**RAJASTHAN HIGH COURT**

Bhupendra Kumar

Vs.

Makhanlal

Civ.F.A. No. 194 of 2000

(Satya Prakash Pathak, J.)

16.05.2006

**JUDGEMENT**

**Satya Prakash Pathak, J.**

1. In this appeal, the appellant has challenged the judgment and decree dated 29-5-2000 passed by Addl. District Judge No.1, Sri Ganganagar in - *Bhupendra Kumar v. Makhanlal and Anr.,* [1] whereby the suit of appellant plaintiff has been dismissed.

2. The facts giving rise to this appeal, in brief, are that appellant filed a suit for dissolution of partnership firm and rendition of accounts stating therein, inter-alia, that a partnership firm in the name and style of M/s. Khubiram Makhanlal was carrying on its business at Sri Ganganagar in building materials, paints etc. with its partners Makhanlal and Mohar Singh (father of appellant-Plaintiff) but on 11-4-1973 Mohar Singh separated himself from the partnership business and thereafter inducting the plaintiff and defendant No.2 Vijay Kumar, a new partnership firm was created executing a deed of partnership which incorporated the terms and conditions of partnership and fixed their shares in the business etc. It was stated in the plaint that all the partners were working partners and the books of accounts were in possession of the defendants, however, in the year 1980 disputes cropped up between the partners in relation to the accounts of firm and the work of partnership came to standstill. It was also averred in the plaint that the partnership firm purchased plot No.4 in Vinoba Basti, Sri Ganganagar, in an auction from Municipal Council, Sri Ganganagar on lease of 99 years for a consideration of Rs. 16,825/- on which construction was made by the partnership firm and the building materials of the firm is still lying therein under lock and key of the defendants who are selling the goods illegally for their personal gains and devouring the proceeds to which they have no right. It was also stated that in the year 1980 the plaintiff came to know that defendant No. 1 got his name entered in the documents of the plot purchased by the firm showing himself as the proprietor of firm, which is actually the property of the partnership firm and as fractions between the partners reached to a height, they by consent appointed arbitrators for settlement of

disputes but the defendants did not cooperate in the matter so the arbitrators could not pass their decision though the plaintiff was ever ready and so would remain in future also and try his best to cooperate the Panchas in the matter. It was further stated in the plaint that the plaintiff asked the defendant time and again to let him know the accounts of the partnership business and to make payment of his share but they did not do so, nor they produced the accounts before Panchas, which make it clear that the defendants want to devour the share of the plaintiff and stated that as the partnership was at will and the plaintiff could at any time dissolve the partnership, the agreement to appoint the Panchas dated 20-1-1981 is a notice for dissolution of the firm. It was the contention of the plaintiff that despite repeated efforts the defendants have not given him the account of the business nor have shown him the same therefore the plaintiff has a right to file suit for dissolution of the firm and rendition of account.

3. In the written statement filed by defendants, the partnership between the parties was not denied, however, it was stated that the business was carried in the premises of defendant No.1 and though Mohar Singh had separated from partnership on 11-4-1973 but the business was being looked after by plaintiff, his brother and Mohar Singh and the first book of accounts was maintained by them. They denied the possession of the partnership deed with them and stated that since plaintiff, his brother and father were looking after the business, the original partnership deed must either be with them or with the Income-tax Department. The defendants, though admitted percentage of shares of the partners in the business, as stated in the plaint, but stated that Vijay Kumar was only a financing partner and was not a working partner as he was having his own business of cloth. The defendants alleged that the plaintiff and his brother Mahendra Kumar in the premises of the firm itself started parallel business in the name of their personal firm namely, Gupta Paints from 17-4- 1978 and by criminal conspiracy started taking undue benefits transferring the assets of the partnership firm. According to the defendants, the firm had a debt of Rs. 53,000/- to firm Lokram Vijaykumar and as the plaintiff had taken all the moveable properties in his possession and Lokram was insisting for payment, the building in the name of defendant was sold through two sale deeds on 10-9-1981 for Rs. 48,500/- and at that time, no material of the firm was there and only the vacant possession was handed over, where Shiv Shankar, the proprietor of Agrawal Pipe Store, is carrying on his business by taking it on rent. It was said that the partnership was dissolved on 16-11-1976 and the signatures of plaintiff as partner in the banks accounts were discontinued. As regards the premises in question being in the name of defendant No.1, it was stated that as the defendant had invested more amount in the business of the firm, it was taken in the name of defendant with the consent of parties. The defendants denied the allegation of the agreement being with them and stated that they wanted to decide the matter in a cordial atmosphere but as the information sought by the Panchas was not given in time, the award was delayed and when the plaintiff came to know that it was against him, he, on false facts, in order to defend himself, his brother and father, filed the suit.

4. The plaintiff filed rejoinder to the written statement and while reiterating the averments of the plaint repelled the submissions and contentions of the defendants.

