

**(2013) 08 P&H CK 0162**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No's. 2371 and 961 of 1987

Firm Ram Chander

APPELLANT

Vs

Firm Raghubir Singh Kasera and Others <BR> Santosh Devi  
Vs Jagan Nath and Others

RESPONDENT

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**Date of Decision :** 21-08-2013

**Acts Referred:**

Partnership Act, 1932 — Section 45

**Citation :** (2014) 173 PLR 553

**Hon'ble Judges :** Surinder Gupta, J

**Bench :** Single Bench

**Advocate :** Supriya Garg, for Mr. Akshay Bhan, for the Appellant; S.D. Bansal, for the Respondent

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## **Judgement**

Surinder Gupta, J.—This order shall dispose of two RSA Nos. 2371 & 961 of 1987 as common questions of law and facts are involved in these cases.

RSA No. 2371 of 1987

This regular second appeal relates to the civil suit No. 499 of 1979 filed by Firm Ram Chander Dinanath Gur Bazar Rewari for recovery of Rs.

12,750/-. The case of the plaintiff (now appellant in this regular second appeal) in brief is that a sum of Rs. 10,000/- was advanced to firm

Raghubir Singh of which defendant No. 2 Raghubir Singh and defendant No. 3 Jagannath were the partners. The payment of Rs. 10,000/- was

made vide cheque No. 048899 drawn on Central Bank of India, Rewari. The rate of interest was settled @ 0.95% per month and a writing to this

effect was executed by defendant No. 2 as partner of defendant No. 1 firm. As the loan was advanced to defendant No. 1 firm, both defendants

No. 2 & 3 are liable to repay the said amount. The defendants only paid Rs. 670/- by way of interest to the plaintiff-firm. The remaining amount

i.e. Rs. 10,000/- towards principal and Rs. 2,750/- towards interest had not been paid. Hence, the suit.

2. Defendant No. 2 in his written statement contested the claim of plaintiff with the plea that he had repaid the entire loan amount with interest on

4.3.1977. His second contention is that defendant No. 1 firm was dissolved on 4.11.1975 and defendant No. 3 was having no concern with

defendant No. 1 which was converted in sole proprietorship firm of defendant No. 2. Defendant No. 3 also contested the claim of the plaintiff in

his separate written statement alleging therein that he ceased to be the partner of defendant No. 1 firm w.e.f. 4.11.1975.

3. The pleadings of the parties led to the framing of the following issues by the trial Court:-

(i) Whether the plaintiff firm is registered partnership firm and Munshi Lal is one of its registered partner? OPP

(ii) Whether the defendant No. 1 was a registered partnership firm and defendants No. 2 & 3 were its partners at the time of execution of the pronote? OPP

(iii) If issue No. 2 is proved whether defendant No. 2 executed the pronote as partner on behalf of defendant No. 1? OPD

(iv) Whether defendant No. 2 repaid Rs. 10,280/- on 4.3.1977? OPD

(v) Whether the plaintiff has no locus standi to file the present suit against defendant No. 3? OPD

(vi) Whether defendant No. 3 is no more a partner of defendant No. 1 after 4.11.1975 if so to what effect?

(vii) Whether defendant No. 3 is entitled to special cost? OPD

(viii) To what amount, if any, the plaintiff is entitled to?

(ix) Relief.

4. The learned trial Court recorded the finding on issues No. 1, 2 & 8 in favour of the plaintiff and decreed the suit for recovery of Rs. 12,750/-

with costs and future interest @ 6% per annum from the date of filing of the suit till the realization of the whole decretal amount.

5. Defendants No. 1 & 2 did not prefer any appeal, however, Jagan Nath-defendant No. 3 filed the appeal, which was decided on 4.3.1987 by

the Court of Additional District Judge, Narnaul, whereby the judgment and decree of the learned trial Court was modified to the extent that

defendants No. 1 & 2 were held liable to pay entire decretal amount and the suit of the plaintiff against defendant No. 3 was ordered to be

dismissed. This regular second appeal No. 2371 of 1987 has been preferred by the plaintiff-firm against the judgment and decree of the first

appellate Court. During the pendency of this appeal, defendant No. 2 died and his legal representatives Sagar Chand and Rajinder Parashad were

impleaded as party for the purpose of his appeal.

