

Chennuru Gavararaju Chetty vs Chennuru Silaramamurty Chetty And ... on 6 October, 1958

**Equivalent citations: 1959 AIR 190, 1959 SCR SUPL. (1) 73, AIR 1959
SUPREME COURT 190, 1959 SCJ 570**

Author: Bhuvneshwar P. Sinha

Bench: Bhuvneshwar P. Sinha, Syed Jaffer Imam, J.L. Kapur

PETITIONER:
CHENNURU GAVARARAJU CHETTY

Vs.

RESPONDENT:
CHENNURU SILARAMAMURTY CHETTY AND OTHERS

DATE OF JUDGMENT:
06/10/1958

BENCH:
SINHA, BHUVNESHWAR P.
BENCH:
SINHA, BHUVNESHWAR P.
IMAM, SYED JAFFER
KAPUR, J.L.

CITATION:
1959 AIR 190 1959 SCR Supl. (1) 73

ACT:
Lease, Renewal of-Manufacture of salt-Lessees, if
fiduciaries of quondam partners-Constructive trust-Test-
Presumption--Indian Trusts Act, 1882 (II of 1882), ss. 88,
90--Madras Salt Act, 1889 (Mad. 4 of 1889).

HEADNOTE:
The appellant, defendant No. 1 in the suit, from which the
appeal arises, and the father of defendants 2 to 7, as the
highest bidders, obtained a seventeen years' lease of a salt
factory from the Government and the license to manufacture
and sell salt under the Madras Salt Act, 1889. They entered
into a partnership with the plaintiffs to carry on their
business for the period of the lease. On the death of their
father, defendants 2 to 7 were admitted into the

partnership. The partnership agreement made no provision for the continuation of the partnership on expiry of the lease or for the acquisition of a fresh lease on behalf of the partnership. The lease expired, the license came to an end and the partnership stood automatically dissolved. The Government changed its old policy of granting leases to the highest bidders and adopted one of renewing them in favour of previous lessees in whom they had confidence. The appellant

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and defendants 2 to 7 applied for the renewal of the lease that stood in their names. The plaintiffs also applied for a grant of it to them. No premium was called for and none had to be paid. The Revenue Authorities chose to renew the lease in favour of the appellant and the said defendants for a further period of 25 years. The plaintiffs filed the suit claiming that the renewal of the lease was an asset of the dissolved partnership. The trial Court found against them but the High Court on appeal reversed that finding. The suit was instituted months before the renewal of the lease and years before the renewal of the license, which alone could enable the licensee to manufacture and sell salt. The Courts below found that the allegation of the plaintiffs that the goodwill and assets of the firm had been utilised for obtaining the renewal of the lease was unfounded, as they had failed to prove that a partnership firm at all existed. It was also found that during the last three years of the existence of the partnership, the parties had fallen apart and lost mutual confidence. The question for decision was whether s. 88 of the Indian Trusts Act applied and the renewal of the lease in favour of the appellant and the said defendants for running the salt factory could be treated as an asset of the dissolved partnership between the contesting parties.

Held, that in order that a case might be brought within the purview of s. 88 of the Indian Trusts Act, it must be shown either that (1) a person had a fiduciary character and was thus in duty bound to protect the interests of others or that (2) he had placed himself in such a position as to render his interest adverse to those of the others and had thereby obtained a pecuniary interest which he must hold for their benefit as well. As in the instant case the fiduciary character of the partners came to an end with the termination of the original lease and of the partnership business along with it, there could no longer be any subsisting interest in a partner which another was bound to protect nor could one partner be said to have availed of his character as a partner when he obtained the fresh lease. Section 88 of the Indian Trusts Act or the illustrations (d) or (e) thereto could, therefore, have no application, nor could s. 90 of the Act, which in terms had no application even if applied, improve the position of the plaintiffs.

No question of a constructive trust could also arise under the general law apart from the statute. There is no absolute rule of law or equity in England that renewal of a lease by one partner must necessarily enure to the benefit of all the partners. There is, however, a presumption of fact that there is an equity in favour of the renewal of the lease enuring to the benefit of all the partners. Such a presumption may be rebutted by the facts of a particular case. The Indian law as enacted in the Indian Trusts Act, and particularly ss. 88 and 90 of that Act, is substantially the same. In the instant case, the facts and circumstances amply rebut that presumption.

