(1989) 10 KL CK 0005

In the High Court Of Kerala

Case No : A.S. No''s. 159 of 1978 and 137 of 1980

V.P. Veerankutty Haji and Others — APPELLANT

Vs

V.P. Kunhalankutty and Others — RESPONDENT

Date of Decision : 31-10-1989

Acts Referred:

Citation : (1989) 10 KL CK 0005

Hon'ble Judges : Sivaraman Nair, J;Shamsuddin, J

Bench : Division Bench

Advocate : V.P. Mohankumar and Prabha K. Pillai, for the Appellant; P.N.K. Achan and N.N. Sujanapalan for Respondent No. 1 and K.K. Ravindranatha and P.C. Sasidharan for Respondent Nos. 8 to 15, for the Respondent

Judgement

Shamsuddin, J.—A.S. No. 159 of 1978 arises out of O.S. No. 42 of 1977 and A.S. No. 137 of 1980 arises out of O.S. No. 126 of 1971 on the file of the Subordinate Court, Kozhikode. The above suits were tried jointly and evidence was recorded in O.S. No. 126 of 1971. Against the judgment and decree in O.S. No. 126 of 1971, the 1st Defendant filed A.S. No. 78 of 1978 before the District Court, Kozhikode and against the judgment and decree in O.S. No. 42 of 1977, the Plaintiff filed A.S. No. 159 of 1978 before this Court. As both the appeals arise from a common judgment, this Court in C.M.P. No. 16449 of 1979 withdrew A.S. No. 78 of 1978 to this Court and renumbered as A.S. No. 137 of 1980. The 1st Defendant has filed a Cross Objection in A.S. No. 159 of 1978.

2. O.S. No. 126 of 1971 was filed by Plaintiff for rendition of accounts of a partnership business known as M/s V.P. Alikutty Haji and Co. and also for partition of assets of the partnership firm. O.S. No. 42 of 1977 was filed by the Plaintiff for a declaration that a gift deed executed by deceased Alikutty Haji on 27th September 1967 in favour of 1st Defendant evidenced by Ext. B-1 is void, inoperative and unenforceable and for setting aside the same and for partition of properties described in plaint A and B schedules and allotment of 14 shares out of 64 shares to the Plaintiff together with mesnc profits.

3. We shall first deal with. A.S. No. 159 of 1978 which arises out of O.S. No. 42 of 1977. Plaintiff and the 1st Defendant therein are sons of Alikutty Haji and Defendants 2 to 5 are daughters of Alikutty Haji, who died on 9th November 1968. According to the Plaintiff, the plaint schedule properties belonged to Alikutty Haji along with other items of properties. All the properties belonging to Alikutty Haji other than the plaint schedule properties were divided between the Plaintiff and Defendants 1 to 6 under partition deed evidenced by Ext. B-2, dated 21st November 1969. Admittedly, the plaint schedule properties were not included in the partition. It is the Plaintiff''s case that Ext. B-1, a gift deed executed by deceased Alikutty Haji on 27th September 1967 is void and unenforceable and is liable to be set aside. It takes in items 1 to 4 of plaint A schedule properties. In regard to items 5 and 6, the contention of the 1st Defendant is that they are dedicated as wakf by Alikutty Haji and his brother Kunhalikutty under document No. 3009/1912, which was destroyed during the Mappila rebellion and that taking advantage of this position, the Plaintiff has claimed right in respect of these items also.

4. The trial Court upheld the gift deed and found that items 1 to 4 covered by the gift deed are not partible. However, it took the view that items 5 and 6 are partible item and granted a decree in favour of the Plaintiff for partition of those items and allotment of his share. It also found that the value of a lorry described in B Schedule as item 1 is also liable to be partitioned. The trial Court also directed that quantum of mesne profits will be fixed in the final decree proceedings. It is challenging the finding of the trial Court that items 1 to 4 of the plaint A schedule are not liable to be partitioned, that the Plaintiff filed A.S. No. 159 of 1978. In that appeal, the 1st Defendant filed cross objection challenging the finding of the trial Court that items 5 and 6 are partible.

