



2025:DHC:9418-DB



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment reserved on: 08.10.2025

Judgment pronounced on: 29.10.2025

+ RFA(OS)(COMM) 15/2018

M/s GUPTA INTERNATIONAL & ORSAppellants

Through: Mr. T.K. Ganju, Senior Advocate along with Mr. Aquib Ali, Ms. Anupriya Nigam Sharma, Ms. Amreen Khaliq, Mr. Arsh Kaul and Mr. Pranay Lakhanpal, Advocates.

versus

SHRI ASHOK KUMAR SINGHAL & ANR.Respondents

Through: Mr. P.D. Gupta, Senior Advocate along with Mr. Abhishek Gupta, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellants (Plaintiffs before the learned Single Judge) assail the correctness of the Judgment dated 18.04.2018 [hereinafter referred to as 'Impugned Judgment'], whereby the learned Single Judge dismissed the Appellants'/Plaintiffs' suit for possession, *mesne* profits, cancellation of documents, etc.

2. The Appellant Nos.1, 2 and 3 were Plaintiff Nos.1, 2 and 3 in the suit, whereas Respondent Nos.1 and 2 were Defendant Nos.1 and



2. Herein, the parties shall be referred to by their status and ranking in the suit, i.e., CS(COMM) No. 1666/2016.

FACTUAL MATRIX:

3. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.

4. The Plaintiff Nos.2 and 3 are wife and husband, whereas Defendant Nos.1 and 2 are related to each other as brother-in-law and sister-in-law. Defendant No.1 proposed an idea to Plaintiff No.3 to carry on a business under the partnership. Since Plaintiff No. 3 was a government employee, it was decided that Plaintiff No.2 and Defendant Nos.1 and 2 would be partners in the partnership firm. Accordingly, on 16.05.1998, a partnership firm was constituted under the name and style of M/s Gupta International [Plaintiff No.1]. It was agreed that the partnership business shall be of export/import, trading/distribution in gold, bullion, jewellery, leather coats, garments, handicrafts, or other items or goods which may be mutually agreed upon. In terms of the partnership, all the partners were entitled to share profits and losses equally.

5. After the constitution of the partnership firm, Plaintiff No.2 and Defendant Nos.1 and 2 continued to carry on the business. However, it is stated by the Plaintiffs that Plaintiff No.2 and Defendant No.2 are dormant partners, whereas Defendant No.1 is an active partner, and the entire business of the firm was carried out by Defendant No.1 only.



6. The dispute in the present case arose with respect to the two properties built on Plot Nos.31 and 32, out of Khasra No. 4/2, situated in Block Number-C, Uttam Nagar, Delhi [hereinafter referred to as 'suit property']. The said suit property was purchased by the Plaintiff No.1 (Partnership firm), *vide* registered sale deed dated 22.01.1999, for a consideration amount of Rs.3,40,000/-. It is the case of the Plaintiffs that the construction was demolished and a new three and a half storey building was constructed on the suit property.

7. Further, *vide* a Retirement Deed dated 15.06.2000, Defendant No.2 retired from the partnership firm and received a sum of Rs.73,269.80/- in *lieu* of her share, title and interest in the said partnership, including its assets and goodwill. It was specifically stated that the aforesaid amount had been paid to the retiring partner *vide* Cheque No. 813696 dated 17.06.2000 in full and final settlement of her share.

8. Thereafter, a new Partnership Deed dated 16.06.2000 was entered into between the continuing partners, i.e., Plaintiff No.2 and Defendant No.1, under the same name and style.

9. It is pertinent to note here that as per Clause 9 of both the aforesaid Partnership Deeds [hereinafter referred to as "Clause 9"], no party was entitled to sell, mortgage, assign, or in any manner alienate his share or interest in the partnership firm to any outsider, nor was any partner permitted to create any charge or encumbrance upon the assets of the partnership firm. Clause 9 of the Partnership Deed dated 16.05.1998 is reproduced thereof:



2025:DHC:9418-DB



“...that no party to this deed shall be entitled to sell, mortgage or assign his share to any outsider or otherwise alienate his interest in the firm or create any charge on the partnership assets and any such action shall be considered null and void and shall not be binding on other partners of the firm.”

