(1969) 09 MAD CK 0008

In the Madras High Court

Case No : Appeal No. 324 of 1963 and Appeal Against Order No. 265 of 1963

C.R. Ramachandran and Others — APPELLANT

Vs

C.P. Porai Goundar (Died) and Others — RESPONDENT

Date of Decision : 10-09-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Limitation Act, 1908 — Article 59, 60
Partnership Act, 1932 — Section 48, 49

Citation : (1969) 09 MAD CK 0008

Hon'ble Judges : Ramkrishnan, J;Ramanujam, J

Bench : Division Bench

Advocate : V. Rajagopalachari and M. Ramachandran, for the Appellant; V. Thiagarajan, R. Desikan, T.R. Ramachandran, K. Narayanaswamy and R. Sivapunniyam, for the Respondent

Final Decision : Allowed

Judgement

Ramkrishnan, J.—The matters in these two appeals are connected. Therefore they are dealt with together by a common judgment.

2. Appeal Suit No. 324 of 1962 is filed by the Plaintiffs against the decree and judgment of the learned Subordinate Judge of Coimbatore, in

Original Suit No. 72 of 1956. It was a suit for the dissolution of a partnership firm N. Desai Goimdar & Co. for taking of accounts of the

partnership and for costs. The details of this partnership firm can be briefly stated thus. The suit firm Desai Goundar and Co., was run in

partnership by three partners consisting of the first Plaintiff Ramai Goundar, first Defendant Dorai Goundar, and Defendants 2 to 4, represented by

their joint family manager, the second Defendant. Exhibit A-6 is the deed of partnership entered into between the parties, dated 25th October

1944. The first Plaintiff filed the suit for dissolution of partnership on 27th February 1956, and a preliminary decree for dissolution was passed on

3rd April 1957 directing Defendants 2 to 4 to render accounts. The first Plaintiff Ramai Goundar died during the pendency of the suit and Plaintiffs

2 to 6 have been impleded as his legal representatives. The fourth Defendant also died during the pendency of the suit and his legal representatives

have been impleaded. As per the terms of exhibit A-6, the partnership deed, the capital contributed by the parties 1 and 2, namely, Manickam, the

second Defendant, and Ramai Goundar, the first Plaintiff shall be Rs. One lakh in equal amounts of Rs. 50,000/-each and such amounts shall be

credited to their capital account. All further sums standing to the credit of a partner shall be so credited to his personal account which account shall

be adjusted to his annual share of profits or losses as well as drawings from time to time or any money which may be brought by him into the

business at any time. The capital accounts shall not carry interest. The personal account of a partner shall carry interest at 7 1/2 percent per annum

calculated on the amounts standing to the credit of a partner''s personal account at the end of the year after adjusting moneys credited in the year

or drawn during the year before adjustment, the annual share of profits or loss for that year. If it is found that partner''s personal account shows an

overdrawn balance at the end of any year, interest shall be charged on such overdrawn balance and debited to his account before adjustment of

share or profit or loss for the year. We are concerned in this appeal with certain amounts in the personal account of the first Plaintiff as well as

amounts in the personal accounts of Plaintiff 2 to Plaintiff 6.

3. The first Plaintiff, on 30th August 1955, wrote a letter, exhibit A-16 (true copy) to the firm thus:

I have to my credit more than a lakh of rupees in my loan account in the books of the firm, N. Desai Goundar and Company, Coimbatore, on this

date.

In view of my contemplated settlement of substantially all my properties and assets, which are all my own self-acquired, on all my sons, who are all

above eighteen years of age, I am writing this letter requesting you and authorising you to transfer from my said loan account, a sum of Rs.

1,00,000/- to the credit of each of my five sons, C.R. Ramachandran, C.R.

Lakshmanan, C.R. Lingiah, C.R. Krishnan and C.R. Balaraman, in

equal shares of Rs. 20,000/- (twenty thousands) each by opening accounts in their individual names in the firm''s books. The excess balance may

be left over in any loan account. I shall be glad if you will arrange to give effect to this so as to take effect from first April 1953. I may add that this

arrangement is final and binding on me and I make it irrevocable.

