Bombay High Court
Iqbalnath Premnath Anand vs Rameshwarnath Premnath Anand And ... on 21 January, 1976
Equivalent citations: AIR 1976 Bom 405
Bench: Mukhi
JUDGMENT

1. A short but some what interesting question arises in this appeal from order, as to when a partnership can be said to be not a partnership at will even if the relevant deed of partnership does not contain any express provision either as to the duration or the determination of the partnership.

2. By a deed of partnership dated the 4th December, 1967, the plaintiff and the two defendants who are blood relations (the plaintiff and the first defendant being brothers and the second defendant being their mother) agreed to continue the family business of Messrs Ramsarandas & Sons, operating inter alia as Passage & Passport Agents. It would appear that the business was originally started years back in 1914, by an ancestor of the parties, as a proprietary business, and was thereafter converted into a partnership. There were several reconstitutions in between until the present firm was constituted by the above mentioned deed of partnership dated 4th December, 1967. It is this partnership, with which this appeal is concerned.

3. It is now appropriate to set out some of the relevant provisions and clauses of this partnership deed because a considerable amount of argument has been advanced on the interpretation of this deed and in particular clauses 14 and 15 thereof.

4. Now it is provided in clause 1, that the partnership business shall be deemed to have commenced on and from the 25th day of October, 1967. The parties expressly agreed by clauses 6 and 13 that to begin with the profit and losses of the calendar year 1967, were accepted and confirmed by all the partners. The provisions were obviously inserted with a view to ensure the continuity of the business. Clause 14 after stating that the partnership was at will provides for the retirement of a partner and clause 15 provides that the death or legal disability of a partner shall not have the statutory effect of dissolving partnership. Clauses 14 and 15 may be reproduced in extenso and read as follows:-

"14. That the partnership being at will any partner shall be at liberty to retire or be separate from the firm but in that case such partner shall have to give two clear months' previous notice in writing to the other partners of his intention to do so, and at the expiration of the period of such notice and on settling the accounts and his liabilities, he shall be allowed to retire from the firm.

15. That in case of death of any of the partners or of any legal disability of a partner, the partnership business shall not be dissolved, but shall continue subject to the provisions of this Deed. Anyhow, within six months, new deed shall be executed by the continuing partners, with the mutual consent of the surviving partners and legal heirs of the deceased or legally disabled partner."

It would appear that the partnership firm operated not only in the Bombay but at several places in the Punjab and particularly at Jullundur and it is the contention of the defendants that the air travel

business at Jullundur Office constituted the main and most important part of the partnership business.

5. Sometime in May 1973, disputes and differences arose between the partners that is to say the plaintiff on the one side and the two defendants on the other and it requires to be noticed that defendant No. 2 who is the mother is clearly on the side of the younger son Rameshwarnath defendant No. 1. As the result of the disputes and differences defendant No. 1, apparently with the approval of his mother, defendant No. 2, filed a criminal complaint against his elder brother i.e. the plaintiff at Jullundur, and obtained a warrant for his arrest. It would appear that the charge was that the plaintiff had taken away a large sum of money from one of the bank accounts of the firm with the United Commercial Bank, at Jullundur. Those moneys were said to represent trust moneys in the sense that they comprised refunds received by the firm from several Air Lines on air-tickets and these moneys were required to be returned to the customers concerned after deducting the firm's commission etc. I am informed that the Criminal Case at Jullundur is still going on.

6. As a result of these disputes and differences, the plaintiff by his advocate's letter dated the 19th June, 1973, gave a notice to the two defendants as the other partners of the firm seeking dissolution of the firm.

7. In paragraph 1 of the said letter (which is claimed by the plaintiff to be a notice for dissolution) after setting out that the plaintiff's share in the profit and losses was 35% and that the partnership was a partnership at will, a reference was made to clause 14 of the partnership-deed which has been set out above and it was stated that clause 14 provided that any partner will be at liberty to dissolve the firm on giving two clear moths' notice in writing to the other partner of his intention to do so.

8. Paragraph 2 of the said notice then reads as follows:

"Accordingly my client does hereby give you two clear months' notice of his intention to dissolve the said firm as he is no longer desirous to continue the partnership business with you. At the expiry of the aforesaid period the said firm shall stand dissolved."

The said notice then went on to mention that since 1970, the business of the firm at Bombay was being managed by defendant No. 1; that defendant No. 2 was a sleeping partner and that defendant No.1 had mismanaged the affairs of the firm and misappropriated large sums from the partnership moneys. It was then contended that the plaintiff had lost confidence in his partners and that is why he wanted that the firm should be dissolved and the affairs of the firm wound up.

9. To this letter, the defendants sent a reply through their Solicitors M/s. Gagrat & Co., and there was a suggestion that instead of indulging in a prolonged and costly litigation it was better that the disputes should be amicable settled. The plaintiff, by his Advocate's letter dated the 28th June, 1973, welcomed the suggestion. Nothing appears to have come out from this avowal of both parties to seek an amicable settlement. In fact in a letter dated the 4th July 1973 the defendant's Solicitors accused the plaintiff of adopting a strange attitude and then stated that there seemed to be no scope for an amicable settlement.

