(1954) 08 CAL CK 0039

Calcutta High Court

Case No: Appeal from Appellate Decree No. 181 of 1948

Satish Chandra Banerjee		APPELLANT
	Vs	
Jiban Krishna Ghosh		RESPONDENT

Date of Decision: Aug. 26, 1954

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 101
- Partnership Act, 1932 - Section 4

Citation: (1956) 2 ILR (Cal) 275

Hon'ble Judges: Debabrata Mookerjee, J; Das Gupta, J

Bench: Division Bench

Advocate: Dr. Sen Gupta and Pannalal Chatterjee, for the Appellant;Atul Ch. Gupta, Surendra Nath Basu, (Sr.) Advs. and Arun Kishore Das Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Das Gupta, J.

The Appellant instituted the present suit for a declaration that a business in castor oil at 1 Ratan Babu Road, Cossipore, was partnership business in which he and the Respondent Jiban Krishna Ghose had equal shares, and for accounts. Jiban''s father Nilkanta had, it is the common case of both parties, a castor oil business, at the address mentioned above, of which he was the sole proprietor and that sometime before 1325 B.S. according to the Plaintiff and sometime before 1327 B.S. according to the Defendant it was converted into a partnership business with Nilkanta and one Surendra Kumar as partners. The Plaintiff''s case is that some time after this partnership came to an end, Nilkanta approached the Plaintiff to join him in a new business as the previous one agreeing to pay an equal half share to him for his remuneration and services and the Plaintiff joined the said business as partner on the aforesaid terms. Nilkanta died in 1334 B.S., but the Plaintiff''s case is, that the partnership business continued with himself and Nilkanta''s son Jiban as equal partners, but that the castor oil business had been closed by mutual consent at

about the beginning of 1346 B.S. and, dissolved. The Defendant pleaded that the Plaintiff was never a partner of the castor oil business, that the business exclusively belonged to the Defendant''s father and thereafter to the Defendant and that the Defendant''s father employed the Plaintiff "as a servant or assistant in his place to "do English correspondence.....", that Defendant''s father used to give the Plaintiff a pay or remuneration of Rs. 50 in the beginning and that thereafter the said pay had been increased to Rs. 150 per month.

2. The trial court considered the oral testimony unreliable, but on consideration of a number of circumstances that were revealed by the documents, came to the conclusion that the Plaintiff was a partner of the business and gave a declaration "that the "Plaintiff was a working partner of the dispirited business and "was entitled to and liable for eight annas'' share of the profit "and loss of the business". A preliminary decree for accounts was also passed.

3. The main circumstances on which the learned trial court appears to have based its conclusion were these:

(1) the account books of the business did not show any debit on account of wages paid to the Plaintiff;

(2) at the same time it showed that every year the Plaintiff freely drew cash from the business. The total of these drawings amounted to many thousands of rupees;

(3) in the fly leaf of one of the account books there were entries showing side by side the drawings by the Plaintiff and the Defendant;

(4) a parent account in Cox and Company that was opened in the Plaintiff''s name was really for the purpose of the business;

(5) the Plaintiff brought in his own name on the Original Side of this Court a suit against one Alec Coyn for recovery of damages for breach of contract by the latter to supply 50 drams of white oil required for the castor oil business;

(6) in a letter which Jiban wrote to the Imperial Bank in 1931 the words "my partner" appear before the name of Satish;

(7) some mortgage deeds were executed jointly in favour of the Plaintiff and the Defendant.

4. Along with these circumstances the court had to consider and did consider also certain circumstances which by themselves were apparently inconsistent with the Plaintiff''s case of partnership. These were:

(1) in 1930 the Plaintiff endorsed a cheque in favour of the business as "manager";

(2) in another letter-the date of which does not appear-the Plaintiff again described himself as manager;

(3) the Plaintiff executed a deed of release in favour of Jiban in respect of some properties which were admittedly purchased with the funds belonging to the business in the name of the Plaintiff;

(4) in a deed of gift by Nilkanta to his son which was attested by the Plaintiff bears the statement to the effect that Jiban had been running a castor oil business with his own capital.

5. The court of appeal held that one circumstance on which the trial court relied namely that there was an entry showing side by side the drawings of Jiban and Satish had not been proved and that the words "my partner" were not in the letter to the Bank when Jiban signed it.

6. It considered all the other circumstances on which the trial court had relied and decided that the Plaintiff''s case of partnership had not been proved.

7. Dr. Sen Gupta attacked as fallacious the reasoning by which the appellate court came to his conclusion and contended that the facts that the appellate court found to have been proved specially the fact that there had been no payment to Jiban at the rate of Rs. 50 or Rs. 150, taken with the fact that considerable amounts had been drawn from the business by the Plaintiff- were incapable of explanation on any other reasonable hypothesis than that the Plaintiff and Jiban were partners of the business.

8. I think it proper, to state that after giving Dr. Sen Gupta''s argument all the consideration it deserved, I have no hesitation in saying that if it were open to us to consider in this second appeal whether the conclusion of the court of appeal below from the circumstances Was right or not, I would not be prepared to say that the appellate court was wrong and would be bound to dismiss this appeal.

9. I am of opinion, however, that: it is not open to us to consider that question. Section 100 of the CPC which provides for appeals to this Court from decrees passed in appeal by subordinate courts allows appeals on the following grounds:

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

10. The only ground upon which this appeal is pressed is the ground mentioned in Clause (a) that the decision was contrary to law. Relying on certain observations of the Privy Council in Dhanna Mal v. Moti Sagar (1927) L.R. 54 IndAp 178, Dr. Sen Gupta has said that the question whether proved circumstances justify the conclusion that the Plaintiff and the Defendant were partners in business was a

question of law.

