V. Anantha Raju . vs T.M. Narasimhan on 26 October, 2021

Author: B.R. Gavai

Bench: B.R. Gavai, Sanjiv Khanna, L. Nageswara Rao

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6469 OF 2021
[Arising out of Special Leave Petition (Civil) No.14165 of 2015]

V. ANANTHA RAJU & ANR. ...APPELLANT(S)

VERSUS

T.M. NARASIMHAN & ORS. .... RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. The present appeal challenges the judgment and order passed by the Division Bench of the High Court of Karnataka at Bengaluru dated 27.2.2015, thereby, dismissing the first appeal being R.F.A. No.1111 of 2008, filed by the appellants and confirming the judgment and decree passed by the XXXIII Additional City Civil & Sessions Judge, Bangalore city dated 18.8.2008, vide which the suit being O.S. No.5622 of 2004 (hereinafter referred to as "the said suit") filed by the appellants/plaintiffs came to be partly decreed.

3. The facts, in brief, giving rise to the present appeal are as under.

The parties hereinafter will be referred to as per their status in the said suit.

A partnership firm, namely, M/s Selwel Combines (hereinafter referred to as "the partnership firm") came to be constituted in the year 1986. Vide Partnership Deed dated 30.10.1992 (hereinafter referred to as "the 1992 Deed"), the partnership firm was re-constituted and the plaintiff No.1 (Appellant No.1 herein) was inducted as a partner along with original partners, i.e., defendant Nos. 1 to 5. As per the 1992 Deed, the plaintiff No.1 was to have 50% share in the profits and losses of the partnership firm. It was however provided in the 1992 Deed, that if the plaintiff No.1 fails to bring in an amount of Rs.50,00,000/-(Rupees Fifty lakh) as his capital contribution to the partnership firm on or before 31.3.1993, his share in the profits and losses of the partnership firm would be only to the extent of 10%.

On 2.11.1992, the partnership firm obtained a property on lease for 99 years and constructed a commercial building thereon. The building was leased out, which fetched a monthly rent of Rs.22,05,532/-approximately.

Vide the Deed of Amendment of Partnership dated 18.8.1995 (hereinafter referred to as "the 1995 Deed"), the partnership firm was again reconstituted, whereby the plaintiff No.2, son of the plaintiff No.1, and defendant Nos. 6 to 11 were inducted as partners and defendant Nos. 12 to 16 were admitted to the benefit of the partnership firm. As per the 1995 Deed, the share of the plaintiff Nos. 1 and 2 in the profits and losses of the partnership firm was to be 25% each.

It is the contention of the plaintiffs that vide another Deed of Amendment of Partnership dated 22.05.1996, the partnership firm was reconstituted, whereby the defendant No.12 was inducted as a partner and the defendant Nos. 13 to 16 were continued to be entitled for the benefits of the partnership firm. However, this fact is disputed by the contesting respondents.

It appears that in the year 2004, differences arose between the plaintiffs and the defendants with regard to the affairs of the partnership firm. On 8.5.2004, the plaintiffs issued a legal notice to the defendants/partners, demanding accounts right from the inception of the partnership firm and their share of profits.

Defendant No.1 replied to the plaintiffs' notice dated 8.5.2004 by communication dated 12.5.2004. It was stated in the said reply that the plaintiffs together were entitled only to 10% share in the profits and losses of the partnership firm and that mentioning of 25% share each in the 1995 Deed was only a mistake of record.

In turn, a show cause notice was issued by the defendants/partners to the plaintiffs on 8.6.2004 with regard to the acts and omissions on the part of the plaintiffs being contrary to the interests of the partnership firm and other partners.

Thereafter, again, there was exchange of communication between the plaintiffs and the defendants. According to the plaintiffs, in the meeting of the partners, held on 18.6.2004, it was resolved to expel the defendant No.1 from the partnership firm. However, as per the defendants, a resolution was passed on the same day, i.e., 18.6.2004, resolving expulsion of the plaintiffs from the partnership firm.

In this background, the said suit came to be filed by the plaintiffs for rendition of accounts with effect from 30.10.1992 and for releasing a sum of Rs.5,48,06,729/- being their 50% share in the profits of the partnership firm. The claim of the plaintiffs was resisted by the defendant No.1 by filing a written statement dated 9.9.2005; defendant Nos. 2, 3, 7 to 12 by filing their joint written statement dated 21.10.2005; and defendant No. 5 by filing written statement dated 29.10.2007.

The XXXIII Additional City Civil & Sessions Judge, Bangalore, framed the following issues and answered them as such.

"17. On the above pleadings of the parties, the following issues have been framed for consideration:

1. Whether the suit of plaintiffs is bad for non-joinder of necessary party that is M/s Selwel Combines?

2. Whether the suit of plaintiffs is bad for mis-joinder namely defendant No. 17 to 19?

3. Whether the suit of plaintiffs is barred by limitation?

4. Whether the plaintiffs prove that they have got 25% share each in the M/s Selwel Combines?

5. Whether the plaintiffs are entitled to the relief of Rs.5,48,06,729/-?

proves that the expelled plaintiffs have no locus-standi to seek accounts of the said firm?

