

Bijendra Prasad and ors. Vs. Smt. Duleshwari Devi and ors.

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Court : Patna

Decided On : Jan-07-1998

Reported in : AIR1998Pat122

Judge : B.M. Lal, C.J. and S.K. Singh, J.

Acts : [Partnership Act, 1932](#) - Sections 69; [Contract Act, 1872](#) - Sections 65; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 11

Appeal No. : L.P.A. No. 1313 of 1997

Appellant : Bijendra Prasad and ors.

Respondent : Smt. Duleshwari Devi and ors.

Advocate for Pet/Ap. : S.S. Dwivedi, Sr. Adv.

Disposition : Appeal dismissed

Prior history : 1. Letters Patent Appeal is directed against the judgment and decree dated 21st August, 1997, whereby the plaintiffs have been non suited, inter alia, on the ground that the suit as framed and filed for seeking relief for partition, accounts and dissolution of the firm was not maintainable in view of the provision of Section 69 of the Indian Partnership Act, 1932 (hereinafter referred to as 'the Partnership Act'), which envisages that registration of a firm is a condition precedent to maintain

Judgement :

1. Letters Patent Appeal is directed against the judgment and decree dated 21st August, 1997, whereby the plaintiffs have been non suited, inter alia, on the ground that the suit as framed and filed for seeking relief for partition, accounts and dissolution of the firm was not maintainable in view of the provision of Section 69 of the Indian [Partnership Act, 1932](#) (hereinafter referred to as 'the Partnership Act'), which envisages that registration of a firm is a condition precedent to maintain the suit. Thus, in nutshell in the absence of registration of the firm, the Court gets no jurisdiction to proceed with the trial of the suit.

2. The pleadings as set out by the appellants/ plaintiff are that one Hari Mohan Prasad and his three minor sons, namely, Bijendra Prasad, Birendra Prasad and Kali Shankar Prasad, claimed that a partnership firm was constituted by a deed dated 3-7-1954 (the deed was unregistered) wherein minor plaintiffs Nos. 2 to 4 under the guardianship of their father Hari Mohan Prasad as well as respondents/defendants 1 and 2 were the partners to the extent of half and half share in the cinema business. Though learned counsel appearing for the appellants disputes this fact contending that it has been inadvertently mentioned in the plaint, but paragraph 3 of the plaint reveals this fact and it cannot be said that inadvertently it has been mentioned in the plaint. It is necessary to reproduce paragraph 3 of the plaint which reads as under:--

'That there was a deed of partnership executed between plaintiffs 2 to 4 under the guardianship of plaintiff No. 1 and defendants 1 and 2 on 3-7- 1954 by which it was agreed that the plaintiffs 2 to 4 shall have -/8/- eight annas share and defendants 1 and 2 shall have -/8/- eight annas share in the cinema business."

Ex facie, perusal of paragraph 3 of the plaint reproduced above makes it abundantly clear that a deed of partnership was executed between plaintiffs Nos. 2 to 4, i.e., minor son under the guardianship of plaintiff No. 1 Hari Mohan Prasad and defendants Nos. 1 and 2 on 3-7-1954 (unregistered deed) whereby it was agreed that the plaintiffs, i.e., minor sons, plaintiffs Nos. 2 to 4 shall have half share and defendants Nos. 1 and 2 shall have half share in the cinema business. It appears that defendants Nos. 1 and 3 remained absent throughout despite

summons and defendants Nos. 2 and 4 had filed joint written statement and while contesting the suit raised all legal and factual pleas inasmuch as the suit as framed and filed was not maintainable in view of the provisions of Sections 30,48 and particularly 69 of the Partnership Act for want of registration.

3. For the purpose of disposal of this appeal, the other factual and legal pleas raised by the defendants-respondents are not necessary to best gone into. Therefore, this Court is only dealing with the impact of non-compliance of the provisions of Section 69 of the Partnership Act. A bare reading of the provisions of Section 69 of the Partnership Act envisages that in a suit based on partnership firm the Court gets jurisdiction only if the firm is registered under the Partnership Act meaning thereby that registration of a firm is condition precedent to derive right to institute a suit and the Court gets jurisdiction to proceed with the suit only when the condition precedent enumerated under Section 69 of the Act is fulfilled. This proposition of law has no two opinion. In the case of *Loonkaran Sethia v. Ivan E. John*, AIR 1977 SC 336, their Lordships of the Apex Court held that Section 69 is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an unregistered firm, whether existing or dissolved, void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling under the ambit of Section

69.

4. Since paragraph 3 of the plaint, as discussed above, envisages that there was a partnership firm created for the purpose of business on 3-7-1954 and admittedly it was not registered, therefore, provisions of Section 69 of the Act are attracted and, therefore, on this issue rightly the appellant plaintiffs have been non-suited by the trial Court and the same was maintained by the first appellate Court as well.

5. Learned senior counsel appearing for the appellants, Shri S. S. Dwivedi, strenuously contended that notwithstanding the fact that the suit was not maintainable in view of the provisions of Section 69 of the Act, even then in view of Section 65 of the Indian Contract Act, when an agreement is discovered to be void, or when a contract becomes void, any person who has received any

advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it. In this regard it is submitted that the respondents have received advantage under the agreement dated 3-7-1954 and thus are bound to restore it or to make compensation for it, to the person from whom they received it, i.e., from the appellants/plaintiffs though the agreement is unregistered and for this proposition learned counsel strongly relied on the decision in the case of A. A. Khan v. Ameer Khan, AIR 1952 Mys 131.

