
(2001) 10 P&H CK 0147
In the Punjab And Haryana At Chandigarh
Case No : Civil Appeal No. 3355 of 1999

Satish Kumar Mehta

APPELLANT

Vs

Suman Kumar Mehta

RESPONDENT

Date of Decision : 17-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2002) 1 RCR(Civil) 243

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Baldev Raj Mahajan, for the Appellant; Gurcharan Dass and Tara Chand, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Unsuccessful plaintiff Shri Satish Kumar, Mehta has filed the present regular second appeal and it has been directed against the judgment and decree dated 24th August, 1999 passed by the Court of the learned District Judge, Amritsar who affirmed the judgment and decree passed by Shri Kuldip Singh, Civil Judge (Senior Division), Amritsar; who dismissed the suit of the plaintiff for permanent injunction.

2. The brief facts of the case are that Shri Satish Kumar Mehta son of Shri Tarlochan Dass Mehta filed a Srfit for permanent injunction against his real brother Shri Suman Kumar Mehta alleging that he is the sole proprietor of Messrs Mehta Textiles and Finishing Mills, Hide Market, Amritsar. The respondent is also carrying on his business under the name and style of Messrs New Mehta Textile Mills opposite Murgi Khana Batala Road, Amritsar. The appellant and the respondent are real pothers. It is alleged by the appellant that after the death of their father, a dispute arose in between and it wag mutually agreed that the appellant will be sole proprietor of Messrs Mehta Textiles and Finishing Mills carrying on its business at Hide-Market, Amritsar while the respondent, will be the owner of the firm Messrs New Mehta Textile Mills, Opposite Murgi Khana,

Batala Road, Amritsar. After this agreement between the parties, the respondent wrote to the factories Inspector claiming that he had no concern with Messrs Mehta Textile and Finishing Mills. He also addressed letters to the Labour and Reconciliation Office, Amritsar and Labour Inspector, Grade-1, Amritsar and the Manager, E.S.I. Amritsar that he had no concern with this firm. The case set up by the appellant is that he had been depositing the amount and dues in the various authorities claiming himself as a Proprietor of the firm Messrs Mehta Textile Mills, Amritsar. The respondent is a strong headed person. He wanted to show force and threats to interfere in the business of the plaintiffs firm Messrs Mehta Textiles and Finishing Mills.

3. Notice of the suit was given to the defendant whose stand was that he had never relinquished his interest in the partnership firm of Messrs Mehta Textile and Finishing Mills on the basis of the letter dated 18.5.1992 as alleged by the appellant and that he is still a partner; all the assets of the firm, including the machinery etc. belong to the partnership concern. Earlier there was a regular deed of partnership which was scribed on 16th November, 1989. The new partnership after the death of their father came into existence on 23rd November, 1991, in which the mother of the parties was also included as a partner. It was pleaded by the defendant that the plaintiff is violating the terms and conditions of the partnership deed dated 23rd November, 1991. The firm Messrs New Mehta Textile Mills was started by the respondent after taking loan from the bank and this loan was raised from the State Bank of Patiala on 17th September, 1992. The appellant has no right, title or interest in the new concern Messrs New Mehta Textile Mills. The machinery was installed on the land belonging to the wife of the respondent. The letter dated 18.5.1992 written by the respondent had been admitted by the appellant, but he accepts that it was only intimation to the various authorities that he was no longer the managing occupier of the said concern. The defendant also took the stand that the firm was duly registered partnership firm and the same could not come to an end as no deed of dissolution of partnership has been executed. With this broad defence the defendant prayed for the dismissal of the suit.

4. A rejoinder to the written statement was filed by the plaintiff in which he reiterated the allegations made in the plaint and denying those of the written statement. On the pleadings of the parties, the trial Court framed the following issues:

1. Whether the plaintiff is entitled to the injunction prayed for? OPP
2. Relief.

Parties led their evidence in support of their case and on the conclusion of the proceedings the suit was dismissed by the trial Court. The unsuccessful plaintiff filed the first appeal before the learned District Judge, who vide impugned judgment and decree dated 24th August, 1999 dismissed the appeal filed by the plaintiff. Still not satisfied, the present regular second appeal.