7. What order or decree?

19. My findings on the above issues are as under:

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Issue No.1:     In the negative.
Issue No.2:     In the negative,
Issue No.3:     In the negative
Issue No.4:     In    the     negative,    the
                plaintiffs   have got     10%
                                share together in      M/s
                                Selwel Combines.
                Issue No.5:     See order below
                Issue No.6:     Plaintiff No. 1 and 2 were
                                expelled from the date
                                18/6/2004 and can seek
                                for accounts.
                Issue No.7      As per final order."
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While partly decreeing the suit, holding that the plaintiffs together are entitled to 10% share in the profits and losses of the partnership firm till 18.6.2004, and that from 18.6.2004, they were expelled partners of the partnership firm, the trial court vide the judgment and order dated 18.8.2008 directed that the partnership firm had to be made as party in the final decree proceedings. The other defendants□partners were also granted liberty to apply to the Court during final decree proceedings for their declaration of profit and loss share by paying necessary court fee. The trial court further directed the partnership firm and the defendant No.1 to produce all the accounts, balance sheets, returns filed before Income Tax authorities and the bank documents and such other documents for the period from 30.10.1992 till 18.6.2004, before an independent and impartial auditor for drawing the final decree.

Being aggrieved thereby, the plaintiffs preferred an appeal being R.F.A. No.1111 of 2008 before the High Court of Karnataka at Bengaluru. The Division Bench of the Karnataka High Court, by the impugned judgment and order dated 27.2.2015, dismissed the said appeal. Being aggrieved thereby, the plaintiffs have approached this Court by way of present appeal by special leave.

4. We have heard Shri R. Basant, learned Senior Counsel appearing on behalf of the plaintiffs/appellants and Shri Balaji Srinivasan, learned counsel appearing on behalf of the defendants/respondent Nos. 1 and 2. Though service of notice is complete on the other respondents, no one has entered appearance on their behalf.

5. Shri R. Basant, learned Senior Counsel, appearing on behalf of the appellants, submitted that both the trial court and the High Court have grossly erred in holding that the plaintiffs will have only 10% share in the profits and losses of the partnership firm. He submitted that the finding, that since the plaintiffs failed to prove that they have invested an amount of Rs.50,00,000/□(Rupees Fifty lakh) and as such, they are not entitled to 50% share but only 10% share in the profits and losses of the partnership firm, is totally erroneous. Learned Senior Counsel submits that the 1992 Deed was drastically amended vide the 1995 Deed. He submits that, though the 1992 Deed had provided that the share of the plaintiff No.1 in the profits and losses of the partnership firm was 50% and it will be reduced to 10% in the event the plaintiff No.1 does not contribute an amount of Rs.50,00,000/□ (Rupees Fifty lakh) towards capital of the partnership firm, there was no such stipulation in the 1995 Deed. The learned Senior Counsel submits that, as a matter of fact, the plaintiffs had invested the said amount of Rs.50,00,000/□(Rupees Fifty lakh). He submits that, in any case, the 1995 Deed clearly provides that the plaintiff No.1 and the plaintiff No.2, who was inducted into the partnership firm by the 1995 Deed, would be entitled to 25% share each in the profits and losses of the partnership firm. He submits that the same cannot be a mistake or error. He submits that if the share of all the partners as specified in the 1995 Deed is calculated, it would clearly reveal that it provided for 25% share for each of the plaintiffs. The learned Senior Counsel, therefore, submits that both the trial court and the High Court have grossly erred in totally ignoring the specific provision contained in the 1995 Deed.

6. Shri Balaji Srinivasan, learned counsel, appearing on behalf of the respondent Nos. 1 and 2,

submitted that the finding of fact, on the basis of the appreciation of evidence, by the trial court as well as the High Court warrants no interference. He submits that the perusal of the 1992 Deed as well as the 1995 Deed would clearly show that the plaintiff No.1 could not have 50% share in the profits and losses of the partnership firm unless he invested an amount of Rs.50,00,000/□(Rupees Fifty lakh). He submits that the evidence of plaintiff No.2 as PW□1 would itself show that he has admitted that he had no material to establish that an amount of Rs.50,00,000/□(Rupees Fifty lakh) was invested by the plaintiff No.1 in the partnership firm. Learned counsel further submits that the plaintiff No.1 has failed to step into the witness box and as such, an adverse inference has to be drawn against him. Learned counsel further submits that as per the 1992 Deed, the plaintiff No.1 was entitled only to 10% share in the profits and losses of the partnership firm since he failed to invest an amount of Rs.50,00,000/□(Rupees Fifty lakh). By the 1995 Deed, the plaintiff No.2, who is son of the plaintiff No.1, came to be inducted and the 10% share of the plaintiff No.1 was to be divided amongst them. However, inadvertently, it came to be mentioned in the 1995 Deed that the plaintiffs will have 25% share each. Learned counsel, therefore, submits that no interference is warranted and the appeal deserves to be dismissed.

7. In the present case, most of the facts are undisputed. It is not in dispute that vide the 1992 Deed (Exhibit D□3), the partnership firm was reconstituted and the plaintiff No.1 was inducted as a partner along with the original partners, i.e., the defendant Nos. 1 to 5. As per clause 4 of the 1992 Deed, the plaintiff No.1, i.e., the incoming partner, was to contribute an amount of Rs.50,00,000/□ (Rupees Fifty lakh) towards capital, on or before 31.3.1993. As per clause 22 of the 1992 Deed, the share of the plaintiff No.1 in the profits and losses of the partnership firm was to be 50% if he contributed an amount of Rs.50,00,000/□(Rupees Fifty lakh) on or before 31.3.1993. Failing which, the same was to be only 10%.

8. It is also not in dispute that on 2.11.1992, the partnership firm obtained a property on lease for a period of 99 years and constructed a commercial building, which was leased out, and the monthly rent of which was Rs.22,05,532/□approximately.

