

CLARIFICATION ON RETIRING PARTNER'S NAME ON SALE DEED

Date: 29.06.2022

To,
The Technical Advisor (In Charge)
Uttar Pradesh Real Estate Regulatory Authority
Lucknow Uttar Pradesh – 226007

Ref: In the case of **Siddhartha Developers ("Said Firm")** for its proposed Project "**Passion Royal Cottage**" (Application ID 415110) situated at Khasra no. 347, 348, 349, 350, 358, 619, 382, 385, 384, 401, 404, 403 Kanpur.

Sub: Clarification on Retiring Partner's Name on registered Sale Deeds of firm

Respected Sir,

This is with reference to the above mentioned subject, we have been asked that why the name of **Jaisons Rangolee Securities Pvt. Ltd.** is written on the conveyance deeds of the promoter "**Siddhartha Developers**". In this regard we wish to submit that **Jaisons Rangolee Securities Pvt. Ltd.** and **Sandeep Kansal** have formed a partnership firm on 16th June 2006 in the name and style of **Siddhartha Developers**. The partnership was constituted to contract, erect, build, repair, re-model demolish, develop, improve and maintain real estate buildings, structures houses, apartments, hospitals, schools, places, projects, paths, streets, sideways, courts, alleys, etc. so basically the firm was in the business of real estate developer. Later on **Jaisons Rangolee Securities Pvt. Ltd** retired from the said firm on 31st March 2013. During the period of 7 years **Siddhartha Developers** has purchased **through various sale deeds**, chunks of land for development of proposed project "**Passion Royal Cottage**". During the execution of sale deeds, **Name of the firm along with name of current partners** i.e. **Sandeep Kansal & Jaisons Rangolee Securities Pvt. Ltd.** were mentioned as **buyers**.

Though the names of **Sandeep Kansal & Jaisons Rangolee Securities Pvt. Ltd.** were mentioned in the conveyance deeds, the land were never purchased by them in their individual capacity, the funds used for purchase of the land



were provided from the firm i.e. **Siddhartha Developers** and **not through the individual contribution of the partners.**

To support our submissions, ledger of **Jaisons Rangolee Securities Pvt. Ltd.** is attached as Annexure 1, wherein firm has paid **Rs. 69,387/-** on 11th Jan 2013 against Full & Final settlement of its capital contribution. It clearly shows that partner **Jaisons Rangolee Securities Pvt. Ltd.** has never used his own funds to purchase the project land and the funds utilized entirely belongs to the firm.

Some judicial principles justifying the above submissions read as follows:-

1. **Debi Parshad V/s. Jai Ram Dass and Ors. (Appeal No. 65 of 1951)** - High Court of Punjab : *"The property shall be deemed to be partnership property, if it was purchased out of partnership funds, even though the sale deed was in name of one of the partners only, for in such a case the partner will be deemed to hold the property in trust for the firm."* (Annexure 2).
2. **Adarji Mancherji Dalal – 1930 - High Court OF Bombay:** *"It may be noted that partner is a trustee of partnership property standing in his name, and no partner can be said to have any beneficial interest in any particular estate or property, until the partnership is dissolved"*. (Annexure 3).
3. **Ram Sahay Mall Rameshwar Dayal v. Bishwanath, AIR 1963 Patna 221 :** *"To substantiate the view that once any property is made the property of partnership firm then during the subsistence of the partnership a partner may assign his share to another and after the dissolution in terms to the agreement the property will pass on to another subsisting partner."* (Annexure 4).
4. **Mohan Lal Bahri vs. K.L. Bahri and Ors. (25.11.1997 – Allahabad HC) MANU/UP/0499/1997:** Defendant appellant being principal person looking after firm's business--Purchasing land in his individual name--But paying consideration out of firm's funds by withdrawal of amount by cheque of firm's account with Bank--No consent of any partner--Contrary to provisions of partnership deed--Huge sum of money paid from partnership



account with Bank as interest--Disputed property rightly held to be firm property. **(Annexure 5).**

Further Section 14 of the Indian Partnership Act reads as under:-

"Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

It is noticed that all property and rights and interests which the partners may have brought in the common stock as their contribution to the common business are parts of the partnership property. Even if a property contributed by one partner be an immovable property, no document, registered or otherwise, is required for transferring the property to the partnership.

Further reliance has been placed In the Indian Partnership Act by **Pollock and Mulla 1st Edition at page 40** the statement of law on the point under consideration is stated to be that land bought in the name of one partner, and paid for by the firm out of the profits of the partnership business, is partnership property unless a contrary intention appears.

On the basis of above submission it is clear that the project land completely belongs to partnership firm i.e. **Siddhartha Developers** and is in possession of the promoter, and not the partner **Jaisons Rangolee Securities Pvt. Ltd.** The promoter "Siddhartha Developers" has complete rights for development of its project on the said land area.

Hope this may suffice your requirement, we humbly request you to kindly consider our submissions and grant us registration of the Project as we have filed the registration in compliance with the four corners of law. We shall be highly obliged.

Yours faithfully

For **M/s. Siddhartha Developers**


For **SIDDHARTHA DEVELOPERS**


Partner/auth. Signatory

29/6/22 KANPUR

Siddhartha Developers

414-415 Krishna Tower

15/63, Civil Lines

Kanpur

Jaisons Rangolee Securities Pvt. Ltd.

Ledger Account

C-27/273, C -13, Indian Press Colony

Maldahiya

Varanasi

1-Apr-2008 to 18-Jul-2013

Date	Particulars	Vch Type	Vch No.	Debit	Credit	Page 1
1-4-2008	Dr Opening Balance					
25-7-2008	Dr HDFC Bank Ltd. A/c No. 01272320008994	Receipt	12		24,009.62	
30-7-2008	Cr HDFC Bank Ltd. A/c No. 01272320008994	Payment	10	2,812.50	2,812.50	
31-3-2009	Dr Profit & Loss A/c	Journal	34		49,117.55	
	Cr Closing Balance			2,812.50	75,939.67	
				73,127.17		
				75,939.67	75,939.67	
1-4-2009	Dr Opening Balance					
31-3-2010	Cr Profit & Loss A/c	Journal	13	663.75	73,127.17	
	Cr Closing Balance			663.75	73,127.17	
				72,463.42		
				73,127.17	73,127.17	
1-4-2010	Dr Opening Balance					
31-3-2011	Cr Profit & Loss A/c	Journal	13	1,159.50	72,463.42	
	Cr Closing Balance			1,159.50	72,463.42	
				71,303.92		
				72,463.42	72,463.42	
1-4-2012	Dr Opening Balance					
15-11-2012	Cr Bank Charges	Journal	15	1,917.21	71,303.92	
11-1-2013	Cr HDFC Bank Ltd. A/c No. 01272320008994	Payment	18	69,386.71		
				71,303.92	71,303.92	

For SIDDHARTHA DEVELOPERS

Partner/auth. Signatory

MANU/PH/0121/1952

Equivalent Citation: AIR1952P&H284

IN THE HIGH COURT OF PUNJAB

Letters Patent Appeal No. 65 of 1951

Decided On: 26.11.1951

Appellants: **Debi Parshad**

Vs.

Respondent: **Jai Ram Dass and Ors.**

Hon'ble Judges/Coram:

Eric Weston, C.J. and Harnam Singh, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S.K. Daphtary, Bishan Narain and K.S. Thapar, Advs.

For Respondents/Defendant: K.L. Gosain and H.L. Sibal, Advs.

JUDGMENT

Harnam Singh, J.

1. In order to appreciate the points of law arising in Letters Patent Appeal No. 65 of 1951 it is essential to set out the facts of the case in some detail.

2. On the 29th of April, 1948, Jairam Das instituted civil suit No. 324 of 1948 for dissolution of partnership and rendition of accounts pleading that he was partner with Debi Parshad defendant No. 1 and Balkishan Das defendant No. 2 in the firm, the Ambala Flour Mills, Ambala City, the shares of the plaintiff, Debi Parshad and Balkishan Das being annas four, annas ten and annas two in a rupee respectively. The case of the plaintiff was that the period of partnership was two years, but if there was an extension of the lease of the Mills by the exercise of option given to the lessee under the lease deed, Exhibit D. 1, the partnership was to continue for the period of the lease. In the plaint it was said that Madan Lal son of the plaintiff, Baikunth Nath attorney of Debi Parshad and Balkishan Das defendant No. 2 were to work in the firm on salary fixed between the parties and that on the capital investments the partners were to be paid interest at six per cent, per annum.

