2025 INSC 1046

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2025
(ARISING OUT OF SLP(C) NO.25938 OF 2023)

DOGIPARTHI VENKATA SATISH AND ANR. ...APPELLANTS

VS.

PILLA DURGA PRASAD & ORS. ...RESPONDENTS

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.
2. This appeal assails the correctness of the judgment and order dated 19th October, 2023 passed by the High Court of Andhra Pradesh at Amaravati, whereby the Civil Revision Petition No.1679 of 2019 filed by the respondent no.1 was allowed. The order passed by the Trial Court dated 2nd July, 2018 was set aside, and

further the application I.A. No.429 of 2018 under Order VII Rule 11, Code of Civil Procedure, 1908[1], was allowed and the plaint of Original Suit No.118 of 2012 was rejected.

3. Relevant facts necessary for adjudication of this appeal are as follows:

3.1 Admittedly, the suit schedule property is in the ownership of the appellants. One Aditya Motors (the lessee), a sole proprietorship concern of Pilla Durga Prasad (P.D. Prasad) requested the appellant to lease out the same. Accordingly, under a registered lease deed dated 13th April, 2005, the schedule premises was leased out to Aditya Motors. Thereafter, it appears without the consent of the owner-appellant, Aditya Motors inducted M/s. Associated Auto Services Pvt. Ltd.

3.2 After the expiry of the lease period, the lessee did not vacate the premises. The appellant after due notice under Section 106 of the Transfer of Property Act, 1882, filed a suit for eviction of

[1] CPC

not only the lessee but also M/s. Associated Auto Services Pvt. Ltd. and its two directors. The lessee was impleaded as defendant no.1, M/s. Associated Auto Services Pvt. Ltd. was impleaded as defendant no.2 and the two directors as defendant nos.3 and 4.

3.3 During the pendency of the proceedings, an application for seeking amendment in the plaint under Order VI Rule 17 of the CPC was filed by the appellant. One of the amendments sought was that the lessee-defendant no.1 be deleted and, in its place, Pilla Durga Prasad be substituted as representative of the lessee. The cause title of the suit, thus, changed from *Dogiparthi Venkata Satish and another Vs. Aditya Motors and others* now stood as *Dogiparthi Venkata Satish and another Vs. Pilla Durga Prasad and others*. The amendment was allowed by order dated 28th March, 2018, which order was not challenged, and it attained finality.

3.4 Later on, after the amendment, the defendant moved an application under Order VII Rule 11

CPC to reject the plaint on the ground that as the registered lease deed dated 13th April, 2005 was with Aditya Motors and now since the plaint had been amended and Aditya Motors has been deleted and in its place Pilla Durga Prasad has been substituted, the plaint does not disclose any cause of action against Pilla Durga Prasad, and as such was liable to be rejected.

3.5 The appellants objected to the said application stating that Aditya Motors was a proprietorship concern with Pilla Durga Prasad as its sole proprietor and since proprietorship concern is not a juristic person, therefore, it would not make any difference if the proprietor was made a party as representative of Aditya Motors, which description remained in the cause title. The cause of action was actually against Pilla Durga Prasad as he alone was the signatory to the registered lease deed. Pilla Durga Prasad being the proprietor of Aditya Motors and he having signed the registered lease deed as representative and proprietor of Aditya Motors,

the application under Order VII Rule 11 CPC was liable to be rejected. The cause of action, if any, was always against the proprietor and not the firm. The use of Aditya Motors was only for the purposes of carrying on the business and not for any other purpose. It was only Pilla Durga Prasad, who was the relevant person.

3.6 The Trial Court after considering the rival submissions rejected the application under Order VII Rule 11 CPC by order dated 2nd July, 2018. Aggrieved by the same, revision was filed before the High Court by Pilla Durga Prasad. The High Court by the impugned order has allowed the revision merely relying upon the provisions contained in Order XXX Rule 10 CPC. According to the High Court, the proprietorship concern ought to have been made a party as it could be sued but it could not sue on its own. Aggrieved by the same, the present appeal is before us.

4. We have heard learned Senior Counsel for the parties and perused the material on record. In our considered opinion, the Trial Court was

right in rejecting the application under Order VII Rule 11 CPC. The High Court committed serious error in relying upon Order XXX Rule 10 CPC. The reasons for our conclusion as noted above are as follows:

4.1 A proprietorship concern is nothing, but a trade name given by an individual for carrying on his business. A proprietorship concern is not a juristic person. It cannot sue, however, in view of Order XXX Rule 10 CPC, it can be sued. In order to analyse the said provision, it would be appropriate to reproduce the same. It reads as follows:

> "10. Suit against person carrying on business in name other than his own.— Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly."

4.2 The use of the word can in Order XXX Rule 10 CPC only indicates that proprietorship concern may be made a party. However, it does not

necessarily mean that the proprietor itself if made a party would not be enough, inasmuch as, the proprietorship is to be defended by the proprietor only and not by anybody else. Once the proprietor has been impleaded as a party representing the proprietorship, no prejudice is caused to rather its interest is well protected and taken care of by the only and only person, who owns the proprietorship. Order XXX Rule 10 CPC does not in any manner debar a suit being filed against the proprietor.

4.3 It is well settled by series of judgments that proprietorship concern cannot be equated either with a company or with a partnership firm. Order XXX deals with partnership basically, however, Rule 10 thereof refers to proprietorship. It makes very clear that proprietorship concern cannot sue but it can be sued. Whether proprietorship concern is sued in its name or through its proprietor representing the concerned is one of the same thing. The High Court seems to have taken completely hyper technical view not realising that there was

no prejudice caused and the cause of action very much accrued against the proprietor as he alone had signed the lease deed on behalf of the proprietorship concern and there was no involvement of any second or third party, whose interest could be said to have been prejudicially affected. Once the interest of the proprietorship concern was taken care of by the proprietor having been impleaded nothing further remained.

4.4 In Ashok ***Transport Agency v. Awadhesh Kumar and another***[2], this Court explained that a proprietary concern is only a business name and that Order XXX Rule 10 is merely enabling, the real party being the proprietor. The relevant portion of the same are reproduced hereunder:

> "6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX Rule 1 CPC

[2] (1998) 5 SCC 567

enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order XXX which make applicable the provisions of Order XXX to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order XXX have no application to such a suit as by virtue of Order XXX Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of proprietary business "insofar as the nature of such case permits". This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

4.5 Similarly, in **Shankar Finance and Investments v. State of Andhra Pradesh and others** [3] , this Court emphasised that in proceedings involving proprietary concerns, representation may be in the trade name or through an authorised agent with personal knowledge, yet the proprietor remains the real party in interest. For reference, the relevant portions of the same are as follows:

> "16. In regard to business transactions of companies, partnerships or proprietary concerns, many a time the authorised agent or attorney holder may be the only person having personal knowledge of the particular transaction; and if the authorised agent or attorney holder has signed the complaint, it will be absurd to say that he should not be examined under Section 200 of the Code, and only the secretary of the company or the partner of the firm or the proprietor of a concern, who did not have personal knowledge of the transaction, should be examined. Of course, where the cheque is drawn in the name of the proprietor of a proprietary concern, but an employee of such concern (who is not an attorney

[3] (2008) 8 SCC 536

> holder) has knowledge of the transaction, the payee as complainant and the employee who has knowledge of the transaction, may both have to be examined. Be that as it may. In this case we find no infirmity."

5. Accordingly, the appeal is allowed. The impugned order is set aside. The Trial Court to proceed in accordance with law to decide the suit on its own merits.
6. Pending application, if any, shall stand disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

NEW DELHI;
AUGUST 26, 2025