5. In O.S. No. 126 of 1971, the trial Court passed a preliminary decree for rendition of accounts in relation to the partnership firm M/s V.P. Alikutty and Co. In A.S. No. 137 of 1980, the 1st Defendant has challenged this finding. While the appeals were pending, the 1st Defendant died and his legal representatives were brought on record.

6. In A.S. No. 159 of 1978, the learned Counsel for the Plaintiff contended that the view taken by the trial Court upholding the validity of the gift deed evidenced by Ext. B-1 is unsustainable. In this connection, the learned Counsel for the Plaintiff pressed into service the evidence of P.W. 3 who is alleged to be the doctor, attending on Alikutty Haji from 1966 onwards. P.W. 3 deposed that Alikutty Haji underwent an operation for strangulated hernia at Thangal''s Hospital, Calicut on 8th September 1967, that he took Alikutty Haji back to his house at Kondotty on 23rd September 1967 and that from 1966 onwards, till he left Kondotty, Alikutty Haji was not in a position to reply to any question put to him. He also stated that Alikutty Haji was suffering from hypertension, diabetis and uremia and also become unconscious from 1966 onwards and was not in possession of his mental faculties. He further stated that on 23rd September

1967, Alikutty Haji was in a bad condition and he was in a semi-comatose stage and was not in a position to speak or to do anything.

7. In the cross-examination, P.W. 3 stated that lie was working as a consulting physician for medical stores, Kondotty P.C.C. Society and that one Mohammedkutty, son-in-law of deceased Alikutty Haji was the Secretary of P.C.C. Society, that he had not kept any records for treatment and that when Alikutty Haji was taken to the hospital for operation, both the Plaintiff and the 1st Defendant accompanied him to the hospital. According to him, Alikutty Haji did not recover from his disease and he was in comatose stage. He admitted that he did not know who was personally attending on Alikutty Haji at the hospital. He denied the suggestion that he was giving evidence at the instance and instigation of Plaintiff Kunhalikutty and Mohammedkutty.

8. The learned Counsel also relied on the evidence of P.W. 1, as Plaintiff. He stated that after the death of Alikutty Haji, there was a partition, but all the properties belonging to Alikutty Haji were not included therein, that it was the 1st Defendant who gave instruction for preparation of the document and that items 1 to 4 were not gifted by his father to the 1st Defendant. According to P.W. 1 at the time when Ext. B-1 came into existence, his father did not have either mental or physical capacity to execute a document. He also denied the contention of the 1st Defendant that items 5 and 6 are wakf properties. He admitted that the property covered by Ext. B-3, which is another document purported to have been executed by Alikutty Haji was not included in this partition or in the earlier partition. He also admitted that the 1st Defendant was receiving the rent of the school building from 1967 onwards, that he had never demanded from the 1st Defendant his share of the rent received by the 1st Defendant, that it was the 1st Defendant who used to get repair of the school done and that the 1st Defendant was taking the income from the coconut trees in the school compound and paying the tax.

9. As against this evidence, Counsel for the 1st Defendant relied on the evidence of D. Ws. 1 to 3. The 1st Defendant as D.W. 1 gave evidence that items 1 to 4 in the plaint schedule were gifted by his father to him under Ext. B-1 document, that his kudiyirippu is situated just on the southern side of these properties, that items 5 and 6 belonged to his father and brother Kunhalikutty that they dedicated these properties as wakf and that therefore items 1 to 6 also are not available for partition. He also stated that Ext. B-1 document was written by D.W. 2 on the instruction of his father, that he had seen his father signing the document, that it was registered at the residence of Alikutty Haji, where the Plaintiff, his wife and children and the 6th Defendant were also living at the time, that the Plaintiff was present in the house at the time of registration and that nobody had any dispute regarding the validity of the document. He also stated that out of the two attestors of the document, Veerankutty died and Unneenkutty, the other testator was laid up with rheumatic complaint and that his father was fully conscious when the document was executed and till his

