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(2014) 106 ALR 139 : (2013) 31 LCD 2312 : (2014) 124 RD 355

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

SINGLE BENCH

GOPALJI GUPTA — Appellant

Vs.

ADDITIONAL DISTRICT JUDGE — Respondent

(Before : Narayan Shukla, J)

W.P. No. 3233 of 2004

Decided on : 29-10-2013

A. Indian Partnership Act, 1932 — Section 69 — Non-registration of firm — Bar to suit — A suit by an unregistered firm is barred under Section 69(2) only if it seeks to enforce a right arising from a contract or conferred by the Partnership Act. (Para 13)

B. Civil Procedure Code, 1908 (CPC) — Order 30 Rule 1 — Suit by Partners in Firm Name — Application and Scope — Order 30 Rule 1 CPC regulates the procedure for filing a suit by two or more persons claiming as partners in the firm's name and does not require the firm to be registered. This provision applies to suits of any nature of cause of action, unlike the specific bar under Section 69 of the Partnership Act. (Para 13)

C. Partnership Firm — Unregistered Firm — Suit for Cancellation of Sale Deed — Common Law Right — A suit for cancellation of a sale deed concerning the firm's immovable property, where the sale deed was executed by an unauthorized person and not in the ordinary course of the firm's business, is a suit based on a common law right. Such a suit by an unregistered firm is not barred by Section 69(2) of the Indian Partnership Act, 1932. (Paras 10, 13)

D. Abatement of Suit — Death of Plaintiff Partner — Partnership Firm as

Plaintiff — Where a suit is essentially by a partnership firm to protect its property, and multiple partners are plaintiffs, the death of one plaintiff-partner (even without substituting legal heirs) does not cause the suit to abate, provided that more than two partners of the firm continue to pursue the cause of action. This is particularly true when the suit is considered a suit by the firm itself. (Paras 3, 11, 13)

Cases Referred

- [In Re: Abani Kanta Pal](#), AIR 1986 Cal 143 : 89 CWN 1158
- [M/s. Haldiram Bhujawala and Another Vs. M/s. Anand Kumar Deepak Kumar and Another](#), AIR 2000 SC 1287 : (2000) 2 JT 596 : (2000) 2 SCALE 177 : (2000) 3 SCC 250 : (2000) 1 SCR 1247 : (2000) 1 UJ 603 : (2000) AIRSCW 984 : (2000) 2 Supreme 145
- [Pandit Sri Chand and Others Vs. Jagdish Parshad Kishan Chand and Others](#), (1966) 3 SCR 451
- [Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and Others](#), AIR 1977 SC 336 : (1977) 1 SCC 379 : (1977) 1 SCR 853
- [M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property](#), (1998) 7 AD 37 : AIR 1998 SC 3085 : (1999) 1 CTC 175 : (1998) 6 JT 289 : (1998) 5 SCALE 195 : (1998) 7 SCC 184 : (1998) 1 SCR 485 Supp : (1998) AIRSCW 2994 : (1998) 7 Supreme 276
- [Shanker Housing Corporation \(Ext.\) Vs. Mohan Devi and Others](#), AIR 1978 Delhi 255 : (1978) 14 DLT 153 : (1978) 1 ILR Delhi 607 : (1978) RLR 205

Final Result : Dismissed

JUDGMENT

Narayan Shukla, J.—Heard Mohammad Arif Khan, learned Senior Advocate assisted by Mohammad Aslam Khan, learned Counsel for the petitioners as well as Mr. S.K. Mehrotra, learned Counsel for the respondents.

The petitioners have assailed the order dated 17.5.2002, passed by the Additional Civil Judge (Senior Division) Lakhimpur Kheri in Civil Suit No. 441/2000.

The respondents-plaintiffs instituted a suit for cancellation of different sale-deeds as well as for mandatory injunction against the defendant Nos. 1 to 5 to remove the machineries and possession from the land of plaintiff No. 6.

Briefly the facts of the case are that respondent No. 11/defendant No. 3 executed a power of attorney in favour of respondent No. 10/defendant No. 2. In exercise of power of

attorney the defendant No. 2 executed the sale-deeds in favour of defendant No. 1, as well as defendant No. 5, Maa Gauri Cottage Industry.