10. The followed a letter which has considerable significance. In that letter which is dated the 9th July, 1973 and is addressed by the defendant's Solicitors M/w. Gagrat and Co. to the plaintiff's Advocate, Mr. Mahendra Gill, in the second paragraph it is stated:-

"Our clients are prepared to waive the two month's notice period and treat the firm as dissolved earlier even on date that may be agreed. In any event, our clients are agreeable to the dissolution of the firm."

The letter then went on to mention that wild allegations had been made by the plaintiff ; referred to the surreptitious withdrawal made by the defendant of a large sum of money namely Rs. 1, 10, 000/- from the firm's Bank account at Jullundur and demanded refund of the said amount by the plaintiff.

11. Now it must be mentioned that Mr. Mahendra Gill, the learned Advocate for the plaintiff, has stated that the reference to clause 14 in the letter dated June 19, 1973, addressed by him on behalf of his clients to the two defendants was a mistake in the sense that the notice of dissolution of the partnership firm did not require to be a notice of two clear months and that what clause 14 really provides is that when a partner chooses to retire then he must give two months' clear notice in writing of his intention to so retire.

12. Mr. Gill, says that the intention of the plaintiff was to dissolve the firm by exercising his right in law to do so by a notice of dissolution under Section 43 of the Indian Partnership Act, 1932, (hereinafter referred to as "the Act") is clear from paragraph 2 of the letter dated the 19th June, 1973 (which has been set out above) and that at the worst it may be taken that the mention of two months' period indicates the date from which the firm is to be dissolved as provided under sub-section (2) of Section 43 of the Act.

13. In so far as the letter dated 9th July, 1973, addressed by the defendants' Solicitor M/s. Gagrat and Co. is concerned, Mr. V. O. Meghani, the learned Advocate for the defendants says that the sentence in paragraph w of that letter namely.

"In any even, our clients are agreeable to the dissolution of the firm."

does not mean that the defendants were really agreeable to the plaintiff's retirement from the firm. According to Mr. Meghani, this construction is proper and reasonable because in plaintiff's advocate's letter clause 14 of the deed of partnership, was referred to.

14. It requires to be mentioned that during the course of the arguments, it was vehemently suggested by Mr. Meghani, that the plaintiff's Advocate's notice, dated the 19th June, 1973, is really a notice of retirement; that the plaintiff had in fact retired from the partnership and that all that he (the plaintiff) was entitled to was the ascertainment of his share and dues, if any, so that the partnership business which according to him was an old family business must continue and be in the hands of the two defendants.

15. I will refer to this aspect of the matter at a later stage of this judgment.

16. Basically the contention of Mr. Gill, the learned advocate for the plaintiff is, that a proper construction of the deed of partnership the 4th December 1967 will show that it is clearly a partnership at will. It is then contended that by the letter dated 19th June 1973 a valid notice of dissolution was given by the plaintiff, notwithstanding the mistaken reference to clause 14 and that in any event, the correspondence reveals that there was mutual consent that the firm dissolved, when the defendants in terms stated that they were agreeable to the dissolution of the firm. According to Mr. Gill, in this view of the matter even if it were to be assumed that the notice of dissolution dated the 19th June 1973 was somehow defective the dissolution of the partnership firm will be by consent under the provision of Section 40 of the Act.

17. Mr. Meghani, the learned Advocate for the defendants, on the other hand contends that the partnership is not at will; that the letter dated the 19th June, 1973 by the plaintiff's advocate, to the defendants, at the best, constitutes a notice under clause 14 of the partnership deed for retirement of the plaintiff and that in fact the plaintiff has so retired.

18. Naturally, on the basis of their respective contentions it is urged on behalf of the plaintiff that a Receiver of the assets of the partnership firm must be appointed and on behalf of the defendants the plaintiff's argument is refuted and it is urged that no receiver can be appointed. The defendants then contended that in any even the conduct of the plaintiff as disclosed by material on record is such that the Court should not assist him by appointing a receiver of the partnership assets.

19. It requires to be noticed that the plaintiff's notice of motion for appointment of receiver, being No. 3413 was taken out on the 10th August 1973 and a Judge of the City Civil Court. (Judge Suresh) by his order dated the 20th February, 1975, refused to appoint a receiver. The learned Judge rejected prayer (a) of the notice of motion but passed an order as regards prayer (b) restraining the parties as to dealing with some of the properties.

20. It also requires to be noticed that the learned Judge of the City Civil Court, began his order by saying that there was hardly any substance in the notice of motion. A perusal of the order of the learned Judge, shows that according to him the core of the matter was that in the instant case the partnership was not a partnership at will. He arrived at this conclusion on a reading of Cls. 14 and 15 of the partnership deed and then curiously went on to observe (presumably on his construction of the plaintiff's advocate's letter of 19th June 1973) that the plaintiff had in fact retired from the partnership as contemplated by clause 14 of the deed of partnership.

21. It would appear that the learned Judge, on his reading of the deed of partnership and in particular clauses 14 and 15 and on the basis on an English decision in Abbott v. Abbott, reported in (1936) 3 All ER 823, came to the conclusion that in the instant case the partnership was not a partnership at will and therefore held that plaintiff could not claim a dissolution of the firm.