death. He further stated that two other documents were also executed on the day by his father, one in favour of the sister of the mother of the Plaintiff and the Defendants evidenced by Ext. B-3 and the other evidenced by Ext. B-4 in favour of Bangalathu Erammathu, that before registration, the Sub Registrar took the deposition of his father and that Ext. B-5 is the certified copy of the same. He also said that on the date of gift deed, the property was put in his possession and that thereafter he was taking the income from the property and was paying the tax. The building in items 1 to 4 was rented out to the Government for running a school and after the gift deed, the rent of the building was collected by him. He wrote a letter to the Headmaster along with the gift deed requesting to pay the rent to him on the strength of the gift in his favour. Ext. B-6 is the reply given by the Assistant Educational Officer to his petition. Ext P-7 is the proceedings of the District Educational Officer dated 17th September 1968 recording transfer of ownership of the building to the Plaintiff with effect from 27th September 1975. Ext. B-8 is the covering letter sent while returning the gift deed. D.W. 1 stated that it was because items 5 and 6 are wakf properties, that those items were not included in the partition, that wakf deed was destroyed that it was not possible to obtain a registration copy of the document and that Ext. B-9 is the extract from the register kept in the Office of the District Registrar. He produced Exts. B-10, B-11 and B-12, the receipts for payment of tax in respect of properties gifted to him. He admitted that in 1957 his father was admitted in Thangal''s Nursing Home for operation for hernia and that he was not aware of the registration of items 5 and 6 as wakf properties in the Wakf Board.

10. D.W. 2 is the scribe of Ext. B-1 document. He deposed that he knew Alikutty Haji from 1952 onwards and that he had written documents including Exts. B-1, B-3 and B-4. According to him, Exts. B-1, B-3 and B-4 were written on the instructions of Alikutty Haji and he was conscious at the time when it was prepared and Plaintiff and the 1st Defendant were present there at the time of registration.

11. D.W. 3, the Sub Registrar who registered the documents, is another witness whose evidence was very strongly relied on by the Counsel for the 1st Defendant. He registered Exts. B-1 to B-3. He deposed that it was at the residence of Alikutty Haji that he registered Exts. B-1 to B-3, that it was Alikutty Haji himself who presented the documents for registration before him, that when the document was registered, Alikutty Haji was possessed of his faculties so as to know the contents of the documents, that he had taken deposition from him before registration, that Ext. B-5 is the certified copy of the same and that Alikutty Haji has signed Ext. B-5 deposition. He did not see Alikutty Haji signing Ext. B-1 document, but he saw Alikutty Haji signing Exts. B-2 and B-3 documents. D.W. 3 further stated that at the time of registration of these documents Alikutty Haji was fully conscious and that the Plaintiff and Defendant were present at the time of registration.

12. In the cross-examination, he stated that he was not aware of the kind of

treatment, which was given to Alikutty Haji of the disease from which he was suffering, and that when Alikutty Haji signed the documents, his hand was unsteady. Initially he stated in chief examination that he was not in a position to say whether he came to the house for registration in a car or by walk, but subsequently, he corrected by saying that a car was brought by the scribe and that it was in that car that he went to the house for registration.

13. The learned Subordinate Judge, who had occasion to hear the witnesses and watch their demeanour chose to believe the evidence of D.Ws. 1 to 3 and uphold the gift of items 1 to 4 in favour of the 1st Defendant under Ext. B-1.

