

PRIVY COUNCIL

Ram Singh

Vs.

Ram Chand

P.C.A. No. 29 of 1923

(Lords Dunedin Phillimore, CJ Sir John Edge, J. Mr. Ameer Ali and Sir Lawrence Jenkins.JJ.)

30.10.1923

JUDGMENT

Lord Dunedin J.

1.This case is of the simplest nature. A gentleman who has a partnership at will brings a suit for a declaration of dissolution. The learned Judge of the District Court before whom the case depends finds and it is declared "that this partnership shall be deemed to have been dissolved on 11th February, 1911, the date of the notice of the plaintiff to the defendant," and then he makes a declaration in ordinary form as to accounts being taken, but he puts in one particular finding, No. 3:-

"An account of all dealings and transactions between plaintiff and defendant from December, 1897, with the instructions that the debit of Rs. 7,559 against defendant and credit of Rs. 3,133 in plaintiff's favour are forgeries and are to be struck off, and all entries relating to interest payable to either party are wrong."

2. Both parties appealed against that finding. On appeal, so far as the finding of fraud is concerned, the High Court are entirely in accordance with the learned Judge and they say in their judgment:-

"From the evidence on the record it is therefore clear that the plaintiff has been guilty of gross misconduct. He has destroyed the old account books, has falsely prepared a balance sheet, Exhibit P. W. 1., has made false entries in the books and has tried to deprive the firm of a valuable asset."

3. If they had stayed there all would have been well, but they go on to say this :-

"Having done all this he has had the audacity of coming into Court with a prayer for an equitable relief.'

4. But it is not an equitable relief, for which he is asking. When it is a partnership at will a partner is entitled to dissolution; it is a legal right, under the Code and under the contract. Then the learned Judges quote a passage from "Lindley on Partnership" which deals with the circumstances in which a Court may order dissolution of partnership during the term, which, of course, has nothing to do with this case.

5. The appellant here has been forced to admit that he cannot ask for any alteration of paragraph 3 which has been read, and the respondent cannot support the judgment of the High Court, which says that there is to be no relief given; but on the question of relief he practically says: "There is no room for an account here at all, because we have already seen that this gentleman has falsified all the account books, and there is nothing to account upon. That is really trying to make this Board do what the Commissioner ought to do when the accounts are being taken.

6. In the circumstances it is quite clear that the appeal must be allowed with costs, and the decree of the District Court restored. With regard to the costs of the appeal to the High Court which were ordered to be paid by the present appellant, their Lordships think that having regard to what took place there, neither party should have any costs, and any costs, paid under the High Court's order must be repaid. The future costs, which will be incurred on the further proceedings in the District Court will of course be in the discretion of that Court. Their Lordships will humbly advise His Majesty accordingly.

Appeal allowed.