

Assistant Collector (First) Jaipur Court

Suit no 71/2016

Smt Anjana Badera
W/o Rakesh Badera
(Jaati Mahajan Khandelwal)
445 Vidhyut Nagar A ,
Ajmer Road Jaipur

V/s

1) Smt Asha Khandlwal
W/o Sh Om Prakash Khandelwal
#D 232 A Tulsi Marg ,
Bani Park Jaipur

2) Sh Mukanda
3) Sh Lalu
4) Sh Babu
5) Sh Lachhu

Defendant 2-5 all S/o Late Sh Bheewa,
(Jaati Maali)
Gram Jaisinghpura Bas Bakharota
Tehsil Sanganer

6) Sh Kishan Lal Aggarwal
S/o Ladu Ram Aggarwal(Jaati Mahajan)
#A 7- A/15 Rana Pratap Bagh
Delhi -7

7) Smt Sunita Chandnani
W/o Sh Harish Chandnani(Jaati Sindhi)
Plot 635, Bees Dukan
Adarsh nagar, Jaipur

8) Smt Payal Chandnani
W/o Sh Vijay Chandnani(Jaati Sindhi)
Plot 635, Bees Dukan
Adarsh Nagar , Jaipur

9) Govt. of Rajasthan Through
Tehsildar Sanganer
Tehsil Sanganer, Dist Jaipur

10) Sub- Registrar Sanagner
Tehsil Sanganer, Dist Jaipur




सहायक कलेक्टर
जयपुर शहर प्रथम

Decision

13/1/2021

Plaintiff Anjana Badera filed a suit for Declaration/ Mutation and Permanent Injunction (Sec 88/ 53 & 188 of Rajasthan Tenancy Act 1955) on 19/ 7 / 2016 against the Defendants 1 to 10 for the land in question mentioned in point no 1 of the suit. Plaintiff stated that the plaintiff and defendant no 1 had purchased 1/5 (one fifth) of the land mentioned in point number 1 of the suit from Manni Devi for M/S Vishal Farms as partners Asha Khandelwal and Anjana Badera on 03/12/2004 via a registered sale deed. Plaintiff also stated that as per the partnership deed of M/S Vishal Farms signed on 23/11/2004, the plaintiff has 40% share in the firm and hence should be declared as a co-tenant of 40% of 1/5 of the land mentioned in point no 1 of the suit & hence division and permanent injunction according to her share. The plaintiff mentioned that due to differences in the partners, she had asked the co-partner (defendant) for division of the land in question, however the co-partner (defendant) said that the settlement would be done by selling of the land in question, however when the settlement was not done the plaintiff filed an arbitration petition in the District Civil Court Jaipur, but in the reply filed by the defendant, she denied the plaintiff to bring this matter property, due to which it became important for the plaintiff to bring this matter in the court. In support of the case the plaintiff had presented registered sale deed dated - 10/12/2004 and records of rights of the land in question as on 21/6/2016.

The notices were served to all the parties, following which defendant number 6 and defendant no 7&8 (combined) filed their written statements, key points of which are given below:

- Defendant no 6 stated that he does not have any problem with the division of the land provided the plaintiff is given share in only the land bought and in possession of the plaintiff.
- Defendant no 7&8 mentioned along with the other facts that the plaintiff has not come to the court with clean hands as she has concealed some facts related to the case and hence the case is should be rejected.

Defendant No 1 on 26/09/2017 filed an application under Order 7 Rule 11 of CPC 1906 for Rejection of the suit stating that the land in question which the plaintiff and defendant no 1 has purchased for Manni Devi was bought in the Name of the firm M/S Vishal Farms via partners, hence the plaintiff is neither is the recorded co-tenant nor in possession of the land , hence she does not have any right to division of this land.

The plaintiff filed a written reply to this application stating that she is a recorded co-tenant of the land and hence hold right to division. The plaintiff also stated that order 7 Rule 11 of CPC 1906 lays grounds of rejection of the suit on the technical basis and hence is not applicable in this case. No documentary proofs were submitted with the application.

On 24/12/2020, final argument between both the parties was heard. A written statement along with citations and following supporting documents was presented by defendant no 1:


सहायक कलक्टर
जयपुर शहर प्रथम

- 1) Indian Partnership Act section 1932 – Sections 14, 17, 32 etc.
- 2) Partnership deed of M/s Vishal Farms dated 23/11/2004
- 3) The memorandum of acknowledgement of Form B and Form E by the office of Registrar of Firms of 30-09-2015
- 4) Registered Sale deed of land From Manni Devi to M/S Vishal Farms through Partners dated 03/12/2004
- 5) Revised Partnership deed in force from 17/8/2015, in which the plaintiff Anjana Badera has retired as partner from M/S Vishal Farms renouncing all her rights on movable /immovable property of the firm stating that all the dues have been cleared.
- 6) Financial Documents of settlement between Plaintiff and Defendant no 1
- 7) Affidavit of Resignation by Plaintiff Anjana Badera for M/S Vishal Farms and it's copy published in The Rajasthan Gazette.
- 8) Newspaper notice of retirement of the plaintiff from M/s Vishal Farms, stating that all her dues have been cleared and that she does not hold any share in the firm 17/8/2015 onwards
- 9) Plaintiff's retirement catered with the Registrar of the Firms.
- 10) Circular of Rajasthan Revenue department S. No 5(8)Raj-6/97-6 dated 9/6/2009 instructing that the mutation when done in Name of the Firm/company should be just in the name of that firm/company alone and should not have name of partners/managers etc written 'via', 'through ' etc
- 11) High court Judgment of 23/11/2017- Rejected arbitration application filed by the plaintiff.
- 12) Supreme court of India document- Dismissed arbitration application of the plaintiff on 14/11/2018.
- 13) Decision of the commercial court dismissing arbitration request of the plaintiff on 12/09/2018
- 14) High court orders dated 06/02/2017 to open the mutation of M/S Vishal farms as per the revised partnership deed of 17/8/2015.
- 15) Admission/ letter by plaintiff to Tehsildar Sanganer to open the mutation in the Name of M/s Vishal Farms.
- 16) Latest record of rights where Name of Anjana Badera has been replaced by Om Prakash Khandelwal(incoming partner) of M/S Vishal Farms.

Analyzing the arguments of the lawyers in light of the citations, documentary proofs, provisions of CPC 1906, Indian Partnership Act 1932 and other related acts, the following can be concluded:

- 1) The plaintiff and defendant no 1 had brought 1/5 of the land in questions in point no 1 for the suit from the previous co-tenant Manni Devi (as per land in her possession as per her share) for the firm M/S Vishal Farms through partners Asha Kandelwal and Anjana Badera via a registered sale deed on 03 /12/2004. Based on this the mutation was opened making M/S Vishal Farms through Asha Khandelwal and Anjana Badera co-tenant of the land purchased.

However, **the plaintiff on 17/8/2015, i.e before filing this suit retired and renounced her rights from the firm M/s Vishal Farms, stating in**

सहस्यक कलक्टर
जयपुर शहर प्रथम

the revised partnership deed that she has no share in the movable / immovable property of the firm as all her dues have been cleared and in future she will file no case regarding the same. The above listed documents no 3, 5 to 9 and 11 to 16 also prove plaintiff's (Anjana Badera's) retirement from the firm on 17-8-2015 before filing this suit 19/07/2016. Hence the plaintiff has hidden the vital information related to the case and has come to the court with any valid cause of action.

without CoA

- 2) The plaintiff retired from the firm of 17/08/2015, renouncing all her rights and share in the firm, which has also been upheld by the High court in order of S.B Civil Writ Petition no 1520/2017. Hence she holds no locus standi for filing a suit for declaration, division or permanent injunction. To file a suit, the offended party needs to have a locus standi. One needs to show that some legitimate right of the individual has been damaged. Such infringement ought to likewise bring about some damage caused to the individual. If no lawful right has been disregarded, the individual would not have a locus standi for recording a suit. This has been upheld in various cases namely Pirthi Singh and Ors. vs Chander Bhan and Anrthe whrere in application was expelled by Punjab-Haryana High Court stating that the candidates had no locus standi to document the case.
- 3) Indian Partnership Act of 1932 Sections 14, 15, make it clear that property and rights and interests in a property acquired with money belonging to the firm become the property of the firm and the partner is entitled to just his share of profits. The person who has brought the property would not be able to claim or exercise any exclusive right over any property even to his share in the business (Upheld in AIR 1966 , Supreme Court 1300(V53-C251)).

Hence the co-tenant of the land in question here is only M/S Vishal Farms and not the partners. This is supported further by the circular S. no 5(8) Raj-6/97/6 dated 9/6/2009 of the Rajasthan Revenue department which directs that while filing a mutation in name of a firm/ company, only the name of the firm/ company should be mentioned and it should not have ' via partner', ' via manager' etc mentioned.

Therefore as per section 14 ,15 of Indian Partnership Act 1932, the land in question here belongs to the Firm M/S Vishal farms and no partner can claim it as it is the barred by Indian Partnership Act and its Relevant Provisions.

In the view of above given facts and circumstances, the court is of the considered view that the plaintiff neither has a Locus standi to file the plaint as she had retired from the firm M/s Vishal Farms and has renounced all her rights on the movable or immovable property of the firm before filing this suit. Neither does the plaintiff have any valid cause

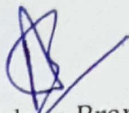
सहायक कलक्टर
जयपुर शहर प्रथम

of action for seeking any adjudication in her favour nor can it be tried can it be tried as the provisions of Indian Partnership act bar it .

The suit filed by the plaintiff is thus not maintainable, same is dismissed being infructuous.

Announced in the open court on 13 Jan 2021




Arshdeep Brar
Assistant Collector-1 Jaipur
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