2. Ms. Vandana Gupta posed herself as the proprietor of plaintiff No. 7, i.e. Bajrang Cottage Udyog. Under the garb of sale-deed, the defendant-purchaser tried to grab the land of the petitioner No. 7, Bajrang Cottage Udyog whereas only its machinery was sold out. Therefore, the petitioners instituted the suit for cancellation of sale-deeds. The petitioners Nos. 1 to 6 as well as opposite party No. 3, Smt. Vandana Gupta are the partners of plaintiff No. 7, i.e. Bajrang Cottage Udyog. Thus, petitioner No. 7 is a partnership firm. Since defendant No. 3, who is also one of the partners, sold out the property the other partners including the firms file the aforesaid suit for cancellation of sale-deeds impleaded Smt. Vandana Gupta as defendant No. 3.

3. During the pendency of the suit, the plaintiff No. 5 Mahesh Agrawal died but the surviving plaintiffs could not substitute his legal heirs in his place within time provided therefor. Therefore, the defendants filed an application No. 33 C/2 for abatement of suit. The surviving plaintiffs filed objections, stating therein that the wife of Mr. Agarwal is only sole heir and after his death she has attained the state of unsound mind and nobody is ready to come forward as her next friends, therefore, only the option is to implead her as an opposite party. They also submitted that the firm is not a registered firm and since the interest of each and every partner is involved, the suit shall abate only to the extent of share of the petitioner No. 5. They also sought permission to amend the suit to implead the widow of plaintiff No. 5. The Court below rejected the application for abatement. The finding of the Court is that the partners of firm may have joined the firm as plaintiffs to institute the suit but virtually it was a suit by the firm to protect the property of the firm which was sold out by one of the partners, i.e., defendant No. 3 Smt. Vandana Gupta. Therefore, even after death of one of the partners as plaintiff, the suit survives as it is a suit by a firm. The immovable property of the sale-deed belongs to the firm as the land in dispute was recorded in the name of firm in the revenue record. Aggrieved petitioners/defendants filed the revision against the order, passed by the Trial Court, which too was dismissed. Therefore, the present writ petition is before this Court to adjudicate upon the correctness of the orders, passed by the Court below as well as to determine the question as to whether on the death of one of the plaintiffs (partners of the firm) the suit shall survive?

4. Learned Counsel for the petitioners submits that since interests of petitioner Nos. 1 to 6 being partners of the firm are involved separately, the suit shall be treated by the individual persons for their private interest. He further submits that there are seven partners of the firm but one has not joined. Therefore, the suit cannot be said to be the suit by the firm unless all the partners of the firm join together to file the suit. He further emphasized his arguments over the objection raised by the plaintiffs against the application for amendment through which they had admitted that it is an unregistered firm and each and every partner has his own individual interest to file the suit. Therefore, the suit shall abate only against one plaintiff, U, the plaintiff No. 5.

5. In order to examine the right and status of the unregistered firm to sue or to be sued he drew the attention of this Court towards section 69 of the Indian Partnership Act, 1932 and submitted that no suit to enforce a right arising from a contract or conferred by this Act shall be instituted unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm. He further submits that since admittedly, it is an unregistered firm, therefore, the firm has no right to file the suit and thus, the suit in question shall be treated as a suit by the persons in the individual capacity.

6. In support of his submission he cited following decisions;

(i) [Shanker Housing Corporation \(Ext.\) Vs. Mohan Devi and Others](#), The relevant paragraph 17 is quoted below:

"Under section 69(2), a suit to enforce a right arising from a contract can be instituted by or on behalf of a firm against any third party only if (a) the firm is registered and (b) the persons showing, i.e. all the partners of the firm at the time of the institution of suit, are or have been shown in the Register of Firms as partners in the firm, while under Rule 1 of Order XXX two or more persons, who claim as partners may sue, or who are liable as partners may be sued, in the name of the firm (If any), provided such persons were partners at the time of the accruing of the cause of action. If the facts in a given case are such as to attract the applicability of the provisions in both section 69(2) and Rule 1 of Order XXX, the requirements in both the provisions should be fulfilled. In such a case, if a suit to enforce a right arising from a contract is to be instituted by or on behalf of a firm against any third party, the firm has to be a registered firm, and the partners' of the firm as on the date of the institution of the suit must have been shown in the Register of Firms as partners in the firm, and further they must have been partners of the firm at the time of accruing of the cause of action."