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Featherstonhaugh v. Fenwick, (1810) 34 E.R. 115, Clegg v. Fishwick, (1849) 41 E.R. 1278, Clements v. Hall, (1857) 44 E.R. 954, Clegg v. Edmondson, (1857) 44 E.R. 593, In Ye Biss, Biss v. Biss, [1903] 2 Ch. 40 and Griffith v. Owen, [1907] 1 Ch. 195, G considered.

JUDGMENT:

CIVIL APPELLATE, JURISDICTION: Civil Appeal No. 91 of 1954. Appeal from the judgment and decree dated December 10, 1948, of the Madras High Court in Regular First Appeal No. 609 of 1946, arising out of the judgment and decree dated March 30, 1946, of the Court of the Subordinate Judge of Chicacole in Original Suit No. 1 of 1943.

A. V. Viswanatha Sastri and R. Ganapathy Iyer, for the appellant.

K. M. Rajagopala Sastri and S. K. Sastri, for respondents Nos. 1, 2, 3, 5-7, 13 and 24-27.

1958. October 6. The Judgment of the Court was delivered by SINHA J.-The only question for determination in this appeal by the first defendant, on a certificate granted by the High Court of Madras, is whether the renewal of a lease for running a salt factory, granted by the Government in favour of the appellant and others (defendants 1 to 7), could be treated as an asset of the dissolved partnership between the contesting parties. The trial court decided this question in favour of the contesting defendants. On appeal by the plaintiffs and some defendants on the side of the plaintiffs, the High Court of Madras determined this controversy in favour of those appellants. Hence, this appeal by the first defendant whose interest is identical with that of defendants 2 to 7. The reference in this judgment to 'I appellant' will, thus, include the interest of the other non-appealing defendants also.

The relevant facts of this case, upon which the appeal depends, may shortly be stated as follows: The contesting parties used to carry on the business of salt manufacture in accordance with the rules laid down by the Government under the Madras Salt Act (Mad. 4 of 1889) (which will, hereinafter, be referred to as the Act). It is not permissible to manufacture salt otherwise than under the provisions of the Act. The land and the factory where salt used to be manufactured by the parties, are

Government property. It appears that the first plaintiff, the father of plaintiffs 2 to 4, plaintiff 5, the first defendant and the deceased father of defendants 2 to 7, had made bids for the lease of the land and the factory, and the highest bid of the defendants aforesaid, was accepted; and in pursuance thereof, a lease for 17 years from January 1926, to December, 1942, was granted by the Government in favour of the first defendant and the father of defendants 2 to 7. 'By a deed of partnership dated March 18, 1926, the first plaintiff with a two-anna share, the father of plaintiffs 2 to 4, having a similar share, and plaintiff 5 with another two-anna share, on the one hand, and the first defendant, having a five anna share, and the father of defendants 2 to 7, with the remaining five-anna share, entered into a partnership for running the salt factory. The terms of the partnership will have to be discussed in detail hereinafter. They contributed a sum of Rs. 30,000 for paying the premium for the lease and for other incidental expenses in running the factory, in proportion to the shares just indicated. The father of defendants 2 to 7, who had a five-anna share in the business, died in August, 1935, and the defendants 2 to 7 were admitted as partners in place of their father. In accordance with the rules of the salt department, the requisite licence for the manufacture of salt, was granted to the first defendant and the father of the defendants 2 to 7, in, whose name, the lease also stood. In or about the year 1939, differences arose between the parties, but -the business continued to be carried on by the defendants 1 to

