

(1985) 07 AHC CK 0017
In the Allahabad High Court
Case No : First Appeal No. 129 of 1971

State of Uttar Pradesh

APPELLANT

Vs

Hamid Khan and Bros. and Others

RESPONDENT

Date of Decision : 22-07-1985

Acts Referred:

Partnership Act, 1932 — Section 69(2)

Citation : AIR 1986 All 130

Hon'ble Judges : R.K. Shukla, J;N.D. Ojha, J

Bench : Division Bench

Advocate : O.P. Gupta, for the Appellant; N.S. Singhal, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—This is a defendant's first appeal against the judgment and decree dated 29th March, 1971 passed by the Ist Additional Civil Judge, Aligarh decreeing the suit of the plaintiff-respondents for recovery of Rs. 75,000/- with costs along with interest pendente lite and future at the rate of six per cent per annum. The suit was instituted by the respondents on the allegations that the firm plaintiff-respondent No. 1 was a registered firm, that an agreement had been entered into between the plaintiffs and the Public Works Department of the Uttar Pradesh Government at Narora whereby the plaintiff firm was to carry out certain works in connection with the construction of a barrage on the river Ganga. The claim of the plaintiff-respondents was that the amount in respect of which the suit has been instituted was payable to them by the defendant-appellant in connection with the aforesaid work done by them. The suit was contested by the defendant-appellant on various grounds and on the pleadings of the parties the trial court framed as many as twelve issues. The parties produced evidence in support of their respective cases and on its perusal the trial court decreed the suit for recovery of Rs. 75,000/- as already pointed out above. Indeed, the finding of the trial court is that on the basis of the material on record the plaintiff-respondents were entitled to a decree for Rs. 98,253.42 but the

decree was passed for Rs. 75,000/- only inasmuch as the plaintiffs had paid court-fee only on that amount.

2. Sri O. P. Gupta holding the brief for the standing counsel appearing for the defendant-appellant has stated before us that he was challenging the findings of the trial court on issues 2, 8 and 10 only. In view of this categorical statement made by counsel for the appellant the findings of the trial court on other issues are not being considered and the decision of this appeal is being confined to the aforesaid three issues. For the sake of convenience these three issues are being reproduced below : --

(2) Whether the suit of the plaintiffs is barred by Section 69 of the Partnership Act?

(8) To what relief, if any, are the plaintiffs entitled?

(10) Whether the plaintiffs claim for recovery of lump sum of Rs, 75,000/- without specifying the items left by him is not maintainable?"

3. Coming to issue No. 2 it was urged by counsel for the appellant that on the plaintiffs' own case the agreement on the basis of which they carried out the work in respect of which the suit had been filed was entered into on 6th of March, 1964 as is clear from paragraph 29 of the plaint. This paragraph deals with the cause of action. It states that cause of action arose on 6th of March, 1964 when the agreement was executed and thereafter on 25th and 26th June, 1964 when the work in pursuance of the agreement was completed by the plaintiffs as also on 13th July, 1965 when notice in regard to their claim was served by the plaintiffs on the defendant and on 14th September, 1965 when the period of aforesaid notice, served on the defendant-appellant expired. It was also brought to our notice by counsel for the appellant with reference to Ex. 23, the certificate of registration granted by the Registrar of Firms to the plaintiff-respondents, that the said certificate was granted on 20th January, 1967. On the basis of these dates it was asserted that since the cause of action as stated in paragraph 29 of the plaint had arisen much before the firm was registered on 20th January, 1967, the suit was not maintainable in view of the bar created by Section 69 of the Partnership Act.

4. Having heard Sri O. P. Gupta for the appellant and Sri N. S. Singhal counsel for the respondents we find it difficult to agree with this submission. A perusal of the plaint indicates that the suit was instituted on 21st August, 1967. Even a bare perusal of Section 69 of the Partnership Act leaves no room for doubt that what is barred by the said section is the institution of a suit to enforce a right arising from a contract or conferred by the Partnership Act by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown as a partner in the Register of Firms. This is the requirement of Sub-section (1) of Section 69. Sub-section (2) of Section 69 likewise bars the institution of a suit to enforce a right arising from a contract by

or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm. The certificate of registration, a copy whereof has been filed as Ex. 23 indicates that the certificate of registration was granted on 20th January, 1967 and that the persons through whom the suit has been instituted have been shown as partners in the firm. (Firm) Ram Prasad-Thakur Prasad Vs. (Firm) Kamta Prasad-Sita Prasad, was a case where a suit had been instituted on behalf of a firm before its registration. The firm was got duly registered during the pendency of the suit and the plaint was amended incorporating this fact. The question arose about the effect of the firm being registered during the pendency of the suit and the plaint being amended. After referring to Section 69 of the Partnership Act it was pointed out that the date relevant for applying the provisions of Section 69 was the date when the suit was instituted and the suit could not be deemed to have been instituted on the date when the plaint was amended consequent upon the firm being registered. In Sri Baba Commercial Syndicate and Another Vs. Channamasetti Dasu and Another, it was held in paragraph 11 of the report that an existing unregistered firm can get over the disability imposed by Section 69 by registering before it brings a suit. We accordingly find no substance in the submission made by counsel for the appellant that the suit was barred by Section 69 of the Partnership Act inasmuch as on the date when the suit was instituted the plaintiff firm had already been registered.

5. As regards issue No. 8, as seen above, this was an issue about the relief to which the plaintiff-respondents were entitled. Counsel for the appellant has urged that since a decree for a consolidated sum of Rs. 75,000/- without giving the specifications thereof could not be claimed by the plaintiff-respondents, the decree passed by the trial court is erroneous. This submission really takes us to issue No. 10. We, therefore, shall deal with issues 8 and 10 together. In this connection it was urged by counsel for the appellant that the claim for which the plaintiff-respondents wanted to have a decree in their favour should have been specified itemwise and a claim for Rs. 75,000/- in a lump sum was not maintainable. In our opinion, there is no substance in this submission either. A perusal of the plaint as well as the judgment of the trial court makes it clear that the plaintiff-respondent had specified the various categories under which their claim was based. They also produced evidence in respect of the various categories referred to above. While dealing with issue No. 8 the trial court has given as many as ten categories and has also stated the corresponding amount under these categories to which the plaintiff was found entitled. The trial court has thereupon specified the amount which was to be deducted on account of the, counter-claim made by the defendant-appellant, it has then found that after deducting the amount of the counter-claim made by the defendant-appellant the total amount payable to the plaintiff-respondent by the defendant-appellant was Rs. 98,253.42. A decree for the whole amount due, however, could apparently not be passed inasmuch as the plaintiffs had paid court-fees only on a sum of Rs.

75,000/- and on account of this circumstance their claim stood confined to Rs. 75,000/- only. It cannot, therefore, be said that the trial court committed any error in decreeing the suit of the plaintiff-respondents in the manner stated above. As already noticed earlier no other point has been pressed by counsel for the appellant.

6. In the result the appeal fails and is dismissed with costs.