14. The learned Counsel for the Plaintiff however vehemently contended that P.W. 3 is the doctor who was attending on Alikutty Haji and that there is no reason to disbelieve him. He also attacked the evidence of D.W. 3, Sub Registrar as highly interested. According to the Counsel D.W. 3 was friendly with the 1st Defendant. Nothing has been brought out to show that D.W. 3 had any preference for the 1st Defendant. It was also pointed out by the learned Counsel that D.W. 3 did not see Alikutty Haji executing the document. We do not think that there is any legal requirement that the executant should sign the document before the Registrar. No rule is brought to our notice to establish such requirement.

15. D.W. 3 stated that he registered three documents namely Exts. B-1, B-3 and B-4 executed by Alikutty Haji and that before registration he had taken the deposition evidenced by Ext. B-5 from Alikutty Haji that he was fully satisfied that he was conscious at the time of registration of Exts. B-1, B-3 and B-4, documents and that Alikutty Haji was aware of the contents of the documents. The evidence of D.Ws. 2 and 3 show that the Plaintiff was present at the time of registration. According to P.W. 1 at the time of registration, the Plaintiff his wife and children were living at the residence of Alikutty Haji. These items of evidence have not been seriously challenged in cross-examination.

16. Learned Counsel for the Plaintiff however brought to our notice certain minor discrepancies in the evidence of D.W. 3 as to how he came to the residence for registration. Though he initially stated at one place that he went by walk, he corrected it by saying that D.W. 2 the scribe of the document brought a car and that he went in that car. This discrepancy might have occasioned as a result of lack of memory. There is overwhelming oral and documentary evidence in the case that Exts. B-1, B-3 and B-4 were registered at the residence of Alikutty Haji. Therefore minor discrepancy in his evidence as to how he went to the residence of Alikutty Haji does not in any way affect the credibility of his testimony, that he went to the residence of Alikutty Haji and registered the documents. We also do not find any reason for D.W. 3 to speak falsehood so as to deprive the Plaintiff of his share in the property of his father. Plaintiff examined as P.W. 1 stated that he never challenged Exts. B-3 and B-4 which were also documents executed by Alikutty Haji on the same date. Ext. B-3 is executed in favour of maternal aunt of the Plaintiff and the 1st Defendant and

Ext. B-4 is another document executed in favour of a stranger. Ext B-2 is the partition deed effecting partition of the properties of Alikutty Haji after his death and admittedly the plaint schedule properties as well as the property covered by Exts. B-3 and B-4 were riot included therein. Ext. B-1 gift deed takes in items 1 to 4 of the plaint A schedule property and it is not disputed that there was building in items 1 to 4 which was rented out to the Government for running a school. It is difficult to believe that at the time when partition Ext. B-2 was effected the Plaintiff was not aware of items 1 to 4 where the school building is situated. Plaintiff as P.W. 1 admitted that his children were studying in the school. We feel that the conduct of the Plaintiff is not insisting on inclusion of items 1 to 4 in Ext. B-2 partition deed is clearly indicative of the fact that he was not inclined to challenge at that time the gift in favour of 1st Defendant. As indicated above, the evidence of D.Ws. 1 to 3 clearly establishes the presence of the Plaintiff at the time of registration. If the wife and children of the Plaintiff were living at the residence of Alikutty Haji at the time of registration as stated by D.W. 1 it is difficult to conceive that the Plaintiff did not know about the registration. P.W. 3 admitted that he was a consultant in the hospital run by P.C.C. Society, Kondotty of which Mohammedkutty the son-in-law of Alikutty Haji was the Secretary. P.W. 3 stated that he was treating Alikutty Haji from 1966 onwards, that during the entire period of his treatment he was unconscious or in semicomatose condition and that Alikutty Haji was not in a position to reply to any questions put to him. D.Ws. 2 and 3 are independent witnesses and there is no reason for them to give false evidence on the mental condition of Alikutty and the presence of the Plaintiff. There are other documentary evidence and circumstances which we shall presently advert to, indicating that the evidence of P.W. 3 cannot be safely accepted.

