2026 INSC 979

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8167 OF 2017

V. SUMITRA REDDY & ANR. ...APPELLANT(S)

VERSUS

K. RANGANADHA REDDY & ORS. ....RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

In this appeal, challenge has been made to the judgment and order dated 09.04.2012 passed by the then High Court of Judicature of Andhra Pradesh at Hyderabad (briefly the 'High Court' hereinafter) in Civil Revision Petition No. 1554 of 2011 filed by the first respondent.

2. The issue involved pertains to the share of the first respondent in the assets of the partnership firm on its dissolution.

Pertinently, the issue centers around the interpretation of the provisions of Sections 46 and 48 of the Indian Partnership Act, 1932 (briefly 'the Partnership Act' hereinafter) in the context of Sections 7 and 43 thereof.

3. At the outset, relevant facts may be noted.

4. In the year 1964, the following persons constituted a partnership firm under the name and style of M/s Viraj Constructions:

(1) Kasireddy Lakshmi Narayana Reddy,

(2) Vallappareddy Sundara Ram Reddy,

(3) Vardhireddy Mohan Krishna Reddy,

(4) Vallappareddy Kodanda Ram Reddy, and

(5) Vallappareddy Sumitra Reddy.

4.1. Be it stated that Kasireddy Lakshmi Narayana Reddy is the father of the first respondent and the plaintiff in the original suit. Vallappareddy Sundara Ram Reddy is the father-in-law and father of appellant Nos. 1 and 2 i.e. Vallappareddy Sumitra Reddy and Vallappareddy Raja Gopal Reddy. Appellant

No. 1 herself is the fifth partner of the aforesaid partnership firm.

5. The principal business of the partnership firm was carrying on construction works with the Railways. It is not in dispute that the partnership was at will. Terms and conditions of the partnership were reduced into writing in the partnership deed dated 31.12.1964.

6. A new partner, Vardhireddy Dashrat Rami Reddy, was admitted to the partnership firm on 13.12.1968 with the consent of all the partners. Accordingly, a new partnership deed dated 13.12.1968 came to be executed by and between the partners. The respective shares of profit and loss amongst the partners were divided in the following manner:

(1) Kasireddy Lakshmi Narayana Reddy- 25 percent out of 100.

(2) Vallapareddy Sundara Ram Reddy - 17 percent out of 100.

(3) Vardhireddy Dashrat Rami Reddy - 10 percent out of 100.

(4) Vardhireddy Mohan Krishna Reddy - 15 percent out of 100.

(5) Vallappareddy Kodanda Ram Reddy - 16 percent out of 100.

(6) Vallappareddy Sumitra Reddy - 17 percent out of 100.

7. In the course of its business, a landed property to the extent of Ac. 3.27 Guntas bearing survey Nos. 28/1, 28/2 and 28/3 situated at Begumpet, Hyderabad was acquired in the name of the partnership firm (though there appears to be some confusion regarding the actual date of purchase of the land, either 25.06.1966 or 05.09.1975).

8. Some of the partners mooted a proposal that if Kasireddy Lakshmi Narayana Reddy retired from the partnership firm, a promissory note for a sum of Rs. 22,500.00 towards his share would be executed. They also assured settlement of accounts as and when required. In response to such a proposal, Kasireddy Lakshmi Narayana Reddy decided to retire from the partnership firm. He circulated a letter dated 03.03.1970 to all the partners stating that he would be retiring

from the partnership on and from 01.04.1970. As promised and assured, a promissory note was executed on 17.07.1970 in favour of Kasireddy Lakshmi Narayana Reddy for a sum of Rs. 22,500.00, agreeing to pay the said amount together with interest at the rate of 12 percent per annum.

9. As payment of the said amount was not made despite demand being made, Kasireddy Lakshmi Narayana Reddy instituted a civil suit being O.S. No. 128 of 1975 in the Court of Additional District Judge, Nellore for recovery of a sum of Rs. 30,457.50 being the amount due under the aforesaid promissory note dated 17.07.1970. Partners of the partnership firm contested the suit taking the stand that the partnership firm was not dissolved. Consequently, Kasireddy Lakshmi Narayana Reddy did not retire and continued to be a partner of the partnership firm. Therefore, he was not entitled to any of the reliefs sought for in the suit.

10. Additional District Judge, Nellore *vide* the judgment and decree dated 04.05.1979 dismissed O.S. No. 128 of 1975, agreeing with the contentions advanced on behalf of the

defendants. The consequence of such dismissal of the suit would mean that the partnership firm continued to remain in existence and Kasireddy Lakshmi Narayana Reddy did not retire from the partnership firm.

11. Kasireddy Lakshmi Narayana Reddy thereafter preferred a first appeal against the judgment and decree dated 04.05.1979 which was registered as ASSR No. 90685 of 1979 before the High Court. However, *vide* the order dated 02.11.1983, the first appeal was dismissed as not pressed. Thus, the judgment and decree dated 04.05.1979 passed in O.S. No. 128 of 1975 became final and binding between the parties.

12. In the meanwhile, on 15.10.1983, Kasireddy Lakshmi Narayana Reddy sent a legal notice to all the remaining partners of the partnership firm stating that he was unable to continue in the said partnership firm and called upon them to dissolve the partnership firm. He also sought for rendition of accounts and his share in the profits and properties of the partnership firm.

12.1. As he did not receive any response, he filed O.S. No. 1601 of 1983 in the Court of Additional Judge, City Civil Court, Hyderabad against the remaining partners of the partnership firm and Andhra Bank, Sultan Bazar, Hyderabad seeking the following reliefs:

(i) to direct the defendants to render accounts of the dissolved partnership firm and in the event of their failure to do so, a Commissioner be appointed for scrutiny of books of account and to ascertain the profits; and

(ii) to pay the amount found due to the plaintiff (Kasireddy Lakshmi Narayana Reddy) together with interest at the rate of 12 percent per annum.