7. In August 1941, in accordance with the changed policy of the Government, which substituted the practice of settling salt leases by renewal of the lease in favour of those lease-holders whose conduct had been satisfactory in the opinion of the Department, for the old practice of settling salt leases to highest bidders, the Collector enquired from the old lease-holders whose record had been satisfactory from the point of view of the salt department, whether they would take renewal for a period of 25 years. The appellant as also. the other defendants aforesaid, their conduct having been satisfactory, were amongst those lessees who had been 2invited to make applications for the renewal of their leases. Accordingly, they made their application in July, 1942, and a fresh lease for 25 years, was granted to them on April 15, 1943, for the period January, 1943 to December, 1967, in pursuance of the Collector's order passed in November, 1942 (Ex. P-15(a)). The terms of the new lease will have to be discussed later in the course of this judg- ment. As the term of the previous lease and of the licence to manufacture and sell salt-which 'was the partnership business-was to expire at the end of December, 1942, one of the contesting defendants, served a notice upon one of the plaintiffs to the effect that as. the partnership was expiring at the end of the month, the partners should settle their accounts, and make arrangements for the disposal of the unsold stock of 82102 maunds of salt. The reply to the notice was given on December 28, 1942, through an advocate, alleging inter alia that the application for the renewal of the lease for a period of 25 years had been made on behalf and with the consent of all the partners, and that, thus, the partnership business was agreed to be continued even after the expiry of the term of the previous partnership. The answer further attributed fraud and "evil intention " to the other party. The answer also called upon the defendants to pay a penalty of Rs. 2,500 per head, and to hand over the entire partnership lease property to the plaintiffs' party. Thus, the exchange of the notices aforesaid was a prelude to the institution of the suit on January 5, 1943, that is to say, even before the fresh lease had been executed by the Government in favour of the contesting defendants 1 to 7. The suit was instituted on the footing that the original partnership continued even after December, 1942, inasmuch as the fresh lease had been obtained in pursuance of a unanimous resolution of all the partners to obtain

the new lease for the partnership business. But an alternative case also was sought to be made out that even if the partnership did not continue after December, 1942, as a result of the acts of the defendants, the benefit of the fresh lease for 25 years should be treated as an asset of the dissolved partnership business, and should be taken into account in the process of dissolution of the partnership. The plaint as framed contained a large number of reliefs to which, the plaintiffs claimed, they were entitled, for example, a declaration that the partnership was continuing, and that the defendants 1 to 7 had forfeited their rights in the partnership as a result of their fraudulent acts, an injunction restraining defendants 1 to 7 from carrying on the salt works independently of the partnership and on their own account, and the declaration that the renewal of the lease in the name of the defendants 1 to 7, for a further period of 25 years, was for the benefit of the partnership. But at the trial, the plaintiffs, perhaps, realizing the weakness of their position, elected to put in a memorandum in the trial court on February 8, 1946, confining their prayers to reliefs on the basis of a dissolved partnership, and giving up other reliefs, which they claimed on the footing of the partnership still continuing. Thus, at the trial, the reliefs claimed were confined to taking accounts between the parties of the dissolved partnership, and treating the fresh lease for 25 years, as part of the assets of the dissolved firm. It is, therefore, not necessary to refer to the defendants' written statement, except with reference to the plaintiffs' claim to have the renewed lease for 25 years treated as an asset of the dissolved partnership. The contesting defendants 1 to 7 stoutly denied that the plaintiffs' claim in respect of the fresh lease for 25 years, was well-founded. They asserted that they only were entitled to run the business on the fresh lease and licence meant only for their benefit and not for the benefit of the dissolved partnership.

The trial court-passed a preliminary decree, declaring that the partnership stood dissolved on December 31, 1942, and for taking accounts. As regards the benefit of the renewed lease for 25 years, the trial court negatived the plaintiffs' claim that the dissolved partnership carried any firm or trade name, which, could be said to have any tangible goodwill, and that the defendants could not be restrained from carrying on the business in their own names as they had been doing in the past. After expressing a doubt as to whether there was any goodwill of a particular firm name, the court directed that "the Commissioner is authorized to sell the goodwill of the old firm for what it is worth by way of realization of the assets of the dissolved firm as amongst the partners." In effect, therefore, the trial court decided that the plaintiffs were not entitled to the benefit of the new lease.