10. Further, on 03.07.2000, during the subsistence of the partnership, Defendant No.1, executed various transfer documents in favour of Defendant No.2, namely, a registered General Power of Attorney (GPA), Affidavit, Agreement to Sell (ATS), Possession Letter, Will, and Receipt, in respect of the only fixed asset of the partnership firm, i.e., the suit property [hereinafter referred to as ‘subject transaction’]. The subject transaction was effected for a consideration of Rs.3,70,000/-, paid through Cheque No.340613, which was issued in the name of Plaintiff No.1, and thereafter, the possession of the suit property was handed over to Defendant No.2. It is further borne out from the account statement of the partnership firm that the said amount was duly credited in the bank account of the partnership firm.

11. It is the case of the Plaintiffs that the subject transaction was carried out unauthorisedly by Defendant No.1, in complete contravention of Clause 9. It is further averred that the Plaintiffs had no knowledge whatsoever of the said transaction at the time of its execution and became aware of the same only on or about 19.03.2002.

12. Further, on 18.06.2002, Plaintiff Nos.2 and 3 and Defendant No.1 entered into a Memorandum of Settlement [hereinafter referred to as ‘MOU’] to settle all their disputes which existed with respect to the partnership firm. Para 6 of the MOU shows the retirement and full



and final settlement of Defendant No.1 from the partnership firm. Para 6 of the MOU is reproduced thereof:

“6. That in settlement of his outstanding balance in Capital Account of partnership firm M/s Gupta International, 1-44, IInd Floor, Arya Samaj Road, Uttam Nagar, New Delhi 110059 a sum of Rs. 5,27,050.92 has been paid in cash and a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) has been paid vide Cheque No. 942511 dated 4.8.2002 drawn on Canara Bank, Uttam Nagar, New Delhi in full and final settlement of all his claims in upto date profits goodwill and other assets of the firm. A separate Retirement cum partnership deed is being executed by Mr. Ashok Kumar Singhal, Bimla Gupta and Sh. Om Prakash Gupta.”

13. Accordingly, the Plaintiffs filed the suit on 01.05.2003, alleging that the subject transaction was made without the consent of Plaintiff No.2, the other partner of the firm, and hence, the transaction is not valid in view of specific prohibition as per Clause 9 and Section 19(2)(g) of the Indian Partnership Act, 1932 [hereinafter referred to as ‘IP Act’]. It was contested by the Defendants by filing separate Written Statements, whereby it was claimed that Plaintiff No.2 had consented to the subject transaction as she signed Balance Sheets Financial Year (FY) ending on 31.03.2000 and 31.03.2001, and Profit and Loss Account of the partnership firm. It was also claimed that by the conjoint reading of the MOU and the subsequent Retirement-cum-Partnership Deed of Defendant No.1 dated 30.06.2002, it is evident that the accounts of the firm were taken from Defendant No. 1 and a full and final settlement of his shares was arrived at.

14. The following issues were culled out by the learned Single Judge:

- “1. Whether this court has pecuniary jurisdiction to entertain and try the present suit?*
- 2. Whether the suit is bad for misjoinder of parties?*



3. Whether the defendant no. 1 sold and transferred the suit property to the defendant no. 2 without authority, consent and knowledge of plaintiff no. 1?

4. Whether after the purchase of the suit property, a new three and a half storeyed building was constructed by the erstwhile partnership firm? If so, its effect.

5. Whether the plaintiff no. 2 was a dormant partner? If so, its effect.

6. Whether the plaintiff is entitled to decree of possession, mesne profits, declaration, permanent injunction and cancellation, as prayed for in the plaint?"

15. On behalf of the Plaintiffs, Plaintiff No.3/PW1 and Sh. Hussain Mondal/PW2 appeared in evidence. On behalf of the Defendants, Defendant No.1/DW1 appeared in evidence and Sh. Subhash Aggarwal/D2W1 appeared on behalf of his wife, Defendant No.2 (Smt. Bimla Aggarwal).

16. The Plaintiffs, before the learned Single Judge, did not press Issue Nos.1 and 2. The learned Single Judge, after appreciating the evidence, recorded the following finding of fact:

"11. ...

