



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 20.11.2025

Judgment pronounced on : 06.02.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.184 of 2022
& CMP.Nos.7832 & 7835 of 2023

- 1.A.P.Visalakshi Achi (Died)
- 2.O.A.A.Anantha Padmanaban Chettiar (Died)
- 3.Valli
- 4.Sundaram Anantha Padmanaban

.. Appellants

[Appellants 1 and 2 died, appellants 3 and 4 & RR4 and 5 are already on record, are impleaded as Lrs of the deceased appellants 1 and 2 vide order dated 26.02.2025 in CMP.Nos.15984 & 15986 of 2022 in A.S.No.184 of 2022.]

Vs.

1.Shree Arunachaleswarar Mills
 A partnership firm registered under Indian Partnership Act, 1932, having Registered Office at Old No.9, New No.10, Municipal Office Street, Valarmathi Lane, Tiruppur 641 604 and Factory at Narasingapuram, Palai Road, Udumalpet, represented by its Managing Partner, S.Natarajamoorthi.

- 2.S.Naatarajamoorthi
- 3.S.Kaveriammal
- 4.Muthu Adaikappan Anantha Padmanaban



5. Annamalai Anantha Padmanaban
6. R. Krishnamoorthy

.. Respondents

*[R6 impleaded vide order
dated 11.07.2025 in
CMP.No.10018 of 2025 in
A.S.No.184 of 2022]*

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 07.04.2021 in O.S.No.252 of 2018 on the file of the Principal District Judge, Tiruppur.

For Appellants : Mr.P.R.Raman
Senior Counsel
for Mr.Anupam Raghuraman

For Respondents : Mr.V.Raghavachari
Senior Counsel
for Mr.M.Mohideen Pitchai for RR1 to 3
Mr.N.Sathish Kumar for R6

JUDGMENT

The defendants in O.S.No.252 of 2018 are the appellants in this appeal suit.

2.Pleadings:



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The plaint in brief:

(a) The 1st plaintiff is a partnership firm in the name of M/s.Shree Arunachaleswarar Mills, with plaintiffs 2 and 3 being its present partners. The firm bears Registration No.880 of 2016. Originally, one A.R.A.Valliammai Achi, A.P.Visalakshi Achi, the 1st defendant, AP.Muthu Addaikappan, O.A.A.A.P.Annamalai, AP.V.Sundaram and M/s.Karaikudi Multi Industries Private Limited, represented by its Director, O.A.A.Anantha Padmanaban Chettiar, the 2nd defendant were partners of the said firm, when it was formed and registered in Regn.No.339 of 1966. The 1st plaintiff firm owned the suit properties, having acquired the same, in and by sale deeds dated 13.02.1967, 10.02.1971 and 26.06.1974, in the name of firm. The firm had availed of loans to the tune of Rs.38 lakhs from Indian Bank, Udumalpet Branch, mortgaging its movable and immovable assets, including the suit properties. Consequent to failure to repay the dues, the Bank initiated proceedings in O.A.No.802 of 1998 before the Debt Recovery Tribunal, Chennai.

(b) In the meantime, one of the partners, A.R.A.Valliammai Achi died and A.P.Visalakshi Achi, wife of the 2nd defendant and her sons, AP.Muthu Addaikappan and AP.Annamalai retired from the firm vide retirement deed



dated 29.11.1999. Subsequently, in and by another retirement deed dated 01.12.1999, AP.V.Sundaram and M/s.Karaikudi Multi Industries Private Limited, represented by its Director, O.A.A.Anantha Padmanaban Chettiar, the 2nd defendant have also retired from the firm. Consequent to the same, M/s.Enson Cotspin Private Limited, S.Nataraj and N.Kamalaveni continued as partners of the firm. The original retirement deeds dated 29.11.1999 and 01.12.1999 have been lost by the 2nd plaintiff on 10.06.2016. Despite efforts made to trace the same, it has not been located. Public notice was effected in Tamil daily, Malai Murasu on 01.07.2016 and a police complaint was also lodged, which was acknowledged vide CSR.No.100 of 2016. Subsequently, the police authorities also issued a Non-traceable Certificate on 13.07.2016.

