

(2009) 02 KAR CK 0018

In the Karnataka High Court

Case No : Regular Second Appeal No. 2559 of 2006

Shantappa

APPELLANT

Vs

Irappa Shankarappa and Others

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Partnership Act, 1932 — Section 69 (1), 69 (3), 69 (4) (a)

Citation : (2009) 6 KarLJ 257

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Sriyuths D.L.N. Rao for V.M. Sheelvant and S.R. Anuradha, for the Appellant; Sriyuths Andanimanth G.R., S.S. Niranjana and V.F. Kumbhar, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—This regular second appeal is directed against the concurrent findings recorded by both the Courts below decreeing the suit filed by the plaintiffs-respondents 1 to 4 herein.

2. Appellant was the 1st defendant and 5th respondent was the 2nd defendant. The suit was filed for taking the accounts of the dissolved partnership firm treating the sales of the properties effected by the 1st defendant in favour of the purchasers as not binding on the plaintiffs and for a decree for the amount found due to the plaintiffs.

3. It was the case of the plaintiffs that R.S. No. 88/2 of Krishnapur Village in Hubli Taluk was jointly owned by four persons. The plaintiffs 1 and 2 and the defendants 1 to 3 being acquaintances and friends decided to undertake a venture to develop and sell the land bearing R.S. No. 88/2 and an oral agreement in this regard to carry on the business in development and sale of plots was reached amongst them. As per the terms of the agreement, the plaintiffs 1 and 2 and defendants 1 to 3 were required to contribute equally

towards investment and expenses and the profit and losses should be shared equally. It was also agreed that all of them should together enter into an agreement to purchase the property from the owners of R.S. No. 88/2 and with the consent of all the parties, a power of attorney from the owners of the lands should be taken in the name of the 1st defendant to enable him to complete all formalities and also to sell or transfer the flats to be formed in the land.

4. Pursuant to the agreement, plaintiffs 1 and 2 and defendants 1 to 3 negotiated with the owners and entered into a registered sale-cum-development agreement on 19-5-1988. The sale consideration payable was fixed at Rs. 5,78,000/-. The purchasers were to get the land converted and secure necessary approved layout plan and develop the land by incurring expenditure on their own. After development of the land, 15 guntas of the same was to be delivered to the owners. Owners of the land were required to execute a power of attorney to enable any of the purchasers to develop the land and sell the plots.

5. It is not in dispute that pursuant to the agreement, a power of attorney came to be executed by the owners in favour of the 1st defendant. A sum of Rs. 2,02,000/- was paid by plaintiffs 1 and 2 and defendants 1 to 3 to the owners on the date of agreement. As they faced financial difficulty, all of them together approached the 3rd plaintiff to join the venture by contributing financially. Accordingly, 3rd plaintiff contributed Rs. 80,000/- on 11-9-1988 which is evidenced by a document produced and marked at Ex. P. 85. As per the plaintiffs, further payments were made to the landowners in between 1988 to 1992.

6. The 1st defendant after completion of the development and formation of plots, sold the said plots to different persons showing less consideration in the records. As he failed to furnish the accounts despite making profits, the plaintiffs dissolved the joint venture by issuing notice on 17-8-1995 addressed to the 1st defendant and also calling upon him to furnish the accounts. Since the plaintiff failed to furnish the accounts, the suit came to be instituted.

7. Only the 1st defendant-appellant herein contested the suit denying the very joint venture. He contended that it was he who had agreed to purchase the land from the owners for the purpose of developing the same and selling the plots. As the plaintiffs and defendants 2 and 3 were close friends of the 1st defendant, they approached the 1st defendant agreeing to contribute towards the sale consideration and for future expenses so that the work could be done in partnership, to which the 1st defendant agreed. However, as plaintiffs 1 and 2 and defendants 2 and 3 had no ready money, it was the 1st defendant who alone paid Rs. 2,02,000/- to the owners and got the agreement registered in favour of all of them jointly. As the plaintiffs 1 and 2 and defendants 2 and 3 were unable to make any payment to the 1st defendant to make further payments to the owners and towards expenses and as the 1st defendant who was also facing financial difficulty, in consultation of the owners he undertook further work of development and sale of plots on behalf of the owners at their risk and expenses.

He further asserted that neither plaintiffs 1 and 2 nor defendants 2 and 3 contributed any money for development work. He also contended that as no sale deed was executed by the owners in favour of the so-called partners, there was no partnership business and the business was not done on behalf of plaintiffs and defendants 2 and 3, but on behalf of the owners, hence there was no obligation on the 1st defendant to account for the profit and loss.

8. The Trial Court framed necessary issues including as to whether the plaintiffs proved that they were entitled to seek accounts of the dissolved partnership firm from the defendants and as to whether the plaintiffs proved that they were entitled to the decree for an amount found due to them and to claim interest on the amount found due.

