

(1982) 02 GUJ CK 0015
In the Gujarat High Court

Dayalal Trikamlal Mali

APPELLANT

Vs

Harjivandas Madhavji Mali and Another

RESPONDENT

Date of Decision : 19-02-1982

Acts Referred:

Partnership Act, 1932 — Section 42

Citation : (1982) 2 GLR 305

Hon'ble Judges : S.L. Talati, J

Bench : Single Bench

Judgement

S.L. Talati, J.—This appeal is directed against the preliminary decree passed by the Civil Judge (S.D.), at Bhavnagar in Special Civil Suit No. 21 of 1966 on 7-9-1976. The appellant is the original defendant, while the respondents are the original plaintiffs. The short facts which gave rise to this appeal may be briefly stated as under:

2. The plaintiffs and the defendant had entered into a partnership agreement exh. 82 on 29-3-1961. The parties had kept one contract in the name of the defendant regarding murrum work on Rajasthali-Bhandaria road in Palitana District Bhavnagar. The defendant had 50% share in that partnership and each of the plaintiffs had 25% share. That partnership was for that particular work only. It was specifically provided in the deed that so soon as the work is completed the partnership, would stand dissolved automatically. That work was completed. The final bill was prepared and thereafter the amount was not paid though notice, dated 17-9-1966 was addressed to the defendant and as a result the suit came to be filed.

3. Various contentions were raised by filing written statement and the learned Civil Judge framed issues in exhibit 45 and found all issues practically in favour of the plaintiffs and passed preliminary decree. That decree is challenged by filing this appeal.

4. The learned advocate Shri Suresh M. Shah who appeared on behalf of the

appellant-defendant argued his appeal only one point and, therefore, that is the only point which is required to be decided in this appeal. That point is in regard to the limitation. He based his arguments on the basis that admittedly the contract work was completed on 24-7-1963. That position could be found by a reference to a document mark 53/1. It is not very clear as to whether that document was proved or was not proved; but it is a letter issued by an Engineer concerned on 27-7-1976. This would make it clear that letter was issued during the pendency of the suit. That letter was addressed to the defendant. It was in reply to the letter of the defendant which the defendant might have written on the same date because the letter reads "In response to your application, dated 27-7-76, the information required by you is as under:

(1) Beginning date of the work 21-1-1960 (2) Date of completion of the work 24-7-1963.

Though no effort was made to get this document exhibited, on the assumption that this date is correct the suit had proceeded and on that assumption this appeal is also argued.

5. The learned advocate Shri Suresh M. Shah submitted that the suit was filed on 23-11-1966. According to him the suit for dissolution of a firm is required to be filed within a period of three years as per Article 5 of the Limitation Act which reads as under:

Description of suit Period of Time from which Limitation period begins to run 5. For an account and a share of the profits of a dissolved partnership Three years The date of the dissolution."

It was submitted that as the contract work was completed on 24-7-1963 three years should be counted from that date and if that is so the limitation to file the suit would expire in the month of July and as the suit was filed after a period of four months it was liable to be dismissed on the plea of limitation. For the purpose as to what would be dissolution of a partnership, the learned advocate Shri Shah referred to Section 42 of the Indian Partnership Act, 1932 which runs as under:

42. Dissolution on the happening of certain contingencies-Subject to contract between the partners firm is dissolved:

- (a) if constituted for a fixed term, by the expiry of that term;
- (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- (c) by the death of a partner; and
- (d) by the adjudication of a partner as an insolvent.

On the basis of Section 42 it was submitted that this adventure or undertaking was completed on 24-7-1963 and, therefore, the suit was barred by law of

limitation.

6. The learned advocate Shri Shah referred to a case of Sayyad Abdul Hawk and Others Vs. Tumulury Vaikuntam, . It was a case where the partner died. It was held that the mere fact that the accounts were intended to be taken after all the stock is sold cannot be held to mean that there is an agreement that if there is a death before all the stock is sold there is to be no dissolution. On the same analogy the learned advocate Shri Shah submitted that for the purpose of taking the accounts a Suit is to be filed so soon within a period of three years from the date of completion of the work and it cannot be urged that merely because the work of taking accounts was being continued the partnership also continued unless there is a contract mentioning such an eventuality in the partnership deed. Having considered the arguments of the learned advocate Shri Shah we may only say that for the reasons that follow hereafter we are unable to agree with his view.