(c) M/s.Enson Cotspin Private Limited entered into a partnership deed on 25.11.2000, admitting the 2nd plaintiff, his father V.Subramaniam and mother Kaveriammal, the 3rd plaintiff and sister, Maheswari as partners. Under the same deed, M/s.Enson Cotspin Private Limited, represented by N.Rajendran, S.Nataraj and N.Kamalaveni have retired from the firm. The firm got a new Registration No.46 of 2001. A joint publication was effected in Dinamani and in New Indian Express on 06.06.2001 in compliance with the mandate of Section 72 of the Indian Partnership Act, 1932, declaring the continuing



partners of the firm to be the plaintiffs 2 and 3 and the father and sister of the 2nd plaintiff. The retirement of the defendants and their sons and various other partners were also duly intimated to the Registrar of Firms, Coimbatore and necessary mutation has taken place in Form-A on the file of the Registrar of Firms, Coimbatore, relating to the Registration No.339 of 1966.

(d) Subsequently, the 3rd plaintiff, Kaveriammal, Subramanian and Maheswari also retired from the firm vide retirement deed dated 04.04.2002 and thus, the 2nd plaintiff became the sole proprietor of M/s.Shree Arunachaleswarar Mills. Indian Bank brought the assets of the Mill for sale to recover its dues by public auction. The 2nd plaintiff challenged the said proceedings. As per the orders of this Court in CRP.No.1811 of 2009 and on the file of the Debt Recovery Appellate Tribunal, Chennai, the 2nd plaintiff paid Indian Bank a sum of Rs.13 lakhs on 31.03.2001, Rs.10 lakhs on 14.07.2009, Rs.35 lakhs on 21.07.2009 and Rs.20 lakhs on 10.12.2010. A one time settlement was also initiated by the Indian Bank for a sum of Rs.5.10 crores on 05.11.2011, out of which, Rs.45 lakhs was realized by the Bank and kept in a no lien account. Subsequently, the 2nd plaintiff paid further amounts to the tune of Rs.25 lakhs on 16.02.2012 and Rs.40 lakhs on 31.03.2012, Rs.10 lakhs on 31.03.2012 and Rs.25 lakhs on 29.06.2012 and in all, the 2nd plaintiff has paid a total sum of



Rs.2.10 crores toward part settlement of the loan amount of the 1st plaintiff with Indian Bank.

(e) Having become the sole proprietor, the 2nd plaintiff is the sole and absolute owner of the suit properties, he has been in effective possession and enjoyment of the same. The name of the 2nd plaintiff was also mutated in the patta on 08.01.2005. Thereafter, by a new partnership deed dated 24.10.2016, the mother of the 2nd plaintiff, S.Kaveriammal, was inducted as a partner of the firm. The same was registered on 14.11.2016 in Registration No.880 of 2016, on and from that date, the plaintiffs are in exclusive control, possession and management of the firm and its properties. The defendants and other partners had already retired from the firm as early as in 1999 and they have no right, interest or title over the Mill and its assets.

(f) By order dated 08.02.2018, the Debt Recovery Appellate Tribunal, Chennai, dismissed the appeal filed by the plaintiffs against the Bank. The plaintiffs alone have been pursuing legal remedy to protect the assets of the firm for the past 18 years. The 2nd plaintiff has in fact leased out the Mill to third parties and because of labour unrest, strike and lockout, the business activities of the Mill became paralyzed. It was only the 2nd plaintiff, as partner of the 1st



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plaintiff, who attended to the disputes with the labour force and also settled the same amicably. Despite having retired from the firm in 1999, the defendants hatched up a conspiracy and fraudulently created a partnership deed dated 13.10.2016, by making false recitals that they have been carrying on business in the name of M/s.Shree Arunachaleswarar Mills from 01.04.2003 and that it has been registered in Registration No.821 of 2016 on 14.10.2016 before the Registrar of Firms, Tiruppur.

