

(2000) 05 DEL CK 0094

**Delhi High Court****Case No:** I.A. No's. 4734/98 and 901 and 3615/99 in Suit No. 2576/88

Sat Nam Singh

APPELLANT

Vs

Sardar Sant Singh and Others

RESPONDENT

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**Date of Decision:** May 19, 2000**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 47

**Citation:** (2000) 54 DRJ 358**Hon'ble Judges:** J.B. Goel, J**Bench:** Single Bench**Advocate:** T.S. Upadhayay, for the Appellant; S.C. Nigam, for the Respondent

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**Judgement**

J.B. Goel, J.

I.A. No. 4734/98 has been filed by plaintiff for restraining defendant No. 1 from Realizing the decretal amount payable under decree passed in Suit No. 110/85 Sant Singh v. Janta Hydrolic & Others by the Court of an Addl. District Judge, Delhi from defendant No. 4 a tenant. I.A. No. 901/99 and I.A. No. 3615/99 have been filed by defendant No. 1 seeking release of the balance amount of Rs. 1,90,099/- deposited in this Court by defendants 5 and 6/tenants and also for vacating the stay against withdrawal of Rs. 1,26,000/- realised in decree passed in Suit No. 110/85 referred to above, which has been stayed by this Court.

2. These applications have been filed in the circumstances as mentioned hereafter.

3. plaintiff and defendants No. 1 to 3 had started a business in partnership under the firm name of M/s. Sardar Plastic Industries at 1429, Fiaz Ganj Road, Bahadur Garh Road, Delhi for manufacturing plastic and stationary items. Defendant No. 1 is father whereas plaintiff and defendants No. 2 and 3 are his sons. The plaintiff has alleged that the plot of land bearing Industrial Plot No. 150 situated in Block "C", Mayapuri, New Delhi measuring 1210 sq.yds. was allotted by DDA to them as partners of M/s. Sardar Plastic Industries by means of registered lease deed dated

20.9.1967, construction hereon was also raised by the four partners and is also occupied by them besides others including defendants No. 4 to 6 as tenants. It is also alleged that for the last few years the partnership has stopped its business and now they have only rental income, that defendant No. 1 has been Realizing rent from defendants No. 4 to 6 and has been looking after the affairs of the partnership business but he has not rendered its accounts for several years and the plaintiff has also been excluded from the affairs of the business. He has accordingly filed the present suit for dissolution of the firm in case the firm is found not already dissolved and for rendition of accounts in respect of his 1/4th share therein.

4. Defendant No. 1 in his written statement has admitted that plaintiff and defendants No. 1 to 3 were doing business as partners of M/s. Sardar Plastic Industries. However, the said firm was dissolved w.e.f. 1.4.1972, when plaintiff and defendant No. 3 retired from the partnership, its accounts were gone into, and on dissolution, plaintiff got shop No. 1993-41 measuring 64 yards situated at Shivaji Road while defendant No. 3 was allotted shop premises No. 1993-42, Shivaji Road, Delhi measuring 150 sq. yds. besides payments made to them and property No. C-150, Mayapuri, New Delhi belongs to defendant No. 1 and it was specifically agreed in the partnership deed that the plot on allotment would belong to him alone. Defendant No. 1 and defendant No. 2 continued as partners but defendant No. 2 also retired later on and defendant No. 1 continued the business and he is the sole owner of the aforesaid industrial plot.

5. plaintiff in replication has disputed the dissolution of the firm or its accounts having been settled. It appears that defendants No. 2 and 3 had also filed their written statement but that is not brought on record though the replication filed by the plaintiff to it is on the record. Now defendant No. 1 has placed on record copy of their written statement. Defendants 2 and 3 have also in this written statement pleaded that the firm M/s. Sardar Plastic Industries was dissolved in April 1972, its accounts were settled and amounts found due to plaintiff and defendant No. 3 were paid by means of cheques and properties No. 1993-41 and 1993-94 situated at Shivaji Road, Azad Market, Delhi were allotted to them and now plaintiff and defendants No. 1, 2 and 3 are carrying on their business separately from each other and that except defendant No. 1, others have got no interest in property No. C-150, Mayapuri, New Delhi.

6. Defendants No. 4, 5 and 6 were occupying parts of the property apparently as tenants and defendant No. 1 has been Realizing rent from them. By interim order dated May 8, 1989, defendant No. 1 was restrained from inducting any new person into the premises. On an I.A. No. 10460/91 filed by the plaintiff defendants No. 5 and 6 were directed to deposit in the Court the arrears of rent w.e.f. September 1989 @ Rs. 8500/- per month and Rs. 3,000/- per month respectively and defendants No. 5 and 6 had deposited the arrears of rent as well as future rent in the Court.

