

CASE NO.:  
Appeal (civil) 7318 of 2000

PETITIONER:  
Gannmani Anasuya & Ors

RESPONDENT:  
Parvatini Amarendra Chowdhary & Ors

DATE OF JUDGMENT: 17/05/2007

BENCH:  
S.B. Sinha & Markandey Katju

JUDGMENT:  
J U D G M E N T

S.B. SINHA , J :

1. This appeal is directed against a judgment and decree dated 29.10.1999 passed by a Division Bench of the High Court of Judicature at Andhra Pradesh at Hyderabad whereby and whereunder an appeal preferred by Appellants herein, who were Defendant Nos. 2, 3 and 5 to 7 in the suit, from a judgment and decree dated 23.04.1993 in O.S. No. 55 of 1985 passed by the Subordinate Judge, Ramchandrapuram, was dismissed.

2. Plaintiffs (Respondent Nos. 1 and 2 herein) filed a suit purported to be one for partition claiming 2/3rd share in the property described in Schedule 'A' appended to the plaint, claiming 4/9th share in the property described in Schedule 'B' appended thereto, as also for a decree directing the Defendants 1 to 3 to render fair and proper accounts in respect of the poultry business which was being run in the Schedule 'B' property from the year 1968 onwards as also for future profits thereupon.

3. Plaintiffs are sons of Defendant No.1 (Respondent No.3 herein). One Narasimha Murthy was the father of Defendant No.1. Appellants herein admittedly are related to the respondents. Appellant No. 1 is niece of late Narasimha Murthy. Her parents died when she was very young and unmarried. She was brought up by the said Narasimha Murthy and married to Appellant No.2 herein. Appellant Nos. 1 and 2 allegedly were close to the said Narasimha Murthy. At the time of marriage, Appellant No. 2 was a student of Veterinary Science at Madras. After securing B.V. Sc. Degree, he got an appointment in the veterinary department and later on became a B.D.O., and subsequently a Project Officer in the Urban Community Development of the Hyderabad Municipal Corporation. They allegedly approached Defendant No. 1 and late Narasimha Murthy to invest money in poultry business at Hyderabad; pursuant whereunto investments were made. Allegedly, an arrangement was entered into by and between the parties that profits of the said business can be shared by late Narasimha Murthy, on the one hand, and Defendant No. 1 and Defendant No.2, on the other, equally after giving due credit to the expenditure and interest to investments made @ 15% p.a. 7 acres and 14 guntas of land was purchased with the moneys advanced by late Narasimha Murthy and Defendant No.1 at Attapur near Hyderabad in the name of late Narasimha Murthy and the Defendant No.2. Poultry business was, thus, started.

4. Narasimha Murthy died in the year 1971. With the profits from the said business going up, a tube manufacturing plant was also installed. According to the plaintiffs on the death of the said Narasimha Murthy, they inherited 2/3rd undivided interest of the said poultry and tubes manufacturing business and Appellant No.2 had the remaining 1/3rd share. The joint family and Respondent No.3 herein had no interest in the said business concern.

5. Allegedly, a notice dated 27.08.1985 was served asking the appellants

herein to render accounts in respect of the said businesses, but no reply thereto was given. A suit was thereafter filed on 12.09.1985. The father of the Plaintiffs-Respondents Nos.1 and 2, namely, Respondent No.3 herein in his written statement for all intent and purport supported the case of the plaintiffs alleging that there had been no settlement of accounts in respect of the said businesses and after the death of Narasimha Murthy, he was entitled to the share to which his father was entitled to from the said business. It was alleged that further amounts were also advanced after the death of his father by way of advance as well as interest accrued on principal amounts advanced. It was further alleged that the infrastructures and the buildings referred to in Schedule 'B' appended to the plaint including the residential house bearing D. No. 7/26 were constructed with the profit earned from the business. It was, therefore, contended that they were entitled to 2/3rd share in the business besides the amounts advanced together with interest at the rate of 15% p.a. and also to a half share in the properties described in Schedule 'B' appended to the plaint together with income thereof.

6. With his written statement, Defendant No.1 filed a document as an annexure thereof showing that a sum of Rs.1,55,535.00 had been advanced during the period 23.08.1968 to 29.05.1971.