17. Exts. A-19 to A-29 are returns submitted on behalf of V.P. Alikuttv Haji and Co. A-19 is dated 29th May 1967, A-20 is dated 27th June 1967, A-21 is dated 27th July 1967, Ext. A-22 is dated 25th August 1967, Ext. A-23 is dated 20th October 1967, A-24 is dated 20th November 1967 and A-25 is dated 20th December 1967. In these documents declarations were made by Alikutty Haji himself. In Ext. A-26, A-27, A-28 and A-29, M. Kuttirayan, in the capacity as Manager made the declarations. These are all documents produced by the Plaintiff himself. The Plaintiff has no case that these documents are not genuine. Having produced these documents as evidence on his side it was also not open to the Plaintiff to contend that they are not genuine. So the story put forward by P.W.3 that Alikutty Haji was in a state of unconsciousness from 1966 till his death or was in a semicomatose condition, and that he was unable to understand questions and reply cannot be believed. In Ext. X-12 file, we find an application dated 1st August 1967 signed by Alikutty Haji for adjournment of assessment proceedings on the ground of ill-health and another authorisation dated 8th August 1967 signed by Alikutty Haji authorising the 1st Defendant to appear before the Agricultural Income Tax Officer and give evidence and produce records on behalf of Alikutty Haji.

18. The learned Counsel invited our attention to a decision of the Privy Council in AIR 1939 117 (Privy Council) and submitted that there is no acceptable evidence of execution of the document by Alikutty Haji. In the above ruling the Privy Council held that one of the essentials of attestation is that each of the attesting witnesses must have signed the instrument in the presence of the executant. D.W.3 the Sub Registrar has not seen Alikutty Haji signing Ext. B-1; nor has D.W.2 the scribe or D.W. 5 the attesting witness seen Alikutty Haji signing the document and that in the absence of such evidence the lower Court should have found against proper execution of the document. It is no doubt true that D.W.3 has not seen Alikutty Haji signing the document but he had taken the deposition of Alikutty Haji. Ext. B-5 is the deposition. In Ext. B-5 Alikutty Haji stated that the three documents (Exts. B-1, B-3 and B-4) presented for registration were read out to him, that it was after understanding the contents that he signed the documents and that he was fully conscious. One of the attestors to Ext. B-1 Veerankutty died. The other attestor D.W. 5 was examined on behalf of the 1st Defendant but he pretended that he did not remember anything about the gift deed executed by Alikutty Haji though he had to admit that he attested the document. He stated that he did not see Alikutty Haji signing the document. He was treated as hostile and was cross examined. We do not find any reason to discard Ext. B-5 deposition recorded by the Sub Registrar. In this connection we would like to refer to the following observation of the Privy Council in Gangamoyi Debi v. Troiluckhyanath Chowdhri ILR Cal. 537 in regard to the endorsement of the Registrar:

The registration is a solemn act to be performed in the presence of a competent official appointed to act as Registrar, whose duty it is to attend to parties during the registration and see that the proper persons are present and are competent to act and are identified to his satisfaction; and all things done before him in his official capacity arid verified by his signature will be presumed to be duly done and in order.

In the light of evidence referred to above and the principle enunciated in the ruling of the Privy Council in Gangamoyi Debi''s case ILR Cal. 537 (supra), we are of the view that execution and registration have been properly proved and are beyond challenge. It follows that items 1 to 4 are not available for partition.

19. There is a cross-objection filed by the 1st Defendant challenging the finding of the trial Court that the 1st Defendant has not succeeded in establishing that items 5 and 6 are wakf properties. There is no evidence of registration of these properties as wakf properties before the Wakf Board.

