

Sunkari Tirumala Rao vs Penki Aruna Kumari on 17 January, 2025

1

2025 INSC 92

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION

Petition(s) for Special Leave to Appeal(C) No. 30442/2019

SUNKARI TIRUMALA RAO & ORS.

VERSUS

PENKI ARUNA KUMARI

O R D E R

1. This petition arises from the order passed by the High Court of Andhra Pradesh at Amravati dated 17-7-2019 in Civil Revision Petition No.2944/14 by which the High Court allowed the Revision filed by the respondents (original defendants) and thereby set aside the order passed by the District Judge, Vizianagaram in Original Suit No.80/12 deciding a preliminary issue as regards the maintainability of the suit instituted by the petitioners – herein (original plaintiffs) for recovery of money.

2. It appears from the materials on record that the petitioners – herein (original plaintiffs) instituted Original Suit No.80/12 praying for the following reliefs:-

VI. Therefore, the plaintiffs pray that the Honourable Court may be pleased to pass a Decree and Judgment in favour of the plaintiffs and against the defendant:-

a) For recovery of Rs.30,00,000/- (Rupees Thirty Lakhs only) from the defendant;

b) Costs of the suit; and

c) For such relief or other reliefs as the Honourable court 15:22:01 IST deems fit and proper in the circumstances of the case, in the interests of justice.”

3. In the suit proceedings, the issue as regards the maintainability of the suit was raised on the ground that a partner of an unregistered partnership firm could not have filed the Suit for recovery of money, being hit by Section 69 of the Indian Partnership Act, 1932 (hereinafter, the “Act”).

4. The aforesaid issue was decided as a preliminary issue and the Trial Court held that the suit is maintainable. The Trial Court took the view that although there is a partnership deed on record yet as the partnership business had not commenced, the suit could be said to be maintainable.
5. The defendants being dissatisfied with the order passed by the Trial Court deciding the preliminary issue as stated above challenged the same by filing a Civil Revision Application before the High Court.
6. The High Court took the view that the suit is not maintainable, being hit by Section 69 of the Partnership Act. The High Court in its impugned order while allowing the revision application, observed as under:-

“3. The counsel for petitioner submits that the suit is not maintainable for the reason that it is hit by Section 69(1) of the Indian Partnership Act, 1932 (for short, the Act). The issue involved is whether a partner of an unregistered firm can maintain a suit against the other partner. For the sake of convenience, Section 69(1) of the Act is extracted hereunder:

Section 69: 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 a behalf of any persons 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:

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

4. The counsel for the respondents-plaintiffs submits that the partnership business has not yet commenced, and in the written statement filed by the petitioner-defendant in the suit, it is categorically mentioned that the business was stopped in the year 2009. The counsel for the petitioner, in answer to the said submission, draws the attention of this Court to the partnership agreement, wherein it is clearly mentioned that the plaintiff was offering partnership to the respondents as she was not able to carry on the business. The reason for closure of the business is immaterial since it is clearly mentioned in the agreement itself that the petitioner-defendant was not in a position to continue the Crusher and hence, she is offering partnership to the respondents. Hence, it has to be understood from the agreement that knowing fully well that the Crusher was not in a working condition on the date of the agreement, the respondents entered into the agreement. The judgment of the Lahore High Court in *Bishen Narain v. Swaroop Narain*¹ AIR 1938

Lahore 43 is to the effect that the fact that the actual business did not commence is immaterial, when the suit is filed by a member of the partnership firm against another partner, and it held that the partnership deed has to be registered in order to maintain a suit against the other partner. This Court is persuaded by the said judgment, since, even looked at from the point of view of equities, the respondents do not deserve to be given any concession on the ground that the business of the partnership firm has not commenced, as was done by the lower Court. Once there is an agreement of partnership, unless it is registered, no suit can be maintained by the partners for enforcing any right accruing from such agreement.

5. In view of the above, this Court opines that the impugned order cannot be sustained.

6. Accordingly, the civil revision petition is allowed, setting aside the order dated 07.7.2014, passed in O.S. No.80 of 2012 on the file of the Court of District Judge, Vizianagaram. Consequently, it is held that O.S. No.80 of 2012 on the file of the Court, of District Judge, Vizianagaram, is not maintainable.”