RSA No. 961 of 1987

6. This regular second appeal arises from Civil Suit No. 695 of 1980 filed by Santosh Devi against firm M/s. Raghubir Singh Kasera through its

partners Raghbubir Singh and Jagan Nath for recovery of Rs. 14,000/-. The case of the plaintiff, in brief, is that on 22.2.1977 the defendants

borrowed Rs. 10,000/- from her and the interest was settled @ 1.15% per month. Defendant No. 2 executed a writing in favour of the plaintiff on

behalf of the firm. The loan amount was not repaid and the suit amount was outstanding against the defendants for the recovery of which the

present suit has been filed.

7. The defendants contested the claim of the plaintiff on the similar grounds as were pleaded in Civil Suit No. 499 of 1979.

8. The pleadings of the parties led to the framing of the following issues by the trial Court:-

(i) Whether the defendant No. 1 & 2 borrowed a sum of Rs. 10,000/- on behalf of Firm defendant No. 1 from the plaintiff on 22.2.1977 and

executed a ruqa in this regard in favour of the plaintiff ? OPP

(ii) Whether the defendant No. 1 was not a registered partnership firm at the time of advancement of alleged loan? OPD. 2.

(iii) Whether the plaintiff is entitled to any interest. If so, at what rate and to what amount? OPP

(iv) Relief.

9. The trial Court recording the findings on all the issues in favour of the plaintiff and decreed the suit against all the defendants.

10. In this case also the appeal was preferred only by Jagan Nath on the ground that he had nothing to do with defendant No. 1 firm after the

dissolution of the partnership on 5.11.1975. The appeal was accepted and the decree of the learned trial Court was modified to the extent that

defendant No. 2 Raghubir Singh was held personally liable for the payment of the entire decretal amount.

11. Against the judgment and decree of the first Appellate Court Santosh Devi-plaintiff has preferred this appeal.

12. I have heard the learned counsel for the parties in both the appeals and have gone through the records with their assistance. The point in issue

in both the appeals is same, as such the reference is being made to evidence led by the parties in Civil Suit No. 499 of 1979.

13. So far as the judgment and decree of the trial Court against M/s. Raghubir Singh Kasera and Sh. Raghubir Singh is concerned, the same has

attained finality in both the cases, as both the defendants have not preferred any appeal against the judgment and decree of the trial Court.

14. The substantial question of law which arises for consideration in this appeal is as follows:-

Whether in the absence of proof of any dissolution deed, a partner of a registered partnership firm can get absolved from the liabilities of firm?

15. The loan in Civil Suit No. 499 of 1979 was advanced on 24.8.1976 while the loan in Civil Suit No. 695 of 1980 was advanced on 22.2.1977.

The fact to be seen is as to whether on the above dates or afterwards whether Jagan Nath had been acting as partner of defendant No. 1 firm or

he has given notice to public or business world of his retiring from partnership of firm M/s. Raghubir Singh Kasera.

16. Admittedly, M/s. Raghubir Singh Kasera was a partnership firm and as per Form "A" issued by the Register of Firms, copies of which are on

the trial Court file, Raghubir Singh and Jagan Nath were its partners. The date of their joining the firm as mentioned in Form "A" is 20.10.1971.

Above fact is not disputed as the specific plea has been taken by the defendants that the partnership was dissolved on 4.11.1975. The onus is on

the defendants to prove their plea of dissolution of defendant No. 1 firm and retiring of defendant No. 3 from partnership. Admittedly there was no

public notice or information to business fraternity regarding retiring of defendant No. 3 from partnership of defendant No. 1.

