

MOHD. LAIQUIDDIN AND ANR.

v.

KAMALA DEVI MISRA (DEAD) BY LRS. AND ORS.  
(Civil Appeal Nos. 6933-34 of 2002)

JANUARY 5, 2010

**[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]**

*Indian Partnership Act, 1932:*

ss.42 and 4 – Deemed dissolution of firm – Two partners  
– Death of one partner – LRs of deceased partner not  
interested in continuing the firm or in constituting a fresh firm  
– Effect of – Held: Since there were only two partners  
constituting the partnership firm, on death of one of them,  
there was deemed dissolution of the firm, despite existence  
of a clause in the partnership deed which said otherwise – A  
partnership is a contract between partners – There cannot be  
any contract unilaterally without acceptance by the other  
partner – LRs of the deceased partner could not be asked to  
continue the partnership, as there was no legal obligation upon  
them to do so, as partnership is not a matter of heritable status  
but purely one of contract, which is also clear from definition  
of partnership under s.4.

ss.14 and 48 – Property of firm – Partnership firm,  
constituted for construction of a cinema theatre, consisted of  
two partners – While the first partner offered her land for  
construction of cinema theatre, the second partner  
constructed cinema theatre and other allied constructions by  
procuring funds – Deemed dissolution of the firm in view of  
death of the first partner – Distribution of residual property  
amongst the partners – Held: On facts, there was no intention  
from either partner to treat the land, building, structures etc.  
as properties of the firm – As the partnership got dissolved  
on death of a partner, it would be reasonable to allow both the

A *parties to take their respective properties – First partner entitled to exclusive possession of the land while second partner entitled to take away the movables and recover the value of buildings and structure embedded to the land.*

B *Appeal – Second appeal – New plea – Question of law, based on pleadings and evidence on record, not raised before lower courts – Held: Such question of law can be permitted for the first time before the High Court.*

C *Constitution of India, 1950 – Article 136 – Powers under – Not to be exercised, until grave injustice is shown to be caused to the aggrieved party by way of the impugned order.*

D **The partnership firm in question, constituted for construction of a cinema theatre, consisted of two partners. One of the partners filed suit for dissolution of the partnership firm alleging that the other partner mismanaged the business of the firm, manipulated the account books and stopped payment of the minimum guarantee profit, as envisaged under the partnership deed, to the plaintiff-partner.**

E **In terms of the partnership deed, the plaintiff-partner offered her land for construction of the cinema theatre, while the defendant-partner constructed the cinema theatre and other allied constructions by procuring necessary funds.**

F **During pendency of the suit, the plaintiff-partner died and her legal representatives, i.e. the appellants, were brought on record. The trial court held that there was deemed dissolution of the partnership firm due to death of the plaintiff-partner, and since the appellants were not agreeable to enter into partnership with the defendant-partner, they were entitled for rendition of accounts and to be handed over the entire cinema theatre with allied structures as per the deed of partnership. Meanwhile the**

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defendant-partner also died, and his legal representatives, i.e. the respondents were brought on record before the First Appellate Court, which confirmed the decree passed by the trial court. A

The respondents filed appeal before the High Court, which also held that the partnership firm stood dissolved on account of death of one of the partners, but permitted the respondents to take away the movables from the cinema theatre and recover the value of the building and structures embedded to the land. On a combined reading of the terms of the partnership deed, the High Court held that the land and the cinema were not the properties of the firm but were properties of the respective parties, and thus the appellants were entitled to exclusive possession of the land and the respondents were entitled to take away the projectors and other machineries, the furnitures and all other items, which can be safely removed from their place and that the appellants should pay the respondents the value of the remaining portions of the structures which could not be removed without any damage, after proper valuation of the same. B  
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In appeal to this Court, the questions which arose for consideration were: 1) whether the High Court erred in permitting the respondents in raising a question for the first time in second appeal, which was not in the pleadings before the Trial Court or the First Appellate Court; 2) whether the High Court erred in holding that there had been dissolution of the partnership firm on account of death of a partner and 3) whether the High Court also erred in permitting the Respondents to remove the movables from the cinema theatre. F  
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Dismissing the appeals, the Court

HELD: 1. The contention that the High Court erred H

- A in permitting the respondents to raise a new plea for the first time in the second appeal has no substance. The new plea which was allegedly raised before the High Court for the first time was that all assets of the firm including the land and building is to be dealt with under
- B Section 48 of the Partnership Act, 1932 and the proceeds is to be disbursed to the two partners in accordance with the respective shares as per the partnership deed. The High Court had dismissed this plea. The Respondents did not appeal against the said finding of the High Court.
- C That apart, when a question of law is raised on the basis of the pleadings and evidence on record which might not have been raised before the courts below, it is difficult to hold that such question of law cannot be permitted for the first time before the High Court. Therefore, one fails
- D to see how the Appellants are aggrieved by this finding of the High Court even assuming the High Court had formulated a new question of law, which was not raised before the Courts below. There is thus no scope for exercise of powers by this Court under Article 136 of the Constitution. [Paras 17 and 19] [889-G-H; 890-A-C; 891-A-B]
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*Santakumari & Ors. v. Lakshmi Amma Janaki Amma (D)*  
By Lrs. & Ors. (2000) 7 SCC 60, relied on.

