

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.2597 OF 2016

KODENDERA K. UTHAIAH (D) BY LR.APPELLANT(s)
VERSUS
P.M. MEDAPPA AND OTHERSRESPONDENT(s)

JUDGMENT

NAVIN SINHA, J.

The respondent was the plaintiff in O.S. No. 42/1991, seeking dissolution of the partnership firm and rendition of accounts. The suit was decreed in part, holding that the legal heirs of the deceased partner, were entitled to 1/4th share to be quantified in terms of Clause 14 of the partnership deed. R.F.A. No. 231/1996 preferred by the plaintiff, against grant of partial relief, was allowed on 08.02.2006 directing dissolution of the firm and settlement of accounts “as of date”. Aggrieved,

the defendant has preferred the present appeal. The parties, for convenience, shall be referred to by their respective positions in the suit.

2. The facts, in brevity are, that the father of the plaintiff i.e. P.M. Medappa, along with three others constituted a registered partnership firm, M/s. Rums & Co. The partnership deed dated 27.01.1971, in Clause 14, stipulated that in the event of death of a partner, the remaining partners shall have the option to give a written notice within three months of the death, to the legal heirs of the deceased partner, for purchase of the shares of the deceased. The purchase price was to be the amount of the share of the deceased as determined at the last annual general accounts, inclusive of interest @ 10% per annum, upto the date of purchase. P.M. Medappa was deceased on 27.07.1990. The surviving partners, defendants 1 to 3, gave notice on 15.10.1990 in terms thereof to the plaintiff and defendants 4 to 9, being the legal heirs of the deceased partner.

3. The plaintiff preferred O.S. No. 42/1991 seeking dissolution of the firm and rendition of accounts, alleging refusal of the remaining partners to pay the legal heirs of the deceased partner, the due share under Clause 14. The suit was decreed in part by the Civil Judge on 03.01.1996 holding that the plaintiff and defendants 4 to 9 as legal heirs of the deceased partner, were entitled to 1/4th share to be worked out on basis of the last annual general accounts, together with interest @ 10% per annum from the date of death till the date of decree. Aggrieved by the grant of partial relief, the plaintiff preferred R.F.A. No. 231/1996. The High Court, by the impugned order, held that the notice dated 15.10.1990 had not been served on all the legal heirs of the deceased partner. Clause 14 therefore never became operational, directing dissolution of the firm and settlement of accounts “as of date” entitling the legal heirs to 1/4th share in the assets and profits of the firm with interest @ 6% per annum till settlement. Liberty was further granted to seek appointment of a receiver

to take care and manage the assets of the partnership firm pending finalisation of settlement of accounts.

4. During the pendency of the litigation, the partnership underwent several changes, and today Subbaiah, the nephew of the original defendant no.2 is the sole proprietor of the erstwhile partnership business, permitted to be substituted by order dated 04.03.2016.

5. Shri R. Basant, learned senior counsel for the appellant-defendant submitted that the plaintiff in his evidence had admitted due service of the notice dated 15.10.1990. Clause 14 evinced an intention to the contrary for continuance of the partnership on the demise of a partner and therefore Section 42(c) of the Partnership Act (hereinafter referred to as “the Act”) providing for dissolution by operation of law on the death of a partner, has no application. The manner for calculation of the dues of the deceased partner was provided for in

Clause 14. Section 37 of the Act, therefore, had no application. The remaining partners were always ready and willing to pay the legitimate dues in accordance with Clause 14. The plaintiff insisted on induction of the wife of the deceased partner, and refused settlement of accounts, raising unreasonable demands. The dues could not be paid as in the meantime the plaintiff filed the suit and the partners bonafide decided to await outcome of the suit. There was no intentional delay or desire to defeat the rights of the legal heirs of the deceased partner.

6. Conversely, Shri Nanju Ganpathi, learned senior counsel for the respondent-plaintiff, submitted that the finding with regard to non-compliance with Clause 14 by failure to serve notice on all the legal heirs calls for no interference. After the service of notice dated 15.10.1990 upon him, the plaintiff made several endeavours to persuade the remaining partners to pay 1/4th share of the deceased partner in terms of Clause 14. Ultimately, on 31.05.1991, the plaintiff asked for

the audited balance sheet but was denied the same on the pretext that the auditing was still not complete and some more time was required. The auditing of the accounts was in fact completed and filed on 31.10.1990 despite which the remaining partners did not pay the legitimate dues to the legal heirs. In absence of any justification by the defendants to act in accordance with Clause 14, the High Court has committed no error in directing dissolution and settlement of accounts “as of date” since it has been admitted that the share of the profits to the account of the deceased were ploughed back for the benefit of the partnership. The appeal may be dismissed.