(iii) In my opinion, that the consent and agreement of the plaintiff no.2 existed is firstly seen from the documentation being the Balance Sheets of the partnership firm of the financial years ending 31.3.2000 and 31.3.2001, proved and exhibited as DWL/XI(colly). A reading of the Balance Sheet of the financial year ending 31.3.2000 of the partnership deed shows that under the head of Fixed Assets both a shop account and a car account is shown. The shop account is shown to be of an amount of Rs.3,67,500/-. Admittedly, the suit property was the only fixed asset of the partnership firm being an immovable property and therefore, shop account entry in the balance sheet of the financial year ending 31.3.2000 would naturally only refer to the suit property. As on the financial year ending 31.3.2000, therefore, the suit property is shown to be the property of the partnership firm, however when we read the Balance Sheet of the next financial year ending 31.3.2001, it is seen that the shop account under the heading of fixed assets is no longer shown as existing and in fact in



the Profit and Loss Account for this financial year ending 31.3.2001, there is an entry of profit and loss of the building for a sum of Rs.2,500/- that the shop was sold and profit on sale was Rs. 2500/-. Therefore, there is a clear difference between the two Balance Sheets of the financial years ending 31.3.2000 and 31.3.2001 because in the first Balance Sheet the shop is shown as a fixed asset of the partnership firm whereas in the Balance Sheet of the subsequent financial year ending 31.3.2001 along with the Profit and Loss Account of that year, shows that the shop account under the heading of fixed asset no longer existed i.e. the firm did not have any immovable property with the fact that there is an entry of profit and loss of the building in the Profit and Loss Account for a sum of Rs.2500/- showing the shop was sold. At the cost of repetition, it is noted that admittedly the partnership firm had only one immovable property being the suit property and therefore once an entry of the suit property existed under the head of fixed assets and thereafter did not exist, and that both the Balance Sheets and Profit and Loss Account of the consecutive years are admittedly signed by the plaintiff no.2, therefore it has to be held that the suit property was transferred with the consent of and agreement with the plaintiff no.2 of the defendant no.1.

(iv) I reject the argument urged on behalf of the learned senior counsel for the plaintiffs that since there is no number mentioned of the suit property in the Balance Sheets and Profit and Loss Accounts because these documents do not contain exact postal address of an immovable property, because in the present case there was only one immovable property of the partnership firm, and therefore the entry of a shop account in the Balance Sheet of financial year ending 31.3.2000 can only refer to the suit property and the non-existence of such an entry of fixed asset of the shop Recount in the Balance Sheet of the financial year ending 31.3.2001 shows that the partnership firm had transferred the suit property. Therefore, once these Balance Sheets are proved to have been signed by the plaintiff no.2, besides the signatures also existing on these Balance Sheets of the defendant no.1 and the Chartered Accountant, such facts and documents are sufficient for this Court to hold that the transfer of the suit property by the defendant no.1 in favour of defendant no.2 vide documentation dated 3.7.2000 was with the consent of and as per an agreement with the plaintiff no.2.

12. On behalf of the plaintiffs it was argued that the plaintiff no.2 used to and had signed the Balance Sheets of the financial year ending 31.3.2000 and 31.3.2001 in good faith without reading the same, however learned senior counsel for the plaintiffs has failed to show me any averment in the pleading/replication filed by the plaintiffs that the plaintiff no.2 has signed the relevant Balance



Sheets in good faith and without reading the same. In fact, there is even no such evidence led on behalf of the plaintiffs specifically deposing that the two balance sheets were signed in good faith without reading the same by the plaintiff no.2. Though learned senior counsel for the plaintiffs has sought to rely upon Para 12 of the affidavit by way of evidence filed by PW-1 Sh. Om Prakash Gupta/plaintiff no.3 and the husband of plaintiff no.2, however this Para 12 only contains a general deposition that the defendant no.1 was presumed to carry business in an honest manner in good faith but that the defendant no.1 turned out to be dishonest person and which averments can in no manner said to be denial of the specific averments made by the defendant no.1 in his written statement that the plaintiff no.2's consent is shown by signing of the aforesaid two relevant Balance Sheets and Profit and Loss Accounts. It was necessary for the plaintiffs to at least make a clear cut deposition of plaintiff no.2 having signed the two Balance Sheets etc without reading and in good faith, but neither in the deposition of PW-1/plaintiff no.3 or Sh. Hussain Mondal/PW-2, an employee of the firm, it is at all deposed that plaintiff no.2 signed the two Balance Sheets in good faith without reading the same. In the deposition of PW-2 Sh. Hussain Mondal it is only stated that the balance sheets used to be prepared by the Chartered Accountant and the plaintiff no.2 used to sign the same at the encircled place, but there is no averment at all of the plaintiff no.2 signing the balance sheets in good faith without reading the same. In my opinion, therefore plaintiffs have in fact, neither pleaded nor even orally deposed that plaintiff no. 2 had signed the two Balance Sheets etc in good faith without reading the same and therefore the knowledge of the transaction of transfer of the property as shown in the balance sheet cannot be imputed to the plaintiff no.2.

