

Mohinder Singh v. Shiv Das Singh, (Sodhi, J.)

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(10) It may be stated that the Settlement Officer was not taking any action *suo motu* in this case. It was only on the objection application of the appellants that respondents 4 and 5 had passed the impugned orders. That application should have been filed within seven days from the date of the acceptance of the bid under rule 92(2)(a), which was not done. The application deserved to be dismissed on that ground alone.

(11) In view of what I have said above, this appeal fails and is dismissed, but with no order as to costs.

S. S. SANDHAWALIA, J.—I agree.

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K. S. K.

APPELLATE CIVIL.

Before H. R. Sodhi, J.

MOHINDER SINGH,—Appellant.

*versus*

SHIV DAS SINGH,—Respondent.

**Regular Second Appeal No. 1005 of 1960.**

August 21, 1970.

*Code of Civil Procedure (V of 1908)—Order 22 Rule 4—Suit for dissolution of partnership and rendition of accounts—One of the partners dying during the pendency of the suit—Legal representative not brought on record—Such suit—Whether abates.*

*Held*, that a suit for rendition of accounts of a partnership cannot be maintained against some of the partners only. Every partner of the firm is a necessary party in such a suit, because the shares of all the partners in the matter of their profits and losses have to be determined. It is neither possible nor correct to decide the extent of rights and liabilities of a partner in his absence. Where, however, two or more partners sue in the name of a firm and any of such partners dies, it is not necessary to join the legal representatives of the deceased as a party to the suit under order 22 Rule 4 of Code of Civil Procedure. But this provision has no application when the suit is not in the name of the firm. Hence in a suit for accounts of a dissolved partnership filed by one partner in his individual capacity against another, if one of the partners dies, the right to sue cannot survive against the others and the legal representatives of the deceased have to be impleaded as a party otherwise the suit abates.

(Para 5)

*Regular Second Appeal from the decree of the Court of Shri C. G. Suri, Additional District Judge, Ludhiana, dated the 21st March, 1960, affirming that of Shri Des Raj Dhamija, Senior Subordinate Judge, Ludhiana, dated the 24th February, 1959, dismissing the suit against defendant No. 1 with costs having already abated against defendant No. 2. The lower appellate Courts made no order as to costs.*

Y. P. GANDHI, ADVOCATE, for the appellant.

H. S. GUJRAL, ADVOCATE, for the respondent.

### JUDGMENT

H. R. SODHI, J.—This second appeal raises a question about the abatement of a suit for dissolution of partnership and rendition of accounts. To appreciate the point involved, it is necessary to state a few facts hereunder.

(2) Mohinder Singh plaintiff filed a suit on 23rd March, 1957, on the allegations that he had entered into partnership with Shivdev Singh defendant respondent 1 in the year 1950. It was further alleged that the plaintiff was serving in the Army as Subedar Major and that he had been sending money from there to the defendant respondent Shivdev Singh to carry on partnership business. It was an oral partnership. On 15th October, 1955, another partnership was constituted between the plaintiff as one party, Shivdev Singh defendant respondent as second party and Chanan Singh who has since died as third party. In the plaint the averment is that Chanan Singh deceased was admitted into the partnership by the partnership deed, Exhibit P. 1, as executed on 19th November, 1955, though the new partnership had started working earlier. The first partnership was dissolved by a notice before the second was formed. In the present suit settlement of accounts in respect of both the partnerships was asked for making defendant 1 liable in regard to first and both the defendants in respect of the second. The suit was filed by the plaintiff in his own name against the two defendants in their individual capacity and no reference was made to the name of the firm in the title of the plaint. There can be no dispute with the proposition that in a suit for rendition of accounts, every partner is, practically speaking, in the position of a plaintiff or a defendant and each one of them is liable to render accounts and pay the amount found due from him. Both the defendants filed written statements and it was pleaded by

them that the second partnership was only a sham transaction entered into for the purposes of income-tax. They also pleaded that the suit was bad for misjoinder of causes of action inasmuch as the two partnerships being quite distinct and separate, a claim for rendition of accounts in respect of both could not be joined in one suit. Chanan Singh defendant died during pendency of the suit and his legal representatives were not brought on the record within the prescribed time. An application was made to implead them and set aside the abatement but the same was rejected. A question then arose as to whether the suit had abated as against Chanan Singh only or in its entirety. An issue was framed in the following terms :—

“What is the effect of the death of Chanan Singh defendant No. 2 on the suit ?”

