

(2009) 02 P&H CK 0107
In the Punjab And Haryana At Chandigarh

Gurbax Rai Saini	Vs	APPELLANT
Shiv Ram Saini (since deceased) through L.Rs.		RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Citation : (2009) 02 P&H CK 0107

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Judgement

Mahesh Grover, J.—This Regular Second Appeal is directed against the judgments and decrees dated 14.11.1975 and 15.2.1980 passed respectively by Sub Judge Ist Class, Kapurthala (hereinafter described as `the trial Court') and the District Judge, Kapurthala (referred to hereinafter as `the First Appellate Court') vide which a preliminary decree for rendition of accounts was passed in favour of the plaintiff and the appeal of the defendant-appellant was dismissed.

2. Shiv Ram Saini (since deceased and now represented by his legal representatives) had filed a suit for rendition of accounts against the appellant. It was pleaded therein that the appellant was his brother-in-law and that the plot as detailed in paragraph 2 of the plaint was owned by the parties in equal shares and the same was purchased vide sale deed dated 5.3.1957. It was further pleaded that in order to sell this plot, the appellant had got executed a power of attorney in his favour from Shiv Ram Saini on 16.1.1969. The plot was thereafter sold and the appellant was alleged to have received the entire sale consideration. Shiv Ram Saini demanded his share of the sale proceeds, but the appellant declined to do so. He also did not render the accounts despite the repeated requests. On 1.12.1971, a notice was issued to the appellant to render the accounts, but the amount was not paid and hence, the suit was filed.

3. The appellant, who contested the suit, admitted the relationship, but denied that the plot was purchased by the parties. It was averred that the plot was purchased by M/S Saini Brothers, Kapurthala and from the beginning, it was considered and included in the assets of the said firm. The appellant had pleaded

that the plot was purchased out of the funds of the firm and since it was going in losses, the same was sold in order to pay its debts. It was denied that the appellant had accepted the sale consideration of the plot while acting as an agent of Shiv Ram Saini and, therefore, the question of the rendition of accounts did not arise at all. On the pleadings of the parties, the following issues were framed by the trial Court:

1. Whether the suit is within limitation? OPP
2. Whether the suit in the present form is not maintainable? OPD
3. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
4. Whether the property in dispute was of Messrs Saini Brothers, Kapurthala, which went in losses and its effect? OPD
5. Whether the plaintiff is estopped from filing the suit by its act and conduct? OPD
6. Whether the defendant is an accounting party? OPP
7. Relief.

4. After appraisal of the entire evidence on record, the trial Court held that the property did not belong to the partnership firm and that the suit was within limitation. It was further held that since the appellant had acted as an agent of Shiv Ram Saini, the suit for rendition of accounts was maintainable. Resultantly, a preliminary decree for rendition of accounts was passed in favour of Shiv Ram Saini and against the appellant. Feeling aggrieved, the appellant filed an appeal, which was dismissed by the First Appellate Court and the findings of the trial Court were affirmed.

5. Hence, this Regular Second Appeal.

6. Learned Counsel for the appellant made three-fold submissions to assail the judgments and decrees of the Courts below. Firstly, he argued that since the quantum of sale proceeds was known to Shiv Ram Saini and a sum which stood ascertained, at best, a suit for recovery could have been filed and the suit for rendition of accounts was not maintainable. Secondly, it was submitted that the suit was clearly barred by limitation and thirdly, learned Counsel contended that by the own admission of Shiv Ram Saini, the property had been purchased in the name of the partners and for the benefit of the firm, and once that was established, suit against the appellant alone could not have been filed without impleading the remaining partners. Learned Counsel for the appellant referred to Exhibits D1 and D2 to contend that the partnership firm had undergone a change. Shiv Ram Saini, who was the original partner of the firm, left the partnership in favour of some gainful employment and in his place, his wife joined the firm in 1958. This change was not denied by Shiv Ram Saini. He submitted that on 1.4.1964, the son of Shiv Ram Saini joined as a new partner of

the firm which is reflected in the partnership deed Exhibit D1. Learned Counsel for the appellant contended that the father of the appellant, namely, Shri Munshi Ram, who was one of the original partners of the firm, died on 29.4.1966 and after his death, his share in the partnership devolved upon the appellant and another partnership deed was executed on the same day. He referred to Clause 14 of the partnership deed, Exhibit D2, which reads as under:

14. That in case of dissolution of firm the goodwill and name of the firm shall go to only Shri Gurbax Rai partner, and the land on which factory has been erected shall be the assets of the firm.

7. To support his contentions/ submissions, learned Counsel for the appellant placed reliance on Anant Ram Munshi Vs. Spedding Dinga Singh and Company and Others, ; Narandas Morardas Gaziwala and Others Vs. S.P. Am. Papammal and Another, ; S. Mohinder Singh v. Shiv Des Singh AIR 1971 P.&H. 186 ; State of Jammu and Kashmir v. L.Tota Ram AIR 1971 J.& K. 71 and Brothers Chitty Fund v. Jacob Mathew 2004 (1) C C C 262 (Ker).

8. No one has put in appearance on behalf of the respondents despite the fact that the case was shown in the list of regular cases and thereafter in the warning list for a number of days. The matter was even heard in part on 20.1.2009 and was adjourned. In this view of the matter, the Court was left with no option but to proceed to decide the case. I have given my thoughtful consideration to the entire matter and have carefully examined the record.