11. In my judgment, this argument cannot be accepted. The relevant observations in Dhanna Mal''s case are these:

A third question, more formidable in character, must be disposed of before their Lordships further proceed. The learned District Judge, on appeal here, dismissed the Respondent''s suit, finding that the Appellants'' tenancy was permanent. It is thereupon contended by the Appellants that this finding was one of fact by the learned Judge not open to review either by the High Court on second appeal or by this Board.

Now their Lordships would be the last to seek to abridge the effect of Sections 100 and 101 of the Code of Civil Procedure, or weaken the strict rule that on second appeal the appellate Court is bound by the findings of fact of the Court below. They are well aware, moreover, that question of law and of fact are often difficult to disentangle. It is clear, however, that, the proper effect of a proved fact is a question of law, and the question whether a tenancy is permanent or precarious seems to them, in a ease like the present, to be a legal inference from facts and not itself a question of fact. The High Court has described the question here as a mixed question of law and fact-a phrase not unhappy if it carries with it the warning that, in so far as it depends upon fact, the finding of the Court on first appeal must be accepted. On these lines, which the High Court appear strictly to have observed, the appeal to that Court was competent, and it was in their Lordships'' judgment open to the learned Judges there to entertain it as they did.

12. In my opinion, it is misreading the judgment of the Privy Council to say that conclusions of facts from given facts are questions of law. What their Lordships pointed out was that where the question was of a legal inference from fads that would be a question of law.

13. In every case that comes before the Court, the question the Court has to decide is whether certain facts produce a legal consequence. This involves a conclusion on J acts and an understanding of law. A person brings a suit for declaration of title and recovery of possession, basing his claim on a purchase from a co-sharer who has been out of possession more than 12 years. The court has to decide the question of fact whether there was a valid purchase by the Plaintiff and whether the Plaintiff''s vendor was a co-sharer of the property. In law, the possession of one co-sharer is possession of another co-sharer also. So the fact that the Plaintiff''s vendor-a co-sharer-has been out of possession will not trouble the court. If, however, the Defendant pleads that the Plaintiff''s vendor although a co-sharer was ousted from possession the court will have to decide on the evidence if there was such ouster. If in the absence of any ouster being established, the court holds that the Plaintiff has no title because the Plaintiff''s vendor was out of possession, the court commits an error on a question of law. If the court misappreciates the evidence and finds that

there was ouster when on a proper appreciation the finding should be that there was no ouster, the court commits an error on a question of fact.

14. Let us consider another case, an action in ejectment brought by a landlord on the averment that the tenancy has been terminated by service of notice. The question whether notice has been served or not is question of fact. Whether the notice actually given was of a certain period is also a question of fact but whether the law requires the notice for that period or for a longer period is a question of law. In coming to the conclusion whether notice has been served or whether the notice served was, say of 15 days, or more, the court has to consider other facts proved by the evidence. That from certain other facts a conclusion of fact is reached does not make the matter a question of law.

15. Similar positions arise in almost every case. It is, therefore, misleading and confusing to state as a general proposition that every conclusion from facts is a conclusion of law. It is helpful to remember that to arrive at a legal conclusion, the first step is to come to a conclusion as regards facts from other facts; and the second step is to conclude whether the requirements of law are found to be satisfied by those final facts.

16. In the present case, the question is whether the Plaintiff and the Defendant were partners. Section 4 of the Indian Partnership Act defines the relationship of partners in these words:

Partnership is the relation between persons who have agreed to share to profits of, a business carried on by all or any of them acting for all.

17. In the present case, the court had to decide whether the established facts gave rise to the legal conclusion whether the Plaintiff and the Defendant were legal partners. But in order to come to that conclusion the court has first to decide whether there has been any agreement within the meaning of Section 4. If there lies been any such agreement the court arrives at the legal conclusion that they are partners but if no agreement has been established the court must arrive at the legal conclusion that the partnership has not been established.

18. The question whether there has been an agreement within the meaning of Section 4 or not has to be decided on a consideration of all the facts. The process of conclusion from the relevant facts is a conclusion on facts. If the question arises whether some evidence was legally admitted or not, that is a question of law. But apart from that, the conclusion from the evidence on the question whether there was an agreement within the meaning of Section 4 is, in my judgment, a question of fact.

19. I have, therefore, come to the conclusion that it is not open to us in this second appeal to investigate the question whether the learned Judge came to the right conclusion from the circumstances that were established by him.

20. Notice must be taken of another agreement which was addressed by Dr. Sen Gupta. He said that the learned Judge has fallen into error in not considering all the circumstances together and that what he did was to consider each circumstance by itself. On a reasonable reading of the judgment, I am of opinion that there is no substance in this contention. The learned Judge has clearly stated that he has considered all the circumstances together. In the very nature of things, in putting reasoning on paper, it is not physically possible to place all the circumstances together. Some circumstances have to be placed first, other circumstances later. It is absurd to base thereupon an argument that all the circumstances have not been considered together. Dr. Sen Gupta said that we should not take as sufficient the learned Judge''s statement that he has considered the circumstances together. There may be cases in which it may be right, in spite of a statement in the judgment that all the circumstances have been considered, that they have not, in fact, been so considered. The present case is not one of them. On a reading of the judgment passed by the learned court of appeal below, I have come to the conclusion that the learned Judge has carefully considered all the circumstances together.

21. I would, therefore, dismiss this appeal with costs.

Debabrata Mookerjee, J.

22. I agree.