The sons mentioned above are Plaintiffs 2 to 6, who have been subsequently added as the legal representatives of Ramai Goundar on his death in

this suit for dissolution of partnership. Shortly afterwards, on 15th January 1954, Ramai Goundar Wrote letters to each one of his sons, exhibit A-

1 series, informing them what he had done, namely, of transferring to each of them in the books of the firm from his loan account Rs. 20,000/-. He

concluded:

I have already instructed the firm in the matter and affirm that I have made it over to you without any restrictions out of my love and affection

towards you. It is for you to deal with it hereafter.

4. Thereafter, individual personal accounts were opened in the names of Plaintiffs 2 to 6 in the books of the firm showing the credit of Rs. 20,000

and adding to it interest at the end of each year. The Interest was credited last in 1955. In the profit and loss accounts prepared by the auditor

from time to time, they were shown as loans. There was a similar transaction of money, lent by one Valliammal to the firm. That was also shown

under the heading of loans in the profit and loss account of the firm.

5. After the dissolution of the firm, a receiver was appointed in pursuance of the preliminary decree, before the passing of the final decree. At that

stage, Plaintiffs 2 to 6 filed a petition u/s 151, Code of Civil Procedure, for directing the receiver to pay Rs. 1,324349-1-0 due to them out of the

funds realised by the receiver. This application was filed on 9th January 1958. The Respondents to the application, who included the other partners

of the firm, resisted the application on several grounds, of which we are concerned with the principal question and Which is the only question 90

far as these appeals are concerned, namely, the bar of imitation. Their main plea was that these amounts must be viewed as loans simpliciter and

that the rule of limitation applicable thereto, was Article 59 of the old Limitation Act, which prescribes a three years'' period of limitation for realising the loans. On the other hand, the contention of the Plaintiffs was that Article 60 of the old Limitation Act should be applied, as the

amounts were really deposits made under an agreement that they shall be payable on demand. In that case, there is a lime limit of three years for

recovering the amount from the date when a demand is made.

6. The lower Court found on this point that the amounts were loans simpliciter and not deposits and that the claim of the Plaintiffs for the amount

was barred by time. This decision, against which Civil Miscellaneous Appeal, No. 265 of 1963 has been filed, was used for the purpose of

adjusting the rights of the partners in the proceedings for the final decree in the main suit. The appeal from the final decree is Appeal Suit No. 324

of 1963.

7. The interpretation of Article 60 of the Limitation Act thus referred to involves the consideration of certain well-known principles for

distinguishing loans from deposits, as explained by Lord Atkin in Nawab Major Sir Mohammed Akbar Khan v. Attar Singh 63 I.A. 279 and

followed in AIR 1940 132 (Privy Council) .

Was this then a loan, or was it a deposit payable on demand? It should be remembered that the two terms are not mutually exclusive: A deposit of

money is not confined to a bailment of specific currency to be returned in specie. As in the case of a deposit with a banker, it does not necessarily

involve the creation of a trust, but may involve only the creation of the relation of debtor and creditor, a loan under conditions. The distinction

which is perhaps the most obvious is that the deposit not for a fixed term does not seem to impose an immediate obligation on the depositee to

seek out the depositor and repay him. He is to keep the money till asked for it. A demand by the deposit would therefore seem to be a normal

condition of the obligation of the depositee to repay.

Again, the Supreme Court in V.E.A. Annamalai Chettiar and Another Vs. S.V.V.S. Veerappa Chettiar and Others, had laid down (head-note):

Whether a transaction is a transaction of loan or deposit does not depend merely on the terms of the document but has to be judged from the

intention of the parties and all the circumstances of the case.

Even though the transaction is a transaction of deposit, the deposit can be coupled with an agreement that it will be payable on demand. Such an agreement can be expressed or implied, and If an express agreement in that behalf is recorded in the document, the transaction of deposit cannot

thereby be converted into a transaction of loan and the words ""we shall pay the said sum cannot convert the document into a promissory note. The

promise to pay will be involved in a promissory note as well as in a deposit within the meaning of Article 60, Limitation Act, and the Court will

have regard to intention of the parties and the circumstances of the case in order to arrive at the conclusion whether the document is a promissory

note.