13. It may be mentioned that prior to institution of O.S. No. 1601 of 1983, one of the partners Vallapareddy Sundara Ram Reddy passed away. Consequently, his legal representatives were added as defendants in the suit. During the pendency of the suit, another partner, Vardhireddy Dashrat Rami Reddy died, following which his legal representatives Smt. Vardhireddy Tulsamma and

Vardhireddy Rajasekhar Reddy, being his wife and son, were brought on record as defendants in the suit.

14. After consideration of the issues framed, the evidence brought on record and having due regard to the rival contentions of the parties, learned trial court passed a preliminary decree on 06.11.1995 in the following terms:

1. plaintiff is entitled to 0.25 ps. share out of 100 ps. capital amount of the partnership firm M/s. Viraj Constructions;
2. defendant Nos. 1 to 6 and defendant Nos. 8 and 9 are hereby directed to render accounts on or before 31.03.1996 to the plaintiff towards his share of the partnership up to 31.03.1970;
3. if the defendants fail to render accounts as directed above, the plaintiff is at liberty to file a petition to pass a final decree for appointment of a Commissioner for settlement of accounts of the partnership firm in terms of this preliminary decree;

4. plaintiff is entitled to claim interest at 12% p.a. on the amount found to be due to him towards his share after settlement of accounts, from 01.04.1970 onwards till the date of realization;
5. the suit as against defendant No. 7 is dismissed;
6. defendant No. 7 shall bear his own costs of the suit; and
7. defendant Nos. 1 to 6, 8 and 9 to pay to the plaintiff a sum of Rs. 4,788.00 towards costs of the suit.

15. Feeling partly aggrieved by the preliminary decree dated 06.11.1995, the plaintiff i.e. Kasireddy Lakshmi Narayana Reddy preferred a first appeal before the High Court which was registered as CCCA No. 52 of 1999. The defendants i.e. the appellants herein preferred cross objection.

16. The High Court *vide* the order dated 28.03.2001 disposed of CCCA No. 52 of 1999 as well as the cross objection by modifying the preliminary decree dated 06.11.1995 in the following manner:

> As the partnership is at will, under Section 43 of the Partnership Act, soon after the partner has expressed his willingness to dissolve the partnership firm, after giving notice, the partnership firm M/s. Viraj Constructions was dissolved on 18.10.1983 and the defendants 1 to 6, 8 and 9 are liable to render the accounts to the plaintiff towards his share upto 18.10.1983 and if any amount is due payable to the appellant, from out of the profits of the partnership firm, he is entitled to receive the same with interest at 12% per annum till the date of realization.

17. At this stage, it may be mentioned that during the pendency of the first appeal before the High Court, defendant No. 8 i.e. Vardhireddy Dashrat Rami Reddy died and he was substituted by his legal representatives Vardhireddy Mohan Krishna Reddy and Vardhireddy Rajasekhar Reddy (respondent Nos. 2 and 6 in the present appeal).

18. Original plaintiff Kasireddy Lakshmi Narayana Reddy thereafter filed an interlocutory application in O.S. No. 1601/1983 i.e. IA No.1247/2001 for passing final decree by appointment of a Commissioner and to direct him to take over possession of the assets of the partnership firm including the

land admeasuring Ac. 3.27 Guntas situated at Begumpet, Hyderabad (referred to hereinafter as 'the land in question') and to settle the accounts of the partnership firm including the share of the plaintiff in terms of the preliminary decree dated 06.11.1995 as modified by the High Court on 28.03.2001.

19. The said interlocutory application was contested by the defendants. However, the trial court i.e. the City Civil Court rejected such objection *vide* the order dated 25.11.2002 and appointed Shri J. Prabhakar, Advocate as the Commissioner for execution of the warrant.

20. Defendants filed application for review of the order dated 25.11.2002. By order dated 26.04.2004, the City Civil Court allowed the review petition by recalling its order dated 25.11.2002 to the extent of directing the Commissioner to take possession of the assets of the dissolved firm. The City Civil Court accepted the plea of the defendants that as per the preliminary decree, as modified, the plaintiff is only entitled to his share in the profits of the business of the partnership firm till 18.10.1983. Therefore, he is not entitled to any share in the

properties of the firm which is being run by the remaining partners. It was clarified that the question of selling of property would arise only when the other partners fail to pay the amount to the plaintiff.

21. Assailing the review order dated 26.04.2004, plaintiff filed CMA No. 1485 of 2004 before the High Court.

22. In the meanwhile, plaintiff filed an interlocutory application before the City Civil Court being IA No. 655/2003 for appointment of an advocate as a Commissioner to sell the property whereas defendant Nos. 4 and 5 filed another interlocutory application before the said court being IA No. 892/2005 for appointment of a chartered accountant or a person who is well versed in accounts as the Commissioner for determining the value of the share of the plaintiff as on 18.10.1983 in the dissolved partnership firm. The City Civil Court dismissed the interlocutory application filed by the defendants and allowed the interlocutory application of the plaintiff *vide* the order dated 25.07.2006. City Civil Court held that the preliminary decree had not limited the right of the

plaintiff to receive the value of his share as on 18.10.1983 in the assets of the dissolved firm and that his rights will exist till passing of the final decree.

23. Feeling aggrieved by the order dated 25.07.2006 passed in IA No. 655/2003, the defendants filed CRP No. 3825/2006 before the High Court.

24. Assailing the above order dated 25.07.2006 passed by the City Civil Court in IA No. 892/2005, defendants also filed CRP No. 4063 of 2006 before the High Court which was dismissed at the admission stage on 13.10.2006. The special leave petition filed against the order dated 13.10.2006 was dismissed by this Court on 05.01.2007.

25. Both CMA No. 1485 of 2004 and CRP No. 3825 of 2006 came to be disposed of by a common judgment and order dated 30.01.2009 passed by a learned Single Judge of the High Court. On a detailed consideration of the respective pleas of the parties, the High Court set aside the review order dated 26.04.2004 and after referring to the provisions of Sections 46 and 48 of the Partnership Act, held as follows:

> 27. ……… The language of the above section is very clear that the outgoing partner is entitled to get his share of profits out of the assets also in addition to other sources available for them for distribution after discharging the liabilities of third parties. When once there is a preliminary decree in favour of the plaintiff for ascertaining the profits on verification of the accounts rendered by the other partners, value of the movable and immovable properties of the firm has to be ascertained and if the other partners who are running the subsequent partnership business are ready to pay the share of the plaintiff, there would not be any problem. Otherwise, the properties have to be brought to sale and the sale proceeds have to be distributed rateably as per their share in the partnership firm.