5. I have heard Shri B.R. Mahajan, learned counsel appearing on behalf of the appellant/plaintiff and Shri Gurcharan Dass, learned counsel appearing on behalf of the respondent and with their assistance, have gone through the record of the case. 6. Before I deal with the contentions raised by the learned counsel for the appellant, it will be appropriate for me to reproduce para Nos. 11 to 17 of the judgment of the first appellate Court, which are as under:

"11. I have given my thoughtful consideration to the arguments of the learned counsel for the parties. Ex.D.2 is the first partnership deed which was executed between the appellant and the respondent and their father. This deed was executed on 16.11.1989. Father of the parties died on 13.7.1991. Thereafter, the partnership deed, Ex.D.3 was executed by the appellant, respondent and their mother. This deed is signed by all the three partners and is also attested by Jagmohan and Gopal Krishan Anand. This partnership was executed on 23.11.1991. Gopal Krishan Anand while in witness box as DW.7 stated that this deed was attested by him and was signed by the parties after they admitted its contents to be correct. A long and searching cross-examination was directed on this witness, but no dent could be created in his statement from which it could be inferred that Ex.D-3 was not executed by the parties and their mother. Now, once it is seen that the partnership deed, Ex.D.2 was duly executed between the parties, then the plea of the appellant that this partnership deed was executed by police pressure and forcibly appears to be without any basis. By reverting to the pleadings between the parties, it shall be seen that it was a specific case of the appellant that after their father died, by way of settlement, the firm M/s Mehta Textile and Finishing Mills was given to him, while the respondent was given the firm M/s New Mehta Textile Mills and a residential house bearing No. 133, Krishna Square, Amritsar. The facts and circumstances available on the record will go to show that there could be no occasion for settlement in respect of M/s New Mehta Textile Mills because the said firm was not in existence at that time and there arose no question of giving that by way of settlement. Otherwise also, the appellant has not led cogent or reliable evidence to show that any settlement or partition of the properties of their father ever took place. No writing or document in this respect has also been produced by the appellant. The registered sale deed of Messrs New Mehta Textile Mills land Ex.D.31 is dated 18.5.1992. The sale consideration was paid through a cheque, Ex. DW/8/A which is dated 15.5.1992. The loan was raised by the respondent from the bank and State Bank of Patiala had released Rs.75,000/- on 17.9.1992 as is proved from loan document Ex.D.29/A. It is also not controverted that with this loan amount the respondent had purchased machinery of the firm Messrs New Mehta Textile Mills. The only conclusion which can be drawn from this is that at the time when father of the parties died or there was any settlement as alleged by the appellant, although not proved, the firm Messrs New Mehta Textile Mills was not in existence. As far as house bearing No.133, Krishna Square, Amritsar, is concerned, it shall be revealed that this property was purchased from Amritsar Improvement Trust, Amritsar, by the respondent on 14.12.1983. No evidence is

available on the file to show that this house was purchased with the funds provided by Messrs Mehta Textile and Finishing Mills. If it was so, the appellant could very well prove the same by producing documents in the shape of Income Tax returns and other documents to prove that the amount was provided by firm M/s New Mehta Textile Mills. As such, the plea taken by the appellant in his plaint as well as in his replication has not been established by the evidence on the record.

12. Now coming to the argument of the learned counsel for the appellant to the effect that the respondent had relinquished and abandoned this right over firm Messrs Mehta Textile and Finishing Mills. On this point the entire case of the appellant rests-upon the letter Ex.P.21 and the document, Ex.P.2. By minutely examining Ex.P.21, it shall transpire that the respondent had categorically mentioned in this letter written by him to the Assistant Director of Factories that he was no longer Manager and occupier of the firm, but was only a partner in the firm. By no means, the recitals made in this document can be interpreted to show that the intention of the respondent was to relinquish and abandon his right over the said firm or by writing this letter the firm stood dissolved and the appellant became sole proprietor. The appellant cannot take any benefit from the law laid down in Harish Kumari's case (supra). In that case, the partners had themselves decided to not to transact any business from a particular date and it was held that the issuance of notice subsequently by the plaintiff for dissolution of the partnership firm would be of no consequence. But, the facts involved in the present case are even not remotely similar to the ones involved in the cited authority. In the present case, the respondent categorically in Ex.D.8 had informed the Assistant Director of Factories that he continued to be a partner of the firm. His intention was not at all there to relinquish or abandon his rights in respect of Messrs Mehta Textile and Finishing Mills. As far as then law laid down in Om Parkash's case (supra) is concerned which has also been relied upon by the appellant, again, the facts involved in the cited authority were that the plaintiff had filed a suit for dissolution of the,, partnership deed, which precisely is not case as far as the facts involved in the present case are concerned. The document, Ex.P.2 also does not lead to a conclusion that the respondent intended to serve his right or claim over the property in dispute. The proceedings recorded by the Regional Provident Fund Commissioner show that the respondent had stated that he was no longer a Manager or Occupier of the firm Messrs Mehta Textile and Finishing Mills. It is nowhere recorded that he had relinquished or abandoned his claim over the said firm. To my mind, the respondent had valid and plausible explanation for the same, because he was complaining that the appellant was running the Factory illegally and for his illegal acts, respondent shall not be liable in this capacity as managing partner or occupier. Once there was a valid partnership created between the appellant, respondent and their mother then the firm could only be dissolved as per the provisions in the Indian Partnership Act or as provided in partnership dated, Ex.D.8. Needless to say that the firm was never dissolved. As such, there was no occasion with the appellant