7. Vide order dated 16.5.1994, in I.A. No. 7455/93, the rent of Rs. 3,000/- per month by defendant No. 6 was ordered to be paid to defendant No. 1 for his maintenance.

8. In the meantime, defendants No. 5 and 6 vacated the premises and vide order dated October, 17, 1994 passed in I.A. 8869/94, defendant No. 1 was restrained from letting out or parting with possession of their portions. A money decree was passed against defendant No. 4 by an Additional District Judge. On application I.A. No. 4734/98 filed by plaintiffs, an interim order was passed on May 25, 1998 restraining the defendant No. 1 from Realizing or withdrawing if realised the amount due under the said decree. On defendant No. 1's I.A. 1969/97 vide order dated 3.12.1998 as modified later on 2.11.1999, out of the amount of Rs. 5,93,012/- deposited in Court by defendants No. 5 and 6 a sum of Rs. 2,73,958/- has been paid to the MCD direct towards house tax liability and Rs. 10,000/- has been paid to the defendant No. 1. The balance amount out of the amounts deposited by defendants No. 5 and 6 is lying in deposit and decretal amount realised from defendant No. 4 amounting to Rs. 1,26,000/- is still lying deposited in the executing Court.

9. Defendant No. 1 by the aforesaid two applications (IAs 901/99 and 3615/99) is seeking for vacating the interim injunctions/stay orders and for releasing the amounts lying in deposit. Both the learned counsel were heard orally and they have also filed detailed written submissions.

10. The case of the plaintiff and contentions raised on behalf of the plaintiff are that the property C-150, Mayapuri, New Delhi belongs to the partnership firm; partnership, has not been dissolved and plaintiff being partner of 25% share in the partnership property and assets is entitled to his share out of the assets of the partnership. Whereas learned counsel for defendant No. 1 has contended that the partnership firm was dissolved w.e.f. 1.4.1972 when plaintiff and defendant No. 3 walked out, accounts were gone into, settled and their shares in the partnership business was given to them by means of cheques besides, two properties as aforesaid allotted to them, As per partnership agreement entered into between the parties the defendant No. 1 alone was entitled to this property, the partnership firm has been dissolved and the property exclusively belongs to defendant No. 1; he has also been letting out and Realizing rent of the premises from tenants. It has been contended that relevant documents of partnership and dissolution have been stolen by the plaintiff for which a complaint was lodged with police on 18.11.1988 on discovering the theft. In the circumstances the suit is not maintainable.

11. Defendant No. 1 inter alias has placed on record copy of the report to the police dated 18.11.1988, copies of income tax assessment orders dated 23.3.1972 and 27.2.1974 for the assessment years 1969-70 and 1971-72 in respect of the partnership firm M/s. Sardar Plastic Industries wherein plaintiff and defendants No. 1 to 3 are shown as four partners in equal shares and the demands of tax assessed on those assessment orders, copy of the letter dated 27.7.1972 sent by defendant No. 1 to the Income Tax Officer, District 7(2), New Delhi informing that Sardar

Madan Pal Singh and Sardar Satnam Singh, i.e., plaintiff and defendant No. 3 had ceased to be partners and in their place Shri Kulwant Singh and Shri Manmohan Singh have been taken as partners w.e.f. 1.4.1972, copy of the assessment order dated 23.1.1976 in respect of assessment year 1974-75 in the name of M/s. Sardar Plastic Industries showing Sant Singh, Dharambir Singh, Kulwant Singh and Manmohan Singh as partners with defendant No. 1's share of 40% and others of 20% each, copy of the dissolution deed dated 30.3.1974 of partnership between Sardar Sant Singh, Dharambir Singh, Kulwant Singh and Manmohan Singh w.e.f. 30.3.1974. This dissolution deed states that they had entered into partnership w.e.f. 3.4.1972; statement of account/trial balance, trading and profit and loss accounts for the period ending 31.3.1988, 31.3.1989 and 31.3.1990, copy of the dissolution deed of partnership dated 1.4.1972 between Sant Singh, Dharambir Singh, Satnam Singh and Madan Pal Singh whereby Satnam Singh and Madan Pal Singh had entered from the partnership and copy of partnership deed dated 16.5.1962 between plaintiff and defendants No. 1 to 3 have been placed on record.

