Pradip Kumar Dutta and ors. Vs. Gopal Chandra Bose and anr.

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Court : Kolkata

Decided On : Jul-09-1980

Reported in : AIR1981Cal85

Judge : A.K. Sarkar, J.

Acts : Partnership Act, 1932 - Section 69 and 69(3)

Appeal No. : Suit No. 151 of 1978

Appellant : Pradip Kumar Dutta and ors.

Respondent : Gopal Chandra Bose and anr.

Advocate for Def. : Bhola Nath Sen and ;C.K. Saha, Advs.

Advocate for Pet/Ap. : P.K. Mullick and ;Nirmal Mitra, Advs.

Judgement :
ORDER

A.K. Sarkar, J.

1. A partnership firm under the name and style of 'Gopal Bose Gangaram' was constituted by a deed of partnership dated 29th September, 1962 between Gopal Chandra Bose the defendant No. 1 Devilal Mehta the defendant No. 2 and one Pashupati Dutta. The shares of the partners in the partnership were Gopal

Chandra Bose 6 annas 6 pies, Devilal Mehta 4 annas 3 pies and Pashupati Dutta 5 annas 3 pies enumerated in Clause VII of the said Deed of partnership. The terms of the partnership inter alia contained in the said Deed dated 29th September, 1962 tendered as Exhibit A in Clause XIV, 'Death, incapacity, insanity, insolvency, expulsion or retirement of any partner or attachment and sale of the share of any partner for his private debts shall not dissolve the firm but shall be carried on by the other persons and in case of death of any partner his legal heirs will be taken as partner or partners'.

3. On 29th May, 1977 the said Pashupati Dutta died interstate leaving him surviving the plaintiffs in the suit as his heirs and legal representatives. Upon such death his entire estate including his right, title and interest in the said partnership business, 'Gopal Bose Gangaram' devolved upon the plaintiffs under the provisions of Hindu Succession Act, 1956. The partnership of 'Gopal Bose Gangaram' was not however dissolved.

4. The plaintiff No. 1 Pradip Kumar Dutta, youngest son of the said Pashupati Dutta deceased, during his father's lifetime attended and was learning the said business with intent to join the same in the event of his father's death.

5. The following issues were settled in Court :-

ISSUES

1. What are the scope, terms and effect of the deed of Partnership dated 29th Sep., 1962?

2. Did the deed of relinquishment vest the first plaintiff with any right, title and interest in respect of the share of the deceased partner in the partnership business absolutely ?

3. Has the plaintiff acquired any right under the deed of partnership dated 5th September. 1977? Did the partnership thereunder come into effect ?

4. Is the first plaintiff ready and willing to act as partner in spite of notice of dissolution?

5. Has the plaintiff No. I accepted the accounts up to the period ending April 13, 1977 on 1-8-1977?

6. Has the plaintiff No. 1 received any money as alleged in paragraph 10 of the written statement ?

7. Is the plaintiff No. 1 entitled to any account or any share of profit of the firm ?

8. Is the plaintiff No. 1 entitled to ask for the dissolution of the firm ?

9. Have the plaintiffs any locus standi to institute or maintain the suit?

10. To what reliefs, if any, is the plaintiff No. 1 entitled?

6. The Deed of partnership dated 29th Sept., 1962 was a registered deed, the shares of the parties were enumerated in Clause VII. Clause XIV provided that the said partnership shall not be dissolved on the death of any of the partners whereupon his legal heirs will be taken as partner or partners. There are also specific provisions in the said deed with regard to the rights and liabilities of each of the partners as also what would happen with regard to the business of the firm and in the event of death of any of the partners his legal heirs will be admitted as partner or partners and the business of the firm shall continue. This is in answer to Issue No. 1.

