(2010) 6 ALT 198

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 6222 of 2005

Sri Sadaram Visweswara Rao	APPELLANT
Vs	
Malla Seetha Ratnam	RESPONDENT

Date of Decision: March 5, 2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 7 Rule 11, 151#Partnership Act, 1932 â€" Section 58, 69, 69(1), 69(2), 69(3)

Citation: (2010) 6 ALT 198

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Advocate: N. P. Anjana Devi Satyanarayana, for the Appellant; E.V.V.S. Ravi Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Kantha Rao, J.
This Civil Revision Petition is filed against the order dt. 18.10.2005 in I.A. No. 560 of 2005 in O.S. No. 2286 of 2005

on the file of the II Addl. Junior Civil Judge, Visakhapatnam.

2. The revision petitioner is the plaintiff in O.S. No. 2286 of 2005 before the court below. He instituted the suit contending that he is a partner of

the '' firm Parameswari Picutre Palace, Visakhapatnam and there was an agreement between all the partners of the firm that the leasehold rights shall be auctioned and the highest bidder is entitled to run the theatre. The revision petitioner claims that he became the highest bidder in the auction

for an amount of Rs. 60,000/- and took possession of the theatre and was running the same. While so, it is said that the respondent tried to

interfere with his possession and enjoyment of the theatre, which lead to filing of the suit for permanent injunction by him. The defendant who is the

respondent herein filed written statement contending, inter alia, that the suit is liable to be rejected for want of registration of the partnership firm, as

required u/s 69 of the Indian Partnership Act, 1934 (for short "the Act") and the firm not being registered, the revision petitioner, who is admittedly

a partner of the firm, cannot institute the suit.

3. The respondent/defendant filed I.A. No. 560 of 2005 in the suit under Order VII Rule 11 (a) (d) r/w Section 151 C.P.C. urging the court to

reject the plaint with exemplary costs. The trial court having made an enquiry into the said interlocutory application arrived at the conclusion that to

enable a partner to file a suit as a partner or on behalf of the partnership firm, the firm should be registered and accordingly issued a direction to the

revision petitioner to get the defect rectified i.e. to get the unregistered firm registered as per the Provisions of the Act on or before 1.12.2005 to

prosecute the suit. The said finding is impugned in this revision.

4. I have heard Smt. N. Anjana Devi, the learned Counsel for the Revision petitioner and Sri. V.V.S. Ravi Kumar, the learned Counsel for the

respondent.

5. A plain reading of Section 69 of the Act goes to show that for a partner to file a suit to enforce any right arising out of a contract or liability

relating to a firm, the firm must be registered. As this provision is mandatory, unless the firm is registered, a suit filed by any of the partners to

enforce any right arising from a contract or liability concerning the firm is not maintainable.

6. The learned Counsel for the revision petitioner however contends that as per Section 58 of the Act, an application seeking registration of the

firm has to be singed by all the partners or by their agents authorised in that behalf and as such it is not possible for the revision petitioner to obtain

the signature of the defendant, who is also a partner of the firm and therefore he submits that the direction issued by the trial court cannot be

sustained and the order may be set aside.

7. The question requires to be addressed in this revision is whether the revision petitioner, who is a partner of an unregistered partnership firm can

institute a suit without the firm being registered to enforce a right arising out of a contract relating to the firm.

8. The learned Counsel for the revision petitioner placed reliance on a decision in Kundanmal v. Madan Gopal AIR 1956 Hyd wherein learned

single Judge held that Section 69 does not apply to a case where the partner has based his claim for profits on subsequent compromise and not on

the basis of the claim arising out of the original partnership. Relying on the above citation, the learned Counsel for the petitioner submits that since

the petitioner filed the suit basing on an oral agreement entered into by the partners and the suit is not to enforce a right arising from a contract or

liability under the original partnership and therefore registration of the firm is not necessary to maintain the suit.

9. On the other hand, the learned Counsel for the respondent placed reliance on a decision in Samyuktha Cotton Trading Company Vs.

Bheemineni Venkata Subbaiah and Others, wherein a learned single Judge of this Court held that to maintain a suit by a partner of a firm,

registration of the firm is a requirement u/s 69 of the Act and rejection of suit filed by a firm on account of non-registration is not a bar for filing a

suit afresh after securing registration.

10. The decision relied on by the learned Counsel for the revision petitioner has no application to the facts of the case on hand. In the case on

hand, the contention of the petitioner is that there was an oral agreement between the partners and basing on the same, he filed the suit. From the language of Section 69 of the Act, what all can be understood is that no suit to enforce a right arising from a contract or liability conferred by the

Partnership Act shall be instituted unless the firm is registered so long as the person suing or sued has been shown as a partner in the firm. Even if

there is an oral agreement came into existence subsequent to the original partnership between the partners, as contended by the learned Counsel

for the petitioner, the claim of the revision petitioner becomes a right arising out of original partnership deed, which is unregistered. Therefore, mere

existence of subsequent oral agreement does not enable the petitioner to get over the mandatory requirement of Section 69 of the Act and

consequently the petitioner cannot institute any suit as a partner to enforce even a subsequent oral agreement.

11. The real rest is as to in which capacity the plaintiff instituted the suit i.e. whether he instituted the suit in his individual capacity or as a partner of

the firm. In the instant case, the revision petitioner instituted the suit in the capacity of the partner of the firm against another partner seeking

perpetual injunction restraining him from interfering with the management of the theatre (the firm). The alleged subsequent agreement, which was

said to be oral was also between the partners and it relates to the rights and liabilities of the partners arising under the said firm which was not

registered.

12. The provisions envisaged under Sub-sections (1) and (2) of Section 69 of the Act requiring a partnership firm to be registered are meant for

discouraging the non-registration of firms. They mandate that registration of a firm is a pre-requisite for instituting a suit of the nature mentioned in

Section 69.

13. Sub-section (3) of Section 69 recognizes the following exceptions for the mandatory requirement of registration of the firm envisaged under

Subsections (1) and (2), they are: the enforcement of any right to sue for (a) the dissolution of the firm or (b) for accounts of a dissolved partnership or (c) for realizing the property of dissolved firm, (d) an official assignee or receiver may realize the property of an insolvent partner,

even though the firm is not registered.

14. The suit instituted by the revision petitioner does not fall under any of the exceptions mentioned above. The plaint filed by him, therefore, would

be considered as a void plaint and the Court will have no jurisdiction to entertain the said plaint. In the instant case, however, the learned trial

Court issued a direction to the revision petitioner to get the firm registered on or before 01.12.2005, as per the provisions of Act for the purpose

of prosecuting the suit. Without complying with the said direction, the revision petitioner challenged the order passed by the learned trial Court. As

to this, it may be pointed out that even if the revision petitioner complied with the order passed by the trial Court by getting the firm registered

pending the suit, it would not have cured the defect since the suit by a partner of an un-registered firm is not maintainable. However, after getting

the firm registered, a fresh suit is not barred provided the cause of action still survives. Therefore, even by complying with the orders of the learned

trial Court, the revision petitioner cannot prosecute the same suit.

15. For the foregoing reasons, I do not find any merit in the revision petition and accordingly dismiss the same. There shall be no order as to costs.