

(1949) 02 MAD CK 0045
In the Madras High Court

Nagireddi Pothuraju

APPELLANT

Vs

Missula Veera Venkata Satyanarayana

RESPONDENT

Date of Decision : 01-02-1949

Acts Referred:

Citation : (1949) 62 LW 252 : (1949) 1 MLJ 420

Hon'ble Judges : Mack, J

Bench : Division Bench

Judgement

Mack, J.—This is a petition to revise an order passed by the Additional Subordinate Judge, Vizagapatam, directing the sale of a rice mill in open auction on an application filed by the respondent who was the plaintiff in a suit for dissolution of a partnership firm, whose only business was the running of this rice mill. The suit was filed in 1935 and first dismissed on the ground that the plaintiff was not a partner. The plaintiff, however, succeeded in an appeal, A.S. No. 43 of 1940 judgment in which was delivered in February, 1941. Since then, the matter is said to have been pending before a Commissioner appointed to take accounts. In 1948, the plaintiff applied for the sale of the mill, which is now under lease to a third party by the first defendant for Rs. 4,000 for a period of one ear. The first defendant claims to have purchased the interests of the other partners and to hold a preponderant interest in the mill amounting to a 4/5th share. The plaintiff's right to a 1/5th share has been declared and the learned Subordinate Judge proceeded on this basis. Though he strove to bring the parties together and make them agree to some reasonable method of determining the value of the plaintiff's 1/5th share, he was unable to do so and directed the sale of the entire mill in open auction, overruling the strenuous protests of the first defendant. The plaintiff in his affidavit in support of his application valued the mill at Rs. 30,000 whereas the first defendant valued it only at Rs. 15,000. The first defendant appears to be genuinely anxious about retaining the mill for himself and also purchasing the plaintiff's share; and with this end in view he went to the length of accepting the petitioner's valuation of the mill at Rs. 30,000 and offering to pay him Rs. 6,000 as his 1/5th share. Even this the

plaintiff refused on the ground that if the mill was sold in public auction, it was likely to fetch even more than the valuation he put on it in his affidavit.

2. One of the objections taken by the first defendant: is that the learned Subordinate Judge did not go into one of his contentions, namely, that the site on which the mill stood belonged to him, though the mill building was a partnership asset. It is common ground that the preliminary judgment in the partition suit did not determine this point. It is not adverted to in the lower Court's order, although it appears as one of the grounds of objection in the counter and is also made a ground for revision. Until this point is decided, a sale of the entire mill and the site will merely lead to future complications. I have heard the parties at length and I am satisfied that the plaintiff is taking an unreasonable attitude in going to the length of rejecting the offer by the first defendant to accept even his own valuation of the mill.

3. In *Sayers v. Sayers* (1879) A.C.174, some principles applicable to the present case have been laid down. That was a dispute between a 1/8th partner and a 7/8th partner in a music hall which was a going concern. Lord Cairns (the Lord Chancellor) made the following observation on those facts which appear to me relevant to the present case.:

It appears to me that, looking at the nature of this business, and looking at the very small interest which was taken in it by the respondent, it would certainly not be desirable in this case to have a sale or to bring these premises to the hammer for the purpose of ascertaining what sum ought to be given for them.

No doubt, the Court in a suit for dissolution of partnership has power to sell even a going concern. But when one partner has a greatly preponderating interest in the concern, his interests should be considered and any proposal submitted by him for the purchase of the shares of minor partners should be given serious consideration. In the present case, the first defendant has, I think, established his bona fides in going to the length of accepting the petitioner's own valuation of the mill at Rs. 30,000 given in his affidavit in support of his application. Neither side was able to agree on any independent person to value the mill. I do not think that in the circumstances the learned Subordinate Judge acted in accordance with settled principles in directing the entire mill to be sold in Court auction at the instance of this minor partner. I have carefully considered the conflicting positions and I direct in modification of the lower court order as the most equitable solution the 1/5th share of the plaintiff to be sold in open auction with first defendant's starting bid of Rs. 6,000, which the first defendant's learned advocate says he is still willing to pay, namely, 1/5th of the plaintiff's own valuation of the mill. If there is any higher bidder, the plaintiff will benefit. This arrangement will not prejudice him in the least as he will be assured of his share of the mill on his own valuation. The Commissioner who is, taking accounts in the suit will accordingly hold the sale of plaintiff's one-fifth share in the mill as expeditiously as possible. His remuneration will be the same as that fixed by the Subordinate Judge.

4. I direct the first respondent to pay the petitioner the costs of this petition with minimum advocate's fee.

5. Incidentally, the Commissioner is directed to complete his accounts in this very long pending suit which was filed in 1935. It is high time that this long pending litigation received a final disposal.