(g) The defendants have made false declaration and successfully managed to obtain registration of the existing identical name of the 1st plaintiff firm, illegally. The 2nd defendant, even in 2005, by a letter dated 09.06.2005, in reply to the demand made by the Accounts Officer of BSNL, Pollachi, went on record stating that the 1st plaintiff Mill was taken over by M/s.Enson Cotspin Private Limited and two others, along with all liabilities and therefore, any dues would have to be paid only by the 2nd plaintiff. Pursuant to the said reply, BSNL authorities have also addressed a communication on 20.06.2005 to the 2nd plaintiff, making a demand for its dues, enclosing a copy of the 2nd defendant's letter dated 09.06.2005. The 2nd defendant therefore having accepted that he has no right over the 1st plaintiff firm and has no right to register the firm afresh in the same name and thereby claim right over the assets of the 1st plaintiff.



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(h) The 1st defendant also moved the Revenue Divisional Officer, Udumalpet to cancel the patta standing in the name of Shree Arunachaleswarar Mills, represented by Natarajamoorthi and for substitution in her name and in the name of her mother-in-law, Valliammai Achi. Unfortunately, the officials, without affording sufficient opportunity to the plaintiffs and without considering material documents, arbitrarily passed orders to cancel the patta in the name of the 2nd plaintiff and ordered substitution of the names of the 1st defendant and her mother-in-law. The 2nd defendant has preferred a revision against the said order before the DRO, Tiruppur, which is still pending.

(i) The defendants have rendered themselves liable for prosecution under Section 70 of the Indian Partnership Act, 1932, for furnishing false particulars regarding ownership, place of business and also date of commencement of business. The registration in Regn.No.821 of 2016 is illegal and void and cannot create any right, interest over the properties/assets of the 1st plaintiff firm. On 20.06.2018, the defendants with their henchmen, attempted to trespass into the suit properties and encroach upon the same illegally. The plaintiffs thwarted the said attempts and interventions of well-wishers. Based on the illegal, void and fabricated documents, the 1st plaintiff is negotiating with third



parties to alienate and encumber the suit properties. Hence, the plaintiffs are also entitled to the relief of permanent injunction.

3. Written statement filed by the defendants in brief:

(a) The plaintiffs have not framed the suit properly, despite noticing the right claimed by the defendants. The plaintiffs have not chosen to seek for a declaratory relief and therefore, the suit is liable to be dismissed on this ground alone. The defendants have a fundamental right to carry on any business and the plaintiffs have no right to question the same. It was only these defendants who started the business in the year 1966 and continued the same for 30 years, acquiring goodwill in the business circles. The fact that plaintiffs have not been able to produce the original retirement deeds shows that the claim of defendants and other partners having retired is false and only a story invented by the plaintiffs. The plaintiffs have created forged documents and are relying on the same. Mere fact that payments were made by the 2nd plaintiff to the Bank would not give him any right and the mutation of patta in the name of the 2nd plaintiff was rightly set aside by the RDO, Tiruppur and the patta in the name of the original name of the partners has been restored. Lands were purchased in the names of Visalakshi Achi and her mother-in-law, Valliammal Achi for starting Shree Arunachaleswarar Mills. Subsequently, the other partners were inducted.



The firm became indebted to Enson Cotspin Private Limited and therefore, a Memorandum of Understanding was entered into with the firm, undertaking to repay the debts. However, the Memorandum of Understanding could not be implemented, on account of the firm not being able to repay the debts.

(b) The 2nd plaintiff, at this juncture, approached the 2nd defendant and after negotiations, a MoU was entered into on 10.11.2000, in and whereby the 2nd plaintiff promised to discharge all debts of the 1st plaintiff firm, including the amounts due to workers, Government authorities, besides also depositors and the personal loans of the 1st defendant and the family members within a period of two months. However, the 2nd plaintiff did not fulfill any of his commitments within the time stipulated in the MoU and also letters dated 11.11.2000 and 11.01.2001. The defendants had agreed to transfer the assets of the 1st plaintiff only on completion of all the obligations undertaken by the 2nd plaintiff and since there was a default committed by the 2nd plaintiff, the assets of the 1st plaintiff firm were not transferred to the 2nd plaintiff.