- F *Hardayal Gir v. Sohna Ram* 1970 (3) SCC 635 and *Chandra Singh v. State of Rajasthan* (2003) 6 SCC 545, referred to.

- 2.1. Dissolution of a partnership firm on account of death of one of the partners is subject to the contract entered into by the parties. Though Clause 22 of the Partnership deed herein reads that "the partnership deed shall be in force for a period of 42 years certain from this date and the death of any partner shall not have the effect of dissolving the firm", this clause clearly states that
- G death of any partner shall not have the effect of
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dissolving the firm. However, in the facts and circumstances of the case, absolute effect to this clause cannot be given. [Paras 22 and 23] [892-A-D] A

2.2. When there are only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. A partnership is a contract between the partners. There cannot be any contract unilaterally without the acceptance by the other partner. The appellants, the legal representatives of the deceased partner were not at all interested in continuing the firm or constitute a fresh firm and they cannot be asked to continue the partnership, as there is no legal obligation upon them to do so as partnership is not a matter of heritable status but purely one of contract, which is also clear from the definition of partnership under Section 4 of the Partnership Act, 1932. Therefore, the trial court was justified in holding that the firm dissolved by virtue of death of one of the partners and the first appellate court as well as the High Court have taken the correct view in upholding the same. [Para 26] [893-D-F] B C D E

*Smt. S. Parvathammal v. CIT* 1987 Income Tax Reports 161, approved.

3. As to the issue related to removing the movables from the Cinema and allowing the Respondents to recover the value of the building and structures embedded to the land, from the appellants, it is true that there was no intention from either of the parties to treat these properties as the properties of the firm. A careful perusal of Clause 24 of the Partnership Deed clearly indicates that the land as well as the building with the fixtures etc., to be vested with the plaintiff-partner (since deceased), after the expiry of term of 42 years. It is also true that directing the delivery of the entire property to the F G H

- A appellants would cause prejudice to the rights of the Respondents and would put him to loss. As the partnership got dissolved on the death of the plaintiff-partner, it would be reasonable to allow both the parties to take their respective properties. The appellants are
- B entitled to the exclusive possession of the land and the respondents are entitled to take away the movables from the property and recover the value of the buildings and structure embedded to the land. It has to be assessed by the technically qualified person. The appellants are liable
- C to pay the value of the remaining structures after adjusting the amount if any due to the appellants. [Paras 27 and 41] [893-G; 897-H; 898-A-D]

- D *Arjun Kanoji Tankar v. Santaram Kanoji Tankar* (1969) 3 SCC 555; *Arm Group Enterprises Ltd. v. Waldorf Restaurant* (2003) 6 SCC 432; *Commissioner of Income Tax, Madhya Pradesh v. Dewas Cine Corporation* (1968) 2 SCR 173; *Narayanappa v. Krishtappa* (1966) 3 SCR 400; *Malabar Fisheries Co. Calicut v. CIT* (1979) 4 SCC 766 and *S.V. Chandra Pandian v. S.V. Sivalinga Nadar* (1993) 1 SCC 589,
- E referred to.

*Mills v. Clarke* 1953 (1) AER 779, referred to.

*Halsbury's Law of England*, 4th Edition, referred to.

F Case Law Reference:

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|---|------------------|-------------|---------|
|   | AIR 1978 AP 257  | referred to | Para 4  |
|   | 1970 (3) SCC 635 | referred to | Para 18 |
| G | (2003) 6 SCC 545 | referred to | Para 19 |
|   | (2000) 7 SCC 60  | relied on   | Para 19 |
|   | 1987 ITR 161     | approved    | Para 25 |
| H | (1969) 3 SCC 555 | referred to | Para 31 |

(2003) 6 SCC 432	referred to	Para 32	A
1953 (1) AER 779	referred to	Para 34	
(1968) 2 SCR 173	referred to	Para 36	
(1966) 3 SCR 400	referred to	Para 38	B
(1979) 4 SCC 766	referred to	Para 39	
(1993) 1 SCC 589	referred to	Para 39	

CIVIL APPELLATE JURISDICTION : Civil Appeal  
No.6933-6934 of 2002. C

From the Judgment & Order dated 9.4.2002 of the High  
Court of Judicature, Andhra Pradesh at Hyderabad in A.S. Nos.  
1048 & 1050 of 2001.

