

K. Damodaran Vs. Samuel Aaron

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Court : Kerala

Decided On : Oct-19-1959

Reported in : AIR1960Ker201

Judge : Vaidialingam, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 11, Rules 18 and 20

Appeal No. : Civil Revn. Petn. Nos. 739 and 785 of 1959

Appellant : K. Damodaran;samuel Aaron

Respondent : Samuel Aaron;k. Damodaran

Advocate for Def. : K.P. Abraham,; P.P. John,; E.M. Jacob and;

Advocate for Pet/Ap. : K.P. Abraham,; P.P. John,; E.M. Jacob and;

Judgement :

ORDER

Vaidialingam, J.

1. Both these Civil Revision Petitions filed by the defendant and plaintiff respectively in O. S. 80/1955, Subordinate Judge's Court, Telli-cherry, arise out of an order passed by that court in I. A. 1312/1959 dated 17-9-1959. The said application was filed by the plaintiff under Order 11, Rules 12, 14 and 15 of the

C.P.C., for permission to inspect the documents produced in the case by the defendant. The said application was opposed by the defendant. The learned Judge, overruling the objections of the defendant, gave permission to the plaintiff to inspect the accounts for the period from 11-4-1949 till 11-11-1953. The discussion in the judgment shows that the learned Judge intended to permit the plaintiff to inspect documents from 1-4-49. But in the concluding portion of the order, the learned Judge has stated that the period of inspection will be from 1-4-50 till 11-11-53. Evidently, the date 1-4-50 given therein is a mistake for 1-4-49. But anyhow I will make it clear in my order, when giving final directions in both the C. R. Ps. Against this order permitting the plaintiff to have inspection of the documents produced in this case by the defendant, the latter has filed C. R. P. 739/1 59 on the ground that the learned Subordinate Judge should not have permitted inspection at all in the circumstances of this case or at any rate, should not have permitted inspection. at that stage, without certain other conditions being satisfied by the plaintiff.

2. As a condition precedent to the plaintiff being allowed for an inspection of the accounts, in and by the same order, the learned Judge further 'directed that the plaintiff should produce all the records which he wants to rely upon and that he should also summon witnesses to produce records, if any before 30-9-1959. The learned Judge has also stated that the plaintiff will not be entitled to rely on documents produced on his side or summons at his request after 30-9-59. The plaintiff has filed C.R. P. 785/59 against that portion of the order placing these conditions as against the plaintiff and also restricting the inspection for the period from 11-4-1949 alone, though the account-books produced in this case at any rate, are from 1-4-48 also. A minor attack is also made in this C. R. P. that though the learned Judge had intended to give inspection to the plaintiff from 1-4-49, still in the final portion of the order, the learned Judge has restricted it for a period subsequent to 1-4-50. Whether this date 1-4-50 is due to a mistake or inadvertence, the plaintiff prays for clarification regarding the said period.

3. As the suit itself is pending before the lower court, it is desirable that I do not express any views regarding the various allegations made by the plaintiff and controverted by the defendant. It is enough to state that-the plaintiff and the

defendant were partners in a business known as 'Timber Supply Company and the Baliapattam Saw Mills'. A partnership deed was executed by the plaintiff and the defendant on 24-11-1941 and that has been marked as Ext. B1 in these proceedings. It is stated therein that the partnership business shall be that of a Timber Mill consisting of the purchase and sale of timber and sawing and preparing of timber for sale and of doing such other work connected with the timber business as the parties may agree upon and shall be carried on at the premises of the Mill at Pappinasseri, or such other building or places as the parties may from time to time agree and that the business is also to include the saw Mill business carried on at Pappinasseri.

It is also provided, among other conditions, that the management shall be carried on jointly and both the parties shall be active partners provided the parties may by mutual consent, allot to each of them such duties as they may think necessary and there is also a provision regarding the books of account being kept properly posted and kept in the building of business and the right of the partners to inspect the account at any time is also guaranteed. Though the partnership deed appears to have been executed only on 24-11-1941, the partnership itself appears to have come into existence from 1-8-1940. It is also seen that the parties dissolved the partnership business with effect from 5-10-53 and this is also evidenced by the deed of dissolution of partnership executed by the parties on 11-11-1953¹ and the said document is Ext. B6. It is stated therein that the partnership concerns, Timber Supply Company and Maliapattam Saw Mills were managed by the second party therein with the consent of the first party. It may be mentioned that the first party and the second party in Ext. B6 were the plaintiff and the defendant respectively.

