

(1935) 10 PAT CK 0004
In the Patna High Court

Raghunath Rai Rambilas, Firm

APPELLANT

Vs

Surajmal Nagarmal, Firm

RESPONDENT

Date of Decision : 25-10-1935

Acts Referred:

Citation : AIR 1936 Patna 6

Hon'ble Judges : Mohammad Noor, J; Macpherson, J

Bench : Full Bench

Judgement

Mohammad Noor, J.—This appeal is directed against a decree of the District Judge of Muzaffarpur dismissing the plaintiff-appellant's suit for dissolution of partnership and rendition of accounts which was decreed by the trial Court.

2. The main question which was in controversy before the learned District Judge was whether the Muzaffarpur Court had jurisdiction to try the suit. It is an admitted fact that the plaintiffs have a firm at Sitamarhi in Muzaffarpur district which is a branch of a firm of the same name stationed at Calcutta. The defendants are also a firm having its head office at Calcutta. It is also admitted that the two firms entered into a partnership business for purchase and sale of jute. It was arranged that the capital was to be supplied by the defendants and that jute was to be purchased by the plaintiffs at Karnal in the district of Muzaffarpur and despatched to Calcutta where it was to be sold by the defendants; the profit or loss was to be shared by both the parties, the defendants being further entitled to charge interest on the capital advanced by them. The plaintiff instituted the present suit for dissolution of the partnership and for taking accounts of the jute business. The defence, with which we are concerned in this second appeal was that the partnership was entered into at Calcutta and therefore the Muzaffarpur Court had no jurisdiction to try the suit. The learned Subordinate Judge decided the question of jurisdiction in favour of the plaintiffs and passed a preliminary decree for accounts. On appeal the learned District Judge has reversed that decree. He disbelieved the plaintiff's evidence that the agreement for partnership was entered into at Sitamarhi and

having found that the main business of partnership had been carried on at Calcutta held that the Muzaffarpur Court had no jurisdiction to try the suit.

3. The learned Advocate for the appellants has raised two points: first, that the evidence taken on commission on behalf of the defendants ought not to have been taken in evidence, as it was not formally tendered. He relied upon a decision of the Calcutta High Court in *Kusum Kumari Roy v. Satya Ranjan Das* (1903) 30 Cal 999. That decision was based upon a practice of the Original Side of the Calcutta High Court as was pointed out in the case of *Dhani Ram v. Murli Lal Mahto* (1909) 86 Cal 566. There does not seem to be any merit in this contention. The second point taken was that as jute was to be purchased in Karnal in the district of Muzaffarpur it must be taken as another place of partnership business and therefore the suit was maintainable at Muzaffarpur. He relied upon a decision of the Madras High Court in *G. Thimmappa v. Balakrishna Mudaliar* 1926 Mad 427. It was laid down in this case that where a partnership business is carried on at two places, the cause of action arises in both the places and the Courts have jurisdiction to entertain the suit for dissolution of the partnership in either of these places. This decision was however based upon facts of its own. There was a definite finding of fact that the business in question was carried on at Bellary also and not only at Coimbatore as alleged by the defendant. It was found that the account of the partnership business was kept at Bellary. In this case it is practically admitted that the account of the partnership, namely the account of sale and of profit and loss of the jute business, was kept at Calcutta. The only account which might have been possibly maintained in the district of Muzaffarpur was about the purchase of jute; but the purchase of jute for the purposes of business cannot necessarily be the carrying on of the business of the partnership. The learned District Judge has clearly found as a matter of fact that it was at Calcutta that the accounts were kept and that there was no place of business of the partnership in Muzaffarpur. I see no merit in this appeal and dismiss it with costs.

Macpherson, J.

4. I agree.