

(1942) 12 AHC CK 0012
In the Allahabad High Court

Edulji Meharbanji Boyce

APPELLANT

Vs

Lala Shyam Sunder Lal and Another

RESPONDENT

Date of Decision : 21-12-1942

Acts Referred:

Citation : AIR 1943 All 192 : (1943) 13 AWR 39

Hon'ble Judges : Hamilton, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hamilton, J.—This is an appeal against an appellate decision of the District Judge of Jhansi that modified a preliminary decree of the Court of the Civil Judge of Jhansi. There is little or no dispute as to facts but the parties do not agree as to what is their legal status on those facts. The plaintiff Edulji Meharbanji Boyce brought this suit against the defendants, Shiam Sunder Lal and his minor brother, Brij Mohan Lal, under the guardianship of Shiam Sunder Lal. He alleged that the parties were partners and he asked for accounts and for such a sum as might be found due to him after the taking of accounts. Defendants put in one written statement and, while admitting that there had at one time been a partnership, said that it was dissolved during the lifetime of their father. They asserted that they had submitted accounts for the years 1924 to 1936 and, on a reminder, also for the years 1911 to 1923 and, that they had offered a sum of Rs. 408-11-3 which the plaintiff would not accept. They admitted there was joint property and they did not explain why they submitted accounts to the plaintiff. The first Court found that on the facts the partners were co-owners of properties which were jointly purchased but there was no partnership and the defendants were the agents of the plaintiff; therefore, a preliminary decree for accounts from 1915 till 9th April 1935, the date when there was partition between the parties, was passed.

2. The learned District Judge also found that the defendants were the agents of the plaintiff but limited the accounts to the period from June 1931 to 9th April

1936 because it was on the earlier date that Musaddi Lal, the father of the defendants, died. The learned District Judge found that there had originally been a partnership between Meharbanji Boyce, father of the plain, tiff, and Lala Ganga Sahai, brother of the grandfather of Musaddi Lal. Meharbanji Boyce died in 1896 and his sons Firoz Shah, who died in 1915, and Edulji, the present plaintiff, replaced him. Ganga Sahai died in 1923 and was replaced by his grand-nephew, Musaddi Lal, who died in June 1931 and was replaced by the defendants. The learned District Judge found that the partnership originally dealt in excisable articles and ran an ice factory and the partners acquired some buildings which were leased to shop-keepers. By the year 1928 the business in excisable articles and the ice factory were given up. It is clear to us that had the buildings leased to shopkeepers and the business in excisable articles been given up leaving the ice factory only, the learned Judge would have held that there was a partnership. He, however, held that merely collecting rents from houses and shops and dividing them between the parties would not establish a partnership. He evidently thought that the word "business" as used in Section 239, Contract Act, meant some undertaking of an industrial or commercial nature. That section is as follows:

Partnership is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business and to share the profits thereof between them.

3. The word "business" is not used in the sense applied to it by the learned District Judge. For instance, two doctors may form a partnership to treat patients and not to do anything of a commercial nature such as selling medicines. Two owners of buildings, which they let out to tenants, can combine, dealing with the property in such a way as to form a partnership. It is nobody's ease that these buildings let out to shopkeepers have been dealt with any differently in 1935 or the years immediately preceding that year than was the case, say, in 1890 when accounts produced before the Court by the defendants showed that there was a partnership which included this house property. What happened was that when the partner Meharbanji died his sons Feroz Shah and Edulji were taken into partner, ship by Ganga Sahai on the same terms as their father and so when Ganga Sahai died either Musaddi Lal alone or Musaddi Lal and his two sons, the defendants replaced Ganga Sahai in the partnership and if Musaddi Lal alone replaced him then the defendants replaced Musaddi Lal in 1931.

4. Learned Counsel for the respondents has argued that if a member of a joint family becomes a partner of a stranger it does not follow that every other member of the joint family also becomes a partner and we accept this proposition. One has to see on the facts of each case whether other members of the joint family did or did not become partners. One written statement was put in by the two defendants jointly and it was never suggested there that the position of the minor defendant in any way differed from that of the defendant Shiam Sunder Lal and admittedly defendant 1 on behalf of himself and of his minor

brother submitted accounts to the plaintiff which the plaintiff did not accept as correct. On the facts found by the learned District Judge the plaintiff and the defendants are partners and the defendants entered into partnership on the death of their father Musaddi Lal taking over the rights and liabilities of their father. Consequently they are bound to give accounts just as their father was and the accounts which they have to submit are not limited to the period after the death of their father. The decision of the learned District Judge restricting the period for which the defendants have to give accounts from June 1931 to 9th April 1935 is incorrect and we, therefore, restore the decision of the Civil Judge and allow the appeal granting the plaintiff his costs in all Courts.