25.1. High Court noted that the receiver, who was described as the Commissioner, was appointed under Order XL of the Code of Civil Procedure, 1908 (briefly 'the CPC' hereafter) and that he had taken over possession of the land in question after getting the said land surveyed through the Mandal Surveyor and on verification of the TSLR record. After rejecting the plea of the defendants that the Commissioner (receiver) ought not to have been appointed, the High Court held that under Order XL of the CPC, the receiver is entitled to take possession of the property whereafter the High Court issued the following directions:

> 30. ……. Now the Commissioner has to take steps to get the value of the property assessed. After determining the value of the property, if the other partners come forward to pay 25% of the value of the property after deducting the liabilities, if any, the properties can be left to the partners after satisfying the share of the plaintiff, otherwise, the property has to be sold to realize the amount for the purpose of distribution. If the parties come to an understanding, the plaintiff may also take 25% of the land towards his share instead of selling the property for the purpose of distribution of the same out of the sale proceeds among the partners ….

25.2. In view of the aforesaid findings, CMA No. 1485 of 2004 came to be allowed and CRP No. 3825 of 2006 was dismissed.

26. Thereafter, the plaintiff filed I.A. No. 541 of 2009 before the trial court under Order VII Rule 7 CPC and Section 47 of the

Partnership Act for a direction to the advocate Commissioner to sell the land in question and to pay 25% of the sale proceeds to him after discharging the liabilities of the partnership firm, towards his share, while passing the final decree.

27. However, the trial court accepted the plea of the defendants that all that the plaintiff was entitled to receive is the value of the partnership assets assessed as on 18.10.1983 and that he is not entitled to insist on the sale of the property and receive 25% of the sale proceeds. Accordingly, the trial court dismissed I.A. No. 541 of 2009 *vide* the order dated 28.04.2010.

28. In the meanwhile, the original plaintiff Kasireddy Lakshmi Narayana Reddy died, and the first respondent K. Ranganadha Reddy filed CRP No. 1554 of 2011 as his legal representative before the High Court assailing the order dated 28.04.2010.

29. By way of the impugned judgment and order dated 09.04.2012, the High Court allowed the civil revision by setting aside the order dated 28.04.2010. Consequently, the High

Court allowed the interlocutory application filed by the plaintiff i.e. IA No. 541/2009 by holding that unless the parties mutually agree to settle their shares and file a joint memo before the trial court within two months, the advocate Commissioner shall sell the assets of the dissolved firm i.e. the land in question through public auction and deposit the sale proceeds before the trial court within four months. The final decree shall be passed by the trial court within a period of six months for payment of 25% of the sale proceeds to the plaintiff-petitioner (respondent No. 1 herein) after discharging the liabilities of the dissolved partnership firm, if any.

30. Assailing the aforesaid impugned judgment and order dated 09.04.2012, the appellants (defendants) filed the related special leave petition. By order dated 30.07.2012, this Court had issued notice and, in the meantime, directed stay of sale of the property for a period of three months, which was extended thereafter. Though an attempt at mediation was resorted to, it was not successful whereafter order dated 10.04.2017 was passed by this Court granting leave.

31. Learned counsel for the appellants firstly referred to the undisputed facts of the case. He submits that assets of the partnership firm M/s Viraj Constructions which included appellant No. 1 as the sole surviving appellant (since appellant No. 2 has passed away), V. Sundara Ram Reddy and the plaintiff (father of respondent No. 1) included a plot of land admeasuring Ac. 3.27 guntas situated in Survey Nos. 28/1, 28/2 and 28/3 at Begumpet, Hyderabad (already referred to as the 'land in question'). This landed property is presently in the custody of the advocate Commissioner appointed by the City Civil Court *vide* the order dated 25.11.2002.

31.1. M/s. Viraj Constructions, being a partnership at will, was dissolved at the instance of the plaintiff on 18.10.1983 by serving a legal notice on the other partners. The other partners thereafter took over the assets and liabilities of the partnership firm and carried on the business by constituting a new firm.

31.2. In O.S. No. 1601/1983 instituted by the plaintiff for rendition of accounts, a preliminary decree dated 06.11.1995 was drawn by the City Civil Court holding that the plaintiff is entitled to 25% out of 100% capital amount of the partnership firm and that the defendants were liable to render accounts to the plaintiff upto 31.03.1970 with plaintiff entitled to claim interest at the rate of 12% per annum on whatever amount found due to him following rendition of accounts.

31.3. The preliminary decree was partially modified by the High Court *vide* the order dated 28.03.2001 to the extent that the defendants were liable to render accounts to the plaintiff upto 18.10.1983 i.e. the date when the partnership firm stood dissolved.

31.4. Plaintiff initiated final decree proceedings which were ultimately carried to the High Court. *Vide* the impugned judgment and order dated 09.04.2012, the High Court opined that the landed property should be valued by the advocate Commissioner as on the date when he assesses the value and accordingly directed the advocate Commissioner to sell the asset by public auction and to deposit the sale proceeds before the City Civil Court. Of course, the aforesaid order has been stayed by this Court.

31.5. In the above factual backdrop, learned counsel for the appellants Mr. Ananga Bhattacharyya submits that the short question which arises for consideration in the present appeal is, in the event of dissolution of a partnership at will at the instance of one of the partners, whether the outgoing partner is entitled to his share in the immovable assets of the partnership firm valued as on the date of dissolution of the firm or on the date of assessment of the valuation of the property?

31.6. Mr. Bhattacharyya submits that a cut-off date in the preliminary decree is specified so that the final decree can be worked out, taking the valuation of the landed asset on the date mentioned in the preliminary decree. Further, the provision of interest in the preliminary decree is to compensate the outgoing partner for the delay in realization of his entitlement from the date of the preliminary decree till payment.