14.(i) The issue with respect to knowledge, consent and agreement of plaintiff no.2 to transfer the suit property by the defendant no.1 in favour of the defendant no.2 also becomes clear from a Memorandum of Settlement dated 18.6.2002/Ex. PW1/DC entered into between plaintiff no.2, plaintiff no.3 and defendant no.1. This Memorandum of Settlement is an admitted document and this Memorandum of Settlement shows an exhaustive agreement between the parties to settle all their disputes which existed with respect to the company M/s Gupta Jewellers Pvt. Ltd. and the partnership firm of M/s Gupta International/plaintiff no.1. Para 6 of this Memorandum of Settlement showing the retirement of defendant no.1 from the partnership firm and receiving Rs.75,000/- for full and final settlement of his claims in the partnership firm and the Retirement Deed of a partnership firm to be signed thereafter reads as under:-



*“6. That in settlement of his outstanding balance in Capital Account of partnership firm M/s Gupta International, 1-44, IInd Floor, Arya Samaj Road, Uttam Nagar, New Delhi 110059 a sum of Rs. 5,27,050.92 has been paid in cash and a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) has been paid vide Cheque No. 942511 dated **4.8.2002** drawn on Canara Bank, Uttam Nagar, New Delhi in full and final settlement of all his claims in upto date profits goodwill and other assets of the firm. A separate Retirement cum partnership deed is being executed by Mr. Ashok Kumar Singhal, Bimla Gupta and Sh. Om Prakash Gupta.”*

(emphasis added)

(ii) The aforesaid Para 6 of the Memorandum of Settlement dated 18.6.2002 has to be read with the Deed of Retirement-cum-Partnership dated 30.6.2002 entered into about 12 days later between the defendant no.1, plaintiff no.2 and plaintiff no.3 and this Deed of Retirement-cum-Partnership clearly shows that the accounts of the partnership firm were taken and defendant no.1 received a sum of Rs.75,000/- for his share in the partnership firm i.e accounts being taken means the books, Balance Sheet and Profit and Loss Account of the firm was looked into by the plaintiff no.2 and which documents showed that the shop fixed asset account of the firm which existed as on 31.3.2000 stood closed as on 31.3.2001 with in fact the Profit and Loss Account showing a profit of Rs. 2500/- on sale of the suit property. This Deed of Retirement-cum-Partnership is an admitted document and is exhibited as Ex.P-6/PW1/10. The relevant paras 4 and 5 of this Retirement-cum-Partnership Deed read as under:-

*“4. The Retiring Partner confirms that **as a result of accounts** being taken a sum of Rs.75,000/- is due and payable to him in lieu of his share, title and interest in the said partnership business including its assets and goodwill he has no other claim against the Continuing Partners in respect of the said Firm.*

5. The Continuing Partners have paid the said sum of Rs.75,000/- to the Retiring Partner vide Cheque No. 942511 dated 4th August, 2002 in full and final settlement of his share in said business including its assets & goodwill.”

(emphasis added)

(iii) The subject transaction which is impugned by the plaintiffs is dated 3.7.2000 and this aforesaid Retirement-cum-Partnership



Deed is dated 30.6.2002 i.e almost around two years later and in this document executed two years later, it is specifically stated that the accounts of the partnership firm have been taken whereby defendant no.1 will receive a sum of Rs.75,000/- in full and final settlement and therefore before arriving at a full and final settlement surely all the accounts of the partnership firm including its Profit and Loss accounts Balance Sheets etc would have been examined and these Profit and Loss Accounts and Balance Sheets which have already been referred to above show that the suit property had already been transferred.

(iv) I may note that the Balance Sheet and Profit and Loss Account of the financial year ending 31.3.2001 is dated 10.6.2001 i.e plaintiff no.2 had signed the same on 10.6.2001, and therefore when accounts would have been taken later on at the time of execution of the Retirement-cum-Partnership Deed on/dated 30.6.2002 i.e after one year later then the plaintiff no.2 signing the Balance Sheet and Profit and Loss Account for the financial year ending 30.3.2001 on 10.6.2001 would have categorical knowledge of the transfer of property, otherwise there would have been no question of accounts having been taken before signing of the Retirement-cum-Partnership Deed dated 30.6.2002 Ex. P-6/PW1/10.