9. The 1st plaintiff examined himself as P.W. 1 and produced and marked Exs. P. 1 to P. 90. The 1st defendant (appellant herein) examined as D.W. 1 and relied upon one document marked as Ex. D. 1. Upon consideration of the evidence on record both oral and documentary, the Trial Court recorded a finding that plaintiffs 1 and 2 and defendants 1 to 3 agreed to undertake a venture for development and sale of land in partnership by contributing equally and pursuant to the same, a registered agreement of sale was executed by the owners of the land in favour of the plaintiffs 1 and 2 and defendants 1 to 3. Although the defendant contended that the entire amount of Rs. 2,02,000/- was paid by him alone, the Trial Court found that the defendant had failed to establish the same and that the plaintiffs were able to establish that the amount was contributed jointly and equally. The Trial Court also found that the 3rd plaintiff was inducted as a partner in the joint venture by investing Rs. 80,000/-.

10. Since the defendant had admitted in his cross-examination that to gain profits for himself, plaintiffs and the 2nd defendant, they had agreed to do the business and as the 1st defendant had further stated in the cross-examination that he was unable to explain how much amount was arranged by him and from where he arranged the same to invest in the joint venture, although he claimed that the entire amount was invested by him and further as the defendant failed to adduce evidence of the owners to establish his plea that although the owners had executed the power of attorney in his favour in terms of the agreement of sale, since the plaintiffs failed to pay the amount towards development charges agreed to between himself and the owners, he undertook the development work, formed plots and sold the same for and on behalf of the owners, the Trial Court found that the defendant failed to show as to at what stage he was asked to continue on behalf of the owners. It is also found that there was nothing to show that the agreement to purchase the land and develop the same as a joint venture was cancelled by the 1st defendant.

11. Reference is also made by the Trial Court to the fact that the plaintiff during the course of suit called upon the 1st defendant to produce documents, but the defendant did not produce the same.

12. The Trial Court has clearly and categorically found that the registered agreement of sale jointly obtained in the name of plaintiffs 1 to 4 and defendants 1 and 2 vide Ex. P. 84, the subsequent document vide Ex. P. 85 whereunder all the above mentioned five persons together inducted the 3rd plaintiff into their joint venture coupled with the fact that if the plaintiffs had not contributed anything, why no action was taken to terminate the joint venture including the rights of the 3rd plaintiff who had contributed Rs. 80,000/- under Ex. P. 86 were sufficient to hold that plaintiffs had in fact contributed at least to certain extent towards the joint venture. The fact that the defendant did not also return any money to the plaintiffs who had contributed the same and to the 3rd plaintiff from whom admittedly Rs. 80,000/- was received are also regarded as circumstances going in favour of the plaintiffs. Therefore, the plaintiffs were entitled for the accounts from the 1st defendant with profit or loss and if after taking the accounts, anything remained as an asset, the plaintiffs are found entitled to share the profits and if there is a loss, they are held liable to share loss proportionate to their contributions. It is also ordered that the 1st defendant shall pay interest to the plaintiffs on the amounts payable to them, if any, at 18% per annum and if the joint venture is shown to have suffered loss, the plaintiffs are held liable to reimburse the same to the 1st defendant proportionate to their percentage of contribution with interest at 18% per annum from 21-8-1995.

13. The lower Appellate Court has reappreciated the evidence on record and fully concurred with the findings recorded by the Trial Court.

14. Learned Senior Counsel appearing for the appellant contended that the Courts below committed serious illegality in proceeding on the premises that the plaintiffs and defendants 1 to 3 constituted a partnership firm to run a partnership business. Drawing the attention of the Court to Section 69(1) of the Indian Partnership Act, 1932 (hereinafter referred to as "the Act" for short), he submits that unless the firm was a registered one and the person suing is or has been shown in the register of firms as a partner in the firm, no suit to enforce any right arising under a contract shall be instituted in any Court by any person suing as a partner in the firm. He has further contended that as per Section 19(2) (f) and (g) of the Act, no partner has an implied authority to act as an agent of the firm to acquire immovable property on behalf of the firm or to transfer the immovable property belonging to the firm. He therefore submits that the 1st defendant could not have and has not acted for the firm or on behalf of the partners in transferring the immovable properties by developing them into plots.

15. It is his next contention that since the registered agreement of sale states that sale deed will be executed on payment of the balance sale consideration and possession of the land was to be handed over after such payment, in the absence of such registered sale deed, the question of acting under the joint venture did not arise. He has pointed out that because the plaintiffs did not pay the balance sale consideration and were not in a position to contribute towards development

expenses, the 1st defendant has acted for the original owners. He has also contended that the lower Appellate Court has failed to frame proper points for consideration.