9. It will be relevant to refer to paragraphs 2 and 4 of the plaint in the said suit, filed by the plaintiffs, in the City Civil Court at Bangalore:

> "2. A firm by name M/s Selwel Combines was constituted in the year 1986 and the same was registered in 1990. By means of Reconstitution/Partnership Amendment Deed dated 30th of October 1992, the partnership firm was reconstituted consisting of the first plaintiff and defendant 1 to 5 as the partners of the firm. The capital as invested under the partnership Deed was to an extent of Rs. 25,000/□each by each one of the defendants 1 to 5 and a sum of Rs. 50,00,000/□(Rupees Fifty Lakh only) was invested by the first plaintiff alone. For the purposes of operation of the Bank Accounts, the first defendant was constituted as the Managing Partner who was entrusted with the duty to operate the bank Accounts. The first plaintiff was entitled to a profit share of 50% and each one defendants 1 to 5 were entitled to 10% each. A copy of the Partnership Deed dated 30.10.1992 is produced herewith and marked as DOCUMENT NO. 1.

> 4. The Partnership was again reconstituted by the Partnership Amendment Deed dated 18.8.1995 by virtue of which the second plaintiff and defendants 6 to 11 were to 16 who were them minors were also admitted to the benefit of the partnership firm. The firm was constituted to carry out the activities of building and development. As per the Reconstitution Deed, the capital of the firm was the contribution which were already made by the existing partners and each one of the incoming partners had to contribute a sum of Rs. 10,000/- To reconstitute it further it is provided that the first plaintiff was entitled to 25% of the profit share and the second plaintiff who is none other than the some of the first plaintiff was also entitled to 25% of the profit share. The other partners were entitled to various extent of shares as contained in the Reconstitution Deed dated 18.08.1995. For the purposes of operation of the Bank Accounts, the first defendant was constituted as a Managing Partner who was entrusted with the duties of operation of the Bank Accounts. The construction activities had to be looked after by the first plaintiff. The Partnership Deed further provided that the partners could withdraw the amounts only if agreed mutually between the partners from time to time. Clause 10 of the agreement provided that any of the partner as per the Reconstitution Deed were entitled to appear in person or could authorize any person to appear on behalf of the firm before any judicial or quasi-judicial authority. Therefore as per the terms of the Reconstitution Deed, the plaintiffs together are entitled to a profit share up to 50%. Copy of the Reconstitution Deed dated 18.08.1995 is produced and marked as DOCUMENT NO. 2."

10. Perusal of the aforesaid paragraphs would reveal that the plaintiffs have specifically stated that, in pursuance of the 1992 Deed, a sum of Rs.50,00,000/-(Rupees Fifty lakh) was invested by the plaintiff No.1 alone. It has been further averred that the plaintiff No.1 was entitled to a share of 50% and each one of the defendant Nos. 1 to 5 were entitled to share of 10% each in the profits and losses of the partnership firm. The plaintiffs have further averred that the partnership firm was again reconstituted on 18.8.1995 by the 1995 Deed, by virtue of which, the plaintiff No.2 as well as defendant Nos. 6 to 11 were inducted as partners in the partnership firm. Vide the 1995 Deed, the defendant Nos. 12 to 16, who were then minors, were also admitted to the benefit of the partnership firm. It has been averred that after the reconstitution of the partnership firm as per the 1995 Deed, it was provided that the plaintiff No.1 was entitled to 25% share in the profits and losses of the partnership firm, so also, the plaintiff No.2, who is the son of the plaintiff No.1, was entitled to 25% share in the profits and losses of the partnership firm. It has further been averred that the share of the rest of the partners, i.e., the defendant Nos. 1 to 11, in the profits and losses of the partnership firm is as mentioned in clause 13 of the 1995 Deed, whereas the defendant Nos. 12 to 16 were entitled to 2% share in the profits of the partnership firm.

11. It is the specific case of the plaintiffs in the plaint that the partnership firm on 2.11.1992 had obtained a property bearing No.30, situated at Cunningham Road, Bangalore-560 052, admeasuring an extent of about 2972 sq. mtrs. on lease, for a period of 99 years. It is further averred in the plaint that subsequent to the acquisition of the leasehold rights, the partnership firm undertook the construction activities with the investments, which were made according to the terms of the partnership deed. It is the case of the plaintiffs that after the construction of the building was

complete, the entire building was leased out in favour of the defendant No.17. It is averred that the defendant Nos. 18 and 19 were made parties to the said suit since the current account of the partnership firm was with the respondent No.18 □Bank, of which, the respondent No.19 was the Manager. It is further averred by the plaintiffs in the plaint that in the returns filed before the Income Tax Authorities, the share of the plaintiffs in the profits and losses of the partnership firm was shown as 25% each.

12. It will further be relevant to reproduce paragraph 9 of the written statement, filed on behalf of the defendant No.1, in the said suit:

> "9. It is true that the firm was reconstituted in the year 1995 and the Defendants No. 6 to 11 are admitted as partners and further Defendants No. 12 to 16 are admitted for the benefit of the firm.

They number of partners of the firm, nature of activities of the firm and other details pertaining to the partnership deed is duly recorded in the partnership deed and subsequent reconstitution deeds. In the light of the facts stated supra, the 1st plaintiff was not entitled to 25% share in the profits. Accordingly, at the time of induction of 2nd plaintiff as a partner to the firm, it was agreed between the partners that the 1st plaintiff would be entitled to pass on 50% of his right to the 2 nd plaintiff. Accordingly, the plaintiffs No.1 and 2 are only entitled to 10% share. The condition incorporated in the partnership deed dated 30□10□1992 had not been rectified or varied in any manner. The reference to the share of the party has come into documentation of the subsequent deeds based on the preceding document, but without specific noting of the noncompliance of the condition precedent to be performed by the 1st plaintiff.

