
(1954) 09 MAD CK 0014

In the Madras High Court

Case No : Letters Patent Appeal No. 139 of 1951

Kuttuva S. Thulasi Ammal

APPELLANT

Vs

R.M.K. Ramachandra Naidu and Others

RESPONDENT

Date of Decision : 10-09-1954

Acts Referred:

Partnership Act, 1932 — Section 37

Citation : AIR 1955 Mad 171 : (1955) ILR (Mad) 1115 : (1955) 68 LW 86

Hon'ble Judges : Rajamannar, C.J;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : T.V. Balakrishnan, for the Appellant; A. Viswanatha Iyer and O.K. Ramalingam, for the Respondent

Final Decision : Allowed

Judgement

Rajagopala Aiyangar, J.

1. The only question that has been argued in this appeal relates to the claim for interest in respect of the amounts due to the plaintiff who is the

appellant before us from 26-1-1947.

2. The facts necessary to understand the contention in the appeal are these: The plaintiff brought a suit o. S. No. 153 of 1947 on the file of the Sub

Court, Madurai -- out of which this L. P. Appeal arises -- for a decree directing the dissolution of the partnership firm of Sri Krishna Rice and Oil

Mills, Madurai, for the taking of the accounts of the partnership from its inception down to the dissolution and the taking of an account of the losses

caused by the defendants in using the partnership properties for their, private benefit after expelling and excluding the plaintiff from the partnership

on 26-1-1947 and debiting such losses to the shares of defendants, and other incidental reliefs. ""The plaintiff and defendants 1, 2 and 4 along with

one Rajammal entered into an agreement of partnership under Ex. A. 1 dated 12-4-1945 for carrying on the business of rice hulling and oil

extraction under the name and style of Sri Krishna Rice and Oil Mills, Madurai. The term of the partnership was for a fixed period of ten years and

the plaintiff contributed a two annas share of the capital and was entitled to that share of the profits.

It was the common case of all the parties that the third defendant who died after the institution of the suit was taken as a partner In the place of

Rajammal mentioned above. Within a year from the commencement of the partnership there were disputes between the partners as to the manner

in which defendants 1 and 4 were conducting the partnership. Notices passed between the plaintiff and the defendants and the defendants

purported to expel the plaintiff from the partnership as and from 26-1-1947, and oh and from 4-2-1947 the defendants formed a new partnership

in conjunction with two other persons and carried on this new business with the assets of the old business including of course the share of the

plaintiff in these assets. The defendants in their written statement sought to support their conduct in expelling the plaintiff by alleging that it was really

a case of voluntary retirement an her part and denied their accountability for the profits of the new business with the additional partners. They

further stated that accounts between the partners of the original partnership were settled for one year ending 12-4-1946 and that no case had been

made out for reopening the accounts already settled. Subject to the above they further expressed their willingness to have the dissolution decreed

arid the plaintiff getting her share after the taking of accounts.

3. The learned Subordinate Judge found that the plaintiff did not retire from the firm but bad been improperly sought to be expelled from the suit

firm from 26-1-1947 and that with the aid of the total assets belonging to the firm from which the plaintiff was unmaking expelled the defendants

and earned on a new business in conjunction with additional partners, and that the so called settlement of account for the year ending 12-4-1946

had not been established. He also field that the plaintiff was not bound by the transactions of this new business. On findings he passed a preliminary

decree on 9-3-1949 dissolving the partnership firm as and from the date of the decree, directed a commissioner to be appointed to take the

accounts of the partnership under Ex. A. 1 from 12-4-1945 till 26-1-47 and ascertain the assets of this partnership as on that date for the purpose of finding out the sum then due to the plaintiff and also to take an account from 26-1-1947 till the date of the final decree of the new firm started under Ex. B. 5 and find out the share of the profits of the plaintiff made in the new venture as may be attributable to the use of her share of the property of the old firm. The decree further stated that if the new venture had resulted in profits it shall be open to the plaintiff to claim a share of profits attributable to the use of her share of assets in the old partnership; if it had ended in a loss it shall be open to the plaintiff to claim interest at six per cent, per annum from 26-1-1947 on her share capital till the date of "final accounting and that the plaintiff be at liberty to elect at the time of the final accounting.

4. From this decree of the learned Subordinate Judge defendants 1, 2 and 4 preferred an appeal to this court in A. S. No. 247 of 1949 on all the defences raised by them to the plaintiff's suit. The appeal came on for hearing before Viswanathe Sastri J. The learned Judge affirmed the findings of the Subordinate Judge that the plaintiff was improperly sought to be expelled from the partnership as and from 26-1-1947 and that there was no settlement of accounts for the period ending 12-4-1946. Before the learned Judge learned counsel for the plaintiff stated that he was not insisting upon the taking of accounts of the new firm started under Ex. B. 5 but would be content to receive interest, at six per cent, per annum from 26-1-1947 on the amount found as due to her as on that date. The learned Judge however modified the decree of the trial court by directing that interest at six per cent, per annum should run not from 26-1-1947 but from the date when the sum would be ascertained after the taking of the account of the dissolved partnership under A. 1 following in this respect the decision of the Privy Council reported in -- AIR 1930 185 (Privy Council)

Complaining of this variation the plaintiff has filed this Letters Patent Appeal and the sole question for consideration for us is whether the plaintiff is entitled to Interest from 26-1-1947 or whether she Is entitled to it only as and from the date of the ascertainment of the amount due to her in final decree proceedings.