5. The learned trial Court, on the basis of the pleadings of the parties, framed following issues on 4-10-1983.

> (1) On which of the parties, the responsibility to disclose the accounts of firm Khubiram Makhanlal lies?
>
> (2) Whether firm Khubiram Makhanlal has dissolved on 16-11-1978?

6. By the order of trial Court dated 29-3-1990, a preliminary decree was passed and the plaintiff was declared entitled to 45% share in the assets of the firm Khubiram Makhanlal deeming it dissolved on 20-1-1981 and one lawyer was appointed as Receiver for the recovery of the debts of the firm and to submit the accounts before the Court, who submitted his report on 14-7-1992, stating that plaintiff was entitled to receive Rs. 16,973.43 from the defendants towards his deposit with the firm. The defendants raised objections to that report, however, the same were rejected vide order dated 26-7-1999. Thereafter, another report was filed by the Receiver on 3-3-1999 holding the plaintiff entitled to a sum of Rs. 58,416/- also as the profits in the business carried by him as partner of the firm along with his right to get Rs. 16,973.43 deposited by him. This report was also objected to by the defendants and the plaintiff filed an application on 29-2-2000 for preparation of final decree. The trial Court after hearing the parties refused to pass final decree in favor of the plaintiff on the basis of the reports of the Receiver and dismissed the suit of the plaintiff.

7. Heard learned counsel for the parties.

8. It has been contended by the learned counsel for the appellant that in the present case two reports were submitted before the Court by the Receiver and by those two reports the appellant-plaintiff was held entitled to receive a sum of Rs. 16,973.43 ps. and Rs. 58,416/- respectively but the learned trial Court has dismissed the suit in its entirety without assigning proper reasons. According to the learned counsel, the suit was liable to be decreed on the basis of the Receiver's reports. In the last, it has been submitted that after preparation of the preliminary decree, final decree was required to be made in the case, which has not been done taking into consideration the facts and circumstances of the case.

9. On the other hand, it has been submitted that the trial Court has considered the matter in detail and when it was found that in fact Receiver did not properly considered the entries made in the Register and held the entitlement of the plaintiff wrongly, the trial Court dismissed the suit more particularly taking into consideration the fact that neither any money was required to be received from the debtors nor any

amount was due to be paid by the firm to any one. It has been submitted that the suit has correctly been dismissed by the trial Court which requires no interference by this Court.

10. I have considered the submissions made before me and carefully perused the material available on record.

11. The point for consideration is as to whether the learned trial Court has passed the impugned judgment and decree after analyzing the material available on record in its correct perspective or not?

12. It is to be seen that the appellant- plaintiff's case before the trial Court was that since a dispute arose between the partners of the firm and the business of the firm came to halt, it became essential for him to file the suit for dissolution and rendition of accounts. It was further the case of plaintiff that the defendants misappropriated funds of the firm and that was the reason for closing down of the firm. On the other hand, perusal of the written statement filed by the defendants transpires that the account books of the firm were maintained by the plaintiff and his brothers and plaintiff was not entitled to receive any amount whatsoever because the firm suffered a huge loss and was closed as early as in the year 1976, and the preliminary decree was prepared as early as in the year 1990. The Court, while hearing the arguments of both sides on preparation of final decree, after perusal of the account book of the firm found the suit liable to be dismissed. In Paras 7 and 8 of the impugned judgment, the Court has clearly stated that neither plaintiff nor the defendants were entitled to any amount as per the registers of the firm, on the basis of which the Receiver prepared the accounts, as the same discloses that the Receiver had taken into consideration the entries wrongly. The learned trial Court has taken note of the fact that the amount which was required to be paid by the firm was wrongly taken into account by the Receiver as the amount to be recovered from debtors of the firm. Paras 7, 8, and 9 of the judgment read as under :-

(Vernacular matter omitted...Ed.)

13. After carefully examining the entire material on record, it cannot be said that the learned trial Court has not considered the matter properly. The reports of the Receiver have been considered by the learned trial Court and the mistake committed by the Receiver while preparing the report has also been narrated in the impugned JUDGEMENT. The appellant has failed to point out as to how and in what manner the entries of the register considered by the trial Court were not considered correctly. If that is so, then the trial Court was left with no option but to dismiss the suit. Further, the matter has become quite old and even if any recoveries are to be made whatsoever, then also, the same have become barred by limitation. I do not find any substance in the argument of the learned counsel for the appellant also that in view of the reports of

Receiver, final decree was required to be passed particularly in the circumstances that the Receiver inadvertently committed a mistake apparent in taking into consideration the liabilities of the firm as the assets and the assets of the firm as liabilities. The learned trial Court based its findings on the entries made in the register and when nothing was found recoverable on behalf of the firm and further it was found that no amount was due to be paid by the firm, has rightly dismissed the suit in the above circumstances. The trial Court has, thus, committed no illegality in appreciating the material available on record.

14. In view of foregoing discussions, the answer to point framed is that the trial Court has rightly dismissed the suit and the defendant is entitled to the costs of the proceedings.

15. In the result, the appeal being devoid of merit, is required to be dismissed with costs. Hence, dismissed with costs.

Appeal dismissed.