12. Defendant No. 1 has also placed on record copies of agreement dated .1.3.1988 between Sant Singh (defendant No. 1) and M/s. Metafab whereby the latter had agreed to pay to the former minimum amount @ Rs. 3,000/- per month and another agreement dated 1.11.1985 between Sant Singh (defendant No.1.) and M/s. Fixwell Electrical and Electronics Pvt. Ltd., the latter agreeing to pay to the former monthly @ minimum of Rs. 8,500/- per month both evidently as rent though named as promotion charges.

13. It is not disputed that plaintiff and defendants No. 1 to 3 had entered into partnership. plaintiff has not placed on record copy of the partnership deed. Copy of partnership deed dated 16.5.1962 has, however, been filed by defendant No. 1 along with the written submissions. This is a photo state copy with impressions of signatures of the parties appearing thereon. Defendant No. 1 has also placed on record photo-state copy of a deed of dissolution dated 1.4.1972 between plaintiff and defendants No. 1 to 3. The original purports to be on stamp paper of Rs. 10/- This also contains impression of signatures of the parties. If original has been stolen it could be used as secondary evidence. Signatures thereon have not been specifically denied by plaintiff. Even otherwise other material on record corroborates it. By this dissolution deed, plaintiff and defendant No. 3 walked out of the partnership leaving defendants No. 1 and 2 as continuing partners. A complaint was lodged by defendant No. 1 on 18.11.1988 with the police wherein it is alleged that the documents including the dissolution deed are suspected to have been stolen by Satnam Singh (plaintiff) and Mahender Pal Singh, both his sons.

14. The assessment orders dated 23.3.1972 and 27.2.1974 for the assessment years 1969-70 and dated 1971-72, are in respect of the firm M/s. Sardar Plastic Industries comprising of four partners, i.e., plaintiff and defendants No. 1 to 3. Evidently on dissolution of the partnership w.e.f. 1.4.1972, defendant No. 1 on behalf of the new

firm vide his letter dated 27.7.1972 informed the Income Tax Officer, District 7(2), New Delhi about plaintiff and defendant No. 3 having retired and in their place Kulwant Singh and Manmohan Singh taken as partners w.e.f. 1.4.1972. Along with this letter, various documents, namely, return for 1972-73, form No. 12 for the year 1972-73, statement of account for 1972- 73, form 11A copy of the dissolution deed and copy of the partnership deed for 1973-74 have also been annexed. Copy of the assessment order dated 2.3.1.1976 for the assessment year 1974-75 is in respect of the firm M/s. Sardar Plastic Industries comprising of four partners i.e. Sant Singh, D.Bir Singh (Dharambir Singh), Kulwant Singh and M.M. Singh (Manmohan Singh), In this assessment order, it is also acknowledged that application in form No. 12 duly signed by the partners had been filed along with the return. Deed of dissolution of partnership dated 30.3.1974 executed by Sant Singh, Dharambir Singh, Kulwant Singh and Manmohan Singh also recites that they have been carrying on business in the name of M/s. Sardar Plastic Industries, C-150, Mayapuri, New Delhi since 3.4.1972 and they have dissolved the same w.e.f. 30.03.1974. That was the new firm on retirement of plaintiff and defendants No. 3. These documents prima facie show that the firm between plaintiff and defendants 1 to 3 was dissolved w.e.f. 1.4.1972.

15. As against this, plaintiff relies on copy of notice in Form 2 of the Indian Partnership Act, 1932 bearing the date as 1.12.1977 whereby the principal place of the business has been shown to have shifted from 1429, Fiaz Ganj Road, Bahadur Garh Road, Delhi to C-150, Mayapuri, New Delhi Phase II on 2.10.1969. This form has been returned with the following remarks:-

"Returned in original with the remarks:

(1) please give the specific date in the column of date of alteration;

(2) please get the signatures attested;

(3) Submission of two Form No. 2 is not clear with different years.

16. There seems to be no reason why alteration effected on 2.10.1969 was sought to be intimated after 8 years on 1.12.1977. One of the objection is about submission of two Form No. 2. Only one form No. 2 has been placed on record. There is no Explanation available why two forms No. 2 for the same purpose had been sent and why one has been withheld. Much reliance cannot be placed on this document in view of cogent and more authentic documentary evidence placed on record by defendant No. 1.

