
(1987) 10 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : CMP. No. 195/1987

Jagat Ram and Sons

APPELLANT

Vs

Bodh Raj & Others

RESPONDENT

Date of Decision : 30-10-1987

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 22, Order 30, 4
Jammu and Kashmir Contract Act, 1977 — Section 45

Citation : (1991) KashLJ 749 : (1988) SriLJ 173

Hon'ble Judges : M.L.Bhat, J

Bench : Single Bench

Advocate : H.L.Bhagotra, A.V.Gupta, Advocates appearing for the Parties

Judgement

1. Through the medium of this application Smt. Sulakshna Rant, Arun Kumar Jain, Rajesh Kumar Jain & Navneet Kumar Jain, hereinafter called

the applicants, seek to be included as plaintiffs in addition to the plaintiffs already on record. It is averred in the application that these applicants

have purchased a portion of the suit property from the partners of the plaintifffirm, therefore they are entitled to be made plaintiffs under O.22.R.10

CPC. Certified copies of sale deeds indicating their respective share .from the suit property are also produced by Mr. A.V. Gupta.

2. The suit is brought on behalf of the plaintifffirm. Names of the, partners were disclosed by the plaintiffs at the instance of the defendants, The

four partners disclosed are Jagat Ram, Ram Krishan Gupta, Ram Lai and Ram Gopal. Ram Lal partner is said to have died on 971983 & his

share bas devolved on Kanaya Lal, in whose favour he has executed a will.

3. Jagat Ram partner has 29% share in the suit property. He has sold his 10% share to Rajesh Kumar, one of the applicants. Ram Gopal has 15%

share in the suit property. He has sold 7% to Navneet Kumar, one of the applicants. Ram Krishan has 23% share. He has sold 8% to Navneet

Kumar,' one of the applicants. Kanaya Lal who has succeeded Ram Lai alongwith Bipen Kumar, Raj Rani & Smt. Neeti Gupta have sold 14%

share to Arun Kumar & 15% to Sulakshana Rani, applicants. In this manner the applicants claim to be mortgagees of part of property a claim that

they be added as plaintiffs. On behalf of The plaintifffirm, Jagat Ram, one of the partners has also signed the CMP alongwith the applicants. The

defendants have filed objections to this application. It is contended that O. 30 of the CPC does not permit assignees to substituted as partners of

the firm. By virtue of assignment firm is deemed to be dissolved and it cannot be said to have been reconstituted with the assignees. Firm cannot

bring a suit or be sued without its being registered under section 69 of the partnership Act. O.22.R.10 CPC is said to be inapplicable to the

present case which is governed by specific provisions of CPC.

4. It was contended that any partner can sue & be sued in the name of the firm. Addition of individual partners to the suit is not necessary, nor can

assignee be made a party because that will be inconsistent with the scheme set out in O.30.CPC.

5. Applicants rely on O 22.R.10 which postulates that suit may be continued with the leave of the court by or against the persons in whose case

there is assignment, creation or devolution of any interest during the pendency of the suit. This Rule is exception to Rules 3&4 of O.22. CPC.

Legal representatives under O.22. Rules 3&4 of a deceased person can be brought on record during the pendency of a suit. But Rule 10 of O.22

takes care of those cases where there is assignment, creation or devolution of interest by any reason except death of a party. The assignment of

interest contemplated in this Rule must be during the pendency of the suit, After assignment of interest in the suit

4 property is created in any person, he is said to have acquired a right to continue the suit. The word 'interest' in my opinion mean either to maintain

a suit or any transferred right to sue. Such a right should be founded on the right which a person may acquire in respect of the subject matter of the

suit:

6. O. 30 R. I CPC prescribes the procedure for suits by or against firms and

persons carrying on business in names other than their own. It lays down that partners who constitute a firm may sue or be sued in the name of the firm. Rule 4 of O. 30 CPC provides that notwithstanding anything contained in section 45 of the Contract Act, if any partner dies before the institution or during the pendency of any it shall not be necessary to join the legal representatives of the deceased as a party to the suit, but the right of the legal representative; to be made a party or to enforce their claim against the survivors of a deceased partner shall not be effected. Rule 5 lays down procedure for service of notice on the partners of the firm and Rule 6 of O.30 CPC provides that where persons are sued as partners in the name of the firm they shall appear individually in their own names, but proceedings shall be continued in the name of the firm.