(v) It is also relevant to note that as per the plaint plaintiffs had claimed that they had come to know of the illegal transaction dated 3.7.2000 on 19.3.2002 (Para 11 of the plaint) and this Retirement-cum- Partnership Deed Ex.P-6/PW1/10 is executed about three months later on 30.6.2002 and therefore if the plaintiff no.2 had come to know of the illegal transaction dated 3.7.2000 on 19.3.2002 then there was no reason why the plaintiff no.2 and the plaintiff no.3 would have signed the Retirement-cum-Partnership Deed dated 30.6.2002 that all accounts of the partnership firm were taken and consequently defendant no.1 will receive a sum of Rs.75,000/- from the partnership firm in full and final settlement of his claims."

17. Therefore, upon appreciation of pleadings, *vide* Impugned Order, the learned Single Judge held Issue Nos.3, 4,5 and 6 in favour of the Defendants, on the following grounds:

i. A conjoint reading of the Balance Sheets of the Financial Year (FY) ending on 31.03.2000 and 31.03.2001 establishes that the subsequent Balance Sheet of the FY ending on 31.03.2001 shows that



the firm did not have any immovable property, with the fact that there is an entry in the Profit and Loss Account for a sum of Rs.2,500/-.

ii. Neither in the averments in the Plaint nor in the evidence, by way of the Affidavit(s) of Plaintiff No.3/PW-1 and Sh. Hussain Mondal/PW-2, an employee of the firm, has it been deposed that Plaintiff No.2 had signed the Balance Sheets in good faith and without reading the same.

iii. On the conjoint reading of the MOU and the subsequent Retirement Deed of Defendant No.1, it is evident that accounts of the partnership firm must have been looked at before arriving at the full and final settlement of the shares of Defendant No.1.

iv. Rights which are created by parties under the document, being an agreement to sell in the nature of part performance, would be valid if it satisfies the requirements of Section 53-A of the Transfer of Property Act, 1882.

v. To decide Issue No.4, documentary evidence ought to have been led, with respect to, from where the money for the alleged reconstruction of the suit property was sourced.

vi. Irrespective of the decision in Issue No.5, the consent of the Plaintiffs for the subject transaction is established.

CONTENTION OF THE PARTIES:

18. Heard learned senior counsel for the parties at length and, with their able assistance, perused the paperbook. Learned senior counsel have also filed their written submissions, which are on record.



19. The singular argument raised by the learned senior counsel for the Plaintiffs/Appellants is with reference to Section 19(2)(g) of the IP Act and Clause 9. Learned senior counsel submits that the learned Single Judge has erred in dismissing the suit despite the fact that the transfer of the suit property, without the express consent of the other partner, was not permitted. Learned senior counsel also submits that there is no evidence to prove that Plaintiff No.2 agreed to transfer the property. In support of his submission, learned senior counsel relies upon the judgments rendered in *Bina Murlidhar Hemdev & Ors. v. Kanhaiyalal Lokram Hemdev & Ors.*¹; *R.K. Industrial Corporation (Chemical Division) v. Vanson Medical Stores & Ors.*²; and *Sushil Singh and Ors. v. Reeta Associates & Ors.*³.

20. *Per contra*, learned counsel for the Respondent No. 2, while relying upon the depositions, two Balance Sheets, MOU and Retirement Deeds of the Defendants, has submitted that the Plaintiffs had knowledge of the subject transaction and the same has been done with the consent of the Plaintiffs and that there is no scope for any interference.

21. Learned counsel for the parties have not made any other submissions.

ANALYSIS AND FINDINGS:

22. This Court has analysed the submissions advanced by the learned senior counsel for the parties. After having analysed the

¹AIR 1999 SC 2171.

²(2015) SCC OnLine Del 10055.

³(2019) SCC OnLine P&H 318.



arguments of the learned counsel for the parties, the issues which require adjudication are:

- i. Whether the aforesaid transaction has taken place without the consent and authority of Plaintiff No. 2, the other partner of the firm?
- ii. Whether the learned Single Judge has erred in dismissing the suit despite the fact that the transfer/alienation of the suit property without the express consent of the partner was not permitted?

