
(2011) 12 AHC CK 0417
In the Allahabad High Court
Case No : Second Appeal No. 895 of 2011

Pratap Singh

APPELLANT

Vs

Ram Charan

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 7 Rule 7
Contract Act, 1872 — Section 65
Partnership Act, 1932 — Section 69
Transfer of Property Act, 1882 — Section 53A

Citation : (2012) 2 ADJ 550

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Sibghat Ullah Khan, J.—Heard Sri K.M. Garge, learned counsel for the appellant and Smt. Rama Goel Bansal, learned counsel for the respondent caveator at the admission stage.

2. This is defendant's Second Appeal arising out of O.S. no.469 of 1999 instituted by plaintiff respondent. The suit was decreed in part by Additional Civil Judge (S.D.). Court no.2 Mathura through judgment and decree dated 25.7.2001 against which defendant appellant filed Civil appeal no.156 of 2001 and plaintiff respondent filed Civil Appeal no.15 of 2002. A.D.J. Court no.1 Mathura, dismissed both the appeals hence this Second appeal.

3. Learned counsel for respondent on inquiry from court stated that plaintiff respondent did not intend to file Second Appeal against the impugned judgment and decree.

4. Plaintiff respondent stated in the plaint that he and the defendant appellant entered into a partnership and each party contributed Rs.75,000/-and the land over which partnership business was carried out belonged to the plaintiff. The relief claimed was for return of the amount of Rs.75,000/-along with share of the

plaintiff in the profit and return of the land along with damages for use and occupation @ Rs.2000/-per month. However, plaintiff admitted that no written partnership had been executed in between the parties and entire transaction was oral. The defendant pleaded that partnership can not come into existence orally and in any case suit was barred by Section 69 of Partnership Act. Defendant also pleaded that plaintiff was not the only owner of the land in dispute and suit was also barred by Section 53-A of Transfer of Property Act as oral agreement to transfer the land had taken place in between him and the plaintiff.

5. The trial court accepted the version of the defendant appellant that partnership could not come into existence orally. The trial court further held that plaintiff was the only owner of the land in dispute and no agreement for sale had taken place in between him and the defendant (in any case agreement for sale in U.P. w.e.f. 1977 can be only through registered document).

6. The plaintiff had asserted that partnership came into existence in 1991 and it was terminated in 1994 as defendant dishonestly and forcibly removed the plaintiff from the partnership.

7. The trial court decreed the suit for return of Rs.75000/-, for possession over the land in dispute and for mesne profit @ of 500/-per month.

8. The main argument of learned counsel for the appellant is that the suit had been filed with the allegation that partnership had been created and as the plaintiff failed to prove that any partnership had come into existence hence suit should have been dismissed and it could not be decreed treating the amount of Rs.75000/-as loan. Similarly, other reliefs also could not be granted as they were not properly prayed for and the basis on which the reliefs were claimed was not found proved by the courts below.

9. I do not agree with the contention of learned counsel for the appellant. Under Order 7 Rule 7 C.P.C. any appropriate relief to which plaintiff is found entitled may be granted by the Court even if it has not been prayed for.

10. u/s 65 Contract Act it is provided as under:

When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

11. As the contract of agreement was discovered to be void for not being in writing defendant was bound to return the amount received by him and to compensate for the same. A substantial relief has already been granted by the courts below to the defendant by not directing payment of interest.

12. Learned counsel for appellant has cited the following authorities:

1. Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others,

2. Santiranjana Das Gupta Vs. Dasuram Murzamull,

3. Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and Others,

13. These authorities are not at all relevant for the purposes of this case as they all deal with partnership, and section 69 of partnership Act. It has also been held in these authorities that partnership can not be oral. In the instant case the said point has already been decided in favour of the appellant by the Court below.

14. Accordingly, there is no error in the impugned judgments and no question of law has wrongly been decided by courts below. Second Appeal is, therefore, dismissed under Order 41 Rule 11 C.P.C.