On appeal to the High Court, the learned Chief Justice, delivering the judgment of the Division Bench, came to the conclusion that the plaintiffs' case that the fresh lease had been obtained as a result of the resolution of the partners to carry on the business after the lapse of the specific period of the partnership which came to an end in December 1942, had not been made out. But on the alternative plea of the plaintiffs, the Court, after an elaborate discussion of English and Indian Law on the subject, held that the plaintiffs were entitled to treat the new lease as an asset of the dissolved partnership. The conclusion of the High Court may better be stated in its own words, as follows:-

"In conclusion, we hold that the new lease obtained by Defendants 1 to 7 in -renewal of the old lease which formed the subject matter of the partnership, must be held by them for the benefit of the other members of the partnership, who are entitled to share in the advantage gained by Defendants 1 to 7. As the lease itself was executed

after the termination of the partnership and as it is not the case of the Appellants that any one other than defendants 1 to 7 had furnished the consideration for the new lease, the benefit of the renewal alone 'will be treated as an asset of the partnership which terminated on 31st December, - 1942, and a value placed on it. The Commissioner appointed by the lower Court may, after taking such evidence as may be necessary, be directed to fix the value in the first instance. In arriving at a value, the liability of defendants 1 to 7 to furnish capital and incur the necessary expenses for carrying on the new business with its attendant risks and also possibilities of profits, are factors to be taken into account."

In those words, the High Court set aside the judgment and decree of the trial court, and allowed the appeal in terms which the Commissioner appointed to take accounts of the dissolved partnership, may not find it easy to implement. In support of this appeal, the learned counsel for the appellant, has contended that the High Court has misdirected itself in construing the provisions of the Indian Trusts Act, in holding that a constructive trust had been made out in favour of the plaintiffs; that there is no absolute rule that the renewal of a lease which was the subject-matter of a partnership, must always enure to the benefit of the old partners; and that the essential ingredients of s. 88 of the Trusts Act, had not been made out in this case. He also contended that the lease by itself, did not create a right to manufacture salt and to sell it, and that a licence is a necessary pre-requisite to carry on the business of manufacture and sale of salt in accordance with the rules of the Department, and that it is open to the Department not to recognise any partners in the business. In this case, it was further contended, the licence to sell salt had been granted only in 1945. Under the English law, there may be a presumption that the renewal of a lease which formed the subject matter of a partnership, will enure for the benefit of the partners, but he contended that in the circumstances of this case, such a presumption could not arise, and even if it did, it was rebutted by the following facts. The term of the original partnership was a fixed one, terminating with the term of the lease and of the licence to manufacture salt, which came to an end with the year 1942; the partnership-deed did not contemplate that this business would be extended beyond the fixed term in the event of a fresh lease being obtained from the Government. It was highly significant that the term of the partnership to carry on the salt business was deliberately fixed as conterminous with the terms of the lease and the licence. The plaintiffs never took any steps to obtain a renewal of the lease, nor was there any evidence that they asked the defendants to take a renewal for the benefit of all the partners. On the other hand, when the defendants applied on their own behalf for a fresh lease for 25 years, the plaintiffs put in a petition of protest, and prayed to the Government for being included in the category of lessees in the lease to be granted for 25 years, as co-lessees, but without any success. There is no allegation in the plaint of any attempt at concealment on the part of the appellants to the effect that they were taking the lease for their own benefit. Nor was there any evidence that the defendants had taken any advantage of their position as partners, or had utilized any funds of the partnership for obtaining the fresh lease. Lastly, it was contended that differences having cropped up between the parties during the years 1939 to 1942, it could not be said that the plaintiffs placed such a confidence in the defendants -as to place them in the position of constructive trustees within the meaning of s. 88 of the Trusts Act.