20. The learned Counsel for the first Defendant vehemently relied on the southern boundary mentioned for item 11 of A schedule property allotted to the 1st Defendant in Ext. B-2 partition among the legal heirs of Alikutty Haji. It is shown as Padinjare Valiya Peedikakkal Paramba dedicated as wakf. The eastern boundary of that property is also mentioned as Valiyaveetil Paramba. In the circumstances, we are not in a position to definitely say that the recital of the

southern boundary of item 11 in A schedule to Ext. B-2 relates to item 6 of the plaint schedule property as contended on behalf of the 1st Defendant. The extract of the deed produced is also not sufficient to establish that it relates to items 5 and 6 of the plaint schedule property. There is no other acceptable evidence by the 1st Defendant to prove his contention regarding items 5 and 6. In the circumstances there is no merit in the cross-objection. We confirm the finding of the learned Subordinate Judge that items 5 and 6 are liable to be partitioned.

21. In A.S. No. 137 of 1980 which arises out of O.S. No. 126 of 1971, learned Counsel for the 1st Defendant contended that the decree passed by the lower Court directing rendition of accounts of the firm "V.P. Alikutty Haji and Co." and also directing that on failure of the 1st Defendant to produce the accounts, the Commissioner would have to come to a decision about the assets and liabilities of the firm with reference to Exts. A-7 to A-9 and A-30 to A-33 and any other material placed before the Court during the final decree proceedings is incorrect and unsustainable. There is also a direction in the decree that if no amount can be arrived at on the basis of the above accounts, then the liability of the 1st Defendant would be decided on the basis of the decision in Surendranath Sud (Dead) by L.Rs. Vs. Standard Vacuum Oil Co. and Others, . It was also found that liability of the 1st Defendant is from 30th June 1965. A preliminary decree was also passed for rendition of accounts.

22. Learned Counsel for the legal representative of the 1st Defendant challenged these directions in the decree. He contended that there is no evidence to show that the 1st Defendant was conducting the partnership business from 30th June 1965, that Alikutty Haji himself was the Managing Partner till his death and that therefore no question of rendition of accounts by the 1st Defendant relating to partnership business arises.

23. Ext. A-6 dated 20th January 1966 is a copy of the letter sent by 1st Defendant on behalf of M/s V.P. Alikutty Haji and Company to the Income Tax Authorities. It was regarding production of accounts before the tax authorities. Ext. A-16 is another letter dated 8th November 1967 which the 1st Defendant signed on behalf of the firm regarding the opening of a branch at Chalakudy. Exts. A-10 to A-12 are documents regarding a hundi drawn, on 20th January 1966 by the 1st Defendant on behalf of the firm. These letters as well as Ext. A-16 letter sent by 1st Defendant on behalf of the firm to the Sales Tax Authorities would show that 1st Defendant was managing the affairs of the firm. Further question to be considered is whether the firm was in existence after the death of Alikutty Haji. After the death of Alikutty Haji, 1st Defendant sent Ext. A-13 return of income for the year 1968-69 to the Income Tax Authorities. Ext. A-13 was signed by 1st Defendant on behalf of the firm. Alikutty Haji died on 9th November 1968. Exts. A-13 and A-9 would show that the 1st Defendant was in possession of the accounts. In the assessment order, the profit derived by the Company was shown as Rs. 10,780 and the shares of the Plaintiff and the 1st

