

## **Bhola Nath vs Mt. Kaso Devi And Ors. on 8 December, 1950**

**Equivalent citations: AIR1951ALL601, AIR 1951 ALLAHABAD 601**

### **JUDGMENT**

Agarwala, J.

1. This appeal arises out of execution proceedings. One Debi Das had six sons, Shyam Sunder Das, Gauri Shanker, Ram Chander, Balkrishna, Mohan Lal & Ram Kishan. Ram Kishan died leaving a widow Mt. Kaso Devi- respt. She sued her husband's brothers & obtained a decree, on 9-1-30 for future maintenance under which a charge was created upon certain family properties including a 1/6th share in a partnership firm known as Krishna & Co. carrying on its business at Banaras city. Gauri Shanker's share was later on acquired by Mohan Lal, the 5th brother, & in this way Shyam Sunder Das, Ram Chander & Balkrishna were partners in the partnership firm of 1/5th each out of 1/6th share & Mohan Lal's share was 2/5th out of 1/6th share.

2. In 1935 Sita Ram, one of the patnrs. of Krishna & Co., filed a suit for the dissolution of the partnership & for accounts. To this suit all the other patnrs. including Shyam Sunder Das, Gauri Shanker, Ram Chander, Balkrishna & Mohan Lal were parties. On 2-9-36 a preliminary decree was passed directing the dissolution of partnership, & the appointment of a receiver for taking accounts & realising partnership assets by sale of the partnership property. On 16-5-37 the receiver sold the assets of the partnership, including immovable properties, to one Bhola Nath for Rs. 33,200/-. On 26-8-37 Mt. Kaso Devi applied to the Civil Judge in the partnership suit praying that, out of the sale proceeds of the partnership assets & the profits payable to her judgment debtors, namely, Shyam Sunder, Ram Chander, Mohan Lal & Balkrishna (Gauri Shanker having transferred his share to Mohan Lal went out of the picture), the amount due to her for future maintenance may be paid to her & that the charge for her maintenance may be declared to be fastened to the amount in deposit in Ct to the extent of the shares of her judgment-debtors. This very reasonable appln. was, however, dismissed by the Ct. On 27-8-37 a final decree was prepared defining the amounts payable to the various patnrs. out of the assets in the hands of the Ct.

3. On 8-2-38 Ram Chander, one of the judgment-debtors, under Mt Kaso Devi's decree, filed suit No. 72 of 1938 against Mohan Lal, Balkrishna, Shyam Sunder & Mt. Kaso Devi claiming the relief that the sale proceeds be not paid to Mohan Lal, Balkrishna & Shyam Sunder till Mst. Kaso Devi's charge had been satisfied. The relief claimed in this suit was also eminently reasonable. But Mst. Kaso Devi took up the plea that Shyam Sunder, Mohan Lal & Balkrishna were willing to pay-the amount due to her, that Ram Chander alone was not willing to do so & that, therefore, he was not entitled to maintain the suit. Ram Chander, therefore, did not prosecute the suit which was dismissed for default on 31-3-38.

4. On 12-10-43 Mb. Kaso Devi put in an. execution appln. for the execution of her own decree as against the original judgment-debtors & also against Bhola Nath, the purchaser of the partnership assets. By means of this execution appln. Mat. Kaso Devi prayed that a sum of Es. 315 due to her for 35 years, from 1-11-40 to 1-10-43, at the rate of Rs. 9/- per mensem, be realised by sale of the 1/5th share of Ram Chander & 2/5th share of Mohan Lal & his sons out of 1/6th share of the partnership assets which belonged to the family in the hands of Bhola Nath. Her case was that the property purchased by Bhola Nath was subject to the charge created by the decree in her favour & that she could pursue the charge against the property in the hands of Bhola Nath. Bhola Nath objected to the execution of 'the decree as against the assets in his hands on the ground inter alia that he was a bona fide purchaser for value of the partnership assets that the charge, if any, did not subsist upon the assets purchased by him but fastened upon the sale proceeds. There were other objections also with which we are not concerned in this appeal. The Ct. below held that the charge subsisted as against the assets in the hands of Bhola Nath & dismissed his objections. Against this decree Bhola Nath has come up to this Ct. in appeal. The sole question that has been argued before me in this appeal is whether the charge created upon the share of the judgment-debtors, Ram Chander & others, in the assets of the partnership firm subsists against the property purchased by Bhola Nath or not. In my opinion, the answer to this question must be in the negative.

5. First, we must clearly bear in mind the rights of the patnrs. in the partnership assets. Undoubtedly, all the patnrs. together own all the property belonging to the partnership, but the rights of an individual patnr. in respect of the partnership property are not identical, in the absence of any contract to the contrary, with those of co-owners of such property. Co-owners of property are owners in defined shares. Every co-owner can say with respect to his share that he is the proprietor of that share with the result that qua his share he has an absolute right to dispose of it in any way he likes. His share in the property can be transferred or charged by him & can be sold in execution of a decree against him. The purchaser of such a share becomes a co-owner along with other co-owners with the same rights as his vendor had. The rights of the patnrs., however, qua the partnership property are different. No single patnr. can say that he is the owner of a particular share in the partnership property. He is merely the owner of a share in the assets of the partnership remaining in the hands of the patnrs. after meeting all the liabilities of the partnership with the consequence that a patnr. cannot transfer or charge a share in a particular item of the partnership property, nor can that particular property be attached & sold in execution of a decree against a particular patnr. as apart from a decree against the whole partnership.

