

**(2014) 03 AP CK 0184**

**Andhra Pradesh High Court**

**Case No:** L.P.A. Nos. 37, 47 and 48 of 2002

S. Shiva Raja Reddy

APPELLANT

Vs

S. Raghu Raj Reddy

RESPONDENT

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**Date of Decision:** March 27, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Limitation Act, 1963 - Section 3
- Partnership Act, 1932 - Section 68

**Citation:** (2015) 3 ALD 208 : (2015) 2 ALT 342

**Hon'ble Judges:** M.S.K. Jaiswal, J; L.N. Reddy, J

**Bench:** Division Bench

**Advocate:** Gopal G. Naik and P. Vishnuvardhan Reddy, Advocate for the Appellant; P. Vishnuvardhan Reddy, V.L.N.G.K. Murthy, Bharadwaj Associates and G. Gopal Govind Naik, Advocate for the Respondent

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**Judgement**

L. Narasimha Reddy, J.

These three Letters Patent Appeals are as between the same parties, with a slight change as to their ranking. L.P.A. Nos. 37 and 48 of 2002 are filed against the decree, dated 19.10.2001, in C.C.C.A. No. 40 of 1999 on the file of this Court, which, in turn, arose out of the decree, dated 26.10.1998, passed by the Court of II Additional Chief Judge, City Civil Court, Hyderabad, in O.S. No. 121 of 1997. L.P.A. No. 47 of 2002 is filed against the decree, dated 19.10.2001, in C.C.C.A. No. 35 of 1999, that, in turn, arose out of the decree, dated 26.10.1998, in O.S. No. 67 of 1997, on the file of the same trial Court. The plaintiff in both the suits is common. While L.P.A. No. 48 of 2002 is filed by the plaintiff in O.S. No. 121 of 1997, the defendants 1 and 9 therein filed L.P.A. No. 37 of 2002. L.P.A. No. 47 of 2002 is filed by the plaintiff in O.S. No. 67 of 1997. For the sake of convenience, the parties are referred to, as arrayed in O.S. No. 121 of 1997.

2. One Sri Satyanarayana Reddy had three sons, by name, Shiv Raj Reddy, 1st defendant, Ram Reddy (not a party to the suits), and Raghu Raj Reddy, the plaintiff. The plaintiff and the defendants 1 to 8 have brought into existence a firm, with the name "Shiv Raj Reddy 8. Brothers", on 10.10.1993, mainly for the purpose of undertaking business in film production, distribution and exhibition. The firm has also acquired land and constructed a cinema hall, by name, Aradhana 70 mm at Tarnaka, Hyderabad. The share of the plaintiff and the defendants 1, 2 and 6 was said to be 14% each, that of the 5th defendant 15%, 4% each for the defendants 3 and 4, and 9% and 12% respectively of the defendants 7 and 8. It was alleged that the 6th defendant transferred his share to the 7th defendant and the share holding of the latter became 23%. Later on, the firm is said to have an arrangement with M/s. B. Arjun Reddy & Company. The business of the entire firm was said to have been merged into the larger firm, by name, Shiv Raj Reddy & Brothers and B. Arjun Reddy & Company, the 9th defendant, which is under the management of the 1st defendant.

3. The plaintiff filed O.S. No. 754 of 1991, which has been renumbered as O.S. No. 121 of 1997 for dissolution of the 9th defendant firm, for a direction to the defendants 1 to 5 to render accounts of the said firm, and for payment of his share of profits and assets. O.S. No. 67 of 1997 was also filed by the same plaintiff for dissolution of the firm, by name, M/s. Shiv Raj Reddy & Brothers, and for rendition of accounts and allocation of 20% of the profits and assets therein to him. The ancillary relief of appointment of commissioner and receivers was also prayed for.

4. The 1st defendant filed written-statement, opposing the suit. According to him, the plaintiff was not a partner of the firm at all and that his name was included only for the purpose of accounting. It was also alleged that the plaintiff did not make any investment in the firm and he is not entitled to any relief. Certain other facts were also pleaded.

5. Having regard to the stand taken by the 1st defendant in O.S. No. 121 of 1997, the plaintiff filed O.S. No. 3 of 1996, since re-numbered as O.S. No. 67 of 1997, almost for the same relief's, but with some changes as to percentage of shares, etc. For example, in O.S. No. 121 of 1997, the plaintiff claimed 14% share of the profits, whereas in O.S. No. 67 of 1997, he claimed the share at 20%, duly explaining the reasons in the body of the plaint.