Defendant were shown as Rs. 3,594 each. In Ext. A-7 assessment order dated 31st October 1966 there is a statement that all the partners except V.P. Alikutty Haji actively participated in the conduct of the business. Such a statement is found in Ext. A-8 assessment order for the accounting year 1967-68 and also in Ext. A-9. In the circumstances, it is clear that preceding the death of Alikutty Haji, Sri V.P. Kunhalankutty Haji, the Plaintiff and the 1st Defendant were running the business and since Alikutty Haji was bedridden, he was not actively participating in the conduct of the business. Exts. X-4 to X-10 relate to hire purchase agreement in regard to lorry bearing registration No. KLD 5695. Ext. X-4 is a letter signed by the 1st Defendant on 26th November 1968 for the purpose of a loan of Rs. 14,000 on the strength of a hire purchase agreement in relation to vehicle No. KLD 5695. Ext. X-4 is signed by 1st Defendant as the Managing Partner of V.P. Alikutty Haji and Go. Ext. X-5 is also a letter sent in connection with the hire purchase arrangement for the lorry, which also was signed by the 1st Defendant on behalf of V.P. Alikutty Haji and Co. In regard to this arrangement, the 1st Defendant also produced a solvency certificate from the Village Officer and that is Ext. X-6. Ext. X-7 is the printed proposal form regarding the hire purchase of motor vehicles from Sampath Financiers, Calicut. In this document also, 1st Defendant signed as the Managing Partner of V.P. Alikutty Haji and Co. Ext. X-9 is a promissory note executed by the 1st Defendant on behalf of the firm in favour of Sampat Financiers regarding the hire purchase loan. Ext. X-10 is the notification of termination of the agreement of hire purchase sent to the Regional Transport Officer, Kozhikode. In this also, the 1st Defendant has signed on behalf of the firm. These documents clearly show that the 1st Defendant, was conducting the business after the death of Alikutty Haji at least till 26th November 1968. Exts. A-19 and A-29 are certified copies of monthly return submitted to Sales Tax Authorities for M/s V.P. Alikutty Haji and Co. for the months of April 1967 to March 1968. These documents and Exts. A-32 to A-34 audited accounts would show that the firm was sending returns in respect of the firm and that there were audited accounts for the firm. In the circumstances, it is clear that the accounts of the firm were available and that the 1st Defendant was managing the business and handling the affairs of the partnership. Though the 1st Defendant contended that the Plaintiff was managing the affairs of the firm, documentary evidence referred to above does not support the contention of 1st Defendant. It is also not born out that Plaintiff was actively participating in the business. It is in these circumstances that the lower Court found that 1st Defendant is liable for rendition of accounts.

24. It is however contended by learned Counsel that the relief of rendition of accounts granted against 1st Defendant by the lower Court has become infructuous since 1st Defendant died pending disposal of the appeal. According to learned Counsel, legal heirs of 1st Defendant cannot be Saddled with liability to render accounts.

25. In this connection, reliance has been placed by learned Counsel appearing for legal representatives of 1st Defendant, on a Division Bench ruling of the Madras

High Court in Karri Venkayyamma Vs. Goluguri Tirapayya, . Court held thus:

It is settled law that the loyal representative of a partner is not liable to vender accounts to the other partners. The other partners must allege and establish the liability of the deceased partner, and the amounts so asc rtained could be recovered from the assets of the deceased in the hands of his legal representatives.

We are in respectful agreement with the proposition laid down in the above ruling. However, there are Exts. A-7 to A-9 which would show the income of the firm in respect of assessment years 1966, 1967 1968 and 1969. Shares of profit of each individual partner shown theire in can be accepted as income of the firm during relevant years and liability of deceased partner can be ascertained on the basis of these documents and the amounts so found liable can be recovered from the assets of 1st Defendant in the hands of legal representatives. Of course, it is open to legal representatives of 1st Defendant to adduce evidence in final decree proceedings on the question whether amounts shown as share of profits of the Plaintiff were drawn by Plaintiff. We set aside the decree for rendition of accounts passed against 1st Defendant and instead direct the lower Court to deter mine the share of profit of Plaintiff on the basis of Exts. A-7 to A-9 in final decree proceedings. Legal representatives of 1st Defendant are at liberty to adduce evidence on the question whether Plaintiff has drawn share of profits which belonged to him in respect of these years. Amounts finally ascertained as liable from 1st Defendant to Plaintiff in final decree proceedings, can be recovered from the assets of 1st Defendant in the hands of his legal representatives.

26. In the result, A.S. No. 159 of 1978 and Cross Objection are dismissed and A.S. No. 137 of 1980 is disposed of as above. The parties will bear their respective costs.

