

Rappai Vs. Pushpam

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Court : Kerala

Decided On : Mar-26-2010

Reported in : 2010(2)KLT182

Judge : S.S. Satheesachandran, J.

Acts : Rent Control Act; ;[Partnership Act, 1932](#) - Section 14; ;[Constitution of India](#) - Article 227

Appeal No. : W.P. (C) No. 12141 of 2007

Appellant : Rappai

Respondent : Pushpam

Advocate for Def. : G. Sreekumar (Chelur), Adv.

Advocate for Pet/Ap. : N.P. Samuel, Adv.; T. Krishnanunni, Sr. Adv.

Judgement :

S.S. Satheesachandran, J.

1. Petitioners are defendants 1 to 3 in O.S. No. 280 of 1998 on the file of the Sub Court, Thrissur. Suit is one for dissolution of a firm and settlement of accounts. Respondents are the additional plaintiffs in the suit. A preliminary decree was passed in the suit for dissolution of the firm directing settlement of accounts by

passing of final decree. In the final decree proceedings, the petitioners/defendants 1 to 3 moved an application for permitting them to carry on business of their own in a building over which the firm has tenancy right, which formed part of its assets. The petitioners canvassed such a right contending that they form the majority among the partners of the dissolved firm. Ext.P1 is the copy of that application. That application was objected to by the respondents, the additional plaintiffs impleaded as the legal heirs of the deceased plaintiff, viz., one among the partners of the firm. At the time of arguments, as seen from Ext.P3 order, challenged in the Writ Petition, the petitioners canvassed for auctioning the tenancy right as an asset of the dissolved firm so that the successful bidder in that auction be permitted to conduct the business in that building. Plea so canvassed was resisted by the respondents contending that the petitioners had been appointed as party receivers earlier in the suit for carrying the business, but, on account of their default in depositing the income before the court the business had to be closed down. The present petition had been filed, according to them, only to delay the disposal of the final decree proceedings.

2. The learned Sub Judge, after appreciating the rival contentions presented by the parties, concluded that it is impracticable and more so not feasible, to auction the tenancy right over the building as canvassed by the petitioners. It was also observed that an auction for renting out building on an yearly or monthly basis may not be possible, and it cannot be determined at this stage how long the final decree proceedings will continue for its completion. Noticing the impracticability in the auctioning of the building on a monthly/yearly basis, which is likely to cause change of person periodically depending upon who is the successful bidder among the parties Ext.P1 petition was dismissed with an observation that final decree proceedings will be expedited. Propriety and correctness of Ext.P3 order passed by the learned Sub Judge is challenged in the Writ Petition invoking the supervisory jurisdiction vested with this Court, under Article 227 of the [Constitution of India](#).

3. After hearing the counsel on both sides at length as I found that more enlightenment on the issue projected - auctioning of the tenancy right of a firm as part of its assets and the legal principles applicable thereof is called for, Senior

Advocate Sri. T. Krishnanunni was requested to assist the court to resolve the question presented for consideration. The learned Senior Counsel Sri. Krishnanunni presented various facets of the issue under consideration, making reference to Ganpat Rai and Anr. v. Abnash Chancier AIR 1973 J. & K. 74, Dwijendra Nath v. Rabindra Nath : AIR 1987 Cal. 289 and Jayalakshmi v. Shanmug ham 1987(2) KLT SN 47 In all the above decisions considering whether tenancy right formed part of the assets of a firm it is concluded that it formed part of the goodwill of the firm. In Ganpat Rai and Anr. v. Abnash Chander AIR 1973 J.&K.; 74 expressing the view that tenancy right of the firm has to be treated as part of its goodwill, it has been held that in determining the assets of the firm on its dissolution such tenancy right will have to be valued along with the goodwill and taken into account at the final settlement of the accounts while passing a final decree. In Dwijendra Nath v. Rabindra Nath : AIR 1987 Cal. 289; the High Court of Calcutta has held that the provisions under the Rent Control Act-would not be a bar in treating the tenancy right in favour of the firm as part of its goodwill and as an asset of the firm. In Jayalakshmi v. Shanmugham (1987 (2) KLT 47 (C. No. 67) dilating on the question whether the benefit of a tenancy right formed part of its goodwill this Court has held thus:

Subject to the contract between the parties, the property of the firm includes all property and rights and interests in the property originally brought into the stock of the firm, or acquired by purchase or otherwise by or for the firm or for the purposes and in the course of the business of the firm and also include also the goodwill of the business.

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Under Section 14 of the Act, 'goodwill' of the business is also property of the firm. Goodwill can be an advantage connected with the premises in which the business is carried on. The benefits of tenancy rights can also form part of the goodwill in the absence of any stipulation to the contrary. Goodwill is a thing which is very easy to describe but very difficult to define. It is an advantage which is acquired by business beyond mere value of the capital, stock, fund or property employed therein, in consequence of general public patronage and encouragement which it

receives from constant or habitual customers. It is composed of a variety of elements and is an advantage connected with the premises in which the business was previously carried on. The benefit of tenancy right in the premises may also form part of the goodwill without which the business may sometimes be of no use and value.

In the light of the judicial pronouncements as above, it has to be concluded that tenancy right formed part of the assets of the firm, subject to the terms of the partnership deed and contract between the parties.

4. In the given facts of the case, it is evident that, in the preliminary decree proceedings, none of the partners had canvassed any question relating to the tenancy right of the firm over the building in respect, which the petitioners have made the request under Ext.PI application in the final decree proceedings for permission to carry on business of their own.

5. Both sides admit, that there were proceedings for eviction at the instance of the landlord under the provisions of the BRC Act alleging cessation of occupation of the premises by the tenant and commission of waste. Though the Rent Control Court and the appellate authority accepted the case of the landlord and ordered eviction, it was set aside in revision by this Court noticing the pendency of the present suit for dissolution of the firm. Tenancy right of the firm over the building is not disputed before me. However, as the tenancy right of the firm has not been gone into in the preliminary decree proceedings, the court has to look into whether the partnership deed evidences the tenancy right of the firm and it is established by other relevant materials. In case it is satisfied that the firm has tenancy right over the building, it can be treated as an asset of the firm. In view of the dissolution of the firm ordered under the preliminary decree, the tenancy right of the firm, if so established, can be treated as one of its assets while taking a settlement of accounts. Price of tenancy right of the firm, if established, then has to be determined in accordance with law. No doubt, the most, feasible method is to auction such tenancy right among the partners of the dissolved firm so that the successful bidder be entitled to have such tenancy right over the building. Such an exercise need be gone into only if the court is satisfied of the tenancy right of the

firm and that there is no other contract between the partners how that right is to be determined. At any rate, that question need be considered only with settlement of accounts in relation to all assets of the firm in passing of the final decree and not before as canvassed under Ext.P1 application by the petitioners/defendants in the suit.

6. In view of the above circumstances, I see no interference with Ext.P3 order passed by the learned Sub Judge is called for. Subject to the above observations and making it clear that the value of tenancy right of the firm, if so established, can also be fixed in auction with the settlement of accounts of the dissolved firm, the Writ Petition is closed.

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