

CASE NO.:
Appeal (civil) 6519 of 1994

PETITIONER:
Pamuru Vishnu Vinodh Reddy

RESPONDENT:
Chillakuru Chandrasekhara Reddy & Ors.

DATE OF JUDGMENT: 17/02/2003

BENCH:
SHIVARAJ V. PATIL & K.G. BALAKRISHNAN.

JUDGMENT:

J U D G M E N T

SHIVARAJ V. PATIL J.

The few facts which are relevant and necessary for disposal of this appeal in brief are that one Pamuru Rama Subba Reddy filed the suit O.S. No. 126 of 1976 for dissolution and accounting of the partnership assets of the firm Vijay Mahal Theatre. The defence set up to resist the suit was that the plaintiff and the 4th defendant retired from the firm in the year 1971 and, therefore, the plaintiff was not entitled to seek dissolution of the partnership and the settlement of the accounts. The suit was decreed. In the first appeal, the High Court affirmed the findings of the trial court; however, set aside the decree for dissolution of the firm and directed the defendants to pay the amounts due to the plaintiff towards his share in the assets of the firm on valuation without resorting to the sale of the assets of the firm. The High Court directed the trial court to make an enquiry into the valuation and to decide the date on which the valuation of the plaintiff's share shall be arrived at taking into account that the plaintiff's share was not paid to him. Against the said judgment of the High Court, special leave petition was filed before this Court which was dismissed as withdrawn in 1987.

The first defendant died during the pendency of the suit and defendants 7 to 11 were added as his legal representatives. M.Subbareddy to whom the share of the plaintiff was said to have been transferred was impleaded as 12th defendant to the suit as per the directions of the High Court. During the pendency of the enquiry into the valuation of the plaintiff's share in the assets of the partnership firm, the plaintiff died and his minor son Pamuru Vishnu Vinodh Reddy, represented by his natural guardian was added as the legal representative of the deceased plaintiff.

The trial court, pursuant to the directions given by the High Court, appointed a Commissioner for ascertaining the value of the share of the plaintiff as on the date and also as on 5.4.1971. Thereafter, the son of the deceased plaintiff (appellant herein) filed I.A. No. 270 of 1987 to decide the date on which the valuation of the plaintiff's share was to be made

before the Commissioner proceeds to hold an enquiry as per the directions of the High Court. The learned Addl. District Judge, after hearing the parties, allowed the said application holding that the date on which the Commissioner values the property was the relevant date to ascertain the valuation of the plaintiff's share in the partnership firm. The 3rd defendant, being aggrieved by the said order, filed a revision petition before the High Court. The High Court allowed the revision petition, set aside the order of the learned Addl. District Judge and held that the relevant date for the purpose of ascertaining the value of the share of the plaintiff was the date on which he ceased to be a partner, observing that if the latter date than the date on which the plaintiff ceased to be a partner was taken for the purpose of ascertaining the value of his share, it would confer unjustified windfall on the outgoing partner and it would be inconsistent with the concept of retirement or expulsion. The son of the original plaintiff who was the respondent no. 1 in the revision petition before the High Court, aggrieved by the order made by the High Court, is before this Court in this appeal challenging the validity and correctness of the impugned order.

The short question that arises for consideration in this appeal is as to which is the relevant date for the purpose of ascertaining the value of the share of the plaintiff in the partnership firm i.e. whether 5.4.1971 or the date on which the Commissioner made the valuation of the share of the plaintiff.

Shri M.N. Rao, the learned Senior Counsel on behalf of the appellant contended that the High Court was not justified in reversing the order of the trial court declaring that the date on which the Commissioner valued the property of the partnership firm as the relevant date for ascertaining the value of the share of the plaintiff in the firm; the High Court failed to appreciate that the trial court had recorded a finding taking note of the observation of the Division Bench judgment of the High Court dated 24.11.1983 passed in A.S. No. 481/79 to the effect that the trial court while deciding the relevant date for ascertaining the value of the share of the plaintiff shall take into account the fact that the value of his share had not been paid. He added that the High Court by the said judgment dated 24.11.1983 had modified the decree of dissolution of the partnership firm granted by the trial court only on the ground of equity to allow the partnership firm to carry on its business and granted the decree for accounting and also for the payment of value of plaintiff's share of 25% in the said firm; in that view, the relevant date for ascertaining the value of the share of the plaintiff can only be the date on which the Commissioner valued the properties of the partnership firm. He further submitted that the High Court committed an error in the impugned order in holding that the plaintiff had admittedly retired from the partnership firm on 5.4.1971, the date on which an agreement to sell his share was entered into although neither the value of the share was ascertained nor was it paid till date; the fact that the High Court in the judgment dated 24.11.1983 made in the first appeal granted relief of rendering of accounts of partnership

firm from 5.4.1971 till date itself clearly indicated that the plaintiff continued to be partner of the firm. It was further submitted that the High Court ought to have appreciated that the share of the plaintiff was being utilized by the partnership firm and had earned profits and in such circumstances the relevant date for valuing the share of the plaintiff should have been the date when the Commissioner ascertained the value of the assets of the firm.