Article 60 of the Limitation Act states that the deposit of money should be accompanied by an agreement that it shall be payable on demand.

Stress is laid by Mr. V. Thiagarajan, learned Counsel for the Respondents, that there is no proof of such a contemporaneous agreement in this

case, that is, an agreement at the time when Ramiah Goundar made the deposit. In any event, it is urged that there is no evidence of such an

agreement when the transfer was made by Ramiah Goundar to his sons. The learned Counsel in this connection refers to the decision in Govind

Chintaman v. Kachubhai Gulabchand AIR 1924 Bom. 29 and relies on the following:

It in not clear what the Legislature meant by the word ""deposited"" in Article 60, but there must be some difference between ""money lent"" and

money deposited"" and one can only assume that a Plaintiff relying upon Article 60 must prove that something took place between the parties at the

time the money passed which would constitute the handing over of the money ""a deposit"" and not a loan"".... Ordinarily, when A hands over money

to B on the understanding that it is not a gift, but has to be repaid when demanded, that when the Plaintiff seeks to prove that the money so handed

over was ""a deposit"", the onus would lie upon him to prove that there were additional circumstances which turned the ''loan'' into a ''deposit''.

As against this, Mr. V. Rajagopalachari, for the Appellants, contends that such an agreement need not be express, but it can be implied and

deducible from the course of the dealings, and that there are data in this case from which an inference could be drawn about such an agreement,

both at the time when the deposit was made by Ramiah Goundar and also when the amounts standing to his credit were transferred to the sons subsequently. We are inclined to agree with this argument for the following reasons.

8. We have briefly referred earlier in this judgment to the terms of the partnership deed which deals with the manner in which the personal accounts

of the partners had to be dealt with. The relevant part contained in Clause 4 is as follows:

All further sums standing to the credit of a partner shall be so credited to his personal account to which account shall be adjusted his annual share

of profits or losses as well as his drawings from time to time or any moneys which may be brought by him into the business at any time. The

aforesaid capital accounts shall not carry any interest. The personal accounts of the partners shall carry interest at seven and half per cent per

annum calculated on the amount standing to the credit of the partner''s personal account at the end of the year after adjustment of moneys credited

in the year or drawn during the year but before adjustment of the annual share of profit or loss for that year. This is, the interest for the year shall be

calculated on closing balance of the account at the end of the year after adjusting everything except the annual share of profit or loss. There is no

capital account for the party of the third part, and all sums standing to his credit shall be so credited in his personal account only. If it is found that a

partner''s personal account shows an overdrawn balance at the end of any year, interest shall be charged on such overdrawn balance in the same

manner aforesaid and the same rate are debited to his account before adjustment of profit or loss for the year.

The significant terms to be noticed in this provision are that the personal account shall be treated as a deposit account, to be added to when

deposits are made, and subtracted from when withdrawals are made, from time to time. Interest is to be calculated only on the balance remaining

at credit at the end of the year. For broken periods within the year, there is to be no interest. Overdrawals are permitted, for such overdrawals, the

drawee has to pay interest to the firm The normal rule in the case of a loan simpliciter is computation of interest on every pie of it, and to calculate

interest for every day when the loan is subsisting. But the provision for computation of interest only on the balance remaining at the end of the year,

the provision for withdrawals and deposits and the provision for interest on overdrawals, appear to us to provide clear indicia to show that there was an implied agreement that this was a deposit repayable on demand, and not a loan. Another circumstance that supports the same conclusion,

the balance on an account belonging to Valliammal dealt within an identical manner in the books of firm, was allowed to be claimed during the final

decree proceedings without any objection by the Respondents in this case. What enures in the case of the account of Valliammal must equally

enure for the account of Ramiah Goundar and his sons, the Plaintiffs 2 to 6.

9. Secondly, even after the transfer of accounts in the names of Plaintiffs 2 to 6, the amounts were dealt with in the same manner as before, that is,

in accordance with Clause 4 of the partnership deed. Interest was claimed by Plaintiffs 2 to 6 in their income tax returns, accrued as at the end of

the year. It appears to us that since the transactions were dealt with in the accounts after the transfer in the same manner as before, they had to be

dealt with similarly and viewed as deposits repayable on, demand and not as loans. There is authority for this last mentioned view in Ramaswami v.

