
(1976) 10 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous F.A. No. 117 of 1976 & Msic. F.A. No. 117 of 1976

Sajjan Singh and others

APPELLANT

Vs

Nadeali and Brothers, Bhopal

RESPONDENT

Date of Decision : 29-10-1976

Acts Referred:

Partnership Act, 1932 — Section 47

Citation : (1977) JLJ 78

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

Bench : Single Bench

Advocate : S.R. Phadnis and P.V. Pandit, for the Appellant; K.L. Issarani, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Malik, J.—This is an execution appeal. The appellants were the tenants of the respondent-firm M/s Nadeali and Brothers. They were sued for eviction and arrears of rent in the Court of the. Second Additional District Judge, Bhopal. A decree was passed against them. They then preferred an appeal before the High Court which was registered as First Appeal No. 171 of 1975. They prayed for stay of the execution and the Court stayed the execution insofar as eviction part of the decree was concerned subject to the appellants depositing Rs. 23,000/- & odd, due as arrears of rent and damages upto the date of the order It. 9-12-1975, within a month, failing which the stay was to stand vacated automatically. The appellants deposited Rs. 23,409.50 nps. towards rent and damages due upto August, 1975. The stay was, therefore confirmed on further condition that the appellants deposited rent from September, 1975 to March, 1976 by 1st of April, 1976, and thereafter continued to deposit rent on the 15th of each succeeding month.

2. The execution of the decree insofar as the eviction of the judgment debtors in concerned, remains stayed. But the respondent decree-holder proposes to withdraw the money deposited by the judgment-debtors towards rent and mesne

profit. The judgment-debtors appellants have raised objections to the excitability of the decree even insofar as it relates to rent and mesne profits. Those objections have been overruled by the executing Court and hence this appeal.

3. The first objection raised was that while the suit was pending before the Second Additional District Judge, Bhopal the plaintiff-firm stood dissolved on 31-1-1974 and on accounts being taken, the accommodation in question came to be allotted to Majhar Hussain (one of the three partners) by mutual agreement. It was contended that Majhar Hussain alone could prosecute the suit for eviction of the tenants after the firm stood dissolved. He should have intimated the Court and got necessary amendment made in the cause-title of the suit. The firm as such could not sue. It had in law died and the decree obtained in favour of a dead-legal person was a nullity. It could not, therefore, be executed.

4. Such a plea was raised before the trial Court and the same was overruled. (See para 27, 28 and 29 of the Judgment in Civil suit No. 1-A of 1975 dated the 30th August, 1975). The finding that the suit was maintainable even though the firm stood dissolved, is a subject-matter of a challenge in hirst Appeal No. 171 of 1975, & so long as the finding is not set aside, the executing Court has no power to go behind the finding. The trial Court which is the executing Court as well, in bound by the finding earlier recorded in the trial. The rule of res-judicata operates.

5. Apart from this and without prejudice to what may ultimately be decided in the First Appeal, it is an admitted position that the firm could sue for the eviction of tenants when the suit was filed. What would be the elect of dissolution of the firm, and assignment of the assets to one of the partners taking place during the pendency of the suit, is the question To such a case. Order 22 Rule 10 of the CPC would apply. A suit by a firm under Order 30 Rule 1, C.P.C. is in fact a suit by all the partners of which the firm is constituted. It is merely giving an abbreviated name for the partners, but in effect, all the partners are before the Court as plaintiffs. Majhar Hussain was then one of the plaintiffs and continued to be the plaintiff even after dissolution of the firm. Earlier he had a limited right. By assignment after dissolution he acquired a greater right. If his right was enlarged by assignment during the pendency of the suit, he had a right to apply under Order 22 Rule 10, C.P.C. But if he chose not to apply, the original party's right to continue with the suit would not be lost since the result of the suit would be binding on the assignee and he could avail the benefit of the decree that might ultimately be passed. If the suit were to be dismissed, he incurred that risk as well.

6. The learned counsel for the appellant's second contention was that u/s 47 of the Indian Partnership Act the authority of each partner to bind the firm continued notwithstanding the dissolution, so far an might be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. And since the dissolution of the firm and winding up, was all completed on the 30th January, 1974, the power of

Ajaib Hussain who had sued in the name of the firm would come to an end & he could not continue with the suit. At any rate, he had no continuing authority to give a valid discharge for mesne profits payable after the 30th January, 1974. His execution application filed on behalf of the firm for mesne profits relating to period after the 30th January, 1974, was clearly not maintainable.

7. In my construction of section 47 of the Partnership Act, a pending suit for eviction was a transaction begun but unfinished and the partner had a right to prosecute the suit till its completion and till satisfaction was obtained of the decree if passed and till the assets were placed in the hands of the partner to whom it were allotted by mutual agreement. The winding up process is not complete till this is done. An authority to file a suit includes an authority to prosecute it till its end and to obtain satisfaction, for the benefit of the partners to whom such benefit must go.

8. The normal rule is that even after dissolution, payment to any of the partners discharges the debtor even though a third person is appointed to collect the debts owing to the firm, and the debtor is aware of the fact. But if on dissolution, a debt due to the partnership is assigned to one of the partners and the debtor has notice of such assignment, he can only pay to the assignees. (See Lindley on Partnership). In the present case, if Majhar Hussain has been allotted the assets for which mesne profits must go to him, the tenants must pay mesne profits to him, or to his authorised agent. Majhar Hussain has come forward to say that any payment made to Ajaib Hussain would be payment to his authorised agent who was competent to give a valid discharge. And that is the end of the matter. If the Judgment-debtors had any further doubts, a notice could be given to all the partners and instructions obtained. After all, they were tenants of the firm and must pay rent to some partner to whom the assets are assigned if that has been brought to his notice, or as per instructions given to him by all the partners collectively.

9. The law is again clear that a decree in favour of the firm is a decree in favour jointly of its partners and, therefore, it can be executed even after dissolution, by some of the partners for the benefit of all. (See AIR 1932 596 (Lahore)) The procedural law contained in Order 30, Rule 1, C.P.C. and Order 21 Rule 15, C.P.C. do not stand abrogated by the Indian Partnership Act. Ajaib Hussain, therefore, could execute the decree obtained in favour of the firm for the benefit of Majhar Hussain insofar as it related to mesne profits after 31-1-1974 and for the dissolved firm for the arrears of rent and mesne profits upto. 31-1-1974. In fact, the decree is one and indivisible and is being executed as a whole, the apportionment of the amount amongst the partners is a matter with which the judgment-debtors are not concerned.

10. In the result, the appeal has no force and is dismissed. Costs on appellants. Counsel's fee Rs. 100/-