
(1940) 01 BOM CK 0005
In the Bombay High Court
Case No : Second Appeal No. 310 of 1938

Vazirbhai Sultanbhai Tamboli

APPELLANT

Vs

Gadmal Nathmal Marwadi

RESPONDENT

Date of Decision : 31-01-1940

Acts Referred:

Citation : AIR 1940 Bom 263 : (1940) 42 BOMLR 511

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—This is a second appeal from the decision of the Assistant Judge at Nasik. The only point to be determined is whether the plaintiff's suit for taking accounts of the partnership business is barred by the law of limitation. Both the lower Courts have held the claim to be time-barred. In January, 1933, before the plaint was filed, the plaintiff gave a notice of demand for accounts. According to the plaint that was because there was an agreement between the parties the terms whereof are recited in paragraph 2 of the plaint. The trial Court upheld the agreement but the lower appellate Court came to a contrary decision. In second appeal I cannot go into that question of fact which is based on oral evidence. The appellant's contention, if it rested on that agreement only, must be rejected.

2. It is however urged on behalf of the appellant that the inference drawn by the lower Courts, from the fact that no business was done after 1924, that there was a dissolution of partnership is erroneous. As regards the powers of the Court in second appeal, in *Wali Mohammad v. Mohammad Baksh* (1929) 32 Bom. L.R. 380, P.C. it is stated amongst other things as follows :-

The legal inference to be drawn from proved or admitted facts is a matter of law, or, in other words, the proper legal effect of a proved fact is essentially a question - of law, but the question whether a fact has been proved when evidence for and against has been properly admitted is necessarily a pure question of fact.

3. The question is when was the partnership between the plaintiff and the defendant dissolved. The Court has to find out whether the relations between the plaintiff and the defendant who had agreed to share the profits of the business carried on by them had come to an end. That is an inference which in this case is drawn from certain facts. In second appeal the question whether those facts were proved cannot be gone into. The proved or admitted facts are the following: (1) That there was no fresh business done after September/October, 1924. (2) That the shop which was rented by the partnership was closed and surrendered to the landlord at about the same time. (3) That the financial position of the firm was difficult and the plaintiff was disinclined to work and attend to the business.

4. The question is whether from these facts it is legitimate to draw an inference that the relations between the parties came to an end. On a perusal of the judgments of the lower Courts it appears that the Courts have not kept in mind the distinction between the closing of a business and dissolution of a partnership. These two things have been mixed up with the result that in considering the legal effect of each fact shown to be proved the lower Courts in my opinion have not come to a correct conclusion. When a partnership at will is formed, apart from the circumstances in which the Court may dissolve it, it can come to an end by a notice of dissolution or abandonment by one of the partners of the partnership. In the present case the only inference which can be properly drawn from the facts established is that in about October, 1924, the parties saw that further business was not profitable. Two alternatives were then before them. If they had lost confidence in each other, for the winding up of the business, one would give notice to the other and come to the Court and ask the Court to intervene. If they had not lost confidence, the selling of the goods of the partnership could be done by both or either, and if left to either, that partner would be acting as the agent of the other. The fact that no further partnership business was done does not result in a dissolution of the partnership is made clear by the Judicial Committee of the Privy Council in *Sathappa v. Subrahmanyam* [1927] AIR P.C. 70. An inference to the same effect is clearly shown to be deducible from another judgment of the Judicial Committee of the Privy Council in *Joopody Sarayya v. Lakshmanswamy* (1913) ILR 36 Mad.185 : s.c. 15 Bom. L.R. 634, P.C. In the present case the facts which are admitted, and proved show that the defendant was left with the work of selling the goods, which had remained unsold, and he also attended to the recovery of outstandings. Indeed the defendant's action in filing the darkhast (exhibit 41) where he applied for payment of the sum, for which a decree was passed in favour of both the plaintiff and the defendant, shows that he affirmed till then his power to act as an agent on behalf of the partnership. The result therefore is that although there is evidence indicating clearly that the business of the partnership had stopped there is no evidence of dissolution or intention on the part of either party to terminate the legal relation of partnership. That result followed only when the plaintiff gave notice to render accounts in January, 1933, and thereafter he filed this suit for an account of the winding up. In my opinion therefore the judgment of the lower Courts cannot be

supported and the appeal is allowed. The matter is remanded to the trial Court for disposal on merits. It is declared that the partnership was dissolved on January 16, 1933, and the plaintiff's suit is not barred by the law of limitation. The respondent will pay the costs of the appeal here and in the lower appellate Court. As regards the costs in the trial Court, on remand when the question of costs is determined the trial Court will consider it in the light of the judgment of this Court, on the questions involved in the appeal.