16. Learned Counsel appearing for the respondents has refuted all the contentions urged by the appellant. He has brought to the notice of the Court Section 69(3) and 69(4)(a). He has contended that in view of the express authority conferred under Exs. P. 84 and P. 85 on the 1st defendant, question of placing reliance on Section 19 which dealt with implied authority of a partner, will not arise. He has relied on the judgment in *Firm Haji Isa Haji Noor and Ors. v. Saru Bai W/o Ragho Appa and Anr.* AIR 1938 Nag. 324, to contend that when persons in business associate together for the purpose of carrying on the business, it is legitimate to infer that they are not doing it for philanthropic purposes but intend to make a profit out of it and also that they all intended to share in the benefit of the proceeds.

17. Having heard the learned Counsel for the parties and upon careful consideration of all the materials placed, I find that the contention urged by the learned Senior Counsel stating that as per Section 69(1) of the Act, the suit instituted was not maintainable as the firm was not a registered one and the persons suing were not shown as registered partners in the registered firm is untenable. This argument totally glosses over the provisions contained u/s 69(3) (a) which makes it clear that the provisions of Sub-section (1) shall not affect the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm. In the instant case, the suit is filed for rendition of accounts of a dissolved firm. It is clear from the findings recorded by the Courts below that the partnership business was dissolved by issuing notice by the plaintiffs. Therefore, this argument has no substance.

18. As regards the other contention based on Section 19 of the Act, the same has no relevance to the present case as it is not in dispute that plaintiffs 1 and 2 and defendants 1 to 3 agreed to carry on a joint venture in development and sale of plots, pursuant to which an agreement of sale was entered into vide Ex. P. 84 wherein a mention is made with regard to the joint venture and it was provided that a power of attorney has to be executed by the owners authorising any one of them to carry out the activities of development. Admittedly, the power of attorney was executed on the same date by the owners in favour of the 1st defendant authorising him to carry out the developmental works including sale of plots. It is admitted by D.W. 1 in his cross-examination at paragraph 9 that based on the said power of attorney, he has carried on all the developmental works. He has also admitted that himself, plaintiffs 1, 2 and 4 and 2nd defendant were friends and hence with an intention to purchase the property jointly and to make profit, they took up the venture. He has further admitted that the 3rd plaintiff contributed Rs. 80,000/- showing her as a partner inducted. In these circumstances, the arguments advanced by the learned Senior Counsel urging

that there was no authority given to the 1st defendant to develop or sell the land cannot be accepted.

19. Both the Courts have concurrently held that the evidence on record established that the 1st defendant has acted pursuant to the joint venture and in accordance with the power of attorney executed authorising him to develop the land and sell the same. The Courts below have further held that the defendant failed to establish that the entire amount was contributed by him for the purchase of the land under the agreement of sale and that no amount was contributed by the plaintiffs towards the development. Therefore, the contentions urged by the learned Senior Counsel that in the absence of proof of execution of registered sale deed by paying full consideration to the owners, 1st defendant could not have acted under the joint venture agreement for the plaintiffs and that he had in fact acted for and on behalf of the original owners under a different understanding with them, cannot be accepted. At any rate, this aspect of the matter is a question of fact and is in the realm of appreciation of evidence on record. This Court in exercise of jurisdiction u/s 100 of the Civil Procedure Code, 1908, cannot reappreciate the same to upset the said findings.

20. It is necessary to notice here that the Trial Court has clearly opined that the 1st defendant was required to account for the dealings under the joint venture as to whether he has earned any profit or has incurred any loss. After rendering such accounts, if anything remained as an asset plaintiffs are held entitled to share the profits and if it is shown that there was no profit and the 1st defendant had incurred loss, the same has to be shared proportionately. In other words, the profit and loss is to be proportionately shared as per the contributions made by the plaintiffs. Both the Courts below have held that a sum of Rs. 2,02,000/- was paid jointly by plaintiffs 1, 2, 4 and the 1st defendant. It is further held that a sum of Rs. 80,000/- is contributed by the 3rd plaintiff subsequently under Ex. P. 86. There is nothing to show as to how much was contributed subsequently by the plaintiffs and how much was contributed by the 1st defendant. It is in this background that the Trial Court has ordered that "plaintiffs, defendants 1 and 2 shall share the profits or losses proportionate to their contributions. 1st defendant shall render accounts of joint venture giving the following particulars: (1) contribution by each plaintiffs and defendants 1 and 2; (2) payments made to the owners of land; (3) expenses incurred for development of land, sale of plots; (4) proceeds of sale of plot". Therefore, it is open to the 1st defendant to show the accounts to establish that nothing more was contributed by the plaintiffs apart from their share in the form of advance given in a sum of Rs. 2,02,000/- at the time of entering into the agreement of sale and the subsequent sum of Rs. 80,000/- at the time of inducting the 3rd plaintiff as a partner. Therefore, I do not find any legitimate basis for the grievance made by the appellant-1st defendant.

21. In view of the above, this appeal being devoid of merits is dismissed. No costs.