It was contended on behalf of the plaintiff that the abatement was not *in toto* and could be only so far as defendant 2 was concerned and that the plaintiff was entitled to get rendition of accounts with regard to the first partnership which carried on its business for the period from 1st December, 1950, to 14th October, 1955, before the second partnership came into existence by adding a third partner. The argument was that the deceased defendant could not be made liable for rendering accounts for the first period and his death affected the suit regarding the second partnership only. The trial Court repelled this contention and dismissed the suit holding that it could not proceed against defendant 1 as well in respect of the period prior to the date when the deceased defendant Chanan Singh became a partner.

(3) The plaintiff took an appeal to the Additional District Judge, Ludhiana, but it met with no success. He has, therefore, come to this Court in second appeal.

(4) Arguments advanced in the Courts below have been repeated before me and the two contentions of Mr. Y. P. Gandhi, learned counsel for the appellant, are—

(1) That a suit for accounts of a dissolved partnership does not abate on the death of an erstwhile partner, and

(2) That in the instant case, the two causes of action are entirely different though joined together in one suit, and that it

is so admitted by the defendants themselves in their written statements who objected to the joinder by getting a specific issue framed to this effect.

(5) The first contention of Mr. Gandhi is to be noticed only to be rejected. It is a settled proposition of law that a suit for accounts cannot be maintained against some of the partners only and that every partner is a necessary party. The reason for this rule is not far to seek. The shares of all the partners in the matter of their profits and losses have to be determined and it is neither possible nor correct to decide the extent to rights and liabilities of a partner in his absence. The cardinal rule of law is that no decree can be passed against a person in his absence. The argument of the learned counsel founded on Order XXX, rule 4, Civil Procedure Code, is misconceived. It is only when two or more partners sue in the name of a firm and any of such partners dies, that it is not necessary to join the legal representatives of the deceased as a party to the suit but this provision has no application when the suit is not in the name of the firm. The present is a suit for accounts of a dissolved partnership filed by one partner against the others. In such a situation, if one of the partners dies, the right to sue cannot survive against the others and the legal representatives of the deceased have to be impleaded as a party.

(6) The main question really to be determined is whether in the matter of taking accounts, the entire period of two partnerships is to be treated as continuing one or that before 15th October, 1955, there was a distinct and separate partnership between the plaintiff appellant and defendant respondent 1 which had already been dissolved and from which the deceased partner could be disassociated. It is true that once it is held that the rights and liabilities between the plaintiff and defendant respondent 1 could not be adjudicated with regard to the first partnership without the accounts for the subsequent period being also taken, Chanan Singh deceased was a necessary party, and the suit could not proceed without his legal representatives having been brought on the record. The Courts below took the view that since assets of the first partnership were utilised to constitute the second partnership after the deceased became a partner, the accounts for both the periods had thus to be taken before the matter could be finally adjudicated. Reliance was placed on section 31(1) of the Indian Partnership Act, 1932, which permits introduction of a partner into a firm with the consent of all the existing partners.

In order to resolve this question, it becomes necessary to make a reference to the pleadings of the parties and the partnership deed Exhibit P. 1 executed on 19th November, 1955. According to his pleadings, the plaintiff appellant was serving as Subedar Major in the Army and during his period of service he advanced a loan of Rs. 4,000 to defendant respondent 1 and after his retirement, the entire pension was also being received by the later. All this amount, as stated by the plaintiff, was being spent in the partnership business. The partnership firm was paying income-tax as well and continued its business till 14th October, 1955. It is specifically stated by him in the plaint that he was entitled to a dissolution of partnership and rendition of accounts for the period from 1st December, 1950 to 14th October, 1955, against defendant respondent 1 who had not rendered any accounts to him. It is further pleaded by him that with effect from 15th October, 1955, defendant respondent 2 was taken in the partnership and a partnership deed, Exhibit P. 1, executed which contained all the conditions. A perusal of this document shows that there is no reference whatsoever made therein to any previous partnership or to assets and liabilities of the same having been taken by the new partnership. It is completely an independent and distinctly new partnership between the parties brought about by the deed except that the parties had actually started business from 15th October, 1955, and that a document was executed on 19th November, 1955. We have a recital in the deed that regular account books had been started from the first day of start of business, that is, from 15th October, 1955, and they were to be kept till the existence of the partnership business. Both the defendants in their written statements took objection to the joinder of two separate causes of action and the trial Court framed the following issue :—

“Whether this suit is bad for mis-joinder of causes of action and parties ?”

