

(1949) 08 MAD CK 0068
In the Madras High Court
Case No : A.A.O. No. 22 of 1947

N. Muhammad Ussain Sahib and Another	APPELLANT
Vs	
S.N. Abdul Gaffoor Sahib and Others	RESPONDENT

Date of Decision : 05-08-1949

Acts Referred:

Partnership Act, 1932 — Section 48

Citation : AIR 1950 Mad 758 : (1950) 63 LW 52 : (1942) 55 LW 52

Hon'ble Judges : Satyanarayana Rao, J

Bench : Single Bench

Advocate : A.G. and A.N. Viraraghavan, for the Appellant; T.L. Venkatarama Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Rao, J.—This appeal arises out of proceedings for passing of a final decree in a partnership action. The partnership in dispute was commenced on 1st January 1937 under an agreement between three partners, one N. Abdul Wahab now represented by defendants 1 to 8, Abdul Wahab, defendant 9 and Abdul Gafoor, respondent 1—plaintiff. A period of ten years was fixed as the duration of the partnership. Under the provisions of the agreement the two Wshabs had contributed the capital and Gaffoor was only the working partner. The articles of partnership also provide for annual settlement of accounts and the method of settling those accounts. The settlement proceeds on the basis of the book value of the assets and not on the real value. On 5th December 1942, N. Abdul Wahab died which brought about the dissolution of the partnership. The plaintiff Gaffoor instituted the action, out of which this appeal arises for taking accounts of the dissolved partnership from 1st January 1937, the date of its commencement and for a decree in his favour for his share of the profits. A preliminary decree was passed on 24th July 1944 which was by consent. A Commissioner was appointed thereafter to go into the accounts and submit his report to the Court. The only question now in controversy between the parties is

whether the book value of the assets should be taken for assessing the profits and loss of the partnership or whether the market value of those assets should be considered in arriving at the profits. The learned District Munsif accepted the former view while the Sub-Judge accepted the latter and remanded the suit for fresh disposal to the District Munsif. It is against this remand order that defendants 1 and 9 have preferred this civil miscellaneous appeal to this Court and it was strenuously argued by Mr. Ganapathi Iyer on behalf of the appellants that the correct principle of valuation is the one adopted by the learned District Munsif.

2. The articles of partnership do not provide the method of winding up the partnership after it is dissolved, nor is there any agreement between the partners as to the method by which the accounts should be taken of the assets if the partnership were to be dissolved or if the partners were to retire, after sometime. The general rule applicable, when there is no agreement between the partners prescribing the method of winding-up, is as stated by Lindley on Partnership at page 507,

"to convert the partnership property into money and this money after the payment of partnership debts must be divided amongst the partners in the shares in which they may be entitled to it."

Where the articles expressly provide that the book value alone should be the basis for determining the profits, as in *Coventry v. Barclay*, (1864) 3 D.E.G.J. & Sec. 320: 46 E.R. 659, that would govern the rights of the parties. In a case where the articles of partnership provide that the share of a deceased partner in the assets of the partnership should be calculated with reference to the annual account made up on 30th April every year, the House of Lords in *Gruikshank v. Sutherland*, (1923) 92 L.J.Ch. 136, hold, that if no definite and uniform usage to the contrary is established, the assets of the partnership for the purpose of winding up after the dissolution should be taken, not at the book value but at their fair value to the firm. Merely because the account is settled for one purpose in a particular manner it does not follow as pointed out by Lord Wrenbury in the same case that that method of taking account would be good also for another purpose. The annual accounts are never taken with a view to determine the rights of a deceased partner or a retiring partner. The object of the annual settlement is only for the definite purpose of assessing the profits at the end of the year and so long as the partnership is continued it does not make any difference to the partners even if notional value is taken as the value of the assets. The asset at that book value continues to belong to the firm and whatever fluctuations there may be in the value of that asset, the benefit or the loss of it would accrue to the firm. But the situation is totally different when the firm is dissolved or when a partner retires. The settlement of his account must be not on a notional basis but on a real basis, that is, every asset of the partnership should be converted into money and the account of each partner settled on that basis. No partner is entitled to take advantage of the appreciation of the

value of the assets to the detriment of the other partners. So long as the firm continues, it is not possible for any partner to claim exclusively the benefit of the appreciation of the value of the assets for himself and at the time of the dissolution, such benefit must be shared by all the partners equally. The plaintiff is therefore entitled to have the assets of the partnership properly valued for the purpose of winding-up of the partnership. The assets have to be valued, of course, on the basis of the market value on the date of the dissolution, that is, 5th December 1942. The order of the remand made by the learned Sub-Judge is correct.

3. I am not called upon to decide in this appeal any other question and my judgment should not be taken either expressly or impliedly to have decided any other point except the point stated above. It is for the first Court to determine the assets and their value and other questions that have been raised before it already. The result is the appeal fails and is dismissed with costs.