NAGPUR HIGH COURT

Chainkaran Sidhakaran Oswal

Vs

Radhakisan Vishwanath Dixit

First Appeal No. 30 of 1947

(R. Kaushalendra Rao and Tambe, JJ.)

27.01.1947. 22.10.1954

JUDGMENT

R. Kaushalendra Rao, J.

1. This is defendant No. 3's appeal directed against the judgment and preliminary decree, dated 27-1-1947, passed by the Additional District Judge, Chanda, in a suit for partition and separate possession.

2. The facts relevant for purposes of this appeal are as follows. Respondent no. 1 Radhakishan filed the present, suit against his two brothers Girjashankar and Balibhadra, respondents nos. 2 and 3, and the appellant Chamkaran for partition of certain property that remained to be partitioned after a previous partition between the parties. A prayer was also made that, if necessary, a receiver be appointed for taking accounts of the dissolved partnership between the appellant (defendant No. 3) on the one hand and the joint family of the respondents on the other.

3. In the plaint, the plaintiff alleged that mouzas' Kawadji and Kothari were acquired in partnership by Rai Bahadur Chandiprasad, predecessor-in-title of the plaintiff and. defendants nos. 1 and 2 and Seth Sidhakaran, father of defendant No. 3, each having a half share in the same. The home-farm land was cultivated by them in partnership and they also carried on money-lending and grain-lending business there in partnership. The income front the villages and cultivation was utilised by them for purposes of the business of the partnership. Rai Bahadur Chandiprasad died in 1906 bequeathing all his property to the plaintiff' and defendants 1 and 2 by a with. As the plaintiff and defendants 1 and 2 were then minors, trustees appointed under the will continued the partnership with Seth Sidhakaran till the business was handed over to the plaintiff and defendants Nos. 1 and 2 on their attaining majority. Sidhakaran died on 24-8-1932. He was the managing, partner at that time, and alter his death his son Chainkaran, defendant No. 3, became the managing, partner of the partnership and continued to be so till the date of suit.

4. The defense of the defendants Nos. 1 and 2 was that the village property was held in co-ownership and not in partnership. The defense of the defendant No. 3 was that the aforesaid villages, money-lending and grain-lending business belonged to the partnership. The defendant

No. 1 had on behalf of the plaintiff and defendant No. 2 and himself given a registered notice on 23-4-1936 to the defendant: No. 3, expressly declaring dissolution of the partnership. The suit brought on 28-11-1942 was, therefore, barred by time under Article 106 or 120 of the Limitation Act.

5. During the course of the proceedings before the trial Court, the suit was compromised as between the plaintiff and defendant No. 3. Thereafter, the controversy remained only between the defendants nos. 1 and 2 on the one hand and the defendant No. 3 on the other, about the existence of the alleged partnership. An objection raised by the defendant No. 3 that this controversy could not be litigated in this suit was negatived by the trial Court as well as by this Court at an earlier stage of the suit.

6. The trial Court has now held that the parties and their predecessors-in-title were partners as regards cultivation and money-lending and grain-lending business in villages Kawadji and Kothari. It further held that the suit was not barred by time. On these findings it passed a decree for taking accounts of the dissolved partnership; the date of the dissolution is held to be 19-4-1943.

7. The only ground urged by the learned counsel for the appellant before us is that the finding of the dial Court that the suit is within time is erroneous.

8. There is also a cross-objection filed by the respondents nos. 2 and 3 (defendants Nos. 1 and 2 in the suit). The only ground urged before us by their learned counsel is that the learned trial Judge erred in law giving a direction to take accounts of the partnership from the year 1895; accounts should have been ordered to be taken from 24-8-1932.

9. It is no more disputed by the parties that the relationship between them is that of partners. There is also no dispute between them as regards the partnership property. It is also not in dispute that the partnership in suit was a partnership at will.

10. The points that arise for consideration in this case are, therefore :

(i) Is the suit barred by time ?
(ii) Is the direction given by the learned trial Judge to take accounts from the year 1895 correct ? or is it necessary to substitute the date 24-8-1932 in place of the year 1895 in the relevant direction ?

