
(1985) 02 AP CK 0010
In the Andhra Pradesh High Court
Case No : Appeal No. 13 of 1977

Kuppannagari Sreeramamurthy and Another	APPELLANT
Vs	
Pydi Anda Rao and Others	RESPONDENT

Date of Decision : 07-02-1985

Acts Referred:

Andhra Pradesh Cinemas (Regulation) Act, 1955 — Section 10(2), 3
Andhra Pradesh Cinemas (Regulation) Rules, 1962 — Rule 36(4)
Contract Act, 1872 — Section 23
Partnership Act, 1932 — Section 29

Citation : AIR 1985 AP 336

Hon'ble Judges : Reghyvir, J;Kodandaramayya, J

Bench : Division Bench

Advocate : N.V. Ranganadham, for the Appellant; K.R. Rao and P. Ramachandra Reddy, for the Respondent

Judgement

Kodandaramayya, J.—The main question for determination in this appeal is whether the sale deed in favour of plaintiffs conveying the interest of a partner in a partnership firm is hit by Condition 12 of the licence for cinema exhibition issued under the A.P.Cinemas (Regulation) Act , 4 of 1955 and consequently void.

2. The suit is laid for accounting of dissolved firm and in the alternative for the share of the assets of the partnership firm on the basis of the sale deed obtained by the plaintiffs from defendant 3. The plaintiffs claim that they purchased the property under sale deed dated 5-1-1970 and the half share of defendant 3 in the partnership firm consisting of defendants 1 to 3 . It is averred that originally partnership firm was formed consisting of one Pydi Narasikha Apparao, father of defendants 1 and 2, defendant 3 and one Papi Naidu for running a cinema talkies. The said papi Naidu sold his one-third share to the father of defendants 1 and 2 and defendant 3 and the half share of defendant 3 was sold to the plaintiffs and thus the plaintiffs are owners of half share in the firm and hence the suit.

3. The suit was resisted mainly on the ground that defendant 3 obtained a licence for running the theatre sold the property to the plaintiffs and the said sale is hit by condition 12 of the licence and consequently the sale is void.

4. It is necessary to state the previous proceedings between the parties. Defendants 1 and 2 who claimed to be the heirs of their father filed the suit for specific performance of the half share of defendant 3 on the ground that defendant 3 is bound to offer to sell his share to them as per the terms of the partnership deed between the parties was not registered and hence the suit is not maintainable. But this Court while affirming the judgment of the trial Court held: vide P. Ananda rao v. G. Raja Rao AIR 1976 AP 256 that though the deed of partnership is invalid for want of registration an agreement of partnership could be implied from the circumstances of the case and the validity of the sale deed in favour of the plaintiffs was left open without giving a decision. The trial Court found on this controversy following the judgment in K. Viswanathan Vs. Namakchand Gupta and Another, that the sale deed is void and consequently dismissed the suit as not being maintainable. Against the judgment and decree of the trial Court the present appeal is filed.

5. It is necessary to notice that defendant 3 died pending the appeal. In view of this question it is not necessary to notice that their (sic) issues and findings and we proceed to examine the validity of the sale deed of the plaintiffs.

6. The Andhra Pradesh Cinemas (Regulation) Act 4 of 1955 (hereinafter called the Act) is passed as indicated in the preamble to provide for the regulation of exhibitions by means of cinematographs in the State of Andhra Pradesh. It is necessary to refer to two provisions relating to the question before us. R.36(4) of the A.P.Cinemas (Regulation) Rules, 1962 (hereinafter called the Rules) is in the following terms:

"Whenever there is a transfer of title it shall also be accompanied by a letter of consent in writing on (of) the original licensee that the licence will also be transferred in the name of the transferee."

Condition 12 of the Licence reads as follows:-

"The licensee shall not, without the permission of the licensing authority, assign, sublet or otherwise transfer the licence or the licensed premises, nor shall the licensee without permission as aforesaid allow any other person during the period of currency of the licence, to exhibit films in the licensed premises."