However, due to proximate relationship between the partners, the same was agreed to be understood between the parties as per the original terms."

13. It will also be relevant to refer to paragraph 4 of the written statement, filed on behalf of the defendant No.2, in the said suit:

> "4. The facts regarding the constitution and re□constitution of the firm M/s. Selwel Combines is a matter of record similarly, the accounts of the firm is also a matter of record. In this context, it is relevant to mention that the Plaintiff No.1 was inducted into the firm as a partner and he had assured to invest Rs. 50,00,000/□on or before 31.03.1993. Under that circumstance, he was entitled to 50% of the share in firm. If he failed to comply with the same, he is only entitled to 10% share. Subsequently his; half share has been transferred to the Plaintiff No.2. By inadvertence by share ratio of the Plaintiffs has been reflected as 50% in some documents and the same is subject to rectification. The same was not immediately rectified or altered due to the cordial relationship between the parties and since there was no actual distribution of funds in that ratio. Any statement made contrary to the same is hereby denied. In fact, the Plaintiffs in the presence of the other partners have accepted and admitted this fact. They are estopped from pleading anything to the contrary."

14. The stand taken by the rest of the defendants in their written statements is on the same lines as taken by the defendant Nos. 1 and 2.

15. It could thus be seen that the defendants have not disputed the fact with regard to the reconstitution of the partnership firm in the year 1995 vide the 1995 Deed. They have also not disputed the fact that the defendant Nos. 6 to 11 were inducted as partners in the partnership firm and that the defendant Nos. 12 to 16 were admitted to the share in the profits of the partnership firm vide the 1995 Deed. It is however, their case that the plaintiff No.1 was entitled to 50% share in the profits and losses of the partnership firm, only if he invested an amount of Rs.50,00,000/-(Rupees Fifty lakh) on or before 31.3.1993. It is their case that, if the same was not complied with, he was entitled to only 10% share in the profits and losses of the partnership firm. It is their stand that, by inadvertence, the profit and loss share ratio of the plaintiffs had been reflected as 50% in some documents and the same was subject to rectification. It is their further case that the same was not immediately rectified or altered due to the cordial relationship between the parties.

16. It could thus be seen that the defendants have not disputed about the reconstitution of the partnership firm by the 1995 Deed. They have also not disputed that in the 1995 Deed, the share of plaintiff Nos. 1 and 2 in the profits and losses of the partnership firm is mentioned as 25% each. However, it is their case that, since in pursuance of the 1992 Deed, the plaintiff No.1 had not invested an amount of Rs.50,00,000/-(Rupees Fifty lakh), his share remained to be only 10%, half of which was given to his son, i.e., the plaintiff No.2, vide the 1995 Deed. It is their case that the plaintiffs' share of 25% each, as mentioned in the 1995 Deed, is by inadvertence or a mistake in fact, and the same was subject to rectification.

17. It will be apposite to refer to relevant part of the affidavit, filed by the defendant No.1 under Order XVIII Rule 4 of the Code of Civil Procedure, 1908, in the court of the City Civil Judge at Bangalore, in the said suit:

> "5. ...In this context, it is pertinent to mention that on 18.8.1995, a deed for reconstitution of partnership was entered into thereby admitting the plaintiff No.2 as an additional partner. At the time of induction of plaintiff No.2, the plaintiff No.1 had proposed admission of plaintiff No.2 with an intention to bifurcate his share in the firm by transferring half of his share to his son who is plaintiff No.2. The plaintiff No.1 in terms of the agreement failed to pay towards capital of the firm the sum of Rs.50 lakhs within 31.3.1993 and also until this day. Under such circumstances, in reality, the plaintiff No.1 was holding only 10% share in the firm and consequently by virtue of transfer of his half share the 5% was transferred in favour of plaintiff No.2.
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> 6. I state that on account of failure of plaintiff No.1 to contribute Rs.50 lakhs before 31.3.1993 having not been noted, an error had crept in the account of the firm initially reflecting the share of plaintiff No. 1 as 50% and thereafter reflecting the share of plaintiffs @ 25% each subsequent to induction of plaintiff No.2."

18. It could thus be seen that even in his affidavit in lieu of examination-in-chief, the defendant No.1 admits about the execution of the 1995 Deed.

19. At this stage, it will be relevant to refer to Sections 17, 91 and 92 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Evidence Act'):

"17. Admission defined.—An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.—When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is con-tained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B. Oral evidence is offered of the payment. The evidence is admissible.

92. Exclusion of evidence of oral agreement.—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

> Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law. Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document. Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved. Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.
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> Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:
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> Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.
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> Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.
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> Illustrations
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> (a) A policy of insurance is effected on goods “in ships from Calcutta to London”.

The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B Rs 1000 on the 1st March, 1873. The fact that, at the same time, an oral agree□ment was made that the money should not be paid till the thirty□first March, cannot be proved.

(c) An estate called "the Rampur tea es□tate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been re□garded as part of the estate and was meant to pass by the deed, cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract re□ formed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on deliv□ery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally war□rants him sound. A gives B a paper in these words "Bought of A a horse for Rs 500". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs 200 a month". A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circum□stances under which it was delivered."