7. We have considered the respective submissions and perused the materials and evidence on record. The order sheet dated 02.12.2016 records that the appellant was required to file proof of deposit of Rs.50 lacs. The office report states that only Rs.25 lacs have been deposited. The attention of the Court was not invited to these facts during arguments, by learned Counsel for the parties and neither has any

mention been made regarding the same in the written submissions filed by the parties.

8. The primary facts with regard to the constitution of the partnership firm comprising of four partners, the demise of one of the partners on 27.07.1990 and consequent exercise of option under Clause 14 of the partnership deed on 15.10.1990 by the remaining partners are not in dispute. The controversy with regard to service of notice on all the legal heirs of the deceased partner need not be dwelt upon at length, in view of the fact that it was in fact served on the plaintiff, and the rest of the notices were sent to the address of their mother, and acceptance refused by others. The plaintiff has admitted that he impleaded the other legal heirs as defendants 4 to 9, as they refused to join him as plaintiffs.

9. Section 37 of the Act provides that if any member of a firm dies and the surviving partners carry on the business without any final settlement of accounts, the estate of the

deceased partner is entitled to such share of the profits made as may be attributable to his share of the property or to interest @ 6% per annum on the amount of his share in the property of the firm. In our considered opinion, it will have no application in the facts of the case in view of Clause 14 of the partnership deed, which also provides for the manner of calculating the dues. Similarly, Section 42(c) of the Act, providing for dissolution of the firm on the death of a partner, will also have no application in view of the aforesaid clause evincing a clear intention to continue the partnership on the death of a partner.

10. The last audited accounts upto 31.03.1989 having been signed by the deceased as a partner, the only controversy is with regard to the period thereafter till his death on 27.07.1990. Clause 14 of the partnership deed provides for determination of the purchase price of the share of the deceased partner on the basis of the last annual general account with interest @ 10% per annum upto the date of the

purchase. Admittedly, no final accounts till date of death has been furnished much less purchase of the share of the deceased been made till date by actual payment of the legitimate 1/4th share to the legal heirs of the deceased partner.

11. The plea of the defendant, that delay in payment of the legitimate dues was attributable to the conduct of the plaintiff is not tenable from the facts and materials on record. The plaintiff has averred that after receipt of the notice dated 15.10.1990 he had contacted the surviving partners several times, held discussions with them, and requested for the accounts. Ultimately on 31.05.1991, he wrote to them asking for the balance-sheet. An incorrect reply was furnished that the accounts had not been audited when in fact they had already been filed on 31.10.1990. The defendant K.K. Uthaiyah in his evidence has acknowledged discussions with the legal heirs of the deceased partner and that the share of the assets of the deceased partner had remained in the firm itself, even

while the surviving three partners continued to take their share of the profits after accounting. Though he deposed that a copy of the audited report was sent to the plaintiff through his driver, neither was the date mentioned or any evidence led in support of the same.

12. It is not the case of the appellant that the Income-Tax Returns of the Partnership firm were not filed within statutory time. If the returns were so filed, naturally the share of the deceased partner payable under Clause 14 till his demise on 27.07.1990 posed no difficulty for payment. The plea that in view of the pending litigation the dues were not paid is unacceptable and not bonafide. The legal heirs of the deceased partner are, therefore, held entitled to 1/4th share with 10% interest per annum from 27.07.1990 till the date of purchase.

13. The finding that Clause 14 of the partnership deed was not complied with and, therefore, never became operational is

held to be unsustainable and is set aside. The consequential direction for dissolution and settlement of accounts “as of date” for that reason, is also set aside. The legal heirs are held not to be entitled to any share in the profits after 27.07.1990. The liberty to move for appointment of receiver to take care and manage the assets of the partnership firm pending finalisation of accounts and settlement calls for no interference. The plaintiff is permitted to withdraw the deposit made before this court after due furnishing of proof of identity. The said amount shall be adjusted against the final dues found payable to the legal heirs after settlement of accounts.

14. The appeal is allowed, but only to the extent indicated.

.....J.
(Ranjan Gogoi)

.....J.
(Navin Sinha)

New Delhi,
October 04, 2017