(c) Indian Bank filed CMP.No.262 of 2009 before the Chief Judicial Magistrate, Coimbatore and took physical possession of the properties of the 1st plaintiff and also auctioned the machineries of the Mill. For the remaining part



of the Indian Bank loan, the Bank approved an One Time Settlement for Rs.4,60,000/- to the defendants which the defendants discharged by obtaining private loans. It was only the defendants who saved the properties of the Mill from being sold in public auction. The Bank has issued a No Due Certificate on 19.08.2017. Insofar as the proceedings between the firm and the Labour Union, revenue recovery proceedings were initiated and the Tahsildar took steps to recover the amounts due by attaching the properties of the Mill. To avoid sale, the 1st defendant paid Rs.1.35 crores on 15.06.2017 and balance of Rs.1,36,44,028.23, leaving some more amounts due and payable to the Labour Unions. Depositors of the 1st plaintiff approached TANPID Court, Coimbatore and gave complaints and the amounts due to the depositors were paid only by the defendants and the complaint was closed.

(d) In fact, the plaintiffs 2 and 3 were also arrayed as accused in the said case and they got themselves discharged from the High Court on the ground that they had no obligations to discharge the amounts due to the depositors. The 2nd plaintiff failed to pay the debts as undertaken by him, which resulted in the Commercial Tax Department issuing a notice dated on 26.06.2018 for recovery of Rs.11,35,111/- and PF demand of Rs.26,46,049/- being made on 10.08.2017. For the default committed to Bank of Madura, the 1st defendant's flat at Chennai



was auctioned by the Bank. Despite not honouring his commitment, the 2nd plaintiff managed to get the patta transferred in his name in the year 2005 and on coming to know the defendants have approached the RDO, Tiruppur, who conducted an enquiry and transferred the patta issued to the 2nd plaintiff. The plaintiffs have suppressed the MoU dated 10.11.2000 and have not come to Court with clean hands. The defendants alone are entitled to the assets of the 1st plaintiff Mill and the plaintiffs 2 and 3 have not right in the 1st plaintiff's firm or its name. As owners, the defendants are entitled to run the business under the name, Shree Arunachaleswarar Mills and for the purpose, they have registered the firm on 14.10.2016. There was no firm in existence on the date when the defendants registered the firm. After coming to about the registration by the defendants, the 2nd plaintiff hurriedly registered another firm in the same name on 14.11.2016. The plaintiffs are not entitled to injunction as prayed for as the property was purchased by Visalakshi Achi and Valliammal Achi and the patta has also been restored in their names. When Indian Bank initiated proceedings, the plaintiffs 2 and 3 abandoned the suit property and upon discharge, Indian Bank delivered physical possession of the suit property only to the defendants. The plaintiffs are not in possession and therefore, the defendants prayed for dismissal of the suit with costs.



4. The reply statement filed by the 1st plaintiff and adopted by the plaintiffs 2 and 3, in brief:

(a) The plaint averments and allegations are reiterated. The defendants having retired in 1999, have no locus to question the right of the plaintiffs 2 and 3 over the 1st plaintiff Mills and its assets. Hence, there is no necessity to seek relief of declaration as claimed by the defendants. The fact that the retirement deeds were brought to the notice of the Registrar of Firms would negate the allegation that the retirement deeds are fabricated documents and not true. The defendants cannot claim right under the erroneous order passed by the RDO since the same is under challenge before the DRO, Tiruppur.

(b) The defendants have suppressed material fact as to how they mobilized funds to discharge the One Time Settlement amount to the Bank. The 2nd plaintiff came to know that the 1st defendant entered into an agreement on 29.04.2017 behind the 2nd plaintiff's back with one R.Krishnamoorthi to sell the suit properties and under the said illegal agreement, an advance of Rs.6,94,15,975/- was received in order to discharge the loans of Indian Bank. The 1st plaintiff handed over the original title deeds of the suit properties to R.Krishnamoorthi. The 1st defendant schemingly filed a false complaint on 05.12.2017 before the Pallathur Police Station, as if the original title deeds were



lost while travelling from Karaikudi to Pallathur and managed to obtain a Non-traceable Certificate from the police. Based on the complaint of R.Krishnamoorthi, the Non-traceable Certificate was cancelled by the police on 14.12.2017.