20. It could thus be seen that the admission given by the defendant No.1 in his written statement as well as in his affidavit in lieu of examination□in□chief, that the partners have executed the 1995 Deed, is unambiguous and clear. In the light of this admission by the defendant Nos. 1, 5, and 2, 3, 7

to 12, it will be relevant to consider the effect of Sections 91 and 92 of the Evidence Act in the present case.

21. This Court in the case of Roop Kumar v. Mohan Thedani1 has elaborately considered the earlier judgments of this Court on the issue in hand and has held as under:

> "12. Before we deal with the factual aspects, it would be proper to deal with the plea re□lating to scope and ambit of Sections 91 and 92 of the Evidence Act.
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> 13. Section 91 relates to evidence of terms of contract, grants and other disposition of
> 1 (2003) 6 SCC 595 properties reduced to form of document.

This section merely forbids proving the con□tents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known sometimes as the "best□evi□dence rule". It is in reality declaring a doc□ trine of the substantive law, namely, in the case of a written contract, that all proceed□ings and contemporaneous oral expressions of the thing are merged in the writing or dis□placed by it. (See Thayer's Preliminary Law on Evidence, p. 397 and p. 398; Phipson's Evidence, 7th Edn., p. 546; Wigmore's Evi□dence, p. 2406.) It has been best described by Wigmore stating that the rule is in no sense a rule of evidence but a rule of sub□stantive law. It does not exclude certain data because they are for one or another reason untrustworthy or undesirable means of evidencing some fact to be proved. It does not concern a probative mental process — the process of believing one fact on the faith of another. What the rule does is to declare that certain kinds of facts are legally ineffec□tive in the substantive law; and this of course (like any other ruling of substantive law) results in forbidding the fact to be proved at all. But this prohibition of proving it is merely that dramatic aspect of the process of applying the rule of substantive law. When a thing is not to be proved at all the rule of prohibition does not become a rule of evidence merely because it comes into play when the counsel offers to "prove" it or "give evidence" of it; otherwise, any rule of law whatever might be reduced to a rule of evidence. It would become the legitimate progeny of the law of evidence. For the pur□pose of specific varieties of jural effects — sale, contract etc. there are specific require□ments varying according to the subject. On the contrary there are also certain funda□mental elements common to all and capable of being generalised. Every jural act may have the following four elements:

> (a) the enaction or creation of the act;
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> (b) its integration or embodiment in a single memorial when desired;
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> (c) its solemnization or fulfilment of the prescribed forms, if any; and
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> (d) the interpretation or application of the act to the external objects affected by it.

14. The first and fourth are necessarily in□volved in every jural act, and second and third may or may not become practically im□portant, but are always possible elements.

15. The enaction or creation of an act is concerned with the question whether any jural act of the alleged tenor has been con□summated; or, if consummated, whether the circumstances attending its creation autho□rise its avoidance or annulment. The inte□gration of the act consists in embodying it in a single utterance or memorial — com□monly, of course, a written one. This process of integration may be required by law, or it may be adopted voluntarily by the actor or actors and in the latter case, either wholly or partially. Thus, the question in its usual form is whether the particular docu□ment was intended by the parties to cover certain subjects of transaction between them and, therefore, to deprive of legal effect all other utterances.

16. The practical consequence of integration is that its scattered parts, in their former and inchoate shape, have no longer any ju□ral effect; they are replaced by a single em□bodiment of the act. In other words, when a jural act is embodied in a single memorial all other utterances of the parties on the topic are legally immaterial for the purpose of determining what are the terms of their act. This rule is based upon an assumed in□tention on the part of the contracting par□ties, evidenced by the existence of the writ□ten contract, to place themselves above the uncertainties of oral evidence and on a dis□inclination of the courts to defeat this ob□ject. When persons express their agree□ments in writing, it is for the express pur□pose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume de□liberation on the part of the contracting par□ ties and it is natural they should be treated with careful consideration by the courts and with a disinclination to disturb the condi□tions of matters as embodied in them by the act of the parties. (See McKelvey's Evidence, p. 294.) As observed in Greenlear's Evi□dence, p. 563, one of the most common and important of the concrete rules presumed under the general notion that the best evi□ dence must be produced and that one with which the phrase “best evidence” is now ex□clusively associated is the rule that when the contents of a writing are to be proved, the writing itself must be produced before the court or its absence accounted for be□fore testimony to its contents is admitted.

17. It is likewise a general and most inflexi□ble rule that wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a mat□ter both of principle and policy. It is of prin□ciple because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were li□able to be impeached by loose collateral evi□dence. (See Starkie on Evidence, p. 648.)

18. In Section 92 the legislature has pre□vented oral evidence being adduced for the purpose of varying the contract as between the parties to the contract; but, no such limitations are imposed under Section 91. Having regard to the jural position of Sec□tions 91 and 92 and the deliberate omission from Section 91 of such words of limitation, it must be taken note of that even a third party if he wants to establish a particular contract between certain others, either when such contract has been reduced to in a document or where under the law such contract has to be in writing, can only prove such contract by the production of such writing.

19. Sections 91 and 92 apply only when the document on the face of it contains or ap□pears to contain all the terms of the con□tract. Section 91 is concerned solely with the mode of proof of a document with limita□tion imposed by Section 92 relates only to the parties to the document. If after the doc□ument has been produced to prove its terms under Section 91, provisions of Section 92 come into operation for the purpose of ex□cluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supple□ment each other. Section 91 would be inop□erative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91.