On the other hand, it was contended on behalf of the respondents that the fresh lease for 25 years, was granted to the appellants as a result of the changed policy of the Government, by which they substituted the renewal to approved parties in place of the old practice of settling the terms of the lease by open competition and by holding auction-sales. The contesting defendants obtained the lease in their names because they were entered in the Government records as the original lessees, and as the original lease was admittedly for the benefit of all the partners, the new lease also must be treated as being founded on the old lease. It was also contended that s. 88 of the Trust Act, was not exhaustive, and that even if the present case did not come strictly within the terms of that section, the rule of English law relating to constructive trusts, applied to the case, and that, therefore, the High Court was quite justified in coming to the conclusion that the lessees were in the position of trustees when they obtained the renewed lease. The plaintiffs failed in their attempt to be included in the category of joint-lessees along with those defendants because of the changed policy and the rules of the Department. Hence, the plaintiffs were in a position of disadvantage as compared to the defendants in whose name, the original lease and the licence stood. In view of those facts, it was further contended, the plaintiffs could not either get the lease independently for themselves, or succeed in getting their names included in the category of joint-lessees. Lastly, it was contended that in the circumstances of the present case, the presumption of law that the defendants were constructive trustees, had not been rebutted.

Before dealing with the arguments advanced on behalf of the parties, it is convenient to set out, in brief outline, the system of working salt factories under the Act (Mad. 4 of 1889), which was enacted to "consolidate and amend the law relating to the salt revenue in the Presidency". Under the Act, a "salt factory" includes any place used or intended to be used for the manufacture of salt or for the storage or keeping of the same, as defined from time to time by the Collector of salt revenue. "Licensee", under the Act, means a person to whom a licence to manufacture salt or saltpeter, is issued, and includes any person registered as the transferee of such licence under the provisions of the Act. Under s. 8, only licensees or public servants under the Central Government, are authorized to manufacture salt. Section 9 of the Act, authorizes the Collector of salt-revenue to grant licences for the manufacture of salt in respect of specified salt works, containing such particulars and conditions as the Central Government may prescribe from time to time. Such a licence may be for the manufacture of salt for sale to the Central Government or for general sale; and may be transferred or relinquished in accordance with the prescribed rules. Section 12 lays down that?

a licensee shall be taken to be the owner of the licence and of the salt works specified therein. It is open to the Central Board of Revenue to establish a new salt, factory, and, subject to the payment of compensation, to close any salt factory or a portion thereof, and thus, cancel or amend the licence. A provision has also been made by s. 17 for the grant of a temporary licence for the manufacture of salt in certain contingencies. Section 25 authorizes the Collector of salt revenue to impose upon a licensee a fine according to the prescribed scale, or to suspend a licence or even to cancel a licence for want of due diligence or default by a licensee. Section 43 contains a prohibition against the removal of salt from a salt factory otherwise than on account of the Central Government or for transport to a place of storage authorized by the Collector of salt revenue, except under a permit and upon payment of duty at the fixed rate. The Central Government is authorized to make rules generally for carrying out the provisions of the Act, and specially for regulating certain matters set

out in s. 85. Such rules, on publication in the official gazette, have the force of law, and have to be read as part of the Act. It is common ground that elaborate rules have been laid down by the Government, for regulating the manufacture and sale of salt, so as to safeguard public revenue and to prevent the manufacture of contraband salt. It is, thus, clear that the business of manufacture of salt, which the parties to the agreement of partnership carried on, was not an ordinary occupation, which, is free from such strict rules and regulation as have been laid down by and under the Act. The licensee owes a special responsibility to the Government, and, therefore, the transfer or relinquishment of licences under the Act, has to be regulated according to the rules laid down by the Government. It is true that there is no absolute prohibition against such transfer or relinquishment, but the Government through its public officers, has the determining voice in such matters. It is in the background of the law laid down by or under the Act, that we have to discuss the rights and lease. The first lease, a draft copy of which is on the record as ex. P-16 at pp. 101 to 105, is an indenture between the Secretary of State for India in Council as the lessor, and the first defendant and the father of defendants 2 to 7, as the lessees. The consideration for the lease is the sum of Rs. 25,000/-. The lease is for a period of 17 years from January 1, 1926, subject to either party having the right to determine the lease by a notice in writing at the close of the salt manufacturing season. It provides that on the expiry of the lease or its sooner determination as aforesaid by notice on either side, the lessees shall leave the demised premises which had been leased out exclusively for the manufacture, storage and sale of salt and for the works connected therewith, without any right to erect any dwelling houses, etc. It also provides that the lessees shall be granted a modified excise licence in Form E-1(d). It also contains the condition that the lessees shall not, except with the written consent of the lessor, first had and obtained, assign, underlet, or part with the possession of the leased land or any portion thereof. The lessees may take a partner or partners, who may be approved by the Collector in the business. The lease also contains detailed provisions as to how the business of manufacture has to be carried on under the supervision of the public authorities like the Collector.