3. In paragraph No. 3 of the plaint it was stated that a licence was obtained under the Punjab Foodgrains Control Order, 1944 for which an application was made on the 3rd of October, 1945, the licence being in the name of the Ambala Flour Mills. On the 9th October, 1945, lease-deed, Exhibit D. 1, was made, defendant No. 1 being shown as the lessee. Balance-sheets were prepared showing profits and losses, and in those balance-sheets Jairam Das, Debi Parshad and Balkishan Das were shown as partners. In para No. 3 of the plaint it was then stated that Debi Parshad operated on the accounts of the firm with various banks.

4. Debi Parshad defendant No. 1 resisted the suit pleading that he was the sole proprietor of the business, that the plaintiff and defendant No. 2 were his employees and that, in any case, the lease of the Mills was not the property of the firm. Defendant No. 1 stated in paragraph No. 20 of the written statement that the plaintiff, defendant

No. 1 and defendant No. 2 were to share the profits and losses of the business in the ratio of annas four, annas ten and annas two in a rupee respectively. Balkishan Das defendant supported Debi Parshad defendant No. 1 and on the pleadings of the parties the trial Court fixed the issues specified hereunder: (1) Whether the plaintiff is a partner with the defendants and on what terms? (2) Whether the leasehold rights in question were the partnership property? (3) Is the plaintiff estopped from claiming the leasehold rights as partnership property as alleged in paragraphs Nos. 15 and 16 of the written statement of defendant No. 1? (4) Which is the accounting party? (5) Whether Section 69 of the Indian Partnership Act would bar the present suit? (6) What is the date when the partnership shall be deemed to be dissolved? (7) Whether the accounts up to the 31st of December, 1947, have been settled finally and what is its effect? (8) Relief.

5. In deciding civil suit No. 324 of 1948 the Court of first instance found for the plaintiff on issues Nos. 1 to 5 and 7 and further found that Debi Parshad was the accounting party and that section 69 of the Indian Partnership Act did not bar the suit, In the result, the Court of first instance passed a preliminary decree ordering that the partnership shall be deemed to be dissolved with effect from the 29th of April, 1948.

6. From the preliminary decree. Debi Parshad defendant appealed in the Court of the District Judge. Ambala, under section 96 of the Code of Civil Procedure, while Jairam Das cross-objected challenging the decision of the Court of first instance on issue No. 6. In the Court of the District Judge Debi Parshad challenged the correctness of the decision of the Court of first instance on issues Nos. 1 and 2.

7. In deciding the appeal the District Judge found against the plaintiff on issues Nos. 1 and 2 and dismissed the cross-objections. In the result the District Judge dismissed the suit leaving the parties to bear their own costs throughout.

8. From the decree passed by the District Judge on the 31st January, 1951, Jairam Das came up in further appeal under section 100 of the Code of Civil Procedure.

9. In Regular Second Appeal No. 50 of 1951 Mr. Justice Jeevan Lal Kapur has restored the judgment and decree of the Court of first instance with costs throughout, and has ordered that the Official Receiver should take possession of the partnership property and do such other acts as are necessary for carrying out the accounting which has to be done right up to the date of the final decree or up to the time the Receiver takes possession under the decree.

10. In these circumstances Debi Parshad defendant No. 1 appeals under clause 10 of the Letters Patent from the judgment given in Regular Second Appeal No 50 of 1951 on the 5th of June, 1951.

11. In admitting the Letters Patent Appeal it was ordered that the Receiver should not take possession of the property of the partnership during the pendency of the appeal. Jairam Das has applied for the vacation of that order giving rise to Civil Miscellaneous No. 625 of 1951. This judgment disposes of Letters Patent Appeal No 65 of 1951 and Civil Miscellaneous No. 625 of 1951.

12. Mr. S. K. Daphtary, appearing for the appellant, urges that the findings given by the District Judge on issues No. 1 and 2, being findings of fact, the Court had no jurisdiction to interfere with those findings in second appeal.

13. In these proceedings it is not disputed that the question whether a partner is a partner or an agent of a firm is a mixed question of law and fact. That being so, in

second appeal the learned Judge was competent to examine the correctness of the finding of the Court of first appeal on issue No. 1. On this point 'Chokalinga Chettiar v. Muthu-Swami Chettiar', MANU/TN/0526/1924 : AIR 1925 Mad 768 and 'Chimanram Motilal v. Jayantilal Chhaganlal', MANU/MH/0038/1939 : AIR 1939 Bom 410 may be seen. Again, though the question covered by issue No. 2 is mainly a question of fact, but in deciding that issue the Court of first appeal did not take into consideration documents, Exhibits D. 3 and D. 13, which had an important bearing on issue No. 2. That being so the finding given by the Court of first appeal on issue No. 2 was not binding on this Court in second appeal.

14. Mr. S. K. Daphtary then urges that the judgment under appeal on issue No. 1 cannot be sustained on the evidence, oral and documentary, that was brought by the parties on the record.

15. Now, in order to establish partnership it has to be proved that there was an agreement entered into by all the partners concerned, that the agreement was to share the profits of business and that the business was carried on by all or any of the persons concerned acting for all. In this connection, section 4 of the Indian Partnership Act may be seen. In the present case Debi Parshad admitted in the written statement that there was an agreement entered into by the plaintiff and the defendants to share the profits of the business, the shares of the plaintiff, defendant No. 1 and defendant No. 2 being annas four, annas ten and annas two in a rupee respectively.

16. Mr. S. K. Daphtary points out that the judgment under appeal proceeds upon the basis that if it is shown that there was an agreement between the parties to share the profits, in the absence of other circumstances, partnership should be held to be established whereas Section 6 of the Indian Partnership Act, 1932, hereinafter referred to as the Act, enacts that receipt by a person of a share of profits of a business does not of itself make him a partner with the persons carrying on that business. In my judgment, the objection raised has force.

17. Explanation II occurring in Section 6 of the Act provides 'inter, alia' that the receipt by a person of a share of the profits of a business does not of itself make him a partner with the persons carrying on the business. Clearly, the Act does not provide for the initial presumption in favour of existence of partnership in case of receipt by a person of share of profits of business. On the other hand Section 2(3), English Partnership Act, 1890, does provide for such a presumption. Section 2(3) of the English Act reads: "Receipt by a person of share of the profits of a business is 'prima facie' evidence that he is a partner in the business." That being the situation of matters, we have to determine the question covered by issue No. 1, regard being had to the real relation between the parties as shown by all relevant acts taken together. Indisputably participation in profits is strong evidence of partnership.

18. But it was said that mutual agency between the parties has not been established and there is evidence to show that there was no partnership. I do not accede to the objection raised.

19. Exhibit P. 16/A shows that on the 3rd of October, 1945, Jairam Das acting for the firm applied under the Punjab Agricultural Produce Markets Act, 1939, for a license showing in that application Debi Parshad, Jairam Das and Balkishan Das to be the partners of the firm. Again, acting for the firm Jairam Das applied under the Punjab Foodgrains Control Order, 1944, for authority to purchase, sell or store for sale in wholesale quantities all kinds of foodgrains and wheat products throughout the territory

of the Punjab. License, Exhibit P. 4, was granted on that application and all these years the Ambala Flour Mills, Ambala City, has been working on the basis of the license, Exhibit P. 4.

20. In the proceedings relating to the assessment of Income Tax for the year 1948-49 Baikunth Nath with Sheo Parshad, authorised representative of the firm, appeared before the Income Tax Officer. A perusal of a copy of the order passed by the Income Tax Officer, Exhibit P. 19, shows that Jairam Das & Balkishan Das were shown to be the partners of Messrs. Ambala Flour Mills, Ambala City. In making the order, the Income Tax Officer found that Balkishan Das being a partner of the firm the salary paid to him was inadmissible.

21. Exhibit P. 20 is a copy of the order passed by the Additional Income Tax Officer made on the 15th May, 1948, showing Jairam Das, Debi Parshad and Balkishan Das to be the partners of the firm.

22. Exhibit P. 18 is a copy of the return of income of the Ambala Flour Mills for the Income Tax year 1948-49. In this return which was filed on the 12th of November, 1948, Debi Parshad, Jairam Das and Ealkishan Das are shown to be the partners of the firm, their shares being annas ten annas four and annas two in a rupee respectively. In filing this return Debi Parshad acted for the firm.