Manickam AIR 1938 Mad. 236, where there are observations to the following effect:

A sum was lying with a banker as deposit in the name of one A. In a subsequent arrangement between A and B, it was arranged that a portion of

the deposit should be transferred to B while the other portion should go to the benefit of A. Subsequently A sued the banker for the recovery of

the money lying in his name as deposit:

Held, the arrangement did not change the nature of the sum as a deposit with a banker but still remained as a deposit payable at A''s demand.

Article 60 therefore was applicable to the suit.

Here too the position is analogous. A substantial portion of the original deposit of Ramiah Goundar was transferred in the names of his four sons,

after opening separate accounts in their names. The transaction is the same as if Ramiah Goundar withdrew the amount and arranged fresh deposits

in the names of his four sons to be dealt with in the books of the firm in the same manner as before, namely, under the same implied agreement. We

are, therefore, of the opinion, differing from the view of the lower Court, that these deposits are to be dealt with under Article 60 of the Limitation

Act and that there is no bar of limitation to negative the claim.

10. Learned Counsel for the Respondents argued that there is a difference

between the two deposits. Ramiah Goundar was a partner. Hence

Section 48(b)(2) of the Partnership Act will enable him to claim repayment of the advance only when a dissolution takes place. But the sons are

not partners. They are creditors. Their claim can be enforced only in independent proceedings. It appears to us that this distinction is only a

distinction in regard to the remedies available to the partner who is also a creditor and a stranger who lends money to the partnership. It has no

relevancy for construing the nature of the deposit for the purpose of finding out the relevant provision of the Limitation Act applicable. The partner

can claim payment of the balance due to him only when dissolution takes place. In the present case, he can withdraw from the account from time to

time. A stranger who lends money can claim the money outright without waiting for dissolution. He can also withdraw from time to time under the

arrangement in this case. He can also claim a preference at the time of dissolution u/s 48(b)(i) of the Partnership Act. This is what Plaintiffs 2 to 6

have done. They have urged that their claim for repayment of the balance in their personal account should be allowed in the dissolution proceedings

u/s 48(b)(i) of the Partnership Act. We are of opinion that there is no legal impediment, when once the bar of limitation has necessary relief in the

dissolution proceedings.

11. Relying on Section 49 of the Partnership Act, Mr. V. Thiagarajan, for the Respondents, next urged that the sons of Ramiah Goundar as

creditors cannot claim payment in the dissolution proceedings. There was an earlier decision when this point considering it as a preliminary

objection and overruling it by the Court below, and the High Court in a civil revision petition filed by the Respondents dismissed the civil revision

petition in limine. Mr. V. Thiagarajan urges that this dismissal of the civil revision petition will not prelude him from urging his objections at the

present stage. Assuming that the objections can be urged again, we are of opinion that Plaintiffs 2 to 6 in the present proceedings function in two

capacities: one capacity is as the legal representatives of their father so far as the dissolution of the partnership is concerned, and the other capacity

is in their own individual capacity as creditors for repayment of the deposits in their names. For the reasons mentioned earlier in this judgment, as

creditors they can successfully resist the bar of limitation put forward against them by the Respondents. As a result they can insist that in the final

decree proceedings, provisions should be made in accordance with Section 48(b)(i) of the Partnership Act for the payment of their debts. This Is

the gist of their prayer both in the interlocutory application as well as in the final decree proceedings and in the two appeals now before us, filed

against the decisions in the interlocutory application and in the final decree proceedings, so far as that decision has affected them adversely. The

claim due on the account taking in respect of the father''s personal account will be adjusted in the final decree proceedings in accordance with

Section 48(b)(2) of the Partnership Act. This is also not disputed before us.

12. For the reasons set out above, we are of opinion that both the appeals have to be allowed and the Appellants, namely, Plaintiffs 2 to 6, will be

entitled to have the balance, due in the personal accounts standing in their names, taken into account and provided for in the final decree

proceedings in accordance with law. The matter is, therefore, remanded to the lower Court for passing an appropriate final decree in the light of

the findings and observations in the judgment. The Appellant will be entitled to their costs in these appeals.