Before a decision could be given on this issue, Chanan Singh defendant died.

(7) It was a common case of the parties that two separate causes of action had been joined though defendants objected to the same. Without expressing any opinion on the propriety of joining the two causes which formed the subject matter of the aforesaid issue, there is no gainsaying the fact that the first partnership between the plaintiff and defendant 1, its dissolution and rendition of accounts till 14th

October, 1955, when another new partnership was formed, constituted a separate cause of action. The two firms, one between the plaintiff and defendant 1 which functioned till 14th October, 1955, and the other between the plaintiff, defendant I and the deceased defendant 2, were beyond any doubt separate legal entities and on the death of defendant 2, the cause of action against defendant 1 in regard to rendition of accounts for the first partnership did not cease to survive. I am, therefore, of the considered view that as against defendant respondent 1, the right to sue for dissolution of partnership and rendition of accounts in regard to the first partnership exists and no question of the suit *qua* that cause of action having been abated arises. The learned Additional District Judge was in error in holding that no final determination of profits and losses of the partners for separate periods could be made unless both the periods were taken together.

(8) A reference has been made by the Courts below to section 31 of the Indian Partnership Act, 1932, which has no bearing on the issue involved in the instant case. Partnership deed, Exhibit P. 1, does not show that the deceased was introduced as a partner into the previous firm that was constituted by the plaintiff appellant and defendant respondent 1 and all that this section provides is that when a partner has been introduced in a firm he does not become liable for any act of the firm done before he become a partner. No such contingency arises in the case before us when there is a separate cause against defendant respondent 1 who along with the plaintiff constituted a separate partnership from 1st December, 1950, to 14th October, 1955. Privy Council case reported as *Raj Chunder Sen v. Ganga Das Seal* (1), relied upon by the Courts below in holding that the suit abated *in toto* is distinguishable on facts and not applicable to the circumstances of the present case. The plaintiff in that case asked for accounts between him and defendants and a preliminary decree was passed by the Subordinate Judge by virtue of which defendant 1 was held liable to render accounts to all the partners. Accounts were gone into by a Commissioner and on his report final decree by which various partners were made liable for their contributions to the liabilities of the business was passed. Two separate appeals were filed to the High Court; one by the plaintiff and another by two of the defendants. One of the defendants in both the appeals died and

(1) I.L.R. 31 Cal. 487.

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his legal representative was not substituted in time. When the appeals came up for hearing both of them were dismissed as having abated. The Judicial Committee of the Privy Council upheld the judgment of the High Court and observed that the right to sue did not survive against the other defendant alone as the appeals could not proceed in the absence of a representative of the deceased defendant. It was one cause of action in which the respective rights and liabilities of the different partners had to be determined and the same could not be done in the absence of one of them. Since I am holding that the second partnership was quite distinct from the first one, the question of abatement of the entire suit does not arise. The suit can proceed with regard to the partnership as originally constituted between the plaintiff and defendant respondent 1.

(9) In the result, the appeal is allowed, judgment and decree of the Court below set aside and the case remanded to the trial Court for decision in accordance with law in the light of the observations made above. There will be no order as to costs.

K. G. K.

CIVIL MISCELLANEOUS.

Before Bal Raj Tuli, J.

RAGHUVIR LAL SEHGAL,—Petitioner.

versus

THE HARYANA STATE ELECTRICITY BOARD, ETC.,—Respondents.

C. W. No. 109 of 1970

August, 21, 1970.

*Punjab Service of Engineers (Electricity Branch) Conditions of Service Rules (1939)—Rules 7—Punjab State Electricity Board Service of Engineers (Civil)—Regulation (1965)—Regulations 1(3) and 15—Appointments of Assistant Engineers under 1939 Rules—Conditions of appointment stipulating the appointment to be governed by the Rules and Regulations framed by the Punjab State Electricity Board in due course—Regulations framed long after the appointment—Seniority of such appointed Engineers—Whether to be fixed under the Rules or the Regulations.*