31.7. According to the learned counsel, the High Court's order dated 28.03.2001 whereby the preliminary decree was modified to the extent that defendants were made liable to render accounts to the plaintiff upto 18.10.1983 has attained finality. Therefore, the date 18.10.1983 has to be reckoned as the date upto which the accounts have to be settled. However, by way of the impugned judgment and order dated 09.04.2012, the High Court has traversed beyond the preliminary decree as modified by the High Court *vide* the order dated 28.03.2001.

31.8. In this connection, he submits that the plaintiff had actually conceded to the aforesaid position by seeking implementation of the High Court's order dated 28.03.2001. In fact, the High Court by way of the impugned judgment and order has also opined that no partner can take advantage of the increase in value of the partnership assets after dissolution of the partnership. The issue, therefore, is whether a partner who dissolved the partnership firm in 1983 and has since been in no manner involved with the affairs and business of the partnership firm, can take advantage of the increase in the value of the partnership's assets? According to Mr. Bhattacharyya, the answer has to be in the negative. In this connection, he has placed reliance on the following decisions of this Court and that of the Madras High Court:

(i) *Addanki Narayanapppa Vs. Bhaskara Krishtappa*[1];

(ii) *Pamuru Vishnu Vinodh Reddy Vs. Chillakuru Chandrasekhara Reddy*[2];

(iii) *N. Muhammad Ussain Sahib Vs. S.N. Abdul Gaffoor Sahib*[3].

31.9. He submits that the principles that can be culled out from the above decisions are fully applicable to a dissolved partnership at will too. The plaintiff who dissolved the partnership way back in 1983, now cannot be allowed to take advantage of the appreciation in the value of the landed assets.

31.10. He, therefore, submits that the impugned judgment and order of the High Court cannot be sustained and should be set aside and quashed with the further direction that the plaintiff (respondent No.1) would be entitled to the commensurate share of the partnership as on the date of dissolution i.e. 18.10.1983.

[1] AIR 1966 SC 1300
[2] (2003) 3 SCC 445
[3] AIR 1950 Mad 758

32. In response, learned counsel for the first respondent also referred to the factual background of the case and submits that appellants in the final decree proceedings had raised two objections as to the entitlement of the plaintiff (respondent No. 1) in the context of the preliminary decree:

(i) plaintiff is not entitled to the immovable property of the partnership firm but is only entitled to the profits accruing out of the business of the partnership firm; and

(ii) even if the plaintiff is held to be entitled to the immovable property of the partnership firm, he is entitled to have a shared value only as on 18.10.1983. In other words, as per the appellants, plaintiff will not be entitled to the escalation in value of the immovable property, post dissolution of the partnership firm.

32.1. Learned counsel submits that both the aforesaid objections are legally unsustainable. Besides, those have already been adjudicated in favour of the plaintiff (respondent

No. 1) and have attained finality. Thus, it is not permissible for the appellants to re-agitate the two issues once again.

32.2. Adverting to the first objection, learned counsel submits that the plaintiff (respondent No. 1) filed an interlocutory application being I.A. No. 1247 of 2001 for appointment of an advocate Commissioner to take over possession of the immovable property and to settle the accounts of the partnership firm by including his share in the immovable property. The adjudication of the said application was carried up to the High Court in CMA No. 1485 of 2004. The High Court *vide* the judgment and order dated 30.01.2009 upheld the contention of the plaintiff that he is entitled to 25 percent of the value of the immovable property after deducing the liabilities of the partnership firm. Thereafter, plaintiff (respondent No. 1) filed I.A. No. 655 of 2003 seeking a direction to the advocate Commissioner to settle the accounts of the partnership firm by selling the immovable property. This interlocutory application came to be allowed by the City Civil Court *vide* the order dated 25.07.2006. This was assailed by the appellants (defendant Nos. 4 and 5) by filing CRP No. 3825 of

2006 which came to he dismissed by the High Court *vide* the common judgment and order dated 30.01.2009.

32.3. From the above, learned counsel submits that after the common judgment and order of the High Court dated 30.01.2009, which has admittedly attained finality, it is no longer open to the appellants to re-agitate that the plaintiff (respondent No. 1) is either not entitled to 25 percent share in the immovable property or that the immovable property ought not to be put to sale.

32.4. As regards the second objection i.e. 25 percent share of the plaintiff in the immovable property be restricted to the value of the property prevailing as on 18.10.1983, learned counsel submits that appellants (defendant Nos. 4 and 5) had filed I.A. No. 892 of 2005 for appointment of a Commissioner to determine the value of the share of the plaintiff in the partnership firm as on 18.10.1983. The City Civil Court *vide* the order dated 25.07.2006 held that the plaintiff's right exist till the passing of the final decree and that his share in the firm including in the immovable property cannot be restricted to 18.10.1983.

32.5. The revision filed by the apellants against the aforesaid order dated 25.07.2006 came to be rejected by the High Court *vide* the order dated 13.10.2006 in CRP No. 4063 of 2006. The special leave petition filed by the appellants challenging the aforesaid order of the High Court was dismissed by this Court on 05.01.2007.

32.6. In the above backdrop, it is contended on behalf of the plaintiff (respondent No. 1) that it is not open to the appellants to re-agitate that the valuation of the plaintiff's share in the immovable property should be restricted to the date on which the firm stood dissolved i.e. 18.10.1983.

32.7. Counsel for the respondent, therefore, submits that the impugned judgment and order of the High Court is perfectly in order. All that the High Court has directed is that the advocate Commissioner should sell the immovable property through public auction and thereafter to deposit the sale proceeds in the court and out of sale proceeds, respondent No.

1 would be entitled to 25 percent thereof. No fault can be found with the view taken by the High Court. On the contrary, the insistence of the appellants that the right of the plaintiff (respondent No. 1) in respect of the immovable property be restricted to the date of dissolution of the firm i.e. 18.10.1983 has no basis either in law or in equity. He, therefore, submits that the civil appeal may be dismissed and the impugned judgment and order of the High Court be affirmed.