6. Both the suits were not clubbed as such, but appear to have been tried and heard together. Having regard to the fact that the parties are not common to both the suits, evidence was recorded separately. A preliminary decree was passed on 26-10-1998 in O.S. No. 121 of 1997, directing that the 9th defendant-firm be dissolved and defendants 1 to 5 therein were directed to render accounts. It was left open to the plaintiff to file separate applications for appointment of commissioner, and for taking the accounts in respect of defendant No. 9 therein. On the same day, the trial Court passed a preliminary decree in O.S. No. 67 of 1997, almost with

similar directions.

7. Defendants 1 and 9, i.e. the Managing Partner and the Firm filed C.C.C.A. No. 40 of 1999 before this Court, challenging the decree in O.S. No. 121 of 1997. Same parties filed C.C.C.A. No. 35 of 1999 against the decree in O.S. No. 67 of 1997. Through common judgment dated 19-10-2001, a learned single Judge of this Court allowed C.C.C.A. No. 35 of 1999 and consequently dismissed O.S. No. 67 of 1997 on the ground that the suit is barred by limitation. C.C.C.A. No. 40 of 1999 was dismissed, however by restricting the relief of rendition of accounts only for a period of three years prior to the filing of the suit and directing that the income tax returns of the firm shall constitute the basis for accounting.

8. L.P.A. No. 47 of 2002 is filed by the plaintiff feeling aggrieved by the decree in C.C.C.A. No. 35 of 1999, that resulted in dismissal of O.S. No. 67 of 1997. He has also filed L.P.A. No. 48 of 2002 feeling aggrieved by the decree passed in C.C.C.A. No. 40 of 1999, in so far as it has limited the relief of rendition of accounts only to the extent of three years and directing that the income tax returns shall constitute the basis. Defendant Nos. 1 and 9 filed L.P.A. No. 37 of 2002 feeling aggrieved by the dismissal of C.C.C.A. No. 40 of 1999.

9. Sri V.L.N.G.K. Murthy, learned counsel for the plaintiff submits that there was no basis for the learned single Judge to dismiss O.S. No. 67 of 1997. He contends that for all practical purposes, that suit was nothing but the continuation of O.S. No. 121 of 1997, and that none of the defendants have raised the plea of limitation in the suits. It is argued that once O.S. No. 121 of 1997 was found to be not barred by limitation, the question of the subsequent suit, O.S. No. 67 of 1997 being treated as barred, on that ground, does not arise. He further contends that even according to the learned single Judge, the evidence on record discloses that the business of the firm was continued after the death of Shivraj Reddy also, so much so, the income tax returns were also filed, and the view taken by the learned single Judge cannot be countenanced.

10. As regards the riders added by the learned single Judge, while dismissing C.C.C.A. No. 40 of 1999, learned counsel submits that it is only in the course of enquiry into the application filed for rendition of accounts, that the relevant facts and figures would come out, and the income tax returns can not at all be treated as the basis. He submits that the exercise of rendition of accounts of a firm is larger in its scope, than mere filing of returns, under the Income Tax Act. He further submits that the restriction of the period for rendition of accounts, up to three years before filing of the suit, is equally untenable.

11. Sri Gopal G. Naik, learned counsel for the defendants 1 and 9, on the other hand, submits that the question of limitation was dealt with by the learned single Judge based upon undisputed facts and a correct view was taken on the issue. He submits that though the limitation is a mixed question of fact and law, the facts are already

on record and the legal aspect of it was elaborated by the learned single Judge. He contends that the mere filing of income tax returns cannot lead to a conclusion that the firm continued its activities even after the death of one of the partners i.e. Shivraj Reddy.

12. Learned counsel further submits that the plaintiff failed to place any material before the trial Court as regards the accounts and the learned single Judge has taken the view that the best way to know the state of affairs of the firm is to take the facts and figures mentioned in the income tax returns. It is also his case that whether one goes by the law of limitation or general practice, the plaintiff is not entitled to the relief of rendition of accounts for a period, beyond three years, preceding the date of filing of the suit.

13. In the two suits filed by the plaintiff, the following issues were framed:

O.S. No. 121 of 1997:

1. Whether the plaintiff is entitled for dissolution of the suit partnership as prayed for?
2. Whether the plaintiff is entitled for the rendition of accounts?
3. Whether the plaintiff is only a nominated partner and as such is not entitled for any share in the suit partnership as contended by the defendants?