23. Exhibit P. 17 is a copy of the return of income of the Ambala Flour Mills filed on the 25th June, 1947. Exhibit P. 17 appears to have been signed by Debi Parshad, Jairam Das and Balkishan Das as partners of the firm.

24. From what I have said above it is plain that there is abundant evidence on the record showing that there was mutual agency between Debi Parshad, Jairam Das and Balkishan Das in the matter of the business of the Ambala Flour Mills. Exhibit D. 13 shows that on the 9th of October, 1945 Jairam Das paid rupees 2,500/- to the firm per cheque No. 039208 drawn on the Central Bank of India Limited. On the 10th of October, 1945 Jairam Das paid rupees 4,000/- to the firm per cheque No. 69532 drawn on the same bank. On the 31st of December, 1946, a sum of rupees 6,176/11/- was debited to the capital account of Jairam Das on account of losses. In Exhibits P. 1 and P. 2 Jairam Das, Debi Parshad and Bal-kishan Das are shown to be partners of the Ambala Flour Mills.

25. But counsel for the appellant argues that the lease-deed, Exhibit D. 1, made on the 9th of October, 1945, and the documents, Exhibits D. W. 1/1 to D. W. 1/8, D. W. 4/1, D. W. 5/1 to D. W. 5/3, D. W. 7/1 and D. W. 7/2 and D. W. 6/1 to D. W. 6/5 show that Debi Parshad was the sole proprietor of the Ambala Flour Mills. The documents other than Exhibit D. 1 deal with the loan transactions of the firm with the Central Bank of India Limited and the account of the Ambala Flour Mills with the Central Bank of India Limited, Imperial Bank of India, Ambala City. Bharat Bank, Limited, and the Punjab National Bank Limited, Ambala City. Exhibit D. W. 6/1 is a pronote for a lac of rupees in favour of the Central Bank of India executed by the firm showing that Debi Parshad was the proprietor. This loan was raised against the pledge of goods given in Exhibits D. W. 6/7 and D. W. 6/8 dated the 27th of November, 1945.

By these documents, cotton-seed, wheat, gram, 'toria,' rice, paddy, sugar, gur and other commodities, loose or in bags or in bales, stored in the godowns of the firm were to be security for the loan. On the 2nd of July, 1947, the overdraft limit was raised to the sum of rupees ten lacs, but the loan was against the goods belonging to the firm which were pledged with the bank. In my judgment the fact that Debi Parshad was shown in the

bank transactions to be the sole proprietor of the firm is not sufficient to rebut the evidence examined by the plaintiff showing the existence of partnership. The record does not show as to why in dealings with various banks Debi Parshad was shown to be the sole proprietor of Messrs Ambala Flour Mills but it is common knowledge that banking companies object to dealing with unregistered-firms with many partners.

26. Counsel for the appellant then argues that the lease-deed, Exhibit D. 1, militates against the truth of the case set up by the plaintiff. From that which appears hereinafter it follows that the lease made on the 9th of October, 1945, was acquired with the money belonging to the firm and was the property of the firm.

27. Giving the matter my anxious consideration, I find that though no presumption arose from the receipt by Jairam Das of a share of the profits of the business in favour of existence of partnership the evidence on the record proves beyond doubt that Jairam Das, Debit Parshad and Balkishan Das were partners in the firm.

28. Mr. S. K. Daphtary challenges the correctness of the judgment under appeal on issue No. 2. In arguing this point, it is said that the lease-deed, Exhibit D. 1, was made by the lessors including Madanlal, son of the plaintiff, and Ram Samp, nephew of the plaintiff, in favour of Debi Parshad and that Debi Parshad lessee paid rupees 20,000/- to the lessors before the Sub-Registrar. In making the payment of rupees 20,000/- Debi Parshad gave cheque No. 039208 dated the 9th of October 1945, for rupees 2500/- to Ram Sarup and Madanlal. As would appear from Exhibit D. 13 by this cheque Jairam Das had paid rupees 2500/- to the firm. Clearly, it is established that of the sum of rupees 20,000/- paid to the lessors by Debi Parshad rupees 2500/- was contributed by Jairam Das. Exhibit D. 13 shows that on the 4th of October, 1946, Jairam Das paid rupees 2,500/- to the firm. The particulars of this payment as given in Exhibit D. 13 are:

"By amount of lease for one year in account of Rs. 5000/-, Rs. 2,500/- already paid for the period 1-10-1945 to 30-9-1946."

Out of the lease money of rupees 20,000/-Jairam Das had to pay rupees 6000/- for the period between the 1st of October, 1945, and the 30th of September, 1946. Of the sum of rupees 5000/- Jairam Das paid rupees 2500/-on the 9th of October, 1945, by means of cheque No. 039208 drawn on the Central Bank of India Limited and a further sum of rupees 2500/- on the 4th of October 1946. Clearly, the evidence on the record proves that Jairam Das contributed to the payment of the lease money. Exhibit D. 4 shows that on the 9th of October, 1945, the firm paid rupees 1008/- for the purchase of the stamp for the lease-deed, registration expenses and other miscellaneous charges. Clearly, if the lessee rights were not the property of the firm, the firm would not spend rupees 1008/- for obtaining the registered lease-deed and Jairam Das would not pay any amount on account of the lease money. Section 14 of the Act reads: "Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

29. In the Indian Partnership Act by Pollock and Mulla 1st Edition at page 40 the statement of law on the point under consideration is stated to be that land bought in the

name of one partner, and paid for by the firm out of the profits of the partnership business, is partnership property unless a contrary intention appears. In the present case payments made to the lessors are shown in the partnership accounts.

30. Finding as I do that the partnership paid for the lease, the lessee rights are partnership property.

31. Mr. S. K. Daphtary argues that the lease made on the 9th of October, 1945, being for a term of two years, the existing lease is not the property of the partnership. On this point the lease-deed, Exhibit D. 1, reads: "2. That at any time before the expiry of the term of two years of the lease or on the completion of the first period of two years the said lessee shall be entitled at his own option and will extend the lease for a further period and term of two years from the expiration of first term, i.e., from 1st day of October, 1947, to the 1st day of October, 1949, at the same rent and conditions and provisions as are herein contained.

Provided also that at any time before the expiry of the second period of two years of the extended period of lease, that is to say on or before the 1st day of October, 1949, the said lessee shall be entitled at his own option and will extend the period of lease for a further period of two years from the date of the expiration of the 2nd period i.e., from the 1st October, 1949, to the 1st October, 1951. at the same rent and conditions and provisions as are herein contained provided further that no fresh indenture shall be required to be executed for the extended periods of 'lease."

32. Mr. S. K. Daphtary points out that the renewed lease for the period ending on the 30th of September, 1951, was obtained by Debi Parshad in exercise of the option given to him under the lease-deed, Exhibit D. 1, and is not the property of the partnership. I am not impressed with the argument raised for it has been decided more than once, that if one partner obtains in his name, either during the partnership or before its assets have been sold, a renewal of a lease of the partnership property, he will not be allowed to treat the renewed lease as his own and as one in which his co-partners have no interest. On this point *Biss v. Biss* (1903) 2 Ch 40, and '*Clegg v. Fishwick* (1850) 19 LJCh 49 may be seen.

In the last mentioned case, the facts were that the plaintiff was the administratrix of one of several partners in a coal mine, and she filed a bill some years after the death of the deceased, against the surviving partners, for an account and a dissolution, and for a declaration, that the renewed lease which had been obtained by the defendants, might be declared subject in equity to a trust for the benefit of the partnership. On those facts, it was held that the old lease being the foundation for the new one, the parties interested jointly with others could not take the benefit of the renewed lease to the exclusion of those others. No attempt was made to show that the rule laid down in '*Biss v. Biss*', and '*Clegg v. Fishwick*', did not govern the present case and I have no doubt that the cases govern the point raised. Clearly, Debi Parshad and Bal-kishan Das cannot take the benefit of the renewed lease to the exclusion of Jairam Das.

33. Mr. S. K. Daphtary finally urged that the judgment under appeal is wrong in so far as it directs accounts to be taken right up to the time of the final decree. I do not see any substance in the argument. Section 37 of the Act provides that where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled

at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent, per annum on the amount of his share in the property of the firm.