7. In her written statement, Defendant No. 3 (Appellant No. 2 herein) accepted that during the life time of late Narasimha Murthy, Defendant No. 1 partitioned the joint family properties under a registered deed of partition of the year 1961. But according to him, only landed properties were partitioned keeping the family house and vacant sites at Pulagurtha joint. The allegation to the effect that Appellants herein approached the Defendant No.1 and late Narasimha Murthy for investment of money in the poultry business or that they invested any amount on the premise that the profits arising out of the said business can be shared by late Narasimha Murthy and Defendant No. 1 and the Defendant No.2 equally after giving due credit to the expenditure and interest to investments made at 15% p.a. was denied. The other allegations made in the plaint were also disputed. A plea that the suit was barred by limitation was also taken.

8. There is no document to show that any partnership came into being by and between the parties and/or their predecessors in interest.

9. It is, however, not in dispute that after the suit was filed, an Advocate Commissioner was appointed for making an inventory of the poultry farm. It was stated that late Narasimha Murthy merely advanced a sum of Rs. 5,000/- and as a good gesture of goodwill, his name was included as one of the vendees along with Defendant No. 2 in the purchase of the property by reason of the said deed of sale dated 02.12.1970. According to Appellants, Narasimha Murthy had never shown any interest in the said property as a result whereof the business became exclusively theirs and the same was accepted by late Narasimha Murthy. Even if the said allegations are correct, Narasimha Murthy would only have = share in the land covered by the said sale deed.

10. M/s Anasuya Poultry Farm or M/s Anasuya Plastics were the business concerns started by the Defendant No.2 (Appellant No. 1 herein) with her own money and late Narasimha Murthy or Respondent No.3 had no interest therein. It was furthermore contended that for carrying out the poultry business, a shed had been constructed by Defendant No.2 by obtaining loans from the State Bank of India and neither Narasimha Murthy nor the Defendant No.1 even objected thereto. The business, therefore, was a proprietary concern of the Appellant No.1 herein. Although separate written statements were filed by the Defendant No.4 and Defendant Nos. 5 to 7, it may not be necessary to consider the same. Defendant No. 4 in her written statement relinquished her share.

11. A large number of issues were framed by the learned Trial Judge. The learned Trial Judge by reason of his judgment dated 23.04.1993 passed a preliminary decree directing partition of the properties described in Schedule

'A' appended to the plaint into three equal shares by metes and bounds and allotted two shares to the plaintiffs and furthermore directed partition of the properties described in Schedule 'B' appended to the plaint into nine equal shares by metes and bounds and allotted four shares to the plaintiffs. Appellant Nos. 1 and 2 herein as also Respondent No. 3 herein were also directed to render fair and proper accounts in respect of poultry business from 1968 onwards.

12. Appellants herein (Defendant Nos. 2, 3, 5 to 7) preferred an appeal thereagainst before the High Court, which has been dismissed by reason of the impugned judgment.

13. The High Court having regard to the contentions raised by parties formulated the following questions for its consideration :

1. Whether the poultry business carried on by the appellants is a joint venture?
2. Whether there was a settlement of account under Ex. B8?
3. Whether the respondents are entitled to the share of defendant No. 47?; and
4. Whether the suit is barred by limitation."

14. Mr. A. Subba Rao, the learned counsel appearing on behalf of the appellants, would submit that the learned Trial Judge as also the High Court committed a serious error insofar as they failed to take into consideration the effect of Ex.B-8, which categorically goes to show that the accounts had been settled by and between the parties on 30.05.1979. The learned counsel urged that it may be true that no averment was made in the written statement in regard to the said document, but in view of the fact that Defendant No. 1 (Respondent No. 3 herein) having admitted the execution thereof, the same should have been taken into consideration for the purpose of determining the issue of limitation, if not for other purposes.

15. The learned counsel would submit that the High Court has also not bestowed any consideration in respect of the execution of deed of partnership dated 06.03.1978 entered into by and between the appellants with her daughter wherein Defendant No.1 (Respondent No.3) is a witness.

16. In any event, the learned counsel argued, there is nothing on record to show as to how the High Court came to a conclusion that the plaintiffs and Defendant No.1 had 2/3rd share in the business venture. The learned counsel submitted that the fact that Defendant No.1 (Respondent No.3) was himself an Engineering Graduate, there was absolutely no reason as to why he had not asked for an account annually and having regard to the fact that the partnership was allegedly entered into in the year 1978, the suit was ex facie barred by limitation.