O.S. No. 67 of 1997:

1. Whether the plaintiff is entitled for rendition of accounts as prayed for?

This was recast as follows, on 27-1-1998:

1. Whether the plaintiff is a partner in defendant No. 1 firm? If so, whether he is entitled for dissolution of the said firm and for rendition of accounts?

14. In O.S. No. 121 of 1997, P.Ws. 1 and 2 were examined on behalf of the plaintiff and Exs. A-1 to A-13 were filed. The 1st defendant alone deposed as D.W. 1, and he filed Ex. B-1. In O.S. No. 67 of 1997, P.Ws. 1 and 2 were examined and Exs. A-1 to A-20 were filed. The 1st defendant deposed as D.W.-1 and he did not file any documents. As observed earlier, two L.P.As. were filed by defendants 1 and 9. The learned single Judge did not frame any points for his consideration. Common discussion was undertaken for both the appeals and covering all aspects.

15. From a perusal of the common judgment, it becomes clear that the learned single Judge dealt with the questions as to,

- a) whether O.S. No. 67 of 1997 is barred by limitation;
- b) whether the plaintiff in O.S. No. 121 of 1997 made any investment towards his share in the 9th defendant-firm and he was entitled for the relief of dissolution of the firm; and

c) if the 9th defendant-firm is to be dissolved, what should be the pattern of rendition of accounts.

On the first aspect, the learned single Judge took the view that O.S. No. 67 of 1997 was barred by limitation. Extensive reference was made to the arguments advanced on behalf of the parties as well as to the judgments cited by them. One of the objections raised by the plaintiff was that the plea of limitation was not raised in the suit by any of the defendants, and being a mixed question of fact and law, it ought not to have been entertained by the learned single Judge. The result of the appeals has already been mentioned. Now it needs to be seen as to whether the view taken by the learned single Judge can be sustained in law.

16. Firstly about limitation: It is not in dispute that none of the defendants in O.S. No. 67 of 1997 have raised any grounds of limitation. It has already been mentioned that the said suit is nothing but the continuation of O.S. No. 121 of 1997. The very basis for filing O.S. No. 67 of 1997 was the nature of defence taken by the 1st defendant in O.S. No. 121 of 1997. Be that as it may, the limitation happens to be a mixed question of fact and law, and it can be decided only after the concerned party is given an opportunity to lead evidence and put forward his contentions. There may be occasions where an appellate Court can directly deal with the question of limitation though it was not covered by any issue framed by the trial Court. Those, however, are cases, where the facts, that are evident from the pleadings are taken on their face value and a finding is recorded.

17. As a matter of fact, Section 3 of the Limitation Act casts a duty upon the Court to examine the question of limitation, and that can be a ground for rejection of a plaint under Rule 11 of Order VII C.P.C. It is too well-known that it is only when the contents of a plaint are taken on their face value, and the Court finds that even according to averments in the plaint the suit is barred by limitation, that a plaint can be rejected. Once a suit is numbered, an occasion may arise for the Court to deal with the question of limitation, if it is raised by the defendant, duly framing an issue. If the defendant in a suit did not raise any plea as to limitation and the trial Court did not deal with the question, the appellate Court can examine the question of limitation, if only the circumstances are akin to those, that enable a trial Court to reject the plaint, in exercise of its powers u/s 3 of the Limitation Act and Rule 11 of Order VII C.P.C. If the Appellate Court feels that the reference to any pleading or evidence is necessary to determine that question, it cannot deal with the same, for the first time. If the defendant in a suit, in his capacity as appellant or respondent, before the appellate Court, persists with the plea and convinces the appellate Court, at the most, it may be a case for remand.

18. In the instant case, the learned single Judge proceeded to decide the question of limitation, without taking into account, the pleadings and evidence on record. We are of the view that such a procedure is not correct. Once the defendant did not choose to raise the plea of limitation, the learned single Judge ought not to have

dealt with that question at all, nor the contents of the plaint revealed that the suit was barred by limitation. Even otherwise, the only basis for the learned single Judge to treat O.S. No. 67 of 1997 as barred by limitation was, that, the 9th defendant-firm did not carry on the business after the death of one of its partners by name Shivraj Reddy. The death of the partner was in the year 1984. The learned single Judge took note of the fact that the income tax returns of the firm were not filed beyond 1984. Ex. A-14 was the income tax returns for the year 1983-84, filed on 15-01-1986. Once it is evident that the income tax return was filed in the year 1986, i.e. two years after the death of one of the partners, it cannot be treated that the firm stood dissolved with the death of the partner, and he did not carry on the business thereafter.

