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| **Muhammad ali jinnah university** |
| PROJECT REPORT ON LAW CASE |
| Partnership |
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| **PREPARED BY** |

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**Acknowledgement**

The success and final outcome of this project required a lot of guidance and assistance from many people and we are extremely privileged to have got this all along the completion of my project. All that we have done is only due to such supervision and assistance and we would not forget to thank them.

We would like to express my deepest appreciation to all those who provided me the possibility to complete this report. A special gratitude we give to our final project manager, Mr. BABER SALEEM, whose contribution in stimulating suggestions and encouragement, helped us to coordinate our project especially in writing this report.

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# **THE PARTNERSHIP ACT, 1932**

**Definition:**

Partnership is a relationship among specific persons who have agreed to share the profit of business carried on by all or any one of them acting for all.

**Essential elements of partnership in relation to its definition:**

It has five essential elements, lack of one renders it defective. They are stated as under:

* **An association of persons of two or more:** Minimum membership is two. In case of banking business maximum association is ten whereas it is twenty for any business other than banking. If the maximum membership exceeds, partnership becomes illegal and to be converted either in private or public limited company.
* **An agreement entered into by all persons concerned:** Partnership does not emerge from status but it is the creation of agreement among individuals and its purpose is to share profits of business. Partnership has no independent existence or personality separate from its members. The rights and liabilities of partners are rights and liabilities of the firm and are enforceable by and against them individually. Mere promise of a share of profits in lieu of work does not necessarily involve partnership. Partnership relates to the voluntary contractual nature of partnership. It emphasizes the fact that partnership can only arise as a result of an agreement express or implied between two or more persons. Partnership considers the actual agreement among the partners and does not regard the status. If son of a partner renders services to business does not attain the status of a partner. He is mere administrator but not partner. Oral agreement does not constitute partnership.
* **Agreement for business:**Business includes every trade, occupation, or profession, which is lawful. Where there is not intention to carry on business, there can be not partnership. Agreement for marriage does not constitute partnership under this Act. Agreement of service also does not fall within the meaning of this Act.
* **Carried on by all or any one of them acting for all:**If two of three partners, A and B, delegate power to administer the business to third one C, and C makes an agreement with other firm as an agent, shall make liable to all of the partners and not alone C. Act of one partner is supposed of all partners and renders all responsible. Act of third person does not make liable to all.
* **For sharing profits:**All four former conditions do not constitute partnership alone if the object of them is not sharing profit. As and how profit is shared is left to the parties whatever they decide. Fix or unfix, monthly or annually, or varied profit, as the case may be agreed. All the remuneration, annuities, or wages are excluded from sharing of profits however they are paid out of profits.

After all we reach at the conclusion that these are the five essential elements, one of which lack renders partnership incomplete and invalid. Five elements must be there to constitute partnership.

## **Effect of non-registration.**

* No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
* No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.
* The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—
* the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or
* the powers of an official assignee, receiver or Court under the Insolvency Karachi Division Act, 1909, or the Provincial Insolvency Act, 1920, to realize the property of an insolvent partner.”

# **CASE:**

## **Facts:**

the brief facts leading to the filing of the present appeal are that:

* The plaintiff and defendant No.1, who are real brothers inter-se, were working as carpenters in Kuwait. They set up a carpentry shop in partnership with each other. In 1986 both brothers decided to establish a school in memory of their mother.
* With mutual consent respondent No.1 provided land measuring 32-marlas at Allama Iqbal Road, Garhi Shahu, Lahore, for construction of the school. The appellant allegedly contributed forty thousand Kuwaiti Dinars at the relevant time (equivalent to Pak Rs.28,80,000/-) for construction of the building. It is apparent from the contents of the plaint that the brothers agreed to run the business in partnership and in this regard executed a partnership deed on 22.2.1986.
* **It is significant to note that partnership deed was on plain paper. It was neither registered nor stamped.**

### **Reason:**

According to the contents of the plaint, the respondent was charged with the responsibility of running the affairs of the school. The partnership deed also provided a mechanism for allocation of profits which arrangement need not be gone into at this stage being irrelevant for the purposes of this list.