7. After the death of Pashupati, one day during the plaintiffs' mourning the defendants went to their house and after discussions with them decided to take plaintiff No. 1 as partner in the said business and stated that relinquishments of their right, title and interest in the share of the said business in favour of the plaintiff No. 1 by his sisters, mother and the brother, the other plaintiffs would be necessary. The Deeds of relinquishment as prepared by the Advocate of the defendants were executed by the plaintiffs except the plaintiff No. 1, relinquishing their right, title, interest in the share of the said partnership in favour of plaintiff No. 1. Six Deeds of relinquish mem are tendered and collectively marked Ext. 'C' There was no cross-examination of the plaintiff No. 1.

8. The next witness, Sri Achintya Kumar Ghosh in answer to Q. 35 to Q. 57 put to him proved the facts leading to the execution of the said Deeds of relinquishment, he was also not cross-examined on this point. The next witness, plaintiff No. 3 himself in answer to Q. 34 to Q. 45 put to him clearly deposed that after the death of Pashupati, there were discussions between the defendants and the plaintiffs and their relatives whereby the defendants decided to take the plaintiff No. 1 as partner upon execution of deeds of relinquishment by the oilier heirs of late Pashupali Dutta in favour of the first plaintiff. The deeds of relinquishment were executed in the presence of the defendant No. 1 and the witness admitted in answer to 0- 85 put to him in cross-examination that he relinquished everything with regard to his share in the said partnership of favour of his said brother, the plaintiff No. 1.

9. The said deeds contained the relinquishment of all right, title and interest in the share of the said partnership in favour of plaintiff No. 1 but the plaintiff No. 1 was to pay all statutory liabilities and (axes. I am satisfied that the plaintiff No. 1 paid the Estate Duty of the estate of Pashupati which included his share in the said partnership business as will appear from estate duty provisional certificate and challan both tendered and marked Exhibit 6. I am also satisfied that plaintiffs Nos. 1 and 3 applied for and obtained Succession Certificate (Exhibit L) inter alia in respect of Pashupati's share in the said partnership mentioned in Clause 6 of the certificate. The answer to Issue No. 2 therefore is in the affirmative.

10. The plaintiff No. 1 attended the business as a partner and was told by the defendant No. 1 that the partnership deed was being prepared. While attending the said business, the defendants asked him to sign two documents e. g. the balance sheet as at 30th Chaitra, 1383 B. S. corresponding to 13th April, 1977 and profit and loss account for the same period of the said partnership business of 'Gopal Bose Gangaram'. The said documents contained accounts covering also the period of the plaintiffs father; the plaintiff No. 1 was asked by the defendant No. 1 to sign the said documents where the other two partners had signed. Under his signature the words 'L/H of late Pashupati Dutta' was written by the defendant No. 1 meaning thereby legal heir of Pashupati Dutta. It is significant that the signature of plaintiff No. 1 was put along with the signatures of other two partners,

under the heading 'Partner' written by the hand of the defendant No. 1. The said two documents clearly and sufficiently show that plaintiff No. 1 was admitted as a partner of the business in terms of Clause 14 of the Deed dated 29th Sep., 1962 ('Exhibit A') by the defendants. The said documents are tendered and marked Ext. D and the signatures encircled by blue pencil tendered and marked Exts. D1 and D2.

11. Sometime in early Sep., 1977 an Indenture of partnership was executed by and between the plaintiff No. 1 and the defendants (Exhibit 'O') but the date when the partnership was to come into effect and operation was kept blank on the plea that the same will be filled in at the time of registration of the Deed.

12. In answer to Q. 114, the plaintiff No. 1 deposed that the initials of all the three partners on the margin near the blank spaces in the said Deed (Exhibit 'O') were put so that the said blank spaces would be filled in later on as assured by the defendants.In cross-examination, the plaintiff No. 1 stated in answer to Q. 256 that there was verbal talk between the three partners in the presence of his family members at his residence while the parties agreed that the rate of interest to be paid by a defaulting partner on the amount if overdrawn by him from the partnership fund would be at 12% per annum and the date of commencement of the partnership would be the day following the date of death of Pashupati Dutta i. e. 30th May, 1977. Achintya Kumar Ghosh the brother-in-law of the plaintiff No. 1 present at the time of execution of the deed by the partners put down the extent of shares of each partner in the original partnership deed in his own hand. That has been encircled in red pencil in the said Indenture tendered and marked as Ext. O1. The original deed of partnership has been tendered and marked Ext. O. The extent of shares put in para 7 of the original partnership deed was put with the approval of Gopal Chandra Bose as would appear from answers to Q. HO and to Q. 278 put to the plaintiff No. 1 in cross-examination. The other blanks Gopal Chandra Bose said would be filled in at the time of registration of the deed.

