(2016) 11 KL CK 0006

In the High Court Of Kerala

Case No : A.S. No. 495 of 1997 (Against The Judgment in OS 409 of 1994 of Sub Court, Thalassery dated 20-12-1996).

Kaiparath Achuthan, S/o. Chathu, aged 63 years, No Occupation, Residing At Kallyani Sadan, Perumthattil Desom, Erancholi Amsom, Thalassery Taluk, Kannur District - Appellant @HASH Kaiprath Kumaran, S/o.Chathu, Aged 64 Years, No Occupation, Residing At Per

Date of Decision : 07-11-2016

Acts Referred:

Partnership Act, 1932 — Section 69(1)
Specific Relief Act, 1963 — Section 20

Citation : (2017) 170 AIC 513 : (2017) 1 CivCC 138 : (2017) 1 CivilLJ 566 : (2016) 4 KerLJ 608 : (2016) 4 KLT 546

Hon'ble Judges : V. Chitambaresh and Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. K. Mohana Kannan, Advocate, for the Appellants; Sri. T. Krishnan Unni (Sr.) and Sri. R. Ramadas, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Mr. V. Chitambaresh, J. - Is an agreement to release the rights in an unregistered partnership firm by a partner in favour of another partner specifically enforceable ? Is such a suit for specific performance hit by Section 69(1) of the Indian Partnership Act, 1932 ?

2. The plaintiff and the first defendant are brothers and the second defendant is the wife of the first defendant who were all engaged in a partnership business run under the name and style ''Central Stores''. Subsequently Ext.A1 agreement dated 20.1.1991 was entered into where under the first and second defendant agreed to release their rights in favour of the plaintiff for a consideration of Rs. 1,50,000/-. The right of the first defendant in the partnership firm and the right of the first and second defendant over the shop building was agreed to be released. Only the plaintiff and the first defendant were the partners of the partnership firm which was not registered under the Indian Partnership Act, 1932 [''the Act'' for short]. The period fixed till 31.3.1992 for payment of consideration

was extended till 31.3.1993 by Ext.A1(a) endorsement on the reverse of Ext.A1 agreement in view of the financial constraints of the plaintiff. The defendants thereafter issued Ext.A2 letter dated 22.6.1994 to the plaintiff purporting to rescind the contract for release. The plaintiff thereupon issued Ext.A3 letter dated 30.6.1994 reiterating that he is ready and willing to perform his part of the contract in the payment of consideration. The letter accused the defendants of demanding a higher amount as consideration and not executing the release deed after accepting the sum of Rs. 1,50,000/-. This was followed by the suit for specific performance of Ext.A1 agreement for release and also for damages to the tune of Rs. 20,000/- on account of delay.

3. The defendants contended that the amount offered as consideration for release is a pittance considering the volume of the business and the market value of the building. Ext.A1 agreement happened to be executed on the insistence of the plaintiff when the first defendant could not attend the shop on account of his ailment and hospitalisation. The defendants pointed out that Ext.A1 agreement has already been rescinded by Ext.A2 letter and that the same cannot be specifically enforced. Exts.B1 to B7 documents were relied on to show that the first defendant was in and out of the medical college hospital for quite a long time disabling participation in business. The claim for damages put forth by the plaintiff for the delay in the execution of the release deed was refuted asserting that the suit is misconceived. The trial court though negatived the claim for damages of Rs. 20,000/- has decreed the suit for specific performance of Ext.A1 agreement for release. The defendants have been directed to execute the release deed on the plaintiff paying a sum of Rs. 1,50,000/- with interest at the rate of 12% per annum till payment. It is reported that a sum of Rs. 1,92,500/- has since been deposited by the plaintiff on 15.1.1997 even before he received copy of the Appeal Suit on 4.9.1997.

4. The defendants challenge the judgment and decree of the court below mainly on the ground that the suit is hit by Section 69(1) of the Act for want of registration of the partnership firm. The plaintiff died pending Appeal Suit and his legal heirs are impleaded as respondents 2 to 7 who are eager to have the decree sustained. The defendants are quick to point out that the partnership firm is deemed to be dissolved by the death of the plaintiff as partner under Section 42(c) of the Act. The defendants contend that the dissolution of the partnership firm has rendered Ext.A1 agreement for release invalid and incapable of being enforced. The fact that the value of the building wherein the partnership business is conducted has escalated by efflux of time is also put forward as a ground of attack. The plea in short is that this is not a fit case where the discretion under Section 20 of the Specific Relief Act, 1963 is to be exercised in favour of the plaintiff.