17. Mr. T.L.V. Viswanatha Iyer, the learned counsel appearing on behalf of the plaintiffs (Respondent Nos. 1 and 2), on the other hand, submitted that although the question in regard to the extent of share had been raised before the learned Trial Judge, the same was not done before the High Court and, thus, the same should not be permitted to be raised before us. According to the learned counsel as the appellants herein were not in a position to make any investment and a total sum of Rs.1,55,535/- was advanced by Defendant No.1, towards the joint venture, a suit for rendition of accounts was maintainable. The judgment of the trial court, according to the learned counsel, was unassailable, in regard to the question of limitation. The learned counsel would contend that Ex.B-8 upon which reliance has been placed, does not contain any signature of any party nor any amount has been paid pursuant thereto in full and final settlement of the accounts wherefor

the same was drawn up. It was pointed out that Defendant No. 1 was only a manager of the Hindu undivided family and the business concerns were being run the appellants herein. In view of the fact that profits were being reinvested into the partnership business, it is idle to contend that the accounts were settled particularly when the business was found to be a running one by the learned Trial Judge. Even the notice issued by the plaintiffs, it was pointed out, had not been replied by the defendants. The learned counsel would contend that Article 5 of the Limitation Act, 1963 would not be applicable in a case of this nature as the same refers to a dissolution of partnership and as in this case, the provisions of the Indian Partnership Act, 1932 are not attracted, only Article 113 thereof would apply.

18. Dr. K.P. Kaylash Nath Pillai, the learned counsel appearing on behalf of Defendant No. 1 (Respondent No.3), would submit that the question as to whether the business was a joint venture or not being a question of fact, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

19. So far as issue No. 1 is concerned, we are satisfied that the business was a joint venture and not the sole proprietary concern of the Appellant No. 1, as urged by Mr. Subba Rao.

20. We may furthermore notice that a concession was made before the High Court that so far as the immovable property is concerned, having regard to the provisions contained in Section 45 of the Transfer of Property Act, 1894, Narasimha Murthy had a share therein. It is, thus, not necessary for us to go into the said question as correctness or otherwise of the said concession is not in question before us.

21. However, it is difficult for us to accept the reasonings of the High Court in regard to Ex. B-8. Plaintiffs (Respondent Nos. 1 and 2) were claiming the property as members of the Hindu undivided family. Admittedly, the interest of the Hindu undivided family was being looked after by Narasimha Murthy and after his death by Defendant No.1 (Respondent No.3). Correspondences were exchanged by and between Appellant Nos. 1 and 2 only with Narasimha Murthy and Defendant No. 1 (Respondent No.3). Yet again admittedly, Defendant No. 1 (Respondent No.3) was the manager of the Hindu undivided family. His dealing with the appellant in regard to the affairs of the business will have a direct bearing in the matter of determination of the issues raised before us.

22. An admission made by a party can be used against him. When such admission is made by a Karta of the Hindu undivided family, who is managing the family property as well as family business affairs, the same would be a relevant fact. When a claim was made by the plaintiffs for rendition of accounts in the lis, issuance of a document purported to have been authored by one of the parties, in our opinion, was required to be taken into consideration.

23. In terms of Section 58 of the Indian Evidence Act, 1872, a thing admitted need not be proved. [See Shreedhar Govind Kamerkar v. Yesahwant Govind Kamerkar & Anr. \026 2006 (14) SCALE 174]

24. It is also a trite law that when in cross-examination a witness accepts the correctness of a document, the same would be relevant. A pleading in regard to existence of a document may be necessary for advancing the case of a party, but when a witness admits a document to be in his own handwriting without anything more, the effect thereof may have to be considered having regard to the provisions contained in Section 145 of the Indian Evidence Act in terms whereof the only requirement would be that his attention is drawn before a writing can be proved. These relevant facts have not been considered by the High Court. The High Court merely proceeded on the basis that Ex. B-8 did not contain anybody's signature. If the Defendant No. 1 accepted the contents of the said document, which, according to him, were noted by him from the books of accounts,

authenticity thereof is not in question, and, thus, even in absence of books of accounts, relevant pages whereof were found to have been torn, the High Court ought to have taken the same into consideration as well as the admission on the part of the Defendant No. 1 and the effect thereof. Such an admission could be taken into consideration both for the purpose of arriving at a finding in regard to the fact as to whether a full and final settlement of accounts had been arrived at, which was a relevant fact as also for determining the question of limitation.

25. There is no document in writing to prove partnership. Accounts had not been demanded by the plaintiffs or the defendant no. 3 for a long time. Even an oral partnership had not been proved. What was the subject-matter of the partnership had also not been considered by the High Court. A share in a joint venture, in absence of any document in writing, must be determined having regard to the conduct of the parties. The High Court proceeded on the basis that the plaintiffs and defendant No.1 had = share in the property in terms of Section 45 of the Transfer of Property Act. If the said immovable property formed assets of the joint venture, the same would be an indicia to determine the shares held by the parties thereto. Ordinarily, the extent of an involvement made shall be the criteria for determining the share of the co-entrepreneurs. In absence of terms and conditions of the joint venture having not been reduced to writing, conduct of the parties how they dealt with affairs of the business would be relevant.

