Madras High Court
N. Gangulu Naidu vs Namineni Chengama Naidu And Anr. on 17 September, 1924
Equivalent citations: 85 Ind Cas 397, (1924) 47 MLJ 871
Author: V Rao
JUDGMENT Venkatasubba Rao, J.

1. This is a Letters Patent appeal from the decision of the Officiating Chief Justice. The facts that have led to this appeal may be briefly stated. The plaintiff sued the defendants, who are four in number, alleging that he entered into a partnership with them, that he contributed towards capital Rs. 1,745, that the defendants by suppression of the accounts of the firm and otherwise were causing loss to him, and on these grounds he asked for a decree dissolving the partnership and directing the defendants to pay him the amount due inclusive of interest and profits.

2. Defendants 1 to 3, while admitting that they entered into the partnership, pleaded that as the plaintiff had made default in the payment of the capital agreed to be contributed, the partnership was dissolved within a few months of its formation, that the accounts were settled, that the amount due to the plaintiff was paid up and that the account-books of the dissolved partnership were taken by the plaintiff. The written statement of the 4th defendant is not before us, but it would appear that he did not admit that the plaintiff contributed Rs. 1,745 as capital, but he had no objection to have accounts taken and his share of the profits paid over to him.

3. The learned Subordinate Judge found that substantially the case of the plaintiff was true, that the defendants fraudulently withheld the account-books, and in the result he gave the plaintiff a decree for Rs. 1,745 and profits amounting to Rs. 1,100. The plaintiff claimed in the plaint the said amount as profits, and on the ground that every presumption should be drawn against parties suppressing the account-books, the Subordinate Judge accepted the figure mentioned by the plaintiff as the profits due to him and directed that amount to be paid.

4. From the decree of the Subordinate Judge the first three defendants preferred an appeal to the District Judge. The 3rd appellant (3rd defendant) subsequently died and his legal representative was not brought on the record within the prescribed period. The appeal abated so far as the deceased appellant was concerned under Order 22, Rule 3, Civil Procedure Code, and the respondent applied to the District Judge for the dismissal of the appeal on the ground that all the partners were necessary parties to a partnership action and that the appeal in the absence of the legal representative of the 3rd appellant was incompetent. The District Judge on the strength of Raj Chunder Sen v. Ganga Das Seal and Ramgati Dhur v. Raj Chunder Sen (1904) ILR 31 C 487 (PC) dismissed the appeal. It may be observed in this connection that the 4th defendant was not even at the outset made a party to the appeal, but this defect was not made a ground of the application to dismiss the appeal.

5. A second appeal was filed to this Court by defendants 1 and 2 from this order of dismissal. Spencer, O.C.J., holding that Raj Chunder Sen v Ganga Das Seal and Ramgati Dhur v. Raj Chunder Sen (1904) ILR 31 C 487 (PC) did not apply to the facts of this case, reversed the decision of the District Judge and remanded the appeal to the lower appellate Court for disposal on the merits. I am

of the opinion that the decision of the learned Officiating Chief Justice is right. It is undoubtedly true that ordinarily, to a partnership action, all the partners must be made parties, for an account cannot be taken in the absence of any partner. Let me take an example. A sues B, C and D for an account of a dissolved partnership. A claims Rs. 500 as the amount payable to him. If a partnership account is taken, it may be found that D owes the partnership Rs. 2,000 out of which C is entitled to Rs. 1,000, B to Rs. 500 and A to Rs. 500.

6. Take another instance. A claims Rs. 500. The accounts may disclose that B and C owe the partnership each Rs. 1,000, Rs. 1,500 is due to D and Rs. 500 to A. These illustrations show that it is ordinarily impossible to take an account of a dissolved partnership in the absence of any one of the partners. The Courts have therefore invariably held that a plaintiff in a partnership action is liable to have his suit dismissed if he does not make all the partners parties to his suit.

7. In the present case, however, the facts are somewhat different. The Subordinate Judge has given a decree for a lump sum, being of the opinion, that accounts cannot be taken in the normal way in the absence of account-books. Whether the Judge was justified in giving the plaintiff a decree for the whole amount of profits claimed, is not a matter with which we are now concerned. It is no doubt true that his finding in effect involves taking of an account. As Mr. A. Krishna-swami Aiyar, the vakil for the plaintiff put it, the decree of the Subordinate Judge is the result of a notional taking of an account though there may be no actual taking of an account. This, I am prepared to accept; but still is the presence of all the parties necessary ?

8. Firstly, defendants 1 and 2, who were the appellants before the District Judge, contend that there was no partnership at all. In deciding this issue, the Court is not hampered by the absence of any of the parties. The case of those defendants is that there is no partnership to be dissolved and the rule that requires that all the partners must be made parties to a partnership action cannot apply to a case like the present where the appellants deny the existence of the partnership.

9. Secondly, the three defendants who originally filed the appeal put forward a common case, were represented by a single pleader and preferred a joint appeal. They made common cause against the plaintiff and there was no dispute on any point among themselves. They urged that the plaintiff was in possession of the account-books and was responsible for their, suppression. If in appeal this contention is accepted and the plaintiff is found to be in possession of the books, he being unable to produce them, (he asserts he has not got them), the appeal will be allowed and the plaintiff's suit will be dismissed. In this event again, the absence of any particular party is not fatal to the appeal. Under Order 41, Rule 4, Civil Procedure Code, the decree then may be reversed not only in favour of the defendants who are before the Court, but of all the defendants. It makes no difference that the other defendants are not parties to the appeal.

10. Thirdly, if it is found in appeal that the defendants suppressed the account-books, two alternatives are possible : either the decree of the Subordinate Judge may be affirmed or the Appellate Court may direct an account to be taken on a different footing, different from the one adopted by the Subordinate Judge. If the decree of the Subordinate Judge is affirmed, then again the absent defendants will be bound by the result, and the fact that they are not represented in appeal

causes no inconvenience. If any different basis is adopted by the Appellate Court for taking the account, even in that case, no dispute at any time having existed between the three defendants, the absence of one of them in the appeal does not stand in the way of the rights of the parties being determined. Whatever may be the amount decreed by the Appellate Court the three defendants were prepared to pay it jointly, and it must be noted that the decree of the Appellate Court cannot be for an amount larger than what was allowed by the Sub-Court. If the decree of the Appellate Court to any extent modifies the Sub-Court's decree in favour of the defendants, it may enure for the benefit of all of them; but as between the three defendants the Court is not called on to decide the measure of the liability of each one of them and determine their rights inter se. And the learned Vakil for defendants 1 and 2 has clearly stated to us (if any such assurance is necessary) that his clients do not propose to raise any question of this kind. In this view also, the absence of the 3rd defendant's representative is not fatal to the appeal.

11. Raj Chunder Sen v. Ganga Das Seal and Ramgati Dhur v. Raj Chunder Sen (1904) ILR 31 C 487 (PC) is therefore clearly distinguishable and does not apply.

12. As stated at the very outset, there is no indication that an objection was taken by the plaintiff to the appeal being defectively constituted on account of the absence on the record of the 4th defendant. This is possibly due to the fact that the plaintiff realised that under Order 41, Rule 20, Civil Procedure Code, it was open to the Court to direct the 4th defendant to be made a party. But, however, it is unnecessary to consider this point as I find that it was not raised before the District Court.

13. In the result, the judgment of the Officiating Chief Justice is confirmed and the Letters Patent Appeal is dismissed with costs.

Jackson, J.

14. I agree.