
(1983) 02 KAR CK 0004
In the Karnataka High Court
Case No : Second Appeal No. 1 of 1975

H. Manjunatha Nayak

APPELLANT

Vs

Ullal Dayananda Hanumanth Nayak (by L. Rs.) and Another

RESPONDENT

Date of Decision : 04-02-1983

Acts Referred:

Partnership Act, 1932 — Section 22, 32, 45

Citation : AIR 1984 Kar 55 : (1983) 1 KarLJ 383

Hon'ble Judges : G.N. Sarhahit, J

Bench : Single Bench

Advocate : V. Krishna Murthy, for the Appellant; B.P. Holla, for the Respondent

Judgement

1. This appeal by defendant 2 is directed against the judgment and decree dated 13-9-1974 passed by the District Judge, South Kanara, Mangalore in R. A. No. 2 of 1971, on his file, dismissing the appeal on confirming the judgment and decree dated 26-10-1970, passed by the Civil Judge, Mangalore, in O. S. No. 142 of 1969, on his file.

2. The plaintiff filed a suit before the learned Civil Judge for recovery of Rupees 17,600/- against the defendants. He averred in the plaint that the first defendant is a partnership firm of which defendants 2 and 3 are partners. The defendants were taking advances from the plaintiff for supply of cocoanut off and oil cakes at the agreed prices and the business was thus carried on from 23-10-1968 to 15-10-1969. As on 15-10-1969, a sum of Rs. 22,650/- was due from the defendants. Between 15-10-1969 and 21-10-1969 the defendants supplied 86 tins of cocoanut oil working out to Rs. 5050/- in respect of which bills and invoices have not been sent to the plaintiff. However, the plaintiff has given deduction to the extent of the value subject to the variation if any after receipt of bills. Therefore, the plaintiff claimed Rs. 17,600/- as the balance due from the defendants.

3. Defendant 1 the firm and defendant 3 remained ex parte. The contest was

only by defendant 2. While admitting he was a partner of defendant 1 firm, he put forward his case that the firm was dissolved on 31-8-1969. As per the terms of the deed of dissolution, the entire liabilities of the dissolved firm had to be borne by defendant 3 and from that date onwards, he became the sole proprietor of the business. The dissolution was effected to the knowledge of the plaintiff. The dealings thereafter between the plaintiff and third defendant were not binding on the second defendant. It was the third defendant that had to pay all the liabilities of the dissolved firm and according to the second defendant that had been, discharged, by the third defendant.

4. The learned Civil Judge raised the following issues as arising from the pleadings:-

- (1) Whether the firm of Sri. Venkatesh Mills has been validly dissolved as on 31-8-1969 ?
- (2) Whether the plaintiff has knowledge of the said dissolution? If so, whether the plaintiff's dealings after 31-8-1969 are not binding upon the 2nd defendant ?
- (3) Whether liabilities of the firm of Venkatesh Mills due to the plaintiff have been discharged as alleged by the 2nd defendant ?
- (4) Whether the 2nd defendant is not liable for plaintiff-claimed amount ?
- (5) What is the amount due to the plaintiff ?
- (6) To what relief?

5. The learned Civil Judge, appreciating the evidence on record, answered issue No. 1 in the negative. Under Issue No. 2 he held that the plaintiff had no knowledge of alleged dissolution of the firm and as such dealings after 31-8-1969 were also binding on defendant 2. On Issue No. 3 his finding was in the negative. Under Issue No. 4, he found that defendant 2 was liable for the plaintiff amount. Under Issue No. 5 his finding was that the plaintiff was entitled to recovery of the amount claimed in the plaintiff. Accordingly, he decreed the suit as prayed for. Aggrieved by the said judgment and decree, defendant 2 went up in appeal before the learned District Judge in R. A. No. 2 of 1971 on his file and the learned District Judge raised the following points as arising for his consideration in the appeal.

- (1) Whether defendant 2 is liable to answer the suit claim?
- (2) Whether, as alleged by defendant 2, the amount claimed in the plaintiff has been paid off by defendant 3 ?

6. The learned District Judge, reassessing the evidence on record, in the light of the arguments addressed before him, found under Point No. 1 that defendant 2 was liable to answer the suit claim. Under Point No. 2 he held that defendant 2 failed to prove that defendant 3 paid off the amount claimed in the plaintiff and in that view he dismissed the appeal, confirming the judgment and decree of the

trial Court. Aggrieved by the said judgment and decree, defendant 2 has instituted the above second appeal before this Court.

7. The learned Advocate Sri V. Krishnamurthy appearing for the appellant, strenuously urged before me that the Courts below were not correct in coming to the conclusion that the plaintiff had no notice of dissolution of the firm and as such defendant 2 was bound to account even for the future transaction after the dissolution of the firm. He, however fairly and rightly conceded before me that defendant 2 was liable for the transactions before the dissolution of the firm on 31-8-1969.