It is also stated that the parties have looked into the accounts of the firm and got prepared balance-sheet and Profit and Loss Account regarding the financial state of the concern as on the date of dissolution namely, 5-10-1953. Ultimately, it is also seen that in view of the fact that the second party therein (the present defendant) has been managing the concern all along, the plaintiff makes over the concern with all immovable properties, stock, effects etc., to the defendant who has agreed to pay the plaintiff a sum of Rs. 22,500/- being the estimated value of the goodwill. The manner of this payment is further provided in the document. But

it is specifically mentioned in Ex-B6 that 'it has been estimated that the net assets of the firm and the liabilities of the firm balance each other.'

5. According to the plaintiff, from certain Income tax proceedings that took place regarding the assessment of this firm for certain periods prior to the dissolution of the firm, he had reason to suspect the conduct of the defendant and as such, called upon the defendant for fresh settlement of account. As, according to the plaintiff, the defendant is not agreeable, he has instituted the present suit on 18-11-55 for reopening the accounts on grounds of fraud, mistake and errors. The broad case of the plaintiff, as set out in the original plaint is that the settlement of accounts and the resultant statement in Ex. B6 that the assets and liabilities balanced each other, leaving nothing to the plaintiff by way of profit or investment, were brought about by fraud and misrepresentation and amounts to a gross abuse of the confidence and trust which the plaintiff had reposed in the defendant.

The plaintiff claims to have the accounts reopened and examined by the court so as to enable the plaintiff to surcharge and falsify the debits and credits shown in the accounts. In the plaint the plaintiff has alleged that the partnership business was being managed by the defendant, exclusively and that it was the defendant who was maintaining all the accounts of the business and preparing, balance-sheet and profit and loss account from time to time and that the plaintiff took them all as correct without suspecting dishonesty or bad faith on the part of the defendant. Certain other allegations are made by the plaintiff, which according to him, will establish his right to have the settled accounts reopened.

The defendant has controverted the various allegations contained in the plaint. While admitting the partnership entered into between the parties and the business being carried on, the defendant admits that the partnership business was being managed by him but denied that he was in exclusive management. The defendant stated that with the consent of the plaintiff, the defendant was chiefly but not solely or exclusively in charge of the conduct of the day-to-day business of the partnership. Again, the defendant states that it is true that he was causing accounts to be maintained and the balance-sheet and Profit and Loss Account prepared; but he was keeping the plaintiff fully informed and was also consulting

the plaintiff and taking his consent regarding all important details with regard to the nature and extent of the assets, borrowings and liabilities, receipts and payments, income and expenditure and profit and loss of the partnership business.

He denies the charge of any dishonesty or bad faith on his part and he also disputed the allegation of the plaintiff that the latter was ignorant of all the matters or that he took the balance-sheet and Profit and Loss Account as correct, having confidence in the defendant. Regarding the circumstances under which the deed of dissolution was entered into, the defendant avers that at that time it was agreed that the accounts should be looked into and the balance-sheet and profit and loss account as on 5-10-53 should be prepared soon. The Firm's auditor, according to the defendant, was requested by both the partners to get the balance-sheet and profit and loss account prepared and submitted and 'they were presented by the auditor to the defendant in the first instance and were thereupon passed on to the plaintiff by the defendant'.

6. The defendant further avers that 'he met the plaintiff with the statements and records and both of them had a discussion over the state of accounts' and he also states that both the plaintiff and the defendant had been looking into, the balance-sheet year after year and therefore, there was absolutely no scope for surprise or disappointment at finding that the assets and liabilities balanced each other. It is further admitted by the defendant that it was he who was submitting the usual returns to the Income-tax department, but the said Returns were always submitted only with the plaintiff's consent and after the balance-sheet and Profit and Loss account had been drawn up and examined and accepted by the plaintiff.

The defendant further states : 'It is false to state that the plaintiff never examined the accounts and had accepted as correct the abstract of accounts presented to him from time to time and that the defendant failed to allow the plaintiff to scrutinise the accounts.' Then regarding the various allegations made by the plaintiff in paragraphs 14, 15 and 16 of the plaint and which according to the plaintiff, will constitute acts of fraud, the defendant characterised those allegations as a issue of Falsehood and he gives his explanations regarding those allegations. Ultimately, the defendant states that at the time when the deed of dissolution of

the partnership was entered into, the plaintiff once again scrutinised the accounts and on that basis, the accounts were settled fairly and openly and with the full knowledge on the part of the plaintiff of all material particulars and as such, the defendant contended that the plaintiff is not entitled to reopen the accounts so stated and settled and he is not entitled to have a fresh account taken.

