

ORDERS ON IA No.8

This suit for recovery of Rs.2,54,54,000/- from the defendants with interest at 18% per annum is filed by a partnership firm represented by its two partners. One of them by name A.T.Krishnappa is examined as PW1 and he has partly cross examined.

2. At this juncture I.A. No.8 came to be filed U/O I rule 10

CPC by another partner T.P.Gangadhar for transposing A.T.Krishnappa as 3rd defendant in the suit on the ground that he has expressed the desire to retire from the partnership firm and has been acting against the interest of firm by refusing to participate in the proceedings.

3. Notice of I.A8 was issued to Pw1 A.T Krishnappa, but he has not chosen to file objections. However, defendants 1 and 2 oppose the I.A contending that Pw1 was not tender for further cross examination and the plaintiff's I.A for discarding his evidence and to adduce the evidence through a GPA holder was rejected by order dated 10-01-2020. There is no conflict of interest between the firm and Pw1 and this application is filed to undo the effect of Pw1's cross examination. Further, transposition can take place only in the partition suit and not in a suit of this nature.

4. The learned counsel for the plaintiff has produced copy of order sheet in C.C.No.53/2021 on the file of Prl. JMFC, Magadi along copy of charge sheet for the offences punishable U/Sec.465, 468, 467, 471 r/w Sec.34 of IPC to show that Pw1 is arrayed as 13th accused. It is noticed that, the FIR was registered on 28-01-2019, but Pw1 was examined in chief and cross examined two years before the registration of FIR. Therefore, I am unable to accept the contention of the plaintiff

that Pw1 has turned hostile because of registration of criminal case.

5. As rightly argued by learned counsel for defendants, this appears to be an attempt to wriggle out the situation by the another partner of the plaintiff having failed in his attempt to get the evidence of Pw1 discarded. Admittedly, the partnership firm is not yet dissolved and Pw1 continues to be its partner. As of now there is nothing on record to indicate that Pw1 is not willing to continue as a partner of the firm.

6. This is a suit by the firm and not a suit by one partner against another. As provided under Order XXX rule 1 of CPC, a partnership firm can sue only through its partner. Considering the fact that partnership firm is not dissolved and the suit is not filed by one partner against the other alleging misconduct or fraud or misappropriation and as observed earlier that this I.A is filed just to escape the consequences of the evidence elicited through Pw1 during cross examination, I am of the opinion that, the same is liable to be rejected.

7. In the result following order is passed.

I.A.8 filed by the plaintiff under
Order I rule 10 CPC for transposing
Pw1 A.T Krishnappa as additional
defendant is hereby rejected.

For further cross examination of
Pw1 finally 19-02-2021.

(H.R.RADHA)
LXXXIV Addl. City Civil & Sessions Judge
(CCH 85 - Commercial Court)
Bengaluru