Privy Council Appeal No. 81 of 1939

Lala Hakim Rai - - - - - - - *Appellant*

v.

Lala Ganga Ram - - - - - - - *Respondent*

Lala Ganga Ram - - - - - - - *Appellant*

v.

Lala Hakim Rai - - - - - - - *Respondent*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND JUNE, 1942

Present at the Hearing:
LORD ATKIN
LORD ROMER
SIR MADHAVAN NAIR
[*Delivered by* LORD ROMER]

This appeal by the plaintiff and cross-appeal by the defendant arise out of a suit brought for the purpose of winding up the affairs of a partnership that existed many years ago between the two parties. The questions that the plaintiff seeks to have decided upon his appeal (apart from a question relating to interest) are questions whether in taking the accounts of the partnership certain items should or should not be allowed on one side or the other. They are purely questions of fact. It is not and cannot be suggested that they involve any question of principle whatsoever. Such being the case, they most emphatically are not questions that ought to be made the subject of an appeal to His Majesty in Council. It is true that the appeal is concerned with only six out of a great number of items appearing in the account, and that two out of the six were very properly abandoned during the argument of the learned counsel for the plaintiff. But that is not to the point. If four of such items are to be regarded as a proper subject matter of appeal to His Majesty in Council, every such item in the accounts must equally be so regarded. It is not, in their Lordships' opinion, either right or proper that the Board should in this way be required to take partnership or any other accounts. If a question of principle be involved it is, of course, another matter. But where this is not the case, the decision of the Court below on the various items of an account should, in their Lordships' opinion and for the reasons just given, be treated as conclusive unless the appellant can prove that the decision is beyond all question erroneous.

With these preliminary observations their Lordships turn to the facts that have given rise to the present appeals.

The appellant and respondent in the appeal (hereinafter referred to as the plaintiff and the defendant respectively) are brothers, and before the 16th August, 1914, had been carrying on in partnership the business of extracting and refining saltpetre at two factories, one being situate at Chappanwali, the other at Gujranwala. The business appears to have been managed by the defendant, the plaintiff being merely a sleeping partner. On the 16th August, 1914, the partnership was dissolved by mutual agreement. At the same time various items of the partnership property were divided between the parties, as recorded in a document of that date which has been referred to as the deed of partition. It is unnecessary to state the contents of the deed in any detail. It is sufficient to say that the factory at Chappanwali became the sole property of the defendant and the factory at Gujranwala (though at a later date) became the sole property of the plaintiff. Other items of the partnership property not then divided were described in the deed as "remaining joint," which their Lordships understand as meaning that such items were to be dealt with later, either by being taken over by one of the partners (as happened in the case of the factory at Gujranwala) or by being realised by the defendant and the proceeds thereof divided between them. Of these latter items the only one that need be mentioned is a stock of crude saltpetre at the Chappanwali factory, against which in the deed appears the figure of 24984. The deed did not indicate in express terms whether such figure represented value or weight. The item appears, however, in a list of items against each of which appears a figure that unquestionably, and indeed admittedly, represents its value. The *prima facie* inference therefore is that the saltpetre was treated by the parties as being worth Rs.24984. As to all the items in such list the deed provides that they shall be divided at the end of the year after the refining of the saltpetre.

On the 13th June, 1916, the plaintiff commenced the present suit in the Court of the Senior Subordinate Judge, Gujranwala, claiming to have the partnership dissolved and the usual accounts taken. The case would appear to have been simple enough. No decree dissolving the partnership was requisite. It had been dissolved nearly two years before, as has already been stated. The assets formerly belonging to the partnership, so far as not then partitioned, had been enumerated in the deed of the 16th August, 1914. All that would seem to have been necessary was to ascertain how those assets had been dealt with by the defendant; to realise those that still were outstanding; and then to adjust finally the accounts between the parties. Nevertheless, close on 26 years have elapsed since the suit was begun, and the accounts are still the subject matter of dispute. This scandalous state of affairs reflects little credit either on the parties and their legal advisers or upon the system of procedure that renders such a state of affairs possible. It is fair, however, to say that the proceedings in the suit during the first seven and a half years of its existence were rendered practically abortive through the fault of the plaintiff. For during that period he continued to assert, in spite of the defendant's denial, that the business carried on at Gujranwala had no connection with that carried on at Chappanwali and was the subject matter of a wholly distinct partnership between himself and the defendant. He contended accordingly that the suit was concerned exclusively with the Chappanwali business. As will appear presently, it was not until the 20th December, 1923, that it was admitted by the plaintiff that the former business was merely a branch of the latter and had belonged to the partnership that was the subject matter of the suit. In the meantime, viz., on the 18th October, 1918, the Subordinate Judge had passed a preliminary decree in the suit. Inasmuch as the cross-appeal is in part founded upon the wording of this decree, the material part of it must be set out in full:

> It is ordered that a preliminary decree be passed in favour of the plaintiff against defendant to the effect that the plaintiff and the defendant Ganga Ram were owners in equal shares of the factory at Chappanwali with all its branches and that the partnership was dissolved on 1st Bhadon Sambat 1971 (16th August 1914) but the

> accounts were not finally settled. The factory with all its sites for manufacture of crude saltpetre has gone to the share of Ganga Ram. The plaintiff has no hand in it.