13. In answer to Issue No. 3, I have to say that the partnership by the said Deed dated 5th Sep., 1977 executed between the plaintiff No. I and the defendants came into effect on and from 30th May, 1977 i.e., on the day following the death of

Pashupati Dutta and the plaintiff No. 1 acquired right under the said Deed as a partner to the extent of 5 annas 3 pies i. e. to the extent of share of his father, late Pashupati Dutta held in the partnership.

14. The defendants by letters dated 26th Sep. and 23rd Dec., 1977 tendered as Exhibits F and G respectively called upon plaintiff No. 1 to Obtain Estate Duty Clearance Certificate and Succession Certificate in respect of the estate of late Pashupati Dutta in order that the said partnership with the plaintiff No. I be brought into operation and also complained of rough and arrogant attitude of plaintiff No. 1. If the partnership was not already in operation there was no point in complaining of the attitude of the first plaintiff. By letter dated 4th Jan., 1978 (Ext. H) the said plaintiff denied the allegations of the defendants and called upon the defendants to give accounts of the partnership business for the period 1st Baisakh, 1384 B. S. and 14th Jaistha, 1384 B. S.

15. I have already found that plaintiff No. I had cleared the Estate Duty in respect of the estate of late Pashupati Dutta including his share in the said partnership business as also obtained Clearance Certificate in respect thereof and obtained Succession Certificate in respect inter alia of the deceased's shares in the said partnership. There was no impediment to admit plaintiff No. 1 to the partnership of 'Gopal Bose Gangaram' in terms of the partnership deed dated 29th Sep., 1962 on the death of Pashupati Dutta. As a matter of fact, I find that the defendants did admit plaintiff No. 1 as partner of Gopal Bose Gangaram from 30th May, 1977 in terms of the Deed executed between them. The said partnership had come into effect, was acted upon by the parties who obtained signature of the plaintiff No. 1 on the balance sheet and profit and loss account of the business, Exhibits D, D1 and D2; the plaintiff No. 1 acquired right as partner under the said Deed. The answer to Issue No. 3 is in the affirmative.

16. The defendants however were not pulling on well with the plaintiff No. 1 and complained of rough and arrogant behaviour of the plaintiff No. 1. The defendants also obstructed the plaintiff No. 1 from joining the said partnership, did not allow him access to books of the partnership and insulted him. Ultimately by notice dated 6th March, 1978 (Ext. 5) caused to be served on the defendants, the plaintiff

No. 1 dissolved the said partnership and was not and could not be witling to continue as a partner with the defendants. The specific performance of the agreement of Sep., 1977 is not necessary. The answer to the Issue No. 4 is in the negative.

17. By signing the balance sheet as at 30ih Chaitra, 1383 B. S. corresponding to 13th April, 1977 and profit and loss account for the same period of the said partnership business, plaintiff No. I accepted the account up to period ending April 13, 1977. The answer to Issue No. 5 is in the affirmative.

18. With regard to receipt of moneys, the plaintiff No. 1 in his evidence admitted that about Rs. 7,950/- was received by him and his brother from the said partnership business. They gave a joint receipt for sum of Rs. 5,000/- and thereafter moneys taken by him were all recorded in the books of accounts of the partnership firm where he put his signature and the total amount taken by them including the said Rs. 5,000/- would be about Rs. 7,950/- or Rs. 8,000/-. He admitted that he put his signature in Kantcha Jabda of the partnership. No evidence,however, has been adduced by or on behalf of the defendants. The answer to Issue No. 6 shall be in the negative.