In opposition, the learned counsel for the respondents made submissions in support and justification of the impugned order supporting the same for the very reasons recorded in the impugned order elaborating them and pointing out certain factual aspects.

In order to appreciate the rival contentions touching the controversy raised by the parties, we feel it necessary to state few more facts as can be gathered from the judgment of the High Court in A.S. No. 481/1979.

Partnership with the plaintiff as per Exbt. B/7 was admitted in the written statement but it was contended that the plaintiff and the 4th defendant gave up their shares and retired from the partnership; the plaintiff transferred his share to M. Subbareddy and the same was evidenced by Exbt. B/21 dated 5.4.1971; since Exbt. B/21 was not filed before the income tax authorities, a fresh deed was executed on 9.11.1971 which was also attested by the plaintiff and the 4th defendant wherein the wife of the second defendant was also taken as a partner; the plaintiff denied the attestation of Exbts. B/21 and B/22; they were sent to the expert; the trial court found that attestation of the two documents by the plaintiff was proved but held that the plea set up by the defendants that the plaintiff was paid his share and the account was settled was not accepted; in that view, the trial court held that the plaintiff continued to be the partner of the firm and consequently, decreed the suit for dissolution; the auditor who was examined as DW-3 in the case was common for both the plaintiff and the defendants; the High Court having considered both documentary and oral evidence, concluded that the plaintiff had agreed to sell his share and the agreement was binding on him and that it was affirmed twice both in Exbts. B/21 and B/22. The High Court affirmed the finding that no payment was made to the plaintiff as agreed. It was also found that the plaintiff retired on 5.4.1971 with the consent of all the partners. The relevant portions of the said judgment in A.S. No. 481/1979 read as under:-

"Once we hold that the retirement was obtained by consent of all partners Section 32(a) of the Partnership Act is attracted and a retirement with the consent of all the other partners can be effected without dissolution. The failure on the part of the remaining partners to settle the accounts of the retiring partner would make them liable for the decree for accounting Hence we do not see any

infirmity in granting a decree for accounting including delivery of the share of the plaintiff without dissolution of the firm as such.

In fact we have adjourned the case to enable the parties to come to an agreement regarding the value of the share of the plaintiff and also the amount due to him towards profits. But since there is no agreement between the parties, we have to proceed to our judgment.

.....

Hence we have no hesitation to pass a decree for directing delivery of the share of the plaintiff.

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Accordingly, we set aside the decree for dissolution and direct a preliminary decree directing accounting against defendants 1 to 5 from 5.4.1971 and also for the payment of the value of the plaintiff's share of 25% in the suit firm. The Court below should determine the value of the share of the plaintiff. The learned counsel for the plaintiff requested to give a direction regarding the date on which the valuation of the plaintiff's share shall be arrived at. However, as we are directing the trial court to make enquiry into valuation, we shall direct the trial court itself to decide date taking into account that his share was not paid till now.

....."

We think it necessary to notice Sections 32, 37 and 48 of the Indian Partnership Act which read:-

"32. Retirement of a partner -(1) A partner may retire,-

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm,

and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm."

"37. Right of outgoing partner in certain cases to share subsequent profits Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm;

Provided that whereby contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the forgoing provisions of this section."

"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."

Use of the word 'retire' in Section 32 of the Act is confined to cases where a partner withdraws from a firm and the remaining partners continue to carry on the business of the firm without dissolution of partnership as between them. Where a partner withdraws from a firm by dissolving it, it shall be dissolution and not the retirement. Retirement of a partner from a firm does not dissolve it, in other words it does not determine partnership inter se between all the partners. It only severs the partnership between the retiring partner and continuing partners, leaving the partnership amongst latter unaffected and the firm continues with the changed constitution comprising of the continuing partners. Section 32 provides for retirement of a partner but there is no express provision in the Act for the separation of his share and the intention appears to be that it would be determined by agreement between the parties. Section 37 deals with rights of outgoing partners. Although the principle applicable to such cases is clear but at times some complicated questions arise when disputes are raised between the outgoing partner or his estate on the one hand and the continuing or surviving partners on the other in respect of subsequent business. Such disputes are to be resolved keeping in view the facts of each case having due regard to Section 37 of the Act. Section 48 deals with the mode of settlement of accounts between the partners after dissolution of the partnership firm.