33. Submissions made by learned counsel for the parties have received the due consideration of the Court.

34. At the outset, let us briefly deal with the law relating to partnership.

35. In England, the law of partnership developed almost exclusively through court decisions. As a matter of fact, the law of partnership was on the whole illustrated an example of judge made law, gradually developing with the growth of trade and commerce. This continued until enactment of the Partnership Act of 1890.

36. In India, the first attempt to formally regulate the relationship of partners and of a partnership firm with third parties was made in 1878 when the law relating to partnership was included in Chapter XI of the Indian Contract Act, 1872 comprising of Sections 239 to 266. However, in due course of time, these provisions were found to be inadequate. Development of trade in India created need for a specific legislation on partnership. As a result, the Indian Partnership Act, 1932 (already referred to as 'the Partnership Act') came to be enacted. Consequently, Sections 239 to 266 of the Indian Contract Act, 1872 came to be repealed by the Partnership Act. Presently, the Partnership Act lays down the statutory framework dealing with partnerships. However, those provisions of the Indian Contract Act, 1872 insofar as they are not inconsistent with the Partnership Act continue to apply to a partnership firm. The Partnership Act, therefore, supplements the Indian Contract Act, 1872.

37. Thus, the Partnership Act has been enacted to define and amend the law relating to partnership. Section 4 defines

‘partnership’ to mean the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all. The persons who have entered into partnership with one another are individually called ‘partners’ and collectively a ‘firm’.

38. Section 5 declares that relation of partnership arises from contract and not from status.

39. A partnership firm is not a legal entity, like a company. It continues to exist as a group of individual partners. The firm name is only a compendious name given to the partnership and the partners are the real owners of the assets. In other words, the partnership property belongs to all the partners constituting the partnership firm. If a partner contributes property to the partnership, it does not remain the property of the partner but becomes the property of all the partners constituting the partnership. All the partners would have interest in that property as part of the assets of the partnership in proportion to their shares.

40. Section 7 deals with ‘partnership at will’. Since this provision has some relevance, the same is extracted hereunder:

> 7. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is ‘partnership at will’.

40.1. This Court has examined this provision on several occasions and laid down the broad contours of Section 7. The essence of ‘partnership at will’ is that it is open to any partner to dissolve the partnership by giving notice. Section 7 contemplates two exceptions. Firstly, there is a provision in any contract made between the partners for the duration of the partnership; secondly, there is also a provision made in any contract between the partners for the determination of their partnership. In either of these cases, the partnership is not at will. In other words, where the partners fix the duration or mode of determination of the partnership, the same is not a partnership at will (please see *Karumuthu Thiagarajan Chettiar Vs. E.M. Muthappa Chettiar*[4]; and *M.O.H. Uduman Vs. M.O.H.*

[4] Air 1961 SC 1225

Aslum[5]). Therefore, when there is a partnership at will, its existence will depend on the intention of the partners and their volition to continue to function as a firm or otherwise.

41. Chapter VI of the Partnership Act comprising of Sections 39 to 55 deals with dissolution of a 'partnership firm'. As per Section 39, the act of dissolution of partnership between all the partners of a firm is called the 'dissolution of the firm'. Section 40 says that a firm may be dissolved with the consent of all the partners or in accordance with the contract between the partners. According to Black's Law Dictionary, 9th Edition, 'dissolution' generally refers to the formal act or process of bringing a legal relationship, contract or entity to an end; the act of bringing to an end.

42. Section 43 deals with dissolution by notice of 'partnership at will'. Section 43 reads thus:

> 43. Dissolution by notice of partnership at will.—
>
> (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to

[5] (1991) ! SCC 412

> all the other partners of his intention to dissolve the firm;
>
> (2) The firm is dissolved as and 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.

42.1. Thus, as per sub-section (1) of Section 43, where the partnership is at will, the firm may be dissolved by any partner by giving notice in writing to all the partners of his intention to dissolve the firm. As per sub-section (2), the firm is dissolved from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, from the date of communication of the notice.

43. Section 44 provides for dissolution of a partnership firm by the court. It says that at the instance of a partner, a civil suit may be filed, and the court may dissolve a partnership firm on any of the grounds mentioned in the said provision. Amongst the various grounds, a partnership firm can also be dissolved by a civil court on any other ground which renders such dissolution just and equitable.

44. This brings us to the core provisions i.e. Sections 46, 47 and 48. Section 46 says that on the dissolution of a firm, every partner is entitled, as against all other partners, to have the property of the firm applied in payment of the debts and the liabilities of the firm and to have the surplus distributed amongst the partners according to their rights. Needless to observe, a partner includes his legal representatives. Section 46 of the Partnership Act is as follows:

> 46. Right of partners to have business wound up after dissolution.— On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

45. Section 47 deals with the stage after dissolution of a partnership firm. As per Section 47, after the dissolution of a firm, the authority of each partner to bind the firm and the other mutual rights and obligations of the partners continue

notwithstanding the dissolution so far as may be necessary to wind up the affairs of the firm and to complete the transactions which had begun but which remained unfinished at the time of the dissolution. The proviso, however, clarifies that the firm would not be bound by the acts of a partner who has been adjudicated insolvent.

46. The mode of settlement of accounts between partners after dissolution is provided for in Section 48. Section 48 reads thus:

> 48. Mode of settlement of accounts between partners.—In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:
>
> (*a*) losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
>
> (*b*) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order—

(*i*) in paying the debts of the firm to third parties;

(*ii*) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(*iii*) in paying to each partner rateably what is due to him on account of capital; and

(*iv*) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

46.1. Thus, in terms of Section 48 while settling the accounts of a partnership firm on dissolution, the rules mentioned thereunder would be observed but that is subject to agreement by the partners.

47. Let us now deal with some of the case laws relied upon by the parties.

48. In *N. Muhammad Ussain Sahib*, Madras High Court was considering the question that upon dissolution of the partnership, whether the book value of the assets should be taken for assessing profit and loss of the partnership or whether

the market value of those assets should be considered in arriving at the profits.

