

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Second Appeal No. 198/2018

1. Ramesh Chandra S/o Baluram Dhakar, Aged About 50 Years, R/o Fateh Nagar, Tehsil Bijolya, District Bhilwara.
2. Suresh Chandra S/o Shankar Lal Dhakar, Aged About 35 Years, R/o Kishan Niwas , Tehsil Bijolya, District Bhilwara.
3. Kamlesh S/o Bhanwarlal, Aged About 40 Years, R/o Kishan Niwas, Tehsil Bijolya, District Bhilwara.
4. Mangilal S/o Gorilal, Aged About 50 Years, R/o Berisal, Tehsil Bijolya, District Bhilwara.
5. Yamuna Shankar S/o Shri Chhitarmal, Aged About 45 Years, R/o Bijoliya, Tehsil Bijolya, District Bhilwara.

----Appellants

Versus

Chitarmal S/o Nathulal, Aged About 65 Years, R/o Sukhpura, Tehsil Bijoliya, District Bhilwara.

----Respondent

For Appellant(s) : Mr. Suresh Shrimali (through VC)
For Respondent(s) : Mr. Sandeep Saruparia
Ms. Falgun Buch.

HON'BLE MR. JUSTICE ARUN BHANSALI

Judgment

31/8/2020

This second appeal is directed against the judgment and decree dated 24/12/2016 passed by Civil Judge, Bijolia, District, Bhilwara, whereby, the suit filed by the appellants has been dismissed on preliminary issue and judgment & decree dated 6/8/2018 passed by Addl. District Judge No.3, Camp – Mandalgarh, District, Bhilwara, whereby, the appeal filed by the appellants has been dismissed, respectively.

The plaintiffs-appellants filed a suit for permanent injunction with the averments that the land comprised in khasra no. 57/2 *ad measuring* 5 bigha is in tenancy of respondent-tenant Chitarmal. The defendant got included his name in the quarry license belonging to Onkar and Nanalal so as to undertake mining operations on the land comprised in khasra no. 57/2. Based on the terms decided between the license holders and defendant, the name of defendant was added in the quarry license.

As the defendant required capital for undertaking mining operations, the plaintiffs on oral proposal agreed for 50% partnership. It was indicated that 50% share was that of defendant and 10% each of plaintiffs. It was agreed that the business will be done in the name of 'Shree Stone, Sukhpura' and a partnership deed and an agreement was executed on 28/12/2009 and payment to the extent of 50% of the value of land was made to the defendant.

Initially overburden from the land was removed, however, on account of recession, the mining operations were stopped. Whereafter, on 15/2/2013 the defendant without informing the plaintiffs started the mining operations and when he was contacted in this regard, he indicated that he alone would carry the mining operations. It was indicated that the defendant was bound by the partnership deed dated 28/12/2009 and, therefore, the plaintiffs were entitled for permanent injunction.

Based on the above averments, relief for permanent injunction was claimed to the effect that the defendant should not

undertake mining operations alone and that the terms and conditions of the partnership deed be followed.

The suit was contested by the defendant on several grounds including based on the submissions that partnership deed and agreement both were void as the firm was not registered and both the partnership deed and agreement were unregistered, which do not confer any right on the plaintiffs. Several other pleas were raised.

Based on the submissions of the parties, the trial court framed preliminary issue as to whether the suit was liable to be dismissed as the firm 'Shree Stone, Sukhpura' was unregistered. Both the parties did not lead any evidence.

After hearing the parties, the trial court relying on the provisions of Section 69 of the Partnership Act, 1932 ('the Act, 1932') came to the conclusion that the suit was barred by said provision and consequently dismissed the suit.

Feeling aggrieved, the plaintiffs filed first appeal. The first appellate court reiterated the findings recorded by the trial court and dismissed the appeal.

It is submitted by learned counsel for the appellants that the two courts below were not justified in dismissing the suit & appeal. Submissions were made that the plaintiffs had referred to both partnership deed and agreement executed on 28/12/2009 and were seeking enforcement of both. The two courts below fell in error in not dealing with the right of the plaintiffs to enforce the

terms of the agreement and in dismissing the suit merely on account of the firm being unregistered, which is not justified.

Submissions were made that in view of the provisions of Section 6 of the Act, 1932, the plea raised by the respondent had no substance.

With reference to the contents of the agreement, it was submitted that the agreement is independent of the partnership deed and the plaintiffs were entitled to enforce the same for which, the provisions of Section 69 had no role. It is prayed that the finding recorded by the trial court on the preliminary issue and upheld by the first appellate court be set aside and matter be remanded back to the trial court.

Learned counsel for the respondent vehemently opposed the submissions. It was submitted that there is no whisper in the suit seeking enforcement of agreement dated 28/12/2009. It was submitted with reference to the averments made in the plaint with respect to cause of action and the relief that both pertain to the partnership firm only and as admittedly the firm is not registered, the suit was barred under the provisions of Section 69 of the Act, 1932.