In this backdrop, now we take up the question for consideration set out above.

The findings as recorded by the High Court in A.S. No. 481/1979 that the plaintiff has retired from the partnership firm on 5.4.1971 and that the partnership firm had also been reconstituted thereafter, have attained finality. In the same judgment, it is held that the plaintiff had agreed to sell his share and the agreement was binding on him as affirmed twice in Exbts. B/21 and B/22. By the said judgment, the High Court set aside the decree granted by the trial court for dissolution having regard to the fact that the plaintiff had retired from the partnership firm and the reconstituted firm continued its operations.

From these findings of fact, it is clear that the plaintiff had retired from the firm on 5.4.1971 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. A finding of fact is also recorded that the defendants had not paid the value of the share of the plaintiff pursuant to the agreement for retiring from the firm. 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. After the retirement from the partnership firm and 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. The High Court, despite specific request by the counsel for the plaintiff in A.S. No. 481/1979 to give a direction regarding the date on which the valuation of the plaintiff's share shall be arrived at, did not give a direction but directed the trial court to make inquiry into valuation and decide the date taking into account that his share was not paid till then. There is no nexus or reason to say that the relevant date for valuation of the share of the plaintiff is the date when the Commissioner valued his share, that too after long lapse of time and taking note of the events that the plaintiff had retired from the firm on 5.4.1971 having sold his share and the firm had been reconstituted with new partners. When the plaintiff retired from the partnership firm on 5.4.1971, his share could be valued as on that date which stands to reason. Once the valuation is made as on that date, for any delay in payment he is to be compensated by awarding interest as is evident from Section 37 of the Act itself. The value of the share of the plaintiff on the date of his retirement from the firm could be regarded as a pure debt with effect from the date on which he ceased to be a partner as per the agreement entered into between the parties. Otherwise the result would be that he was deemed to have been continued as partner of the firm even after he retired from the firm by selling his share. If consideration was not paid as per the agreement, he could enforce it as per law. However, mere non-payment of consideration does not take away the legal effect of retirement from the partnership firm. The High Court in the impugned order has observed thus: -

"It follows from the above that in cases where there is an agreement to purchase share of partner, the value of the share of the outgoing partner or retiring partner shall be ascertained on the basis of the value on the date of the retirement, unless it is a case where the valuation is directed by the Court in the exercise of its discretion, in which event, the relevant date will be the date on which the share is actually valued. Admittedly, it is a case where the plaintiff had retired from the concern on 5.4.1971 and agreed to sell his share to Sri M.Subbareddy. Therefore, there was an express agreement to sell the share, pursuant to which, he sold his share to defendant no. 12 and thereafter he retired and ceased to be a partner on 5.4.1971. If there was delay in payment of his financial entitlement, he is entitled to interest at the rate of six per cent per annum in the property of the firm. Section 37 of the Indian Partnership Act also says that in the case of an outgoing partner, he is entitled to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm. The language used in Section 37 is that "since he ceased to be a partner". In other words, since he ceased to be a partner, he is entitled to interest at the rate of six per cent per annum on the amount of his share in the property of the firm. Section 37 itself makes it clear that the relevant date is the date on which he ceases to be a partner. The proviso to Section 37 also says that if option is given to surviving partners to purchase the share of an outgoing partner and if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under Section 37.

Therefore, in any view of the matter, the relevant date for the purpose of ascertaining the value of the share of the plaintiff is the date on which he ceased to be a partner as it is a case where there was an express agreement between the parties to sell the share of the plaintiff in favour of Sri M.Subbareddy and with effect from that date he became a secured creditor and there was a debt due to him from the other partners who are continuing in the partnership business. It is in the

nature of a debt due to him or the amount due to him is unpaid purchase money. Therefore, the relevant date is the date on which he ceases to be a partner."

[emphasis supplied]

The cause of action for the plaintiff arose on the date of his retirement from the partnership firm and on which date the liability of the defendants also arose. In this view, the plaintiff could certainly claim the value of his share as on 5.4.1971 with interest till the payment was made. The view of the trial court that the relevant date to value the share of the plaintiff is as on the date of the Commissioner's report cannot be accepted, as there was no nexus between the date of retirement of the plaintiff from the firm and the date of Commissioner's report. The date of Commissioner's report may be fluctuating, i.e. it could be earlier or later in the absence of any time-frame. In this view, the High Court was right and justified in passing the impugned order upsetting the order of the trial court. We have every good reason to concur with the finding recorded in the impugned order by the High Court. We find no merit in the appeal. Consequently, it is dismissed. No order as to costs.