
(2016) 02 AHC CK 0029

ALLAHABAD HIGH COURT

Case No: First Appeal No. 515 of 2006

Apollo Trade Lines &
Ohters

APPELLANT

Vs

Praveen Kumar Garg

RESPONDENT

Date of Decision: Feb. 1, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 96

Citation: (2016) 1 ARC 640

Hon'ble Judges: Sudhir Agarwal; Rakesh Srivastava, JJ.

Bench: Division Bench

Final Decision: Dismissed

Judgement

Sudhir Agarwal and Rakesh Srivastava, JJ. - Heard Sri S.K. Mehrotra learned counsel for appellants and Ms. Sufia Saba, Advocate for respondents.

2. This appeal under Section 96 C.P.C. has arisen from judgment and decree dated 18.08.2006 passed by Additional District Judge, Court No. 14, Moradabad in Original Suit No. 1138 of 1993 dismissing plaintiff appellants suit. The plaintiff no. 1 is a partnership Firm and plaintiff nos. 2, 3, 4 and 5 are partners in the aforesaid Firm.

3. It is stated that certain property detailed in para 3 of the plaint was purchased and is partnership property. He also states that defendant no. 1 was using property independently. However, in para 8 it is stated that defendant is trying to damage and make fresh construction in the disputed property and is also trying to alienate the same. The defendant has filed written statement in which allegations of damage, reconstruction and alienation has been specifically denied. The plaintiff sought following relief in the suit:-

"vand ctfj;s vLFkbbZ fu"ks/kkKk izfroknh dks fuf"k) fd;k tk;s fd og vkjkth okD; flgksjk xksfoUn rglyh o ftyk eqjknkckn eqRrkfyd [kljk ua0 6[k ftls okn i= ds lkFk layXu uD"ks esa

yky jax ls iznf"kZr fd;k x;k gS rFkk ftldk gnwnvjok fuEu fyf[kr gS dks fdlh O;fDr dks vFkok mijksDr IEifRr ds fdlh Hkkx dks gLrkUrfjr fdlh O;fDr dk u djsa] vkSj ckt jgs rFkk mijksDr IEifRr esa fdlh izdkj dh dksbZ rksM+ QksM+ u djsa] rFkk dksbZ uo fuekZ.k u djsaA"

English translation by Court

"(A) The defendant, by way of an order of temporary injunction, may kindly be restrained from transferring the property situated at Sihora Govind, Tahsil and District Moradabad falling in Khasra No. 6B and shown in red colour in the sitemap appended to the plaint, the four boundaries of which are given below or any part of the aforesaid property to any person and from causing any sort of breakage in the aforesaid property and from raising any new construction thereon."

4. Trial Court formulated following seven issues:-

"1- D;k oknh dk okn vkns"k 7 fu;e 11 lh0ih0lh0 ds izkfo/kku ls ckf/kr gS\\

2- D;k bl U;k;ky; dh izLrqr okn dh lquokbZ dk vf/kdkj izklr ugha gS\\

3- D;k oknhx.k dk okn Hkkxhnkj dh vf/kfu;e ds vUrxZr izkfo/kkuksa ls ckf/kr gksus ds dkj.k bl U;k;ky; esa pyus ;ksX; ugha gS\\

4- D;k oknh la[;k 1 vflrRo esa ugha gS ;fn gkWaa rks bldk izHkko\\

5- D;k oknhx.k ds i{k esa bl okn dh lafLFkr o ;ksftr djus dk ;qfDr ;qDr okn dkj.k mRiUu gqvk tks lrr~ fojeku gS\\

6- D;k oknh izfrokn ls gtkZ bLrseky ikus dk vf/kdkj gS\\

7- D;k oknh dksbZ vuqrks"k ;k vuqrks"kk sa dks ikus dk vf/kdkj gS\\"

English translation by Court

"1. Whether the suit of the plaintiff is barred by the provision of Order 7, Rule 11 of the CPC?

2. Whether this court has no jurisdiction to hear the present suit?

3. Whether the suit of the plaintiffs is not maintainable in this court on account of its being barred by the provisions of the Partnership Act?

4. Whether the plaintiff no. 1 does not exist. If so, its effect?

5. Whether any reasonable cause of action has arisen and constantly persists in favour of the plaintiff entitling him to institute and file this suit?

6. Whether the plaintiff is entitled to get from the defendant the damages for use?

7. Whether the plaintiff is entitled to get any relief(s)?

5. Issue 1 has been decided by Court below observing that under Order 7, Rule 11 , plaintiff has not been able to show any cause of action in the plaint therefore, liable to be rejected. Further Issue 5 has been answered against plaintiff appellant. While deciding Issue 2 Court has observed, that it has jurisdiction to hear the matter. Issue 4 has been answered in favour of plaintiff holding that the Firm is still in existence and has not been dissolved. Issue 3 with respect to maintainability of suit, whether barred by Partnership Act, has been answered in favour of plaintiff but Issue 6 and 7 have been answered against plaintiff as a result whereof suit has been dismissed.

6. Learned counsel for appellants, submitted that he is confining appeal only so far as relief sought in prayer-A with regard to injunction. We find that in Prayer-A, plaintiff sought temporary injunction against defendant in disputed property that defendant should neither damage the same nor alienate the same. In paragraph 8 of the plaint defendant has denied the same. In paragraph 21, in additional plea, he has further said that neither he has damaged property nor raised any construction nor is taking steps for its alienation. No evidence otherwise, has been adduced by plaintiff-appellant before Court below in respect of allegations made in para 8 and 6.

7. In these circumstances, Court below while answering Issue 1 has clearly observed that there is no cause of action for maintaining suit in question for injunction against defendant. In absence of any evidence otherwise shown before Court below or even before this Court, we do not find any factual, legal or otherwise irregularity or illegality warranting interference. In our view, Court below has rightly observed that there is no cause of action particularly when suit for dissolution of Firm and accounting has been filed by plaintiff-appellants.

8. The appeal has no merit. Dismissed.