

(1936) 03 MAD CK 0006
In the Madras High Court

Mudenur Nagappa

APPELLANT

Vs

Firm of Bhagavanji Rasaji

RESPONDENT

Date of Decision : 13-03-1936

Acts Referred:

Partnership Act, 1932 — Section 19(c)

Citation : AIR 1936 Mad 593 : (1936) ILR (Mad) 1036 : (1936) 43 LW 769 :
(1936) 71 MLJ 378

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—These appeals raise the question of the extent of the authority of a partner to bind by his acts the partnership of

which he is a member. A firm by name Bhagvanji Rasaji consisting of seven partners obtained a decree for about Rs. 4,000. Two persons (i)

Sakalchand (ii) Nagappa putting forward rival claims to the decree in question applied to the Lower Court for its execution as transferee decree-

holders. Sakalchand alleged an assignment in his favour dated 8th September, 1932 by Jasraj one of the seven partners; Nagappa's claim was

based on a similar assignment made on 24th September, 1932 by another partner Jovarmul Bhagvanji. The learned District Judge having rejected

both the applications, the assignees have filed? the appeals in question.

2. The assignment in favour of Sakalchand was for Rs. 1,300 and that in favour of Nagappa for Rs. 1,701. It is not alleged that either of the sums

has been brought into the partnership assets for the common benefit of the partners; the question that arises therefore is, was the transfer in either

case within the scope of the apparent or ostensible authority of the partner? The case, it is common ground, is governed by Chapter XI of the

Indian Contract Act which has since been repealed by the Indian Partnership Act, 1932. The relevant part of Section 251 runs thus:

Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member

binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

3. The only necessity"" observe Pollock and Mulla,

which the English authorities recognise, as conferring authority is the necessity of carrying on the business in the usual way. Extraordinary occasions

will not confer extraordinary power on a partner or manager.

4. The learned authors go onto observe that the words of the present section:

necessary for...carrying on the business of such a partnership as that of which he is a member.

may be read, and it seems the more natural reading, as including what is necessary in the circumstances of the special occasion, and not as

confined to what is necessary in the usual course of business (see their Commentaries on Section 251). In other words, under the English law

power to do what is usual does not include a power to do what is unusual, however urgent"". But u/s 251 it is open to argument that the powers of

a partner are somewhat more extensive than under the English law. With this possible distinction, however, we must at once point out, we are not

here concerned. No attempt has been made to show, indeed no argument has been put forward that the transactions in question are justified by the

existence of any special or extraordinary circumstances. The question therefore reduces itself to this : was the making of the assignment within the

scope of the apparent or ostensible authority of the partner? The principle of apparent authority may be thus stated: Every partner is, in

contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters

which are within the scope and objects of the partnership, provided, that his acts done in violation of his duty to the firm, will not bind it, when the

other party to the transaction is cognisant of, or co-operates in, such breach of duty. Story on Partnership and Agency quoted with approval by

the Judicial Committee in *Bank of Australasia v. Breillat* (1847) 6 Moo. P.C. 152 : 13 E.R. 642. As regards the nature of this firm's business, it is

described as a firm of money-lenders and commission agents and nothing further appears. The decree for about Rs. 4,000 has been transferred in

one case for Rs. 1,300, in the other for Rs. 1,700 odd. The transaction in each case amounts in fact to the compounding of the claim although it

has taken the form of an assignment; if the arrangement was with the judgment-debtor directly, it would have been, without question, nothing short

of a compromise of the debt. The intervention of a third party would in principle make no difference and we should therefore proceed upon the

footing that the debt has been compounded, a large part of the claim being surrendered. As a general proposition, an authority to give discharge for

a debt on payment, does not include a power to compromise or settle it in any way a partner likes. (Lindley on Partnership, 10th Edition (1935)

pp. 190 and 191). We may mention that this principle has now received statutory recognition (Section 19(c) the Indian Partnership Act, 1932).

5. It is said that the firm became dissolved on 5th November 1931 but that circumstance in our opinion makes no difference. Section 263 of the

Indian Contract Act runs thus:

After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding up the business of the

partnership.

6. No new rights accrue to the partners on dissolution as the word ""continue"" clearly shows; for, it implies that the rights previously possessed

remain in existence. Far from enlarging, the section limits those powers, as the authority of the partners continues ""in all things necessary for winding

up the business or the partnership"", in other words, only so far as may be necessary to wind up its affairs (cf. Section 47 of the Indian Partnership

Act, 1932).

7. No further question arises in the appeal filed by Sakalchand and although the learned District Judge has not given cogent reasons for his

conclusion, we must hold that his order is right and dismiss C.M.A. 319 of 1933. It is accordingly dismissed but without costs.

8. In the appeal of Nagappa (C.M.A. 189 of 1933) a further contention has been raised based upon Section 253(5) of the Contract Act. What

happened was, that in the lower Court all the partners except Jesraj approved of and supported the assignment made in the appellant's favour. It is

therefore urged that u/s 253(5) the opinion of the majority should prevail. That Section says:

When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners.

9. This surely does not mean that an ex post facto confirmation can give validity to a transaction initially invalid. The section v presupposes that a

decision was taken, the question having been raised and debated. The power, though not in itself of a judicial kind, is subject to the rule (natural

justice requires it), that every partner must have an opportunity of being heard and the decision must be made in good faith, with a view to the

collective interest of the firm (See Pollock and Mulla's Commentaries on Section 253(5)).

10. Then remains a further point. Our attention has been drawn to an affidavit dated 30th January, 1933, filed by the six partners. It is claimed

there, that the assignment in favour of the appellant can be justified by the terms of the dissolution of the partnership : under those terms it is stated

that the capitalist partners, including the assignor Javarmul Bhagavanji, are entitled to all the assets and outstandings of the firm. Paragraph 4 of the

affidavit then goes on to say:

Javarmul Bhagvanji the capitalist is therefore entitled to collect the amount and the other partners of the firm noted above have no objection to the

recognition of the transfer executed by him in favour of the petitioner Mudenur Nagappa.

11. It is likely that this was not pointedly brought to the notice of the lower Court. Further, it is to be observed that the previous affidavits filed on

behalf of the appellant contain no such assertion. However, we think that this is a question of fact into which the lower Court should go. Had the

affidavit been filed for the first time here, we should not have allowed the question to be raised; but, as already stated, the affidavit was before the

Court below and we think that this matter should be enquired into. The order under appeal is therefore reversed and the Lower Court is directed

to re-hear the application of Nagappa with reference to the question of fact referred to above and dispose of it. The lower Court will expedite the

hearing. We make no order as to costs.