(c) The 1st defendant has also executed Powers of Attorney on various dates in respect of portions of the suit property. Krishnamoorthi and his wife, K.Selvi has filed a suit in O.S.No.68 of 2012 on the file of the Sub-Court, Udumalpet against the defendants and others for enforcing the agreement dated 29.04.2017 and to declare the Power of Attorney dated 01.12.2017 executed in favour of the 8th defendant as null and void, the agreement of sale dated 01.12.2017 in favour of one G.Saravanakumar as null and void, and for a mandatory injunction to direct the defendants in the said suit to execute a registered agreement of sale in terms of the agreement dated 29.04.2017 and also for permanent injunction to restrain alienation of the suit properties. The MoU dated 10.11.2000 is not material to the cause of action for which the present suit has been filed. It is the defendants who have committed fraud and misrepresentation by registering the partnership firm in the identical name. Having become a sole proprietary concern, the 2nd plaintiff had every right to enter into a partnership deed and register the firm. The defendants have no



subsisiting right or interest or possession over the 1st plaintiff Mill and the suit properties.

5. Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

1) Whether the partnership deed dated 13.10.2016 entered into between the defendants has to be declared as null and void and unenforceable?

2) Whether the defendants have to be restrained from interfering with the peaceful possession, enjoyment, management and control of the suit properties by the 2nd and 3rd plaintiffs in the capacity as partners of the 1st plaintiff, by way of a permanent injunction?

3) Whether the defendants have to be restrained from in any manner alienating or encumbering or dealing with any portion of the suit properties in pursuance of the partnership deed dated 13.10.2016?

4. Whether the suit is not maintainable in the absence of the relief of declaration, declaring the plaintiffs 2 and 3 as partners of the 1st plaintiff firm?

5) To what other relief?

6. Trial:



At trial, on the side of the plaintiffs, the 2nd plaintiff was examined as P.W.1 and one S.Sathiyamoorthi was examined as P.W.2 and Ex.A1 to Ex.A67 were marked and on the side of the defendants, the 2nd defendant Anandapadmanaban was examined as D.W.1 and Ex.B1 to Ex.B20 were marked and Ex.X1 to Ex.X5 were marked on the side of the Court.

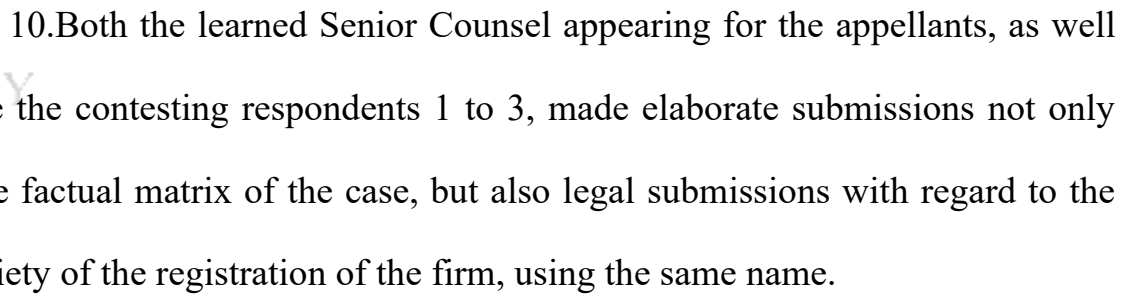
7.Decision of the trial Court:

The trial Court, considering the oral and documentary evidence, decreed the suit and granted both the reliefs of declaration and permanent injunction.

8.Present appeal:

Aggrieved by the judgment and decree of the trial Court, the defendants have instituted the present appeal suit.

9.I have heard Mr.P.R.Raman, learned Senior Counsel for Mr.Anupam Raghuraman, learned counsel for the appellants and Mr.V.Raghavachari, learned Senior Counsel for Mr.M.Mohideen Pitchai, learned counsel for the respondents 1 to 3 and Mr.N.Sathish Kumar, learned counsel for the 6th respondent.