7. We have heard the learned counsel appearing for the parties and have gone through the materials on record.

8. It is evident from a reading of sub-sections (1) and (2) of Section 69 that it assumes a mandatory character. Section 69(1) prohibits a suit amongst the partners of an unregistered partnership firm, for the enforcement of a right either arising from a contract or conferred by the Act, unless the suit amongst the partners is in the nature of dissolution of the partnership firm and/or rendition of accounts. Section 69(2) prohibits the institution of a suit by an unregistered firm against third persons for the enforcement of a right arising from a contract. As a consequence, a suit filed by an unregistered partnership firm and all proceedings arising thereunder, which fall within the ambit of Section 69 would be without jurisdiction.

9. This Court in Seth Loonkaran Sethiya and Others v. Mr. Ivan E. John and Others reported in (1977) 1 SCC 379 had categorically held that Section 69 is mandatory in character and a suit instituted by a plaintiff in respect of a right which was vested in him by virtue of a contract and entered into in his capacity as a partner of a partnership firm, would be void, if such a firm was unregistered. The relevant observations are as under:

“21. 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 an 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. In the

instant case, Seth Sujan Chand had to admit in unmistakable terms that the firm “Sethiya & Co.” was not registered under the Indian Partnership Act. It cannot also be denied that the suit out of which the appeals have arisen was for enforcement of the agreement entered into by the plaintiff as partner of Sethiya & Co. which was an unregistered firm. That being so, the suit was undoubtedly a suit for the benefit and in the interest of the firm and consequently a suit on behalf of the firm. It is also to be borne in mind that it was never pleaded by the plaintiff, not even in the replication, that he was suing to recover the outstandings of a dissolved firm. Thus, the suit was clearly hit by Section 69 of the Partnership Act and was not maintainable.”

10. In yet another decision in *Mukund Balkrishna Kulkarni v.*

Kulkarni Powder Metallurgical Industries and Another reported in (2004) 13 SCC 750, this Court had the opportunity to consider the applicability of Section 69(1) having regard to the facts of that case. Therein, the appellant had filed a suit for declaration that the respondent no. 1 was a partnership business in which both the appellant and the respondent no. 2 had equal shares along with the prayer for dissolution of the firm and rendition of accounts. It was opined therein that the two embargoes which must co-exist for the plaintiff to be non-suited under Section 69(1) would be that:

- i. The suit should be filed by a person “suing as a partner in a firm” and;
- ii. The suit must be to enforce a right arising from a contract.

11. By applying the two embargoes to the facts of that case, it was held that, first, the suit for declaration as regards the existence of a partnership could neither be said to be made by a person suing as a partner nor could be said to be a suit to enforce a right arising from a contract. It was in fact a prayer to be declared a partner in the firm and was therefore, not falling within Section 69(1). Secondly, as regards the other prayer for dissolution of the firm, the Court held that the appellant was in fact suing “as a partner” and was also enforcing a right under a contract. However, the same was saved due to the operation of the exception under Section 69(3) which permits the filing of a suit for dissolution of the firm and rendition of accounts irrespective of the non-registration of the partnership firm. Therefore, the suit was held to be maintainable. The relevant observations are as under:

“9. The sub-section contains embargos which must coexist before a plaintiff can be non-suited under that sub-section. The two embargos relevant for this case are: (1) that the suit should be filed by person “suing as a partner in a firm” and (2) that the suit must be to enforce a right arising from a contract. The submission of the respondents which was accepted by the High Court was that the prayer of the appellant, namely, for a declaration of the existence of the partnership and the share between the parties was a suit to enforce a right under a contract against the firm. A prayer for such declaration could not be said to be made by person suing as a partner.

