

Mir Abdul Khaliq (Dead) By Lrs. vs Abdul Gaffar Sheriff (Dead) By Lrs And ... on 31 January, 1985

Equivalent citations: AIR1985SC608, 1985(1)SCALE190, (1985)2SCC14, 1985(17)UJ586(SC), AIR 1985 SUPREME COURT 608, (1985) 1 CURLJ(CCR) 301, (1985) IJR 144 (SC), 1985 SRILJ 27, 1985 UJ (SC) 586, (1985) 2 CURCC 481, 1985 (2) SCC 14

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, R.B. Misra

JUDGMENT

O. Chinnappa Reddy, J.

1. The appeal arises out of a partnership action. The second defendant is the appellant. His express case was that he retired from the partnership with the consent of the other partners, that there was a dissolution of the firm consequent upon his retirement and that the suit so far as he was concerned was barred by limitation. The High Court has expressly found that the second defendant did retire from the partnership on January 19, 1948, that he was given a lorry and a certain sum at the time of his retirement from the partnership, that there was no final settlement of accounts of the firm at that time, nor was there a dissolution of the firm and that the suit for accounts even against the second defendant was within time. Shri M.K. Bhatt, learned counsel for the appellant, urged that the very circumstances on which the High Court relied to arrive at the conclusion that the second defendant had retired from the partnership were also, in the present case, sufficient to enable the court to come to the conclusion that there was a dissolution of the firm on January 19, 1948 when the second defendant retired from the partnership and consequently the suit for accounts so far it related to the second defendant was barred by time. We think there is substance in the submission of the learned counsel. The several documents upon which the High Court relied to arrive at the conclusion that the second defendant had retired from the partnership with the consent of the plaintiff and the first defendant are themselves sufficient to lead us to the conclusion that there was a dissolution of the firm and the suit in so far as it is directed against the second defendant is barred by time. On January 19, 1948, the first defendant wrote to the Canara Bank a letter (Exh. D-48) intimating them that the second defendant was no longer a partner of the firm and requested the bank to close the account of the firm and open a new account in the name of the first defendant and the plaintiff. Exh. D. 21 is an application made by the plaintiff and the first defendant to the Canara Bank to open a current account in the name of the firm of which the two of them alone were partners. Exh. D-22 is a letter of authority in which the plaintiff and the first defendant have described themselves as the partners of Sheriff Brothers. Exhs. D-12, D-13 and D-14 are documents

executed by the plaintiff and the first defendant only in connection with the over-draft which they had obtained from the Canara Bank. In answer to a request by the second defendant for information, the Canara Bank wrote a letter (Exh. D-129) in which it was stated that the account of the partnership of the three partners was closed on January 21, 1948. In our view, these documents clearly show that not only had the second defendant retired from the partnership, but the firm consisting of the three partners, namely, the plaintiff, and the first and second defendants, was dissolved from January 19, 1948. The suit which was filed in 1953 was clearly barred by limitation against the second defendant. The appeal succeeds and the suit is dismissed as against the second defendant. Since none has contested the appeal, there will be no order as to costs.