
AIR 1981 All 405 : (1981) AWC 570

Allahabad High Court

Case No: Second Appeal No's. 2078 and 2495 of 1974

Ram Adhar

APPELLANT

Vs

Rama Kirat Tiwari

RESPONDENT

Date of Decision: July 31, 1981

Acts Referred:

Partnership Act, 1932 & Section 69(2)

Citation: AIR 1981 All 405 : (1981) AWC 570

Hon'ble Judges: V.K. Mehrotra, J

Bench: Single Bench

Advocate: R.N. Panday, for the Appellant;

Final Decision: Dismissed

Judgement

V.K. Mehrotra, J.

These two second appeals have been filed by plaintiffs of suit Nos. 457 of 1970 and 53 of 1971 against the same

defendant, namely, Ram Kirat Tiwari who is respondent in this Court. The two suits were consolidated and after their trial together they were

disposed of by a common judgment dated Sept. 30, 1972. Both were decreed. In two separate appeals filed by the defendant, these suits were

dismissed by the lower appellate court by a common judgment dated Nov. 30, 1973.

2. The case with which the plaintiffs came to court was that they were manufacturers of bricks and the defendants used to purchase it from them.

The defendant had purchased bricks worth Rs. 2000/- from each of the plaintiffs and had executed separate Sarkhat in their favour in which he

had also agreed to pay interest at the rate of 1% per mensem. Since he had not paid the price of the bricks for the amount of interest, the plaintiffs

were compelled to file the suits for the amounts due to them. Initially it was averred in the plaint of suit No. 53 of 1971 that the two plaintiffs

carried on the business of manufacturing bricks in partnership. By an amendment a further allegation was made that the two plaintiffs used to divide

bricks manufactured at the bricks-kiln equally after contributing to the expenses incurred in the manufacture and thereafter became owners of their

separate shares of bricks which they used to dispose of separately, in the dealings after the separation of the bricks one had no concern with the

other.

3. The pleas that the defendant took in the two suits primarily were that he used to make payments to the two plaintiffs from whom bricks were

purchased by him periodically and the transactions between them were incorporated in the account books. He had made all payments and nothing

was due from him. The Sarkhats had been executed by him for the satisfaction of the plaintiffs during the period awaiting settlement of account. It

was also pleaded that the plaintiffs were carrying on business in partnership and that the suit was barred u/s 69(2) of the Partnership Act. Both

suits, as noticed earlier were consolidated.

4. The trial Judge framed six issues in each of the two cases. The first and the third issues of suit Nos. 457 of 1970, and 53 of 1971 were

common, namely, whether the suits were barred by Section 69 of the Partnership Act. Some of the other issues related to the merits of the claim of

the plaintiffs.

5. Parties adduced evidence in support of their respective cases. The trial Judge considered this evidence and held that the plaintiffs had agreed

only to share bricks manufactured in the brick kiln and not the profits so that the relationship between them was not of partners. Section 69 of the

Partnership Act had, therefore, no application to the suits. On merits he concluded that the defendant had purchased bricks from each of the

plaintiffs for a sum of Rupees 2000/- and had executed the Sarkhats as alleged by the plaintiffs. He had not paid any amount either towards the

price of bricks or towards the interest agreed upon. He was liable to pay both to the plaintiffs. The trial Judge also negated the objection on

behalf of the defendant that the suits were barred by limitation and decreed both the suits for the amounts claimed with pendente lite and future

interest at the rate of 6% per annum, A sum of Rs. 2000/- was claimed as the price of bricks in each of the two suits while a sum of Rs. 645-50

and Rs. 375/- had been claimed in suit Nos. 457 of 1970 and 53 of 1971 as the agreed interest at the rate of 1% per mensem respectively. The

defendants felt aggrieved by the decrees passed and assailed them in two separate appeals.

6. The appeals were heard by the District Judge, Azamgarh. He allowed them on his conclusion that the suits were barred by Section 69 of the

Partnership Act without going into the merits of the matter. The learned District Judge re-appraised the evidence of the parties and recorded his

conclusion in the following terms:--

I am, thus, of the opinion that it is wrong to say that the term Sarkhat or Sajhidari or partnership has been used loosely. It is also wrong to say

that the agreement between Ram Adhar Rai and Dashrath Rai was that they would share the expenses equally and they would divide the bricks

equally at the time of manufacture. They have obviously tried to suppress that there was an agreement to share the profits also but the

circumstances of the case and the statement of D. W. 1 Ram Kirat Tiwari leave no room for doubt that there was such an agreement. The truth of

the matter is that Ram Adhar Rai and Dashrath Rai were doing the partnership business of brick-kiln and the bricks were also being sold jointly. It

was only an act of cleverness when they obtained two Sarkhats from the defendant in respect of the bricks purchased by him from the brick-

kiln.....