22. In this view of the matter, the learned Judge, did not consider it necessary to deal with the affidavits of the parties in detail, but briefly referred to places in Bombay and Punjab where partnership business was being carried on and to certain properties in Kumpta Street, and Fort Street at Bombay.

23. It is in these circumstances that the plaintiff being aggrieved by the order of the learned Judge of the City Civil Court dated 20th February 1975 has filed this appeal.

24. Now I should have thought that a perusal of the deed of partnership dated 4th December 1967 and in particular the opening words in clause 14, "The partnership being at will ....." was sufficient to disclose to the Court in intention of the parties that the partnership constituted by the deed of 4th December 1967 was a partnership at will within the meaning of the Act and that in view of such an express declaration by the parties there would be no question of a contrary implication.

25. But Mr. Meghani argued that the deed of partnership dated the 4th December, 1967 (which according to him was only one of a series, concerning the family business) read as a whole and properly construed, taking into account its history, would show that it was never intended that the partnership should be dissolved at the whim of any individual partner. On this footing he claimed that the partnership was not a partnership at will.

26. In support of his contention Mr. Meghani has taken me though a number of authorities to some of which I will refer, even though the general principles on which, provisions as to the duration and/or determination of partnership may be implied, have been discussed buy the Supreme Court in Karumuthu Thiagarajan Chettiar v. E. M. Muthappa Chettiar, .

27. Now in order to determine whether the partnership between the parties is a partnership at will or not, regard has to be had not only to the principles of construction of documents (so that it may be ascertained if there are any implied provisions) but also to the relevant provisions of the Indian Partnership Act of 1932.

28. No doubt the Court may obtain assistance from English as well as Indian authorities as also from learned commentaries such as Lindley on Partnership and S. T. Desai on the Law of Partnership but the question as to the nature of the partnership involved and the rights of the partners concerned can only be decided and determined in the light of the provisions of the Indian Partnership Act, 1932.

29. It requires to be noticed that there are specific provisions in the Act concerning the nature of a partnership; the rights of the partners concerned as to dissolution; and when a partnership can be said to determine by efflux of time or otherwise. Now it is significant that there also special provisions as to incoming and outgoing partners and Chapter V provides for the introduction of a partner into an existing firm as well as the retirement of a partner from an existing firm.

30. It is important to notice that unlike the position in England what is a partnership at will has been defined by Section 7 of the Indian Partnership Act. Section 7 reads follows:

"Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will."

In so far as the dissolution of a firm is concerned the relevant provisions are contained the relevant provisions are contained in Chapter VI which begins with Section 39. Section 40 provides for dissolution by agreement. Section 41 provides for compulsory dissolution in certain contingencies subject however to contract between the partners. One of such contingencies is the death of a partner and another the adjudication of a partner as an insolvent.

31. Section 43 which gives a statutory right to a partner to enforce a dissolution by notice reads as follows:

"43 (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of communication of the notice."

Section 44 provides for dissolution by the Court on any of the grounds stated therein.

32. It is also necessary to refer to Section 32. The material portion of which i.e. (1) (c), provides that a partner may retire where the partnership is at will by giving a notice in writing to all the other partners of his intention to retire.

33. Mr. Meghani, invited my attention firstly to Glynn v. Margetson and Co., 1893 AC 351 Accommodation in particular to a remark of Lord Halsbury at page 357 that it was permissible for the Court:-

"Looking at the whole of the instrument, and seeing which I will give in a for a reason which I will give in a moment, as its main purpose, one must reject words, indeed whole provisions, if they inconsistent with what one assumes to be the main purpose of the contract. The main purpose of the contract was to take on board at one port and to deliver at another port of perishable cargo." Mr. Meghani described this rule of construction as the "Main Purpose Rule" and stated that the remarks of Lord Halsbury were approved in the latter case of Societe Atantique Society D'armement Maritime S. A. v. N. Rotterdamsche Kolen Centrale, reported in (1966) 2 WLR 944 at page 986. He then referred to a divorce case, Hart v. Hart, (1881) 18 Ch 670, where Kay, J. at page 692, observed that the Court must try to construe the agreement by placing itself in the position as near as it can be, of the parties making the agreement. The learned Judge said that, "That is the rule, as I understand, on the construction of every deed or document, whether it be an agreement, a deed, or a will."

34. Mr. Meghani, then referred to an English Case Admastos Shipping Co, Ltd. v. Anglo-saxon Petroleum Co. ltd. reported in (1958) 1 All ER 725, where on a construction of the document, the words, "bill of lading" were read as the words, "Charter party".

35. Mr. Meghani, also referred to an old English case, Grawshay v. Maule, (1818) 1 Swans 495, a passage from which is quoted in Karumuthu Thiagarajan Chettiar's case . In that case, the Supreme

Court observed that implied terms could be read into a agreement in order to ascertain whether agreement contained any of the two exceptions referred to in Section 7 of the Act. The Supreme Court, was considering the question as to what was the meaning of the words, 'partnership at will' and thereby the scope and ambit of Sections 7 and 43 of the Act.

