

Samuel Nadar Vs. Thangayya Nadar

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Court : Chennai

Decided On : Aug-01-1941

Reported in : AIR1942Mad104; (1941)2MLJ490

Appellant : Samuel Nadar

Respondent : Thangayya Nadar

Judgement :

Somayya, J.

1. This is an appeal against the decree of the Subordinate Judge of Devakottai in A.S. No. 31 of 1937. The plaintiff (appellant) filed the suit out of which this second appeal arises for dissolution of a partnership which he and the defendant are said to have been carrying on. The business of the partnership consisted in the running of a chit transaction, both the partners acting as stake-holders. The chit was to be conducted for a period of fifty months. Two prizes were to be taken by the stake-holders and the remaining forty-eight were to be open to the other subscribers. The person who offered the lowest bid was given the prize. The suit has been dismissed by the lower appellate Court as barred by limitation.

2. The chit started on 13th March, 1924 and the fifty months expired on 14th May, 1928. The present suit was filed on 13th February, 1933. If the adventure or undertaking of carrying on a chit fund was completed by the end of the fiftieth month, then there was a dissolution of the partnership under Section 42 of

the Indian Partnership Act. That would be on 14th May, 1928. If there was a dissolution on that date, then under Article 106 of the Second Schedule of the Indian Limitation Act a suit for an account would have to be filed within three years from that date, unless in the meanwhile there were acknowledgments within three years of each other. The lower appellate Court held that the business of the partnership or the undertaking or adventure as mentioned in Section 42 (b) came to an end on the expiry of the fifty months during which the chit was to run. If this is conceded, the rest follows. The lower appellate Court says:

Ordinarily a chit to run for 50 months by two persons in partnership is an adventure which terminates at the 50th month, or it is a partnership for a particular period.

3. This is a thorough misunderstanding of the nature of the partnership. When two persons form themselves into a partnership for the purpose of carrying on a chit transaction, the chit may come to an end on the expiry of the fiftieth month; but as between the two persons who are joint stake-holders the adventure or undertaking does not come to an end immediately, for monies due to the partnership from the subscribers have to be collected. If it is a case of single stake-holder there is no trouble; he will collect all the monies due from the subscribers who drew the prizes. But in a case where two persons form themselves into a partnership and the partnership is the stake-holder, then the partnership business does not cease or terminate with the fiftieth month or earlier if the auction of the chits every month comes to an end earlier for other reasons. Very much more has to be done; all the monies due to the partnership have to be collected and the liabilities have to be discharged and it is only then that the business can be said to come to an end. As between the two the relationship of partners continues until the termination of the business of the partnership, that is, until all the assets of the partnership are realised and the liabilities paid. It is this initial misunderstanding of the nature of the business namely, that the partnership business came to an end at the termination of the fiftieth month, that has led the lower appellate Court to hold that the suit is barred. As held by a Bench of this Court in *Katta Gundayya v. Katta Siddappa* : AIR1937 Mad599 a suit for taking the accounts of a partnership: would not be barred unless the defendant makes out that there has been a dissolution of

the partnership more than three years prior to the institution of the suit. The onus of making out such dissolution is upon the defendant and it is well established that the mere fact that after a particular date no further business was done will not amount to a dissolution of the partnership.

4. It is unnecessary to refer to the decisions cited in that judgment. In this case the onus of proving that there was a dissolution lay upon the defendant. All that is said by the respondent in support of the judgment of the lower Court is that the plaintiff pleaded that there was a reference to arbitration and an attempt to settle the accounts and that there was an agreement for division of the assets and liabilities of the partnership between the partners. Unfortunately the agreement pleaded by the plaintiff was denied by the defendant and the defendant succeeded in satisfying the lower Courts that the plaintiff's case in regard to the settlement is not true. The first Court found that there was only an attempt at settlement and the lower appellate Court says that the finding of the trial Court that the settlement was only an abortive settlement in April or May, 1928, was not even challenged before him. In the evidence given by the defendant at page 18 of the printed papers this is what he says:

The chit was stopped because plaintiff said the 43rd auction might be postponed owing to the want of collections. The plaintiff looked into the accounts with his accountant for the attempted agreement. The proposed terms were that the assets and the liabilities should be divided equally. I do not remember the persons who might have been present at that time. There was only a proposal to wind up our business as stated above.

5. After this evidence it is idle to contend that there was a dissolution or a completed agreement in April or May, 1928. I hold that the suit is not barred by limitation. I reverse the decree of the lower appellate Court and restore that of the District Munsif with costs here and in the lower appellate Court.

6. Leave to appeal is refused.