17. In any case, it is matter of evidence to be determined during trial and prima facie, the correctness of documents placed en record by defendant No. 1, especially the income tax assessment orders and the intimation submitted to the income tax officer on 27.7.1972 cannot be doubted. Nor any reliable material has been placed on record to disbelieve their correctness and authenticity.

18. It is not disputed on behalf of the plaintiff and rather admitted that defendant No. 1 had inducted defendants No. 4, 5 and 6 as tenants. Agreement dated 1.3.1988 entered into between defendant No. 1 and M/s. Metafab (defendant No. 6) whereby monthly charges @ Rs. 3,000/- was agreed to be paid obviously as rent. The amount has been realised at this rate thereafter. Similarly, defendant No. 5 was inducted as a tenant under similar agreement dated 1.11.1985 at a monthly rent of Rs. 8,500/- per month. A money decree has also been obtained by defendant No. 4 in respect of these premises. Obviously, defendant No. 1 had control over this property, let out the same and Realizing the rent from the tenants without any objection by plaintiff.

19. The partnership agreement dated 16.5.1962 entered into between the plaintiff and defendants No. 1 to 3 inter alias provided as under :-

"AND WHEREAS it has also been agreed and resolved among the partners that the immovable properties to be acquired shall be in the name of the partnership firm. However, Shri Sant Singh and Shri Dharambir Singh shall be the exclusive owners of the same and Shri Satnam Singh and Shri Madan Pal Singh shall have no connection or concern with the same whatsoever."

20. It was thereafter a lease deed dated 20.9.1967 was executed between the firm and the DDA in respect of plot of land No. C-150, Mayapuri, New Delhi. The dissolution deed dated 1.4.1972 in clause 6 provides as under :-

"THAT it has been agreed and settled between the parties that C- 150, Maya Puri, Rowari Line, New Delhi, the land under which was purchased in the name of the partnership and even the construction was made by the funds of the partnership, the. party No. 3 and 4 having realised their shares of the assets and profits even have got left no claim with respect to this property which now will be owned by the Party No. 1 and 2."

21. This is in consonance with the terms of the partnership deed.

22. It may also be mentioned that the plaintiff in para 7 of the plaint has stated that firm M/s. Sardar Plastic Industries had slopped its business for the last few years and now only the income of the firm is from the rent. The period since when the firm was not functioning has not been disclosed. plaintiff has not placed on record anything to show that their partnership had carried on any business after 1.4.1972. If there was such a partnership, there ,would have been assessments of the income of the partnership with plaintiff and defendants No. 1 to 3 as four partners whereas as already noticed, the partners have changed from the assessment year 1973-74, i.e., financial year from 1.4.1972 to 31.3.1973. The plaintiff in his replication to the written statement of defendant No. 1 has also admitted that he is carrying on separate business of electroplating and zinc plating under the name and style of Sardar Electroplating Works for the last 19 years. He has not placed on record to show that he was doing this business before 1.4.1972 and obviously he had started it after separating from the said partnership on 1.4.1972.

23. Prima facie, in view of the material placed on record, defendant No. 1 cannot be deprived from using and dealing with this property to the exclusion of the plaintiff.

24. In that view, the defendant No. 1 is entitled to let out the premises and to realise the rent in respect of the premises properly No. C-150, Mayapuri, New Delhi in his own right. Defendants No. 4 to 6 were admittedly inducted by defendant No. 1. He is thus entitled to realise the rent payable by them and which has been deposited in this Court by defendants No. 5 and 6 and also decretal amount of Rs. 1,26,000/- deposited in the executing Court in the decree against defendant No. 4, withdrawal of which by defendant No. 1 was stayed by this Court on May 25, 1988. That stay order is liable to be vacated. Similarly, the interim orders passed at the instance of the plaintiff whereby defendant No. 1 was restrained from withdrawing the amounts of rent deposited by defendants No. 5 and 6 are also liable to be vacated.

25. In the result, plaintiff's application is No. 4734/98 is dismissed. Defendant No. 1's applications No. 901/99 and 3615/99 are allowed. All the interim orders operating against defendant No. 1 are vacated. The amounts lying in deposit in this Court as well as the decretal amount of Rs. 1, 26,000/- deposited in decree in S.No. 110/85 passed by learned Additional District Judge Delhi as mentioned earlier be paid to defendant No. 1 forthwith.

26. is No. 4734/98 dismissed and is Nos. 901/99, 3615/99 are allowed and stand disposed of accordingly.

27. Nothing stated herein will be treated as expression of opinion on merit during trial of the suit.