
(2015) 03 CHH CK 0004

Chhattisgarh High Court

Case No: Second Appeal No. 865/1998

Shanti Bai Agrawal and
Others

APPELLANT

Vs

Uma Bai Agarwal and
Others

RESPONDENT

Date of Decision: March 19, 2015

Acts Referred:

- Limitation Act, 1963 - Section 27
- Partnership Act, 1932 - Section 42, 45, 46, 47, 48

Citation: AIR 2015 Chh 80 : (2015) 2 CGLJ 466

Hon'ble Judges: Goutam Bhaduri, J.

Bench: Single Bench

Advocate: Ravish Agrawal, Senior Advocate and K.S. Jha, for the Appellant; H.B. Agrawal and Meera Jaiswal, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Goutam Bhaduri, J.

This instant appeal is preferred against the judgment and decree dated 04.07.1998 passed in Civil Appeal No. 37-A/97 by the Second Additional District Judge, Bastar (Jagdalpur). By such judgment and decree, the appellate Court reversed the judgment and decree dated 25.01.1997 passed in Civil Suit No. 226-A/96 by the Third Civil Judge Class-II, Jagdalpur. The instant appeal is by the plaintiff.

2. The briefly stated facts of the case is that a suit was filed by the appellant against Trilokinath Agarwal, Smt. Usha Kiran Agarwal and Deepak Agrawal for declaration and permanent injunction. The undisputed facts are that the house comprised over the Nazul sheet No. 78, Plot No. 103/2, admeasuring 6285 sq.ft. was recorded in name of M/s. Gajadhar Prasad Kashi Prasad, a partnership firm. The firm had four partners namely Bhuwadeshwar Prasad Agarwal (died on 13.07.1962), Udaynarayan Agarwal (Plaintiff),

Trilokinath Agarwal (Defendant-1) and Smt. Singharabai (died on 21.09.1973). The said property was in name of the firm M/s. Gajadhar Prasad Kashi Prasad and plaintiff was residing in the said property right from the year 1943. The partnership firm was dissolved on 02.11.1956. After dissolution of the firm, the plaintiff, who was a partner continuing to reside in the house and was in possession thereof which had also a shop in some portion of the house. It was case of the plaintiff that he was/is in exclusive possession of the suit property for last 12 years after the dissolution, as the suit was filed in the month of September, 1994. The plaintiff/appellant pleaded that by ouster of the title of the defendants after dissolution, the plaintiff was in possession and therefore had acquired the right and title over the suit property by way of adverse possession. It was stated that one of the partner Bhuneshwar Prasad Agarwal died on 13.07.1962 and Smt. Singharabai died on 21.09.1973 and it was also contended that during the life time of Bhuneshwar Prasad Agarwal, the plaintiff was in possession of the suit land. It was further contended that on 23.06.1992, the defendants filed an application before the Nazul Tahsildar, Jagdalpur to mutate their name. It was therefore for such reason, the title of the plaintiff was denied as the plaintiff had acquired the title over the suit land by way of adverse possession. Consequently, the suit for declaration and permanent injunction was filed.

3. In reply to the averments, the defendants stated that the subject land is recorded in name of M/s. Gajadhar Prasad Kashi Prasad at Pratapganj Ward, Main Road, Jagdalpur. It was also stated that the suit property comprised to be the property of the firm. The death of the two partners were also admitted and further this fact was also admitted that on 02.11.1956 the firm was dissolved. It was further denied that the plaintiff was in exclusive possession of the land for last 12 years from the date of filing, thereby has acquired ownership of the property. It was further contended that Bhuneshwar Prasad had bequeath his part of property in favour of the defendants No. 2 and 3 by Will dated 12.07.1961 and as such they were entitled to get their name mutated in respect of the suit land.

4. On the basis of the pleadings and the evidence of the parties, the learned trial Court found that the Will was not proved whereby the defendants had claimed their right and further decreed the suit in favour of the plaintiff by holding that the plaintiff had acquired the title over the suit property by way of adverse possession. The order of permanent injunction was also passed in favour of the plaintiff. The said finding were assailed by the respondents before the Second Additional District Judge, Bastar. The appellate Court by the judgment and decree dated 04.07.1998 has reversed the finding by holding that the defendants are the co-sharers. Consequently, the plaintiff would not get any title over the property by way of adverse possession.

5. With respect to the finding of the Will, no challenge was made. The appellate Court further held that the property belong to a joint Hindu property and as such the question of adverse possession do not arise if the property is held by one of the co-sharers and consequently the judgment and decree was reversed. Against such judgment and decree,

the instant second appeal was preferred. The second appeal was admitted on the following substantial questions of law :

"Whether the First Appellate Court has erred in reversing the trial Court's finding that the plaintiff had perfected his title over the disputed property (house) by adverse possession ?"

