

(1942) 11 BOM CK 0007

Bombay High Court

Case No: Second Appeal No. 640 of 1941

Maganlal Kishordas Shah

APPELLANT

Vs

Ramanlal Hiralal Shah

RESPONDENT

Date of Decision: Nov. 23, 1942

Acts Referred:

- Contract Act, 1872 - Section 11
- Specific Relief Act, 1877 - Section 42

Citation: AIR 1943 Bom 362 : (1943) 45 BOMLR 761

Hon'ble Judges: Lokur, J

Bench: Single Bench

Judgement

Lokur, J.

This second appeal arises out of a suit for the dissolution of a partnership, or in the alternative, if the partnership be found to have been already dissolved, then for accounts and recovery of the amount found due.

2. On August 11, 1924, the plaintiff-appellant entered into an oral agreement of partnership with defendant No. 1 to conduct a cloth shop at Thasra in the name of Ramanlal Maganlal. The plaintiff was to advance the necessary capital on which he was to get interest at six per cent per annum, and the profits and losses were to be shared equally by the two partners. The partnership was dissolved by mutual consent on January 15, 1935. The stock-in-trade, which was valued at Rs. 602, was taken over by defendant No. 1 and the plaintiff was given a promissory note for Rs. 301 as his half share in it. The creditors of the shop were also divided between the partners, and the plaintiff undertook to pay off Rs. 445-8-0 due by the shop to one Motilal Bhogilal. The accounts of the shop were not, however, taken and defendant No. 2, who is the father of defendant No. 1, agreed to execute a promissory note to the plaintiff for whatever be found on accounts to be due to him. To that effect an agreement was passed by the defendants to the plaintiff (exh. 79). On the strength

of that document the plaintiff asked for a declaration that defendant No. 2 was bound to pass a promissory note in his favour for the amount that would be found due to him by the firm under the agreement. But such a claim for a bare declaration, when consequential relief could be asked, being barred u/s 42 of the Specific Relief Act, 1877, it was rejected and is not pressed in this Court. Even as against defendant No. 2 the suit was dismissed on the ground that defendant No. 1 was a minor when the agreement of partnership was entered into. In his written statement (exh. 13), defendant No. 1 admitted the partnership and its terms as set out in the plaint and also its dissolution on January 15, 1935, but he denied the agreement (exh. 79) and set up a further agreement in Samvat 1983 that he was to be paid a salary of Rs. 300 per year. By a supplementary written statement he pleaded that when the oral agreement was entered into on August 11, 1924, he was a minor. Both the Courts below have held that both the defendants signed the agreement of 1935 (exh. 79) and that there was no fresh agreement in Samvat 1983 for the payment of a salary to defendant No. 1, but they found that defendant No. 1 attained majority nine days after he entered into the agreement of partnership on August 11, 1924, and that the agreement was, therefore, void. Thus there being no valid agreement of partnership, of which accounts could be taken, the suit was wholly dismissed.

3. Mr. Desai for the plaintiff-appellant, while accepting all the findings of the lower Courts, points out that defendant No. 1 attained majority within nine days after he entered into the agreement of partnership and the business of the partnership was thereafter carried on for over ten years, that the profits were divided at least for the first three years and that in 1935 the stock-in-trade and the creditors were divided between the partners. He, therefore, contends that in these circumstances the appellant is entitled to have an account of those transactions which took place after defendant No. 1 attained majority, in accordance with the equitable principle laid down by the Privy Council in *Gregson v. Udoy Aditya Deb* ILR (1889) Cal. 223 In that case a Zamindar whose estate was under management u/s 2 of Act VI of 1876 and who was, therefore, incapable of entering into a contract with regard to it, agreed with the plaintiff that the latter should advance money on mortgage and take a lease of a part of the estate. That agreement was void u/s 11 of the Indian Contract Act, but after the management was given up and he was restored the possession of the estate and acquired the right to contract about it, he carried on the transactions with the plaintiff, retaining the benefit of the money paid to him. Decreeing the plaintiff's claim for specific performance of the contract, Lord Hobhouse, in disposing of the argument that the contract was wholly void and could not be validated, observed as follows (p. 232):-

But the answer is that such an argument does not meet the facts of this case. It is quite competent to a person emerging from a state of disability to take up and carry on transactions commenced while he was under disability in such a way as to bind himself as to the whole. The present defendant has done that and more than that. Not only has he taken and, up to the time of suit and for aught that appears till now,

retained the benefit of the plaintiff's payments, but he has since the 8th October 1884 exacted from the plaintiff a part of the consideration which was to move from him. At the defendant's instance the plaintiff has given up the lease that he had obtained from Birinchi Narain, nor is it possible for the defendant to replace the plaintiff in his former position. The defendant, therefore, is clearly bound by the contract, though its terms are to be ascertained by what passed when he was disabled from contracting.