5. The reasoning upon which the learned Judge has made this variation is that

When once the expulsion complained of by the plaintiff is held to be

Illegal her status as ft partner must be deemed to continue right upto the date when the partnership is dissolved by the preliminary decree in the suit

and that in cases where there is no dissolution anterior to the date of the suit the principle embodied in Section 37, Partnership Act, cannot apply.

The learned Judge held that in every case where a plaintiff comes into court for the relief of dissolution of an existing partnership the plaintiff would

be entitled to interest on the amount decreed only from the date of the final decree and not from any earlier date whether it be the date of the

preliminary decree, the date of the plaint or any earlier date.

6. It Is contended by learned counsel for the appellant that in the circumstances of the present case namely the purported expulsion of the plaintiff,

and the appropriation of the entire assets of the partnership after this purported expulsion by the other partners for a new venture of their own the

rule laid down by the Privy Council in AIR 1930 185 (Privy Council) cannot apply and that on the other hand the principle of the rule embodied in

Section 37. Partnership Act, would apply according to which the plaintiff would be entitled to at her option to interest or profits from the date of

her purported expulsion. But it is argued by Mr. Viswanath'a Aiyar learned counsel for the respondents that on the basis of the pleading the

partnership stood dissolved only by the decree of the court and that the plaintiff though as a partner till that date would be entitled to surcharge and

falsify the accounts of the partnership was not entitled to proceed on the footing that the partnership stood dissolved on 26-1-1947 and treat the

other partners as surviving partners utilising the entire assets of the partnership u/s 37, Partnership Act.

7. There can be no doubt that the general rule would be as contended for by learned counsel for the respondents. But it has to be recognised that

the right to interest in the case of accounting between the partners flows from an enquiry arising out of the fiduciary relationship between the

parties. Instances might be suggested where on account of the fraud of the partner interest could be charged against him. In normal cases where

there is no fraud, unfair dealing or oppressive conduct, the rule in AIR 1930 185 (Privy Council) applies and until the actual sum due to the partner

is ascertained there is no obligation upon those who have the funds of the firm in

their hands to pay interest." The decision of the Privy Council in the later case in -- "Hakim Rai v. Gangaram AIR 1942 PC 61 (B) itself shows that the normal rule laid down in AIR 1930 185 (Privy Council) is not Inflexible. Dealing with the earlier decision AIR 1930 185 (Privy Council) Lord Romer delivering the judgment in the later case said:

But that case was concerned with an ordinary suit for the dissolution and the winding up of the affairs of a going partnership. The present case is widely different. It is a suit brought nearly two years after the dissolution of a partnership against the former managing partner, who has been retaining in his hands and for his own purposes the assets of the firm without accounting for them or their proceeds to his co-partner. In such a case Interest is properly chargeable against the accounting defendant even though he has not acted fraudulently, as was held by this Board in the case of - Ahmed Musaji v. Hashim Ebrahim Saleji, AIR 1915 PC 116 (C)"".

In a recent case reported in -- Swaminatha Chettiar and Another Vs. Nagalingam Chettiar and Another, , Subba Rao J. sustained the award of interest in a partnership action from the date of the plaint and rejected the contention of the counsel for the appellant there that the partners would be entitled to interest only from the date when the amount due from the one to the other was ascertained. After referring to the decisions of the Privy Council, the learned Judge said:

It is therefore clear that though the ordinary rule in a suit for dissolution of partnership is to award interest only from the date when the amount due from the one to the other is ascertained, in a case where the suit is for an account in respect of a dissolved partnership, interest may be given even from the date of the filing of the plaint if the circumstances in that case establish that the other partner was in possession of the assets or utilised them for the, purpose of his business or was otherwise guilty of laches.

It is no doubt true that the case which the learned Judge had to deal with was the one of the dissolved partnership. But in our opinion the reason of the rule, does not require the principle to be confined to such suits. In the present case after the plaintiff had been purported to be expelled on 26-

1-1947 the defendants started a new business under Ex. B. 5 utilising "inter alia" the assets belonging to the plaintiff. The plaintiff of course is not bound to have accounts taken of this new partnership for it is not a case of

business of which she was a partner being conducted improperly. On these facts therefore it appears to us that the principle laid down in Section 37, Partnership Act is attracted and notwithstanding that the unlawful expulsion of the plaintiff does not in law bring about a dissolution of the old firm, the plaintiff is entitled to relief on a similar footing. We therefore hold that the plaintiff is entitled to interest at six per cent, per annum on the amount ascertained as due to her share as on 26-1-1947. In other words, we are restoring the decree of the Subordinate Judge the plaintiff having elected to claim interest, instead of profits which was permitted to her under that decree. The appellant therefore succeeds and the plaintiff will be entitled to the relief set out above. She will have her costs of the Letters Patent Appeal.