6. The learned counsel for the appellant submits that admittedly the property belonged to a firm, thereafter, the firm was dissolved on 02.11.1956; therefore, the remedy would be governed by Section 48(b)(iv) of the Partnership Act, 1932, which speaks about the mode of settlement of accounts between partners. It is further submitted that once the firm having been dissolved, the property held by such firm will be treated to be a movable property and therefore the concept of co-ownership as has been held by the appellate Court is completely perverse. It was further contended that after the firm is dissolved, the authority of the partner only continues for the purpose of binding up and not otherwise as per Section 47 of the Partnership Act and further mode of settlement of accounts between partners is provided under Section 48 of the Partnership Act. It is stated after discharge of debt, the residue would be treated to be a movable property which has to be divided among the partners in the proportions in which they were entitled to share of profits. It is therefore contended that the concept of co-ownership as has been held by the learned Court below ignored the admission made by the defendants that the suit property was a property of firm and the firm stood dissolved therefore as a consequence of it, it rendered the property in the hand of the partner as movable property. It was also contended that as per Article 5 of the Limitation Act, 1963, for account and share of the dissolved partnership firm, the limitation prescribed is three years and therefore the right to sue, if any, of the defendant extinguished after three years of the dissolution. It is further stated that as per Section 27 of the Limitation Act, the right of the defendants extinguished since the plaintiff continue to be in possession of the property after the dissolution right from 1956. He submitted that the partner was only entitled to the value of share and placed his reliance in [Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others](#), and further submits that the defendants' right over the property extinguished by virtue of Section 27 of the Limitation Act, 1963 and placed is reliance in AIR 1922 PC 115.

7. Per contra, learned counsel for the respondents supported the order of the appellate Court. It was stated that M/s. Gajadhar Prasad Kashi Prasad is a partnership firm consisting of family members of Bhawneshwar Prasad Agarwal, Udaynarayan Agarwal, Trilokinath Agarwal and Smt. Singharabai. He further contended that the members were coparceners and consequently they were co-sharer. It was further stated that this fact is not in dispute that the partnership firm stood dissolved on 02.11.1956 and no settlement of share of property by rendition of account or share of profits took place as per the provisions of Section 45 and 49 of the Partnership Act. Therefore, it was stated that the partnership continued unless the accounts are settled i.e. profit and loss are determined. It was stated that both the parties therefore knowing their right did not file any suit as it was barred by time but the bar of right do not extinguish the remedy if it is available

otherwise. He placed his reliance in AIR 1976 SC 1633 and would submit that even if some right of the parties are barred and even if the right to file a suit is exhausted but the remedy can be availed by adopting the other remedy as the right is not extinguished and therefore the right of the defendants were not extinguished. He further submits that the possession of the partner of the firm was a permissive and therefore the partner cannot claim the exclusive right over the property of the firm. He further relied on the case law [Saligram Ruplal Khanna and Another Vs. Kanwar Rajnath](#), and submits that so far as the mutual right and obligation of partner it continued notwithstanding the dissolution, therefore, in view of such law, the partners continued with the firm property even after dissolution. It is further contended that it cannot be stated that the plaintiff had held the property adverse to the others i.e. defendants just to claim the title over it.

8. I have heard the learned counsel for the parties, perused the pleadings, evidence and documents placed on record.

9. The submission made by the counsels of both the parties revolved around the effect of dissolution of a partnership firm and the status of the property of a partnership firm after it's dissolution in the hands of the partners. Necessarily, therefore, in my considered opinion the another question of law arises for consideration wherein on the subject of it, both the parties have made their submission. The substantial question of law thus framed as under :

"2. Whether, the immovable property brought into partnership by partners, on dissolution, remained to continue to be immovable property in the hands of the partners ?"

10. Admittedly, according to both the plaintiff and defendants, the suit property was in name of firm M/s. Gajadhar Prasad Kashi Prasad. The written statement contains an admission that over the suit plot the firm had constructed a house wherein with the permission of the other partners, the plaintiff namely Udaynarayan Agarwal was residing. Presently, in the instant appeal, the legal heirs of Udaynarayan Agarwal, plaintiff/appellants have been arrayed and also the legal heirs of Trilokinath Agarwal and Smt. Usha Kiran Agarwal have been made parties. Therefore, by reading of the written statement, the admission and statement of PW-1, this fact is not in dispute that the property belonged to the firm. The finding of the appellate Court that there is no firm and there is no dissolution is completely against the pleading and the evidence in the record and appears to be perverse on the face of it.

