

Privy Council Appeal No. 95 of 1917.

Damisetti Ramachendrudu, since deceased (now represented by
Damisetti Sattemma), and others - - - - *Appellants*

v.

Damisetti Janakiramanna, since deceased, and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 14TH NOVEMBER, 1919.

Present at the Hearing :

LORD SHAW.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

SIR LAWRENCE JENKINS.

[*Delivered by* SIR LAWRENCE JENKINS.]

This appeal arises out of a suit for dissolution of partnership and consequential relief instituted as far back as the 9th August, 1905, in the Court of the Subordinate Judge of Cocanada.

Following on a reference to a Commissioner and a report, a preliminary decree was passed on the 16th March, 1908, dissolving the partnership and determining a number of matters on which the litigants were at issue; and after a further reference and report, the final decree was pronounced on the 8th September, 1908. On appeal to the High Court at Madras the Subordinate Judge's decision was modified, and it is from this appellate decree that the present appeal has been brought.

The partnership dates back to a time before 1894, but in that year the members of the firm entered into a registered agreement of partnership by which their relations with each other were determined.

Of the original partners the 1st defendant alone was alive at the date of this suit's institution, the other partners then being the plaintiffs 1 and 2 and the defendants 6 and 7, who had come into the firm by way of succession. The 1st defendant's share was two-fifths, that of the plaintiffs 1 and 2 two-fifths, and that of defendants 6 and 7 one-fifth. The firm traded in tobacco. Its principal place of business was Cocanada, where the plaintiffs were in management, and there was also a branch at Viravallipalem, which was throughout managed exclusively by the 1st defendant. The ordinary course of business was that tobacco was bought by the Viravallipalem branch and was then consigned to the Cocanada branch, where it was sold. The articles of partnership provided that accounts should be kept at both branches and compared in March of every year, and the uniform practice was for the accounts of the Viravallipalem branch to be brought to Cocanada for comparison with the accounts of the Cocanada branch, where a Cocanada ledger and a Viravallipalem ledger were kept, and this practice continued until the disputes in 1905 which led to this litigation.

In the earlier stages of the suit the matters in dispute were numerous, but three only now remain.

The first relates to certain plots known as the Cheyyeru lands which were purchased in 1900. They are claimed by the plaintiffs as partnership assets, and were so held to be by the Commissioner and the Subordinate Judge. The claim, however, was disallowed by the High Court, and to this decision exception is taken by the 1st defendant, or more strictly by his representatives.

It is true that the purchase money was originally paid out of the firm funds, but the transfer was expressed to be made to the 1st defendant, and this with the entries in the firm accounts and the evidence relevant to this issue lend strong support to the High Court's decision that the purchase was for the 1st defendant.

In view, moreover, of the course the discussion has taken, their Lordships think it unnecessary to examine in detail the materials on which this decision rests; it is enough to say that they see no reason to dissent from it. But there is an alternative claim which has been more seriously pressed, and it is that if the purchase was for the benefit of the 1st defendant it was incumbent on him to discharge himself of the purchase money which undoubtedly was derived from the firm funds.

As a proposition of law this cannot be questioned, but it remains to be seen whether at this stage and in all the circumstances of this case it would be right to direct a further account as to this transaction. This litigation has now been pending for over 14 years, and the first suggestion of the right to this account was made in the course of the argument of the appeal before the High Court. The learned Judges considered it was then too late to ask the 1st defendant's representatives to trace this particular item through the accounts. This view commends itself to their Lordships, and all the more because the present is certainly not a case where it can be said to be patent on the face of the accounts

that the 1st defendant's liability to the firm for the purchase money has not been discharged.

No doubt there is no single entry in the accounts recording the discharge of this amount, but the accounts are consistent with it and are far from indicating on their face that the liability still exists, more especially when regard is had to the balances brought forward each year and the annual comparison and adjustment of accounts as between the two branches of the firm up to March, 1904.

To open up accounts thus compared and adjusted from year to year after this lapse of time would require a very strong case, and that certainly has not been made out.

Their Lordships therefore decline to disturb the High Court's decision on this point.

In the order in which they have been presented, the next matter in dispute is as to the sale of tobacco sent by the 1st defendant to the Cocanada branch in June, 1904.

The transaction resulted in a loss estimated at Rs. 3,159.13.3, and the plaintiffs claim that this should be borne not by the firm but by the 1st defendant. Reliance has been placed on the correspondence and on the opening of a separate khata for this consignment in accordance with the 1st defendant's request.

But the transaction was well within the scope of the partnership, and their Lordships cannot regard the circumstances on which the plaintiffs rely as in any way conclusive against the 1st defendant, so that this claim too was in their Lordships' opinion rightly rejected by the High Court.

There now only remains the plaintiffs' contention that the 1st defendant was indebted to the firm for interest on an account known as the Hevilambi account. It is conceded that the sum on which interest is claimed is Rs. 15,000, and not the larger amount named by the Subordinate Judge. It seems that a sum of Rs. 25,000 was advanced by the firm to Sri Rao Jaggarayinim Garu. A khata was opened in the Viravallipalem accounts and named Hevilambi after the Telugu year, and in this khata the loan was entered.

On the 10th January, 1902, the borrower's indebtedness, then amounting to Rs. 35,189.12, was paid off. The result was that there was standing to the credit of the Hevilambi khata a sum of Rs. 36,000 odd. But of this Rs. 21,000 was sent to Cocanada, and the balance of Rs. 15,000 remaining at the Viravallipalem branch is the amount on which interest is now claimed.

The plaintiffs base this claim on the 1st defendant's admission in his deposition before the Commissioner that the balance, after deducting the amount sent to Cocanada, "was given out as loans and *pettuballu* at the Viravallipalem branch on behalf of the firm; and the interest has been credited in the Sadar khata." Therefore, it is urged, there was interest earned for which the 1st defendant was bound to account to the firm. The argument proceeds that the 1st defendant has failed to produce the books of account under his control, which should show how he dealt

with this interest, and so, it is contended, there arises against him the presumption indicated in illustration (g) to section 114 of the Evidence Act. Their Lordships recognise the value of the presumption, and most certainly would throw no doubt on the propriety of its application where it fits the facts ; but it cannot displace a contrary inference supported by adequate evidence, and here there is such evidence.

Though the 1st defendant admitted the receipt of interest, he at the same time and as a part of this admission declared that it was credited, not in the Hevilambi khata but in the Sadar khata, and explained how this came about. Nor does the case rest there, for the accounts that have been exhibited, together with the annual comparison and adjustment, strongly support the 1st defendant's statement. And if this be accepted, there is now no further liability to account for interest on the Rs. 15,000.

Their Lordships therefore see no sufficient ground for dissenting from the conclusion at which the learned Judges of the High Court have arrived, and in the result they will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

DAMISETTI RAMACHENDRUDU, SINCE
DECEASED (NOW REPRESENTED BY
DAMISETTI SATTEMMA), AND OTHERS

o.

DAMISETTI JANAKIRAMANNA, SINCE
DECEASED, AND OTHERS.

DELIVERED BY SIR LAWRENCE JENKINS.