

**A PARTNERSHIP DEED CANNOT AUTOMATICALLY BIND LEGAL HEIRS OF A DECEASED PARTNER
OF A PARTNERSHIP FIRM**

INTRODUCTION:

The Apex Court vide its judgment dated 18th October, 2019 passed in the case of *S. P. Misra & Ors. V. Mohd. Laiquddin Khan & Anr.*, held that a decree which is obtained against a deceased partner of a partnership firm is not executable against his/her legal heirs.

FACTS:

The Appellants in the present matter are the legal heirs of Mr. Jai Narayan Misra and the Respondents are the legal heirs of Ms. Hashmatunnisa Begum. A civil appeal was filed in the present case by the Appellants challenging the order passed by the Andhra Pradesh High Court at Hyderabad upholding and confirming the order passed by the trial court. The trial court by its order, allowed the application filed by the Respondents under Section 47 of the Code of Civil Procedure, 1908.

During their lifetime, Mr. Jai Narayan Misra and Ms. Hashmatunnisa Begum executed a partnership deed dated 14th April, 1982. As laid down in the aforesaid partnership deed, Ms. Hashmatunnisa Begum was the owner of an open plot of land admeasuring approximately 22,253 square meters along with structures standing thereon which plot of land was situated in Paigah compound, Secunderabad. Both the aforesaid partners entered into a partnership with the object to carry on business in the field of real estate by developing the aforesaid plot of land. Although a major portion of the land was developed, a dispute arose between the partners to an extent of 3,381 square meters which was claimed by Mr. Jai Narayan Misra being the Original Plaintiff. As per the partnership deed, there were only two partners in the partnership firm.

Mr. Jai Narayan Misra being the Original Plaintiff died in 2001 and Ms. Hashmatunnisa Begum being the Original Defendant died in 1996. Mr. Jai

Narayan Misra during his lifetime filed a suit against Ms. Hashmatunnisa Begum before the trial court claiming the following reliefs:

- a) to grant permanent injunction against the defendant restraining the defendant and all persons claiming through the defendant from preventing the plaintiff from carrying out the work of preparing layout plan, developing the property and sale thereof, to an extent of 3,381 square meters;
- b) to grant mandatory injunction directing the defendant to sign the layout and other documents submitting to the Cantonment Board for sanction in respect of the land admeasuring 3,381 square meters forming part of Paigah Colony situated at Secunderabad.

The trial court decreed the aforesaid suit on 14th July, 1993 by granting the following reliefs:

- a) the defendant and all the persons claiming through the defendant be permanently restrained from carrying the work of developing the property and sale thereof in respect of the suit schedule property;
- b) the defendant was directed to sign the layout plan and other documents for submitting to the Cantonment Board, Secunderabad for sanction in respect of the suit schedule property.

Pursuant to the death of the Original Plaintiff Mr. Jai Narayan Misra, his legal heirs filed an execution

petition before the trial court against the legal heirs of Ms. Hashmatunnisa Begum.

The Respondents filed an application in the execution petition under Section 47 of the Code of Civil Procedure before the trial court claiming for dismissal of the execution petition on the ground that the decree passed by the trial court is void and unexecutable. Vide an order dated 1st February, 2006 passed by the trial court, the trial court allowed the aforesaid application. The High Court upheld and confirmed the aforesaid order passed by the trial court holding that the decree obtained against Ms. Hashmatunnisa Begum is not executable against her legal heirs.

Aggrieved by the aforesaid impugned orders of the trial court and the High Court, the Appellants in the present matter preferred an appeal before the Apex Court.

ISSUES:

The Apex Court determined the following questions of law:

- 1) Does a partnership firm dissolve in the event of death of a partner?
- 2) Whether a decree obtained by a decree holder being a partner of a partnership firm can be executed against the legal heirs of the deceased partner of such partnership firm?

JUDGMENT:

The Apex Court noted the submissions made by the respective counsels appearing for the Appellants and the Respondents. It was contended by the counsel for the Appellants that as per the terms of the partnership deed, in the event of the death of a partner, the legal heirs of such deceased partner shall automatically become partners of the partnership firm and shall continue to act as partners of the firm until the venture as envisaged under the partnership is completed and they shall enjoy the same rights and shall be made subject to the same liabilities

and responsibilities as that of the deceased partner. In the submission of the counsel for the Appellants, the orders passed by the trial court and the High Court holding that a decree which has become final cannot be executed against the legal heirs of the judgment debtor is erroneous.

On the other hand, the counsel for the Respondents contended that as there were only two partners in the partnership firm, upon the death of one of them, the partnership firm stood dissolved in light of the provisions of Section 42 (c) of the Partnership Act, 1932. In such case, the question of the legal heirs presuming the partnership which stood dissolved, in place of their predecessor would not arise and thus the decree cannot be executed against them. In light of the fact that the Respondents were not partners to the partnership deed and the partnership firm stood dissolved upon the death of one of its partners, the decree which was obtained against Ms. Hashmatunnisa Begum by Mr. Jai Narayan Misra cannot be executed by his legal heirs against the legal heirs of Ms. Hashmatunnisa Begum. It was further submitted by the counsel appearing for the Respondents that if a partnership deed contains a clause which runs contrary to the statutory provisions as laid down under the Partnership Act, 1932 such clauses are deemed to be void and against public policy.

The Apex Court observed that the reliefs sought by the legal heirs of the decree holder against the legal heirs of the judgment debtor are beyond the scope of the decree passed in the original suit by the trial court. It is a well settled principle that the executing court cannot go beyond the scope of the decree.

Section 42 of the Partnership Act, 1932, deals with the situations of dissolution of partnership, on happening of certain contingencies. As per the said provision,

subject to contract between the partners, a firm is dissolved when:

- (a) if constituted for a fixed term, by the expiry of that term;
- (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- (c) by the death of a partner; and
- (d) by the adjudication of a partner as an insolvent.

CONCLUSION:

The Apex Court held that notwithstanding what is contained in the partnership deed, as the partnership firm comprised of two partners, the firm stood dissolved upon the death of one of the partners. In such circumstances, upon the dissolution of the partnership firm, there cannot be a partnership existing in which the legal heirs of Ms. Hashmatunnisa Begum could presume partnership in her place. Thus, the decree obtained by Mr. Jai Narayan Misra against Ms. Hashmatunnisa Begum in pursuance of the partnership deed dated 14th April, 1982 cannot bind her legal heirs in as much as it is not executable against them.

The Apex Court further observed that the legal heirs of Ms. Hashmatunnisa Begum were not partners in

the partnership deed. The legal heirs of Ms. Hashmatunnisa Begum not being parties to the contract between the partners constituting the partnership firm, such contract can neither confer any rights nor impose any liabilities or obligations upon them. The principle of privity of contract is applicable in such cases. The executable decree depends upon the rights litigated by the parties. The Respondents contended that in light of the fact that they had not derived any assets and liabilities arising out of the partnership firm, the decree obtained against their predecessor by the decree holder cannot bind them and thus cannot be executed against them. The Apex Court upheld both the orders passed by the trial court and the High Court.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.