26. The High Court does not say that the concession made by the learned counsel appearing on behalf of Appellants was incorrect. In a situation of this nature, particularly when the limitation issue required determination, Ex. B-8, in our opinion, should have received serious consideration at the hands of the courts below.

27. In terms of Section 3 of the Limitation Act, it is for the court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties. Such a jurisdictional fact need not, thus, be pleaded. In any event, the said evidence was admissible for the purpose of contradicting a witness, which being a relevant fact should have been considered in its proper perspective. If the contents of Ex. B-8 were accepted, it was not for the High Court to consider the consequences flowing therefrom, and, thus, but the fact whether the figure(s) contained therein could be verified from the books of account might not be very relevant. Whether, it would be in consonance with the pleadings of Appellants was again of not much significance if it can be used for demolishing the case of Plaintiffs and Defendant No.1. If the figures contained in Ex. B-8 were accepted, it was for Defendant No. 1 to explain the same and not for Appellants. The High Court, in our opinion, thus, committed a manifest error in not taking into consideration the contents of Ex. B-8 in its proper perspective.

28. At the cost of repetition, we may state that the effect of the said document at least should have received serious consideration at the hands of the High Court. We cannot accept the contention of Mr. Iyer that such a question had not been raised. From the impugned judgment of the High Court, it appears that the said such question had specifically been raised. The High Court noticed the arguments of the learned Advocate in the following terms :

"\005Therefore, they have no objection for giving the half share in the property in spire of 1st respondent expressing his intention to relinquish his right in the half share of landed property admeasuring Ac. 7-14 guntas in Atapur covered by Ex. B-15. After the settlement of accounts under Ex. B-8 the appellants obtained loans from various banks for the purpose of reviving the poultry business and also setting up of business in plastics. In all the loan transactions, the 1st respondent signed the loan documents as a guarantor. If really he is interested in the business, he would have been one of the principal debtors

and not a guarantor. That indicates that the respondents have no interest in the poultry business carried on by the 1st appellant. Further the 1st respondent got himself examined on commission as he does not want to face the Court since his case is false.

As regards the share of the 4th defendant who is the daughter of late Narasimha Murthy is concerned, the respondents are not entitled to her share as relinquishment of her share in the property is not evidenced by any document except Ex.B9 which is not a registered document. Therefore, the respondents cannot claim the share of the 4th respondent. Since neither late Narasimha Murthy nor respondent No. 1 obstructed the 1st appellant from carrying on the business in the half share of Ac.7.14 guntas of land, the appellants are not liable to account for profits earned by them by their own labour. If really the case of the respondents is that the poultry business carried on by the appellants is not the exclusive business of the 1st appellant, at the time of Ex. B8 they would have demanded for accounting of the profits. As regards the building constructed in the site, it is constructed with the money belonging to the 1st appellant and therefore, the respondents are not entitled for a share in the said building. At the most the value of the site on which the building is constructed may be awarded to the member of the joint family on which the corners constructs a building. The suit for accounts is barred by limitation as the business was closed in 1973. At the most the respondents are entitled for profits 3 years prior to the filing of the suit\005"

29. It was for the High Court to frame appropriate points for its determination in the light of the submissions made on behalf of Appellants in terms of Order 41 Rule 31 of the Code of Civil Procedure. The High Court failed to address itself on the said issue. Thus, apart from Issues Nos. 2 and 4, other points which for its consideration including the extent of the share of Plaintiffs and Defendant No. 1 were required to be specifically gone into particularly in view of the fact that such a contention had been considered by the learned Trial Judge. Issue Nos. 2 and 4, in our opinion, therefore, require fresh consideration at the hands of the High Court.

30. For the aforementioned purpose, it may also be necessary for the High Court to consider the applicability of the relevant articles of the Limitation Act. We, therefore, are of the opinion that the impugned judgment to the extent aforementioned cannot be sustained. It is set aside accordingly in part and the matter is remitted to the High Court for consideration of the matter afresh on the said issues, inter alia, in the light of the observations made hereinbefore. The High Court shall also formulate appropriate points for its consideration in terms of Order 41 Rule 31 of the Code of Civil Procedure and proceed to hear the appeal on merits on the relevant issues apart from Issue Nos.2 and 4. This appeal is allowed to the aforementioned extent. In the peculiar facts and circumstances of the case, there shall be no order as to costs.