5. We heard Mr. K. Mohana Kannan, Advocate on behalf of the appellants/ defendants and Mr. T. Krishnan Unni, Senior Advocate on behalf of the respondent/plaintiff.

6. The appellants contend that the suit is not covered by any of the exceptions in Section 69 of the Act and rely on the following observations in Ashish Verma v. Neeraj Vyas and others [AIR 2012 MP 9]:

"From perusal of the plaint averments and reliefs claimed therein, it is clear that the suit for share in the business of partnership firm has arisen from a contract of partnership. Plaintiff has claimed money from the defendant/revisionist as his share in the partnership business. Further, in view of the status of the plaintiff as partner, he has claimed right to participate in the said partnership business. Thus, obviously, the suit of the plaintiff is for enforcement of a right arising out of the contract of partnership and not independent of it. Plaintiff has no where pleaded that the firm is already dissolved. Thus the suit of the plaintiff is not covered by any of the exceptions provided in Section 69 of the Act."

(emphasis supplied)

The above was a case where a partner sued for the enforcement of a right in an unregistered partnership firm which is not maintainable unless the firm has been dissolved as per Section 69(3)(a) of the Act.

7. We think that the more appropriate decision to the facts in hand is Shriram Shaligram v. Laxmibai and others [AIR 1951 Nagpur 143] wherein Justice Hidayatullah spoke for the Bench as follows:-

"We respectfully agree that the words ''suing as a partner'' must be given their due meaning. When there is an agreement between the partners by which some right is created which is capable of enforcement independently and without resort to general accounts of the unregistered partnership, it furnishes an entirely different cause of action and the plaintiff cannot be described as ''suing as a partner''. It is not every suit that is barred but only a suit brought ''as a partner''. The section must be construed strictly and the bar of the section cannot be carried further than what the words import."

(emphasis supplied)

The above was a case wherein a suit for specific performance to convey the share of a partner in favour of another partner in an unregistered partnership firm is found to be maintainable in law.

8. We shall extract Section 69(1) of the Act in order to find out as to whether the non-registration of the partnership firm has an impact on the claim for specific performance of the nature:

"69. Effect of non-registration:- (1) No suit to enforce a right arising from a contract or conferred by this Act shall 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 a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(emphasis supplied)

The plaintiff is not suing as a partner in the firm and is on the other hand enforcing a right independently and without resort to the general accounts of the unregistered partnership firm. The execution of Ext.A1 agreement for release furnishes an entirely different cause of action and the plaintiff only compels the defendants to execute a release deed as agreed. The suit for specific performance is not hit by Section 69 (1) of the Act no matter that the parties are still partners of the unregistered firm. There is nothing to prevent the parties from agreeing to divide up part of the partnership property and exclude it henceforth from the scope of the partnership.

9. The contention that Ext.A1 agreement has lost its substratum by the dissolution of the partnership firm on account of the death of the plaintiff pending appeal is untenable. The rights and liabilities of the parties have crystallised under the decree and it is the right on the date of agreement that is specifically enforced. The plaintiff had died much after decree pending Appeal Suit only whereupon his legal heirs were brought on record as additional respondents 2 to 7. The dissolution of the firm on account of the death of a partner does not affect the rights conferred under the decree to get specific performance of Ext.A1 agreement for release. Ext.A2 letter purporting to rescind the contract unilaterally does not affect the right of the plaintiff to seek specific performance as rightly found. The plaintiff has not filed any appeal challenging the refusal to award damages to the tune of Rs. 20,000/- and the decree to that extent has become final. There is paucity of evidence to hold that the consideration fixed for the release is inadequate due to the subsequent escalation in price or that it works hardship on the defendants. We are not satisfied that the court below has exercised its discretion under Section 20 of the Specific Relief Act, 1963 in decreeing specific performance in an arbitrary or perverse manner.

10. The Appeal Suit is dismissed. No costs.