This principle was applied in *Girish Chander Lahiri v. Sasi Sekhaheswar Roy* ILR (1905) Cal. 329, which was a case of a lease of certain stone quarries granted by a Thakur who was under a similar disability. After his estate was released and his disability ceased, he received the rent reserved under the lease and acknowledged the lease in the road-cess return. After the death of the lessor, his son dispossessed the lessee and when the latter sued for possession, he was met with the plea that the lease was void and could not be enforced. But on the principle laid down by the Privy Council the plaintiff's claim was decreed.

4. Mr. Choksi for the respondents has tried to distinguish these cases on the lines on which they were distinguished in *Indian Cotton Co. v. Rajhunath* (1930) 33 Bom. L.R. 111 and *Suraj Narain v. Sukhu Ahir* ILR (1928) All. 164. He also objects to this line of argument being taken up for the first time in second appeal. It is true that this aspect of the case does not seem to have been pressed before the Courts below. When respondent No. 1 put in his supplementary written statement pleading his minority at the time of the contract, the plaintiff put in a counter-statement (exh. 52) to meet it. Therein he merely urged misrepresentation, estoppel and ratification. It is now well settled that none of these grounds is tenable and they were not pressed in this Court. But the argument now advanced for the appellant cannot be said to be a distinct plea outside the pleadings or the issues. What is contended on behalf of the appellant is that on the facts proved or admitted, he is entitled to have an account of the business carried on jointly by him and defendant No. 1 in the shop of Ramanlal Maganlal after defendant No. 1 attained majority, and that the suit is maintainable even though the original agreement was void by reason of defendant No. 1's minority at that time. Both the lower Courts framed an issue as to whether the suit was not maintainable, but they did not consider it in the light of the principle laid down by the Privy Council, and there cannot be any objection to consider now whether that principle is applicable to the facts of this case.

5. In *Indian Cotton Co. v. Raghunath* (1930) 33 Bom. L.R. 111 the undivided uncle of the plaintiff gave one of the family lands in lease to the defendant company for a period of five years during his minority, agreeing that after the period had expired, if subsequently the defendant required the land, he would go on giving it to the company, on receiving the same rent as before. On the expiry of five years, the company, without any fresh agreement of lease, remained on the land on payment of the same rent as before and the lessor continued to accept the rent even after he

attained majority. After his death the plaintiff sued to recover possession of the land on the ground that the original lease was void on account of the minority of his uncle. The company contended that the lease created a permanent tenancy and that the plaintiff was bound by it as he had accepted the rent even after the expiry of the period of lease. It was held that although the agreement would create a permanent tenancy, yet it was not binding on the plaintiff as it was void in its inception and could not be ratified by the lessor on his attaining majority. In that case the company relied on the principle laid down by the Privy Council in *Gregson's* case. But Patkar J. distinguished it on the ground that in that case the defendant who was under disability had made an application to secure the Commissioner's sanction to the lease which went on during the period of incapacity and which was subsequently entered into by the defendant after he was free from the disability, and that if in the case under consideration the lessor after attaining majority had confirmed the agreement to grant the subsequent leases should the defendant company require them, the matter would have been different. Patkar J. observed as follows (p. 120):-

In *Gregson's* case the estate was in fact released from management, and the owner became free to manage the affairs as any other man, and he used his freedom to adopt the previous documents as binding on himself and he was compelled to act according to their tenor.

But he differed from the ruling in *Roy v. Tkakur Ram Jiwan Sing* ILR (1905) Cal. 363, if it was capable of being construed as allowing a person under disability, on being free from disability, to ratify an agreement contained in the lease effected while under disability as in the case of a minor, without passing a subsequent deed for consideration. With respect, I fully agree with this, as a void agreement cannot be ratified. Barlee J. also distinguished *Gregson's* case on the same ground observing that the defendant in that case was held to be bound, not because after his disability ceased he had ratified the contract made whilst under disability, but because the contract was actually completed after his disability ceased.

