Santiranjan Das Gupta vs Dasuram Murzamull on 24 August, 1972

Equivalent citations: AIR1973SC48, (1973)3SCC463, AIR 1973 SUPREME COURT 48, 1973 3 SCC 463

Author: I.D. Dua

Bench: A.N. Ray, I.D. Dua

JUDGMENT

I.D. Dua, J.

1. This is plaintiffs appeal on certificate under Article 133(1)(a) of the Constitution of India against the judgment and decree of the High Court of Judicature of Assam and Nagaland reversing the judgment and decree of the Subordinate Judge, Nowgong and dismissing the plaintiffs suit for dissolution of partnership and accounts.

2. According to the plaintiff-appellant he had a mill at Nojai where he was carrying on his milling business. The defendants represented to him that if the milling business was carried on in partnership with them then the plaintiff would make large profits and on that representation and assurance he entered into a partnership with the defendants on or about January 10, 1948. The partnership business, to quote the plaint "commenced from about the middle of January, 1948 and the work continued upto 10th September, 1948". Some disputes arose and on or about November 6, 1948 Murzamull Agarwal told the plaintiff that the business in partnership was no longer possible. In September 1951 the plaintiff instituted the present suit for dissolution of partnership and accounts out of which the present appeal arises. In para 13 of the plaint it was averred that the partnership in question had stood dissolved on and from November 6, 1948.

3. Besides other legal objections taken by the defendants in their writ ten statement it was pleaded that there was no partnership between the parties and that there was only a milling agreement dated January 11, 1948 between them under which the defendants were getting paddy milled in the plaintiff's rice mills for which the dues had all along been paid to the plaintiff In accordance with the milling contract (This plea gave rise to issue No. 1. The trial court decreed the suit holding issue No. 1 in favour of the plaintiff.

4. On appeal the High Court in a fairly detailed and exhaustive judgment came to the conclusion that there was no partnership between the parties and dismissed the plaintiffs suit.

5. Before us Shri Nag, the learned Counsel for the appellant has very fairly and frankly conceded that there Is no written Instrument of partnership. According to him the partnership was oral and was entered into some time on or about January 10, 1948. We have on the record a written agreement between the parties Ex-8 dated January 11, 1948, This agreement purports to be a milling hire arrangement between Santi Ranjan Das Gupta, proprietor of Das Gupta Rice Mills, Nojai Nowgong (plaintiff-appellant in this litigation) and Messrs Dasuram Murzamull of Gauhati (defendants-respondents). According to this agreement, the plaintiff who was not able to run the mill business for himself entered into a milling hire arrangement with the defendants on the following conditions:

> 1. An amount of as 8 (annas eight only) per maund of paddy milled by me will be paid to me by Messrs Dasuram Murzamul and this would include boiling, drying, milling, storing and loading in wagons of the rice produced in the mills. All the running expenses of the mills including cost of labour, lubricants, spare parts etc., will be borne by me.
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> 2. The stock of paddy maintained by Messrs Dasuram Murzamull in my mills will be absolutely theirs and I shall have no claim on it or any rent for it. Creditors of mine will have also no claim for the paddy or rice or products thereof etc.
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> 3. The milling charges will be payable to me either daily or weekly as may be demanded at the rate of eight annas per maund of paddy, rice, khudi, gura, husks etc, will all go to M/s. Dasuram Murzamull.
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> 4. That this milling arrangement will continue till 31st Chaitra 1364 B-S. According to Shri Nag this agreement is merely a paper transaction designed to defeat the plaintiff's creditors because he was in a bad financial position. Reliance in support of the plaintiff-appellant's version was placed on the evidence of the plaintiff himself as P.W. 1. According to his testimony he had in Baisakh 1363 B.S. entered into a partnership with Bijali Das Gupta, Renubora Das Gupta, Mihir Das Gupta and that the partnership was registered as such. The business, according to him. was being run even on the date of his evidence (December 9, 1957) under the same name and style. In 1948 the defendant firm entered into a partnership business with the plaintiff when he was the sole proprietor of his mill. Murzamull Babu in his capacity as managing partner of the defendant firm having entered into the partnership on behalf of that firm. There was, however, no written document executed for this partnership. Information regarding this partnership was sent to the bank concerned and to the Deputy Director of Procurement, Now going, orally. This witness had to admit that there was no written proof of the partnership nor was there any written record with respect to such partnership. The partnership was dissolved because the defendants men had left the mill with their stock when the plaintiff was out of Assam between August and October, 1948. Reference was also made to the testimony of Nirmal Chandra Basu (P.W. 2) who claims to have been an employee of the Assam-Bank in 1948. According to him in the middle of January, 1948 he learnt that