7. It appears that the plaintiff filed, at an earlier stage, I. A. 2095/1956 under Order 11, Rules 14, 15 and 18 C. P. C. for directing the defendant to produce all books of account of the company kept from its very beginning for purpose of inspection by the plaintiff so as to enable him to establish the fraud committed by the defendant. That application was opposed by the defendant and it is also seen that the learned Subordinate Judge directed the defendant to produce the accounts into court so as to avoid future tampering therewith. But the learned Judge was of the view that in the allegations in the plaint, as that stood at that time, particulars about the fraud alleged by the plaintiff have not been given and as such, the plaintiff was not entitled to an order for inspection, until he disclosed the fraud in all its details by way of an amendment of the plaint. In this view, the learned Judge, though directing the defendant to produce the books in court, negated the application of the plaintiff praying for inspection of the said books.

8. Against this order of the learned Subordinate Judge in I.A. 2095/56, the plaintiff filed C. K.P. 115/58 to this court. Mr. Justice N. Vara-daraja Ayyengar, who heard the said C. R, P., was also of the view that the fraud relied on by the plaintiff is definitely wanting in particulars as will be seen from the following observation of the learned Judge in paragraph 6 of his judgment :

'I have gone through the plaint and also the affidavit in support of the petition herein and I am satisfied that the court below is on good ground when it says that the- fraud relied on by the plaintiff is definitely wanting in particulars.'

In the earlier portion of the order, the learned Judge has observed that a party will be entitled to reopen an account which has been settled, if he is able to show that there has been a mutual mistake or fraud and if it is a case of errors, particular errors must be stated and proved. It is also seen that the learned Judge, at the request of the learned Advocate-General who was appearing for the plaintiff-

petitioner, granted permission to the Advocate-General to file a fresh statement as to the fraud. In accordance with the permission so granted, it is also seen that the learned Advocate-General filed a statement on 29-7-58 in C. R. P. 115/58 which, according to the learned Advocate General, particularises the fraudulent acts of the defendant. But the learned Judge was of the view that 'the statement has not carried the matter one whit further' and in this view, the learned Judge came to the conclusion that in the circumstances, the order of the lower court does not require to be interfered with.

9. But it is also seen from the judgment of the learned Judge, that the learned Judge has reserved in favour of the plaintiff his right to file a fresh application for inspection after he has laid the necessary foundation for it.

10. After this order of the High Court, the plaintiff has amended his plaint by incorporating new paragraphs, 14 (1) to 14 (3); 15 (1); and 16 (a) to 16 (d) and according to the plaintiff, the allegations made therein detail the items of fraud practised by the defendant. The defendant filed an additional written statement challenging the various statements made by the plaintiff in the amended plaint.

11. Later, the plaintiff filed the present application I. A. 1312/59 out of which these two Civil Revision Petitions arise. After setting out the proceedings connected with I. A. 2095/56 and the order of the High Court, it is stated in the said application that the defendant has produced all the account-books and other papers in a sealed box and that he has suppressed many important documents without producing the same. It is also stated that the plaintiff has taken steps to summon his witnesses and also for production of documents through them.

It is also specifically averred that 'the plaintiff would be able to point out from the accounts and other papers produced by the defendant the several allegations of fraud and mistakes enumerated in the plaint as it now stands, and it was also further prayed that before the trial starts and the plaintiff tenders his evidence, he should have an opportunity to inspect the documents produced by the defendant to point out and establish the case set out by him'. No doubt it was also mentioned that the plaintiff is as of right entitled to inspect these documents, as they are all documents relied on by the defendant in his written-statement. The application

winds up with a prayer for passing an order permitting the plaintiff to inspect all the documents produced by the defendant and then in the custody of the court.

12. This application was opposed by the defendant on the ground that the plaintiff was not entitled to have an inspection of the documents before he proves his several allegations of fraud and establishes his right to reopen the accounts. It was also contended that the plaintiff has first to prove that the settlement of account and the dissolution of the business were vitiated by fraud and that he must establish these circumstances before he could be permitted to look into the accounts for falsifying and surcharging the debits and credits shown therein. It was also contended that even the amended plaint, on the basis of which the present application was filed, does not give any particulars of fraud alleged by the plaintiff and that it is not in compliance with the directions given by the High Court in C. R. P. 115/58. The defendant also alleged that the application for inspection is only an unfair attempt to fish out information and as such constituted an abuse of the process of the court.