WITH D

C.A. Nos. 4411-4412 of 2002.

Dr. K. Parasaran, Rakesh Dwivedi, R.F. Nariman, A.D.N.  
Rao, A. Subba Rao, Roy Abraham, Kishore Rai, Seema Jain, E  
Anant Prakash, Shantanu Krishna, Mukti Choudhary, Preetika  
Dwivedi, Rahul Dua, Himinder Lal for the appearing parties.

The Judgment of the Court was delivered by

**TARUN CHATTERJEE, J.** 1. These four appeals are F  
directed against the judgment and order dated 9th of April, 2002  
passed in second appeal Nos. 1048 & 1050 of 2001 of the High  
Court of Andhra Pradesh at Hyderabad, by which the High Court  
had partly allowed the appeals and modified the order dated  
17th of October, 2001 of the First Appellate Court, which G  
affirmed the order of the Trial Court decreeing the suit for  
dissolution of partnership firm and other relief filed by the  
appellants who are appellants in C.A.Nos.6933-34 of 2002.

2. It may be mentioned that during the pendency of the suit, H

- A the original plaintiff died and her legal representatives were substituted as plaintiffs before the trial court. The original defendant also died before the filing of the first appeal, and his legal representatives were brought on record as Appellant Nos. 2 to 6 before the first Appellate Court. For the sake of
- B convenience, the Plaintiffs would be referred to as the 'Appellants' and the Defendants would be referred to as 'the Respondents'.

3. The case made out by the original plaintiff (since deceased) in her plaint was as follows:
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- Shri Jai Narayan Mishra, original defendant (since deceased) made a proposal to constitute a firm for construction of a cinema theatre on the land of the original plaintiff (since deceased) and on acceptance of the said proposal by her, they
- D executed a deed of partnership dated 26th of June, 1977. Clause 4 of the partnership deed envisaged that the plaintiff's share in the profits would be 2 annas in a rupee. The original plaintiff (since deceased) was receiving Rs. 2,000/- per month from the original defendant (since deceased) in pursuance of
- E Clause 13, which guaranteed that the minimum profit of Rs. 2,000/- per month would be paid to her. The defendant never disclosed to the plaintiff as to what amount was due to her on settling the annual accounts of the firm. The defendant never furnished the statement of accounts to the plaintiff. He never
- F disclosed the amount of profit payable to her towards her two anna share in the business. The defendant mismanaged the business of the firm and manipulated the account books. There was mutual irretrievable distrust between the plaintiff and the defendant and hence it was impossible to get along with the
- G defendant in the business of the firm. The defendant stopped payment of the minimum guarantee profit to the plaintiff with a motive to strain her financial resources. The gravity of distrust assumed such proportions that the plaintiff could not continue as a partner in the firm. The defendant is also guilty of non-
- H furnishing of annual accounts to the plaintiff and hence the suit.



The original defendant (since deceased) entered appearance and contested the suit by filing a written statement. In the written statement, it was, inter alia, alleged as follows:- A

"The value of the land given by the plaintiff for construction of the cinema theatre was only Rs. 70/- per sq.yard in the year 1977. The defendant invested more than Rs. 25 lakhs for the construction of the theatre. He has been maintaining accounts day-to-day in respect of the business of cinema-theatre and no transaction relating to the said business had been concealed from the plaintiff. An extent of 1000 sq.yds. had been acquired by the Government for widening the road out of the total extent of 6808 sq. mts. of the site given by the plaintiff for construction of the cinema theatre and only the remaining land was available for the business of cinema-theatre. The duration of the partnership as per Clause 2 of the partnership deed was 42 years but subsequently it was agreed to give option to the defendant for another period of 20 years. The terms and conditions of the partnership deed were onerous to the defendant. Irrespective of whether the business made profit or not the plaintiff was guaranteed a minimum income of Rs. 2,000/- per month whereas the plaintiff suffered no loss on account of the business running losses. The defendant had been maintaining regular accounts of the firm and after the scrutiny and approval of the plaintiff those accounts were submitted to the Income Tax Department. At the instance of the second son and the General Power of Attorney (GPA) holder of the plaintiff, the defendant stopped payment of minimum profit of Rs. 2,000/-per month to the plaintiff till the clearance of the amount due to Income Tax Department. The defendant had always been ready and willing to pay the amount due to the plaintiff as and when the plaintiff obtained clearance from the Income Tax Department. The plaintiff never whispered any doubt about the correctness of the accounts. The Plaintiff No.2 who is the GPA holder of the original plaintiff (since deceased) H