36. This is what the Supreme Court said:

"Now S. 7 contemplates two exceptions to a at will. The first exception is where there is a provision in the contract for the duration of the second exception is where there is provision for the determination of the . In either of these cases the is not at will. The duration of a may be expressly provided for tin the contract; but even where there is no express provision, Courts have held that the will not be at will if the duration can be implied. See Halsbury's Laws of England, Third Edition, Vol. w8 p. 502, para 964, where it is said that where there is no express agreement to continue a for a definite period there may be an implied agreement to do so. In Crawshay v. Maule, (1818) 1 Swand 495 = 36 ER 479 at p. 483 the same principle was laid down in these words at p. 483:-

"The general rules of are well settled. Where no term is expressly limited for its duration, and there is nothing in the contract to fix it, the may be terminated at a moment's notice by either party ..... Without doubt, in the absence of express, there may be an implied contract , as to the duration of a partnership.". The same principle in our opinion applies to a case of determination. The contract may expressly contain that the will determine in certain circumstances; but even if there is no such express term, an implied term as to when the will determine may be found in the contract."

37. The Supreme Court, then stated that what the Court had to see was whether it was possible to infer from the contract of partnership whether there was an implied term as to its duration or at any rate an implied terms as to when it will determine. In that case the cu was considering the terms of a contract of partnership which was entered into between two partners for the purpose of carrying on managing agencies business. The said contract provided for the carrying on of management in rotation once in four years so that one partner was to manage for the first four years and the second partner to manage for the next four years. It was also provided that the heirs of the partners and those getting such rights would carry on the management in rotation. The Supreme Court on a construction of this document found that although it could not be said that the partnership was to be permanent, even if there were some doubt as to whether any duration was implied there was no doubt that the said contract implied that the partnership will determine when the managing agency terminates. Having found that there was an implied terms as to determination at lease the Supreme Court came to the conclusion that in view of Section 7 of the Act, it could not be said that that partnership was a partnership at will.

38. Mr. Meghani, the learned Advocate for the defendants has contended that if the deed of partnership dated the 4th December, 1967 is perused and in particular clause 14, it would be seen that there is an express agreement for retirement if the partner concerned gives clear two months' notice. According to Mr. Meghani, this is a provision for determination of the partnership within the meaning of Section 7 of the Act, so that it would also mean that the partnership cannot be

determined at a moment's notice. According to Mr. Meghani, it follows that the partnership in suit is of some duration. He particularly argued that the history of this family concern showed that it could never have been the intention of the parties to permit the family business to be closed down at the whim of one of the partners. He urged that clause 14 was the only made for exit of a partner from the partnership. He argued that after all this was a family concern which had been started in 1914 and that it could not be brought to an abrupt end so long as there were tow partners willing to carry on the business. Mr. Meghani went to the extent of saying that in a manner of speaking the duration of this particular partnership was permanent. His argument was that a partnership at will never provide for a mode of exit and that once the deed provides for a mode of exit then it must necessarily mean that being contractual, it involves bilateral obligations which obligations may be express or implicit depending on the intention of the parties which the Court must determine.

39. In other words, the contention of Mr. Meghani which he has vehemently asserted is that the deed of partnership contains an implied provision as to duration which is up to such time as two partners are able and willing to carry on the business. It was contended that there was also an implied term as to determination because when a partner exercised his right under clause 14 of the deed, he brought about a determination of the partnership firm within the meaning of Section 7 of the Act.

40. Now a reading of S. 7 of the Act, makes it clear that two conditions a particular partnership is a partnership at will or to put it differently the deed of partnership must not contain any provisions whether express or implied as to (a) 'the duration of their partnership" or (b) "for the determination of their partnership". If these two provisions are absent or cannot be implied then the partnership will be at the will. Whether they are called conditions or exceptions the fact remains that there should be no provision in the contract for the duration of their partnership or for the determination of their partnership.

41. Now it requires to be noticed that there is as such in the deed of partnership dated the 4th December 1967, no provision as to the duration or as to the determination. But Mr. Meghani would have the Court read clauses 14 and 15 of the deed in such a manner (along with the whole document) as to come to the conclusion that there is a provision for duration as also a provision for determination. The provision for duration, according to Mr. Meghani, being permanent i.e. till the time when at least two partners are available and are willing to carry on. It is then urged that there is a provision for determination because retirement contemplated in clause 14 must be quested to a provision for determination.

42. In my opinion these contentions are clearly untenable in so far as it sought to be argued that clause 14 of the deed which provides for and regulates retirement of a partner is a provision for determination within the meaning of Section 7 of the Act. If Mr. Meghani were to be right then it would come to this that if there is no provision at all in a deed of partnership as to retirement a partner could nevertheless retire under the statutory right contained in Section 32(1)(c) but if there is reference to the right to retire with some conditions attached as for instance the period of notice or the settlement of accounts etc., then that would amount to a provision for determination within the meaning of Section 7 of the Act and the partner concerned cannot retire under Section 32(1)(c),

because the partnership will then not be a partnership at will. In my opinion it is not permissible to equate retirement with determination within the meaning of Section 7 of the Act.