The renewed lease, exh. D-18, dated April 15, 1943, is between His Excellency the Governor-General in Council, as the lessor and the contesting defendants as the lessees, for a period of 25 years commencing from January 1, 1943. There is no payment of any premium for the lease. The other terms and conditions of the lease are similar to the previous one. Though temporary licences were granted from time to time, it was only on April 17, 1945, that a " revised permanent licence " was granted, and the temporary licence granted for 1945, was cancelled.

The " co-partnership deed " as it is called, which is dated March 18, 1926, is between five individuals, and provides that those five persons should enjoy the profit or bear the loss thereof, according to the shares indicated above; " that as the licence in the salt stands in the names of Chennuru Appala Narasayya Chetty and Guruswamy Chetty out of us, the said individuals only shall be responsible thereto "; and that " In case the said Appala Narasayya Chetty and Guruswamy Chetty or their heirs fail to render proper accounts whenever demanded according to the aforesaid terms to the remaining three sharers or their heirs during the salt lease period of seventeen years and commit defaults or any kind of frauds, Appala Narasayya Chetty Garu and Guruswamy Chetty Garu shall pay by way of penalty to the said three sharers at the rate of Rs. 2,500/- (two thousand five hundred) per share for the year when fraud is committed, without having anything to do with

the other profits and losses." It is, thus, clear that the partnership was for the fixed term of 17 years, ending with the -period of the lease, and the parties did not, in terms, contemplate the continuance of the partnership after the expiry of that period. Their rights and liabilities are entirely with reference to the said period of 17 years, there being no provision for the continuance of the business by the partnership after the expiry of the said term. If there had been a specific stipulation in the partnership deed, or even an indication that the partnership business would continue even after the expiration of the 17 years, which was the term of the partnership, different considerations may have arisen. It could then have justly been said that the managing partner owed a duty to the other partners to obtain a renewal of the previous lease. It is, therefore, not without significance that in para. 12 of the plaint, the plaintiffs specifically alleged that it had been unanimously resolved by the partners that a renewal of the lease should be obtained for a further period for the benefit of the partnership, and that as a matter of fact, the renewal was obtained in pursuance of that resolution and by using the goodwill of the partnership. This specific case has failed in both the courts below, but the High Court, in disagreement with the trial court, has accepted the alternative case as made 'out, in para. 17 of the plaint, that the renewal of the lease should be treated as an asset of the partnership in ,settling the accounts and dividing the assets of the dissolved partnership. But even in para. 17, there is no specific case made out under s. 88 of the Indian Trusts Act (II of 1882). It is not alleged, in terms, that the contesting defendants filled a fiduciary character, and were, thus, bound to protect the interest.% of all the partners in obtaining the renewal of the lease, or that, in so doing, their interests were adverse to those of the other partners, and they had, this gained a pecuniary advantage to the detriment of the other partners. Though the plaintiffs had suggested that the contesting defendants had large funds, amounting to about Rs. 90,000, of the partnership, portion of which had been set apart for Payment of premium and for other expenses incidental to the renewal of the lease, it had been found, and there cannot be the least doubt about it, that no funds of the partnership had been utilized for obtaining the new lease. As already indicated, no premium had to be paid for the fresh lease obtained by the contesting defendants.

Though no foundation was laid in the pleadings, strictly construed, for a case tinder s. 88 of the Indian Trusts Act, we have still to examine the question' whether the High Court was right in holding that either under that section or under the general law, apart from the statutory law, the contesting defendants bad placed themselves in such a position as to render themselves accountable as constructive trustees. Section 88 is in these terms:-

" 88. Where a trustee, executor, partner, agent, director of a company, legal adviser or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage,' or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other persons and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained."