- A had been acting in a highly irresponsible manner detrimental to the interest of the parties. The alleged gravity of distrust is a result of the willful actions on part of the G.P.A holder of the plaintiff who sought to take advantage of the deteriorating mental and physical condition of the plaintiff. The plaintiff had not issued any notice alleging any contravention of the terms and conditions of the partnership deed and the business was made for a specific period subject to the option of the defendant. The present suit was frivolous and misconceived and therefore was liable to be dismissed with costs."
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4. By the judgment and order dated 18th of January, 1999, the VIIIth Senior Civil Judge, City Civil Court, Hyderabad, decreed the suit and passed a preliminary decree of dissolution and for rendition of accounts. The defendant was further directed to hand over the entire property with allied structure and other materials to the plaintiff.
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The trial court framed the following issues for trial:

- E (a) Whether the plaintiffs are entitled for dissolution of the partnership firm as prayed for?
- (b) To what relief ?

5. After examining the oral and documentary evidence adduced by both the parties, and after verifying the relevant provisions of the Partnership Act the Trial Court, inter alia, arrived at the following findings:
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- "The Partnership firm stood dissolved by the death of the original plaintiff (since deceased) on 17th of May, 1996. Since there was no mutual confidence between the parties and as there had been severe disputes since 1988, carrying on the business of the firm became practically impossible. It was further held that since the legal representatives of the original plaintiff (since deceased), the appellants before us, were not
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agreeable to enter into partnership with the defendant and in view of the dissolution of the partnership due to the death of the original plaintiff, the necessary consequence was rendering of accounts and complying with the other terms of the partnership deed. It was ultimately held that there was deemed dissolution of the partnership firm with effect from 17th of May, 1996 due to the death of the original plaintiff (since deceased) and consequently the appellants, her legal representatives, were entitled for rendition of accounts and to be handed over the entire cinema theatre with allied structures as per Clause 24 of the deed of partnership within three months from the date of the judgment. But the Trial Court recorded a finding that there was no mismanagement by the defendant as alleged in the plaint."

6. As noted herein earlier, after the suit was decreed and before an appeal was preferred from the same, the defendant in the said suit died and his legal representatives were brought on record before the First Appellate Court.

7. Feeling aggrieved by the order of the VIIth Senior Civil Judge, City Civil Court, Hyderabad, the respondents, the legal representatives of the defendant, preferred an appeal before the XIIIth Addl. Chief Judge, (Fast Track Court), City Civil Court, Hyderabad. The appellants also filed cross objections praying that it should be held there was dissolution of the firm on account of mismanagement. The First Appellate Court, by an order dated 17th of October, 2001, dismissed the appeal confirming the judgment and decree of the trial court and allowed the cross objections filed by the Appellants. The issue framed by the First Appellate Court was as follows:

- (a) Whether the plaintiffs are entitled for the dissolution of partnership firm?

8. The Appellate Court, on the question of dissolution of the partnership firm, concurred with the findings of the Trial Court, holding that since there were only two partners in the

- A partnership firm and as one of the partner died there was no scope and possibility to continue the partnership firm. The appellate court further held that the Respondents could not rely upon clause 24 of the Partnership Deed which stipulated that after the expiry of 42 years the land as well as the building with the fixtures etc., would be vested with the original plaintiff (since deceased).

9. On the question of mismanagement of the accounts of the firm, the Appellate Court had allowed the cross objections preferred by the appellants. The respondents did not disclose the accounts and they were ignorant of the amounts and the profits to which appellants were entitled to. The respondents also did not produce the corresponding ledger and cash books. In the light of these findings it was held that the management of the account was not proper.

10. Aggrieved by the order of the First Appellate Court dated 17th of October, 2001, the Respondents took an appeal before the High Court of Andhra Pradesh at Hyderabad. The High Court, by its judgment and order dated 9th of April, 2006, allowed the appeal in part and substantially modified the judgment and decree of the trial court.

11. The issues that were raised for consideration of the High Court were as follows:

- (1) Whether the partnership firm stood dissolved by virtue of Section 42 (c) of the Indian Partnership Act on account of the death of the plaintiff No.1 ?
- (2) Whether there was mismanagement of the business of the partnership firm by the defendant No.1 as he failed to maintain proper accounts?
- (3) Whether the partnership can be treated as a license as contended by the defendant-appellants ?
- (4) Whether the land given by the plaintiff No.1 and the

theatre constructed by the defendant No.1 was the properties of the firm liable to be shared as per the shares of the respective partners?