1. Whether the plaintiffs are entitled to the relief of declaration that the registration of the firm by the defendants in the name of the 1st plaintiff is null and void?

12. It is a classic case where the parties have been spending years in litigation, addressing the symptoms of the disease, without taking steps to cure the disease itself. Under the Registration Act, when a firm owns immovable properties, at the time of retirement of any partner, unless the separate interest of the outgoing partner is released in favour of the other partner by a registered deed/stamp instrument, there will not be any effective valid and legal vesting of title in the continuing partners. Such a document would be compulsorily registrable under Section 17(1) of the Registration Act.



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13. Even under the Stamp Act, in the case of a firm owning immovable properties and the partners being non relatives, they are not entitled to concessional stamp duty. A dissolution of the firm which involves partition of the immovable properties of the firm amongst the partners, not being family members attracts stamp duty at Rs.8/- for every Rs.100/- or part thereof, of the market value of the immovable property dealt with under the deed of dissolution, when it is relating to any property situate within Chennai metropolitan planning area and urban accommodation of Madurai, Coimbatore, Salem, Tiruchirapalli and the city of Tirunelveli. Even in respect of other areas, there is a concession of Rs.1/- and the duty is reduced from 8% to 7%. Only when the dissolution is amongst the partners who are family members, then the stamp duty payable is 1% or part thereof, of the market value of the property, which is under partition, consequent upon dissolution of the firm.

14. Even in the case of retirement of partners from the firm as well, the same is dealt with under Schedule I of the Indian Stamp Act, 1899, which is similar to the rates as applicable in the case of dissolution. In the present case, admittedly, there has been no dissolution. As already narrated in the pleadings extracted herein above, there have been instances of retirement of existing



partners, admission of new partners and re-induction of partners who have already retired at various points of time. In fact, at one point of time, all the partners of the firm retired and it is claimed by the 2nd plaintiff that he was the sole proprietor of the proprietary concern, viz., the 1st plaintiff. I am unable to understand how without any dissolution or release by outgoing partners in a manner known to law, the firm can be presumed to be converted into a sole proprietary concern with the 2nd plaintiff as the sole proprietor. Both the plaintiffs and the defendants have claimed that they have made payments to save the properties of the firm and that they alone, to the exclusion of the other, are entitled to control and management of the 1st plaintiff firm.

15.The cause of action for the suit has arisen only on account of a registration having been effected by the defendants in the name of the very same 1st plaintiff firm, despite the defendants having retired from the firm even in 1999. I have already found that all retirements from the firm are not legally sustainable, since the firm admittedly owned immovable properties. Unless the retiring partner executes a registered release or surrender deed, releasing his interest in the immovable property, there would be no vesting of rights in the name of the continuing partners. Strangely, the plaintiffs allege that the defendants have unlawfully entered into a partnership firm and got it registered.



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However, it has been brought out by way of written statement, as well as the evidence that the plaintiffs themselves, on coming to know of the registration of the firm in the very same name of the 1st plaintiff, have proceeded to register another firm on 14.11.2016, by which time, more specifically on 14.10.2016, the defendants had already registered a firm in the name of Shree Arunachaleswarar Mills. Thus, from the above, it can be clearly seen that the plaintiffs and the defendants have only been trying to go one up above the other by taking such steps, including various steps to discharge loans and also repay dues to various creditors and also claim to be in absolute possession and enjoyment.

16. Insofar as the reliefs sought for in the suit, as already set out above, the prayers sought for by the plaintiffs should be understood in the context of the cause of action. The cause of action is that the defendants 1 and 2 having retired on 29.11.1999 and 01.12.1999 from the 1st plaintiff firm and subsequently, there have been several changes effected to the constitution of the firm, the defendants had no right to register a firm in the name on 14.10.2016, by making false declaration and furnishing false information to the authorities. The declaratory relief sought is that the partnership deed dated 13.10.2016 entered into between the defendants in the name of Shree Arunachaleswarar



Mills and registered as Registration No.821 of 2016 before the Registrar of Firms, Tiruppur on 14.10.2016 is null and void and unenforceable.