23. It is trite law that under the provisions of Section 19(2)(g) of the IP Act, the implied authority of a partner, in the absence of a specific contract to the contrary, does not extend to the transfer of immovable property belonging to the partnership firm. The said provision expressly restricts a partner from selling, mortgaging, or otherwise alienating any immovable asset of the partnership firm unless such authority is conferred upon him either by the terms of the partnership deed or by the express consent of all the partners. This statutory limitation is intended to safeguard the collective interest of the partnership and to prevent any one partner from dealing with or encumbering the immovable property of the partnership firm to the detriment of the others, except where such power has been duly delegated or ratified in accordance with law. Section 19 of the IP Act is extracted as under:

“19. Implied authority of partner as agent of the firm.—(1)
Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his “implied authority”.

(2) In the absence of any usage or custom of trade to the



contrary, the implied authority of a partner does not empower him to—

- (a) submit a dispute relating to the business of the firm to arbitration,
- (b) open a banking account on behalf of the firm in his own name,
- (c) compromise or relinquish any claim or portion of a claim by the firm,
- (d) withdraw a suit or proceeding filed on behalf of the firm,
- (e) admit any liability in a suit or proceeding against the firm,
- (f) acquire immovable property on behalf of the firm,
- (g) **transfer immovable property belonging to the firm,** or
- (h) enter into partnership on behalf of the firm.”

(Emphasis supplied)

24. It is evident that neither Section 19 of the IP Act nor Clause 9 provides that prior consent of a partner is necessary to transfer the immovable property of the partnership firm. What has been provided is that none of the partners shall be entitled to transfer the property and such action shall be considered null and void and shall not be binding on the other partners of the firm.

25. At the outset, it is pertinent to note that there have been no legal documents have been produced that show the consent of the parties to the subject transaction. Thus, consent must be established through the evidence. In the present case, on a perusal of an overwhelming documentary evidence, the learned Single Judge has come to the conclusion that Plaintiff No.2 did give her consent to the subject transaction.

26. *Firstly*, on a bare perusal of the Balance Sheets of the partnership firm for the Financial Year (FY) ending on 31.03.2000 and 31.03.2001, a material difference is apparent in the fixed assets of



the partnership firm. The suit property, being an immovable asset of the firm, is reflected under the head 'Fixed Assets' in the Balance Sheet as on 31.03.2000, described as 'Shop Account' with a valuation of Rs.3,67,500/-. Whereas, in the Balance Sheet for FY ending on 31.03.2001, it is observed that the Shop Account under the heading of the fixed assets is missing and is no longer listed as existing. Similarly, the Balance Sheet as on 31.03.2001 records an addition of Rs.2,500/- under the head 'Profit and Sales Account', which is expressly attributed to the sale of a building. Both the Balance Sheets and the Profit and Loss Accounts are signed by Plaintiff No.2. Hence, a plain reading of the Balance Sheets would make it evident to a reasonable and prudent person that the transfer of the partnership firm's fixed assets had taken place and knowledge thereof could reasonably be inferred.

27. Additionally, it is an admitted fact that the partnership firm owned only one immovable property, namely the suit property, and Plaintiff No.2 was fully aware thereof. Accordingly, the non-mention of specific particulars of the suit property in the Balance Sheet does not affect the identification of the suit property referred to as Shop Account in the Balance Sheet.

28. Further, on behalf of the Plaintiffs, it was contended that Plaintiff No.2 had signed the Balance Sheets for the Financial Year (FY) ending on 31.03.2000 and 31.03.2001 in good faith and without reading their contents. However, upon examination of the pleadings and evidence on record, it is evident that no such specific averment has been made in either the plaint or the replication filed by the



Plaintiffs. Furthermore, the Plaintiffs have not produced any direct or credible evidence establishing that Plaintiff No.2 executed the said Balance Sheets in good faith or without perusing them.

29. Learned senior counsel for the Appellants sought to rely on Paragraph No.12 of the affidavit by way of evidence of PW-1/Plaintiff No.3. Nevertheless, a careful reading of Paragraph No.12 reveals only a general assertion that Defendant No.1 was initially presumed to be conducting the business honestly and in good faith, but was later found to be dishonest. Such a statement cannot be construed as a specific denial of Defendant No.1's contention in his written statement that the signatures of Plaintiff No.2 on the relevant Balance Sheets and Profit and Loss Accounts signify her consent and knowledge of the firm's transactions.