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(5) Whether the Courts below were justified in directing delivery of the land along with the structures, machineries and equipments to the plaintiff on account of the dissolution of the partnership firm?

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(6) Whether the plaintiff was entitled for rendition of accounts from the date of commencement of the firm till the date of dissolution?

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12. The findings of the High Court as to these issues raised were as follows.

(1) As to the point of the dissolution of the firm, the respondents submitted that since the parties agreed that in spite of the death of any of the partners, the firms shall continue for 42 years irrespective of the death of the original plaintiff (since deceased) in respect of the partnership deed after examining the relevant provision of the Partnership Act, the Court concurred with the findings of the Trial Court and the First Appellate Court. To reach this conclusion, the High Court had placed reliance on the following decisions of this Court, namely, *CIT v. Suraj Bhan Omprakash*, [1986 ITR 833] and *Smt. S. Parvathammal v. CIT*, [1987 ITR 161].

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(2) On the question of mismanagement of the firm, the High Court held that the First Appellate Court was right in holding that there was mismanagement on the grounds of (i) non production of the account books for the verification of the original plaintiff (since deceased); (ii) the non inclusion of the certain amounts received by way of income in the

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- A accounts, (iii) the non submission of correct  
accounts to the income tax department and (iv) the  
failure of the original defendant(since deceased)  
apprising the original plaintiff(since deceased)  
about the profits and losses of the firm.
- B (3) The Respondents pleaded that in the event the court  
comes to a conclusion that the firm stood dissolved,  
the partnership deed was to be treated in the nature  
of license. The High Court held that the respondent  
C could not deny their liability under the other terms  
of Partnership deed, at the same time, seeking  
benefit from the same. The respondents laid undue  
stress on Clause 20 of the partnership deed, which  
showed that the deed was one of partnership and  
D that both parties had acted upon it. Once the issue  
of dissolution was already decided against him on  
the basis of Section 42 of the Act and also Clause  
20, he could not urge the Court to construe the  
same as a license, since both these pleas were  
E irreconcilable with each other.
- F (4) In relation to the question of property of the  
partnership firm, the Court examined Section 14 of  
the Partnership Act, 1932, the legal position and the  
terms of the contract between the parties. Section  
G 14 defines what a property of the firm is. It is subject  
to the contract between the parties. According to  
this section, the property of the firm includes all  
properties and rights and interests in property  
originally brought into the stock of the firm or  
acquired by purchase or otherwise by or for the firm  
or for the purposes and in the course of the  
business of the firm and includes also the goodwill  
of the business. The general rule laid down in the  
section "subject to contract between the parties"  
H makes it clear that the partners may agree between

themselves to change the general rule and such an agreement may be expressed or implied. A

In the partnership deed, it was clearly mentioned that the "1st party" (original plaintiff) offered her land towards her two-anna share capital for the construction of cinema theatre and other allied constructions for running a cinema business. The "2nd party" (Original defendant) agreed to construct cinema theatre and other allied constructions by procuring the necessary funds. It was agreed that the 1st party would not be bound to contribute any amount towards such constructions. In the light of Section 14 of the Act and in the light of the decision of *Boda Narayana Murthy & Sons v. Valluri Venkata Suguna*, [AIR 1978 AP 257], the High Court held that the land and the cinema were not the properties of the firm and they were the properties of the respective parties. B  
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- (5) In relation to the question of directing delivery of the land along with the structures, machineries and equipments to the appellants on account of the dissolution of the partnership firm, the High Court came to a conclusion that the direction for delivery of the entire property to the Appellants would cause prejudice to the rights of the Respondents and would put them to loss. Since the partnership got dissolved on account of the death of the original plaintiff (since deceased), it would be just and reasonable if each party is directed to take their respective properties. But, in view of the embedding of the walls, the flooring, pillars etc., to the land of the original plaintiff (since deceased), it may not be possible for the Respondents to realize the value of the entire building. Further, the High Court held that the appellants were entitled to have E  
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A                exclusive possession of the land and respondents were entitled to take away the projectors and the other machineries, the furnitures and all other items, which can be safely removed from their place and the Appellants should pay the Respondents the value of the remaining portions of the structures which could not be removed without any damage, after proper valuation of the same.

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C                As the First Appellate court held that the management of the account of the firm was not proper, with which the High Court was also in agreement, the High Court noted that the amount, if any, due to the Appellants after rendition of the account of the firm shall be determined. It was observed that the trial court also asked for rendition of accounts on the dissolution of the firm.

