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DOCTRINE OF HOLDING OUT



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EVOLUTION

The doctrine of holding out is traced back to the partnership act, 1890. It is also known a partnership as estoppels. Every partner is liable to the firm individually but this doctrine creates a liability of the third party to the firm because the principle of estoppel is applied to the doctrine of holding out.

MEANING

If the person represents himself as the partner of the firm or allows some other person to represent him as the partner of the firm, such person shall not be deprived or estopped from his representation. This is known as holding out. The principle of estoppel is applied to holding out which is the rule of evidence because such representation made by him or on his behalf makes another person believe and therefore, deprived of denying his representation later. This doctrine is applicable to retired partners when he is allowed to use his name in connection with the firm. Therefore, the retired partner is liable by applying the doctrine of holding out.

The doctrine of holding out deals under Sec.28 of the Indian Partnership Act, 1932. Anyone who by words spoken or written or by conduct represent himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. Where after partner's death the business continued in the old firm-name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death."

ESSENTIALS

- The person must represent himself as the partner or knowingly allows any person to represent him as a partner of the firm.
- The representation must be made by either words, or written or by conduct.



DOCTRINE OF HOLDING OUT IN CASE OF OSTENSIBLE OWNER

- The transferor should be the ostensible owner of the property.
- The ostensible owner should hold out the property with the express or implied consent of the real owner.
- The transferee must have purchased the property for consideration and act in good faith.
- The doctrine of holding out is not applicable to involuntary transfers like auction sales.

EXCEPTIONS

1. DECEASED PARTNER

The deceased partner is not able to act in the firm and therefore, the holding out is not applicable.

2. INSOLVENT PARTNER

If the partner becomes insolvent and his estate is not liable to the firm.

3. DORMANT PARTNER

A sleeping or dormant partner is a partner who is not actively participating in the firm. Therefore, neither his firm nor his customers know that he is the partner of the firm.

CASE LAWS

Case 1.

Ram Coomar V. M.C Queen (1872) 18.

Held - The Privy Council held that Mrs. Donald was the Ostensible Owner and hence the transfer made by her was valid. This case led to the foundation of the Doctrine of Holding Out, which is incorporated in section 41 of Transfer of Property Act.



Case 2.

Scarf V. Jardine., 1882 7 APP CAS 345.

Held - The retiring partner must be given the retirement notice like the appointment notice, so that the other partners know his status on the firm. He shall be treated as a partner of the firm by holding out because, retired from the firm without notice.

Case 3.

Sham Sunder v. Hari Dev Bansal And Ors., 1999 PLR 122 509.

Held - The present case I have no hesitation in coming to the conclusion that the suit against defendant No. 2 has been correctly decreed on the application of the principle of holding out and on the basis of the other evidence on record. Evasive and uncertain pleas raised by the defendant not supported by any cogent or definite evidence, seen in the light of the admission of the defendants themselves, the defendant No. 2 was dealing with the parties, fairly supports and substantiates the plea of the plaintiff.

Case 4.

Kasinka Trading And Another v. Union Of India, 1995 AIR SC 874.

A notification issued under Section 25 of the Act cannot be said to be holding out of any such unequivocal promise by the Government which was intended to create any legal relationship between the Government and the party drawing benefit flowing from of the said notification. It is, therefore, futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption.



Case 5.

Sal Steel Ltd. v. Union Of India, 2010 SCC ONLINE GUJ 13864.

Even if the resolution of the Government amounted merely to “the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfill it. Whether it is the equity recognized in Ramsden's case (supra) or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power.

DISCLAIMER

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