6. In fact in *Indian Cotton Co. v. Raghunath* all that the lessor had done was to allow the lessee to continue in possession even after the expiry of the period of the lease. This might have been allowed even though the original agreement of lease was void and it could not necessarily be attributed to the stipulation in the lease to continue it as long as the lessee wanted it. No fresh agreement of lease was given and it was, therefore, held that the lessee could not by subsequent conduct ratify the terms of the original lease which was void. In *Suraj Narain v. Sukhu Ahir* ILR (1928) All. 164 the Privy Council case was considered and distinguished on a different ground. There the plaintiff had lent a sum of money to the defendant who was then a minor. After attaining majority the defendant passed a money bond to the plaintiff for the amount of the principal and the interest due on it. The plaintiff's suit on the money bond was thrown out on the ground that the consideration received by a person

during his minority could not be a good consideration for a fresh promise by him after his attaining majority, and that, therefore, the money bond was void for want of consideration. Referring to the Privy Council case, Sulaiman C.J. observed as follows (p. 167):-

The real ground on which the Privy Council case is distinguishable is that although the contract had commenced during the period of disqualification, it had been continued and performed after the disqualification had ceased and fresh advances also had been made by the creditor.

This is the real ground of distinction, but it is urged that even in the present case there is nothing to show that the plaintiff advanced any money to the partnership after defendant No. 1 attained majority. But this is not a suit to recover any sum or any loan advanced to defendant No. 1, but for an account of the transactions which he and the plaintiff carried on as joint owners of the shop of Ramanlal Maganlal. Partnership is defined as a relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The original agreement in this case was void on the ground of defendant No. 1's minority, but admittedly the relation was continued after he attained majority on the terms of the void agreement. The business of the shop was jointly carried on in the name of Ramanlal Maganlal even after defendant No. 1 attained majority. The plaintiff was not a sleeping partner, but supplied his personal labour also for the business. Defendant No. 1 has admitted both in his written statement and in his deposition that the plaintiff was working with him in the shop. In his deposition he says that the kachha accounts were written both by himself and the plaintiff and that the plaintiff was an active partner. He even claimed that as the plaintiff kept indifferent health in attending to the business of the shop he was promised a salary of Rs. 300 per annum. In Samvat 1981, 1982 and 1983 accounts of the business were taken and profits were shared. Defendant No. 1 admits that on September 29, 1933, both he and the plaintiff submitted an application for registration of the firm. When they agreed to close the business on January 15, 1935, the stock-in-trade was taken by defendant No. 1 and he agreed to pay one-half of the estimated price to the plaintiff, and the debt of Rs. 445-8-0 due by the shop to Motilal Bhogilal was thrown on the plaintiff. The plaintiff says that he paid that debt himself. All that then remained was the settlement of the accounts and the determination of the profits and losses in the business done after Samvat 1983, Otherwise it would be grossly unjust if defendant No. 1, after quietly carrying on fresh dealings from day to day for a period of ten years as a partner of the plaintiff, and taken all the benefits from them, is allowed to turn round, disclaim everything he had done and refuse to render an account on the ground that when the dealings commenced ten years previously, his age was short of eighteen years by nine days. The new transactions made after those nine days had passed were not merely ratifying the void agreement of partnership, but fresh business conducted on terms which can be ascertained from that agreement. On the principle laid down by the Privy Council it

was quite competent for defendant No. 1, on emerging from a state of disability, to take up and carry on transactions commenced while he was under disability in such a way as to bind himself by the dealings. The appellant is, therefore, entitled to demand an account of the transactions made after defendant No. 1 became a major, and for that purpose the terms on which they were conducted are to be ascertained by what passed whilst he was disabled from contracting. These terms were that the appellant was to supply capital by way of loans on interest at six per cent. and that he and respondent No. 1 were to share the profits and loss equally. The agreement about the interest has not been considered by the Courts below, but in his written statement defendant No. 1 admitted that during the first three years interest was charged, but because the plaintiff failed to attend to the business fully a fresh agreement was entered into under which interest was not to be charged and the salary of Rs. 300 per annum was paid to him. That agreement is held not proved and therefore the liability of the firm to pay interest at six per cent. on loans advanced stands.

7. The appellant has thus partially succeeded as against respondent No. 1 alone and that too on the strength of the legal aspect of the case which was not argued in the Courts below. Hence he would not be awarded his costs. The dismissal of the suit against defendant No. 2 is confirmed. The appeal is allowed against defendant No. 1, and a preliminary decree will be passed for an account of the transactions of the shop of Ramanlal Maganlal subsequent to Samvat 1983, on the footing that the shop was closed on January 15, 1935, that the payments and transactions prior to August 20, 1924, the date on which defendant No. 1 attained majority, will be left out of consideration, that the capital advanced by the plaintiff to the shop after that date, if any, will carry interest at six per cent. per annum and that the profits and losses will be equally shared by the plaintiff and defendant No. 1. The trial Court will appoint a Commissioner to take accounts and pass a final decree. The plaintiff and defendant No. 1 shall bear their own costs. Defendant No. 2 shall get his costs in the trial Court from the plaintiff.