In the present case the partnership being at will stood dissolved on the date of the institution of the suit, but notwithstanding the dissolution of the firm Debi Parshad and Balkishan Das carried on the business of the firm with the property of the firm. On these facts, Jairam Das, plaintiff, is entitled at the option of himself to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or interest at the rate of six per cent, per annum on the amount of his share in the property of the firm. The property of the partnership which has been used by the continuing partners since dissolution is 'inter alia' goodwill of the Ambala Flour Mills and the leasehold-rights which expired on the 30th of September, 1951. On the amount, if any, due to Jairam Das in the capital account he is by agreement entitled to charge interest at six per cent, per annum. That being so, the judgment under appeal on this point is not open to objection.

34. As stated above in the judgment under appeal the Receiver was ordered to take possession of the partnership property under the decree. This was done under Order XX Rule 15, Civil Procedure Code, read with form No. 21 Appendix D of the Civil Procedure Code. Considering, however, that the plaintiff is entitled to a share of the profits attributable to the use of his share of the property I do not think that the direction as to receivership is justified.

35. Admittedly the accounts are complicated and require an examination. In other words, in the present case an examination and adjustment of accounts is necessary. That being so, I appoint the Official Receiver, Ambala, to be a Commissioner under Rule 11 of Order XXVI of the Code of Civil Procedure to go into the accounts of the partnership and to transmit the proceedings which he may hold to determine the extent of the liability of the parties to the litigation and to report his own opinion on the point referred to him for examination to the Court of first instance.

In the investigation the commission will take the following accounts: (1) an account of the credits, property and effects belonging to the partnership; (2) an account of the debts and liabilities of the partnership? (3) an account of all dealings and transactions between the plaintiff and the defendants from the commencement of the partnership and to take into consideration the goodwill, the leasehold-rights which expired on the 30th of September, 1951 and the stock-in-trade of the partnership in determining the profits attributable to the use of plaintiff's share of the property of the firm and give the plaintiff the right to exercise his option under section 37 of the Act.

36. On the present record the work that the commissioner will have to do cannot be estimated. I leave the question of the fixation of the remuneration of the commission to the Court of first instance with the direction that Jairam Dass plaintiff will be required to pay 25 per cent, of the amount to be paid to the commission and the balance will be paid by Debi Parshad and Balkishan Das in the ratio of their shares in the business.

37. No other point was raised in these proceedings.

38. In the result, I set aside the order directing the Official Receiver to take possession of the partnership property but in other respect maintain the judgment and decree under appeal subject to the directions given above. In the circumstances of the case separate orders are not necessary in Civil Miscellaneous No. 625 of 1951.

39. Having regard to the partial success of the defendant-appellant I leave the parties to bear their costs in this Court.

40. Office to draw up the preliminary decree incorporating the directions given above,

Eric Weston, C.J.

41. I agree.

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MANU/MH/0214/1930

Equivalent Citation: AIR1931Bom428, 1931(33)BOMLR576, ILR1931 55 Bom 795, 133Ind. Cas.845

IN THE HIGH COURT OF BOMBAY

Decided On: 11.04.1930

Appellants: **In Re: Adarji Mancherji Dalal**

Hon'ble Judges/Coram:

S.S. Rangnekar, J.

JUDGMENT

S.S. Rangnekar, J.

1. This is an application by one Adarji Mancherji Dalal for letters of administration limited to two policies standing in the name of the deceased Ratanji Mancherji Dalal. [After dealing with points not material to this report, his Lordship proceeded.]

2. The facts in this case are that the petitioner and his brother Ratanji were carrying on business in partnership at various places, and in the course of such business had acquired considerable property for and on behalf of the partnership. Ratanji died leaving a will by which he appointed three executors, one of them being the petitioner himself. All the executors have renounced, and therefore, it follows that there is no general representative of the estate left.

3. The evidence before me shows that in the course of the partnership business, the partners effected insurance on their own lives and obtained certain policies, some in the name of the deceased and others in the name of the petitioner. There is no doubt on the materials before me, which have not been challenged by the Advocate General, that the account in respect of these policies and the premia payable was a partnership account, and not the individual account of the partners. Then in the will itself the testator has described these policies as being partnership property. The entry showing that these are partnership properties is in the handwriting of the deceased. Therefore, I have no hesitation in coming to the conclusion that these policies were partnership assets, effected no doubt on the lives of individual partners, but for the benefit of the partnership. And this position is not challenged, and cannot be challenged.

4. That being the position, the only question is whether the present case comes within Section 250 of the Indian Succession Act. That section runs as follows:--

Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

5. Therefore, in cases in which the deceased was the sole or surviving trustee and left no general representative, or one who is unable or unwilling to act, letters of administration limited to such property may be granted. Certainly in cases in which the deceased had no beneficial interest in the property on his own account, a limited grant may issue, if the other conditions in the section are satisfied.

6. The only question, therefore, is whether the application falls within Section 250. Now, under the law it is clear that even if any partnership estate stands in the name of a partner, the latter is a trustee of that particular estate or property for the partnership. If any authority is necessary, reference may be made to Section 88 of the Indian Trusts Act. The position, therefore, is that the policies were partnership property. They stood in the name of the deceased and the deceased was a trustee thereof for the benefit of the partnership.

7. A very elaborate argument has been addressed by the Advocate General as to the consequences which may happen if I accepted the contention of the petitioner. I may point out that I am not concerned with the consequences of any order which I may make. The only question with which I am concerned is whether the facts of the case fall within the purview of Section 250. His first argument was that under the section it was necessary that the deceased must have no beneficial interest in the property of which he is also a trustee. But in the end he gave up that position, and rightly too, because that position cannot be maintained having regard to the authorities to which my attention has been drawn by the learned counsel on behalf of the petitioner, viz., *In the goods of Sir A.A.D. Sassoon* (1897) 21 Bom. 673 and *Lord Sudeley v. Attorney-General* [1897] A.C. 11. Apart from these cases, the position in law is very clear. No partner can be said to have any beneficial interest in any particular estate or property until the partnership is wound up and accounts taken. And it is in evidence that this particular partnership was not wound up till the death of the deceased. Therefore, until the death of the deceased he was a trustee of the policies which stood in his name on behalf of the partnership, and it is clear that he would not have been able to make any beneficial use thereof for himself or to assign them to his heirs.

8. Then the next argument, as I understand, is that this section can only apply if the estate of the deceased does not derive any benefit from the particular property, and if the estate of the deceased derives such benefit from the property, then the section cannot apply. I am unable to accept this contention also, because it comes to this that if a person is a trustee within the meaning of the section up to the time of his death, he would cease to be a trustee if after his death his heirs are likely to derive benefit out of the property of which he was a trustee. Nothing is said in the section about the subsequent or ultimate devolution of property of which the deceased was a trustee.

9. The third argument of the Advocate General was that this is a case in which, if probate was applied for by the executors, they would have had to pay probate duty. Apart from the fact that this question does not arise on the present application, Section 19D of the Court-fees Act is a complete answer to that argument.

10. I, therefore, hold that the deceased was a trustee within the meaning of Section 250 of the Indian Succession Act, and the petition must be granted, subject to this, that before any grant issues the petitioner will put in renunciation of Cursetji Dalal.

11. Costs of the Advocate General as well as of the petitioner to come out of the estate. Those of the petitioner as between attorney and client. No probate duty to be charged. Counsel certified.

MANU/BH/0066/1963

Equivalent Citation: AIR1963Pat221

IN THE HIGH COURT OF PATNA

A.F.O.D. No. 212 of 1958

Decided On: 30.11.1962

Appellants: **Firm Ram Sahay Mall Rameshwar Dayal and Ors.**

Vs.

Respondent: **Bishwanath Prasad**

Hon'ble Judges/Coram:

Kanhaiya Singh and Ramratan Singh , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: R.S. Chatterji, Chunni Lal, Govind Prasad, Swaraj Prasad and Lakshman Prasad Tandon, Advs.

For Respondents/Defendant: Lalnarayan Sinha, Ramdeo Prasad Singh, Devendra Prasad Sharma and Bhuvaneshwar Nath, Advs.

JUDGMENT

Ramratan Singh, J.