20. The two sections, however, differ in some material particulars. Section 91 ap□plies to all documents, whether they purport to dispose of rights or not, whereas Section 92 applies to documents which can be de□scribed as dispositive. Section 91 applies to documents which are both bilateral and unilateral, unlike Section 92 the application of which is confined to only bilateral docu□ments. (See: Bai Hira Devi v. Official As□signee of Bombay [AIR 1958 SC 448] .) Both these provisions are based on "best□evidence rule". In Bacon's Maxim Regulation 23, Lord Bacon said "The law will not couple and mingle matters of specialty, which is of the higher account, with matter of averment which is of inferior account in law." It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory.

21. The grounds of exclusion of extrinsic ev□idence are: (i) to admit inferior evidence when law requires superior would amount to nullifying the law, and (ii) when parties have deliberately put their agreement into writing, it is conclusively presumed, be□tween themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacher□ous memory.

22. This Court in Gangabai v. Chhabubai [(1982) 1 SCC 4: AIR 1982 SC 20] and Ish□war Dass Jain v. Sohan Lal [(2000) 1 SCC 434: AIR 2000 SC 426] with reference to Section 92(1) held that it is permissible to a party to a deed to contend that the deed was not intended to be acted upon, but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. Oral evidence is admissible to show that document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties."

22. It could thus be seen that this Court has held that the integration of the act consists in embodying it in a single utterance or memorial — commonly, a written one. This process of integration may be required by law, or it may be adopted voluntarily by the actor or actors and in the latter case, either wholly or partially. It has been held that the question that is required to be considered is whether the particular document was intended by the parties to cover certain subjects of transaction between them to deprive of legal effect of all other utterances. It has been further held that the practical consequence of integration is that its scat□tered parts, in their former and inchoate shape, have no longer any jural effect and they are replaced by a single em□bodiment of the act. It has been held that when a jural act is embodied in a single memorial, all other utterances

of the parties on the topic are legally immaterial for the purpose of determining what are the terms of their act. It has been held that when persons express their agreements in writing, it is for the express purpose of getting rid of any indefinite□ness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. It has been observed that the written contracts presume deliberation on the part of the contracting parties and it is natural that they should be treated with careful consideration by the courts and with a disinclination to disturb the conditions of matters as em□bodied in them by the act of the parties. It has been held that the written instruments are entitled to a much higher degree of credit than parol evidence.

23. This Court has further held that Sections 91 and 92 of the Evidence Act would apply only when the document on the face of it contains or appears to contain all the terms of the contract. It has been held that after the document has been produced to prove its terms under Section 91, the provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. It has been held that it would be inconve□nient that matters in writing made by advice and on consid□eration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slip□pery memory. It has been held that when parties deliber□ately put their agreement into writing, it is conclusively pre□sumed, between themselves and their privies, that they in□tended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory.

24. Though referring to Gangabai w/o Rambilas Gilda (Smt.) v. Chhabubai w/o Pukharajji Gandhi (Smt.)2 and Ishwar Dass Jain (Dead) Through Lrs. v. Sohan Lal (Dead) by Lrs.3, it has been held that it is permissible for a party to a deed to contend that the deed was not intended to be acted upon, but was only a sham document, it would be necessary to lead oral evidence to show that the document executed was never intended to op□erate as an agreement but that some other agreement alto□gether, not recorded in the document, was entered into be□tween the parties.

2 (1982) 1 SCC 4 3 (2000) 1 SCC 434

25. It could thus be seen that once the plaintiffs had specifically contended that the terms of the 1992 Deed were amended/modified by the 1995 Deed, and the defendants admitted about the execution of the said document, i.e., the 1995 Deed, if it was the case of the defendants that the terms mentioned in the 1995 Deed were inadvertent or a mistake in fact, then the burden to prove the same shifted upon the defendants. In view of Section 92 of the Evidence Act, any evidence with regard to oral agreement for the purpose of contradicting, varying, adding to, or subtracting from the terms of the written contract, would be excluded unless the case falls within any of the provisos provided in Section 92. The defendants have attempted to bring their case within the first proviso to Section 92 of the Evidence Act, by contending that mentioning of 25% share to each of the plaintiffs in the profits and losses of the partnership firm was a mistake in fact.

26. It will also be relevant to examine the contention of the defendants, as to whether the share of the plaintiffs in the profits and losses of the partnership firm, mentioned in the 1995 Deed, was due to inadvertence or was a mistake in fact.

27. It will be relevant to refer to the preamble of the 1995 Deed:

> "Whereas the Parties 1 to 6, hereto in pursuance of Deed of Partnership among themselves dated 30th October, 1992, have been carrying on business at 31/1.1 Cunningham Road Bangalore □360052 as Builders and Developers under the name and style of "SELWEL COMBINES".
>
> AND the Parties of Seventh, Eight, Ninth, Tenth, Eleventh, Twelfth, Thirteenth parties have after negotiation agreed to join the partnership firm M/s Selwel Combines as Partners with effect from 18th August, 1995 and are referred tb as the Incoming Partners.
>
> And the Parties hereto have decided to admitted V. Vijaylakshmi Kumari R. Poornima, Master R. Manjunath Master S. Ragavendra, Master S. Badrinath to the benefit of this partnership AND whereas the parties of the First, Second, Third, Fourth, Fifth and Sixth parts have decided to continue· the business of the Firm "SELWEL COMBINES" after admitting parts of the Seventh, Eight, Ninth, Tenth, Eleventh, Twelth, Thirteenth parts as Partners and are referred to as continuing partners.
>
> And whereas the Parties hereto after negotiations amount themselves have decided to amend the terms of partnership of the Firm M/s "SELWEL COMBINES" with effect from 18.08.1995.