Further submissions were made that a bare look at even the agreement would indicate that the same also pertained to the partnership business and in terms of sub-section (3) of Section 69 of the Act, 1932, the suit seeking enforcement of right arising from the contract also is barred and, therefore, the trial court was justified in deciding the preliminary issue holding the suit as

barred by law. Therefore, the present appeal deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record and as made available by learned counsel for the respondent, as learned counsel for the appellants was appearing through video conferencing.

A bare look at the plaint and specially the paragraphs pertaining to the cause of action and relief, which are quoted hereunder, reveal that the entire emphasis in the plaint pertains to the partnership business:

“(15) यह कि दिनांक 15-02-2013 को प्रतिवादी द्वारा साझेदारी व्यवसाय की सम्पत्ति पर वादीगण की बिना जानकारी मे आने दिये खद्दान कार्य प्रारम्भ होने करने से बिनायदावा उत्पन्न हो जारी है।”

“(19) यह कि वादीगण अनुतोष चाहता है कि –

(अ) कि प्रतिवादी को इस आशय की स्थाई निषेधाज्ञा से पाबन्द फरमाया जावे कि संयुक्त व्यवसाय की सम्पत्ति ख0न0 57/2 रक्बा 5 बीघा स्थित मोजा सुखपुरा पर अकेले खनन कार्य निरन्तर रख खनिज उत्पाद नहीं निकाले और न ही उनका निर्गमन करे।

(ब) कि वादपत्र के दोनों पक्षकारों के मध्य निष्पादित साझेदारी प्रलेख की शर्तों की पालना करने हेतु प्रतिवादी को स्थाई निषेधाज्ञा से पाबन्द फरमाया जावे।

(स) कि अन्य अनुतोष उचित वादपत्र हो बहक वादीगण विरुद्ध प्रतिवादी के सादिर फरमाया जावे।”

(emphasis supplied)

Nowhere in the above averments, the plaintiffs have referred to and/or sought any relief based on the agreement dated 28/12/2009. Further, a look at the partnership deed and the agreement reveal that while the partnership deed was attested by the Notary on 28/12/2009 at No.2482 at 2.15 p.m., the agreement on the same day has been notarized at No. 2483 at 2.30 p.m. The significance of the said aspect is that the parties first entered into the partnership deed and, thereafter, entered into an agreement. The terms of the agreement *inter alia* indicated that for 50% share in the business, which was quantified

at Rs. 20 lakh, Rs. 11 lakh were received by the defendant and Rs. 9 lakh would be received lateron. It was also indicated that the parties would be entitled to profit & loss as per the share from the mining business and no objection would be raised by the quarry license holder.

As noticed, the contents of the agreement dated 28/12/2009 also pertain to the partnership business and the profit generated out of the said business. It is not in dispute that the partnership entered into between the parties in the name of 'Shree Stone, Sukhpura' remained unregistered.

The provisions of Section 69 of the Act reads as under:

"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 a behalf of any persons 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 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 are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract but shall not affect,-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or
(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 2010 to realise the property of an insolvent partner.

(4) This section shall not apply,-

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under section 56 this Chapter does not apply, or
(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the presidency towns, is not of a kind specified in section 19 of the

Presidency Small Cause Courts Act, 1882, or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim."

(emphasis supplied)

A perusal of the above provision would reveal that no suit to enforce a right arising from a contract can be instituted in any court by a person suing as a partner in a firm against any person alleged to be a partner in the firm unless the firm is registered. The only exception to the above stipulation is found in sub-sections (3) (a) & (b) and (4) of Section 69 of the Act, 1932.

Sub-section (3)(a) deals with enforcement of a right to sue for dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm. Admittedly, it is not the case of the plaintiffs that the unregistered firm stood dissolved and that they were entitled to any right as provided under sub-section (3)(a). Exceptions provided under sub-sections (3) (b) & (4) are not relevant for the present purposes.

In view of the above, the firm being unregistered, the suit based on the partnership deed was not maintainable.

Further as already noticed hereinbefore, emphasis was laid by learned counsel for the appellants that the plaintiffs were seeking to enforce the agreement dated 28/12/2009 also. Such enforcement is also apparently barred as the said agreement is also in relation to the partnership firm and opening phrase of sub-section (3) clearly bars any proceedings 'to enforce a right arising from a contract' and, therefore, in those circumstances, the said plea raised by learned counsel for the appellants cannot be sustained.

So far as the reliance placed on Section 6 of the Act, 1932, which provides for mode of determining existence of partnership, the said provision essentially has no application to the facts of the present case inasmuch as the plaintiffs themselves have come out with the claim of partnership among the parties and have relied on the partnership deed and as such the existence of partnership, though unregistered, cannot be denied and as such nothing turns based on the provisions of Section 6 of the Act, 1932.

In view of the above discussion, the findings recorded by the two courts below that the suit filed by the plaintiffs is barred under Section 69 of the Act, 1932 cannot be faulted.

Consequently, the second appeal does not give rise to any substantial question of law and the same is, therefore, dismissed.

(ARUN BHANSALI),J

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