11. The existence of firm and its dissolution on 02.11.1956 is not in dispute. Even before this Court also, the respondents did not dispute the existence of firm and its dissolution. The dissolution of the firm is covered under Chapter-VI of the Indian Partnership Act, 1932. Section 42 speaks about dissolution on the happening of certain contingencies. It starts with subject to contract between the partners a firm is dissolved, on certain conditions. Further, Section 45 speaks about the liability for acts of partners done after dissolution. Section 46 speaks about right of partners to have business wound up after

dissolution. Section 47 says continuing authority of partners for "purpose of winding up" and Section 48 speaks about mode of settlement of accounts between partners. The right of partners starts from Section 46 of the Partnership Act and the continuing authority of partners for purpose of winding up and mode of settlement of accounts. The relevant sections of Indian Partnership Act, 1932 for the purpose of controversy are reproduced herein below.

"46. Right of partners to have business wound up after dissolution.--On the dissolution of the a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

47. Continuing authority of partners for purposes of winding up.--After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners continue notwithstanding the dissolution, so far as may be necessary to wind up the affair of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

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."

12. Reading of Section 46 would make it clear that on dissolution of a firm, first the property of the firm be applied for payment of debts and liabilities of the firm and the surplus to be distributed among the partners according to their rights. Section 47 speaks the authority of the partners will continue only so far "as it may be necessary to wind up" the affair of the firm and to complete transactions begun but unfinished at the time of the dissolution, "but not otherwise".

13. The Supreme Court in AIR 1996 1300 in between Addanki Narayanappa and Another v. Bhaskara Krishnappa and Others has occasioned to interpret the share of the partner and the nature thereof. It is stated that the share of a partner is nothing more than his proportion of the partnership assets after they have been turned into money and applied in liquidation of the partnership, whether its property consists of land or not. Further, on dissolution the debts and liabilities should first be met out of the firm property and thereafter assets should be applied in rateable payment to each partner of what is due to him firstly on account of advances as distinguished from capital and, secondly on amount of capital, the residue, if any, being divided rateably among all the partners. It is obvious that the Act contemplates complete liquidation of the assets of the partnership as a preliminary to the settlement of accounts between partners upon dissolution of the firm.

14. Furthermore, in [Mohd. Laiquiddin and Another Vs. Kamala Devi Misra \(Dead\) by L.Rs. and Others](#), , the Supreme Court has held as under :

"38. Under the Partnership Act, 1932, property which is brought into the partnership by the partners when it is formed or which may be acquired in the course of the business becomes the property of the partnership and a partner is, subject to any special agreement between the partners, entitled upon dissolution to a share in the money representing the value of the property.

40. In S.V. Chandra Pandian v. S.V. Sivalinga Nadar, this Court held that: 16....in the entire asset of the firm all the partners have an interest albeit in proportion to their share and the residue, if any, after the settlement of accounts on dissolution would have to be divided among the partners in the same proportion in which they were entitled to a share in the profit.... The mode of settlement of accounts set out in Section 48 clearly indicates that the partnership asset in its entirety must be converted into money and from the pool the disbursement has to be made..."

42. As noted hereinabove, the partnership got dissolved on the death of the original plaintiff (since deceased), it would be reasonable to allow both the parties to take their respective properties. The appellants are entitled to the exclusive possession of the land and the respondents are entitled to take away the movables from the property and recover the value of the buildings and structures embedded to the land. It has to be assessed by the technically qualified person. The appellants are liable to pay the value of the remaining structures after adjusting the amount if any due to the appellants."

15. Further, the Supreme Court in [S.V. Chandra Pandian and Others Vs. S.V. Sivalinga Nadar and Others](#), has held that on the dissolution of firm each partner becomes entitled to his share in the profits, if any, after the accounts are settled in accordance with Section 48 of the Partnership Act. In the entire asset of the firm all the partners have an interest albeit in proportion to their share and the residue, if any, after the settlement of accounts on dissolution would have to be divided among the partners. The Supreme Court in such case law has further held that entire property whether brought in by the partners on the constitution of the partnership firm or acquired in the course of business of the partnership, such property shall become the property of the firm and an individual partner shall only be entitled to his share of profits, if any, accruing to the partnership from the realisation of this property and upon dissolution of the partnership to a share in the money representing the value of the property. Therefore, by application of the above principle, it would be clear that the property of the firm would be "a movable property" for the distribution among the partners and it cannot be held to be an immovable property for the purpose of the dissolution in between the partners.

