
(2009) 02 MAD CK 0126

In the Madras High Court

Case No : C.R.P. (PD) No. 20 of 2009 and M.P. No. 1 of 2009

A. Dhanapal and Others

APPELLANT

Vs

Tamilselvi and Santhosh

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Partnership Act, 1932 — Section 69, 69(1), 69(2), 69(3)

Citation : (2009) 02 MAD CK 0126

Hon'ble Judges : H. Rajasuria, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

H. Rajasuria, J.—Inveighing the order dated 10.12.2008 passed in I.A. No. 391 of 2008 in O.S. No. 58 of 2007 by the Additional District Court cum Fast Court No. I, Erode & District, this civil revision petition is focussed.

2. An epitome and summarisation of the relevant facts, which are absolutely necessary and germane for the disposal of this civil revision petition would run thus:

The respondents, as plaintiffs, filed the suit O.S. No. 58 of 2007 before the Additional District Court cum Fast Track Court No. 1, Erode, for partition of the suit properties, including rendition of accounts relating to the "D" scheduled properties. The revision petitioners/defendants 1 to 5 entered appearance and filed written statement. Subsequently, I.A. No. 391 of 2008 was filed by defendants 1 to 5 under Order 7 Rule 11 read with Section 151 of C.P.C. for rejecting the plaint in respect of the prayer concerning "D" Scheduled property of the plaint. After hearing both sides the lower Court dismissed the I.A. Being disconcerted and aggrieved by the order of lower Court, this revision is focussed by the defendants 1 to 5 on various grounds inter alia thus:

As per the plaint averments, the "D" Scheduled property refers to an unregistered partnership firm and as such, no suit would lie as against an unregistered firm at the instance of any person; there is nothing to indicate and evince that the deceased Mohanraj was a partner in the said unregistered firm; the averments in the plaint relating to the "D" scheduled property are false; the said Mohanraj was only a sharer in the said Sri Kumaran Cable Net Works relating to the "D" Scheduled property and the deceased Mohanraj sold his share during his life time relating to the "D" scheduled property; the lower Court without considering all these facts, simply dismissed the I.A.

4. Despite printing the name of the counsel for the revision petitioners and the names of the respondents, no one appeared.

5. A poring and perusal of the order of the lower Court, including the typed set of papers, would demonstrate and display, evince and convey unambiguously and unequivocally that the I.A. No. 391 of 2008 is a misconceived one and in my opinion it ought not to have been even numbered by the lower Court.

6. In the affidavit accompanying the I.A. No. 391 of 2008 on behalf of defendants 1 to 5, the 5th defendant set out various facts, remonstrating and refuting the averments as found detailed in the plaint. The contentious factual aspects could be gone into only during trial. In fact, D5's affidavit would putforth and setforth as though the deceased Mohanraj, during his life time, sold his share in the said Sri Kumaran Cable Net Works concerning "D" Scheduled property. That fact could be dealt with only during trial and decided ultimately while disposing of the main suit only. It is beyond the scope of Order 7 Rule 11 of C.P.C., as a bare perusal of the said provision would leave no doubt in the mind of any one for that matter.

7. The contention of the plaintiffs that an unregistered firm cannot be sued is prima facie untenable for the reason that Section 69 of the Partnership Act deals with the effect of non-registration of a partnership firm. Section 69(3) is extracted hereunder for ready reference:

69. Effects of non-registration.

(1)

(2)

(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 Provisional Insolvency Act, 1920, to realise

the property of an insolvent partner.

(emphasis supplied)

8. A bare poring and perusal of the aforesaid provision would spotlight and indicate as to how the defendants 1 to 5 - the revision petitioners herein were wrong in contending that the claim of the legal heirs of Mohanraj for rendition of accounts relating to "D" scheduled property is prohibited under law. However, it is for the plaintiffs to prove that Mohanraj was in fact a partner etc. and it is for the defendants to prove their contention that Mohanraj, during his life time, sold his share in the said Sri Kumaran Cable Net Works concerning "D" Scheduled property. These are all factual issues. But the contention of the revision petitioners that no suit for rendition of accounts relating to an unregistered partnership firm would lie is totally a wrong proposition. Hence, I could see no merit in the revision petition. Accordingly, this revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.