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(6)    As for the rendition of accounts, the High Court concurred with the findings of the Courts below.

E                13. The High Court finally concluded that:

F                “The defendants are permitted to take away the machineries, the equipments, the furnitures and all other items including the material of the structure to the extent possible and deliver possession of the land with the remains of the structure which could not be removed on account of impossibility due to embedding of those structures to the land. The defendants are entitled to get the value of such remaining structures assessed through a qualified technical expert and are entitled to get the value of such structures from the plaintiffs after adjustment of the amount, if any, found due to the plaintiffs after finalisation of the accounts which are going to be rendered by them. If the amount due to the 1st plaintiff towards profit of the business to the extent of her share, is more than the value of the remaining structures, the plaintiffs are entitled to

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recover the same from the defendants.”

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14. Feeling aggrieved by the order of the High Court, the Appellants and Respondents filed the present special leave petitions, which on grant of leave, were heard in the presence of the learned counsel for the parties.

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15. Before us the pivotal issues which were raised by the parties are as follows:

(a) Whether the High Court was justified in permitting the Respondents in raising a question for the first time in second appeal, which was not in the pleading before the Trial Court or the First Appellate Court?

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(b) Whether the High Court was justified in holding that there had been dissolution of the partnership firm on account of death of a partner?

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(c) Whether the High Court was justified in permitting the Respondents to remove the movables from the disputed property, contrary to the deed of partnership entered into between the original plaintiff and the original defendant?

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16. We have heard the learned senior counsel for the parties and examined the impugned judgment and the materials on record.

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17. As to the issue raised by the Appellants that the High Court was not justified in permitting the Respondents to raise a new plea for the first time in the second appeal, we may at the outset note that we do not find any substance in this contention raised by the learned counsel for the appellants. They contended that the High Court committed an error of law in considering a new ground of challenge without any plea or factual background neither before the Trial Court nor the first appellate court. The new plea which was allegedly raised

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A before the High Court for the first time was that all assets of the firm including the land and building shall be dealt with under Section 48 of the Act and the proceeds shall be disbursed to the two partners in accordance with the respective shares as per the partnership deed. The High Court as can be seen from the record had dismissed this plea. The Respondents have not appealed against the said finding of the High Court. That apart, when a question of law is raised on the basis of the pleadings and evidence on record which might not have been raised before the courts below, it is difficult to hold that such question of law cannot be permitted for the first time before the High Court. Therefore, we do not see how the Appellants are aggrieved by this finding of the High Court even assuming the High Court had formulated a new question of law, which was not raised before the Courts below.

D 18. In the case of *Hardayal Gir v. Sohna Ram*, [1970 (3) SCC 635], this Court had set aside the judgment of the High Court which allowed the plaintiff to raise a plea of misrepresentation, raised for the first time in the second appeal. In that case, however, the High Court held that the contract had become unenforceable on account of the plea of misrepresentation. Hence, the defendant in that case was indeed aggrieved as the High Court had allowed a plea which he could not have defended properly. In the case at hand, the plea in question, assuming it had been raised for the first time, had been rejected by the High Court, and there had been no appeal from the said finding.

G 19. The Respondents relied on the following decisions: *Chandra Singh v. State of Rajasthan* [(2003) 6 SCC 545], in which case this Court enunciated the principles governing the exercise of its jurisdiction under Article 136 of the Constitution of India; and *Santakumari & Ors. v. Lakshmi Amma Janaki Amma (D) By Lrs. & Ors.*, [(2000) 7 SCC 60] in which decision this Court, after examining the orders of the Courts below arrived at a conclusion that the Second Appellate Court had

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not made out a new plea by merely interpreting the documents and by putting a form to the nature of transactions in question. In the light of our views expressed hereinabove on this issue, we do not find it necessary to further delve into this matter. Suffice it to say that as held in the case of *Santakumari* (supra), this Court would not exercise its powers under Article 136 of the Constitution, until grave injustice is shown to be caused to the party by way of the impugned order.

20. The sole issue raised by the Respondents in this appeal, who are the appellants in Appeal No. 4411-4412 /2002, is whether the finding of the Courts below that the Partnership firm stood dissolved on account of death of one of the partners was correct in the light of the express provisions of the Partnership Act, namely, Section 42 (c) of the same. Before we proceed to examine the correctness of this concurrent findings arrived at by the Courts below, it is necessary to examine the relevant provisions of the Partnership Act, 1923 and the relevant clauses of the partnership deed entered between the original plaintiff and the original defendant.