16. It is well settled that the firm is not a legal entity, it has no legal existence, it is merely a compendious name and hence the partnership property would vest in all the partners of the firm. Accordingly, each and every partner of the firm would have an interest in the property or asset of the firm but during its subsistence no partner can deal with any portion of the property as belonging to him, nor can he assign his interest in any specific item thereof to anyone.

17. Therefore, according to Section 47 of the Indian Partnership Act, 1932, after the dissolution of a firm, the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners continue notwithstanding the dissolution, "so far as may be necessary to wind up the affair of the firm" and further to complete transactions begun but unfinished at the time of the dissolution, "but not otherwise". Herein the dissolution is not in dispute, therefore, the partners had only inter se right between them in terms of Section 47 and 48(b)(iv) of the Indian Partnership Act to claim for the right as per the provisions of the said section.

18. Therefore, in view of the aforesaid discussion, it is held that after dissolution of the property, the immovable property i.e. the subject suit land which was of a partnership firm became "a movable assets" in the hand of the partners inter se of M/s. Gajadhar Prasad Kashi Prasad. The partners have their inter se right in terms of Section 48 of the Indian Partnership Act which could have been enforced by filing a suit to claim a share of dissolved partnership firm.

19. As observed in the aforesaid, the value of the property is to be assessed and the partners are entitled to get the adjustment of their shares from the amount according to the share held in the partnership firm. Consequently, the question of law is answered that on dissolution, the immovable property of a partnership firm converted into money, therefore, loses the character of immovable property in the hands of the partner and the

partners are entitled to receive their proportionate share in residue of the property being money represent the value of the property.

20. Further, as per Article 5 of the Indian Limitation Act, the suit could have been filed by either of the partners within three years of the dissolution. For ready reference Article 5 of the Indian Limitation Act, 1963 is reproduced herein below.

"Article 5 -

1. Description of suit :

For an account and a share of the profits of a dissolved partnership.

2. Period of limitation :

Three years.

3. Time from which period begins to run :

The date of the dissolution."

21. Likewise situation fell for consideration before the Privy Council in a case law reported in AIR 1922 PC 115 in between K. Gopala Chetty v. T.G. Vijayaraghavachariar, the earlier Limitation Act, 1908, Article 106 was governing the limitation for the purpose which subsequently in the year 1963, it became Article 5. The interpretation of Article would go to show that in a case of dissolution of partnership complete winding up of a partnership if no accounts have been taken and there is no constant that the partners have squared up, then the proper remedy when such an item falls in is to have the accounts of the partnership taken and if it is too late to have recourse to that remedy, then it is also too late to claim a share in an item as part of the partnership assets. Here in this case, admittedly the dissolution had happened on 02.11.1956, therefore, by application of (Article 106 of the Limitation Act, 1908) Article 5 of the Limitation Act, 1963, the defendants having not claim any right for settlement of account and share in the partnership, it would be barred as the period of three years has lapsed. The similar proposition has been followed in [Saligram Ruplal Khanna and Another Vs. Kanwar Rajnath](#), . Therefore, taking the totality of the facts, the immovable property of firm M/s. Gajadhar Prasad Kashi Prasad, the suit property was a property of the firm and the firm having been dissolved on 02.11.1956 as per the Partnership Act, it fell into shares of the partners as a movable assets for which the partners could have sue their part of share after the discharge of dues and other settlement within a period of three years from the date of dissolution. Having not done so, the right to sue for account and the share in the partnership property became barred.

22. Now reverting to the plaint allegation, it speaks that the suit was filed by Udaynarayan Agarwal for declaration and permanent injunction on the ground that he is in possession

of the suit property and is held adverse to the other partners after dissolution of the firm. The prayer in the plaint reads as under :

23. In terms of the prayer made, the law if applied as has been laid down in a recent case reported in [Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and Another](#), the Hon"ble Supreme Court has laid down that even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. It further says, only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence. Therefore, in view of the proposition laid down qua the prayer made, the suit filed by the plaintiff is held not maintainable. Therefore, the question of law is answered that the first appellate Court has erred in reversing the trial Court's finding that the plaintiff had perfected his title over the disputed property by adverse possession is held as not sustainable on the grounds enumerated and the reasons stated by the appellate Court, but the suit is held to be not maintainable. The order of the appellate Court in reversing the judgment and decree of the trial Court and the finding thereof are set aside. The suit, however, is dismissed on the ground as per the law laid down in the recent dictum as supra, which do not fall in line to the reasoning given by the appellate Court. The finding has already been given in interpretation of the Section 46, 47 and 48, and the effect of dissolution of a partnership firm in terms of the Partnership Act, 1932.

24. In view of foregoing discussion and observation, the second appeal stands dismissed, as the suit was not maintainable on the basis of adverse possession alongwith observation made. No order as to costs.