48.1. The above question arose in the following factual context. The partnership in question was commenced on 01.01.1937. A period of ten years was fixed as the duration of the partnership. The articles of partnership provided for annual settlement of accounts and the method of settling those accounts. The settlement proceeds on the basis of the book value of the assets and not on the real value. On 05.12.1942, the partnership was dissolved. A suit was instituted by one of the erstwhile partners for rendition of accounts and for a share of the profits. A preliminary decree was passed by consent on the basis of which a Commissioner was appointed to go into the accounts and to submit his report to the court.

48.2. It was in the above context that the question framed arose for consideration. Madras High Court held that upon dissolution of the partnership or when a partner retires, the settlement of his account must not be on a notional basis but on a real basis i.e. every asset of the partnership should be converted into money and the account of each partner settled on that basis. The High Court declared that no partner is entitled to take advantage of the appreciation of the value of the assets to the detriment of the other partners. So long as the firm continues, it is not possible for any partner to claim exclusively the benefit of the appreciation of the value of the assets for himself and at the time of the dissolution, such benefit must be shared by all the partners equally. While carrying out the valuation for the purpose of winding up of the partnership, the assets have to be valued on the basis of the market value on the date of the dissolution. In that case, it was 05.12.1942.

49. A 3-Judge Bench of this Court in *Addanki Narayanappa* was considering the question as to whether the interest of a partner in the partnership assets comprising of movable as well as immovable property should be treated as movable or immovable property for the purposes of Section 17(1) of the Registration Act, 1908. It was in that context that the Bench had considered various provisions of the Partnership Act and observed that the whole concept of partnership is to embark

upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done, whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their shares in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. Though a partner's share does not include any specific part of any specific item of partnership property, still where the partnership is entitled to immovable property, such share does include an interest in immovable property and, therefore, every instrument operating to create or transfer a right to such share requires to be registered under the Registration Act. On the death of a partner, his share in the partnership property is to be treated as money and not as land. The Bench endorsed the view that for the purpose of the Partnership Act and irrespective of any mutual agreement between the partners, the share of each partner is his proportion to the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged.

50. *Chillakuru Chandrasekhara Reddy* is a 2-Judge Bench decision of this Court wherein the question for consideration was, what would be the relevant date for the purpose of ascertaining the value of the share of the plaintiff in the partnership firm? Whether it would be the date of retirement of the partner from the partnership firm or the date on which the Commissioner made the valuation of the share of the partner?

50.1. After referring to various provisions of the Partnership Act and the facts of that case, this Court observed that the plaintiff partner had retired from the partnership firm on 05.04.1971 after selling his share in the partnership firm. Once he had retired from the partnership firm, he had no right to claim any further share in the profits of the firm. The defendants had not paid the value of the share of the plaintiff pursuant to the agreement for retiring from the partnership firm. It was in that context this Court held that if the defendants have failed to pay the value of the share of the plaintiff as agreed to, it has become a debt on the defendants and the plaintiff is entitled to recover the same with interest. This Court clarified that after the retirement from the partnership firm, particularly when the firm was reconstituted with new partners, there was no question of using the plaintiff's share for earning profit in the reconstituted firm. This Court held that there was no reason to say that the relevant date for valuation of the share of the plaintiff would be the date when the Commissioner valued his share, that too, after a long lapse of time, particularly having regard to the fact that the plaintiff had retired from the firm on 05.04.1971 having sold his share and the firm had been reconstituted with new partners thereafter. When the plaintiff retired from the partnership firm on 05.04.1971, his share could be valued as on that date and once the valuation is made as on that date, for any delay in payment, he is to be compensated by awarding interest. Mere non-payment of consideration does not take away the legal effect of retirement from the partnership firm. This Court finally held that the cause of action of the plaintiff arose on the date of his retirement from the partnership firm and on which date the liability of the defendants also arose. Plaintiff could certainly claim the value of his share as on 05.04.1971 with interest till the payment was made.

51. In *Guru Nanak Industries Vs. Amar Singh*[6], a 3-Judge Bench of this Court analysed the distinction between 'retirement of a partner' and 'dissolution of a partnership firm'. The Bench held that on retirement of a partner, the reconstituted firm continues and the retiring partner is to be paid his dues in terms of Section 37 of the Partnership Act. In case of dissolution, accounts have to be settled and distributed as per the mode prescribed in Section 48 of the Partnership Act. When the partners agree to dissolve a partnership, it is a case of dissolution and not retirement. In the facts of that case, it was noted that there being only two partners, the partnership firm could not have continued to carry on its business as a

[6] (2021) 14 SCC 672

partnership firm because when there are only two partners and one has agreed to retire, then such a retirement would amount to dissolution of the firm.

52. Let us now sum up our analysis of the case law.

52.1. Madras High Court in *N. Muhammad Ussain Sahib* was dealing with a partnership which had a fixed duration of existence. It was a case of dissolution of the partnership. The question was, upon dissolution of the partnership, whether the book value of the assets should be taken for assessing the profit and loss of the partnership or whether the market value of those assets should be considered in arriving at the profits? The High Court held that upon dissolution of the partnership or in a case where a partner retires, the settlement of his account should not be on a notional basis. It must be on a real basis. In other words, every asset of the partnership should be converted into money and the account of each partner settled on that basis. In that context, the High Court clarified that post retirement of a partner he is not entitled to take advantage of the appreciation of the value of the assets of the partnership.

52.2. In *Adanki Narayanappa*, in the context of the question as to whether the interest of a partner in the partnership assets comprising of both moveable as well as immovable property, should be treated as a movable or immovable property for the purposes of Section 17 (1) of the Registration Act, 1908, a three-Judge Bench of this Court held that on the death of a partner his share in the partnership property has to be treated as money and not as land. The share of each partner is his proportion to the partnership assets after those assets have been realized and converted into money.