After the passing of this decree the parties appear to have made an attempt to refer all matters in dispute to arbitration. But the attempt failed, and on the 10th March, 1920, one Lala Rallia Ram was appointed Commissioner to examine the accounts and report. He reported on the 22nd May, 1921, finding that a sum of Rs.7363 odd was due to the plaintiff. Both parties put in objections to the report, with the result that on the 30th June, 1922, the Subordinate Judge reduced the amount due to the plaintiff by nearly Rs.5000. Both parties then appealed to the District Judge, and it was when the matter was before him on the 20th December, 1923, that the plaintiff at long last admitted that the Gujranwala business had in truth formed part of the partnership property. Why the Court had not found out this for itself years before is one of the many surprising things about this litigation. In order to wind up the affairs of a partnership properly one of the first things to be ascertained by the Court is of what the partnership assets consist. But however this may be, the result of this belated admission of the plaintiff was, of course, that the partnership accounts had to be taken over again. The case was accordingly remanded by the District Judge for this to be done.

It might reasonably have been expected that after this lamentable waste of time some effort would have been made to get on with the action. What in fact happened is best described in the language of the High Court at Lahore when giving judgment in the case:—

> The record was then sent for in connection with yet another case between the same parties pending in the High Court where it remained from 1923 to 1926. It was not really required for that appeal, but we have been unable to discover at whose instance it was sent for. The record returned to Gujranwala in December 1926, and on the 7th January 1927 another Subordinate Judge appointed Sheikh Abdul Majid Asghar, pleader, as Local Commissioner to consider the accounts.

In a case where time has been so recklessly squandered it is pleasing to be able to record that the Local Commissioner made his report on the 1st June, 1927. He reported that there was due to the plaintiff Rs.47.817 odd. He left the question of interest to the Court. On the 21st June, 1928, however, the Subordinate Judge held that the Commissioner had considered matters that were outside the scope of the enquiries directed by the preliminary decree. The decree itself, he said, was meaningless, but he considered that according to its true interpretation it only directed an account to be taken of certain leases and stocks of saltpetre. He accordingly reduced the amount due to the plaintiff to Rs.3286. He disallowed the plaintiff's claim to be paid interest on what was due to him.

The next three years were occupied in appealing to the District Judge, who eventually made an order in May, 1931. It was, however, subsequently held by the High Court at Lahore, for reasons that need not be gone into, that the order was one that the District Judge had no jurisdiction to make. Whether the High Court was right in so deciding is not a matter upon which their Lordships have been invited to express an opinion. For neither of the parties appealed from the decision. But the result was that the appeals from the order of the Subordinate Judge had to be lodged in the High Court itself.

Before the High Court a number of items appearing in the accounts were challenged on one side or the other; but of these, as has already been stated, four only are the subject matter of the present appeal. The first of these (No. 13 in the accounts) raises the question of what sum is properly chargeable against the defendant in respect of the realisation by him of the crude saltpetre at Chappanwali. To answer that question it is necessary to ascertain what was the weight of that saltpetre. The plaintiff alleges that it was 24,984 maunds. The defendant, on the other hand, asserts that

this sum was its agreed cost in rupees as at the 16th August, 1914, and that its weight can readily be found by ascertaining what was the price per maund of crude saltpetre at that time. The High Court decided, in the defendant's favour, that the figure in question was the cost and not the weight of the saltpetre, and that the price at the time was Rs.1.8.0 per maund. They accordingly held that its weight was 16,656 maunds and charged the defendant in the accounts on that footing. There are, no doubt, certain statements and admissions on the part of the defendant to which their Lordships' attention has been called that seem to be inconsistent with these findings. But there was also evidence the other way, and in the circumstances it is sufficient to say that the plaintiff has failed to satisfy their Lordships that the findings were erroneous.