I, therefore, conclude that Ram Adhar Rai and Dashrath Rai were carrying on the business of brick-kiln in partnership and the defendant

purchased bricks from the said partnership business. The consequence would be that the plaintiffs of both the suits would become dis-entitled to

file the suits and the bar of Section 69 of the Indian Partnership Act would come into play. The suits are barred and are liable to be dismissed.

7. It is this view of the learned District Judge which is under challenge in the present second appeal. The sub-mission of the learned counsel for the

plaintiff-appellants is that, inasmuch as, the plaintiffs were seeking to recover the amounts due to them individually from the defendant under

Sarkhats executed by him and not any amount from him under the partnership as such, the provisions of Section 69 of the Partnership Act were

not attracted at all.

8. Section 69 of the Partnership Act is in the following terms:--

69 (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 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,

1920, 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 etc 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.

9. In *Goverdhandass Takersay v. M. A. Rahiman* AIR 1942 Mad 634 it was held that a stringent provision like Section 69(2) must be strictly

construed. It can be attracted to a suit if it is instituted either by or on behalf of the firm, that is to say ex-fade it purports to be filed either by or on

behalf of the firm or even in the interest of the firm but this must be clear from the plaint itself. A contract entered into by a partner constitutes a

personal agreement and the partner is, therefore, entitled to bring a suit on the contract in his own name without joining the other partners as

plaintiffs in the action. Such a suit does not fall within the ambit of Section 69(2) of the Act.

10. In AIR 1944 37 (Oudh) , It was ruled that where a registered firm sues as the plaintiff and the title does not show that any partners by name

were suing, the second portion of Sub-section (2) of Section 69 is not directly applicable to the case. In *Ram Kumar Ram Chandra Vs. The*

Dominion of India, , the view taken was that even though a firm has no legal entity and as a firm it is not entitled to institute a suit, a suit can be filed

by the firm in accordance with the provisions contained in Order 30, C. P. C. where a suit is instituted in the name of a firm under Rule 1 of Order

30 of C. P. C. it is really a suit by the partners of the firm collectively. Where the firm is registered under the Partnership Act, the provisions of

Section 69(2) of the Act are fully complied with and it was not necessary to consider whether the person through whom the firm had filed the suit

as its partner or not. In *Kesrimal and Another Vs. Dalichand and Others*, it was held that before a partner of a firm can maintain a suit to enforce a

right arising from a contract against any third party, two conditions must be fulfilled, namely, firstly, that the firm should be registered and, secondly,

the person or persons on whose behalf the suit is brought must have been shown in the Register of firms as partners therein at the time of the

institution of the suit.

11. In *Sri Baba Commercial Syndicate and Another Vs. Channamasetti Dasu and Another*, , the view taken was that a suit by a partner in his own

name in respect of debt due to the firm would undoubtedly be a suit by a partner, as such and would be hit by Section 69 of the Act and would not

be maintainable. In *Bharat Sarvodaya Mills Co. Ltd. Vs. Mohatta Brothers*, it was held that Section 69(2) bars a suit against a third party if it is for

enforcing a right arising from a contract. The bar equally applies both to suits by the firm as well as suits on behalf of the firm. There are two

requirements which must be fulfilled before such a suit can be filed to enforce contractual right by a firm or on behalf of the firm (1) that the firm

must be a registered firm and (2) the person suing or have been shown in the register of firm as partner of the firm. These conditions are

mandatory in character, In an appeal by *M/s. Mohatta Brothers* in this case, the Supreme Court, in its judgment reported in *Mohatta Brothers Vs.*

The Bharat Suryodaya Mills Co. Ltd., Ahmedabad, took the view that on facts, the High Court had erred in reversing the finding of the court

below that the partnership deed on the basis whereof the bar of Section 69(2) was being pleaded had never been acted upon. It observed further

that in view of this conclusion it was not necessary for it to go into the legal question as to what should be the proper construction of Section 69(2)

of the Indian Partnership Act.

12. The Supreme Court had occasion to consider the question of the scope of Section 69 in Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E.

John and Others, . In para 21 of the report it observed thus:--

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.

13. The finding which has been recorded by the lower appellate Court, as seen above, is that what the two plaintiffs were seeking to recover from

the defendant was the amount due to the partnership for the purchase of bricks by the defendant. The partnership, indisputably was not a

registered one. On these facts it is clear that the plaintiffs could not bring the suit on account of the bar of Section 69(2) of the Act. The court

below was justified in dismissing the suits on this ground. The appeals deserve to fail.

14. The appeals are dismissed but, in the circumstance of the case, there shall be no order as to costs.