43. It is interesting to notice that what Section 7 of the Act refers to is not a provision for the duration of the partnership but a provision for the duration of their partnership. this means that the deed of partnership must be contain a provision for the duration of the partnership consisting of all the partners concerned that is to say a partnership in which each of the existing partners is a partner. Similarly, the determination is to be of their partnership and not a partnership from which one of the partners has been excluded.

44. It would appear that an argument of the nature, ad advanced by Mr. Meghani before me, was also advanced before me, was also advanced before the Gujarat High Court in Keshavlal Lallubhai Patel v. Patel Bhailal Narandas, .

45. Bhagwati, J. (as he then was) after discussing the principles for construction of a partnership at will including the terms which may be implied held that the retirement of a partner from a firm did not have the effect Order dissolving the firm so that it could not be said that it would amount to determination of the partnership inter Section between all the partners. The learned Judge observed that the retirement of a partner merely severs the partnership between the retiring partner and the continuing partners leaving the partnership amongst the continuing partners unaffected and that the firm continues with the changed constitution comprising the continuing partners. The learned Judge then observed as follows:

"What Section 7 requires it that there should be no provision made by contract between the partners for the duration of their partnership or for the determination of their partnership. the important words are "their partnership" and since the pronoun "their" in the context stands for the 'partners', these words have clearly reference to partnership between all the partners and not partnership of any one partner with the rest. A provision for retirement of a partner which has the effect of disrupting the partnership only as between the retiring partner and the continuing partners and not as between all the partners, inter Section cannot therefore be regarded as a provision for determination of "their partnership within the meaning of Section 7."

46. I find myself in respectful agreement with these observations and in my view any provision as to the retirement of a partner whether conditional or otherwise, whether at a moment's notice or of a specified period and whether on taking accounts or without taking accounts, cannot be considered to be a provision for determination of their partnership within the meaning of Section 7 of the Act.

47. The view that I have taken is also supported by the judgment of the Supreme Court in Karumuthu Thiagarajan Chettiar's case, where at page 1230 of AIR 1961, the Supreme Court, said that the essence of a partnership by giving notice and that "relinquishment of one partner's interest in favour of the other ..... is a very different matter."

48. It is therefore substantially clear the retirement of a partner, which is the same thing as relinquishment of one partner's interest in favour of the other; is a very different matter from the

determination of the partnership consisting of the original partners. In fact it requires to be noticed that the Act contains special provisions in that behalf so that the question of retirement of a partner is considered in Chapter V and the dissolution of a firm is considered in Chapter VI.

49. It was argued on behalf of the defendants that the word 'their' used in Section 7 of the Act makes no difference because if one partner goes out by retirement or otherwise their partnership automatically determines. In my view this can never so, because the provisions of Section 7 of the Act clearly reveal that what is contemplated of the whole firm which is described as their partnership. Any provision in the deed of partnership which does not bring about the determination of the whole firm consisting of the existing partners is not a provision for determination within the meaning of Section 7 of the Act.

50. the learned Judge of the City Civil Court, was therefore clearly in error in holding that the partnership in the present case was not a partnership at will.

50-A. It is appropriate at this stage to notice Mr. Meghani's argument on the effect of the words, which are opening words of clause 14 of the deed of partnership i.e. "That the partnership being at will ....."

51. It was solemnly contended by Mr. Meghani that if the document is read as a whole then these words must be rejected or even removed as either being inappropriate or surplus and for this he relied on a comment at page 413 of Halsbury's Laws of England, Third Edition, Vol. 11. the suggestion is that if the instrument is to be construed according to the intention of the parties as appearing from the whole of the document then the intention must not be defeated by too strict an adherence to the actual words.

52. I am unable to appreciate how this proposition has any application in the instant case when there is an explicit expression by the parties that they considered their partnership as being a partnership at will. Clause 14 as even the learned Judge of the City Civil Court has observed is a reiteration of the statutory provision contained in Section 32(1)(c). There can be no doubt that what the parties intended was that although the partnership was at will and even though there was a statutory provision which enabled the partner to retire it was necessary to provide for a notice period of two months and that the retiring partner would be allowed to retire from the firm on the settlement of his accounts and his liabilities.

53. the next contention of Mr. Meghani was that even if this Court were to hold that there is no express or implied provision for duration or determination within the meaning of Section 7 of the Act a proper construction of the deed of partnership shows that it was the intention (of the partners?) that the family business should never be put to an end to and therefore there could be no valid demand for dissolution by the plaintiff. For this proposition he relied on the Supreme Court decision in Karumuthu Thiagarajan Chettiar's case, . According to Mr. Meghani the Court in that case had held that, that the partnership under consideration was not a partnership at will because the intention of the partners in the circumstances of that case could not be create a partnership at will.

54. I am afraid I do not read the Supreme Court judgment in the manner suggest because the Supreme Court itself observed that:

"The intention obviously was to have a partnership of some duration, though the duration was not expressly fixed in the agreement."