"Partnership" is defined under Section 4 of the Act which reads as under:

*"Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all".*

21. Section 42 of the Act reads as under:

*"Dissolution on the happening of certain contingencies:— Subject to contract between the partners a firm is dissolved-*

- (a) if constituted for a fixed term, by the expiry of the term;
- (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

A (c) *by the death of a partner; and*

(d) *by the adjudication of a partner as an insolvent."*

B 22. Dissolution of a partnership firm on account of death of one of the partners is subject to the contract entered into by the parties. In this context, it is pertinent to refer to the terms of the deed of partnership.

23. Clause 22 of the Partnership deed reads as follows:

C *"The partnership shall be in force for a period of 42 years certain from this date and the death of any partner shall not have the effect of dissolving the firm."*

D This clause clearly states that death of any partner shall not have the effect of dissolving the firm. However, in the facts and circumstances of the case, we are not in a position to give absolute effect to this clause of the deed of partnership.

E 24. The learned counsel for the Respondents contended that since the parties agreed that in spite of the death of any of the partners, the firm shall continue for 42 years irrespective of the death of the original plaintiff (since deceased). They further, argued that it clearly contemplates that the legal representative of the partner, who dies, would be under a duty to enter into a fresh deed of partnership. The legal representatives were precluded from claiming benefits if they deny entering into a fresh partnership agreement.

G 25. In order to arrive at the conclusion that the partnership firm stood dissolved on account of death of one of the partners, the High Court had rightly placed reliance on *Smt. S. Parvathammal v. CIT* (1987 Income Tax Reports 161), wherein this Court held that in a firm consisting of two partners on account of death of one of the partners, the firm automatically dissolved and observed as follows:

H *"A partnership normally dissolves on the death of the*

*partner unless there was an agreement in the original partnership deed. Even assuming that there was such an agreement in a partnership consisting of two partners on the death of one of them the partnership automatically comes to an end and there is no partnership which survives and into which a third party can be introduced. Hence on the death of S, the original partnership was dissolved. The subsequent taking in of the assessee as a partner was only as a result of entering into of a new partnership between R and the assessee. Partnership was not a matter of heritable status but purely one of contract."*

26. In the light of aforementioned case, it is clear that when there are only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. A partnership is a contract between the partners. There cannot be any contract unilaterally without the acceptance by the other partner. The Appellants, the legal representatives of original plaintiff (since deceased) was not at all interested in continuing the firm or constitute a fresh firm and they cannot be asked to continue the partnership, as there is no legal obligation upon them to do so as partnership is not a matter of heritable status but purely one of contract, which is also clear from the definition of partnership under Section 4. Therefore, the trial court was justified in holding that the firm dissolved by virtue of death of one of the partners and the first appellate court as well as the High Court have taken the correct view in upholding the same.

27. As to the issue related to removing the movables from Anand Cinema and allowing the Respondents to recover the value of the building and structures embedded to the land, from the appellants, we should examine the relevant provision of the Act and the relevant clause of the partnership deed.

28. Section 14 of the Partnership Act talks about the property of the firm. It reads as follows:

- A        "Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.
- B

Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

C

29. In addition to this, it is necessary to examine the certain clauses of the Partnership deed, which were entered between the original plaintiff and the original defendants.

D

*Clause 24 -*

E

*"The Party of the Second Part hereby declares, covenants and agrees that at the end of the period of forty two (42) years, this partnership shall automatically come to an end and thereafter the entire property, that is land, buildings, constructions, machineries, equipment, furniture, fixture, fittings etc., shall automatically vest in the party of the first part in "As is where is" condition. Neither party shall be entitled to remove any item or property except for replacement by the firm during the subsistence of this Partnership Firm"*

F

G

30. The learned counsel for the Appellants contended that the High Court was in error in allowing the Respondents to remove the movables from Anand Cinema and in holding that they are entitled to the value of the building and structures embedded to the land, from the Appellants. Further, he argued that the High Court had concurrently found that the partnership is dissolved by operation of law and mismanagement by the Respondents and therefore by virtue of Clause 24 of the deed,

H

the Appellant was entitled to get the entire Anand cinema hall, which was admitted by the Respondent during his examination. A

31. The learned counsel for the appellants on the question of the partnership property relied on various cases of this Court. In the case of *Arjun Kanoji Tankar v. Santaram Kanoji Tankar* [(1969) 3 SCC 555], this Court held that "the property belonging to a person, in the absence of an agreement to the contrary does not, on the person entering into a partnership with others, become the property of the partnership merely because it is used for the business for partnership. *It will become property of the partnership only if there is an agreement express or implied at the property was, under the agreement of partnership, to be treated as the property of the partnership.*" [Emphasis supplied] B C