9. In my opinion, the following substantial questions of law arises for determination in this appeal:

1. Whether the suit for rendition of accounts in respect of a single transaction of sale is maintainable when the amount claimed is sum certain and known to the plaintiff and remedy of suit for recovery is available to him?

2. Whether the findings of the Courts below that the plot in question, of which sale proceedings are the subject matter of dispute, was individual property of the parties and not the asset of partnership firm of Saini Brothers, suffer from perversity, being contrary to oral and documentary evidence on record?

3. Whether the suit for rendition of accounts, in respect of assets and liabilities of partnership firm, would be maintainable without impleading all the partners of the firm as parties to the suit?

10. A scrutiny of the statement of Shiv Ram Saini, who had appeared as PW1, leaves no room for doubt that the property in question was the ownership of the partnership firm and it was purchased in the name of the partners and the sale consideration came from the funds of the firm. He has also admitted the construction of the factory building thereon and the installation of the machinery there. The relevant extracts of the statement of PW1 is reproduced below:

I have given Rs. 22,000/- to Saini Bros. The amount was given to Saini Bros. In

1955. Its partners were I, Munshi Ram, my father-in-law and Gurbux Rai-defendant. When this land was purchased, the amount was in account. It is wrong that the plot was purchased for construction of the factory of the firm. Factory was constructed over the plot, which was machinery of nuts and bolts. Same was Saini Bros. And the said machinery was installed in 1957. I was also in partnership at that time. Building and machinery was of the firm.

xx xx xx xx xx xx xx xx

... Gurbux Rai had been meeting me after sale of the plot and before filing the suit, but relations were strained. He told me that it has been sold for Rs. 88,000/-. I have been demanding Rs. 44000/- but I do not know it was about Rs. 44,000/-....

11. In this view of the matter, there is no escape from the conclusion that the property in question belonged to the partnership firm and not to an individual. Therefore, the suit against one of the partners for rendition of accounts was not maintainable at all.

12. That apart, Shiv Ram Saini has not referred to any other transaction and has limited his prayer to the sale proceeds of one plot regarding which he had mentioned that the same was sold for Rs. 88000/- out of which his share was Rs. 44000/-. Therefore, when the amount stood determined by him and the claim crystallised, then in such an eventuality, the suit for rendition of accounts was misconceived. A suit for rendition of accounts is clearly a remedy which a person can avail of when there is ambiguity in the claim regarding the accounts which, at one point of time, might have been joint between the litigating parties, but if the amount is specific and known to the disputants, then one of them cannot claim the same by way of filing a suit for rendition of accounts and rather, the remedy would be to file a suit for recovery of the amount which has been determined as per the claim sought to be raised by such disputant. This Court in *Anant RamMunshi Ram v. Messrs Spedding Dinga Singh and Company and Ors.* (supra) held as under:

A suit for accounts is an extraordinary remedy which is available to the plaintiff under special circumstances. Such a remedy is frequently resorted to in suits between principal and agent, between partners and other persons between whom there is a fiduciary relationship and also privity of contract. This remedy is not confined to suits between principal and agent or between partners. In equity, a suit for accounts is entertainable where there are circumstances of special complication necessitating the taking of accounts. The ordinary remedy at law is a claim for a sum certain. A sum certain may not be a pre-determined specific amount if it is ascertainable, though not ascertained, and it would be deemed to be a sum certain according to the well-known maxim - *Id certum est quod certum reddi potest* - which means, that is certain which may be rendered certain.

13. A Division Bench of Kerala High Court in *Brothers Chitty Fund v. Jacob Mathew* (supra), after noticing aforementioned judgment, as also various other

judgments, observed as under:- "Thus, the argument of the learned Counsel for the respondents was that the court of equity can take into account the special circumstances and entertain the suit for accounts. But according to us, on a close scrutiny of the plaint, the suit cannot be held to be maintainable. It is not a case of any reciprocal arrangement between the plaintiffs and the defendants. It is admittedly a case where the plaintiffs have borrowed amount from the defendants on various occasions and various documents were executed for this purpose. The plaintiffs were aware of those documents and also aware of the amount paid under various documents. What is alleged is that some of the documents were executed under vitiating circumstances, in which case the amount cannot be realised under those documents. It is their further case that some cheques were issued for payment of the amount and this has not been taken into account for the purpose of discharging the debt. We feel that this not a circumstance necessitating a suit for accounts. It cannot be said that the amount cannot be ascertained. The plaintiffs cannot take advantage merely because there are a number of transactions. Hence, we are of the view that the suit for account is not maintainable."

14. Lastly, the sale of the plot in question took place on 24.1.1969 which was also to the knowledge of Shiv Ram Saini, but the suit was filed on 6.12.1972. Although some efforts had been made to explain this delay, yet, in the considered opinion of this Court, the suit was clearly beyond the period of limitation as it was filed much after the period of three years. Accordingly, looking at the case from any angle, this appeal deserves to succeed.

15. The questions of law, as aforesaid, are answered accordingly. In the result, the appeal is accepted and the impugned judgments and decrees are set aside and the suit of Shiv Ram Saini is dismissed.