30. It was incumbent upon the Plaintiffs to adduce clear and categorical evidence that Plaintiff No.2 had signed the Balance Sheets without reading and in good faith. However, neither the affidavit of PW-1/Plaintiff No. 3 nor that of PW-2/Sh. Hussain Mondal contains any such deposition. The evidence of PW-2 merely states that the Balance Sheets were prepared by the Chartered Accountant and that Plaintiff No.2 used to sign them at the designated place, without any indication that such signatures were made blindly or in good faith.

31. Accordingly, in the absence of any pleading or evidence to this effect, it cannot be accepted that Plaintiff No.2 signed the Balance Sheets without knowledge or in good faith. Consequently, the knowledge of the transaction concerning the transfer of the suit



property, as reflected in the Balance Sheets, must be imputed to Plaintiff No.2.

32. Herein, unless there is positive and cogent evidence to prove that Plaintiff No.2 signed the documents without her knowledge and in good faith, the conclusion drawn by the learned Single Judge is inevitable. Plaintiff No.2 has not stepped into the witness box. Though, her husband, Plaintiff No.3, has stepped into the witness box, however, he was neither a partner in the partnership dated 16.05.1998 nor a necessary party in the present case. Therefore, Plaintiff No.2 was required to appear in evidence to prove her case. It was Plaintiff No.2 who was to prove that she never consented to the sale/transfer of the only immovable property of the firm. Had she entered the witness box, opportunity would have been afforded to the Defendants to cross-examine her in order to unearth the correct facts. Hence, adverse inference is required to be drawn against Plaintiff No.2 because she has withheld the best evidence from the court.

33. Further, on the perusal of Paragraph No.6 of the MOU dated 18.06.2002, it is evident that Defendant No.1 returned the accounts of M/s Gupta Jewellers Pvt. Ltd. and M/s Gupta International and a full and final settlement of his rights, title, or interest in the partnership firm was arrived at. Apart from this, a Retirement-cum-Partnership Deed was executed on 30.06.2002, entered into after about 12 days of the MOU. Clause 4 of the Retirement-cum-Partnership Deed refers to the payment of Rs.75,000/- to Defendant No.1 towards the full and final settlement of his share.



34. Further, the Plaintiffs claim that they came to know of the subject transaction on 19.03.2002. If this assertion is tested in view of the documentary evidence, it becomes evident that Plaintiff No.2 and Plaintiff No.3 would not have signed the documents on 30.06.2002 if Plaintiff No.2 had come to know of the subject transaction on 19.03.2002.

35. As it has already been established that there is no requirement for the prior consent of the other partners, we are of the view that the learned Single Judge has not erred in coming to the conclusion that the subject transaction was entered into with the consent of Plaintiff No.2.

36. Learned senior counsel for the Appellants has relied upon the judgment rendered in ***Bina Murlidhar Hemdev*** (*supra*). This judgment is in the context of deciding an application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. The observations made in the judgment are in the context of deciding a temporary injunction application. Hence, the Supreme Court decided the case on the basis of *prima facie* material.

37. Further, reliance is placed upon ***R.K. Industrial Corporation*** (*supra*), whereby the learned Single Judge was not confronted with an overwhelming documentary evidence to prove that there was consent of the partners. The learned Single Judge only held that there is no implied authority given to a partner to compromise or relinquish his claim of the partnership firm, or withdraw a suit or proceeding filed on behalf of the partnership firm.

38. Similarly, the judgment rendered in ***Sushil Singh*** (*supra*) is



also a decision in the peculiar facts of the case and does not hold that there cannot be any *post-facto* consent. Thus, the judgments relied upon by the learned senior counsel for the Appellants are distinguishable and thus do not apply to the peculiar facts of the present case.

39. Hence, this Court is of the considered opinion that the learned Single Judge has rightly held that the Plaintiffs had the knowledge of the subject transaction, and therefore, they had given their consent for the same.