52.3. The question which came up for consideration before a two-Judge Bench of this Court in *Chillakuru Chandrasekhara Reddy* was, in the event of retirement of a partner what would be the relevant date for the purpose of ascertaining the value of the share of that partner in the partnership firm. Whether it would be the date of retirement of the partner from the partnership firm or the date on which the Commissioner made the valuation? The Bench held that after a partner retires from the partnership firm he has no right to claim any further share in the profits of the partnership firm. Therefore, in such a scenario, there is no reason to say that the relevant date for valuation of the share of the plaintiff would be the date when the Commissioner valued his share, that too, after a long lapse of time.

52.4. In *Guru Nanak Industries*, this Court noted that when there are only two partners in a partnership firm and one has agreed to retire, then such a retirement would amount to dissolution of the firm whereafter the consequences would follow.

53. As would be evident from the above, none of the cases referred to supra deal with a case of partnership at will and the peculiar fact scenario of the present *lis*. However, certain general principles are deducible which we are applying to the facts of this case.

54. Having surveyed the statutory framework and after an analysis of the case laws, the admitted facts of the present case may now be adverted to.

55. In O.S. No. 1601 of 1983 instituted by the plaintiff (first respondent herein) for rendition of accounts of the dissolved partnership and for payment of the amount due to the plaintiff as his share together with interest, the learned City Civil Court passed a preliminary decree on 06.11.1995 holding that plaintiff is entitled to 0.25 ps. share out of 100 ps. capital amount of the partnership and directed the defendants to render the accounts for payment to the plaintiff his share of the partnership up to 31.03.1970 with the condition that if defendants failed to do so, plaintiff would be at liberty to petition the trial court for a final decree by way of appointment of a Commissioner for settlement of accounts. The trial court further held that plaintiff would be entitled to interest at the rate of 12 percent per annum on the amount found due to be paid to the plaintiff till the date of realization.

55.1. In appeal before the High Court at the instance of the plaintiff (defendants also preferred cross objection), the High Court passed order dated 28.03.2001 disposing of the appeal as well as the cross objection by modifying the preliminary decree dated 06.11.1995 by holding that the plaintiff is entitled to seek rendition of accounts from the defendants till the date of dissolution of the firm i.e. 18.10.1983; since the partnership is at will, the moment the plaintiff as a partner expressed his willingness to dissolve the partnership firm after giving notice, the partnership firm stood dissolved on 18.10.1983 rendering the defendants liable to settle the accounts and to pay to the plaintiff his share with interest at the rate of 12 percent per annum till realization.

55.2. Thereafter, plaintiff filed an interlocutory application in the suit before the trial court for passing the final decree by appointing a Commissioner and directing him to take over possession of the assets of the partnership firm for the purpose of settlement of the accounts of the partnership firm. The trial court *vide* the order dated 25.11.2002 appointed Shri J. Prabhakar, Advocate as the Commissioner for execution of the warrant.

55.3. On a review application filed by the defendants, the trial court i.e. the City Civil Court passed order dated

26.04.2004 recalling its order dated 25.11.2002 to the extent of directing the Commissioner to take over possession of the assets of the dissolved firm holding that plaintiff is only entitled to his share in the profits of the firm which is being run by the remaining partners. Question of selling of property would arise only when the other partners fail to pay the amount (share) to the plaintiff.

55.4. This order dated 26.04.2004 came to be challenged by the plaintiff before the High Court in appeal being CMA No. 1485 of 2004.

55.5. In the meanwhile, plaintiff filed I.A. No. 655 of 2003 in the suit for appointment of an advocate as the Commissioner to sell the property whereas defendants filed I.A. No. 892 of 2005 in the suit for appointment of a chartered accountant or a person well versed in accounts as the Commissioner for determining the value of the share of the plaintiff as on 18.10.1983. By a common order dated 25.07.2006, the City Civil Court dismissed the interlocutory application filed by the defendants and allowed the interlocutory application filed by the plaintiff. City Civil Court clarified that the preliminary decree had not limited the right of the plaintiff to receive the value of his share as on 18.10.1983 in the assets of the dissolved firm and that his rights will exist till passing of the final decree.

55.6. Against this order passed by the City Civil Court dated 25.07.2006 in I.A. No. 655 of 2003 filed by the plaintiff, the defendants filed CRP No. 3825 of 2006 before the High Court.

55.7. Both CMA No. 1485 of 2004 and CRP No. 3825 of 2006 were disposed of by the High Court by a common judgment and order dated 30.01.2009. The High Court set aside the review order dated 26.04.2004 and held that once there is a preliminary decree in favour of the plaintiff for ascertaining the profit of the firm on verification of the accounts rendered by the other partners, value of the movable and immovable properties of the partnership firm has to be ascertained. If the other partners do not pay the share of the plaintiff, the properties would have to be sold and the sale proceeds would have to be distributed rateably as per the respective shares of the partners.

The High Court further held that the Commissioner was entitled to take over possession of the property and in fact had taken over possession of the land in question. The High Court directed that the Commissioner has to take steps to get the value of the property assessed. On determination of the value of the property, the plaintiff should be paid 25 percent of the value of the property after deducting the liabilities, if any. If that is not done, the property has to be sold to realize the amount for the purpose of distribution of shares. The High Court put in a caveat that if the parties come to an understanding, the plaintiff may also take 25 percent of the land in question as his share instead of selling the property.

55.8. Since the defendants did not comply with the directions of the High Court, plaintiff filed an interlocutory application before the trial court for a direction to the advocate Commissioner to sell the land in question and to pay 25 percent of the sale proceeds to him after discharging the liabilities of the partnership firm. However, the trial court did not entertain the said interlocutory application and dismissed the same *vide* the order dated 28.04.2010 holding that plaintiff was entitled to receive the value of the partnership asset assessed as on 18.10.1983 and that he is not entitled to insist on the sale of the property and thereafter to receive 25 percent of the sale proceeds.

55.9. As the original plaintiff Kasireddy Lakshmi Narayana Reddy died, his legal representative i.e. the first respondent herein K. Ranganadha Reddy filed CRP No. 1554 of 2011 before the High court assailing the aforesaid order dated 28.04.2010.