1. This appeal by the defendants arises out of a suit for recovery of Rs. 41,500/-, said to have been advanced through hundis and bank drafts to a firm known as Ram Sahay Mall Rameshwar Dayal (Defendant No. 1), besides compensation at 1 per cent per month from the different dates, respectively, of the hundis and the bank drafts. The case of the plaintiff, as made out at the time of hearing, was that the said amount was advanced as loan. It was further alleged that defendants 2 to 7 were members of a joint Hindu family governed by the Mitakshra School of Hindu Law, and the said firm Ram Sahay Mall Rameshwar Dayal, which is located at Konch in Uttar Pradesh, belonged to them. Defendants 8 and 9, who are alleged to belong to another joint Hindu family, are said to be partners, along with the aforesaid defendants 2 to 7, of an Ice Factory for which the loan in question is alleged to have been advanced.

2. Defendants 1, 5 and 8 filed one written statement, and denied all the allegations made by the plaintiff. They said that the plaintiff negotiated with these defendants to be a partner in their Ice Factory and also to start a grain business in partnership. It was agreed that the plaintiff would have four annas share in the Ice Factory, which was the sole concern of these defendants, and eight annas share in the grain business to be started in the name and style of Saligram Mohanlal, which was first started in the commission agency of defendant No. 1, as the parties thought it proper to start independently the business of Saligram Mohanlal on an auspicious date, which fell on the 15th April, 1951. In pursuance of the agreement regarding partnership, the plaintiff began to send moneys from time to time through hundis and bank drafts towards his shares to Konch, where the Ice Factory and the grain business were situated. The total amount of advance, namely, Rs. 41,500/-, is admitted; but it is said that, out of the same, Rs. 25,000/- only was credited to the accounts of the Ice Factory against the four annas share of the plaintiff and the balance was credited towards the grain business against his eight annas share. As the lead of the Ice Factory cracked arid the Jai Engine

failed, the factory was closed.

Similarly, on account of restrictions imposed by the U. P. Government on the transport of gram and fear of seizure of stock, the grain business was also stopped by the plaintiff's agents who were in charge' thereof. The jurisdiction of the Patna Court was also challenged. The other defendants filed separate written statements but they substantially supported the case of defendants 1, 5 and 8. All the defendants asserted that defendants 2 to 4, 6, 7 and 9 had nothing to do with either the said firm Ram Sahay Mall Rameshwar Dayal or with the Ice Factory and the grain business.

3. Only the material issue was raised in the suit, namely, whether the plaintiff had advanced any loan to the defendants, and, if so, what amount and from which of the defendants he was entitled to recover. The learned Subordinate Judge accepted the case of the plaintiff that the amount of Rs. 41,500/- had been advanced as loan and that all the defendants were liable to pay the same, besides interest at the rate of 9 per centum per annum simple.

4. Mr. R.S. Chatterji, learned Counsel for the defendant-appellants, challenged both the above findings; and he also pressed the plea of jurisdiction, regarding which no issue was framed in the Court below and which was not touched at all by the learned Subordinate Judge.

5. The first question for consideration is whether the amount of Rs. 41,500/- was advanced as loan or otherwise. This amount was admittedly made up of advances in seven instalments of Rs. 5,000/- and one instalment of Rs. 6,500/- made through two hundis and six bank drafts. All the bank drafts were for payment to Ram Sahay Mall Rameshwar Dayal; the first hundi, dated the 27th February, 1951, was drawn by defendant Kedarnath on behalf of the said firm; and the last hundi, dated the 2nd April, 1951, was drawn by Tulsi Ram, a servant of the plaintiff, on behalf of Saligram Mohanlal. The first seven instalments were paid during the period 27th February, 1951 to 27th March, 1951 and the last advance of Rs. 6,500/- was made on the 6th April, 1951. Postal charges and bank commission in respect of the hundis and the bank drafts amounted to Rs. 26-9-0 and compensation, as claimed in the plaint from the different dates, amounted to Rs. 14,751-4-0- Thus, the total claim of the plaintiff came to Rs. 56,277-13-0.

6. Though the plaintiff led evidence to show that the amounts were advanced as loans, the averments in paragraphs 5 to 8 of the plaint are to the contrary. It was stated in these paragraphs that, on behalf of the Ice Factory, the defendants sent from Konch their agent named Gurudayal Mall, who approached the plaintiff at Kokamah in the district of Patna for a loan with a view to complete the building and acquire more machineries to give a complete and final shape to the proposed Jai Hind Ice Factory in order to make it a profitable undertaking; the plaintiff, having agreed to advance the loan, "for the purpose eventually to become a partner which was one of the promises given on behalf of the defendants", advanced from time to time the said amounts through hundis and bank drafts; "with a view to obtain the necessary documents of partnership", the plaintiff went to Konch where he was told that the total sum already invested in the unfinished building of the Ice Factory and the acquisition of the land and the machineries, plus the amount estimated to be spent in future, would come up to a lac of rupees; "thereupon the plaintiff asked the defendants to execute necessary documents transferring to him shares in the land, in the building and machineries in regard to the amount advanced by him and the expenses incurred in that connection by the plaintiff and eventually the plaintiff was given a written document on 15th

April, 1951, promising to convey to him -/4/- interest in the land, building and machineries of the Ice Factory in question and acknowledging receipt of payment of Rupees 25,000/- as price of the same"; and

"the plaintiff believing in the assurances above mentioned took the document in question which is filed along with this plaint and relied on the promises regarding the execution of the document and repayment of the rest of the dues to the plaintiff within a short time, but in spite of repeated demands, the defendants have failed to carry out their promises with the result that the entire money of the plaintiff has remained unadjusted and is realisable from the defendants together with damages and compensation at the rate of Re. 1/- per cent per mensem."

In other words, the plaintiff advanced Rs. 41,500/- in all for the purpose of becoming a partner with the defendants and he actually became a partner to the extent of four annas in the Ice Factory, after adjusting a sum of Rs. 25,000/- out of the said amount, and that the defendants promised to repay the balance amount within a short time. That is why damages and compensation, and not interest, were claimed. In evidence, however, the plaintiff made out altogether a new case that he paid Rs. 25,000/- in cash at Konch to the defendants on the 15th April, 1951 for becoming a partner in the Ice Factory and this amount was not a part of Rs. 41,500/- which had been advanced as loan earlier through hundis and bank drafts. The learned Subordinate Judge has tried to overcome the recitals in the plaint by taking aid of the well-known observation that in this country pleadings are extremely lax and unsatisfactorily drawn up; but he missed the fact that in the present case the plaint was drawn up in English by a distinguished lawyer of Patna like the late Shri Nawal Kishore Prasad.

7 . But even the evidence regarding the amount having been advanced as loan is absolutely unsatisfactory.

(Then after discussing evidence (Paras 7 to 12) His Lordship proceeded:)

(13) Having taken into consideration all the facts and circumstances of the case, I am of the opinion that originally the defendants started taking money from the plaintiff as loan, but ultimately it was decided that the plaintiff should become a partner; and, accordingly, he became a partner to the extent of four annas share in the Ice Factory and eight annas share in the grain business, and a sum of Rs. 41,500/- advanced by the plaintiff was adjusted as his share capital in the two partnership undertakings. Hence, the case of the plaintiff on the basis of loan must fail.

(14) Mr. Lalnarayan Sinha submitted that the plaintiff was entitled to recover Rs. 25,000/- of the Ice Factory as the agreement had failed, in support of this submission, he relied on the term that a registered document was to be executed by the defendants in favour of the plaintiff in respect of four annas share in the land and the machineries of the Ice Factory. He conceded that the agreement dated the 15th April, 1951, was a concluded contract; but he contended that the term regarding the execution of a registered document was an executory term in the contract and the defendants' failure to execute a registered document resulted in the failure of the contract as a whole. But this term was not a condition precedent, because the parties had already become partners to the extent of their respective shares and the registered document was to be executed subsequently to give an additional support to the agreement

of partnership. In law, no registered document was required to convey four annas shares in the land and the machineries of the Ice Factory to the plaintiffs. The land and the machineries were bought in the partnership firm by the defendants as their share of the contribution and the plaintiff had paid Rs. 25,000/- as his share capital.