11. As regards point (i), the learned counsel for the appellant urges that on 23-4-1936 Shri. G.Y. Deo, pleader served a notice (Ex. 3-D-3) on behalf of his clients Girjashankar and his brothers (i.e. on behalf of the plaintiff and defendants Nos. 1 and 2). This notice amounts to a notice within the meaning of Section 43, Partnership Act, and therefore by virtue of that notice the partnership stood dissolved on 2-3-4-1936. In the alternative, it is contended that if this notice does not effect dissolution of the partnership, the reply, dated 28-4-1936, (Ex. 3-D-2) of the appellant to that notice is a notice of dissolution of the partnership within the meaning of Section 43, Partnership Act, and the partnership stood dissolved after the expiry of the one week's period mentioned therein. This suit brought on 28-11-1942 for accounts of a dissolved partnership is,

therefore, barred by time under either Article 106 or 120, Limitation Act.

12. It is not possible for us to accept this contention of the appellant. Neither of the two notices is, in our opinion, a notice of dissolution of the partnership within the meaning of Section 43 Partnership Act. That section reads thus :

> "(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
> (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice."

13. It will be seen that to operate as a notice for dissolution of a partnership at will under section 43 of the Act the notice must fulfill the following conditions :

> (a) The notice must clearly state the intention of the partner giving notice to dissolve the firm; and
> (b) it must be given in writing to all other partners of the firm.

It is only when these conditions are fulfilled that the firm is duly dissolved.

14. It is a well-established principle of law that a notice under Section 43, Partnership Act, for dissolution of a partnership must be in writing, communicated to all other partners and not be ambiguous or vagne. It must be factual, explicit and final. In any of the notices Exhibits 3-D-1 and 3-D-2 it is nowhere stated in unambiguous, explicit and final terms that any of the partners intended to dissolve the firm. In our opinion, the aforesaid conditions for dissolution of a partnership are wanting both in the notice dated 24-3-1936 and the reply thereto dated 28-4-1930.

15. In the notice dated 24-3-1836 the plaintiff and defendants Nos. 1 and 2 complain that the appellant had not rendered accounts of the business since he had taken over the management, in spite of demands. They further directed him not to proceed with certain construction works at village Kothari as the works were started without their consent, and that if the construction work was proceeded with further they would not be responsible for their share of the expenditure. In the end they called upon him to render accounts within a week from the date of the receipt of the notice, failing which they would take such action as they may be advised.

16. It will be seen that it is nowhere stated in this notice that there was any intention on the part of the plaintiff and defendants Nos. 1 and 2 to dissolve the partnership. It is only stated that the appellant should render accounts and not proceed with certain construction works, and that failing it they would take action as they may be advised. This certainly is not a notice for dissolution of the partnership within the meaning of Section 43, Partnership Act.

17. In the reply dated 28-4-1936 to the aforesaid notice of 23-4-1936 the appellant states that the plaintiff and defendants Nos. 1 and 2 white in charge of the management of the partnership

business failed to maintain accounts properly, carried on the management of the estate and constructed tanks, buildings., well, etc. without consulting the appellants. He was managing the affairs with their cooperation. The office was kept at Kothari and all of them were entitled to go there and see the construction works and accounts. Though the plaintiff and defendants Nos. 1 and 2 had promised that they would be separating their shares, they had done nothing in that matter. There was no contract to take previous sanction of the other partners by the managing partner, nor was it understood between the parties that such previous permission should be obtained. The repairs were being done to properties held jointly by the parties. The appellant had a half share therein and he had to protect that share and therefore he would continue to do the work. If an undertaking would be given by the respondents that they would make good the loss caused to the appellant then he would stop proceeding with the work. The appellant also called upon the defendants Nos. 1 and 2 and the plaintiff to get their share of the property partitioned within eight days of the receipt of that reply so that he could effect repairs to his half share thereof. The account books were in the office, and if they so desired they could inspect the same. In conclusion the appellant observed.

> "Now (you) are hereby informed by the return notice that your share be got partitioned, as much as (you) can, and independent 'Wahiwat' (management) be effected early. Herein, I do not refuse as intimated to (you) several times. I shall have to perform those works compulsorily whichever may be needful for the sake of protecting my share so long as you do not partition your share separately, and you shall be bound to give the expenses incurred in joint."