And whereas the parties hereto have decided to admit the following minors to the benefit of Partnership as:

> 1 Kum. v. Daughter of□Sri 22.05.78 Vijayalakshmi R Venkateshan 2 Kum. R. Daughter of Sri. 07.10.87 Poornima Rajanna 3 Master R. Son of Sri. 07.10.86 Manjunath Rajanna 4 Master R. Son of Sri. 20.05.86 Raghavendra Somashekar 5 Master S. Son of Sri. 13.08.90 Lokanath Somashelar And whereas parties hereto are desirous of reducing the terms and conditions of the Agreement of Amendment of Partnership into writing."

28. It could thus clearly be seen that the 1995 Deed specifically refers to the 1992 Deed between the party Nos. 1 to 6, i.e., plaintiff No.1 and the defendant Nos. 1 to 5. It further states that the party Nos. 7 to 13, i.e., the defendant Nos. 6 to 11 and the plaintiff No.2, have, after negotiation, agreed to join the partnership firm with effect from 18.8.1995. It further states that it has been agreed between the parties that the defendant Nos. 12 to 16 have been admitted to the benefit of the partnership firm. The preamble specifically states that after negotiation amongst themselves, the parties have decided

to amend the terms of the partnership firm with effect from 18.8.1995 and thereafter have reduced the terms and conditions of the agreement of amendment of partnership into writing.

29. It will be apposite to refer to clause 4 of the 1995 Deed, which reads thus:

> "4. Capital of the Firm The capital of the firm shall consist of Capital already contributed by parties of First, Second, Third, Fourth, Fifth and Sixth parts and capital contributed by incoming partners of Rs. 10,000/□each."

30. It could thus clearly be seen that clause 4 of the 1995 Deed specifically provides that the capital of the partnership firm shall be the capital already contributed by parties of First, Second, Third, Fourth, Fifth and Sixth parts, and the capital contributed by the incoming partners of Rs.10,000/□ each.

31. In contrast, it will be relevant to refer to clause 4 of the 1992 Deed, which reads thus:

> "4. Capital of the firm: Capital of the firm shall consist of capitals already contributed by partners of First, Second, Third, Fourth & Fifth as below:
>
> | | |
> |---|---|
> | First Partner | 25,000 |
> | Second Partner | 25,000 |
> | Third Partner | 25,000 |
> | Fourth Partner | 25,000 |
> | Fifth Partner | 25,000 |
>
> Sixth Partner is all of that
>
> contribute Rs. 50,00,000 (Fifty Lakhs) as his contribution the capital of the firm and he shall contribute his capital of Rs. 50,00,000 on or before 31st December 1993."

32. It could thus be seen that clause 4 of the 1992 Deed, provides that though the capital of the partnership firm was capital already contributed by the defendants Nos. 1 to 5, i.e., Rs.25,000/□ each, the plaintiff No.1 was to contribute an amount of Rs.50,00,000/□(Rupees Fifty lakh) to the capital of the firm.

33. It will also be relevant to refer to clause 13 of the 1995 Deed, which deals with 'sharing of profits or losses' of the partnership firm:

> "13. Sharing of Profits or Losses:
>
> The book profits or losses shall be arrived at after providing for interest paid or payable of this firm to any of the partners; out of the balance, salary payable to any of them shall be allocated. After this, balance of Profits or Losses shall be shared as below:
>
> Profit Loss

1	T.M. Narasimhan	18%	28%
2	V. Srinivas	2%	2%
3	V. Umashankar	2%	2%
4	E. Ravi Kumar	2%	2%
5	H. Shamanna	4%	4%
6	Anantha Raju	25%	25%
7	V. Bahgyalakshmi	2%	2%
8	V. Shakuntaia	2%	2%
9	Padma	2%	2%
10	Varalakshmi	2%	2%
11	V. Badari	2%	2%
12	Lakshmi	2%	2%
13	S.A.L. Vinay	25%	25%

The following persons are admitted to the benefits of Partnership only:

				% of share in the firm profits
1	Kum. V. Vijayalakshmi 2%	D/o Sri. R. Venkatesan	22.05.78	2%
2	Kum. R. Poornima 2%	D/o Rajanna	Sri 07.10.87	2%
3	Master R. manjunath 2%	S/o Rajanna	Sri 07.10.88	2%
4	Master S. Raghavendra 2%	S/o Somasekar	Sri. 20.05.86	2%
5	Master S. Lokanath 2%	S/o Somasekar	Sri. 13.08.90	2%”

34. In contrast, it will be relevant to refer to clause 22 of the 1992 Deed, which reads thus:

“22. Sharing of Profit & Losses: Book profits of the firm shall be arrived at after providing for interest paid/payable to partner on their capital account balances as in para 22. Out of book profits first salary allowable to any of the partners will be allocated. Balance profits or losses shall be shared as below:

Sri T. M. Narashimhan	10%
Sri. V. Srinivas	10%
Sri. V. Uma Shankar	10%
Sri. E. Ravi Kumar	10%
Sri. H. Shamanna	10%
Sri. V. Anantha Raju	50%

If Sri V. Anantha Raju fails to bring in Rs. 50,00,000 as his capital contribution to the firm on or before 31 st March 1993 he shall be entitled to only 10% of the profits of the firm and liable to share losses also at 10% of total losses. On that event, profits and losses shall be shared or borne an the case may be as follows:

Sri T. M. Narashimhan 20% Sri. V. Srinivas 20% Sri. V. Uma Shankar 20% Sri. E. Ravi Kumar 20% Sri. H. Shamanna 10% Sri. V. Anantha Raju 10%"

35. Comparison of these two clauses would reveal that in the 1992 Deed, though the share of the defendant Nos. 1 to 5 in the profits and losses of the partnership firm was specified as 10%, the share of plaintiff No.1 was specified as 50%. However, it is specifically mentioned in the 1992 Deed, that in the event, the plaintiff No.1 fails to bring in an amount of Rs.50,00,000/□(Rupees Fifty lakh) as his capital contribution to the partnership firm on or before 31.3.1993, the share in the profits and losses of the partnership firm of defendant Nos. 1 to 4 would be 20% each and that of the plaintiff No.1 and the defendant No.5 would be 10% each.

