

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**RSA No.264 of 1985**

**Date of Decision:30.06.2010**

The Collector, Sales Tax Department and others .....Appellants

Versus

M/S Hakam Chand and Company and others .....Respondents

**Coram:- HON'BLE MR. JUSTICE L. N. MITTAL.**

Present: Mr. Vivek Chauhan, AAG, Punjab for the appellants.

None for the respondents.

**L. N. MITTAL, J (ORAL)**

This is second appeal by defendant Nos.1 to 3.

Suit was filed by respondent No.1 M/s Hakam Chand and Company, Amritsar through its partner against appellants and respondent Nos.2 to 5, who were impleaded as defendant Nos.4 to 7. Respondent Nos.5/defendant No.7 is M/s Hakam Chand and Company, Karol Bagh, New Delhi. The name of plaintiff-firm and defendant No.7-firm is same, but plaintiff-firm is carrying on business at Amritsar whereas defendant No.7-firm is carrying on business at New Delhi. There was sales tax liability of defendant No.7-firm towards Sales Tax Department of the State of Delhi (defendant Nos.1 and 2). Accordingly, defendant Nos.1 and 2 issued recovery certificates to Collector, Amritsar (defendant No.3) for recovery of various amounts from defendant No.7-firm and its partners i.e defendant Nos.4 to 6 and also from surety Nanak Chand (not party to the suit). Defendant No.3, however, threatened to effect recovery

from the plaintiff-firm. Accordingly, the plaintiff-firm filed suit for permanent injunction restraining defendant Nos.1 to 3 from recovering any amount from the plaintiff-firm under the recovery certificates issued by defendant Nos.1 and 2 for effecting recovery from defendant Nos.4 to 7 alleging that plaintiff firm is different and separate from defendant No.7-firm.

Defendant Nos.1 and 2 contested the suit and inter alia pleaded that plaintiff and defendant No.7 firms are one and the same firm with same partners, but the plaintiff intentionally effected change in its constitution to frustrate recovery of the sales tax amount due from defendant No.7. Various other pleas were also raised.

Learned Sub-Judge, First Class, Amritsar vide judgment and decree dated 13.05.1983 dismissed the plaintiff's suit. However, first appeal preferred by the plaintiff has been partly allowed by learned District Judge, Amritsar vide judgment and decree dated 24.08.1984 and thereby suit filed by the plaintiff has been decreed partly restraining the defendants from effecting recovery under the disputed recovery certificates from the plaintiff firm except to the extent of interest of Hakam Chand-defendant No.5 in plaintiff firm. Feeling aggrieved, defendants No.1 to 3 have preferred the instant second appeal.

I have heard learned counsel for the appellants and perused the case file whereas none is appearing for the respondents.

According to partnership deed Ex.P-1 dated 01.04.1980 got proved by the plaintiff-firm from Income Tax record, the plaintiff firm has Nanak Singh, Hakam Chand, Pushpa Rani, Surinder Singh, Balwinder Kumar and Shivraj Singh as partners. The defendants

relied on partnership deed dated 16.11.1969 Mark 'B' and another partnership deed dated 06.04.1971 Mark 'D'. According to partnership deed dated 16.11.1969, defendant No.7 firm at Delhi has Hakam Chand, Tilak Raj and Balwant Kaur (defendant Nos.5, 4 and 6) as partners whereas according to partnership deed dated 06.04.1971, defendant No.7 has Hakam Chand, Tilak Raj (defendant Nos.5 and 4), Niranjan Kumar and Mast Ram as partners. However, these partnership deeds have not been proved by the contesting defendants. Moreover, these partnership deeds in no way prove that plaintiff firm constituted by partnership deed dated 01.04.1980 Ex.P-1 is the same firm as defendant No.7 firm. Partnership deed Ex.P-1 refers to retirement of Tilak Raj and Bhagirath Lal from the partnership firm. However, partnership deeds dated 16.11.1969 and 06.04.1971 relied on by the contesting defendants do not refer to Bhagirath Lal as partner of firm-defendant No.7. Consequently, it cannot be said that plaintiff-firm has been created by reconstitution of defendant No.7-firm. Learned counsel for the appellants vehemently contended that plaintiff-firm and defendant No.7-firm are one and the same firm. However, as noticed hereinbefore, there is no evidence to substantiate this contention. On the other hand, documentary evidence referred to hereinbefore negatives this contention.,

In addition to the aforesaid, recovery certificates issued by defendant Nos.1 and 2, pursuant to which recovery is sought to be effected from the plaintiff-firm situated at Amritsar, did not require defendant No.3 to effect recovery from the plaintiff-firm. On the other hand, the recovery certificates in question required defendant No.3 Collector to effect recovery from defendant No.7-firm and its partners

i.e defendant Nos.4 to 6 and surety Nanak Chand. Consequently, even if the recovery certificates in question are taken at their face value, no recovery on the basis thereof can be effected from the plaintiff-firm. However, Hakam Chand-defendant No.5 is partner in plaintiff-firm as well as in firm-defendant No.7. Consequently, learned lower appellate Court has rightly permitted defendant No.1 to 3 to effect recovery from the plaintiff-firm only to the extent of the interest of defendant No.5-Hakam Chand therein. However, contesting defendant Nos.1 to 3 cannot make recovery from the share or interest of other partners of plaintiff firm, who are not liable to pay the disputed amount even according to the recovery certificates issued by defendant Nos.1 and 2. Consequently, there is no infirmity or illegality in the impugned judgment of the lower appellate Court. No question of law, much less substantial question of law, arises for determination in the instant second appeal.

Learned counsel for the appellants also contended that recovery can be effected from the share or interest of Tilak Raj-defendant No.4 in plaintiff-firm. The contention cannot be accepted because Tilak Raj no longer has any interest or share in the plaintiff firm as evidenced by partnership deed dated 01.04.1980 Ex.P-1.

For the reasons aforesaid, I find no merit in the instant second appeal, which is accordingly dismissed.

**( L. N. MITTAL )**  
**JUDGE**

30.06.2010.  
A. Kaundal