17.Insofar as the said relief is concerned, I have already found that there has been no proper or valid retirement of the partners or even the dissolution of the firm. When the firm admittedly owns immovable properties, in law, the firm does not cease to exist and would continue, until a proper dissolution deed or partition deed is executed and registered. Of course, there is one grey area. Excepting the 2nd plaintiff, all other partners left and for some period of time, there was only one partner in the firm, which would defeat the very definition of a partnership firm itself. However, subsequently, the 3rd plaintiff was inducted and the firm again got a minimum of two partners. In the light of the above, it has come out in evidence that the defendants retired from the firm and they also wrote to the Government authorities that they are not concerned with the liabilities and it is only the 2nd plaintiff who is liable to pay the outstanding amounts. By conduct express and implied, the defendants even though the retirement deeds have been disputed and not placed before the Court, the defendants, by their oral and documentary evidence, have made it clear that they did not stake any claim in the 1st plaintiff firm on account of their moving out in 1999, until much later, in 2017 and thereafter.



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18. In fact, in the pleadings, it is also the categorical case of the defendants that though it was agreed that the defendants would release and relinquish their rights in favour of the 2nd plaintiff, which was subject to compliance of various obligations cast upon or agreed to by the 2nd plaintiff alone, admittedly, there has been default and the 2nd plaintiff has not complied with the obligations which was set out in the MoU dated 10.11.2000. In such circumstances and also as contended by the defendants, the plaintiffs cannot contend that the defendants have given up their right in the subject property and that the plaintiffs are the sole and absolute owners of the suit properties.

19. As already discussed herein above, unless there is a valid and legal relinquishment of interest in the partnership firm, which owns immovable properties by duly stamped and registered instruments, or at least by a dissolution of the firm, which also necessarily requires adequate stamp duty and registration, the assets would continue to stand in the name of the 1st plaintiff firm. The parties have not addressed these core issues and instead they have been fighting on the peripherals, which does not give any real relief to the parties. In such circumstances, the only remedy open to the parties is to seek appropriate declaratory relief insofar as the rights of the partners, be it the



plaintiffs 2 and 3 or the defendants or by seeking for dissolution or otherwise and thereby partition of the assets of the 1st plaintiff Mill. Without doing so, it will not lead the parties anywhere and they will only be going around in circles. Insofar as the suit reliefs are concerned, considering that the defendants were not entitled to register the firm using the same name of the 1st plaintiff firm after having relinquished their rights and also affirmed such relinquishment subsequently in an express manner, it is not open to the defendants to have a firm registered in the same 1st plaintiff's name. The plaintiffs are therefore entitled to the said relief of declaration and the trial Court has rightly granted the same to the plaintiffs.

20.The conduct of the plaintiffs is also not blemishless. On realizing that there is a grey area with regard to the validity of the 1st plaintiff's firm and on coming to know of the registration of the firm by defendants on 14.10.2016, they have also gone ahead and registered another firm in the same name with the plaintiffs 2 and 3 as partners. This registration would also be clearly invalid in the eye of law. However, this registration is not under challenge by the defendants.

21.The trial Court has not addressed the issue of legality and validity of



the retirement deeds and subsequent registration and re-registration of the firm in the very same name of the 1st plaintiff. The parties will have to work out their rights by filing a comprehensive suit in this regard and it shall be open to either the plaintiffs or the defendants to set the ball in motion.

22. Unless and until the individual rights of the outgoing partners of the firm are addressed, the questions of the validity of any retirement in the absence of registered documents, releasing their individual interest in the immovable property or by at least a proper dissolution of the firm and consequent partition of its assets, there cannot be any effective relief to the parties, be it the plaintiffs or the defendants.

