

(1935) 12 MAD CK 0037
In the Madras High Court

Rangaswami Pillai (dead) and Others	APPELLANT
Vs	
Narayanaswami Naicken (dead) and Others	RESPONDENT

Date of Decision : 04-12-1935

Acts Referred:

Citation : AIR 1936 Mad 557 : (1936) 44 LW 271 : (1936) 70 MLJ 691

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is a suit for dissolution of partnership and accounts. Both the lower Courts have decreed the suit. There are three points raised by Mr. Krishnaswami Ayyangar before me : (i) the partnership is illegal as it is in contravention of the Abkari Act and the rules framed under it, (ii) the lower Courts were wrong in directing the taking of accounts of the partnership for the year 1922-23, (iii) that in giving direction for the taking of accounts the lower Courts have directed that certain amounts and expenses incurred by the plaintiff for the conduct of suits relating to partnership debts should be debited to the partnership. In regard to the first point as to the illegality of the partnership there are the following findings of both the lower Courts : (i) the partnership was formed at any rate a month prior to the actual grant of license for the sale of toddy, (ii) that seven persons agreed to run the toddy shops contributing capital therefor and financing the licensee under an agreement that all the seven persons should divide the profit derived equally between themselves, (iii) that it was not proved in the evidence that any person in whose name there was no license ever interfered with the business of the toddy shop, (iv) there has been no evasion of the Akbari rules in the actual conduct of the partnership.

2. On these findings, in my opinion, the case is governed by the principle of the decisions in Padmanabhan v. Badrinath Sordu (1912) 35 Mad 582, and Satyala Sanyasi Vs. Bhogavalli Sanyasi alias Bullodu, . It was argued before me with some insistence that this matter is really concluded by the Full Bench decision in Ramanayudu v. Seetharamayya 1935 58 Mad 727, and that it lays down that it

does not matter whether the partnership was formed antecedent or subsequent to the grant of the license and once it is ascertained that the object is that a partnership business in the sale of toddy was intended to be carried on, it would be illegal as infringing the provisions of Rule 27 framed under the Abkari Act. If a case is authority for what it decides, the Full Bench decision is only an authority for the proposition that where a partnership is entered into subsequent to the grant of license it would be illegal as such a partnership would amount to transfer of the license within the meaning of the said Rule 27. The Full Bench cites the case in *Padmanabhan v. Badrinath Sordu* (1912) 35 Mad 582 with approval and *Padmanabhan v. Badrinath Sordu* (1912) 35 Mad 582 lays down two propositions : (i) If two persons agree to start a business in partnership and to contribute capital therefor, there is no transfer involved in the transaction. (ii) If one person carrying on a trade and possessing stock and capital admits another into partnership with himself, making the stock and capital the joint property of both, it would be a transfer.

3. And the mere fact that partners become entitled to a share in the profits of the business in consideration of financing it would not render the transaction illegal. The Full Bench in fact seems to approve every one of the propositions laid down in this case. While stating that the case before them would fall within the second proposition laid down in *Padmanabhan v. Badrinath Sordu* (1912) 35 Mad 582, the Full Bench in *Ramanayudu v. Seetharamayya* 1935 58 Mad 727 proceeded to consider the judgment of *Ananthakrishna Ayyar, J.*, in *Vazhmuni Mudaliar v. Nathamuni* 1930 122 IC 342 and observe thus:

Ananthakrishna Iyer, J., held that it was essential that the license granted to defendant 1 should be produced and that the view of the District Judge was correct in stating that at the time the partnership was formed defendant 1 had not begun to trade in toddy and had no stock which he made the joint property of all the three partners. In this view the partnership could not be held to be illegal as there was nothing *prima facie* illegal in such a partnership under the Abkari Act.

4. This observation really seems to be an affirmance of the first proposition laid down in *Padmanabhan v. Badrinath Sordu* (1912) 35 Mad 582. At any rate, they do not seem to dissent from it. This is the view taken by *Venkatasubba Rao, J.*, in *Satyala Sanyasi Vs. Bhogavalli Sanyasi alias Bullodu*, . I therefore hold that on the facts of this case the partnership entered into is not illegal and the decision of the lower Court on this point is correct. In regard to the second point, as regards the settlement of accounts, the main contention urged is that in the plaint there was an admission that there was a settlement of accounts of the partnership in October 1923 and this admission of the plaintiff was in a way supported by all the defendants but the first. Both the Courts have come to the conclusion that; there was no settlement and directed an account of the profits of the partnership being taken even for the year 1922-23. It may be noticed that while the plaintiff alleged a settlement in October 1923 which resulted in a profit

of Rs. 1,000 defendant 1 denied only that there was any such profits; and in para. 4 of his written statement there is no denial that the accounts were settled in October 1922, though no doubt in para. 5 he proceeds to allege three settlements varying between 6th November 1924 and 1st February 1925. I must say that the finding of the lower Courts on this point is not satisfactory. They ought to have given a clear finding whether there was a settlement of accounts for the year 1922-23 and if so, when. If there was really a settlement of account there is no point in, directing accounts for the year 1922 23.

5. It seems to be common ground that there was a settlement of accounts but the parties are not agreed as to the date or what the result of that settlement was. I think it is essential that before the accounts are taken the Court of first instance should determine on this point : if there was really a settlement at all and if so, when. If it comes to the conclusion that there was a settlement of account on a particular date, it may give proper directions to the Commissioner to have accounts taken from that date. If the Court of first instance comes to the conclusion that there was no settlement of accounts, the present direction to take the accounts even for the year 1922-23 will stand. I direct that accounts be taken in the light of the above observations. In regard to the question of settlement for the year 1922-23 the parties will be at liberty to adduce fresh evidence. In regard to the third point the order of the Court of first instance directing accounts of amounts and expenses incurred by the plaintiff in defending litigation with reference to the partnership debt is correct but in so debiting the partnership the taxed costs incurred by him only should be allowed. In the result the second appeal fails and is dismissed with costs.