

(1990) 02 AP CK 0017

Andhra Pradesh High Court

Case No: Second Appeal No. 470 of 1984

V. Narasimlu

APPELLANT

Vs

K. Dwarakadas and Others

RESPONDENT

Date of Decision: Feb. 6, 1990

Hon'ble Judges: Neeladri Rao, J

Bench: Single Bench

Advocate: P.S. Murthy, for the Appellant; Om Parkash Misra, for the Respondent

Final Decision: Allowed

Judgement

Neeladri Rao, J.

D-10 in O.S.48/73, Sub-Court, Nizamabad is the appellant. The suit was filed for settlement of accounts wherein it was alleged that D-4 and D-10 were the managing partners who have to account.

2. Plaintiff and D-1 to D-10 were partners of the registered firm. Santosh Forest Contractors, Nizamabad. As per the terms of the registered partnership dated 12.8.1969, D-2 took the contract of Cupe No. VIII Bayakkapet Range, Azamanagar, Division Karimnagar for felling and selling the trees, for an amount of three lakhs. The partnership had to continue till the said contract work is completed. It was over by 31.3.71 as per the findings of the lower Courts. The plaintiff claimed that he invested Rs. 12,000/- and D-4 and D-10 are the managing partners and they have to account for refund of the capital amount and the profits realised.

3. It was found that D-1 died even before the suit was filed. Even after the summons to D-1 were returned with an endorsement that he died two years prior to it, the plaintiff had not chosen to implead the legal representatives of D-1 as parties to this suit. The additional issue that was framed is as under-

"Whether the suit abates wholly or only against D-1 as the plaintiff failed to bring the legal representatives, in view of the death of defendant-1?"

But the real point for consideration is whether the suit for settlement of accounts by one of the partners of a firm fails if all the partners/legal representatives of partners are not impleaded as parties.

4. The trial Court dismissed the suit by holding against the plaintiff in regard to the additional issue. The first appellate Court held that even through a suit for settlement of accounts is not maintainable if all the partners are not impleaded as parties, the same does not hold good in a case where the legal representatives of the deceased partners are not impleaded as parties, as the estate of the deceased is not an accounting party, though it may be liable if any amount is found due to the firm from the deceased partner. The Courts below held that D-4 and D-10 are the managing partners of the firm and they are liable to account. It was further held that the point as to whether the plaintiff contributed Rs. 12,000/- towards capital is a matter for consideration when the accounts are taken. Those findings are not challenged in the Second Appeal.

5. So the only point for consideration is whether the legal representatives of D-1 are necessary parties to the suit. If the finding is in the affirmative, the suit falls.

6. This partnership firm had come into existence as per the partnership deed dated 12.8.69. This is a suit for accounts of this firm after the contract work for which this partnership was constituted, was completed. The cause of action for all the partners arise out of the same point i.e. the partnership deed herein. The object of having accounts is to ascertain the profit or loss and the amount which is payable to or payable by each of the partners. So the necessary directions for taking account and the ascertainment of the profit or loss have to be made in the presence of all the partners. It is immaterial whether only one or few of the partners are accountable. Even in such a case all the partners including those who are not liable to account have to be made partners. Such partners are also interested in the ascertainment of profits or loss and also the right or liability of each of the partners to the various amounts. So in a suit for accounts of the dissolved firm or if a firm which was constituted to take up a venture after the completion of such venture, all the partners whether managing or otherwise are necessary parties to the suit.

7. R and N were engaged as gumasthas by one J or carrying on business with an understanding that R and N have to be paid a particular share from out of the profits. R filed a suit for accounts against J without impleading N. In such a case, Calcutta High Court held in *Ramdoyal v. Junmenjoy Coondoo*, 14ILR, 791, that the suit is bad for non-joinder of N the necessary party. It was observed at page 794 as under :-

"The suit, as originally framed, was clearly defective, because, when there are three persons who, under one and the same agreement amongst themselves, are entitled to share in the proceeds of a fund which they hope will be brought into existence, it is obvious that all these three persons must be necessary parties to a suit, the object

of which is to take an account necessary for the purpose of ascertaining the assets of the fund and dividing them".

"When a partner sues only one of his partners for accounts of partnership and the other partners are added after the period of limitation has elapsed, the suit must be dismissed." It was so held in *Pahloomal v. Paramanand*, AIR 1933 Sind 121.