He further relied upon [In Re: Abani Kanta Pal](#), in the matter of Abani Kanta Pal. Relevant Paragraph 9 is quoted below;

"9. In our opinion, it may be that Section 13(6) of the West Bengal Premises Tenancy Act puts an embargo on the plaintiff and does not oust the jurisdiction of the Court. A defendant in a suit for eviction may waive service of a notice u/s 13(6). Section 69(1) of the Partnership Act, however, stands on a different footing. The embargo that has been put on the plaintiff under sub-sections (1) and (2) of section 69 is not for the purpose of protecting the interest of any party, but it is based on public policy. The requirements of sub-sections (1) and (2) of section 69 cannot be waived by the defendant, and the Court is debarred from entertaining a suit ignoring the fulfillment of such requirements. So, if a firm is not registered, excepting a suit as contemplated by section 69(3), the Court will have no jurisdiction to entertain a suit in violation of section 69(1). In other words, the plaint that has been filed by the plaintiff will be considered a void plaint, if it contravenes the provisions of sub-sections (1) and (2) of section 69 of the Partnership Act. This view finds support from a decision of the Supreme Court in [Seth Loonkaran Sethiya and Others](#)

[Vs. Mr. Ivan E. John and Others](#), in that case, sub-sections (1) and (2) of section 69 were involved. The Supreme Court made the following observations:

A bare glance at the section is enough to show that it 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 within the ambit of section 69 of the Partnership Act.

7. He further submits that effect of death of one of the plaintiffs is that the entire suit shall abate. In support of his submission he cited a case decided by Hon'ble Supreme Court i.e. [Pandit Sri Chand and Others Vs. Jagdish Parshad Kishan Chand and Others](#),

8. Per contra Mr. S.K. Mehrtora, learned Counsel for the answering respondents submitted that section 69 of the Indian Partnership Act bars the filing of suit by the firm to enforce a right arising from a contract or conferred by the Partnership Act unless the firm is a registered firm whereas the Order XXX, Rule 1 of the CPC provides that any two or more persons claiming or being liable as a partner may sue or be sued in the name of the firm. It does not qualify the nature of the cause of action whereas section 69 of the Partnership Act imposes restrictions of filing of the suit by unregistered firm only to enforce a right arising from a contract or conferred by the statutory provisions of the Partnership Act. He submits that Hon'ble Supreme Court in the case of [M/s. Haldiram Bhujjiawala and Another Vs. M/s. Anand Kumar Deepak Kumar and Another](#), answered two following questions:

"(8) The points that arise for consideration are:

(I) Whether section 69(2) bars a suit by a firm not registered on the date of suit where permanent injunction and damages are claimed in respect of a trademark as a statutory right or by invoking common law principles applicable to a passing-off action?

(II) Whether the words "arising from a contract" in section 69(2) refer only to a situation where an unregistered firm is enforcing a right arising from a contract entered into by the firm with the defendant during the course of its business or whether the bar u/s 69(2) can be extended to any contract referred to in the plaint unconnected with the defendants/as the source of title to the suit property?

Answering question No. 1 the Hon'ble Supreme Court held--

"(9) The question whether section 69(2) is a bar to a suit filed by an unregistered firm even if a statutory right is being enforced or even if only a common law right is being enforced came up directly for consideration in this Court in [M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property](#). In that case, Majumdar J., speaking for the Bench clearly expressed the view that section 69(2) cannot bar the enforcement by a way of a suit by an unregistered firm in respect of a statutory right or a common law right. Chi the facts of that case, it was

held that the right to evict a tenant upon expiry of the lease was not a right "arising from a contract" but was a common law right or a statutory right under the Transfer of Property Act. The fact that the plaint in that case referred to a lease and to its expiry, made no difference. Hence, the said suit was held not barred. It appears to us that in that case the reference to the lease in the plaint was obviously treated as a historical fact. That case is therefore directly in point. Following the said judgment, it must be held in the present case too that a suit is not barred by section 69(2) if a statutory right or a common law right is being enforced.