13. The learned Subordinate Judge of Tellicherry has held that in view of the allegations made in the paragraphs subsequently incorporated in the amended plaint, the plaintiff could be said to have laid the foundation as per the directions contained in the order of Mr. Justice N. Varadaraja Iyengar. Even otherwise, the learned Judge was not prepared to accept the contention, of the defendant that unless the plaintiff successfully proves the fraud, he is not entitled to an inspection of the accounts. According to the learned Judge, accounts could be ordered to be reopened in the final proceedings, if the plaintiff has proved the various acts of fraud alleged as against the defendant. But, according to the learned Judge, inspection of the accounts for proving fraud alleged by the plaintiff is different from reopening accounts settled. In this view, the learned Judge was not prepared to accept the contention of the defendant that the plaintiff was not entitled to have an inspection of the documents produced in court.

14. But it appears that the defence required some safeguards to be provided in so ordering an inspection. The learned Judge was of the view that the plaintiff has asked for an account in life notice only for a period subsequent to 1-4-49 and

therefore, the plaintiffs right of inspection can also be restricted only to a period subsequent to 1-4-49, observing that if fraud in some items is proved, the plaintiff will be entitled to reopen the entire accounts from the very beginning and that is a matter to be considered at the time of passing of the preliminary decree. The learned Judge also thought that some further safeguard is necessary to prevent the plaintiff from manipulating further evidence, after inspecting the accounts of the defendant: and in this view, the learned Judge has stated that as a condition precedent to the plaintiff being allowed to look into the accounts the plaintiff is to produce all the records he wants to rely on and he should also summon witnesses to produce records before the 30th of September 1959, and the learned Judge has also categorically stated that the plaintiff will not be allowed to rely on documents produced on his side or on summons at his request after 30-9-59. After imposing these restrictions, the learned Judge has directed that the inspection will be conducted in the presence of the Head clerk of that court.

15. As mentioned at the beginning of this judgment, C. R. F, 739/59 is filed by the defendant allowing inspection in favour of the plaintiff and C. R. P. 785/59 is filed by the plaintiff against the conditions imposed as against him.

16. I will consider the attack on the order of the learned Judge by the defendant as raised in G. R. P. 739/59. On behalf of the defendant-petitioner, Mr. K. P. Abraham his learned counsel has raised two main contentions:

(a) In cases like this, the plaintiff is bound to give full particulars of the various acts of fraud detailing each item before any inspection could be granted; and in this case, the plaintiff has not at all! given any such particulars of fraud as required under law; and

(b) In any event, even the amended plaint, as it now stands, is not in accordance with the directions contained in the order of the High Court in C. R. P. 115/58, and the same materials which were before the High Court, have been held by the learned Judge as not containing sufficient particulars about the acts of fraud.

17. Though in the lower court, the defendant took up the contention that the plaintiff will not be entitled to any inspection of the documents produced in court,

unless the plaintiff successfully proves the fraud, that line of attack has not been taken before me by Mr. K. P. Abraham, The attack on this order before me was only in the manner indicated earlier.

18. On the other hand Mr. V. R. Krishna Ayyar, learned counsel for the plaintiff-respondent in this Civil Revision Petition, has supported the order of the learned Judge allowing his client to have an inspection of the documents produced in court. No doubt, he is attacking, in the connected C. R. P. that portion of the order which has imposed some conditions on the plaintiff.

19. So far as C. R. P. 739/59 is concerned, Mr. V. R. Krishna Ayyar learned counsel contended that the particulars given in the amended plaint are quite different from the particulars given in the statement filed by the learned Advocate-General in C. R. P. 115/58. Therefore, according to the learned counsel, the plaintiff could be said to have now laid the foundation of fraud in the fresh and detailed allegations made in the amended plaint. He has also taken me through the statement filed by the learned Advocate-General in the C. R. P. 115/58 as also the various allegations now made in paragraphs 14 (1) to 14 (3); 15(1); and 16 (a) to 16 (d) of the amended plaint. According to Mr. V. R. Krishna Ayyar, those allegations bristle with acts, which according to the plaintiff, amount to fraud. Whether the plaintiff is able to establish those allegations or not, is a totally different matter, which does not arise at this stage of inspection. Therefore, in strict compliance with the order of the High! Court, the necessary foundation has been laid by the plaintiff.

20. Mr. V. R. Krishna Ayyar in the alternative, also took up another plea, which I should say, was not raised before Mr. Justice N. Varadaraja Iyengar in C. R. P. 115/58 or even, in the trial court in these proceedings. After setting out all the necessary allegations, the main grounds on the basis of which inspection is asked for is that the plaintiff should have an opportunity to inspect the accounts to point out and establish the case of fraud and also that the plaintiff is entitled as a matter of right to inspect the documents, as they are all documents relied upon by the defendant in his written-statement.