8. As against that, the learned Advocate appearing for the respondents argued supporting the judgment and decree of the learned District Judge.

9. The sole point, therefore, that arises for my consideration in this appeal is: Whether the appellant is liable for transactions after the dissolution of the firm on 31-8-1969 ?

10. The learned Counsel appearing for the appellant invited my attention to Ss 22, 32 and 45 of the Partnership Act.

Section 22 of the said Act states:

"In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm."

Section 32(3) of the said Act states inter alia :

"Notwithstanding the retirement of partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before, the retirement, until public notice is given of the retirement,"

Section 45(1) of the said Act states:

"Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution until public notice is given of the dissolution."

Thus by reading S. 22 of the Act it becomes clear that a partnership firm is bound if anything or any person on behalf of the firm does anything or executes anything in the firm name, or in any other manner expressing or implying an intention to bind the firm. Anything done otherwise by a partner will not bind the firm. Sections 32 and 45 would generally speak of the liability of partners after retirement or dissolution if notice is given of the retirement from or dissolution of the firm to the old customers and to the public in general. The learned Counsel invited my attention in this behalf to the observations in Halsbury's Laws of England⁴ Third Ed. Vol. 28 at Paras 1118, 1119 and 1120 which speaks of notice

Of dissolution.

They read:-

"Para 1118: Advertisement of dissolution. Any partner is entitled to give public notice of a dissolution or of the retirement of a partner, and to require the concurrence of his partners for that purpose in any necessary or proper acts which cannot be done without their concurrence.

Para 1119: Old customers. of a firm, who deal with it after a change in its constitution, are entitled to treat all former apparent members as still being members until they have actual" notice of the change. As regards them, notice of the dissolution published in the Gazettee. is not per se sufficient; but evidence has been admitted of facts showing that it was probable that an old customer had seen the Gazette.

Para 1120: New customers. Sufficient notice is given to those who have not dealt with the firm before the date of the change or dissolution by the insertion of an advertisement in the London, Edinburgh, or Belfast Gazette, according as the firm has its principal place of business in England, Scotland or Northern Ireland.... .."

Thus, a distinction is made between , future dealers with the firm after dissolution and the old customers. In the case of old customers it is not enough if a public notice is given. They should be given individual notices and any notice given to them of the actual factum of dissolution is sufficient.

Similar are the observations in Lindley on Partnership. These observations are followed in India in the case Central United Bank Ltd. and Another Vs. B.A. Venkatarama Naidu, . It is ruled therein thus :

"Section 32(3) of the Partnership Act specifies the mode by which the retiring partner may be relieved of the responsibility by issuing notice to the various classes of persons who might enter into transactions with the surviving partners. Public notice is intended only to serve a purpose, namely, to bring home to the persons concerned the fact of retirement. That purpose will undoubtedly be served in a better way by personal or actual notice."

Explanation in that section contemplates public notice and pointing out that it is not to be literally construed. Their Lordships have observed :

"Section 32(3) of the Partnership Act puts an end to the partnership between partners qua the retiring partner with the consequence that the rule as to the agency of each partner to the rest of the partners would cease to apply in the case of the retiring partner. A strict application of this rule would cause hardship to third parties who were having and continue to have dealings with the firm without knowing that a particular partner had retired. Its object therefore is not to impose a statutory liability on the retiring partner but to protect third parties by embodying a rule of estoppel so far as retiring partner is concerned for

repudiating the agency of others."

That is also the opinion of the learned commentator Sri S. T. Desai in Law of Partnership in India, Vth Edn., at p. 179. This is what the learned author had observed inter alia :

"Question may arise whether the Act lays down in Section 32(3) and Section 45(1) an absolute rule which makes it necessary that public notice must be given of the retirement or dissolution, or only declares that a public notice shall be sufficient. Thus, for instance, ran a third person, who deals with the continuing partners in a firm after being in fact aware of the retirement of a partner or the dissolution of the firm, seek to hold the out going partner liable, for such dealings on the ground that no public notice was given? It may be contended that the rule of literal construction should be applied and the rule laid down in these sections should be interpreted to mean that public notice is necessary and incumbent in the cases referred to in the section. Such a construction would certainly lead to most surprising results and it is submitted that no such construction can be put on the words of these sections. A person who deals with the continuing Partner with knowledge of the retirement of a partner or dissolution of the old firm deals with a totally different body of persons, and the question of notice does not arise at all. Besides the rule of literal construction is subject to a number of limitations, one of them being that the words of an Act need not be read in a literal sense when good reason for not doing so is to be found within the four corners of the Act itself. The provisos to both the -clauses under consideration afford good reasons for interpreting the rules, as only laying down what is "Sufficient Notice. It would appear, therefore, that any proper notice of the retirement of a partner or dissolution of the firm to a third person would be a sufficient answer to any such claim made by him against the outgoing Partner."