55.10. By way of the impugned judgment and order dated 09.04.2012, the High Court allowed the civil revision by setting aside the order dated 28.04.2010. In the process, the High Court allowed the interlocutory application of the plaintiff by holding that unless the parties mutually agree to settle their shares and file a joint memo before the trial court within two months, the advocate Commissioner shall sell the assets of the dissolved firm i.e. the land in question through public auction and deposit the sale proceeds before the trial court within four months. The final decree will be passed by the trial court within a period of six months for payment of 25 percent of the sale proceeds to the plaintiff (respondent No. 1 herein) after discharging the liabilities of the dissolved partnership firm, if any.

56. Let us now analyse the impugned judgment and order of the High Court dated 09.04.2012 in detail.

57. After considering the materials on record and the rival contentions, the High Court held that the right of each partner on dissolution of the partnership firm is two-fold: (1) right to settle the account as on the date of dissolution; and (2) right to share the residue in the assets of the partnership following liquidation of the assets after satisfying the liabilities set out in Section 48. High Court concluded that liquidation of the assets of the partnership firm is, therefore, a necessary step towards payment of the shares of each partner in the partnership assets.

57.1. The High Court also held that the right of the partner on the dissolution of the partnership firm is to receive the profits till dissolution and to receive the value of the assets in proportion to his share after settlement of accounts. The preliminary decree passed by the trial court as modified by the High Court needs to be understood accordingly. The profits or losses in the business of the partnership firm should be ascertained as on 18.10.1983. The significance of referring to this date is limited to ascertainment of profits and losses alone and it has no relevance to the right of the partners to receive the value in the residue of the assets.

57.2. With the dissolution of the partnership firm, all its assets have to be necessarily liquidated unless any one or more partners of the dissolved firm come forward to pay the market value of the share of the remaining partners/all partners in *lieu* of liquidation with the consent of the remaining partner or partners. The reconstituted firm has no right whatsoever to utilize the assets of the dissolved firm unless all the partners of the dissolved firm reach an agreement to settle the accounts and to pay the outgoing partner his share in the value of the assets. However, if such an agreement is not reached, there is no option other than liquidation of the assets and distribution of the value realized from such liquidation in proportion to their shares amongst all partners.

57.3. After referring to the previous judgment and order of the High Court dated 30.01.2009 whereby the order passed by the City Civil Court dated 26.04.2004 allowing the review petition of the defendants by recalling its previous order dated 25.11.2002 was set aside, the High Court was of the view that by its aforesaid earlier judgment and order it had unequivocally rejected the stand of the defendants that there was no need for the advocate Commissioner to take over possession of the partnership property for sale. Though the High Court did not render a finding as to the date on which the value of the property should be determined, a reading of the said judgment and order in its entirety would leave no room for any doubt that what the High Court had meant was that the property should be valued by the advocate Commissioner as on the date when he assesses the value of the property. This order is in consonance with the settled legal position. The preliminary decree had not limited the right of the plaintiff to receive the value of his share as on

18.10.1983 in the assets of the dissolved partnership and that his right will exist till passing of the final decree.

58. In the above context, let us go back to the order dated 25.07.2006 passed by the City Civil Court. Plaintiff had filed I.A. No. 655/2003 before the City Civil Court in the suit for appointment of an advocate as a Commissioner to sell the property whereas the defendants filed I.A. No. 892/2005 in the said suit for appointment of a chartered accountant or a person who is well versed in accounts as the Commissioner for determining the value of the share of the plaintiff as on 18.10.1983 in the dissolved partnership firm. By the order dated 25.07.2006 the City Civil Court dismissed I.A. No. 892/2005 filed by the defendants and allowed I.A No. 655/2003 filed by the plaintiff. The City Civil Court clarified that the preliminary decree had not limited the right of the plaintiff to receive the value of his share as on 18.10.1983 in the assets of the dissolved firm and that his rights will exist till passing of the final decree.

59. In the judgment and order of the High Court dated 30.01.2009, Section 48 (b) of the Partnership Act and the

provisions of Order XL Rule 1 (b) CPC were examined whereafter the High Court directed that the Commissioner has to take steps to get the value of the property assessed. After determining the value of the property, the other partners may come forward to pay 25 percent of the value of the property to the plaintiff after deducting the liability, if any. The properties can be left with the defendants after satisfying the share of the plaintiff. Otherwise, the property has to be sold to realize the amount for the purpose of distribution. If the parties come to an understanding, the plaintiff may also take 25 percent of the land towards his share instead of selling the property for the purpose of distribution of the sale proceeds amongst the partners.

60. We are of the considered opinion that the decision rendered by the High Court in its impugned judgment and order dated 09.04.2012 is in accordance with law. It is pragmatic and equitable as well. The partnership in question is a partnership at will. Therefore, on receipt of notice of dissolution issued by the plaintiff, the partnership firm stood dissolved on and from 18.10.1983. The remaining partners may have continued to

retain the assets of the erstwhile partnership by constituting a fresh partnership. But that is not permissible. The properties, i.e. the land in question belong to the erstwhile partnership M/s Viraj Constructions. The new partnership could have retained the said land in question only by purchasing it from the erstwhile partnership which had not been done. Therefore, retention of the land in question by the new partnership is illegal. That apart, if the same has to be sold today at the value which prevailed as on 18.10.1983, it will cause serious prejudice to the plaintiff and would be grossly unfair to him, besides being a wholly impractical proposition. On the dissolution of the partnership firm, all the partners are entitled to their share of profits rateably. Defendants had the option and still has the option to purchase the land in question on auction whereafter the sale proceeds from such auction sale can be distributed amongst the erstwhile partners as per their share. But this is an option for the defendants to explore and not for this Court to suggest.

61. Consequently and having regard to the discussions made above, we do not find any error or infirmity in the impugned judgment and order of the High Court dated 09.04.2012. No interference is warranted. Accordingly, the civil appeal is dismissed. All interim stay orders passed in the related special leave petition would stand vacated. The parties as well as the advocate Commissioner shall now comply with the directions of the High Court in the manner prescribed.

62. However, there shall be no order as to costs.

……………………………J.
[UJJAL BHUYAN]

……………………………J.
[VIPUL M. PANCHOLI]

NEW DELHI;
SEPTEMBER 09, 2026.