

(1995) 05 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1828 of 1979

Chaman Lal

APPELLANT

Vs

Ram Saroop

RESPONDENT

Date of Decision: May 12, 1995

Acts Referred:

- Partnership Act, 1932 - Section 44

Citation: (1995) 111 PLR 571

Hon'ble Judges: S.C. Malte, J

Bench: Single Bench

Advocate: S.P. Jain, for the Appellant; Nemo, for the Respondent

Judgement

S.C. Malte, J.

The original Plaintiff who has lost in both the lower Courts, has preferred this appeal for obtaining a decree for dissolution of a Partnership and taking of accounts, and for money decree that would be found due to him.

2. The appellant-plaintiff filed a suit against the respondent-defendant on following contentions:-

As per an agreement of Partnership entered into by the parties on 25.3.1972, the partnership-firm Messrs Delhi Fruit Co. came into existence. The terms and conditions of the agreement of partnership inter-alia indicated that formerly there were five more partners in the firm whose accounts were settled and who retired from the firm and the present plaintiff and defendant preferred to continue. One of the conditions in respect of the sum due to the retiring-partner was that the amount found due to these two respective partners would be paid by the existing partners, i.e. the present plaintiff and the defendant. It was also agreed that the change in the constitution of the firm shall be duly informed to the Income Tax Department and Registrar of Firms. The plaintiff claims that from 25.3.1972 onwards the business of the firm thus newly constituted flourished and it made profits. He further claimed

that defendant used to maintain accounts of the firm. The plaintiff further claims that despite his repeated requests to the defendant, he stalled the issued of setting the accounts of the newly constituted firm. Ultimately, the plaintiff served a notice dated 26.3.1975 on the defendant and called upon him to render accounts of the firm. Despite the receipt of the notice, the defendant did not render accounts. The plaintiff, therefore, filed suit for a decree of dissolution of the partnership and for taking accounts and for a decree of amount that would be found due to him.

3. The defendant contested the suit mainly on the ground that despite the abovementioned agreement which provided that the plaintiff and defendant would continue the partnership-firm after the outgoing partners, no such partnership or the partnership business ever came into existence. His further contention was that after abovementioned agreement dated 25.3.1972, the plaintiff expressed his inability to pay the share of his contribution towards the payment of the dues of the outgoing partners and he declined to continue in the partnership firm. As a result, the defendant had to find out other partners and had to form a separate partnership deed by executing a deed dated 1.4.1972. Thus the defendant disputed the very continuation or existence of partnership with the plaintiff.

4. The trial court held that relationship of partnership of plaintiff and defendant did not exist. The tenor of reasoning given by him indicates that he was of the view that unless it could be shown that such a firm carried on business, the existence of partnership cannot be inferred. He took into account the aspect that the shares of the plaintiff and the defendant had not been mentioned in the agreement dated 25.3.1972 by which plaintiff and defendant were to continue the partnership after the outgoing partners.

5. The first Appellate Court endorsed the views expressed by the trial court and dismissed the appeal by judgment dated 31.3.1979.

6. In this Court, the Advocate for the appellant made submissions. None appeared for the respondent. The Advocate for the appellant submitted that once it was found that the partnership had come into existence among the plaintiff, defendant and other outgoing partners as per partnership deed dated 14.4.1969, it shall be deemed to have continued unless such partnership came to be dissolved in any of the modes as given in Chapter VI of the Partnership Act. It was contended that after the initial partnership dated 14.4.1969, another agreement of partnership was executed on 25.3.1972 when five out of seven partners preferred to retire from the partnership, leaving the plaintiff and defendant to continue it. It was contended that both the lower Courts committed error in arriving at the conclusion that the relationship of partnership did not exist between the parties. There is no dispute that the dissolution of partnership-firm should take place in one of the modes indicated in Chapter VI of the Partnership Act, 1932. The modes given in that Chapter speak about dissolution of the partnership - (i) with the consent of the partners or in accordance with the contract with the partners; (ii) compulsory

dissolution on account of insolvency of a partner or by happening an event which makes it unlawful for the business of the firm to be carried on; (iii) dissolution on happening of certain contingencies such as (a) expiry of the term of the partnership, (b) completion of a venture undertaken by the firm, (c) death of a partner and (d) insolvency of a partner; (iv) by notice of dissolution of the firm if the partnership is at will; (v) dissolution by the Court on the ground, as mentioned in Section 44 of the Partnership Act. In this case, the material on record clearly shows that as early as on 14.4.1969, initially a partnership among seven persons including the present parties had come into existence. Material on record further clearly shows that by another agreement dated 25.3.1972 only plaintiff and the defendant agreed to continue the partnership and other five partners (who were not parties before the Court) opted to retire from partnership on settling the accounts. The documents dated 25.3.1972 shows that on that occasion, some dues to each of these retiring partners were also specified, and it was further mentioned that the said amount shall be paid by the continuing partners (plaintiff and defendant) within three months in instalments. The real controversy then would be as to whether since 25.3.1972, the existing partners, viz. plaintiff and defendant, continued. The admitted position is that there is no document of dissolution of partnership which is said to have come into existence by the agreement dated 25.3.1972. All the same, the existence of the partnership firm would in this case depend on the facts and circumstances which may resolve the question as to whether the partnership firm stood dissolved by the consent of the partners. The plaintiff has come to the Court with contention that from 25.3.1972 he and the defendant carried on the business of the firm and made profits.

