

**SUPREME COURT OF INDIA**

Bijendra Pd.

Vs.

Duleshwari Devi

C.A.No.6062 of 1998

(S. N. Variava and Arijit Pasayat JJ.)

15.07.2004

**ORDER**

1. This Appeal is against the Judgment of the Patna High Court dated 7th January, 1998 wherein the Letters Patent Appeal has been dismissed mainly on the ground that the Suit was barred by the provisions of Section 69 of *The Indian Partnership Act, 1932* (hereinafter referred to as "The Act"). The Court negated an argument that there were number of other issues which were required to be dealt with on the ground that when the Suit was not maintainable under Section 69 of the Act, no question arose for considering the other issues.

2. It must be mentioned that even the First Appellate Court has dismissed the First Appeal on the ground of the Suit was not maintainable under Section 69 of the Act. Of course, the First Appellate Court has, in passing, mentioned that on the facts and circumstances of the case as well as on evidence both oral and documentary they saw no reason to differ with the findings of the Trial Court but there is no discussion on the evidence or on any other issue.

3. Undoubtedly, the Suit filed by the Appellants proceeds on the footing that there was a partnership firm. The Appellants claim accounts and if necessary dissolution of that firm. The Courts below have concluded that on the date the partnership was entered into, the Appellants were minors and thus therefore there could be no partnership. This is a conclusion with which we can find no fault.

4. But that does not make the Suit not maintainable. A question still arises whether there was a joint venture between the parties. On this aspect Issues Nos. 7 and 8 had been raised. If it is found that there was a joint venture, then even though there was no partnership a further question would be whether the appellants are entitled to a share. These are matters which the First Appellate Court should have decided on the basis of evidence led before the Trial Court.

5. Once the conclusion was reached that by virtue of Section 30 of the Act there was no partnership then the Courts erred in holding that the Suit was barred by Section 69 of the Act. If there was no partnership, then Section 69 had no application at all. In that case, the Courts

had to proceed to decide the above-mentioned issues on the basis of evidence. Both the First Appellate Court and the High Court in Letters Patent Appeal have not dealt with these aspects at all.

6. We, therefore, set aside the impugned Judgment as well as the Judgment of the First Appellate Court and restore First Appeal No. 943/1971 to the file of the Patna High Court. The High Court will decide on basis of available evidence and material whether the Trial Court has correctly answered issue Nos.6, 7, 8 and 9. It is clarified that the question of accounts under issue no.6 will only be on the footing that there was a joint venture and not on footing of a partnership.

7. The Appeal stands disposed of accordingly. No order as to costs.