The contention, that the documents, in respect of which inspection is asked for, relate to the documents referred to by the defendant in his written-statement does not appear to have been raised even before the learned Subordinate Judge and such a contention has not also been advanced before me by Mr. V. R. Krishna Ayyar. The new additional contention that is raised by Mr. V. R. Krishna Ayyar, is, that even assuming the plaintiff is bound to give particulars, this is, one of those cases where inspection must precede particulars as the account-books have been kept mainly by the defendant and all available particulars have to be collected only from those account-books. This is the point which, I mentioned earlier, has not been raised before Mr. Justice N. Varadaraja Iyengar or even before the learned subordinate judge in these proceedings.

21. The contentions of Mr. K. P. Abraham that there has not been sufficient compliance with the order of Mr. Justice N. Varadaraja Iyengar can be disposed of straightway. It is his contention that the same materials now found in the amended plaint were before the High Court in a shorter form presented by the learned Advocate-General, in the form of a statement. The learned Judge has stated that the statement furnished by the learned Advocate-General does not carry the matter one whit further. If the matter is so easy as Mr. K. P. Abraham contends, then straightway, C. R. P. 739/59 will have to be allowed on the sole ground that it does not comply with the order of the High Court.

22. As mentioned by me earlier, Mr. V. R. Krishna Ayyar has taken me through the various allegations made in the amended plaint and also the statement filed by the Advocate-General in C. R. P. 115/58. I do not think it necessary to go into any great detail regarding the amended plaint, because I am satisfied that Mr. V. R. Krishna Ayyar is wellfounded in his contention that the allegations now contained in the amended plaint are totally different from the statement filed by the Advocate-General before the High Court and which was found to be not complete. It is enough for me to state that there are several allegations giving full particulars, as far as possible and by virtue of those allegations in the amended plaint, it could in my opinion, be clearly stated that the plaintiff has laid the foundation for his plea of fraud. Every one of those allegations is serious enough, which may require investigation by a court, if the plaintiff is able to satisfy the truth of those allegations.

More than this. I do not propose to say. The allegations now made in the amended plaint are certainly radically different, both in form and in the particulars contained therein, from the statement filed by the learned Advocate-General in C. R. P. 115/58. Therefore, the second contention of Mr. K. P. Abraham, based on the order of the High Court in C. R. P. 115/58 cannot be accepted.

23. The other contention of Mr. K. P. Abraham, learned counsel for the petitioner is that in such cases where the plaintiff rests his case on fraud, he should give full particulars of the various transactions together with complete details about the same.

24. On the other hand, it is the contention of Mr. V. R. Krishna Ayyar that the particulars now given are complete as far as they go. It is open to the defendant to ask for any further particulars that he may require. But according to Mr. V. R. Krishna Ayyar, this question about particulars need not trouble this court at this stage, because this is one of those cases where inspection must precede particulars, if any.

25. Mr. V. R. Krishna Ayyar contended that allegations have been made in the plaint to the effect that it was the defendant who was in exclusive control and management of the business and all the books of account and other records were being maintained by the defendant. Even assuming that there has been a settlement of account as between the plaintiff and the defendant, that settlement of account was only on the basis of the accounts kept and maintained by the defendant and as such, it would be very hard to insist upon the plaintiff furnishing any more particulars at this stage. Mr. V. R. Krishna Ayyar has also taken me through some of the statements in the written-statement of the defendant, which according to him, constitute admissions that the defendant alone was in exclusive charge and control of the accounts and that if at all the plaintiff could have known only about the balance-sheets prepared on the basis of the accounts maintained by the defendant. In particular, the learned counsel referred me to paragraph 5 of the written-statement where the defendant admitted that the partnership business was being managed by him. No doubt, he has stated that the said management by him was in consultation with the plaintiff also. The learned counsel has also drawn

my attention to the further statement in the written-statement to the effect that the defendant was chiefly in charge of the conduct of the day-to-day business of the partnership and also to the effect that it is true that the defendant was causing the accounts to be maintained and balance-sheets and profit and loss account prepared. According to the learned counsel, even the defendant was prepared to admit in paragraph 8 of his written-statement that at the time of the dissolution, balance-sheets and profit and loss account were prepared by the auditor and they were presented in the first instance to the defendant, who passed it on to the plaintiff. The learned counsel also relied upon the further statement in the written-statement, where the defendant has admitted that it was he who was submitting the usual Returns to the Income-tax department. Even on these prima facie materials before the court, the learned counsel contended that this is a case where accounts should have been settled only on the basis of the accounts maintained by the defendant, though no doubt, on behalf of the partnership.