36. In the amended deed, i.e., the 1995 Deed, there is no mention regarding such contingency upon the plaintiff No.1 depositing or not depositing an amount of Rs.50,00,000/□(Rupees Fifty lakh).

37. What has happened between 1992 and 1995 is exclusively within the knowledge of the parties. Though the plaintiffs have averred that an amount of Rs.50,00,000/□ (Rupees Fifty lakh) was invested by the plaintiff No.1 in the intervening period, the same is denied by the defendants.

However, in view of Section 91 of the Evidence Act, the evidentiary value of the 1995 Deed would stand on a much higher pedestal, as against the oral testimony of the parties. The 1995 Deed clearly shows that it is executed after due deliberations, negotiations and mutual consensus on the terms and conditions to be incorporated therein. By the 1995 Deed, 6 new partners have been admitted to the partnership firm, whereas 5 minors have been admitted to the benefit of the partnership firm. The contention of the defendants, that the share of the plaintiff Nos. 1 and 2 in the profits and losses of the partnership firm, mentioned as 25% each, is by mistake and, in fact, is only 5% each, does not sound logical and reasoned. If it was by mistake or inadvertence, nothing precluded the defendants from rectifying the same between 1995 and 2004. The arithmetical calculations would also show that the share in the profits and losses of the partnership firm has been mentioned in the 1995 Deed after due deliberations and negotiations. It could be seen that, though the share of the defendant

No.1, as per the agreement, i.e., the 1995 Deed, in the losses of the partnership firm is 28%, his share in the profits is only 18%. The 10% difference of share in the profits and losses of the defendant No.1 has been adjusted towards the 2% share in the profits given to the defendant Nos. 12 to 16 each. As such, we are unable to accept the contention of the defendants that the share in the profits and losses of the partnership firm as mentioned in the 1995 Deed is inadvertent or a mistake in fact. In any case, if that was so, the burden was on the defendants to establish that the 1995 Deed did not reflect the mutual intention of the parties and the terms and conditions agreed between the parties were different than those reduced in writing by the 1995 Deed.

38. We find that the following observations by the trial court in its judgment and order dated 18.8.2008 are not sustainable in law, in the light of the provisions as contained in Section 91 of the Evidence Act.

"...Therefore if we read the plaint and evidence of plaintiff No.2, the plaintiffs have not produced any scrap of paper that plaintiff No.1 had given or deposited Rs.50,00,000/□towards his share to claim 50% of profit share. It is only mere assertions the plaintiffs are asking before the court that "we are entitled for 50% share" they are not saying before the court why and for what reasons that they are entitled to 50% share □and other partners are entitled to a lesser share. Merely because share of the plaintiffs have been shown as 25% each either in the partnership deed dated 18/8/1995 or subsequent returns filed before the income tax authorities is of no avail because those documents have not been acted upon to distribute the profits between the partners to show that plaintiff Nos. I and 2 were given profit share at any time."

39. In this factual background, we are of the considered view that the trial court as well as the High Court have erred in holding that the plaintiffs together were entitled to only 10% share in the profits and losses of the partnership firm till 18.6.2004.

40. Insofar as the challenge of the appellants to their expulsion from the partnership firm is concerned, we do not find any merit in the contention of the appellants. It will be relevant to refer to clause 17 of the 1992 Deed:

> "17. The Partners have right to expel an erring partner/partners or a partner who prevents the other partner from carrying on business effectively and profitable or the partner/partners who causes damage to the interest of the firm of his/their acts, after him/them reasonable opportunity of being hard."

41. Perusal of clause 17 of the 1992 deed would reveal that the partners have right to expel an erring partner/partners on the grounds specified therein. The 1995 Deed does not have any conflicting provision. The clauses in the 1992 Deed, which are not superseded by the 1995 Deed, would still continue to operate. The trial court has given sound reasons, while upholding the expulsion of the plaintiffs. We see no reason to interfere with the same.

42. In the result, the appeal is partly allowed.

43. The judgment and decree passed by the trial court, as affirmed by the High Court, holding that the plaintiffs together have 10% share in the profits and losses of the partnership firm is modified. It is declared and decreed that the plaintiffs together are entitled to 50% share in the profits and losses of the partnership firm till 18.6.2004.

44. The judgment and decree passed by the trial court, as affirmed by the High Court, to the effect that the plaintiffs are expelled from the partnership firm with effect from 18.6.2004 is maintained. Rest of the directions of the trial court in paragraphs 2 to 6 of the operative part in its judgment are also maintained.

45. The appeal is disposed of in the above terms. There shall be no order as to costs. Pending applications, if any, shall stand disposed of.

....., J.

[L. NAGESWARA RAO] ....., J.

[SANJIV KHANNA] ....., J.

[B.R. GAVAI] NEW DELHI;

OCTOBER 26, 2021