The learned author has relied upon for his opinion on the following decisions: Ratanji Prem Shankar 1938 All LJ 907 : AIR 1938 All 619; Central United Bank Ltd. and Another Vs. B.A. Venkatarama Naidu, and Thummala Rama Rao and Others Vs. Chodagam Venkateswara Rao and Others,

Thus, it is well established that public notice is not the only mode of notifying dissolution, though public notice is one of them. In the case of old customers individual intimation of the factum of dissolution would be necessary. The learned District Judge, however, laboured under the wrong notion that the only mode of intimation was by public notice and he further held that any other mode would not be of any avail or of legal consequence. In the course of the judgment the learned District Judge has, inter alia, observed thus-

"As we have seen, the dissolution of the partnership has not at all been brought home to the plaintiff and the only way that the dissolution can be brought to the notice of the 3rd parties will be by issue of a public notice as provided in Section 45 in the form prescribed u/s 72 of the Partnership Act."

Thus, it is obvious that the learned District Judge has misdirected himself in thinking that the only mode of notice even to old customers is by public notice as contemplated u/s 45. I am unable to agree with the first appellate Court for reasons discussed above.

11. That leads me to the next point as to whether notice was at all given to the plaintiff about the factum of dissolution of the partnership. The learned Counsel for the appellant pressed into service two factors to show that the notice was given to the plaintiff. Firstly, he invited my attention to the definite suggestion made to P. W. 1 that the plaintiff was intimated by phone about the dissolution of the partnership. Secondly, he pressed into service the circumstances that after the dissolution, the third defendant endorsed the invoices as proprietor and not as partner as he used to do before. I will presently advert to those circumstances on the basis of the evidence on record. When P. W. 1 was in the box definite suggestion is put to him, which of course he has denied, thus:

"It is not true to say on 31-8-1999 on phone the fact of dissolution was intimated to Sri Dayananda Nayak on Phone."

When D. W. 1 was in the box he has specifically stated that intimation on phone was given to Dayananda Nayak, about the dissolution of the firm. Dayananda Nayak has not chosen to step into the box and deny this on oath. That being so, the Courts below ought to have held that such intimation was given to Dayananda Nayak. It is further probalised by the evidence on record that the wife of the plaintiff and defendant No. 2's wife were cousins and therefore they were on cordial terms. That being so, I am persuaded to believe that D. W. 1 was intimated about the dissolution of the partnership firm on phone, especially so because of their cordial relationship.

12. As pointed out above Section 22 of the Partnership Act makes it very clear that in order to bind a firm an act or instrument done or executed by partner or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name or in any other manner express or implying as instrument to bind the firm. The Supreme Court in *Devji @ Deviji Shivji Vs. Maganlal R. Athrana and Others*, has ruled that a partner taking sublease not in the name of the firm but in his own name would not bind and was not intended to bind the firm. It is of significance to note that earlier to the dissolution of the firm all the invoices were signed by the 3rd defendant as partner, which meant that it was for and on behalf of the partnership. Subsequent to it he had signed the invoices as proprietor striking out the word "partner". That should have normally put the plaintiff on guard that the partnership firm was no longer in existence and the act by the third defendant was not for and on behalf of the firm. It is no doubt true that when the plaintiff was in the box he said that he had noticed it. But that is a very lame excuse and that would not change the nature of the transaction. In the circumstances, I find that the plaintiff had notice of the dissolution of the firm and as such defendant No. 2 is not bound by any transaction carried on with defendant No. 3, after the dissolution of the firm. To

dint extent the judgment and decrees, of the Courts below aft to be modified.

13. In the result, therefore, the appeal is allowed. The judgment and decree of the trial Court confirmed by the 1st appellate Court are hereby set aside and the matter is remitted back to the trial Court, with a direction that the trial Court shall now proceed to determine the amount due to the plaintiff on account of the transactions that took place earlier to the dissolution of the partnership on 31-8-1969 and then proceed to fix the liability, if at all, on defendant 2 and other defendants and pass a doom in accordance with law.

No costs of this appeal.

Parties shall appear before the trial Court on 21-3-1983 to take further instructions. Send back the concerned records to the trial Court forthwith.

Refund admissible court-fees in this Court as wall u in the lot appellate Court.

The amount drawn at the time of issue of stay order of this Court by the plaintiff may not be ordered to be restituted before the disposal of the suit by the trial Court.

I. A. III is dismissed as not pressed.

14. Appeal allowed.