It was after this observation that the Court held that on the terms of the contract in that case even if there was some doubt whether any duration was implied there was no doubt that the contract implied that the partnership will determine when the managing agency terminated. In other words, the Court came to the conclusion that that partnership was not a partnership at will because the case was brought within the meaning of Section 7 of the Act and it was only after the Court held that there was an implied term as to determination that it found that the partnership could not be said to be a partnership at will.

55. In my opinion, if on a proper construction of the document in question it is held that there was a partnership at will, the provision of law as to dissolution by notice could not be negatived by saying that because there was an old family business and because there is a sentiment that the family business should not be put an end to, one of the partners cannot seek a dissolution by notice in that behalf under Section 43 of the Act.

56. Once it is established that the partnership is a partnership at will the provisions of Section 43 must take effect and cannot be set at naught by an assertion that it could never have been intended that the family business should be abruptly put and end to.

57. It was then suggested by Mr. Meghani that even if this Court holds that the partnership is a partnership at will the parties have contracted out of their right to dissolve the partnership by notice. I am afraid this contention has only to be made to be rejected because it is directly opposed to the provisions of the statute and in particular Section 43 of the Act. U have not been able to appreciate how any partners can contract out of the provisions of Section 43 of the Act.

58. The only manner in which partners could prevent the operation of Section 43 of the Act is to ensure that their partnership is not a partnership at will so that it does not fall within the provisions of that section.

59. I must now refer to the contention of Mr. Meghani, that the correspondence discloses that the plaintiff has if fact on his own volition retired from the partnership. This contention is perhaps based on the observations of the learned Judge of the City Civil Court that, "It is more than clear that the plaintiff gave the notice dated June 19, 1973. He was in fact intending to retire from the partnership as provided under Control. 14 of the said deed."

There is no substance in this argument and I must hold that the learned Judge was also clearly in error. A perusal of the correspondence does not show any such intention. It cannot be said with any show of reason that the plaintiff's Advocates notice, dated the 19th June, 1973, spelled out an intention to retire, far from it being 'more than clear'. On the contrary, as I have mentioned,

paragraph 2 of the notice dated 19th June, 1973, sets out in terms that the plaintiff was giving notice of his intention to dissolve the said firm and that according to the plaintiff, at the expiry of the period of the notice, the said firm shall stand dissolved.

60. As a matter of tact the defendants by their Solicitor's letter of the 9th July in the clearest possible terms indicated their agreement to the dissolution of the firm. All that has been done now is that a gloss is sought to be put on these words and the suggestion is that what was meant by the "dissolution of the firm" was the going out of the firm of the plaintiff alone. Indeed the correspondence does not show that the plaintiff was ever told at any time that he had in fact retired from the firm by reason of clause 14 of the deed of partnership and the letter of 19th June 1973 as interpreted by the defendants.

61. In this view of the matter, there appears to be considerable substance in the contention of Mr. gill, the learned advocate for the plaintiff, that as the result of the correspondence both parties agreed that the firm should be dissolved and that this agreement is reflected in the letters exchanged by the plaintiff's advocate and the defendants' solicitors.

62. It requires to be noticed that after the letter of the 9th July 1973 a somewhat acrimonious correspondence continued, in which allegations and count-allegations were made. Now it may be mentioned that one of the points which agitated the defendants was the withdrawal of a large sum of money by the plaintiff from the firm's bank account in the United Commercial Bank at Jullundur and an apprehension was expressed that there would be no moneys for making refunds to the firm's customers.

63. As is natural in these cases, both parties took up untenable attitudes and made allegations and counter allegations. But my attention has been invited to the record and in particular an affidavit of the plaintiff dated 10th September 1973 in which it is stated that the plaintiff himself refunded to the customers of the firm an aggregate sum of Rs, 1,05,117/- as set out at Ex. 1 to that affidavit. The plaintiff in his said affidavit has stated that during his visit to Jullundur in the middle of August 1973 he made various payments aggregating to Rupees 1,05,117/- as set out at Ex. 1 to that affidavit. The plaintiff in his said affidavit has stated that during his visit to Jullundur in the middle of August 1973 he made various payments aggregating to Rupees 1,05,117/- by means of payees account cheques drawn on the Punjab National Bank, Jullundur City, and that he has in his possession signed and stamped receipts in that behalf.

64. Again in his affidavit dated 7th February, 1974, the plaintiff says, "I say that by withdrawing the said sum of Rs. 1,10,000/- and by repaying about Rs. 1,08,000/- to the admitted creditors of the suit firm I have acted in the best interests of the suit firm."

Actually the suggestion of Mr. Gill, is that the plaintiff withdrew the sum of Rs. 1,10,000/- from the firm's bank account in the United Commercial Bank at Jullundur in order to safeguard himself and ensure that the refunds were in fact made to he firm's customers.

65. Whatever may be the truth of the statement the fact remains that the customers of the partnership firm have been refunded their amounts so that liability of the firm to that extent has been met.

