

(2011) 10 DEL CK 0178

In the Delhi High Court

Case No : Regular First Appeal No.187 of 1998

Shri Narendra Kumar Jain

APPELLANT

Vs

Shri Karam Vir Singh Jain (Since Deceased) Represented By
LRS Etc.

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Partnership Act, 1932 — Section 14, 48

Citation : (2011) 10 DEL CK 0178

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : R.S. Kela, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 31.1.1998 whereby the objections of the appellant herein, and who was the plaintiff in the Trial Court, to the report of the Local Commissioner were dismissed and a final decree was consequently passed by the impugned judgment in the suit for dissolution of partnership and rendition of accounts.

2. The facts of the case are that a partnership was entered into between the appellant herein and late Sh. Karam Vir Singh Jain, defendant no.1. The last deed of partnership between the appellant/plaintiff and the defendant no.1, Sh. Karam Vir Singh Jain was the partnership deed dated 2.4.1973, Ex.PW3/D1. There was a third partner, Sh. Anil Kumar Jain as per the partnership deed, though there were no disputes with this third partner of other two partners and who is thus not a party to these proceedings. The defendant no. 1 was sued as respondent no.1 in this appeal and who expired during the pendency of the appeal. His legal heirs were brought on record vide order dated 17.1.2006. The partnership business was to carry on the business under the name of M/s. ETA

Radio Industries. The business was basically of sale of amplifiers, radios and accessories. Disputes and differences arose between the partners which led to the filing of the subject suit for dissolution of partnership and rendition of accounts.

3. A preliminary decree was passed by the Trial Court on 05.3.1982. As per the preliminary decree, the firm was dissolved and a local commissioner was appointed to take accounts of the partnership firm. The local commissioner after hearing both the parties and allowing them to file their evidence, filed his final report on 14.12.1983. The main dispute is with regard to whether the property no. W-32, Okhla Industrial Area, Phase II, New Delhi admeasuring 391 square yards was or was not the property of the partnership firm. The contention of the appellant was that this property was a property of the partnership firm and thus the appellant was entitled to a share in the same. It was argued that the property was purchased with the funds of partnership firm and was duly shown as a property of the firm in the various balance sheets of the firm including for the accounting year 1978-1979. It is argued that once the property in question was a property of the partnership firm, then, by virtue of Sections 14 and 48 of the Indian Partnership Act, 1932 the appellant was entitled to the share in the same.

4. The entire argument on behalf of the respondent was that though the property is a property of the partnership firm, however when the partnership was entered into vide partnership deed dated 2.4.1973, Ex.PW3/D1, it was agreed that the appellant will only have a right to the yearly profits and losses, and would not have any share in the properties of the firm. It was argued that the appellant/plaintiff was only a qualified engineer experienced in the trade and he was inducted in the partnership firm for his qualification only and without his contributing any capital, and therefore, the appellant had agreed not to claim rights to any of the properties of the firm, except taking a share in the yearly profits and losses. Reliance is placed by the legal heirs of the defendant no.1/ respondents no.1(a) to 1(g) upon para 8 of the partnership deed which reads as under:-

8. That on dissolution of the partnership the entire goodwill rights, its trade name, quota rights, tenancy rights and all such at present or procured during the partnership, will be the property of the first party, who will be its sole owner.

5. The only issue therefore which requires determination in this appeal is as to whether the appellant has or does not have a right in the property bearing no. W-32, Okhla Industrial Area, Phase II, New Delhi. Putting it differently is the appellant debarred from claiming any rights in the properties of the firm by virtue of para 8 of the partnership deed. Counsel for the appellant has sought to argue that the language of para 8 of the partnership deed cannot be said to confer exclusive rights on late defendant no.1 to all the assets of the partnership firm.

6. In order to deal with this only issue which is required to be decided one has to look at the terms of the partnership deed dated 2.4.1973, Ex.PW3/D1, and I would therefore seek to reproduce the entire deed, and which reads as under:-

PARTNERSHIP DEED

This deed of Partnership made on 2nd April 1973, between

- 1) Shri Karam Vir Singh S/o Lala Balmukand Jain resident of 1204, Abdul Rehman Road, Karol Bagh, New Delhi-5 of the first part
- 2) Shri Narendra Kumar Jain s/o Shri Ranbir Singh Jain resident of 4491, Patnamal Street, Pahari Dhiraj, Delhi-6 of the second part
- 3) Shri Anil Kumar Jain s/o Shri K.V. Jain, resident of 1204, Naiwala No.5, Karol Bagh, New Delhi-5 of the third part,

Witnesseth:-

WHEREAS the First Party is a qualified engineer and experienced in Trade, had been carrying on his business of the manufacture and sale of amplifiers, Radios, Accessories etc., under the brand name of "Ajanta", "New Voice", "Roxy", under the name and style of ETA RADIO INDUSTRIES, at 4491 Patnamal Street, Pahari Dhiraj Delhi-6 since 1956, That the firm was duly registered as a Small Scale Industry.

WHEREAS in order to expand the business, the First Party had taken the Second Party as partner in the said running business w.e.f. 1/4/1963.

WHEREAS the First and Second parties have been carrying on business under the regular Deed of Partnership dated 14th April 1963.