The second of the items in dispute (No. 34 in the accounts) is a sum of Rs.22.562.10.0, for which the plaintiff seeks to make the defendant accountable on the strength of some unintelligible entries in the partnership books. As to this item the High Court said " the onus is on the plaintiff to show " that he is entitled. He has not produced evidence and we would disallow " the item." The third item in dispute is a sum of Rs.963.14.0 (No. 46 in the accounts). The plaintiff's claim to treat this as an asset of the partnership is founded upon an entry in the books of the firm which states that this amount should be credited to it by the Aryan Bank. The item was dealt with by the High Court as follows: After pointing out that the bank in question was the property of the plaintiff and that the defendant had no share in it, they said that in order to prove his claim to the item the plaintiff should have produced the books of the bank to show that the direction to credit the firm had in fact been carried out. As he failed to produce such evidence they disallowed the claim. At the hearing before their Lordships there was the same absence of evidence in support of these two items as there was before the High Court. In these circumstances it is plain that they cannot be allowed.

The fourth item in dispute (No. 20 in the accounts) is a sum of Rs.600 which the defendant alleges he paid on behalf of the firm, but which the plaintiff says ought not to be allowed to the defendant. The fact that the money was properly so paid was proved by the defendant. His evidence as to this was not contradicted. The High Court accordingly allowed the item to be credited to the defendant. They were clearly right in so doing.

The only other question arising on the plaintiff's appeal is the question of interest. The High Court, reversing in this respect the decision of the Subordinate Judge, held that the plaintiff was entitled to be paid interest on the sum found due to him at the rate of 6 per cent. per annum from the date of the institution of the suit until realization. That interest should only run as from the date mentioned, and not from the date of dissolution of the partnership, is now conceded by the plaintiff. But he asks that the rate should be 9 per cent. per annum. His claim to this rate is based solely upon the fact that on one occasion during the abortive proceedings that took place for the first seven and a half years after the institution of the suit the defendant agreed to pay interest at such rate in order to obtain a stay of execution of a decree pending an appeal. But this fact is plainly immaterial. The rate of interest to be allowed was entirely a matter within the discretion of the Court—a discretion that in the present case seems to have been wisely exercised.

Upon the cross-appeal of the defendant there are only two questions that call for a decision. The first is as to the scope of the enquiries directed by the preliminary decree of the Subordinate Judge of the 18th October, 1918. It is contended by the defendant that the Subordinate Judge was right in holding that the enquiries were limited to the two matters mentioned in his order of the 21st June, 1928. On this point the learned Judge has been overruled by the High Court, who have held that the enquiries and accounts should cover all the transactions of the partnership. In this they were unquestionably right. In the first place the preliminary decree does not in terms direct any enquiries or accounts at all,

limited or otherwise. In the next place, even if the decree is to be read as impliedly directing accounts and enquiries, their Lordships can find no reason whatsoever why they should be anything less than the accounts and enquiries that are usual in a partnership action. Finally, the decree was made at a time when, owing to the fault of the plaintiff, the suit was being treated as confined to the business carried on at Chappanwali. After the remand made by the District Judge on the 20th December, 1923, the scope of the accounts and enquiries was necessarily extended to cover the whole field of the partnership transactions, even if it had been limited before.

The other question raised by the cross-appeal relates to interest, the defendant contending that no interest at all should be awarded to the plaintiff. In support of this contention the defendant relies upon the decision of this Board in the case of *Suleman* v. *Abdul Latif*, 57 Ind. Ap., p. 245. But that case was concerned with an ordinary suit for the dissolution and the winding up of the affairs of a going partnership. The present case is widely different. It is a suit brought nearly two years after the dissolution of a partnership against the former managing partner, who has been retaining in his hands and for his own purposes assets of the firm without accounting for them or their proceeds to his co-partner. In such a case interest is properly chargeable against the accounting defendant even though he has not acted fraudulently, as was held by this Board in the case of *Ahmed Muraji Saleji* v. *Hashim Ebrahim Saleji*, I.L.R. 42, Cal. 914.

In the result and for the reasons given, their Lordships are of opinion that both the appeal and the cross-appeal fail and should be dismissed. They will humbly advise His Majesty accordingly.

In strictness both appeals should be dismissed with costs. But the costs occasioned by the cross-appeal must be considerably less than those occasioned by the appeal. In order, therefore, to avoid a double and a somewhat difficult taxation of costs with a set off, their Lordships think that justice will best be done by ordering the plaintiff to pay one-half of the defendant's costs of the two appeals.

19302) Wt. 8028—151 170 7/42 D.L. G. 338

In the Privy Council

LALA HAKIM RAI

v.

LALA GANGA RAM

LALA GANGA RAM

v.

LALA HAKIM RAI

DELIVERED BY LORD ROMER

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1942