66. Now the last contention urged by Mr. Meghani, is that on the facts of the case, it is not just and convenient that the receiver should be appointed and that there is a sinister motive on the part of the plaintiff in asking for the appointment of a receiver. He points to the conduct of applicant in having taken away the said amount of Rs. 1,10,000/- from the firm's bank account in Jullundur. It is also contended on behalf of the defendants that it is not necessary to appoint a receiver of the partnership assets as according to the defendants no business worth the name is being carried on at Bombay and the plaintiff has himself stated that he has closed down the branches in the Punjab. It was also asserted that the main business of the partnership was the air travel business at Jullundur which had in any event come to an end.

67. As to the conduct of the plaintiff, the argument that the taking away of Rs. 1,10,000/- was improper and that the plaintiff has acted in a manner hostile to the partnership firm and against its interest by arranging with his wife who is the owner of the building at Jullundur to terminate the tenancy of the partnership firm in that building where the Jullundur Office of the firm was carrying on its business. It is suggested that that was a very valuable asset of the firm along with membership of I. A. T. A. Then comes the suggestion that the defendants can safeguard the assets and business of the partnership firm better than a receiver can.

68. Now when there are differences and disputes between partners and particularly when there is considerable animosity, it is difficult to accept the contention that the assets of the partners will be safer in the hands of one of the partners than in a receiver appointed by the Court for the purpose of safeguarding the assets and properties of the partnership firm. I should have though that the very purpose of appointment of a receiver is to ensure his holding or securing the funds and other properties belonging to the firm for ultimate distribution amongst the partners in accordance with their rights and entitlements when determined. As Kerr, says in his treatise on Receivers at page 5, the object sought by the appointment of a receiver is the safeguarding of property for the benefit of those entitled to it. Although there are many allegations by each party against the other, I do not find in the conduct of the plaintiff any special features, which would dis-entitle him to interim relief by way of appointment of a receiver pending the hearing and determination of the suit filed by him for the dissolution of the partnership firm and for accounts.

69. As a matter of fact, it is substantially clear that the approach of the defendants throughout has been that after issue of the notice dated June 19, 1973 the plaintiff has retired: that the business is theirs and that they are virtually the owners of the business and entitled to carry on the same to the exclusion of the plaintiff.

70. I have already held that the partnership in suit is a partnership at will and that a valid notice for dissolution was given by the plaintiff by his advocate's letter dated 19th June 1973. The partnership firm is therefore dissolved, either at the date of the communication of the notice or in any event at the expiry of two months from the 19th June 1973.

71. In these circumstances, it is necessary in order to safeguard the interests of both the parties that pending the hearing and determination of the suit, the assets and properties of the partnership should be in the custody of an impartial person. After all a receiver can be an impartial person appointed by the Court with the object stated that is to say the protection and safeguarding of the assets of the firm for eventual distribution according to law. Mr. Gill, invited my attention to Halsbury's Laws of England, Third Edition, Volume 28, on partnership, page 554, where it is stated that the Court has jurisdiction to appoint a receiver whenever it is just and convenient on the application of any partner and that the Court will do so if the property is in danger or if the partnership has been or is about to be dissolved.

72. In Kerr on Receivers, 14th Edition, page 63, it is stated that "the readiness of the Court to appoint a receiver in partnership cases depends upon whether the partnership has been dissolved at the time when the application is made. If a dissolution has clearly been effected by the service of the writ, or if the partnership has expired by effluxion of time, a receiver will readily be appointed, though the appointment is not a matter of course; it will be enough to show that one of the former partners is delaying the winding up and realisation of the business."

73. First of all I have held that the partnership is a partnership at will and it has been dissolved by the notice of dissolution dated June 19, 1973 given by the plaintiff's advocate. Secondly, in view of the attitude taken up by the defendants, it is clear that the defendants have effectively kept the plaintiff out and are arrogating to themselves the ownership of the partnership business.

74. In this view of the matter, I consider it not only just and convenient but necessary that a receiver should be appointed, forthwith.

75. The learned Judge, of the City Civil Court, was clearly in error in refusing to do so by him order dated the February 20, 1975.

76. At his stage, Mr. Meghani the learned Advocate for the defendants, sought my permission to address the Court on the question of two specific properties which are said to be the properties of the firm, one the tenancy rights of premises where the firm's business has been carried on at Kumpta Street and the other, a building situate at Fort Street called "Anand Niketan" which is said to be owned by the same partners that is to say the plaintiff, defendants Nos. 1 and 2 although in different shares the mother, defendant No. 2, having half share and the two brothers each having a quarter share in the building. My attention was invited to the paragraph 12 of the order dated 20th February 1975 made by the learned Judge of the City Civil Court where after stating that the defendants claimed that the two properties did not belong to the suit partnership, he observed, "Prima facie, the documents do not show that these two properties belong to the suit partnership."

Now the learned Judge does not mention as to which documents he was referring. Mr. Meghani, states at the bar that the documents that the learned Judge was referring to were firstly two letters both of 19th December 1972 addressed by the three partners to the 2nd Income-tax Officer, A-2, Ward, Bombay 1. In both the letters it is stated that the interest of the plaintiff, and defendants 1 and 2 in the property at 40 For Street was in the following share: Mrs. Tarawati Premnath Ramsarandas

50%, Mr. Iqbal Nath Anand s/o Premnath Anand 25% and Mr. Rameshwar Nath Snand s/o Premnath Anand 25%.