23. Coming to the relief of permanent injunction, though both the learned Senior Counsel have taken me through the various documents to contend that the respective plaintiffs and the defendants alone are in exclusive possession and enjoyment of the suit properties and on the side of the plaintiffs, it is being contended that the plaintiffs alone are continuing the business and therefore, the defendants, who all of a sudden, created a firm in October 2016, after having retired even in 1999, have not been able to demonstrate their continuance of



possession over the immovable properties. Similarly, on the side of the defendants, it is contended that it is only the defendants who have been in possession and have taken all steps to clear the Bank loan, to clear dues of the Labour Union, etc, and that on payment of the One Time Settlement amount, the Bank has put the defendants alone in physical possession of the property.

24. Insofar as physical possession, proceedings are pending before the Revenue Authorities. The original patta granted in favour of the plaintiffs was cancelled at the instance of the defendants 2 and 3 and their names are substituted in the revenue records. However, the plaintiffs have challenged the proceedings of the RDO and the revision is pending before the DRO concerned. However, the clinching document, in my considered opinion, would be the letter dated 10.08.2017 which has been exhibited as Ex.B7, where the defendants have written to the Asset Recovery Management Branch of Indian Bank, requesting for keys of the Mill, pursuant to settlement of the loan account of the 1st plaintiff for Rs.4.6 crores. There is an endorsement in the said letter by the 2nd defendant that he has received the keys from the Bank. Further, towards nearer the filing of the suit, the defendants have been able to establish that they have undertaken various steps to settle the dues of the plaintiffs and in such circumstances, the plaintiffs were certainly not in physical possession of the suit



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properties to be entitled to the relief of permanent injunction. This is moreso on account of my findings to the issue regarding the validity of the various release deeds without payment of proper stamp duty and also the absence of registration. Unless and until the parties trash out all the issues with regard to their respective entitlements in the firm as well as the properties, the plaintiffs cannot claim to be in exclusive possession, to the exclusion of the defendants. Therefore, the plaintiffs are not entitled to the relief of permanent injunction.

25. In fact, under Section 37 of the Indian Partnership Act, 1932 as well, when a member of the firm ceases to be a partner and the surviving or continuing partners carrying on the business of the firm with the property of the firm, without any financial settlement of accounts as between them and the outgoing partner, then, in the absence of a contract to the contrary, the outgoing partner is entitled, at the option of himself or his representatives, to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of 6% per annum on the amount of his share in the property of the firm. Therefore, in the absence of a valid retirement or dissolution, the defendants would certainly be entitled to claim their share in the property of the firm. In fact, Section 48 of the



Act also sets out a mode of settlement of accounts between the partners which apparently has also not happened in the present case, though there have been agreements and understandings entered into between the parties, in order to effect such a settlement.

26. The trial Court has clearly erred in not appreciating the effect of Ex.B7, as well as various payments made by the defendants towards discharge of the loan being more proximate to the cause of action set out by the plaintiffs, for filing the suit. Ex.B8 is also addressed by the Bank only to the 2nd defendant. The trial Court, without addressing larger issues that arose for consideration, has proceeded to hold that the plaintiffs are in possession on account of the defendants having retired in 1999 and that they have not even produced any documents to be in possession and enjoyment of the suit property from 01.04.2003. Ex.B7 and Ex.B8 have not even been discussed by the trial Court in this regard. Moreover, when I have already found that there has been no legal relinquishment of the interest of the partners, the property standing in the name of the firm can only be a joint property where all the partners would be co-owners. The law is equally settled that no injunction can be granted against the co-owner also. Therefore, even from this angle, the plaintiffs were not entitled to permanent injunction. In the light of the foregoing discussions, I am inclined



to set aside the decree of permanent injunction granted in favour of the plaintiffs. The points 1 and 2 are answered accordingly.

27.Result:

In fine, the Appeal Suit is partly allowed and the judgment and decree dated 07.04.2021 in O.S.No.252 of 2018 on the file of the Principal District Judge, Tiruppur, is set aside in so far as the relief of permanent injunction alone. It shall be open to both the parties to approach the competent Civil Court, seeking appropriate reliefs, as they may be advised. There shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

06.02.2026

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Speaking order
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To

The Principal District Judge, Tiruppur.



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P.B.BALAJI.J,

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Pre-delivery judgment made in
A.S.No.184 of 2022
& CMP.Nos.7832 & 7835 of 2023



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