"It is well known that a suit for account cannot be maintained between some only of the partners of the firm but every partner must be made a party. The reason is that every partner has an interest in the determination of his share in the profits and in the working out of that share by the account. If a decree is made in the absence of one of the partners, then in a sense that is a decree against that partner, limiting his interest, limiting the amount which he has to recover and determining the amount he has to contribute to the other partners, and it would be obviously improper, and illegal to make such a decree against him without impleading him." It was observed by the Madras High Court in [Amichand Nagindas and Co. and Others Vs. Raoji Bhai Moti Bhai Patel and Others](#), . The same view was held in [S. Mohinder Singh Vs. Shiv Des Singh](#),

"It is a settled proposition of law that a suit for accounts cannot be maintained against some of the partners only and that every partner is a necessary party. The reason for this rule is not far to seek. The shares of all the partners in the matter of their profits and losses have to be determined and it is neither possible nor correct to decide the extent of rights and liabilities of a partner in his absence. The cardinal rule of law is that no decree can be passed against the person in his absence".

8. Thus the various High Courts have taken a consistent view that a suit for accounts of a dissolved firm is not maintainable unless all the partners figure as either plaintiffs or defendants in such suit. In such a suit for accounts, the rights or liabilities of each of partners have to be determined. If such a firm is having assets the necessary directions have to be given either for the sale of such assets or for allotment of those assets amongst the various partners. No decision can be made behind the back of a person, just as no one can be condemned without being heard. Even the extent of the right or liability of any person cannot be determined without hearing him. So far as each of the partners is concerned, he may be entitled to some amounts from the firm or he may be liable to pay some amount to the firm. In either case, the liability or the right can be considered only in his presence. In a suit for accounts of the firm, there is no possibility of determining the liability or right of only one of the partners without considering such right or liability of all other partners. Principle analogous to *audi alterum partem* is the basis of holding that all the partners are necessary parties in a suit for account of the partnership firm. Even the first appellate parties in a suit for account of the partnership firm. Even the first appellate Court did not hold that the suit is maintainable even when all the partners are not parties to the suit.

9. In this case all the partners were referred to as defendants in the suit but it transpired that D-1 died long prior to the presentation of the plaint. Even after summons to D-1 were returned with an endorsement that he died, no steps were taken to implead the legal representatives of D-1 as parties to the suit, Thus it is clear that the estate of the deceased partners was not represented in the suit.

10. The First appellate Court held that the estate of the deceased may be held liable if it is found that the deceased partner had to pay some amount to the partnership firm after accounts are taken and hence the failure to bring the legal representatives of the deceased partner on record is not fatal for the maintainability of the suit. All the partners of the firm, are accountable to the firm in regard to the funds handled by them and also for the transactions of the firm but if there are managing partners, generally the managing partners alone handle the funds of the firm and carry on the transaction of the firm either by themselves or through staff or agents. In such a case, the managing partners alone have to account and other partners may not have any necessity to give account to the other partners of the firm. Probably the first appellate Court held that the suit is maintainable even when the legal representatives of the deceased are not brought on record as L. Rs. are not accountable. But it is one thing to say whether any or more partners have to render account to the other partners of the firm. It is another thing to determining the rights or liabilities of each of the partners at the time of the settlement of accounts. It is already observed that the right or liability of any of the partners, for determination of such right or liability naturally affects the right or liability of all the other partners. So in case of death of a partner after the dissolution of the firm, the right or liability of the estate of the deceased-partner has to be determined and at such determination the estate has to be represented. Hence the legal representatives of the deceased-partner in case of his death subsequent to the dissolution of the firm are also necessary parties in a suit for accounts.

11. When the legal representatives of one of the defendants in a suit for accounts of partnership-firm were not brought on record it Was held in *S. Mohinder Singh v. S. Des Singh* (supra) that the suit abates even against the living partners for all the partners are necessary parties in a suit for accounts. The Nagpur High Court dealt with a case of omission to bring the L. Rs. of one of the partners in the appeal in AIR 1943 12 (Nagpur) . It was held therein that the appeal in its entirety will fail for non-joinder of necessary parties within time. So the suit for accounts of a partnership firm fails in its entirety when the legal representatives of the deceased-partner are not brought on record in time. So the contention for appellants that the suit in its entirety fails even against the remaining partners as the legal representatives of the deceased partner were not brought on record, has to be upheld. Hence the Second Appeal has to be allowed.

12. Of course in some of the cases, the partners who are not represented may not be liable to pay any amount to the firm and on the other hand, they may be entitled

to receive the amount. If a suit is going to be dismissed for non-joinder of such partners, the partners who manage may have unjust enrichment. So it is for the legislature to intervene if it is felt that the suit against the managing partners is maintainable even when some partners or legal representatives of deceased-partners are not brought on record in time or even when such partners or legal representatives of such deceased-partners are not at all brought on record.

13. If such a statutory provision is made, it does not cause prejudice even to the partners or the legal representatives of the deceased-partners who were not brought on record in time. On the other hand, they too stand to gain.

14. In the result, the Second Appeal is allowed and the judgment and decree of the first appellate Court are set aside and the suit is dismissed. In the circumstances of the case, the parties have, to bear their respective costs throughout.