It was a prayer to be a partner and is therefore not debarred under the provisions of Section 69(1). Furthermore, what was in fact being prayed for by the appellant was a declaration of the existence of a contract between the parties. That could not be said to be a suit to enforce a right arising from a contract. The second prayer of the appellant was not to continue as a partner of the firm but to dissolve the firm. To that extent the appellant was suing “as a partner”. This he was entitled to do under Section 69(3)(a) which insofar as it is relevant, reads as follows:

“69. (3) The provisions of sub-sections (1) ... shall not affect—

(a) 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;”

10. The right of partner to ask the dissolution of a firm is a right the enforcement of which is otherwise forbidden under Section 69(1). It is because of the exception under sub-section (3) of Section 69 that a person suing as a partner can enforce a right under the contract for dissolution of the firm and accounts. The claim for a half share in the firm's assets would be a necessary corollary to a prayer for dissolution. Without the prayer for specified shares in the firm's assets and business, the relief that may be granted in a suit for dissolution would be ineffective. In the circumstances of the case, we allow the appeal and set aside the decision of the High Court and affirm the decision of the first appellate court.

There will be no order as to costs.”

12. In the case on hand, the petitioners (original plaintiffs) had filed the suit for recovery of money in their capacity as partners of an unregistered partnership firm, against the respondent (original defendant) in her capacity as a partner of the same unregistered partnership firm. The Trial Court itself had arrived at a finding that the agreement executed between the parties was in fact a partnership deed and not a bond as claimed by the petitioners.

13. The partnership deed dated 11.12.2009 reads as thus:

“II. My taluk jenny Stone Crusher Quarry in Amathi village, Therlam Mandalam, Vizianagaram. District. I am running the crusher quarry. I am having all rights in my crusher quarry. Now it is difficult for me to run the crusher quarry. I was asked to run the crusher quarry with partnership. My well-wisher asked me to run and i agreed to give the quarry in partnership keeping with me 25%, No.1 of us 20%, No. 2 of us, No.3 of us 15%, no. 4 of us 15%, No.5 of us 7.5%, No.6 of us 7.5% shares allotted to provide partnership, through shares and through this document received Rs. 30,00,000/- (Rupees Thirty Lakhs) so allotted the shares mentioned above through this document.

From today onwards as per the allotment of shares enjoy the schedule properties with all easementary rights and profits and loss. Every month distributions verify and maintain the shares of your properties. I will never object in any manner. Pay the crusher quarry and taxes to the Government. I can not do any dispute believing you persons and handing over to you people.”

14. A perusal of the partnership deed clearly reveals that the sum of Rs. 30,00,000/- which was given to the respondent and which is now sought to be recovered, was rendered by the petitioners as capital for the purpose of acquiring 75% shares collectively in the partnership firm. As per the arrangement, the respondent was to hold the remaining 25% shares. Therefore, there is no doubt that the suit for recovery was filed by a set of partners together on one side, against another partner, for the purpose of enforcing a right accruing under the agreement.

15. It is a clear as a noon day that the present suit had not been instituted by or on behalf of the firm against any third persons so as to fall under the ambit of Section 69(2). The petitioners have also not filed the instant suit for enforcing any statutory right conferred under any other law or a common law right so as to exempt the application of Section 69. Hence, the rigours of Section 69(1) would apply on such a suit and the partnership firm being unregistered would prevent the petitioners from filing a bare suit for recovery of money from the respondent.

16. It would have instead been appropriate for the petitioner to have preferred a suit for dissolution of the partnership firm and rendition of accounts, especially considering that the factum of non-registration of the partnership firm would not have acted as bar in a suit for dissolution in light of the exception carved out under Section 69(3). The defence that the partnership business had not yet commenced and thus, such a suit for dissolution could not have been preferred, would not be of any avail to the petitioners, particularly for overcoming the jurisdictional bar under Section 69(1). The High Court is right in taking the view that a suit of such nature could not be said to be maintainable in the absence of the registration of the partnership firm.

17. In light of the aforesaid, we are of the view that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order.

18. In the result, the Special Leave Petition fails and is hereby dismissed.

19. Pending applications, if any, also stand disposed of.

.....J. (J.B. PARDIWALA)J. (R. MAHADEVAN) NEW DELHI:

JANUARY 17, 2025.