

(1998) 04 MAD CK 0154
In the Madras High Court

V.A. Abdul Wahab Sahib (died) and Others	APPELLANT
Vs	
R.A. Abdul Subhan Sahib	RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:

Partnership Act, 1932 — Section 69

Citation : (1998) 2 LW 689 : (1998) 2 MLJ 720

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Division Bench

Judgement

M. Karpagavinayagam, J.—The defendant in O.S.No. 1866 of 1980 on the file of District Munsif, Vellore, is the first appellant herein since deceased and the appellants 2 to 17 are the legal representatives of the first appellant.

2. The respondent/plaintiff filed the above suit against the first appellant/defendant for recovery of a sum of Rs. 3,500. The said suit was dismissed. Aggrieved over the same, the plaintiff filed an appeal before the Sub Court, Vellore, which in turn, allowed the appeal directing the defendant to pay Rs. 250 per month from 1.10.1979 onwards on the basis of the partnership deed Ex.A-1. Challenging the judgment and decree of the lower appellate court, the present second appeal has been preferred by the defendant/first appellant.

3. The case of the plaintiff is this:

The plaintiff entered into a partnership deed with the defendant and each of them put Rs. 1,000 as their capital. By virtue of the agreement, the defendant agreed to pay the plaintiff Rs. 250 per month towards his share of income. Though initially he paid the amount periodically, he failed to pay the same from 1.10.1979 to 1.12.1980. Hence, the suit.

4. The suit was contested by the defendant on the ground that the alleged partnership deed Ex.A-1 is a namesake partnership deed, that there was no such agreement to pay Rs. 250 per month to the plaintiff, that he was only a tenant under the plaintiff till 1979, that thereafter he got the shop transferred in his

name, that from 1.10.1979 onwards he is the licensee under the Municipality and that therefore, he need not pay any amount to the plaintiff.

5. The trial court, after trial, on consideration of the entire materials produced by both the parties, dismissed the suit holding that the partnership deed Ex.A-1 pleaded by the plaintiff was a namesake partnership deed and it was not acted upon. This judgment and decree passed by the trial court was set aside by the lower appellate court in the appeal filed by the plaintiff holding that the partnership deed is a true and valid document and as such, the plaintiff is entitled to the relief sought for in the plaint.

6. The following substantial question of law was formulated by this Court at the time of admission:

Whether the suit is barred u/s 69 of the Partnership Act?

7. In elaboration of the above substantial question of law, Mrs. Krishnaveni, the counsel appearing for the appellants contended that u/s 69 of the Indian Partnership Act, no suit to enforce the right arising from a contract will lie by a partner against another partner or a firm which is not a registered one.

8. Section 69 of the Indian Partnership Act, 1932 provides thus:

Effect of non-registration: (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court 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 in the Register of Firms as a partner in the firm.

(2) No suits to enforce a right arising from a contract shall be instituted in any court 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 reading of the section would make it clear that only when the firm is registered, any of the partners in exercising the right arising from a contract in pursuance of the partnership deed would file a suit against another partner.

9. In the instant case, admittedly, the firm is an unregistered one and as such, the effect of non-registration of the firm would certainly make the plaintiff to become not entitled to file a suit, in view of the bar u/s 69 of the Act.

10. Mr. Ratnam Sivakumar, counsel appearing for the respondent/plaintiff would, however, submit that the lower appellate court, on the basis of the facts and oral evidence in support of the partnership deed, has come to conclusion that the partnership deed Ex.A-1 has been acted upon and as such, the said factual finding should not be disturbed by this Court.

11. The above submission by the learned Counsel appearing for the respondent, in my view, does not merit acceptance for the following reasons.

12. It is not disputed that the firm on behalf of which a partnership deed Ex.A-1. has been executed is an unregistered one. It is also not disputed that the suit has been instituted by the plaintiff in order to enforce a right arising from a partnership agreement Ex.A-1 entered into between the partners of the firm.

13. In T. Savariraj Pillai Vs. M/s. R.S.S. vastrad and Company, , while dealing with the similar situation, Hon''ble Justice Sathiadev (as he then was) would observe as follows:

In the matter of In Re: Abani Kanta Pal, , a Division Bench in dealing with the scope of the section held that if a Firm is not registered, excepting in a suit as contemplated u/s 69(3) of the Act, the court will have no jurisdiction to entertain a suit in violation of Section 69(1). If further added:

...In other words, the plaint that has been filed by the plaintiff will be considered a void plaint, if it contravenes the provisions of Sub-sections (1) and (2) of Section 69 of the partnership Act....

14. In Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and Others, , the relevant observation which deals with the above proposition is as follows:

A bare glance at the section is enough to show that it is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an unregistered firm whether existing or dissolved, void. In other words, a partner of a erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of Section 69 of the partnership Act.

15. In the Oriental Hotels Limited owning Taj Coromandel Hotel etc. v. Kashmir Handicrafts etc. (1996)1 L. W. 123, this Court would hold thus:

In that view, I am of the opinion that the plaintiff which is not a firm registered under the Partnership Act is not entitled to file a suit as per Section 69(2) of the Partnership Act, and the suit filed in violation of Section 69(2) of the Partnership Act is nonest and on that ground, the suit is liable to be dismissed.

16. Therefore, in view of what is stated above and the decisions referred aforementioned, the suit instituted by the plaintiff, in my opinion, is barred under. Section 69 of the Partnership Act. The substantial question of law which has been formulated in this case is a valid one, in order to come to the conclusion that the relief claimed by the plaintiff in the suit cannot be granted, in view of the bar as referred to above. Therefore, the second appeal succeeds and the same has to be allowed.

17. In the result, the second appeal is allowed. The judgment and decree of the lower appellate court are set aside and the suit is dismissed. But however, in the facts and circumstances of the case, there will be no order as to costs throughout.