26. Mr. K. P. Abraham contended that the plaintiff, before he could have inspection, must be able to furnish some particulars of fraud based at least on the figures contained in the balance-sheet which admittedly, the plaintiff was receiving every year. This point does not carry any conviction with me. So, the only question is whether the plaintiff should be directed to furnish any further particulars or is this a case where inspection must precede particulars, if any. The relevant provision applicable is Order XI Rule 18 (2) of the C. P. C., and according to the said subsection, the party applying for inspection must satisfy the court that he is entitled to inspect them and that they are in the possession or power of the party. As the documents have now been produced by the defendant without any objection, the requirement as to the documents being in the possession or power of the defendant is amply satisfied. The question will be whether the plaintiff is entitled to inspect them. Sub-rule (2) of Rule 18 of Order XI, C. P. C., further states:

'The court shall not make such order for inspection of such documents when and so far as the court shall be of the opinion that it is not necessary either for disposing fairly of the suit or for saving costs.'

Mr. K. P. Abraham referred me to a decision in Newport (Mon.) Slipway Dry Dock and Engineering Company v. Paynter, 1887-34 Ch D 88. In my opinion, that decision will not at all assist the petitioner. It is seen in that case, that particulars of false entries were required and given and applications were made for further and better particulars. The question was whether the plaintiffs therein had already complied with the order for delivery of particulars as will be seen from the following observation of Fry, Lord Justice at p. 94:

'Without laying down any rule to apply to all cases, I think it plain that in this case the defendants have not had sufficient information given them. The object of the order was to let them know what they had to meet, and I think that it has not been substantially complied with.'

That every minute detail need not be given is clear from the observation of the other learned Judge, Cotton, Lord Justice at p. 93 to the following effect:

'I do not say that in every case it is necessary to do more than give the items, in some cases the mere reference to an entry gives all the information wanted, as for instance, if the case in the pleadings was that certain things charged for were never done at all a mere reference to the items would be enough.'

27. The learned counsel relied upon some general observations of Their Lordships of the Supreme Court in paragraph 25 of the decision reported in Bishnudeo v. Seogeni Rai, AIR 1951 SC 280. I do not think those observations have any bearing on the question of the grant of permission to a party to inspect documents. The Supreme Court had to consider the case of the plaintiffs who had asked for a declaration that a particular compromise decree in a previous suit for partition does not bind the plaintiffs, as it is vitiated by fraud, undue influence and coercion. It was in such a case that their Lordships made the observations contained in para. 25 of the judgment.

28. Mr. K. P. Abraham again placed some reliance on some observations of the Nagpur High Court in the decision reported in Bajranglal Maniram v. Anandilal Ramchandra, AIR 1944 Nag 124. The observation of their Lordships is to the effect that a party wishing to reopen a settled account has to specify clearly the

grounds on which he claims permission to reopen and the items to which he takes objection as being entered fraudulently or through mistake and that he has also to prove that those items had been entered fraudulently or through mis-lake and that such errors have to be properly alleged and proved. These observations were made by the learned Judges while considering as to whether a decree granted by the lower court for reopening an account settled should be sustained or not. In my opinion, they have no bearing on the question about the right of a party to have an inspection of the documents produced by his opponent.

29. Mr. K. P. Abraham then relied upon a judgment reported in *Lajpat Rai v. Tej Bhan*, AIR 1957 Pun 14. Even this decision will not assist the learned counsel, because the learned Judge in that case was of the view that the order of the trial court was very unsatisfactory and that the trial court has not brought to bear a judicial discretion in granting the order for inspection. It is also seen that the learned Judge's view was that till a decision is given on issue No. 1 in that case, the party asking for inspection could not have ordinarily such a right. Further the learned Judge was of the view that the attempt of the plaintiff in that case was with a view to fish out, if possible, some entries in the account books in support of his case. It was in view of all these circumstances that the learned Judge set aside an order of the lower court granting an inspection. That it is not possible to lay down any hard and fast rule and that in such matters, the court must exercise a judicial discretion is emphasised by the learned Judge at p. 15 as follows :

'The discretion vested in courts must be exercised judicially to further the primary object of these provisions and care must be taken that they are not used with an ulterior motive. Obviously, the decision rests on the circumstances of each case and it is not possible to lay any hard and fast rule in this matter.'

