

Gattu Lal

Vs

Gulab Singh and Another

Civil Appeal No. 499 of 1971

(O. Chinnappa Reddy, R. B. Mirsa JJ)

18.01.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. The appellant, Gattu Lal entered into a partnership with Jagdeo Singh to 'work a forest' to manufacture coal, the forest having been taken on lease by Jagdeo Singh from Thakur Lallu Singh. The partnership was for a period of five years from June 28, 1943 and the agreement of partnership was oral. About three months after the formation of the partnership, Jagdeo Singh assumed exclusive control of the forest and altogether excluded Gattu Lal from any benefit in the partnership. Thereafter on July 13, 1944, Gattu Lal entered into what is described by the courts below as 'sub-partnership' with Thakur Gulab Singh, the son of Lallu Singh, aged about 19 or 20 years at that time. It is not disputed and indeed it cannot possibly be disputed that the arrangement was really with Thakur Lallu Singh, the father, but in the name of Thakur Gulab Singh, the son. This is obvious from a reading of the evidence of Gulab Singh himself. The deed of sub-partnership recited the circumstance that Gattu Lal had entered into a partnership with Jagdeo Singh for working the Hathibar forest to manufacture coal and that such of then had an eight annas share therein. By the deed of sub-partnership, Gulab Singh was given a half share in the eight annas share of Gattu Lal. Gattu Lal was to be entitled to his share of the profits and losses from the date of the sub-partnership. It was then recited in the deed of sub-partnership that Jagdeo Singh was giving some trouble and that the partnership of Gattu Lal and Jagdeo Singh had not been reduced to writing and got registered. If Jagdeo Singh persisted in his altitude, Gattu Lal would have to take legal action against him. If thereafter possession of the forest was obtained then Gulab Singh and Gattu Lal were to carry on the partnership business each having a half share in the profits and losses. Gulab Singh was to supply the funds whenever Gattu Lal so demanded. If Gulab Singh refused or hesitated to supply the funds, Gattu Lal had the right to break the partnership. If Gattu Lal was to take legal action against Jagdeo Singh, Gulab Singh was to bear all expenses and after accounts were settled Gulab Singh and Gattu Lal were liable each for one half at the time of making the accounts of the partnership firm Gulab Singh Gattu Lal. The partnership was to last for five years which term could be extended by mutual consent. A few days earlier, Gattu Lal had executed a 'Chhithi' referring to the proposed sub-partnership and acknowledging receipt of a sum of Rs. 251 for meeting the expenses. In this 'chhithi' also, it was stated that if the dispute between Jagdeo Singh and Gattu Lal was not settled mutually and if Gattu Lal was required to file a suit, Gulab Singh was to bear all the expenses which might have to be incurred. Thereafter the amount was to be adjusted half and half in the accounts. Notwithstanding the so-called sub-partnership, nothing further happened and Jagdeo Singh continued to work the forest and manufacture coal all by himself, to the total exclusion of Gattu Lal. Ultimately Gattu Lal was forced to file a suit for dissolution of partnership and rendition of accounts against Jagdeo Singh. A preliminary decree was passed on July 7, 1952. An appeal and

second appeal by Jagdeo Singh were dismissed. A final decree for Rs. 3,63,836 was passed by the trial court in favour of Gattu Lal. On appeal by Jagdeo Singh and further second appeal by him to the High Court, the amount was reduced to Rs. 2,86,078-62 p. and costs. The Supreme Court refused to grant special leave against the judgment of the High Court which thus became final. It is the admitted case of the parties that neither Lallu Singh nor Gulab Singh contributed even a pie towards the expenses of litigation. In fact, apart from the sum of Rs. 251 said to have been paid to Gattu Lal at the time of the passing of the 'chhithi', it is not claimed by Gulab Singh that any other or further amount was ever paid by Gulab Singh or Lallu Singh to Gattu Lal. On the other hand, when Lallu Singh was called as a witness to depose on behalf of Gattu Lal in the suit filed by him against Jagdeo Singh, he turned hostile and denied all knowledge of any partnership between Gattu Lal and Jagdeo Singh. The plaintiff Gattu Lal was, therefore, forced to seek the permission of the court to declare the witness hostile and to cross-examine him. He was granted permission to so cross-examine Lallu Singh. Obviously if there was no partnership between Jagdeo Singh and Gattu Lal (the knowledge of the existence of which was denied by Lallu Singh), there could be no question of sub-partnership between Gattu Lal and Lallu Singh's son, Gulab Singh. As we stated at the outset, Gulab Singh was only a tool and the real party to the sub-partnership was Lallu Singh himself. Despite the attitude taken by Lallu Singh in the suit filed by Gattu Lal against Jagdeo Singh in which Gattu Lal ultimately obtained a decree for Rs two lakhs and eighty six thousand and odd Lallu Singh's son, Gulab Singh unabashedly and unashamedly filed the suit out of which the present appeal arises for a share of the amount which had been decreed in favour of Gattu Lal. The suit was resisted on various grounds and was ultimately dismissed by the trial court. On appeal by the respondent, the High Court decreed the suit on the basis of the alleged sub-partnership. It is not necessary for us to discuss the various questions which were canvassed before the trial court and the High Court. One of the grounds on which the suit was dismissed by the trial court was that whatever rights Gulab Singh had under the deed of sub-partnership, had been abandoned by him and therefore, he was not entitled to claim any share in the fruits of the decree obtained by Gattu Lal on the basis of the deed of sub-partnership. This finding was reversed by the High Court, in our view for no good reason. The High Court observed that they found nothing in the conduct of the appellant before them which could have induced the respondent (the present appellant) to believe that there was any abandonment by Gulab Singh. We are afraid it is impossible to agree with this finding. Not only did Gulab Singh not spend a pie towards the litigation started by Gattu Lal against Jagdeo Singh, his father deliberately gave false evidence denying knowledge of the very partnership between Gattu Lal and Jagdeo Singh which in turn was the basis of the sub-partnership. Yet Gulab Singh has now the audacity to file the present suit to recover a share of the fruits of the decree obtained by Gattu Lal ! As we said earlier, Gulab Singh's evidence itself shows that it was Lallu Singh that was the moving spirit in the formation of the sub-partnership and matters connected with it. The High Court completely ignored the conduct of Lallu Singh in the suit filed by Gattu Lal against Jagdeo Singh. In their judgment, the High Court extracted the following passage from Lindley on Partnership, twelfth edition, (pp. 499-500) :

Independently of the Statutes of Limitation, a plaintiff may be precluded by his own laches from obtaining equitable relief. Laches presupposes not only lapse of time, but also the existence of circumstances which render it unjust to give relief to the plaintiff; and unless reasonable vigilance is shown in the prosecution of a claim to equitable relief, the court, acting on the maxim *vigilantibus non dormientibus subveniunt leges*, will decline to interfere.

The doctrine of laches is of great importance where persons have agreed to become partners, and one of them has unfairly left the other to do all the work, and then, there being a profit, comes

forward and claims a share of it. In such cases as these, the plaintiff's conduct lays him open to the remark that nothing would have been heard of him had the joint adventure ended in loss instead of gain; and a court will not aid those who can be shown to have remained quiet in the hope of being able to evade responsibility in case of loss, but of being able to claim a share of gain in case of ultimate success.

We entirely agree with the principle enunciated. The High Court was wrong in not applying the principle to the facts of the present case. The judgment of the High Court is set aside and that of the learned District Judge restored. The appeal is allowed with costs throughout.

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