to have become sole proprietor of the said firm by ousting the respondent without the firm having been dissolved.

13. Another argument adduced by the learned counsel for the appellant was that the partnership created on the basis of Ex.D.8 was never acted upon. This argument also appears to be without any basis. The carrying of business in the name of the firm was continuing as admitted by the appellant himself. He never informed the registrar of Firms with which the firm was registered, regarding its dissolution. Therefore, it has to be concluded that the affairs of the business of Messrs Mehta Textile and Finishing Mills were continuing.

14. It is not disputed that the premises in possession of the firm Messrs Mehta Textile and Finishing Mills were in possession of partnership business as tenant. Therefore, there was inherent right of the respondent also in the capacity of his being partner in the tenancy rights. He could not be ousted simply on the basis of his having informed the Factories department that he was not an occupier.

15. It is amply clear that the appellant did not plead in the plaint about the alleged abandonment or relinquishment of his right in firm Messrs Mehta Textile and Finishing Mills by the respondent. He had also not pleaded so in the replication. He developed his case beyond pleadings to the effect that the respondent had relinquished and abandoned his right in the firm as a partner which amounted to dissolution of the firm. To meet the argument of the learned counsel for the respondent that the evidence adduced beyond pleadings was not admissible, nor it could be looked into, he cited before the Intzar and Another Vs. Sat Parkash Sharma and Others, . There is no dispute that the Hon"ble Punjab and Haryana High Court in this case had held that where the parties knew that a point arose in a case and they produced evidence on it, though it does not find place in the pleadings and no specific issue was framed on it, the court can still adjudicate it. As mentioned above, the reasonable and proper interpretation of documents Ex.P.21 and Ex.P.2 by no means will go to show that the respondent never intended to abandon his right in the firm or he never wanted to dissolve the firm. For the same reason, the law laid down in Uttam Das Chela Sunder Das Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar, as well as in Nagubai Ammal and Ors. v. B. Shamarao and Ors. 1993 Suppl Case 412 will be of no help to the appellant. On this point, the appellant also relied upon Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, but as the appellant failed to prove that the respondent ever intended to dissolve the firm or to relinquish his claim over the partnership business, this authority will be of no help to him.

16. Shri Ramesh Chaudhary, Advocate vehemently argued that even if the respondent is taken to be a continuing partner in the concern Messrs Mehta Textile and Finishing Mills, even then, he is not entitled to interfere in the possession of the appellant over the business premises as he had been proved to be in exclusive possession of the same. In support of this contention, he relied upon Gurmeet Kaur and Anr. v. Surjit Singh 1989 P.L.J. 55. I have gone through

this authority. It was a case of a co-sharer in joint possession where the Hon'ble High Court had held that as he was in established possession of the joint property, he could seek concession of injunction. But, in the present case even if the appellant was running affairs of the business it was for the benefit of the firm constituted by the appellant, respondent and their mother as partners. The respondent, an admitted partner, could not be ousted by the appellant by claiming that he was a sole proprietor of the firm.