Section 14 of the Indian Partnership Act reads thus:-

"Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

It will be noticed that all property and rights and interests which the partners may have brought in the common stock as their contribution to the common business are parts of the partnership property. Even if a property contributed by one partner be an immovable property, no document, registered or otherwise, is required for transferring the property to the partnership. There are similar provisions in the English Partnership Act and the Partnership Act of the U. S. A. In volume I of the second edition of Rowley's book on Partnership in America, it is stated at page 190: -

"A lease of premises occupied by the firm business, procured by one partner before formation of the partnership may become firm property without formal assignment, if it is not understood and partners regard it as such". At page 184 of the book, it is stated:

"Property originally owned by one or more partners, and used in the business of the partnership, may be joint or separate estate, as the partners agree. Originally separate estate, it may be converted into joint estate without formal conveyance, even without any writing, by a parol agreement made between the partners, without any other act. The oral agreement need not be express. It may be proved by a course of conduct e. g., by entries upon the partnership books".

The position obtaining in England is stated thus: -

"The only statutory enactment now applicable to ordinary partnership is the Law of Property Act, 1925, Section 40. This section forbids any action to be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised".

(See Lindley on Partnership, twelfth edition, page 121).

It was held, with respect to the said Section 40 and Section 4 of the Statute of Frauds relating to lands, that, if a partnership is proved to exist, then it may be shown by parol evidence that its property consists of land (page 122 of the same book). The learned author has referred to an observation of Lord Chancellor in *Forster v. Hale* (1800) 5

Ves. 308. In that case, a person attempted to obtain an account of the profits of a colliery on the ground that it was partnership property, and it was objected that there was no signed writing, such as the statute required. The Lord Chancellor observed:

"If by facts and circumstances it is established as a fact that these persons were partners in the colliery, in which land was necessary to carry on the trade, the lease goes as an incident. The partnership being established by evidence upon which a partnership may be found, the premises necessary for the purposes of that partnership are by operation of law held for the purposes of that partnership". (Page 122 of the book).

At page 123 of the book, the learned author has said that the law on the point laid down by the Lord Chancellor was treated as binding authority in the most recent cases. In *Robinson v. Ashton* (1875) 20 Eq 25 the facts were these : On the formation of a partnership it was agreed that the business should be carried on at a mill belonging to R, one of the partners; and R was credited in the books of the partnership with the value of the mill. From time to time sums were expended in making additions to and improvements in the mill; and to the yearly balance-sheets the mill was entered at the original value, increased by the amount so expended, but less a certain amount of depreciation; and the partners were allowed interest on the sums from time to time standing to their capital accounts. And it was held that in the absence of any special agreement the mill was an asset of the partnership, and that on a sale of the business, under which the purchase money of the mill was largely in excess of its value in the books, the difference was profit divisible in the proportions in which the profits of the business were divisible at the time of the sale. The legal position, therefore, appears to be that no written or registered document is necessary for an individual to contribute any land or immovable property as a contribution against his share of the capital of a new partnership business. The same view was taken by a bench of the Calcutta High Court in *Prem Raj Brahmin v. Bhani Ram Brahmi* ILR (1946) Cal 191. It was held that a written document, and, consequently registration, is not necessary to bring in the separate properties of the partners into the partnership stock, and by virtue of Sections 14 and 46 of the Indian Partnership Act and certain provisions of the Indian Contract Act, they become the properties of the firm as soon as the partners intend to so bring them in and Treat them as such. It was further laid down by their Lordships that this sort of contribution or transfer is not prohibited by the Transfer of Property Act, 1882 or the Indian Registration Act, 1908.

Hence, in view of the fact that the land on which the Ice Factory stood was given in the present case by the defendants' firm as a part of their contribution to the capital, I am of the opinion that no registered document was necessary in pursuance of the agreement constituted by the two documents, namely, Exhibits F and 8. Even assuming for the sake of argument that a registered document was necessary, the plaintiff could not treat the contract as rescinded without giving a reasonable, time to the defendants to execute the requisite registered document. There is nothing on the record to indicate that the defendants ever refused to execute the registered document. It is admitted that no notice was given by the plaintiff to the defendants to execute such a document; and there is no evidence to show that the plaintiff or his men even verbally asked the defendants to do so at any time after the 15th April, 1951. It is well settled that disclaimer or renunciation of a contract to be effective must be communicated to the other party to the contract. See *Dhanraj Mills Limited, Liability Co. v. Narsingh Prasad* MANU/BH/0162/1948 : AIR 1949 Pat 270; and in the present case it is admitted that neither party made such a communication to the other. The real fact is that there was no occasion for the defendants to execute a registered document within a reasonable

time, as the lead of the Ice Factory plant cracked and the engine failed and they required complete replacement of the plant to run the factory. That is the case of the defendants in paragraph 22 of the written statement; and P. W. 5 Belas Rai stated that the factory worked for about a month and a half only, because the machine gave way and the factory was closed. The plaintiff also said that the Ice Factory functioned for about two months and then closed down. To the same effect is the evidence of Minaram (D. W. 15) according to whom also the Ice Factory worked for two months only. Hence, the contention of Mr. Lalnarayan Sinha that the contract failed on account of the failure of the defendants to execute a registered document must be rejected.

15. In the circumstances, the plaintiff is not entitled to recover any amount as loan advanced to the defendants. The plaintiff could, therefore, bring a suit for rendition of accounts, and not a simple suit for recovery of the amount.

16. On behalf of the defendants, Mr. R.S. Chatterji submitted that the Patna Court had no jurisdiction to entertain the suit, as the cause of action arose at Konch, where the business was carried on and where the two agreements were executed. Though the plea was taken in the written statement and an issue was raised to that effect originally on the 16th April, 1955, this issue was given up when the issues were recast before the hearing. The defendant-appellants cannot, therefore, raise this plea in appeal, in view of the provisions of Section 21 of the Code of Civil Procedure, which read thus : --

"No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been, a consequent failure of justice".

As stated earlier, the issue raised initially was given up at the time of hearing and there is nothing on the record to show that there has been a failure of justice on account of the trial of the suit at Patna. This contention of Mr. Chatterji must, therefore fail.

17. There are two more questions to be considered. The first question is whether all the defendants are liable for the claim of the plaintiff, if any. Defendants 2 to 7 are descendants of one Binjraj who died 30 years ago. He had three sons, of whom two are defendants 2 and 5. The third son, Bhagirath, died about 40 years ago, leaving behind him two sons, who are defendants 3 and 4. Defendants 6 and 7 are sons of defendant No. 5. Kedarnath (defendant No. 8) is the son of one Kauai who died long ago, and defendant No. 9 is the minor son of Kedarnath. There is no dispute about these facts. Then, the case of the plaintiff is that Kanhai was a brother of Binjraj, while according to the defendants Kanhai belonged to another family. Further, according to the plaintiff, defendant Nos. 2 to 7 belong to one joint family, defendants 8 and 9 belong to another joint family and all the defendants are the proprietors of firm Ram Sahay Mall Rameshwar Dayal (defendant No. 1), while, according to the defendants, only defendants 5 and 8 are proprietors of this firm. The defendants examined several witnesses of Konch in support of their case; but none of these witnesses is competent to speak on the point. Defendants 2, 3 and 5 who are D. Ws. 11, 12 and 15, respectively, support the above case of the defendants; but they are naturally interested. On the face of it, the case of the defendants is improbable. If the firm had been started by defendants 5 and 8 only after separation from the other defendants of Binjraj, then there is absolutely no reason why the firm would be started in the names of Ram Sahay Mall (defendant No. 2) and Rameshwar Dayal (defendant No. 3) who are alleged to be separate from defendants 5 and 8.

It is remarkable that Kedarnath (defendant No. 8) did not come to the witness-box to support the case of the defendants. Admittedly, Kedarnath (defendant No. 8) and Minaram (defendant No. 5) look after the affairs of the firm, and, therefore, their sons must be interested therein; defendants 2 and 3 are also interested as the firm bears their names. Then remains defendant No. 4 a son of deceased Bhagirath Mall; but it is not the case of the defendants that this defendant only separated from the others. In the circumstances, I agree with the learned Subordinate Judge that all the defendants were proprietors of the firm Ram Sahay Mall Rameshwar Dayal (defendant No. 1), and, therefore, all the defendants would be liable for the account, if any, due to the plaintiff.

18. The next question is whether the claim of the plaintiff for loan is hit by Section 4 of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939. The certificate of registration (Ext. 6) as money lender in the name of the plaintiff shows that the maximum amount of loan which could be advanced by the plaintiff is Rs. 20,000/-. In a bench decision of this Court (Parsuram Sahu v. Sant Saran Lall ILR Pat 714, it was held that, if a suit is instituted by a money-lender for an amount exceeding the maximum amount mentioned in the registration certificate, no decree could be passed beyond the maximum amount so mentioned. Hence, according to this decision, if the amount advanced by the plaintiff was a loan, he could not get a decree for more than Rs. 20,000/- as principal. It is however, not necessary to express any opinion on this point, in view of the finding that the amount advanced by the plaintiff was not a loan.