6. In A. A. Khan (Mysore's case), no doubt, partnership had been entered into by one adult with minors and the Court held that such a partnership is void because the partnership was not in terms of Sections 4 and 30 of the Partnership Act which envisage that there must be a firm in existence before a minor could be included in it and under Section 4 it is necessary that there must be an agreement between two or more adults before a partnership comes into being and it is only thereafter that a minor can be admitted to the benefits of the partnership under Section 30(1) of the Partnership Act. But where a partnership is purported to have been entered into by one adult with minors such a partnership is void and cannot be the basis of a suit for dissolution and accounts nor can the minors be regarded as admitted to the benefits of a partnership under Section 30(1) of the Act as there is no partnership in existence. Thus, it was held that minor partners were entitled to recover their contribution to the partnership under Section 65 of the Contract Act with interest thereon.

7. A.A. Khan (AIR 1952 Mys 131) (Mysore case) has no application to the facts of the instant case inasmuch as in paragraph 3 of this judgment (Mysore case) it is found that the partnership firm which came into being according to the terms of the partnership deed had been registered under the Partnership Act and, therefore, there was no occasion for the Court to non-suit the plaintiffs on the ground of non-compliance of the provisions of Section 69 of the Partnership Act, as has been found in the instant case. Under these facts and circumstances, vide paragraph 15 of the judgment (Mysore's case) the benefit granted in favour of the plaintiffs-minors in accordance with the provisions of Section 65 of the Contract Act, the same cannot be granted in the instant case. Therefore, there was no occasion for

the Court to proceed with the suit in the light of the pleadings under Section 65 of the Contract Act and to grant relief to the plaintiffs-minors applying the ratio of Mysore case and the Courts below, in our considered opinion, have rightly non-suited the appellants-plaintiffs.

8. It is next contended by Shri Dwivedi that the Court should have dealt with and decided all the issues arising out of the pleadings in the suit and giving findings on oral and documentary evidence and in absence of the same, the judgment and decree has no binding effect. For this proposition, learned counsel relied on the cases of Sundra Naicka Vadiyar v. Ramaswami Ayyar, AIR 1994 SC 532 and Dilbagrai Punjabi v. Sharad Chandra, AIR 1988 SC 1858. We have already discussed above the legal impact of the provisions of Section 69 of the Partnership Act that for want of registration under the Partnership Act, the suit as framed and filed was not maintainable meaning thereby the suit appeared from the statement of the plaintiff to be barred by law i.e. under the provisions of Section 69 of the Partnership Act. Under these circumstances, as a matter of fact, the plaintiff deserved to have been rejected at the very threshold. If the respondent/defendant have filed the written statement and even if issues were framed and one of the issues was about the maintainability of suit in view of the provisions of Section 69 of the Partnership Act and throughout the Court below has held that the suit was not maintainable, it be deemed that the plaintiff was rejected. However, learned counsel contends that when before filing the written statement the plaintiff is not rejected and the respondent/defendants are allowed to file the written statement, the stage of rejection of the plaintiff has ended and now the clock cannot be set back and, therefore, dismissal of the suit cannot be deemed rejection of the plaintiff under Order 7, Rule 11 (1)(d) of the Code of Civil Procedure (hereinafter referred to as 'the Code'). The submission of learned counsel Shri Dwivedi has no force. A perusal of the provisions of Order 7, Rule 11 of the Code do not envisage any limitation or restrictions on the exercise of Court's power at any stage. Besides this, it does not either expressly or by necessary implication provide that jurisdiction under Order 7, Rule 11 of the Code should be exercised at a particular stage only. Therefore, in the absence of any statutory restrictions placed under Order 7, Rule 11 of the Code it is open to the Court to exercise its jurisdiction under this provision at any stage, may be during the trial or at the appellate stage.

No doubt, such objections are expected to be raised at the very threshold so that unnecessarily Court's time may not be wasted, but, all the same, if the plea is raised in the written statement and ultimately the Court decides the issue in favour of the defend-ants in non-suiting the plaintiffs even after the settlement of the issues or trial, it cannot be deemed that at subsequent stage the trial Court or the appellate Court does not get any jurisdiction. In *Samar Singh v. Kedarnath*, AIR 1987 SC 1926, it has been ruled that plaint can be rejected even alter the stage of settlement of issues etc. Thus, when the dismissal of the suit in the instant case amounts to rejection of the plaint under Order 7, Rule 11(1)(d) of the Code, we fail to understand how question arises forgiving finding on all other issues relating to the merits of the suit, and if other issues are not dealt with by discussing the oral and documentary evidence on record, how applying the ratio in *Sundra Naicka Vadiyar* (AIR 1994 SC 532) and *Dilbagrai Punjabi's case* (AIR 1988 SC 1858) (supra) the judgment and decree under appeal become ineffective. On the other hand, under the facts and circumstances narrated above when the dismissal of the suit resulted in dismissal of the plaint, for want of non-observance of the provisions of Section 69 of the Partnership Act, the question of dealing with other issues and discussing the other evidence, oral and documentary, does not arise. Therefore, the ratio laid down in *Sundra Naicka Vadiyar* and *Dilbagrai Punjabi's cases* (supra) are of no avail to the appellants.

9. No other point was raised.

10. In the result, for the foregoing discussions, this appeal fails and is dismissed.

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