17. Shri T.S. Sandhu, Advocate, the learned counsel for the respondent, cited before the Chainkapam Sudhakaram Oswal v. Radhakishan Vishwanath Dixit and Ors. AIR 1956 Nag 46 and submitted that notice of dissolution of partnership was essential to be there for dissolution of a partnership u/s 43 of the Partnership Act. Admittedly, in the present case no such notice was issued. He also relied upon Bhutya v. Radhakishanlal Shioshankarlal Izatdar and Ors. AIR 1956 Nag 50 wherein it was held that a partnership could not be brought to an end by an unilateral act of one of the partners except giving a notice in writing to the other partners of his intention to dissolve the firm. In the present case, it is not a case of the appellant that the respondent ever gave any notice to him. What he did only was to inform the Factories Department and the Provident Fund Commissioner that he shall not be responsible as occupier of the firm No intention can be derived from this act of the respondent that he intended to dissolve the firm."

7. The learned counsel for the appellant vehemently submitted that the conduct of the defendant shows that Messrs Mehta Textile and Finishing Mills came to the share of the plaintiff who has become exclusive owner of the said business along with all its movable and immovable properties. The earlier controversy stood resolved even by the conduct when the respondent wrote letters to various authorities showing clear intention that he is no longer the partner in the said business. It was further submitted by the learned counsel for the appellant that the defendant, by his own conduct, dis-associated himself with the affairs of the partnership firm depicts cogent proof regarding the dissolution of the partnership firm and also with regard to the fact that the assets of Messrs Mehta Textile and Finishing Mills has fallen to the share of the plaintiff. Mr. Mahajan vehemently submitted that as the new partnership firm came into being on 23.11.1991, the defendant issued notice to the various departments on 4th December, 1991 that hardly there was any business of the firm. In fact, the defendant wanted to grab the movable and other assets of the firm of Messrs Mehta Textile of which the plaintiff has become an exclusive owner. It was also submitted by the learned counsel for the appellant that even if it is assumed for the sake of arguments that it is a partnership firm, still the plaintiff has the interest in the property and therefore, he can claim injunction against the defendant who has no right to file a suit for rendition of accounts and actually a separate suit has already been filed in the civil Court and, therefore, till that matter is adjudicated upon, the civil Court which is seized of a suit for rendition of accounts, the present suit should be decreed.

8. On the contrary, the learned counsel for the respondent has adopted the reasoning which were given by the courts below and he has made a prayer for the dismissal of this appeal with an additional ground that the letter which has been relied upon by the learned counsel for the appellant does not show clear indication about the dissolution of the partnership firm. In fact, the defendant had intimated to the various authorities for the illegal activities which are to be carried out by the appellant, but there is no intention on the part of the respondent that he has retired himself from the partnership deed. The learned counsel for the respondent has also invited my attention to the various provisions of the Indian Partnership Act and submitted that there are various modes with regard to the dissolution of the firm and none of the modes adopted in those provisions has been followed by his client and, therefore, it should be inferred that there was no dissolution of the partnership firm. Rebutting the argument of the learned counsel for the respondent, the counsel for the appellant has submitted that the plaintiff has placed several documents on record to indicate that there was a dissolution of the firm.

9. I have considered the rival contentions of the parties and am of the opinion that the contentions raised by the learned counsel for the appellant are totally devoid of any merit. Section 39 of the Partnership Act lays down that the dissolution of the partnership between all the partners of a firm is called the "dissolution of the firm". According to Section 40 of the Act a firm may be dissolve with the consent of all the partners or in accordance with the contract between the partners. Section 42 further lays down certain contingencies in which the law will presume that the firm has been dissolved. For our purpose, Section 43 is also relevant. According to this section where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. Learned counsel for the appellant has not been able to prove any document on record vide which I may be able to formulate an opinion that the defendant had issued any notice in writing showing his clear intention that he wanted to dissolve his firm or that he wants to retire from the partnership firm. Even assuming for the sake of arguments that the firm has not done any business, still it is a matter which has to be adjudicated upon by the Local Commissioner who may be appointed in a suit for dissolution of the firm. In this case I have to see whether the plaintiff has the right to ask his co-partner not to enter into the business premises and my answer would be in the negative, the reason being is that the rights of all the partners are yet to be determined by the Civil Court. They are co-owners in the affairs of the business and, in these circumstances, to give right to one partner and to keep the other partners out from the affairs of the business will be most inequitable. This aspect of the case has been rightly noticed by the first appellate Court. Therefore, I find no merit in this appeal and the same is hereby dismissed. No order as to costs.

Before I part with this judgment, I am of the opinion that any observation made by the High Court or by the Courts below in the present appeal will not have any

bearing on the merits of the suit which has been filed by the defendant against the plaintiff for dissolution and rendition of accounts.