18. It will again be seen that in this reply also the appellant has nowhere declared his intention to dissolve the partnership. On the other hand, he states that the respondents should take steps to get their shares partitioned or separated as they deem proper; and even if this was not done the property would continue to be joint and the appellant would continue to incur the expenses and the respondents would be liable to pay their share thereof. In out opinion, this notice not only does not effect dissolution of the partnership but, on the other hand, shows that the appellant insisted on continuing his management of the partnership affairs as before.

19. We therefore, hold that neither of the two notices is a notice under section 43, Partnership Act, effecting dissolution of the partnership.

20. Article 106, Limitation Act, relates to taking of accounts of a dissolved partnership, and the period of limitation thereunder starts to run from the date of dissolution. As already held by us, the partnership in suit was not dissolved prior to the date of the filing of the present suit. The dissolution in this case is caused by the institution of the suit and service of summons on the defendants. Article 106 Limitation Act, is, therefore, not applicable to the facts of the present case.

21. It has not been established that the accounts were at any time previously asked by the plaintiff or defendants nos. 1 and 2 or by any one of more of them from the appellant, and that the appellant had refused to render them. On the other hand, it is dear from the aforesaid two notices that the appellant had informed the plaintiff and defendants Nos. 1 and 2 that the account books of the firm were kept ready at the office and could be inspected by any of the partners. Article

120 or any other provision of the Limitation Act is, therefore, not attracted by the facts and circumstances of the instant case.

22. We, therefore, hold that the suit is not barred by time.

23. As regards point (ii), it is urged by the learned counsel for the respondents that under section 42 Partnership Act, normally a partnership is dissolved by the dead of a partner, unless there be a prior contract to the contrary. No such contract is pleaded by the appellant. The partnership existing between Rai Bahadur Chandiprasad and Sidhakaran, therefore, came to an end in the year 1906 on account on the death of Rai Bahadur Chandiprasad. The business that was carried on by the trustees under the will of Rai Bahadur Chandiprasad and Sidhakaran is not a continuation of the old partnership but is at new partnership. The latter also came to an end on 24-8-1932 on account of the death of Sidhakaran, and the partnership which continued between the plaintiff and defendants Nos. 1 and 2 on the one hand and the defendant No. 3 on the other from 24-8-1932 to the date of suit is not a continuation of the old partnership but is a fresh partnership. The trial Court was thus dissolving a partnership which had under law come into existence on 24-8-1932, and therefore it had no jurisdiction to direct accounts to be taken from a date prior to 24-8-1932.

24. It is not possible for us to accept this contention of the respondents. It is true that the defendant No. 3 has not in so many words stated that there was a contract between Rai Bahadur Chandiprasad and Seth Sidhakaran to the effect that the partnership entered into by them would not be dissolved on account of the death of any of the partners but would be continued with the heirs of the deceased partners as partners of the firm in place of them. The plea raised is in the following words :

> "That the villages of Kawadji and Kothari were purchased in partnership by R.B. Chandiprasad and father of this defendant No. 3 in the year 1895 with a view to acquire and share profits by doing business of cultivation and money and grain lending also. There was an agreement to start money and grain-lending business with the income from village etc., and to share profits equally. The whole and sols management was by agreement then entrusted to R.B. Chandiprasad. He continued to manage till his death in 1906 the cultivation and money and grain-lending also along with the village management. Defendant No. 3's father was however the Lambardar of the village. After the death of R.B. Chandiprasad, the trustees of the estate appointed R.B. Chandiprasad by a will executed by him dated 22-12-1902 managed the whole concern. After the trustees handed over the estate in or about the year 1917 to defendant No. 1 and his brothers, defendant No. 1 managed the business and the cultivation and also the village till 1926. Then by agreement of parties the whole management was entrusted to the defendant No. 3's father who continued to manage till his death in 1932. Since then defendant No. 3 has been managing the partnership cultivation and the grain-lending and money-lending business also as per previous agreement. He and his father have been the Lambardars also. The lending business and cultivation were carried on with a view to earn and share the profits."