7. In this case admittedly final bill was prepared on 18-2-1965. The question which is of some importance is as to when could an undertaking be taken to have completed. An undertaking was to have the construction of a murrum road from village Rajasthali to village Bhandaria. Now this was the contract. If one refers to the Indian Contract Act and in particular Section 2 an agreement enforceable by law is a contract and every promise and every set of promises, forming the consideration for each other, is an agreement. Now, therefore, when a contract was entered into it was a lawful agreement which consisted of set of promises. One party had promised to construct the road and the other party had promised to pay the consideration thereof. Now, therefore, unless this contract is completed meaning thereby that reciprocal promises are fulfilled it cannot be suggested that the contract is completed. In a contract of the construction of a road it is one thing to say that the contractor feels that he has completed the work. By completing the work the contract does not become complete. The other said has to accept that the work is completed. The other side accepts the work as completed only when it prepares the final bill for that work. That bill may be paid afterwards, that is the matter of accounts.

8. We may also refer to a case of Basantlal Jalan Vs. Chiranjilal Sarawgi and Others, . On interpretation of Section 42(b) of the Indian Partnership Act, 1932 Head Note (B) says:

Dissolution of the firm - Determination of date - firm constituted to carry out a specific undertaking to supply certain quantity or grain - Contract prematurely terminating after supply of part of goods - Suit for recovering assets of partnership by one partner - Limitation - Undertaking or adventure cannot be said to be completed partnership will not be deemed to be dissolved on the date of termination of the contract - It is dissolved on the final realisation of assets Limitation runs from the date of final realisation of assets - Section 42(b) not applicable.

In paragraph 15 of that judgment it was observed as under:

Hence, to decide the controversy between the parties, the Court had to decide as to when dissolution possible could have taken place. There does not seem to be any illegality committed by the Court below in adopting such a course which is telly borne out by the pleadings of the parties and the evidence in the case.

9. In another case *Shantwam Sadashiva Harithe v. Sripada Bhayant Shanker Chinkkaramane and Ors.* reported in AIR 1974, Karnatak 110 The question u/s 42(b) of the Indian Partnership Act was considered. It was observed as under:

A partnership firm, does not get automatically dissolved under Clause (b) of Section 42 after the expiry of the period for which it was formed if it continues for a limited purpose incidental to the main purpose.

Where the partnership after the expiry of its term continued for disposing of the stock on band and for collecting the outstandings, it was held that it did not brill about the dissolution of the firm automatically under Clause (b).

10. Now, therefore, merely because there is a clause in the partnership deed, exh. 82 where it was stated that the partnership would stand automatically dissolved on the completion of the work, in the first place the work could not be said to be completed till the final bills is prepared as we have observed that an agreement would mean every promise and every set of promises, forming the consideration for each other, is an agreement. Apart from that if from the facts it is seen that the partnership continued even thereafter for the incidental purpose or the main purpose that is for the purpose of collecting the amounts from P.W.D. for the work which was the main adventure for which the partnership was formed, it cannot be suggested that some letter issued by some Engineer on the request of one of the parties to the litigation would bring about the date which would be conclusive evidence of the fact of the completion of the work. Such a construction on such a letter which was obtained by filing application on the same date and receiving answer on the same date that date cannot be taken to be a conclusive date for the purpose of determining as to whether the work in fact was completed on that date and even if the road was completed the contract was not completed till reciprocal promises were fulfilled. The final bill was admittedly prepared on 18-2-1965 and if that is considered the suit is within period of limitation.

11. The result would be that we are of the opinion that the suit filed is within time. Therefore, the appeal fails and is dismissed.

12. only one point was argued and the whole judgment depended on this particular technical only one point which was raised, there will be no order as to costs.