6. Lindley in his treatise on Partnership has set out the differences between co-ownership & partnership very minutely :

"Speaking generally, & excluding all exceptional cases, the principal differences between co-ownership & partnership may be stated as follows :

(1) Co-ownership is not necessarily the result of agreement. Partnership is.

(2) Co-ownership does not necessarily involve community of profit or of loss. Partnership does.

(3) One co-owner can, without the consent of the others, transfer his interest or in the case of land his equitable interest, to a stranger, so as to put him in the same position as regards the other owners as the transferor himself was before the transfer, except that in the case of a transfer by a joint tenant the stranger will become a tenant in common, or in the case of land a tenant in common in equity with the other owners. A patnr. cannot do this.

(4) One co-owner is not as such the agent, real or implied, of the others. A patnr. is.

(5) One co-owner has no lien on the thing owned in common for outlays or expenses, nor for what may be due from the others as their share of a common debt. A patnr. has.

(6) Before the recent changes in the law one co-owner of land was entitled to have it divided between himself & co-owners, but not (except by virtue of the Partition Acts) to have it sold against their consent. A patnr. has no right to partition in specie, but, speaking generally, is entitled, on a dissolution, to have the partnership property, whether land or not, sold, & the proceeds divided.

(7) As between the real & personal representatives of a deceased co-owner of freehold land, the equitable as well as the legal interest in his share was formerly real estate; whilst as between the real & personal representatives of a deceased patnr., the equitable interest in his share of partnership freehold property was & still is treated as personal estate, although the legal interest in it is real estate.

(8) Co-ownership not necessarily existing for the sake of gain, & partnership existing for no other purpose, the remedies by way of account & otherwise which one co-owner has against the others are in many important respects different from, & less extensive than, those which one patnr. has against his co-patnrs." (Lindley on Partnership, Edn. 10, pp. 31-32).

7. The important thing for our present purpose to note is that a patnr. has no right to partition in specie, but, speaking generally, is entitled, on a dissolution, to have the partnership property, whether land or not, sold, & the proceeds divided. Of course, this is subject to a contract to the contrary.

8. Again at p. 415 the learned author describes the nature of a patnr.'s share in a partnership property.

"No patnr. has a right to take any portion of the partnership property & to say that it is his exclusively. No patnr. has any such right, either during the existence of the partnership or after it has been dissolved.

What is meant by the share of a patnr. is his proportion of the partnership assets after they have been all realised & converted into money, & all the partnership debts & liabilities have been paid & discharged. This it is, & this only, which on the death of a patnr. passes to his representatives, or to a legatee of his share; which under the old law was considered as bona notabilia; & which on his bankruptcy passes to his trustee." (Lindley on Partnership, Edn. 10, pp. 415, 416).

9. The law in India is not different. Section 46, Indian Partnership Act, defines the rights of patnrs. in the assets of a partnership on the dissolution of the partnership. It is as follows: --

"On the dissolution of a firm every patnr. or his representative is entitled, as against all the other patnrs. or their representatives, to have the property of the firm applied in payment of the debts & liabilities of the firm, & to have the surplus distributed among the patnrs. or their representatives according to their rights."

So it is the surplus which remains out of the assets of the partnership after meeting the debts & liabilities of the partnership, to which a patnr. is entitled according to his share in the partnership, & consequently a patnr. cannot claim a share in the assets of the partnership in specie,

10. The rights of a transferee or assignee of a patnr.'s share are mentioned in Section 29 which runs as follows:

"(1) A transfer by a patnr. of his interest in the firm, either absolute or by mtge. or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring patnr. & the transferee shall accept the account of profits agreed to by the patnrs.

(2) If the firm is dissolved or if the transferring patnr. ceases to be a patnr. the transferee is entitled as against the remaining patnrs. to receive the share of the assets of the firm to which the transferring patnr. is entitled, & for the purpose of ascertaining that share, to an account as from the date of the dissolution."

11. Sub-section (1) of Section 29 refers to the rights of a transferee during the continuance of a partnership. Sub-section (2) deals with those rights after dissolution. During the continuance of partnership, the section explicitly declares that the transferee's only right is to receive the share of profits of a transferring patnr. & that he has to accept the accounts of the partnership agreed to by the parties. Sub-section (2) is not so explicit. On behalf of Mst. Kaso Devi reliance has been placed upon the words in Sub-section (2), "to receive the share of the assets of the firm," & it is contended that upon dissolution the transferee is entitled not merely to the share of the profits but to the share of the property of the firm. This contention is not sound. The phrase "assets of the firm" in Sub-section (2) means nothing else but the amount that remains after meeting the debts & liabilities of the partnership out of the sale proceeds of the property belonging to the partnership & other

amounts in the hands of the partnership.

12. If the contention advanced on behalf of Mst. Kaso Devi were to be accepted, it would give higher rights to the transferee of a patnr. than the patnr. himself possessed in the property of the partnership.

13. The rights of an attaching creditor of a patnr.'s interest, as mentioned in Order 21, Rule 49, C. P. C., also throw a flood of light upon the question under discussion.

14. It follows from what has been stated above that when partnership property has been sold in a suit for dissolution of partnership, the transferee, including a chargeholder of a patnr.'s interest, cannot follow the property of the partnership in the hands of the purchaser. The transferee's interest attaches to the proceeds which are in the hands of the receiver after payments of all the debts & liabilities of the partnership. The property in the hands of Bhola Nath, therefore, is not subject to the charge created by the decree in favour of Mst. Kaso Devi.

15. I, accordingly, allow this appeal, set aside, the order of the Ct. below & allow the objection of Bhola Nath with costs throughout.

16. It must, however, be made clear that the rights of Mst. Kaso Devi as against the money in the hands of the receiver are not affected in any way by this decision.