25. This plea is in substance a plea of one continued partnership, In spite of the intervening deaths of two partners, at the time of the death of each of those partners the legal representatives of the deceased partner stepping into his shoes. A plea in this form, in our opinion, sufficiently raises a plea of existence of an agreement between the partners to the effect that the death of a partner shall not cause dissolution of the partnership. If the other side wants to dispute the continuance of the partnership in spite of the death of a partner then that party has to plead so specifically. No such plea is raised in the present case.

26. It is a well-established principle of law that such an agreement can be inferred from the conduct of the parties.

27. In *Gokul Krishna Das v. Sashimukhi Dasi*[1], a partnership was entered into between the husband of the plaintiff and the defendants. The husband of the plaintiff died in 1887, and the defendants continued the business on the assumption that the plaintiff was a partner. There was no direct evidence of the contract between the original partners as to the effect of the death of any of the partners, but the conduct of the partners showed that everybody regarded the partnership as continuing. In a suit by the plaintiff for accounts in 1908, it was contended that the suit was barred by limitation on the ground that the partnership was dissolved on the death of the plaintiff's husband. It was held that the firm could not be deemed to have been dissolved on the death of the plaintiff's father and that the suit was within time. Their Lordships observed at pages 300-301 :

> "That section provides that in the absence of a contract to the contrary the relations of partners are determined by the death of any partner. There is no direct evidence to show what was the contract between the parties in this respect at the inception of the partnership; but the Subordinate Judge has held - and his view does not appear to have been contested before the District Judge - that the conduct of the parties since 1887 shows that there must have been a contract between the original parties that the partnership would not be dissolved by the death of any partner. There is no room for the theory that after the death of the husband of the plaintiff a new partnership wan constituted between herself and the surviving partners. The true view is that the original partnership was continued by common consent with this difference that the plaintiff replaced her husband and this condition of things can be explained only on the hypothesis that the contract between the founders of the partnership was that it was not to be dissolved by the death of any of the partners."

28. A similar view is taken in *Haramohan Poddar v. Sudarson Poddar*[2]

> "Partners may accordingly agree that on the death of any of them, his nominee or legal representative shall be entitled to take his place. Whether in a particular case there has or has not been such an agreement, may be proved by an express declaration to that effect or may be determined from the conduct of the parties."

29. The view taken in *Srinivasalu v. Ramakrishna* [3](2) is also to the same effect.

30. In the instant case, though there is no direct evidence of an express agreement to the effect that the partnership would not be dissolved on account of the death of a partner, the evidence on record establishes that at the time of the death of each of the two partners the heirs of the deceased partner stepped into his shoes. This course of conduct between the parties is, in our opinion, sufficient to raise an inference that there was a contract between them that the partnership was not to be dissolved on the death or a partner.

31. Even assuming that such a contract cannot be inferred from the evidence on record, in our opinion, on account of the fact that the legal representatives of the deceased partners Rai Bahadur Chandiprasad and Sidhakaran were admitted as partners the date of dissolution of the partnership in the instant case would be the date of suit. In this respect the following rule laid down by their Lordships of the Judicial Committee of the Privy Council in *Mst. Jatti v. Banwari Lal*[4]*,* fully governs this case :

> "On the death of Rup Chand, the plaintiff's husband, the partnership was dissolved and a right to an accounting arose. But Rup Chand died in 1905, and this suit was not raised until 1914. It is, therefore, time-barred as a suit for such an accounting. If, however, on Rup Chand's death the widow was admitted as a partner to a new partnership, then the date of dissolution would only be the raising of the suit and no limitation could apply."

32. We, therefore, hold that neither the death of Rai Bahadur Chandiprasad nor that of Sidhakaran caused dissolution of the partnership. The partnership continued right from 1895 to the date of suit.

33. For the reasons stated above, we consider that it is not necessary to amend the direction given by the trial Court as to the year from which accounts are to be taken.

34. The result is that this appeal is dismissed, as also the cross-objection. In the circumstances of the case we order that the parties shall bear their own costs.
Appeal and cross-objection dismissed.

Cases Referred.

[1] 16 Cal WN 299
[2] AIR 1921 Cal 538. Their Lordships observed at page 539
[3] AIR 1933 Mad 353
[4] AIR 1923 PC 136 at p. 138