7. On the other hand, the defendant has come with a specific case that since the plaintiff expressed his inability to make contribution towards the amount found due to the outgoing partners, and since he opted to abandon the partnership, the defendant had to find new partners and start a new partnership firm. On record, there is a document dated 1.1.1973 which states that the defendant along with some other partners had formed partnership that had taken effect from 1.4.1972. The said partnership business was also carried in the name and style as "Messrs Delhi Fruit Company".

8. In the context of the above factual position, it was submitted on behalf of the appellant that the partnership would not come to an end by an expulsion of a partner in the manner in which it was done by the defendant by forming a separate partnership firm by taking some other partners. In support of that, reliance was placed on case reported in [Ramnarayan and Others Vs. Kashinath Jagnarain and Another](#). In that case, there was a dispute between the partners and each of the two partners wanted to take advantage of certain licence in respect of salt issued to the firm. In context of that, their Lordships observed that the partnership would not stand dissolved because one of the two partners forcibly expelled the other partner from business. In respect of that proposition, reliance was placed in reported case

Meera Pillai Rowther Mahammathappa Rowther v. Yegnanarayana Iyer Subbiah Iyer AIR 1951 KER 177. In that ruling, it was also observed that a partner cannot be made to retire or expelled by the other partner. Here, the case is not of an expulsion of a partner, but a specific stand is taken by the defendant that by tacit consent, the plaintiff withdrew from the partnership and defendant had to enter into new partnership.

9. On behalf of the appellant, a case reported in [Sohanlal Pachisia and Co. Vs. Bilasray Khemani and Others](#), was also cited. As such, it has no relevance to the present case, because in that case, a firm had filed certain suit against the defendants and there was no question to adjudicate as to whether there was a dissolution of a partnership. Another case reported is Chhotelal Ratanlal and Anr. v. Rajmal Milapchand and Ors. AIR 1951 Nag 448 was cited on behalf of the appellant to emphasize the point that the partnership cannot be brought to an end by the unilateral act by one of the partners except by giving a notice in writing to the other partner of his intention to dissolve the firm. That ruling has also no application to the present case because the question involved in this case is altogether different as mentioned above.

10. Thus, it would appear that the matter, as such, rests on the question as to whether the plaintiff opted to withdraw from the partnership firm after the execution of abovementioned document dated 25.3.1972. In order to assess this aspect, it would be necessary to scan certain circumstances and pieces of evidence. It may be recalled that as per the agreement dated 25.3.1972, the plaintiff and the defendant, who had opted to continue the partnership, had to contribute towards the payment of outgoing partners. The plaintiff deposes that he himself did not pay any amount, but qualified his statement by claiming that the firm paid the amount to the outgoing partners. All the same, the fact remains that there is no document to indicate that the plaintiff ever contributed towards such payment by the firm. The plaintiff further expresses his ignorance as to whether M/s Delhi Fruit Company was functioning as run by the defendant and his other partners. The partnership agreement referred above indicates that the change in the constitution was to be informed to the Income Tax and Sales-Tax Department. In other words there would be an assessment of the firm for the purposes of taxes if the firm as run by the plaintiff and the defendant, had come into existence. In that case, obviously there would have been a mention of the shares of the partners along with their names. The assessment would have taken place subsequent to 1972. The material on record is totally silent about such aspects. It is also pertinent to note that in the document dated 25.3.1972, there is no mention regarding extent of share of the existing partners since after the outgoing partners. It is pertinent to note that plaintiff's witness Harbans Singh who was Income Tax Advisor to Delhi Fruit Company, has deposed that after the execution of document dated 25.3.1972, the plaintiff and the defendant came to him and the plaintiff told him that he was unable to pay any amount that was referred in the said agreement and therefore he did not want to

continue in the partnership firm. He has further deposed that thereupon a fresh partnership was formed by, in all seven persons including defendant and the document dated 1.1.1973 was executed. He further deposes that the plaintiff never raised any objection to the formation and continuation of the new partnership. The said new partnership was being assessed to the Income Tax. The defendant has deposed in support of his contention that the plaintiff declined to make the contribution of payment towards the amount payable to outgoing partners as per the agreement dated 25.3.1972, and he declared that he would not continue. He further deposed that thereupon he had to find new partners and new partnership came into existence. There is nothing to indicate that the plaintiff and defendant continued the business as the partners since after 25.3.1972. On the other hand, the evidence clearly shows that the defendant formed a new partnership with other partners since 1.4.1972 and carried on the business. That stand taken by the defendant has been substantiated by the plaintiffs witness P.W. 3 Harbans Singh and other pieces of evidence discussed above also render support to it. It is pertinent to note that in the plaint, the plaintiff has no where indicated as to upto which period the accounts of the firm, which according to him came into existence was settled. It is also pertinent to note that in the plaint, the plaintiff has no where clarified what was the extent of the share in the firm. He has also not cited the details as to which were the occasions when he demanded the accounts, but the defendant did not pay any heed. In para II of his plaint, it is claimed that Rs. 5,000/- approximately would be payable to him without clarifying as to period to which that amount pertained as a part of the share in the profit, and on which basis he had arrived at that figure. It may be further mentioned that the plaintiff, in his examination-in-chief deposed that after the partnership ceased and after filing the suit, he started his own business in the same shop in which business of the firm was being carried. He did not clarify when according to him partnership ceased. He did not clarify as to how and when he could secure back the shop in which formerly the business of the firm was being carried. The plaintiff filed his suit on 12.5.1975. He was expected to clarify as to since when he had started his own business in the same shop in which the business of the firm was being carried.

11. The evidence and circumstances on record thus clearly indicate that plaintiff brought an end to relationship of a partnership with the defendant. In the result, this appeal stands dismissed with costs.