Even otherwise none of the circumstance which were present before the learned Judge in the Punjab case are present before me so as to justify an interference with the order granting an inspection.

30. Mr. K. P. Abraham relied upon two decisions of the Madras High Court reported in *Ramakrishniah v. Satyanandan*, AIR 1932 Mad 284 of Curgenven, J., and the decision in *Ramachandrayya v. Buchayya*, AIR 1935 Mad 288 of

Venkatasubba Rao J. These two identical decisions are relied upon very strongly by Mr. V. R. Krishna Ayyar to show, that in circumstances like the one before me, inspection must precede particulars if any.

31. In AIR 1932 Mad 284, the suit was for recovery of money by a commission agent against his principal on the basis of settled accounts. It was also in evidence that the settlement of the accounts was based wholly on the plaintiffs accounts. The defendants in that action applied for inspection of the account-books of the plaintiffs. The trial court dismissed the said application on the ground that the party has not qualified himself to make such a request, because his allegations of fraud and misconduct against the plaintiffs were couched in general terms and no specific instances were adduced. It was this order that was carried in revision before the Madras High Court and the contention was that where the specific evidence is exclusively in the hands of one party, it is not reasonable to insist upon the other party giving definite particulars of misconduct which an examination of the account-books alone would disclose. Dealing with this contention, the learned Judge, after referring to the English decisions on this point, observes at p. 286 as follows:

'...the correct view accordingly is that the mere inability of a party to particularise in his allegations does not afford a sufficient ground for refusing to grant him inspection. The nature of the case is such that the defendant may well be unable to secure justice without inspecting the plaintiff's accounts.'

The principles laid down in the English cases referred to by the learned Judge are to the effect that the very fact that a party is unable to plead except in general terms, is in many cases the very reason why he should have discovery from the other party, so as to enable him to plead the fraud in detail. In the end, the learned Judge set aside the order of the trial court refusing permission to the defendant therein to have an inspection of the plaintiff's account.

32. To a similar effect is the decision of Mr. Justice Venkatasubba Rao in AIR 1935 Mad 288. The learned Judge again, after referring to the English decisions, observes at p. 289 as follows:

'..... although generally in actions where fraud is alleged against an agent, discovery precedes particulars, that procedure is not confined to cases of fiduciary relationship alone, but is adopted wherever one party has means of knowledge not equally accessible to the other party. If two, conditions are satisfied, discovery may precede particulars; first where the information required is necessarily within, the opponent's knowledge; secondly the court is satisfied that no unfair attempt to fish out a case is being made. When these conditions are satisfied, discovery may precede particulars even where the object of the action is to reopen settled accounts; Daniel's Chancery Practice, 1914, 8th Edn. Vol. I, pp. 329 and 569.'

These observations of the learned Judge clearly show that inspection may precede particulars not only in actions between the principal and agent, but it may be extended also to cases where one party has means of knowledge not equally accessible to the other party. The learned Judge has also laid down that if the two conditions mentioned in the observations are satisfied, discovery may precede particulars even where the object of the action is to reopen settled accounts.

33. I respectfully agree with the observations of both the learned Judges, in the decisions of the Madras High Court referred to above, and the observations of Mr. Justice Venkatasubba Rao are apposite to the prima facie allegations made in this case. The defendant has himself admitted in his written-statement that he was in management of the partnership business and that he was also maintaining the account-books and sending income-tax Returns. No doubt, he would say that the plaintiff also is aware of the entire state of account. The statement of the defendant himself shows that the information required should be necessarily within his knowledge, as contained in the account-books of the partnership, which the plaintiff would have been, as of a right entitled to inspect at any time if the partnership has been a going concern. The following observation in *Miller v. Harper*, (1888) 38 Ch D 110 at 112 is also quite apt.

'It is good practice and good sense that where the defendant knows the facts and the plaintiffs do not, the defendant should give discovery before the plaintiffs deliver particulars.'

I am satisfied that in this case in the amended plaint, sufficient particulars have been given by the plaintiff, which can be considered to be laying the foundation, in support of his allegations of fraud. Even otherwise, on the basis of the decisions of the Madras High Court referred to above and also the observations in the English case quoted above, I am inclined to accept the contention of Mr. V. R. Krishna Ayyar that this is a case, where inspection must precede particulars, if any. In Order that the controversy may be narrowed down and the defendant may have a clear opportunity of knowing the several acts of fraud, mistake, or error alleged by the plaintiff, the plaintiff is directed within 3 weeks of the completion of inspection of the documents and before the trial is resumed, to file a statement in the lower court, with copy to the defendant, specifying in detail the various objections he takes to the accounts, the settlement of which in each case, he desires to re-open. With these observations, C. R. P. 739/52 is dismissed.