17. The plaintiffs in Civil Suit No. 499 of 27.8.1979 had placed on file the cheques dated 15.7.1976 and 10.7.1976 drawn on the Central Bank of

India, Rewari, Ex. PX/1 and Ex. PX/2, which have been signed by Jagan Nath as partner of defendant No. 1. Firm M/s. Raghubir Singh Kasera

had its partnership account in the Central Bank of India Ltd., Rewari and it is admitted fact that the account was not closed and no intimation was

given to the Bank about the dissolution of partnership. Jagan Nath while appearing as DW-3 in Civil Suit No. 499 of 1979 had admitted his

signatures on the cheques Ex. PX/1 & Ex. PX/2 and he has admitted that these cheques have been signed by him as partner of defendant No. 1

firm, however, he had tried to explain that he had signed the blank cheques and the cheque book was with Raghubir Singh, however, he could not

explain as to why he had signed the cheque book of the personal firm of Raghubir Singh, if his plea that the partnership was dissolved is believed.

Not only this, the cheque Ex. PY dated 24.8.1976 was signed by Raghubir Singh as partner of defendant No. 1 firm. If the partnership had been

dissolved in 1975, it is not understandable as to why even Raghubir Singh had signed the cheque Ex. "PY" as partner of defendant No. 1. The

payment of this cheque was also withdrawn by Jagan Nath and he had admitted his signatures on the back of the cheque. The above evidence is

sufficient to shatter the case of the defendants that the firm M/s. Raghubir Singh Kasera was dissolved on 4.11.1975. The first step, whenever a

partnership firm is dissolved, is taken to intimate the bank having the account of partnership firm and to give necessary instructions to the Bank

regarding the future operation of the partnership account. No such step was either taken or intimation was sent to the Bank. Even the writing with

regard to the advancement of the loan in both the cases was on the Letter Pad of defendant No. 1 Firm.

18. Section 45 of the Indian Partnership Act, 1932 deals with the liability for acts of partners done after dissolution. It provides as follows:-

45. Liability for acts of partners done after dissolution.

(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would

have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person

dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner.

19. No dissolution deed of the firm has been placed on file. The production of a letter Mark "A" and UPC Ex. DW2/2 with regard to the

dissolution of the firm sent to Registrar of firms appears to be a wangled document. Had this intimation been sent to the Registrar of Firms the

witness must have been called to prove the receipt of this letter intimating the alleged dissolution. Even if, for the sake of arguments, it be believed

that the firm was dissolved, there is absolutely no evidence that any public notice, what to talk of sufficient public notice, was given regarding the

dissolution of the firm. In business community when a fact is known about the partnership of a firm and the partners of that firm, the partnership is

presumed to be continuing till notice is given of the dissolution. As per the specific provisions of Section 45 of the Indian Partnership Act, 1932 the

liability of the partner of a registered partnership firm is not absolved till there is a public notice of dissolution of the firm. The substantial question of

law which arises in this appeal is decided accordingly.

20. In this case even the partnership account in the bank was continued. Defendants No. 2 & 3, both have been signing as partners of defendant

No. 1 firm even after the date of alleged dissolution. The learned trial Court has discussed in detail giving reasons, while reaching the conclusion

that defendants No. 2 & 3 both are liable for the loan amount of defendant No. 1 firm in both these cases. The learned Appellate Court has not

looked into above evidence and factual aspects while dissenting with the findings of the trial Court with regard to the liability of defendant No. 3

Jagan Nath to pay the loan amount. The findings of the first Appellate Court in both the cases exonerating Jagan Nath of his liability to pay the loan

amount are perverse and are not based on proper appreciation of law and facts, as such are set aside while the judgment and decree of the learned

trial Court in both the suits are affirmed. Both the regular second appeals are allowed with costs.

21. One of the legal heirs of Sh. Raghubir Singh namely Sagar Chand has raised the issue that he is not liable to pay the amount, even if any, found

due against Raghubir Singh, as he had separated long back from Raghubir Singh. The judgment and decree has already attained finality against defendants No. 1 & 2 and the liability of the legal heirs of Raghubir Singh cannot be ascertained in these regular second appeals. They will, however, be at liberty to raise their plea with regard to their liability to pay the decretal amount before the executing Court, which is competent to decide the same in accordance with law. Copy of this judgment be placed on the file of connected RSA No. 961 of 1987.