The section is in two parts. In order to bring the case within the first part, it has to be shown that the contesting defendants had a fiduciary character, and were thus, in duty bound to protect the interests of the other partners in the matter of obtaining the lease; and that they obtained the lease

for themselves instead, by availing themselves of that character. As already pointed out, it was not within the scope of the partnership in accordance with the terms of the deed, to obtain a renewal of the lease. At the time of entering into the partnership, the parties were fully cognizant of the rules of the Department then in force, according to which a fresh lease could be granted to the highest bidder irrespective of any other considerations as to whether any one of the bidders was a previous lessee. The renewal of the lease without payment of any premium, was the result of the changed policy of the Government, according to which the personal conduct of the lessees, and not the amount of premium, was the determining factor in the grant of a fresh lease. Because the contesting defendants had managed the factory well and to the satisfaction of the Revenue Authorities, they were able to obtain the fresh lease, and it cannot be said that they had availed themselves of their character as partners in obtaining the renewal of the lease. The plaintiffs' allegation that the goodwill of the firm had been utilized for obtaining the renewal, has also not been found by the courts below to be true, because the basic allegation that there was a partnership firm with a goodwill, had not been established as a fact. In our opinion, therefore, the plaintiffs have failed to bring the case within the first part of s. 88.

We shall now examine the position whether the plaintiffs have made out a case in terms of the second part of the section. In order to do so, it had to be shown that the contesting defendants, while obtaining renewal of the lease, had placed themselves in such a position as to render their interests adverse to those of the other partners, and had thereby obtained a pecuniary advantage, which they must hold for the benefit of the other partners as well. In this connection, illustrations (d) and (e) under the section, are instructive. If the plaintiffs had succeeded in proving, as they had attempted to do, that any funds or any goodwill of the alleged firm name, had been utilized for obtaining the renewal of the lease, the case would have directly come under illustration (d). Illustration (e), on the face of it, does not apply, because on the findings, the defendants were not negotiating for the renewal of the lease on behalf of the entire body of partners, nor is there any allegation that they had clandestinely stipulated for themselves a benefit to the detriment of the partnership business or funds. In this connection, it has to be noted that the suit was instituted months before the renewed lease was actually granted, and years before a permanent licence for the manufacture and sale of salt, was issued to the contesting defendants. It has also to be noted that the grant of the lease by itself does confer on the grantee the right to manufacture and sell salt. The lease has to be followed by a permanent licence in order to enable the grantee to carry on the business of manufacturing, storing and selling salt. Hence, the lease by itself has no value unless it is followed by a licence to manufacture and sell salt, which was granted only on April 17, 1945, about two years and four months after the expiry of the previous lease and licence, which, as already indicated, were contemporaneous with the term of the partnership. That is the reason why the High Court granted the decree in favour of the plaintiffs in terms which are rather amorphous and which do not easily lend themselves to conversion in terms of money. This is a business in which the personal factor of the persons in charge of managing the business, is more important than anything else. Another important matter which has a bearing on the case, has also to be adverted to. Between the years 1939 and 1942, that is to say, during the last three years of the term of the partnership, the partners were not on cordial terms, and there does not appear to have been much of confidence between them. They had already started quarreling and attributing unworthy motives. There is, therefore, hardly any room for importing the idea of such confidence amongst partners as would render the

contesting, defendants occupying a fiduciary position, apart from the fact that they were partners.

As already indicated, the partnership stood automatically terminated at the end of the year 1942. The actual grant of the lease in question was made in April 1943, and the permanent licence to manufacture and sell salt, was granted only in 1945. Hence, strictly speaking, when the suit was instituted in January, 1943, legally, there was no lease in existence, nor could the business of manufacture and sale of salt be effectively carried on until the grant of the permanent licence. The plaintiffs could have a cause of action in respect of the renewed lease if their substantive case of continuing partnership had been established. But that case having failed, it is a little difficult to appreciate how they could claim any interest in the renewed lease as an asset of the partnership business. The fiduciary character as between the partners had ceased on the termination of the original lease and of the partnership business. On such a termination, there was no interest of the partners, which the contesting defendants were bound to protect. For the same reasons, the defendants' character as partners had ceased, and they could not, therefore, be said to have availed themselves of their character as partners in obtaining the fresh lease. For all these reasons, it must be held that the plaintiffs have failed to bring the case strictly within the terms of s. 88 of the Indian Trusts Act. A passing reference was made by the learned counsel for the respondents to the terms of s. 90 of the Trusts Act. But it will be noticed that whereas s. 88, quoted above, makes a specific reference to partners and agents, etc., s. 90, in terms, applies to a tenant for life, a co-owner, a mortgagee, or any other qualified owner of any property. Section 90, therefore, in terms, -could not apply to the case. Even if it did, it does not carry the case any further in favour of the plaintiff-respondents.