34. Next coming to C. R. P. 785/59, one of the contentions of Mr. V. R. Krishna Ayyar is that though the court intended to give at any late inspection from 1-4-49, it has in the final portion of the order, allowed inspection only from 1-4-1950. Whether this is a mistake or due to inadvertence the learned counsel wants this to be made clear. The learned counsel, Mr. V. R. Krishna Ayyar also contends that his client should have inspection of all the documents produced in this case which relate also to the year 1948. According to the learned counsel, the reliance placed by the learned Judge on the notice issued by his client demanding inspection only from 1-4-49 cannot be put against him especially when his client wants a complete reopening of accounts.

35. It is very clear from the discussion in the judgment that the learned Judge was prepared to allow inspection at any rate from 1-4-49. But in the concluding portion of the order, the learned Judge has stated that the inspection is to be only from 1-4-50 till 11-11-53. In my opinion, the date 1-4-50 is clearly a mistake for the date 1-4-49. I cannot accept the contentions of Mr. V. R. Krishna Ayyar that his client should be granted permission to inspect the documents even prior to 1-4-49, and which are in court. The learned Judge himself has made it very clear that, if fraud in some items are proved, the plaintiff will be entitled to reopen the entire accounts from the beginning, but that is a matter to be considered at the time of the passing

of the preliminary decree. In view of all these directions and in view of the specific demand made in the notice issued by the plaintiff asking for inspection of accounts from 1-4-49, I do not think that the order of the learned Judge granting inspection only subsequent to 1-4-49 is in any way an improper exercise of his discretion. Therefore, the plaintiff will have inspection of the documents and account-books etc., produced in court by the defendant only for the period from 1-4-49 till 11-11-53 and the direction of the lower court in this regard does not call for any interference,

36. So far as the conditions imposed by the learned Judge are concerned in my opinion, they are, as contended by Mr. V. R. Krishna Ayyar very harsh and they are neither necessary nor warranted by any of the provisions of the C. P. C. The conditions imposed are that the plaintiff must produce all the records which he wants to rely on and that he should also summon all the witnesses to produce records before 30-9-1959 and the further condition is that the plaintiff will not be allowed to rely on documents produced on his side or on summons at his request; after 30-9-1953. This part of the order imposing such a condition on the plaintiff is, in my opinion, totally unwarranted by any of the provisions of the Code. No doubt, it was open to the learned Judge to give any reasonable directions regarding the inspection of the account as such to safeguard the interest of the defendant. While dismissing C. R. P. 739/59, I have already stated that the plaintiff should furnish a statement within 3 weeks after inspection of the accounts. Apart from the fact that the conditions imposed by the learned Judge regarding the production by the plaintiff of all the records and also the plaintiff summoning witnesses for scrutinising the records on or before 30th September 1959 being harsh and unwarranted, they also become totally unnecessary, in view of my directions in the connected C. R. P. In fact, even according to the learned Judge these conditions were imposed to operate as a safeguard against the plaintiff concocting evidence. That safeguard is already provided by me in my order in the connected C. R. P.

37. In the result, the C. R. P. 739/59 is dismissed with the observations contained therein. Costs in the said C. R. P. will abide and be provided for in the decree to be passed in the suit.

38. C. R. P. 785/59, in so far as it challenges the conditions about the plaintiff having to produce all records and summoning witnesses to produce records before 30-9-1959, is allowed, and those conditions are set aside but the period of inspection of the accounts is only from 1-4-49 till 11-11-53 and this C. R. P. is allowed to this extent. There will be no order as to costs in this C. R. P.

39. The learned Judge has directed the inspection to be conducted for 7 days in the presence of the Head Clerk of that Court. I do not like the time of a Head clerk of a court to be wasted in such matters. Such work can be conveniently attended to by an independent commissioner appointed by the court at the cost of the party who wants the inspection.

40. Therefore, the learned Judge will appoint immediately an advocate as commissioner for conducting the inspection of the account-books and he will give proper directions to the said commissioner. The learned Judge will also give suitable directions) to expedite the work of inspection, The costs of the commissioner to be appointed and other incidental expenses will be now entirely borne by the plaintiff in the first instance. Those costs and expenses will ultimately abide and be provided for in the decree to be passed by that court in the suit.

41. As this is a suit of 1955, the learned Judge is directed to expedite the disposal of the suit at every stage hereafter.