It appears that the business of the parties flourished both in Kuwait and Pakistan. In the year 2003 the brothers decided to separate their business in Kuwait. However, according to the contents of the plaint, it was mutually agreed that the school set up in Pakistan would continue to be run under the partnership deed which was kept intact till its expiry.

### **Dispute:**

In May-2005, the appellant allegedly approached respondent No.1 and demanded his share in profit. The matter was lingered on and no profit was paid. The appellant subsequently learnt that respondent No.1 had illegally and unlawfully transferred the entire school property in favor of his son through Waqaf-ul-Ulad deed being dated 20.1.2004. The appellant was aggrieved of the said act and claimed in the plaint that, “the plaintiff is entitled to get his profit from the net profit of the school each year and refusal qua the profit of the year 2004 and 2005 and also to disobey the partnership deed in its true letter and spirit is illegal and unwarranted”.

# **FIGURES:**

**“That the cause of action accrued in favor of the plaintiff and against the defendant No1 on 22.2.1986 when the plaintiff and the defendant No.1 entered into partnership deed.”**

In the prayer clause following amongst other prayers was made: -

“Under the above circumstances and facts, it is most respectfully prayed that a decree of Declaration, Specific performance of the partnership deed………….

………………………………………………………………It be declared that the defendants are bound to act upon the partnership deed dated **22.02.1986** executed between the plaintiff and the defendant No.1 in its true letter and spirit.

The respondent filed a written statement. However, subsequently an application under Order VII rule 11 CPC read with section 69(1) of the Partnership Act and section 35 of the Stamp Act was moved for rejection of the plaint on the ground that the plaint was liable to be rejected being barred by law and without cause of action. Vide order dated 28.4.2009, the application was allowed and the plaint filed by the appellant was rejected.

A perusal of the plaint shows that the appellant admitted that there was a partnership deed dated 22.2.1986 between the appellant and respondent No.1 which related to their joint business of setting up and running a school in Lahore. The said document spelt out the terms and conditions which had mutually been settled between the parties dealing with various aspects of the partnership business including but not limited to allocation of profits and their respective rights and obligations. It was mutually agreed by the appellant and respondent No.1 that after separation of their business in Kuwait in 2003 that the partnership deed relating to the school business at Lahore will be kept intact and the parties will honor their commitments. The appellant also categorically admitted to have received some profits arising out of the partnership business.

The contents of the plaint leave us in no manner of doubt that this was a suit filed by one disgruntled partner against another seeking rendition of accounts and profits of the partnership in addition to specific performance of the partnership deed. It is important to note that the partnership deed was produced by the appellant himself with the plaint in support of averments made in the plaint to establish that there was indeed a partnership business between the appellant and the respondent. The terms and conditions to run the said business had been incorporated in the partnership deed. It was alleged that the respondent had violated the terms and conditions of the partnership deed which had given rise to a cause of action in favor of the appellant. It is also not denied that the partnership deed was never registered.

# **JUDGMENT:**

**Under section 69(1) a suit to enforce a right arising from the contract or conferred by the Partnership Act filed by or on behalf of any person suing as a partner in unregistered firm against the firm or person alleged to be or to have been a partner in the firm is barred”.**

As far as the argument of the learned counsel for the appellant that the learned trial court in arriving at its conclusion relied on defence pleas raised in the written statement is concerned, a perusal of the impugned order shows that the argument raised by the learned counsel for the appellant is ill founded. Even otherwise, as enumerated above, we have carefully gone through the impugned order as well as plaint and find that the order passed by the learned subordinate court is based including the written statement placed by the respondent on the file.

For reasons recorded above, we do not find any merit in this appeal. The impugned order is well reasoned, based upon the record and the correct application of the relevant provisions of law and their application to the facts and circumstances of the present case. Consequently, this appeal fails. It is accordingly dismissed.

# **REFRENCES:**

* https://www.sindhhighcourt.gov.pk/
* <http://districtcourtseast.gos.pk/>