7. The Court below relied on the judgment of the Madras High Court in K. Viswanathan Vs. Namakchand Gupta and Another, where a similar condition of licence was held to make a partnership agreement illegal and void and consequently dismissed the suit. The learned counsel for the appellant relied upon two judgments of this Court in support of his contention that the view expressed by the Madras High Court in the above judgment is no longer good law. In Commr. Of Income Tax, Andhra Pradesh IV, Hyderabad v. Venkataramana

(1984) 1 ALT 399 : (1983 Tax LR 1355) it was held that R.19(1) of the A.P.Excise (Arrack and Toddy Licences, General Conditions) Rules, 1969 was not infringed when the firm holding the licence admitted a new partner. It was held that in view of the judgments in *Jer and Co. Vs. Commissioner of Income Tax, U.P.*, and *K.M. Viswanatha Pillai Vs. K.M. Shanmugam Pillai*, the view of the Madras High Court in *Velu Padayachi Vs. Sivasooriam Pillai*, is no longer good law. Subsequently a Division Bench of this Court in A.S.No.809/76 consisting of Punneyya, J. and Ramachandra Raju, J. held that the view of the Madras High Court in *K. Viswanathan Vs. Namakchand Gupta and Another*, is also no longer good law, and hence it is urged that the view of the trial Court based on that judgment is liable to be rejected.

8. It is urged by Sri Koka Raghavarao, that two Bench judgments referred to above are dealing with the admission of partners and the question before them is whether such admission constitutes a transfer of a licence. But in the present case a regular deed of transfer was executed and hence there cannot be any doubt that the licensee purported to transfer the interests in the licence. He also laid stress on the aspect that condition No.12 prohibits transferring the licensed premises also. Hence, it is argued that the prohibition contained under condition No.12 is clearly attracted and the sale in favour of the plaintiffs is void.

9. We have already extracted condition No.12. So far the provisions of the Act are concerned we do not find any prohibition for transferring the property. But R.36(4) far from prohibiting transfer of property enacts an enabling provision. It simply prescribes procedure for transferring the title and hence we are left only with condition No.12 of the licence. Condition No.12 prohibits the transfer without the permission of the licensing authority.

10. Condition No.12 prohibits exhibiting the films in the licensed premises by any person other than the licensee. It prohibits such exhibition of films either by assigning and subletting or otherwise transferring the licence. The second prohibition is transferring the licensed premises. Finally, it prohibits allowing any person during the period of currency of the licence to exhibit films in the licensed premises. Thus it is clear, all the forms of prohibition of creating interest in third parties is directed against exhibiting the films in the licensed premises during the currency of a license. So if any interest created by the licensee does not permit the transferee to exhibit the films in the licensed premises by virtue of such transfer the condition is not violated.

11. When we look to the terms of the sale deed in question far from violating condition No.12 it contemplates the compliance of the same. Parties have covenanted for applying to the licensing authority and then running the cinema theatre. R. 36(4) never contemplates a prior permission to transfer the title in the property. The covenant in the sale deed clearly contemplates obtaining the licence by the transferee and then run the theatre and hence far from violating the terms of conditions of licence it purports to comply with the present condition No.12. We have seen three modes of creating interest in the licence as

contemplated by condition No.12 Ex.A-4 does not purport to transfer the licence as such . Secondly, it does not purport to allow the transferee to exhibit the films in the licensed premises. The only possible prohibition that may be attracted in the deed is, so far it purported to transfer the licensed premises. It is true that the sale deed purported to transfer the licensed premises but we are clearly of the opinion on a true construction of condition No.12 if the sale deed purported to transfer the licensed premises to enable the transferee to exhibit the films in the licensed premises alone is prohibited, but not a mere transfer of licensed premises. In the context of the provisions of the Act and the Rules, condition No.12 must be construed to prohibit films in the licensed premises. In the absence of creating such interest condition No.12 is not attracted. Suppose a person exhibiting films mortgages the licensed premises to a bank, it clearly constitutes a transfer of licensed premises. Can it be said that he violated condition No.12. According to us clearly not. As such mortgage in favour of a bank does not enable the mortgagee or any person claiming through them to exhibit the films in the licensed premises and hence so long the creation of interest in whatever form that might be does not give right to exhibit the film (and) condition No.12 is not violated. Hence such transfers are not forbidden under law and S. 23 of the Contract Act is not attracted and hence such sales are valid.