> the plaintiff and the defendant had entered into a partnership. According to Ms evidence also the factum of the partnership was never reduced to writing. The other circumstances on which Shri Nag mainly placed reliance in support of the existence of the partnership are that the rates charged for milling by the plaintiff were much lower than the prevailing market rates and that the loading and unloading charges were also undertaken by the plaintiff. These circumstances, according to the learned Counsel suggest that the milling agreement was merely a device or a paper transaction and that the real arrangement between the parties was that they were to do their business in partnership.

6. In our opinion the evidence to which our attention was drawn by Shri Nag is wholly inadequate for coming to the conclusion that the plaintiff-appellant and the defendant firm had entered into a contract of partnership as suggested on behalf of the plaintiff. It is inconceivable that the parties should have entered into an oral agreement of partnership without retaining any record of its terms and conditions. This is not the normal course of business. It is equally inconceivable that the partnership business should have maintained no accounts of its own, which would be open to inspection by both parties even though kept secret from the rest of the world. Absence of such accounts is conceded by the appellant before us. Maintenance of separate accounts by the plaintiff and the defendant firm as suggested by the appellant is no substitute for the maintenance of the accounts of the partnership business as such, accessible to both parties and, indeed, keeping only separate accounts by the parties would tend to negative rather than support the plea of partnership. Some of the other features which go against the appellant's plea are: (1) no account of the partnership was opened with any bank and (mere oral information with respect to the newly created partnership was sent to the bank and (2) no written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership, only oral information having been sent to him. These circumstances further render the story of the partnership more doubtful.

7. Shri Nag submitted that the trial court had on a consideration of the entire material come to a positive finding on issue No. 1 and that the High Court was, therefore, not justified in reversing it. The trial court, in our view, was influenced by considerations which are wholly inadequate for supporting the conclusion that the parties had entered into a partnership According to the trial court the terms of partnership as reproduced in the plaint are reasonable whereas the terms contained in Ex. B suggest that the plaintiff had agreed to charge very low rates for milling the defendants' paddy and he had also undertaken expenses for loading and unloading, which unfairly increased the financial burden on him without any corresponding remuneration. The trial court has also more than once made a reference to the likelihood of the parties making concealed profits from the partnership business and this in its view accounted for the absence of written deed of partnership. This reasoning is, in our view, too thin to satisfactorily explain or justify the extraordinary circumstance of complete absence of accounts even for the private use of the parties. Whenever the parties try to conceal the teal nature of an agreement of partnership, between them they almost invariably, in their own self-interest, take good care to have in their respective possession written records of their rights and liabilities as also of their partnership business dealings. They further try to keep full record of the accounts of the business. This conduct Is guided by the ordinary rules of prudence which govern normal human behavior. Those accounts no doubt

may not be described or treated as official accounts of the partnership maintained in the ordinary course of business. They are intended to be kept strictly and exclusively for the personal and private use of the parties themselves. In the present case it is admitted on both sides that there is no such written record nor were any such accounts ever maintained by the parties for their own exclusive use.

8. The High Court, in our opinion, adopted a correct approach to the case, giving due weight to the absence of written records. On proper consideration of all circumstances of the case, it came to the correct conclusion that there was no reliable evidence on which the existence of partnership could be founded. We find no reason to disagree with this view. The appeal accordingly fails and is dismissed with costs.