32. The same view has been reiterated in the case of *Arm Group Enterprises Ltd. v. Waldorf Restaurant*, [(2003) 6 SCC 432]. D

33. The learned counsel for the Appellant placed reliance on Halsbury's Law of England, to determine how to construe a partnership agreement. Paragraph 39 of the Halsbury's Law of England (4th Edition) states as follows: E

*"Partnership agreements, like any other agreements, will be construed according to normal canon of construction, so that a court will construe a partnership agreement in the light of partners objectives, and terms may be implied by the Court to give the agreement business efficacy."* F

34. In the case of *Mills v. Clarke*, [1953 (1) AER 779] the defendant started the business of a photographer and then admitted the plaintiff- a successful freelance photographer as a partner. The leasehold premises, furniture and studio belonged to the defendant. It was intended to record the terms of partnership into a formal agreement, but no terms were ever settled, except that the partners were to share the profits equally. G H

- A On dissolution of the partnership it was held that no terms ought to be implied except such as were essential to business efficacy and that only consumable items of stock-in-trade were to be regarded as assets of the partnership, and the lease of the property, equipment and personal goodwill were to be treated  
B as being the property of the partners who brought them into business.

- C 35. The learned counsel for the Respondents contended that as per clauses 11 and 13 of the deed, the land, the building and the machinery became the property of the firm and the said property has to be treated as the property of the firm under Clause 21 and learned counsel for the respondents further submitted that as the plaintiff's share was only 2 anna as per clause 4, the value of the above properties of the firm shall be distributed in the ratio of 2:14 between them.

- D  
36. The learned counsel for the respondents relied on various cases of this court. In the case of *Commissioner of Income Tax, Madhya Pradesh v. Dewas Cine Corporation*, [(1968) 2 SCR 173], this Court held that "a partner may, it is  
E true, in an action for dissolution insist that the assets of the partnership be realised by sale of its assets, but where in satisfaction of the claim of the partner to his share in the value of the residue determined on the footing of an actual or notional sale property is allotted, the property so allotted to him cannot  
F be deemed in law to be sold to him.

- G 37. Under the Partnership Act, 1932, property which is brought into the partnership by the partners when it is formed or which may be acquired in the course of the business becomes the property of the partnership and a partner is, subject to any special agreement between the partners, entitled upon dissolution to a share in the money representing the value of the property."

- H 38. In the case of *Narayanappa v. Krishtappa*, [(1966) 3 SCR 400], the issue was whether on relinquishment of rights



by partners of an erstwhile partnership, there was a transfer of immovable property, which required to be registered to constitute a valid transfer. This Court observed:

"No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own...His right is to obtain such profits, if any, as fall to his share from time to time and upon dissolution of the firm to share in the assets of the firm which remain after satisfying the liabilities set out in S.48. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property...The person who brought it in would, therefore, not be able to claim any exclusive right over any property which he has brought in, much less over any other partnership property."

39. This principle was reiterated in the case of *Malabar Fisheries Co. Calicut v. CIT*, [(1979) 4 SCC 766].

40. In the case of *S.V. Chandra Pandian v. S.V. Sivalinga Nadar* [(1993) 1 SCC 589], this Court held that:

"In the entire asset of the firm all the partners have an interest albeit in proportion to their share and the residue, if any, after the settlement of accounts on dissolution would have to be divided among the partners in the same proportion in which they were entitled to a share in the profit... The mode of settlement of accounts set out in Section 48 clearly indicates that the partnership asset in its entirety must be converted into money from the pool disbursement has to be made..."

41. In the light of the argument advanced by the learned counsel for the parties, the relevant provisions of the Act and

- A the clauses of the deed, we do not find any infirmity in the reasoning given by the learned Judge of the High Court. It is true that there was no intention from either of the parties to treat these properties as the properties of the firm. A careful perusal of Clause 24 clearly indicates that the land as well as the
- B building with the fixtures etc., to be vested with the original plaintiff (since deceased), after the expiry of term of 42 years. It is also true that directing the delivery of the entire property to the appellant would cause prejudice to the rights of the Respondents and would put him to loss. As noted hereinabove,
- C the partnership got dissolved on the death of the original plaintiff (since deceased), it would be reasonable to allow both the parties to take their respective properties. The Appellants are entitled to the exclusive possession of the land and the Respondents are entitled to take away the movables from the
- D property and recover the value of the buildings and structure embedded to the land. It has to be assessed by the technically qualified person. The Appellants are liable to pay the value of the remaining structures after adjusting the amount if any due to the Appellants.
- E 42. Accordingly, we do not find any merit in these appeals and the appeals are thus dismissed. There will be no order as to costs.

B.B.B.

Appeals dismissed.