19. In my view, the first plaintiff was admitted to the partnership of 'Gopal Bose Gangaram' as an heir of Pashupati Dutta. The deeds of relinquishment (Ext. 'C') executed by the other heirs of Pashupati Dutta in favour of the first plaintiff were accepted and referred to in the recital of the Deed of Partnership between the parties (Ext. 'O'). The first plaintiff acted as a partner as will appear from his signature in the balance sheet and profit and loss account of the said partnership (Exts. D, D1 and D2). These exhibits clearly show that the partnership with the first plaintiff was acted upon by the parties. The first plaintiff therefore, became a partner of the firm and has locus standi to institute and maintain this suit. This is in answer to Issue No. 9.

20. By notice dated 6th March, 1978 (Exhibit 5), the first plaintiff dissolved the partnership and is entitled to ask for dissolution of the firm and to the account of profit of the said firm since 30th May, 1977 till the date of the decree. This therefore, answers the Issues Nos. 7 and 8 in the affirmative. I have further

ascertained that the defendants also are not willing to continue the partnership with the first plaintiff.

21. Mr. Bhola Nath Sen, the learned Counsel for the defendants questioned the maintainability of the suit under Section 69 of the Indian Partnership Act, 1932 Mr. Sen contended that a suit by a person for declaration that he is a partner with the defendants in a business is hit by Section 69 of the Act and is barred if the partnership is not registered. Mr. Sen cited a Bench decision of this Court reported in (1948) 52 Cal WN 15. It is true that the firm, 'Gopal Bose Gangaram' was not a registered partnership firm. But the instant suit is a suit by the plaintiffs who are not suing as partners in the firm, but is a suit for a declaration that the first plaintiff is a partner of the partnership firm, 'Gopal Bose Gangaram'. Therefore. Section 69(1) does not in terms apply to the instant suit. The instant suit is for enforcement of right to sue for dissolution of the firm and for account; the suit therefore, is not barred because the partnership firm was not registered, being saved by the provisions of Sub-section (3) (a) of the said Section 69 of the Act. Therefore, I am unable to find any substance in the said contention of Mr. Sen. Besides as I have stated before that the partnership between the first plain-tiff and the defendants Nos. 1 and 2 in terms of the Deed of Sep., 1977 was acted upon and the first plaintiff who signed the balance sheet and the proof and loss account of the said partnership along with other partners, 0044/1976 : [1976]3SCR1022 .

22. There will be a decree declaring that the plaintiff No. 1 was a partner of the firm carried on under the name and style of 'Gopal Bose Gangaram' at No. 231, Maharshi Debendra Road (Piyaj Posta), Calcutta-7 since 30th May, 1977; there will further be a preliminary decree dissolving the said partnership business of 'Gopal Bose Gangaram' between defendants and the plaintiff No. 1. It is declared that the proportionate shares of the, parties in the partnership are as follows:

Gopal Bose .... 6 Annas 6 pies.Devila Mehta .... 4 annas 3 pies.AndPradip Kumar Dutt .... 5 annas 3 pies.

23. The accounts of the profits of the said firm be gone into on and from 30th May, 1977 till the date of the decree.

24. Mr. Sailendra Kumar Lahiri, Barrister-at-Law, an Advocate of this Court is appointed special Referee at remuneration of 20 gold mohurs per each effective sitting to be borne in equal shares by the first plaintiff and the defendants and paid at the close of each sitting. The special Referee will go into the accounts of the said partnership business from 30th May, 1977 and report what amount becomes due to the first plaintiff from the said defendants, after adjusting the amounts taken by the first plaintiff and his brother, the plaintiff No. 3 from the said partnership, All acts by the special Referee be completed by 31st Dec., 1980 and his report filed by 15th Jan., 1981. The special Referee will be at liberty to engage a clerk at his discretion.

25. The decree be drawn up expeditiously and all parties and the special Referee would act on a signed copy of the Court's Minute.