12. Accordingly, we hold that on a construction of the terms of Ex.A4 we are of the opinion that transferring interest of the partner in a partnership firm including the premises does not amount to transferring the licensed premises for exhibiting the films under the licence and hence the sale is not hit by condition No.12. This construction placed by us in the present case is also consistent with S. 29 of the Partnership Act which is the relevant provision governing such transfers.

13. It is necessary to look to S. 29 of the Partnership Act which is in the following terms:-

"29. (1) A transfer by partner of his interest in the firm, either absolute or by mortgage, or, by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles to transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution."

14. Courts have construed the effect of transferring the interest of the partner in a partnership firm. A bare reading of the provision makes it clear that mere

transfer of interest by a partner does not enable the transferee to interfere with the conduct of the business or require accounts or to inspect the books of the firm. It gives him a bare right to receive the share of profits. Further the transferor continues to be the member of the firm. Till the transferee is admitted into the partnership he will not become a member of the firm and his right is to receive the profits only. His right to share the assets of the firm will arise only when the firm is dissolved or the transferring partner ceases to be the partner. As held by the Supreme Court "The partnership property vests in all partners during the subsistence of the partnership and no partner can deal with any portion of the partnership property as his own nor can he assign the interest in any specific item of property". (Vide *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, . Even incases of involuntary transfers Courts have to examine the nature of interest that passes to the auction purchaser of the interest of the partner in a firm. The dicta of the Full Bench of he Lahore High Court in *Ajudhia Pershad Ram Pershad v. Sham Sunder* AIR 1947 Lah 13, may be noticed:

"It is evident that a transferee under S. 29, Partnership Act, and by analogy, a peson buying an interest in a partnership under O.21, R.49, Civil C.P.C. does not acquire any interest in tangible assets of any kind. It is not until dissolution that his interest takes concrete shape. Up to that time, his sole right is to receive a share in the profits of the partnership in the running of which he has no share whatsoever; he is not permitted even to question the correctness of the amount offered to him. In an extreme case it is conceivable that the entire partnership assets may be devastated under his very nose and he will be powerless to prevent the injury to his rights. He cannot even move for dissolution of the firm himself. A reference to S. 44, cl. (e) Partnership Act, will show that in a case where the share of a partner has been charged or sold under O.21 R.49, Civil P.C. any of the remaining partners may sue for dissolution, but the right is not conferred upon the transferee of such share. Moreover , as has already been seen, dissolution involves liquidation of the entire assets, and the transferee will even in such a case, receive nothing but liquidated assets as his share."

15. This view is accepted by this Court in *Krishnanda Rao v. M.V. Ramanujaneyulu* (1964)¹ Andh WR 300. Hence, it is clear that except a bare right to receive the profits the plaintiffs are not entitled to receive the share of the assets of the firm till the partnership is dissolved and hence no question of any transfer of a licensed premises enabling the transferee to exhibit the films in the licensed premises as contemplated under condition No.12 would ever arise.

16. Thus, it is seen both under the terms of Ex.A-4, and under law as per the provisions of S. 29 of the Partnership Act, no interest is created in favour of plaintiffs to exhibit the films contrary to condition No.12 of the licence. The sale deed is valid. The view to the contrary is clearly unsustainable. Once we held the sale deed in favour of the plaintiffs is valid in view of the subsequent event that the 3rd defendant died and dissolution took place, the plaintiffs are entitled to

share the assets of the transferor partner as per S. 29(2) of the Partnership Act.

17. The Court below gave a peculiar finding that the 3rd defendant walked out of the partnership and defendants 1 and 2 alone who obtained the licence constitute the partnership (which) is clearly unsustainable. The mere fact that the licensing authority granted a fresh licence in favour of defendants 2 and 2, would not mean that there was cessation of relationship of partners and a new partnership has come into vogue. The finding of the Court below in this regard is clearly unsustainable.

18. Taking into account the subsequent event that defendant 3 died, it is just and proper that we should mould the relief to the plaintiffs and grant them the relief of a decree for the accounts of the dissolved firm. Thus, we hold that the plaintiffs are entitled to profits under S. 29(1) of the Partnership Act of the firm representing the transferor defendant 3 till the death of defendant 3, and thereafter they are entitled to share the assets of the firm to which defendant 3 is entitled and the suit for accounting for the subsequent period is decreed. We allow the appeal accordingly and we make no order as to costs.

19. Appeal allowed.