40. As regards the question of whether, after the purchase of the suit property, the previous construction was demolished and a new 3 ½ storey building was constructed or not, it is pertinent to note that there has been no documentary evidence filed with regard to from where the money to reconstruct the suit property was sourced. The only reliance is placed on the few lines of deposition in Paragraphs 5 and 6 of the affidavit on behalf of Sh. Hussain Mondal/PW-2. The same has been reproduced thereof:

“5. The deponent further states that Shri Ashok Kumar Singhal was the only active partner and before 31.1.2002, Mrs. Bimla Gupta used to visit the business premises only on the occasion of Deepawali etc. for distributing the gifts and bonus to the employees. The deponent further states that two shops were purchased on 22.1.1999 and after the purchase of these shops, these shops were demolished in my presence and thereafter three and a half storey building was constructed over the same; and the said building was also sealed by the D.D.A. Staff of Subhash Nagar, New Delhi, on 28.4.1999 in the presence of police force; and a notice was pasted on the shop and how this was being done on account unauthorized construction made by the Firm.

6. That the deponent further states that the value of the said shops, which were constructed after demolishing the old two shops, were more than Rupees Twenty five lacs on 3.7.2000. Even



the defendants are occupying shops/building in the same area, which are costing more than Rupees Twenty five lacs. The deponent further states that the shops which were constructed, can fetch a rent of Rs.10,000/- to Rs.15,000/- per month easily, if let out.”

(Emphasis supplied)

41. Further, the decision of the learned Single Judge in Issue No.4 has been reproduced thereof:

“Issue no.4

21. As regards issue no.4 as to whether a new 3 1/2 storeyed building was constructed on the suit plot by the partnership firm after the purchase of the suit property on 22.1.1999 when the suit property was purchased by a sale deed, it is seen that no documentary evidence whatsoever has been led by any of the parties and only evidence led is a self-serving few lines deposition of PW-2 in Para 5 of his affidavit by way of evidence that the old shops were demolished and thereafter a new 3 1/2 storeyed building was constructed over the suit plot. Self-serving averments cannot help to prove this issue because if after all the property would have been reconstructed, and for which definitely a few lacs of rupees would have been spent, documentary evidence ought to have been led with respect to from where this money was sourced and what is the documentary proof, how money was spent for purchase of materials, goods etc for reconstruction of the shops on the suit plot, and for all these reasons it is therefore held that it cannot be held by this Court that old shops on the suit plot were demolished and thereafter the property re-constructed by the partnership firm. This issue is therefore decided accordingly.”

42. In view of the aforesaid, this Court is of the considered view that the learned Single Judge has rightly held that in order to decide this issue, it is necessary that the documentary evidence ought to have been led with respect to from where the money to demolish the previous construction and construct the new building came.

43. Lastly, the decision rendered by the learned Single Judge in Issue Nos. 5 and 6 has been reproduced thereof:

“Issue no.5.



22. Issue no.5 pertains to whether plaintiff no.2 was or was not a dormant partner, and in this regard it is observed that irrespective of whether or not plaintiff no.2 was or was not dormant partner, the issue to be decided is actually whether or not the suit property was transferred in terms of the documentation dated 3.7.2000 with the knowledge, consent and agreement of plaintiff no.2, and which issue has already been decided above in favour of the defendants, and therefore, the dormancy or otherwise of the plaintiff no.2 in the partnership firm M/s Gupta International as on 3.7.2000 would not in any manner alter any conclusion with respect to the relevant issue no.3. Issue no.5 is decided accordingly.

Issue no.6 (Relief)

23. In view of the aforesaid discussion plaintiffs are not entitled to the reliefs claimed in the suit. Suit is accordingly dismissed, leaving the parties to bear their own costs.”

44. Herein, for the determination of the issue at hand, the issue that needs to be determined is whether there has been consent and knowledge of the Plaintiffs for the subject transaction. Once the question of the consent and knowledge of the Plaintiffs in the subject transaction is established, the question as to the dormancy of Plaintiff No.2 holds no value.

45. Therefore, Section 19(2)(g) of the IP Act shall not be applicable in the present case, thereby, Issue No.3 is decided in favour of the Defendants. Further, documentary evidence ought to have been led to determine Issue No.4. Additionally, the issue as to the dormancy of the partner in Issue No.5 holds no value to determine the issue at hand, and the reliefs claimed by the Plaintiffs have been rightly denied by the learned Single Judge.

CONCLUSION:

46. Keeping in view the aforesaid discussion, this Court does not find any ground to interfere with the Impugned Judgment.



2025:DHC:9418-DB



47. Hence, finding no merit, the present Appeal is dismissed.

ANIL KSHETARPAL, J.

HARISHVAIDYANATHANSHANKAR, J.

OCTOBER 29, 2025

jai/shahid