that even though the provisions of the Trusts Act, did not, in terms, apply to the case, the general principles of law as applied in the English courts, support the plaintiffs' case. In this connection, reliance was placed upon the cases of Featherstonhaugh v. Fenwick (1), Clegg v. Fishwick (2), Clements v. Hall (3), Clegg v. Edmondson (4), In re Biss, Biss v. Biss (5), Griffith v. Owen (6) . The law in England has been summarized in Halsbury's Laws of England, 2nd Ed., Vol. 24 (Lord Hailsham's Edition) in Art. 863 at p. 450, as follows:-

" The renewal of a lease of the partnership property by one or more of the partners without the privity of the others enures for the benefit of all. The rule is the same when the intention to renew is communicated to the others if the latter are prompt to assert their rights; and it is immaterial whether the term of the partnership is definite or indefinite, or whether the lessors would have refused to renew to the partners who are not privy to the renewal. The representatives of a deceased partner may have a right to share in the profits derived from a renewal of the lease by the surviving partner."

Most of the cases relied upon on behalf of the respondents, form the basis of the statement of the law in England, quoted above.

On a close examination of the English precedents aforesaid, it will be found that there is no absolute rule of law or equity that a renewal of a lease by one partner, must necessarily enure for the benefit

of all the partners. There is a presumption of fact, as distinguished from a presumption of law, that there is an equity in favour of the renewal of the lease enuring for the benefit of all the partners. But such a presumption being one of fact, is rebuttable, and must, therefore, depend upon the facts and circumstances of each case. The Indian Legislature has substantially adopted the English law quoted above, while enacting (1) (1810) 34 E. R. 115.

(3) (1857) 44 E. R. 954.

(5) [1903] 2 Ch. 40.

(2) (1849) 41 E. R. 1278.

(4) (1857) 44 E. R. 593- (6) [1907] I. ch. 195.

the rules laid down in the Indian Trusts Act, particularly, ss. 88 and 90 of the Trusts Act. In the instant case, the facts that. the parties deliberately chose to fix the term of the partnership as conterminous with the term of the lease and licence ending with the year 1942; that they did not, in express terms, or by necessary implication, make any provision for extending the period of the partnership or for obtaining renewal of the lease and the necessary licence; that there was no averment or proof of any clandestine acts on the part of the contesting defendants in the matter of obtaining the renewal of the lease; that the plaintiffs themselves made attempts, though unsuccessful, to get themselves included in the category of grantees at the time of the renewal of the lease ; that the special nature of the business required personal efficiency and good conduct on the part of the actual managing agents; that no funds of the expiring partnership or any goodwill of the partnership was utilized for obtaining the fresh lease; that the fresh lease and licence were granted to the contesting defendants in consideration of their personal qualities of good management and good conduct; that the parties were not on the best of terms during the last few years of the partnership, and finally, that the lease and the permanent licence were actually granted after the partnership stood automatically dissolved at the end of 1942, are all facts and circumstances which point to only one conclusion, namely, that the renewal of the lease was not intended to be for the benefit of all the quondam partners. Those facts and circumstances amply rebut any presumption of fact that the lease should enure to the benefit of all the parties. For the reasons given above, it must be held that the judgment and decree passed by the High Court, in so far as they reverse those of the trial court, are erroneous, and must be set aside. The appeal is, accordingly, allowed with costs throughout, which are attributable to the single issue which has been decided in this Court.

Appeal allowed.