WHEREAS in order to further expand the business and its scope the First and Second parties wish to take Shri Anil Jain, the Third party of the Third part as a working partner w.e.f. 2/4/1973 in the said running business with all the Assets & Liabilities as on 31-3-73.

Now, therefore, the parties had decided to execute this fresh Deed of Partnership in writing.

WHEREAS the property of business running under the name and style of M/S. ETA RADIO INDUSTRIES, stock, in trade, furniture, machinery, tools fittings and other assets and liabilities, have been taken over by the newly constituted partnership firm as its property, at par.

It is, therefore, mutually agreed that the said partners shall become partners on the following terms.

NOW this Deed Witnesseth as under:-

1. That the business of the firm ETA RADIO INDUSTRIES will continue to be carried on as before and now under this fresh partnership, with expression or

changes as mutually decided by the partners from time to time.

2. That this partnership shall be deemed to have commenced w.e.f., 2.4.1973 and shall continue as Will.

3. That the profits and losses of the partnership shall be divided between the partners in the following proportions- First Party - Karam Vir Singh 40 paise in the rupee Second Party - Narendra Kumar Jain 35 paise in the rupee Third Party - Anil Kumar Jain 25 paisa in the rupee

4. The partners of the firm in anticipation of profits shall be at liberty to draw out of the profits a sum or sums as required for their personal expenses and the same shall be debited to their respective personal account.

5. That the accounting period of the firm shall be financial year and shall be closed on 31st March every year, when profits and loss account will be prepared and posted to the accounts of each partner.

6. The credit balance in the name of the parties No.1 & 2 shall be the capital of partnership firm. The new party may also provide capital to the firm from time to time. The parties shall be entitled to an interest at the rate of 12% p.a. for the balance standing in their names on the close of the year.

7. That party No. 1 will be free to run or have interests in any other business, trade or industry, even competitive with the business of partnership.

8. That on dissolution of the partnership the entire goodwill rights, its trade name, quota rights, tenancy rights and all such at present or procured during the partnership, will be the property of the first party, who will be its sole owner.

9. That in case of disputes, no partner or his nominee shall interfere or stop the normal function of the partnership firm.

In witness, whereof, the parties, referred above placed their signature, to this Deed on the 2nd April, 1973 at Delhi.

Witness:

1. Rambir Singh Jain

Sd/-

KARAM VIR SINGH

Party No.1

Witness:

2. Jainti Pd Jain

Sd/-

NARENDRA KUMAR JAIN

Party No.2

Sd/-

ANIL KUMA JAIN

Party No.3

7. A reference to the partnership deed does show that the appellant/plaintiff was shown as a partner who was taken in because of his knowledge and experience of the trade. The first para of the partnership deed specifically records this that the appellant is a qualified engineer who is experienced in the trade. The partnership deed also does not record any contribution towards capital on assets by the appellant when the partnership deed was entered into, though subsequently the balance sheet shows credit balance in the capital account of the appellant which amount is the unwithdrawn profit share of the appellant credited to his capital account every year after year, i.e. the capital account obviously is the sum total of the credits from the profit and loss, year to year, of the partnership firm, and this capital account shows the entitlement to the capital which is not withdrawn by the appellant. This credit balance in the capital account is payable to a partner on dissolution as per Section 48(b)(iii) of the Indian Partnership Act, 1932. As per numerical Para 3 of the partnership deed, the right of the appellant/plaintiff was 40 paisa in the rupee, i.e. 40% in the profit and loss of the partnership firm.

Para 8 is indeed crucial and this para of the partnership deed clearly records in so many words that the entire goodwill, rights, its trade name, quota rights, tenancy rights and all such at present or procured during the partnership will only be the property of the late defendant no.1 who was to be its sole owner. In this para 8, it is quite obvious that by a typographical error, the expression "rights" are missing after the words "all such", however, a reading of para 8 makes it more clear that reference is made to all the rights of the partnership firm of every type including the rights to trade name, quota rights, tenancy rights and other rights which would be of the partnership firm in its properties whether existing when the partnership deed is entered into or which is subsequently acquired. The appellant cannot make any capital, out of the fact that the word "rights" are missing after the words "all such" in para 8 of the partnership deed. The contention of the learned counsel for the appellant that reference to other rights would only be to rights as to tenancy rights is an interpretation which I refuse to accept inasmuch as if certain rights were to be excluded, then after the wide language of para 8, there would have been an explanation or a clarificatory line as to which rights of properties of the partnership firm would belong not to the late defendant no.1 but to the partnership as a whole and which explanation /clarification does not exist. I therefore hold that a reading of the para 8 of the partnership deed shows that the parties with open eyes agreed that the appellant will have no rights whatsoever in any of the properties of the partnership, and which was with the

reason because the appellant was taken as a partnership firm not because he had contributed any capital or immovable property or any other property to the firm, but he was taken as a partner because of his personal contribution which was to be made to partnership on account of his being a qualified engineer experienced in the trade.

8. No other issue was urged or argued before me.

9. In view of the above, appeal being without any merit is accordingly dismissed, leaving the parties to bear their own costs. The impugned judgment of the Trial Court dated 31.1.1998 is sustained. Appeal is disposed of accordingly. Trial Court record be sent back.