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Court : Chennai

Decided On : Aug-08-1881

Reported in : (1882)ILR5Mad47

Judge : Muttusami Ayyar and ;Tarrant, JJ.

Appellant : Muttu Samarapuri Chetti

Respondent : Shanmuga Chetti and anr.

Judgement :

Tarrant, J.

1. In Original Suit No. 128 of 1878 the plaintiff in the present suit sued the present defendants for Rs. 3,805-13-3, alleged to be due from the defendants to the plaintiff, under a verbal partnership arrangement, said to have been continued down to the month of Karthigai of the year Dhatu (November 1877), when the defendants, in consequence of disputes between them, requested the plaintiff to carry on the business on his own account for a few months--which he did--a subsequent desire of the defendants to rejoin the plaintiff not being carried out on account of certain changes in the Government salt rules having had the effect of raising the price of salt and having made it inexpedient for the parties to continue the business. This partnership was entered into between plaintiff and defendants some time in the month of Ani, in the year Yuva (June and July 1875); for the carrying on of a business in the purchase and sale of salt, and which business, it

was further alleged, the plaintiff and defendants, on the 21st Ani, of the year Yuva (3rd July 1875) settled to carry on upon a larger scale than was originally arranged for. In the present suit the plaintiff seeks to recover from the defendants the sum of Rs. 4,109-10-6 as due to him by them under a verbal partnership arrangement, alleged to have been entered into by the defendants with the plaintiff on the 12th July 1876, for the carrying on of business in the purchase and sale of salt, which business, it is said, ceased to be carried on from towards the close of 1878 owing to differences and disputes between the parties. In Original Suit 128 of 1878 a decree was given against the plaintiff and that decree was confirmed in Appeal No. 7 of 1879.

2. I agree with the judgment of the Court of First Instance that the matter directly and substantially at issue in the present suit--the existence of the partnership in the purchase of salt in the plaint herein mentioned--was directly and substantially in issue in the former suit, and I consider that the plaintiff's claim in this suit was included in the former suit, or that it was omitted to be sued for or relinquished therein, in which case this plaintiff cannot sue for the same afresh. It has been argued that the difference between the terms and conditions of the partnership set up in the first suit and that asserted in the present suit gives the plaintiff a new cause of action. I do not think so. Plaintiff could have included in his first suit the whole of his claim in respect of the real cause of action, viz., a partnership alleged to have existed between the plaintiff and the defendants, and was bound to do so in respect of all that he wished to recover from the defendants under the partnership.

3. I would dismiss the appeal with costs.

Muttusami Ayyar, J.

4. I am also of the same opinion. The partnership business, as described in both suits, consisted in the joint purchase of salt from Government and its subsequent division between the plaintiff and the defendants in equal shares, and there was no difference either in the nature of the partnership transaction or in the partners. Such being the case, it was incumbent on the plaintiff, if his allegations in the

present suit were well founded, to have included this claim in the first suit. The plaintiff brought the former suit against the defendants for an account as to the moneys due and payable to him in relation to the partnership business, and it was not open to him to sue then for moneys due in so far as the business was carried on with the funds supplied by Kalati Chetti, and now for moneys due in so far as it was carried on with the funds supplied by the partners themselves. The account to be taken on the dissolution of a partnership is an account of the final balance, due after the adjustment of all partnership accounts, and not of a balance intended to be carried over to a later account or to another head of the partnership account (see *Fromont v. Coupland* 2 Bing. 170).

5. Assuming, for the purpose of deciding the question of *res judicata*, the truth of the inconsistent allegations contained in the two complaints, viz., that the partnership business was carried on, as alleged before, from July 1875 to November 1877, with the moneys supplied by Kalati Chetti for a special remuneration, under a contract made with him, and that it was carried on, as now alleged, from the 12th July 1876 to the end of 1878, with the funds belonging to the partners themselves, under a verbal agreement made between them on the first-mentioned date, it seems to me that they only show a difference in the mode in which funds were procured at different times to carry on the partnership business. Surely a partner is not at liberty to sue after the dissolution of a partnership, as often as there are creditors, or modes of obtaining funds for carrying on the partnership business, and the verbal agreement of the 12th July 1876 did not therefore create a distinct partnership, but only regulated the right of the partners *inter se* with respect to the new mode of providing funds. It was not a contract collateral to the partnership as in *Boulter v. Peplow* 9 C.B. 509. Nor was the former suit one which did not involve a question of the partnership accounts, since it was substantially a suit for an account as to moneys paid by the plaintiff to the defendants' use, and in which the question whether the defendants ought to repay them or not must turn, if the allegations in the present complaint are true, on the state of the whole of the partnership accounts.

6. It may be that the sums now claimed are not included in the particulars of demand contained in the former complaint. But the decision in the first suit was in

effect that there was no partnership as alleged between the plaintiff and the defendants, and not that the mode of carrying on the partnership business was not as then stated by the plaintiff. This being so, the verbal agreement now set up is only evidence which, if true, ought to have been adduced in the former suit in proof of the partnership which was found to have existed.

7. On these grounds I also think that the decision in the former suit bars this action, and that this appeal must be dismissed with costs.

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