19. In conclusion, it must be held that the plaintiff is not entitled to recover any amount in the suit as framed; and the suit shall be dismissed, without prejudice to his right to sue for rendition of accounts.

20. The appeal is, accordingly, allowed, the judgment and decree of the Court below are set aside and the suit is dismissed with costs through out.

Kanhaiya Singh, J.

21. I agree.

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MANU/UP/0499/1997

Equivalent Citation: AIR1998All247, AWC-1997(Suppl.)833

IN THE HIGH COURT OF ALLAHABAD

First Appeal No. 142 of 1977

Decided On: 25.11.1997

Appellants: **Mohan Lal Bahri**

Vs.

Respondent: **K.L. Bahri and Ors.**

Hon'ble Judges/Coram:

R.N. Ray, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Yatindra Singh, Adv.

For Respondents/Defendant: W.H. Khan, Adv.

JUDGMENT

R.N. Ray, J.

1. Aggrieved by the judgment and decree passed by Sri Chandra Mohan, District Judge, Banda on 7-4-1977 in Original Suit No. 12 of 1973, defendant No. 1 as appellant has preferred this appeal. Respondent K.L. Bahri filed a suit restraining the defendant Mohan Lal Bahri, Madari Lal Bahri and Girdhar Lal by permanent injunction for using the lane for their individual benefits by transferring or constructing thereon, using etc. and also for injunction for demolition of the constructions shown as A B C D and boundary given in the plaint. The land in suit was the property of the firm M/s. K.L. Bahri & Co. Banda. The petitioner's case is that the plaintiff and defendants Nos. 1 and 2 are real brothers. They entered into partnership agreement on 20-2-53 by registered agreement to form a partnership to carry on whole-sale cloth business at Banda in the name and style of M/s. K. L. Bahri & Co. The share of each of the three partners were equal. Till the year 1959, the business was looked mostly by the plaintiff and defendant No. 1 and in the said year another separate business in the name and style of M/s Bahri Brothers was opened at Kanpur by the plaintiff and other two brothers to carry on whole-sale cloth business by forming a separate partnership and plaintiff was active partner there. The business of M/s. K.L. Bahri & Co. at Banda was mostly looked after by the defendants Nos. 1 and 2. In the year 1962, the partners of the firm thought to acquire their own business premises, and purchased the land in dispute which is only at a distance of 25 to 30 yards away from the old rented premises where from said partnership business was being carried. That land was purchased from Sri Anwar-ur-zaman, Advocate, Banda, for a sum of Rs. 11,500/-. The land was purchased out of fund of M/s. K. L. Bahri for having their own business premises of the firm on that land but the defendant No. 1 in collusion with the defendant No. 2 got the sale deed executed and registered on 24-8-62 in his own name and kept the facts concealed from the plaintiff, who was at the relevant time, in Kanpur. On account of the disputes between the partners regarding the accounts, stocks, cash in hand and other assets and liabilities of the firm which arose amongst, the partners of the firm, said business at Banda stopped on 1-7-65. Ultimately, the differences etc. were referred to the three

arbitrators. The arbitrators could not successfully arbitrate their disputes and the order of the arbitrators was stayed under the order of the District Judge, Banda on 28-8-1973 and the learned District Judge was pleased to cancel the clause or arbitration as embodied in the partnership deed. As the plaintiff had to go to Srinagar (Kashmir) in connection with the marriage of his daughter and taking advantage of the temporary absence of the plaintiff, the defendant with the help of Sri Sohan Lal Sahgal and his son Narinder Kumar Sahgal and S. K. Agarwal, a P.W.D. Contractor 'started' raising unauthorised construction over the disputed land for their own benefit and also entered into an agreement to sell the disputed land to the defendant No. 3 without any right, title or interest, in respect of the disputed land, the disputed land belonged to the partnership firm only.

2. After having know ledge of these intentions conspiracy and the alleged fraudulent attempt of the defendant, the plaintiff filed the suit for the aforesaid reliefs.

3. It has been submitted that the defendant No. 1 Mohan Lal Bahri was highly educated amongst the brothers, who was M.A. LL.B. and was a very cunning man and he was dealing with the Income and Sales tax matters of the firm. The accounts were prepared under his supervision, he used to look after and attend the business of the firm M/s K. L. Bahri & Co. and he had never intended nor thought to purchase the land for himself but subsequently the greed over-powered him and though it was purchased for constructing of the premises of the firm, he purchased the same in his own name, though money was funded by the partnership firm. Entry to that effect had been duly made in the accounts book of the partnership firm which has been duly exhibited. Defendant No. 2 Madan Lal Bahri had first supported the written statement of the defendant No. 1 but subsequently got his written statement amended on the allegation that the defendant No. 1 managed to got his signatures on some blank papers on the plea that he would be doing needful for to safeguard his interest but misusing his good-faith of the defendant No. 2 and using undue influence upon the defendant No. 2, defendant No. 1 got the written statement filed on behalf of defendant 2 supporting the written statement of the defendant No. 1. In that amendment application, the defendant No. 2 contended that the disputed land was actually purchased from the fund of the firm and that purchase was made for the benefits and use of the firm.

4. On the pleadings of the parties, issues were framed and in this appeal, there was no argument by any parties that there was any error in framing the issues resulting miscarriage of justice thereby. The learned Court below held that the vendor Sri Anwarazaman executed Ext.A which shows that Rs. 500/- was paid as advance as sale consideration and the remaining part of the sale consideration i.e. Rs. 11,000/- was paid to the vendor through Cheque No. HO/1830 of Allahabad Bank, Banda, and that Cheque No. HO/1830 was encashed and credited to the account of the firm with the Allahabad Bank, Banda. Ext. 10 is certified copy of the account book of the Allahabad Bank with regard to the account book of M/s. K.L. Bahri & Co. Banda. In these account, a sum of Rs. 11,000/- had been shown to have been withdrawn by the firm through cheque No. HO/1830 and that withdraw was made on 25th August, 1962. The defendant No. 1 Mohan Lal Bahri was examined himself as DW 2 who stated on oath that the land was purchased by him personally and the sale consideration was paid by him out of his personal account. He claimed that the land in suit was his personal property. Vendor Anwar-ur-zaman was not examined by any party. Be that as it may, DW 2 filed certified copy of the application for construction of the house over the land along with the map, as well as, photostat copy of the payment of water tax ranging from 23-4-67 to 4-9-74. The certified copy of the judgment of Sri B.K. Sharma, learned District Judge, Banda on 28-8-73 in the arbitration case has also been filed and marked as Exhibit. On behalf of

the defendant No. 2 Madan Lal Bahri, he examined himself as DW 2. He stated that the land in suit was purchased with the funds of the firm, he signed on the original written statement dated 2-2-74 under the influence of defendant No. 1 Sri Mohan Lal Bahri, but subsequently he got his written statement amended on his own initiative. The plaintiff also examined himself. All those witnesses were cross-examined by the Court.