Answering question No. 2 Hon'ble the Supreme Court held that when the legislature used the words "arising out of a contract" in section 69(2), it is referring to a contract entered into course of business and transaction by the unregistered firm with its defendants-customers and idea is to protect those categories which deals with such a partnership - firm in business."

9. In this case the suit was based on infringement of statutory rights under the Trade Marks Right as well as upon common law principles of tort. Therefore, Hon'ble the Supreme Court held that it is not for enforcement of any right arising out of a contract entered into by or on behalf of the unregistered firm with third parties in the course of firm's business transactions. The suit is, therefore, not barred by section 69(2) of the Act.

10. Mr. Mehrotra submitted that the case at hand is also based under the Common Law right as it is a suit for cancellation of the sale-deed which was not executed by the firm, but by unauthorized person, i.e., opposite party No. 3. He further submits that in the present case also the sale-deed was not executed in the ordinary course of the business of the firm. Therefore, the present suit cannot be said to be barred by section 69(2) of the Act.

11. He further contended that it is a suit, in fact, by the firm for cancellation of the sale-deed of its immovable property. Therefore, joining of other partners does not create any separate interest in them in the property in dispute. Moreover, Order XXX Rule 1 C.P.C. requires the filing of a suit by two or more persons claiming as partners, therefore, on the death of any of the plaintiffs where still more than two partners of the firm are there as plaintiffs, the suit shall not abate but survives as has been held by the orders passed by the Courts below which does not warrant interference of this Court.

12. In order to determine the controversy as to whether after the death of plaintiff No. 5, on the event of non substitution of his legal heirs the suit shall survive or not, it is worth to read the provisions of section 69 of the Indian Partnership Act, 1932 as well as Order XXX Rule 1 C.P.C.

Indian Partnership Act:

"69. Effect of Non-registration.--(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as

a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of the Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing or have been shown in the Register of Firms as partners in the firm.

(3).....

(4).....

Code of Civil Procedure Order XXX Rule 1 C.P.C.

"(1) Any two or more persons claiming or being liable as partners and carrying on business in (India) may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firms, to be furnished and verified in such manner as the Court may direct

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1) it shall in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons."

13. After reading of the provisions of section 69 of the Partnership Act it is obvious that it speaks only to filing a suit for enforcement of a right arising from a contract or conferred under the Act whereas the provisions of Order XXX, Rule (1) regulates the procedure of filing of the suit of any nature of cause of action and it speaks that any two or more persons claiming as partners may sue or be sued in the name of the firm.-This provision does not impose any condition like that the firm must be registered one whereas u/s 69 of the Act filing of the suit by the firm has been barred unless firm is registered. The suit in question is definitely a suit under the common law right for cancellation of the sale-deed. There is no relief to ensure any right either arising from a contract or conferred under the Partnership Act. There is allegation against the defendants that they have been in connivance to grab the property of the firm. They have also raised finger over the genuineness of the transaction as well as authority of defendant Nos. 3 and 2 to execute the sale-deed. The land in question belongs to the plaintiff No. 5 Bajrang Cottage Industry. All the partners of the firm except one have joined the firm to sue the defendant as plaintiff Nos. 1 to 6. One partner of the firm has been impleaded as defendant No. 3, whose action of execution of the deed to put the loss of the firm's property has been challenged. Therefore, on the basis of the proposition of law laid down by Hon'ble the Supreme Court in the case of Haldiram Bhujawala and another (supra) I hold that it is a suit by the firm.

Therefore, it shall not abate on the death of plaintiff No. 5 as still more than two partners of the firm are pursuing the cause of action of the suit. In the result, the writ petition stands dismissed.