7. Alongwith O.30 R. 1 CPC, it is to be noted that no suit to enforce a right arising from a contract or conferred by the partnership can be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been partner in firm unless the firm is registered and a person suing is or has been shown in the register of firms as a partner in the firm. There are some exceptions to this rule which are not relevant to our purpose.

Mr. Bhagotra has tried to show that O. 30 R. 1 CPC has overriding effect on O. 22 R. 10 CPC, therefore the assignee cannot be made a party because he represents the interests of a partner who is already deemed to be a party in a suit which is "" governed by O. 30 R. 1 CPC.

I have carefully gone through the record of the case and also given my thoughtful consideration to the submissions made at the bar.

8 The procedural law contained in O. 22 R. 10 and O. 30 of the CPC has no inconsistency with each other. O. 30 lays down requirement of filing

a suit against the partners of the firm. Individual partners are not required to be made parties 'under O. 30 R. 1 CPC to a suit to which the said

Order is applicable. Assignees also may not be required to be made a party because of the provisions contained in O. 30 R. 4 CPC, which

though inapplicable to assignees, may provide a guidelines as to whether right of assignees can be taken if they choose to be made a parties to the suit.

Assignees of a partnership during the continuance of partnership do not have the

same right as can be claimed by legal representatives in the case of death of a partner. But assignment of partnership interest: is permissible under the partnership Act. Partner can transfer interest in the firm, but transferee during the continuance of the firm does not acquire right to interfere in the conduct of the business or to require accounts or to inspect the books of the firm but entitles the transferee only to receive shares on the profits of the transferring partner and the transferee shall accept the accounts of profits agreed to by the partners. A transferee or assignee during the continuance of the firm cannot therefore be said to be entitled to effect the rights of the continuing partners but he may be entitled to receive the share of profits, correctness whereof he cannot, question. So assignment during the continuance of the firm is not unknown to law but it is conditioned and the conditions are laid down in section 29 of the partnership Act,

9. If the assignment of partners interest during the continuance of the firm is permissible, he is entitled to protect that interest O. 30 R.1 does not provide as to how such interest will be protected. Therefore, one is to fall back upon O. 22 R.10, which is not abrogated or effected in any manner by the provisions of partnership Act or by procedural law laid down in O. 30 R.4.

10. The applicants in this case have positively acquired interest in the partnership assets and such right is acquired by them during the pendency of the suit. They have a right to maintain the suit. The original, partners right to continue with the suit would not be lost because result of the suit would bind the assignees also. But if the assignees apply for making a party, they cannot be denied that right because that right is never effected by any provisions contained in O. 30 R. 4.

11. For the reasons stated above, I am of the opinion that the applicants have acquired an interest in the suit property during the pendency of the suit. Therefore they are entitled to join as coplaintiff with the present plaintiff in the suit against the defendants. The applicants are also, entitled to seek redemption of the portion of the suit property because in the event of suit property being redeemed, they as owners have a right to recover the possession of the suit property to the extent of their respective shares. They cannot be denied right to ' prosecute the suit to safeguard their own interests.

12 . The CMP is accordingly allowed. The applicants named above are permitted to be added as coplaintiffs with' the present plaintiff. The plaintiffs shall amend the plaint and include the applicants as co plaintiffs after indicating their right on the basis of registered deeds appropriately in the plaint. Let the amended plaint be filed within two weeks. Therafter the main suit be listed for consecration.