5. The learned Court below held that the suit land was purchased in the name defendant No. 1 Mohan Lal Bahri who was one of the partners but the sale consideration of Rs. 11,000/- was paid through cheque of the Allahabad Bank, Banda. The claim of the defendant No. 1 that he had paid this amount of sale consideration out of his own personal account but the learned Court held that it could not be substantiated by cogent evidence because proper entries of the account books of the firm has not been proved in the suit. The learned Court below further went to hold that even assuming that the sale amount of Rs. 11,000/- was paid by the defendant No. 1 from his personal account, still it could not be held that the payment was not made in his individual capacity but it was made as a partner of the firm. Unless there was an individual agreement between the partners, the defendant No. 1 was not entitled to withdraw Rs. 11,000/- from his personal account from the partnership fund account in view of Clause (7) of the partnership deed which was marked as Ext. 1. That Clause (7) provided that every partner was entitled to draw any sum or sums for his private expenses with mutual consent of other partners. The defendant No.1 has not been able to allege or prove any mutual consent of the partners allowing him to withdraw this huge amount of Rs. 11,000/- for purchase of the land in suit for his individual benefit and use. In this connection, it should be taken into account that in the partnership deed, it is mentioned that a share capital of each partner was Rs. 20,000/- and in such a business, according to the learned Court below it was very difficult to believe that the defendant No. 1 could withdraw Rs. 11,000/- without the consent of the other partners, when there was stipulation, as provided in Clause (7) that he could not do so without the consent of the other partners. The fact further revealed that the goods of the firm were pledged with the Bank for obtaining this amount out of cash credit account to the firm. According to him, it was very difficult to believe that the goods of the firm were pledged and secured a money of Rs. 11,000/- from the Bank by burdening the firm to pay interest to the Bank for individual benefit of defendant No. 1 without the consent of the other partners. From the godown register for cotton-price goods maintained by the Bank in respect of M/s. S.K.L. Bahri & Co., it appeared that on 20-8-62 the value of the goods pledged by the firm was of Rs. 22,782/- and on 30-8-62 goods worth more goods were together pledged with the Bank, the value of the goods pledged with the Bank on 31-8-62 amounted to Rs. 29,483/-. From this also it could be inferred that the defendant No. 1 had no right under the partnership deed to withdraw the amount of Rs. 11,500/- for purchase of the land for his own benefit without the consent of the other partners. The learned Court below also took into consideration of para 2 the Section 14 of the Indian Partnership Act and it has been held by the learned Court below that the defendant No. 1 could not prove by cogent evidences that the said purchase was not made in the interest of the firm but he purchased the same for his own interest while taking money from the firm on his own ledger account.

6. The learned counsel for the appellant submitted that the land was purchased in the name of the defendant No. 1 so it was for the plaintiff to rebut the presumption arising out of the sale deed. It was for the plaintiff to prove that the purchase was made by the firm. He submitted that the plaintiff failed to prove the same and it has been further submitted that from the Income Tax return, it would appear from the assessment year for the year 1964-65 (Ext. A-1) and the balance-sheet of the firm as stood on 30-6-63, which has marked as Ext. A-13, that the land in suit had not been shown in the list of

assets of the firm, so it has to be presumed that all the partners had acknowledged of the account books and they did not put any objection for not entering the disputed land in the firm register because they knew that it was the land purchased by the defendant No. 1 for his own interest and from his personal account, maintained in the partnership firm, as per practice.

7. The learned counsel for the plaintiff, referred a decision, as reported in ILR (1908) 10 Bom 811 (Daji Abaji Khare v. Govinti Narayan Bapat) wherein it has been held that the partnership book being accessible to all the partners and being kept more or less under the surveillance of them, so prima facie it was to be inferred that all of them had the knowledge of the entries of the asset register and account books of the firm when there was no complaint that the books of account were not tampered or fabricated. In this particular case, it is not the case of the parties as per plaint or evidence on record that the account books were false or false entries were made. Simply the plaintiff had asserted that accounts book were being maintained and entries were made under the supervision of the defendant No. 1, who was looking after the business at Banda and he was M.A.LL.B. and highly educated amongst the brothers and was entrusted for looking of the income tax and sales tax matters.

8. The learned counsel for the respondents supported the judgment more or less on the same reasons as given by the learned Court below and in support of his contention, he referred a ruling as reported in 1983 All WC 217 : (1983 All LJ 400) (Ram Prasad Gupta v. Firm Seth Murlidhar Ram Chandravijai and Ors.). He referred another ruling as reported in MANU/PH/0121/1952 (Debi Prasad v. Jai Ram Dass). The Division Bench of Punjab High Court held that the land bought in the name of one partner and paid for by the firm out of the profits of the partnership business, is partnership property unless a contrary intention appeared or proved. Another decision as reported is a decision of the Hon'ble Supreme Court as reported in MANU/SC/0450/1993 : (1993) 1 SCC 589 : (1993) AIR SCW 570) (S.V. Chandra Pandian v. S.V. Sivalinga Nadar), where their Lordships were pleased to hold that in view of provisions of Section 48(b)(iv), the entire property whether brought by any of the partners on constitution of the partnership or acquired in course of business of the partnership would constitute property of the firm. It was further held that during the subsistence of the partnership, partners entitled to an undefined share in such property but after dissolution and settlement of accounts, partners entitled to proportionate share in residue of the property. In that decision, the Hon'ble Supreme Court was also discussed the provisions of Section 45(4) and Section 2(47) of the Income Tax Act, 1961. Another decision referred to by the learned counsel for the respondents is a decision as reported in MANU/SC/0533/1994 : JT(1994) 5(SC) 277 : AIR 1994 SC 2694) (P.V. Shankara Kurup v. Leelavathy Nambiar).

9. Duly considered the submissions of both the sides and perused the decisions, as cited by the learned counsel for the parties.

10. It is true that the partners used to get some money personally from the accounts of the firm maintained in the personal ledger of each of the partners of that partnership firm but the facts of the cases are little different. Huge amount of articles had been pledged with the Bank to secure a loan of Rs. 11,000/- and that money was withdrawn by a cheque of the accounts of the firm with the Allahabad Bank at Banda and there was no consent by any of the partners which was contrary to the provisions of Clause (viii) of the, partnership deed. In view of Sec, 14 of the Partnership Act and in view of the materials before the Court, the Court had rightly held that the property was purchased in the interest of the firm because the firm was running in rented house and the total capital of the firm was Rs. 60,000/-initially and there was no such evidence that said

firm flourished so much that the extent of Rs. 11,000/- was an insignificant amount in view of the transactions and profits made by the firm. It has been abundantly proved that the plaintiff had to stay at Kanpur and it was not disputed that the defendant No. 1 was the principal person looking after the business of the firm at Banda and in his supervision, Income Tax returns used to be filed and the books of the accounts were maintained. So, non-inclusion of such property in the assessment register of the firm per se does not prove that the property was not purchased for the interest and benefit of the firm but it was purchased by the defendant No. 1 for his personal interest in his personal capacity. The vendor was not examined who could throw some light to the nature of the transaction but the fact remained that huge sum of money was paid from the partnership account with the Allahabad Bank at Banda, as interest and there was no consent by the other partners, as required under Clause (VII) of the Partnership Deed, the learned Court below was perfectly justified in decreeing the suit holding that the disputed property was the property of the partnership firm. From the whole of the ledger account maintained by the parties, there was never any payment of money to any of the partners to the individual ledger account, kept in the partnership firm for a huge amount over Rs. 4000/- what to speak of an amount of Rs. 11,000/- at any point of time. So, I do not find anything wrong with the findings of the learned Courts below and as such I concur with the findings of the learned Courts below and the judgment and decree, as passed by the learned Courts below, are hereby affirmed.

11. The appeal is dismissed on contest with costs.

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उत्तर प्रदेश UTTAR PRADESH

GB 841800

Before the Hon'ble Real Estate Regulatory Authority, Lucknow,
Uttar Pradesh

Affidavit in support of Clarification Letter and supported documents

I, Sandeep Kansal S/o Late D.C. Kansal aged 51 years R/o 117/H-1/441 Pandu Nagar Kanpur, Partner of M/s. Siddhartha Developers, a Partner Firm having its Office situated at Cabin 414/415, Krishna Tower, Civil Lines, Kanpur do hereby solemnly declare, undertake and state as under:

1. That I am the partner and authorized signatory of **Siddhartha Developers** and being well conversant with the facts and circumstances, competent enough to swear this affidavit.
2. That the Clarification Letter and supported Documents submitted before Authority in pursuance to the registration of "**Passion Royal Cottage**" (Application ID 415110) has been prepared under my instructions and contents of the same are true and correct to the best of my knowledge.

DEPONENT

VERIFICATION

I, Sandeep Kansal S/o Late D.C. Kansal aged 51 years R/o 117/H-1/441 Pandu Nagar Kanpur, Partner of M/s. Siddhartha Developers, a Partner Firm having its Office situated at Cabin 414/415, Krishna Tower, Civil Lines, Kanpur, do hereby verify that the contents of the above affidavit are true and correct as per the company's record, no part of it is false and nothing material has been concealed there from.

Verified at Kanpur on 29/06/2022



DEPONENT



Certified that this documents is presented before me today by
Shri. Sandeep Kansal
who is identified by Sri. A.K. Tiwari
verified per identification.
Hereby attested
A.K. Tiwari (Advocate)
Notary, Govt. of India, Kanpur (U.P.)

30/6/22