19. There is an internal contradiction about the finding recorded in this regard. The subject-matter of both the suits is one and the same firm. The first suit i.e. O.S. No. 121 of 1997 was filed in the year 1991. If the firm can be said to have been dissolved in 1984, no business was carried on, beyond that date, and if the firm was to be treated as dissolved in the year 1984, the same result should have ensued in O.S. No. 121 of 1997 also. No such view was expressed. The second suit was only; the continuation of the first one. Therefore, whether one goes by the absence of plea or issue in the suit, or the preponderance of evidence which shows that the firm continued to function even after the death of one of its partners, or the induction of his legal representatives; the view taken by the learned single Judge that O.S. No. 67 of 1997 is barred by limitation cannot be sustained.

20. Aspects 2 and 3, indicated by us in the preceding paragraphs become relevant in respect of C.C.C.A. 40 of 1999, which in turn arose out of O.S. No. 121 of 1997. The trial Court did not grant any relief as such, in respect of rendition of accounts. On the other hand, it was left open to the plaintiff to file separate application. The decree in so far as it granted such a relief or liberty cannot be said to be contrary to law. It is only when an application is filed, that the occasion would arise for the Court to examine as to what should be the period for which, the accounts of the firm can be required to be rendered, and what are the items of income and expenditure, that are required to be taken into account. For all practical purposes, the learned single Judge has pre-determined the points, that are to be decided in an application, that may be filed for rendition of accounts. Firstly, it was mentioned that the income tax returns filed by the firm shall be treated as the basis and secondly, the period for which the accounts must be rendered was restricted to three years, preceding the date of filing of the suit. With great respect to the learned single Judge, we are of the view that such questions ought not to have been touched at all, particularly, when the decree directing dissolution of the firm was upheld.

21. L.P.A. No. 37 of 2002 is filed by defendant Nos. 1 and 9, challenging the decree passed by the trial Court in O.S. No. 121 of 1997, as affirmed by the learned single Judge. For all practical purposes, the arguments that have been advanced before the trial Court and the learned single Judge have been repeated before us. The

principal contention is that the plaintiff did not invest any amount towards his share and the entire business was carried out by the 1st defendant with his own funds. The firm is said to have been brought into existence only for the convenience of accounting. The learned single Judge has referred to several precedents, such as, the judgments in (1938) 6 ITR 470 (Rangoon) , [Virendra Kumar Avinash Kumar Vs. Commissioner of Income Tax,](#) [Vijayalakshmi Talkies Vs. Commissioner of Income Tax, Mysore,](#) . The relevant provisions of the Partnership Act and in particular Section 68 thereof, were also applied and it was held that once the records of the Registrar of Firms disclose that a particular individual is shown as a partner, with entitlement to claim share in profits, the question as to whether such a partner made any investment at all, becomes insignificant. We are in total agreement with that finding.

22. The filing of a separate suit, being O.S. No. 121 of 1997 by the plaintiff herein for partition of the joint family properties is also cited as a basis to plead that till the share of the plaintiff and the probable mesne profits is decided, he cannot be permitted to plead that he made investment in the 9th defendant-firm. Even this is not acceptable. Once the law is to the effect that it is not necessary that a person shown as a partner must invest his share of the amount, the plea raised by the 1st defendant on the basis of the filing of a suit for partition of the joint family properties, is indeed far-fetched.

23. We therefore allow L.P.A. No. 47 of 2002 and set aside the decree in C.C.C.A. No. 35 of 1999. As a result, the decree passed by the Court of II Additional Chief Judge, City Civil Court, Hyderabad in O.S. No. 67 of 1997 shall remain in force. L.P.A. No. 48 of 2002 is allowed, and L.P.A. No. 37 of 2002 is dismissed, upholding the decree passed by the Court of II Additional Chief Judge, City Civil Court, Hyderabad, in O.S. No. 121 of 1997, in all respects.

24. The miscellaneous petitions filed in the appeals shall also stand disposed of. There shall be no order as to costs.