77. It is not clear as to why two letters were addressed with regard to the same property but it is suggested as the language of the two letters shows that in one reference is to "leasehold property" at 40, Fort Street and in the other the reference is to their "land" at 40 Fort Street. Now whatever may be reason for two letters having been issued, the fact remains that all the three partners to this litigation have jointly made a statement to the Income-tax authorities as to their shares in the property at 40 Fort Street.

78. Mr. Meghani then referred to an affidavit dated the 23rd August 1973 filed by defendant No. 2 Mrs. Tarawati. In paragraph 8 she has contended that the building at Fort Street, 'Anand Niketan', was not constructed from the funds of the suit firm but out of the loans taken from the partnership and that the suit firm was a tenant of the owners and was paying rent for the portion occupied by the firm in the suit building being the front portion on the ground floor of the depth of about 14 ft.

79. Mr. Meghani then stated that as leave was sought to rely on the books and income-tax returns of the partnership when produced, certain other documents were shown to the learned Judge and those documents were certain income-tax assessment order; some letters as well as entries in books of accounts.

80. there is some controversy as to what documents were shown to the learned Judge and what were not. It is obvious that I cannot come to any conclusion as to what documents were seen by the Judge and on which documents he placed reliance for the purpose of his finding that "Prima facie the documents do not show that the two properties belong to the suit partnership."

81. Mr. Meghani tells me that it is not the practice of the City Civil Court to place copies of documents which are referred to or relied upon in this manner on record at the hearing of interlocutory matters. I must express my disapproval of this practice. It is not proper for the Court to arrive at any finding even if it be of a prima facie nature by referring to a document without placing on record a copy of that document. It may be permissible when leave is reserved for referring to and relying on certain documents when produced for the learned Judge to look into those documents. But is he wishes to base his finding on any material contained in those documents then to that extent copies must be placed on record. In other words evidence must always be spread across the record. In find myself at the considerable disadvantage in the sense that I cannot ascertain what was the evidence which persuaded the learned Judge to arrive at the prima facie conclusion that the two properties did not belong to the suit partnership.

82. However, for the purpose of this appeal, I find that the two letters dated 19th December, 1972, addressed to the Income-tax authorities create sufficient doubt as to whether the property at Fort Street does or does not belong to the partnership firm. Indeed this is a matter which can only be decided on proper evidence being placed on record and this, it requires to be stated, has not yet been done. I have therefore decided for the moment to exclude the Fort street property from the order appointing the Court receiver till such time as the plaintiff is able to establish by an appropriate

notice of motion which may be taken out by him in that behalf, that the property at Fort Street is the property of the partnership firm and should be taken in charge by the Court receiver.

83. Mr. Meghani also sought to support the order of the learned Judge of the City Civil Court that the tenancy rights in the building at Kumpta street used by the partnership firm were also not the property of the partnership firm because the tenancy was in the name of Mrs. Tarawati defendant No. 2, who claimed that the tenancy rights were her property and not those of the partnership firm. It is stated that the rent bills of the property at Kumpta street were shown to the learned Judge in support of this contention.

84. Mr. Gill states that his client will consider taking appropriate proceedings in that behalf if receiver is not appointed of the property at Fort street. As regards the tenancy right of the property at Kumpta street he contends that it is an admitted position that the tenancy was originally in the name of Premnath the late father of the plaintiff and 1st defendant and that after his death on 24th October 1967 it was transferred in the name of Mrs. Tarawatibai defendant No. 2. He also contends that there is no dispute that the premises at Kumpta street were all along used by the partnership firm.

85. Mr. Gill, then argued that apart from his contention that the tenancy rights of the Kumpta street property belong to the partnership firm, on the death of Mr. Premnath the three parterres would have inherited the tenancy rights so that the contention of Mrs. Tarawati that the tenancy rights exclusively belong to her cannot be correct even on a prima facie view of the matter.

86. In my opinion, the very fact that the premises at Kumpta street have all along been used by the partnership firm and the manner in which it was transferred from the name of Premnath after his death to that of Mrs. Tarawati, go to show that the tenancy rights of the premises at Kumpta street belong to the partnership firm.

87. In this view of the matter, the receiver which I propose to appoint will not take charge of the property at Fort street but he will take charge of the tenancy rights of the premises at Kumpta street.

88. In the result, the appeal is allowed and other Order dated 20th February 1975, passed by the learned Judge of the City Civil Court is set aside. The notice of motion is made absolute in terms of prayers (a) and (b) with the modification that the Court receiver will not take charge of the building "Anand Niketan" at Fort Street as such but only of the portion of the ground floor covering the entire breadth and to the depth of 14 feet.

89. The respondents will pay the costs of this appeal. There will be no order on the Civil Application No. 1200 of 1975, except that the rule is discharged.

90. At this stage, Mr. Meghani applies for stay of the operation of the order in so far as the appointment of the Court receiver is concerned.

91. Now in a partnership at will and where notice for dissolution is given and a suit filed a receiver is normally appointed as a matter of course. In the instant case, the law was substantially clear and the learned Judge of the City Civil Court ought to have appointed a receiver on the application of the plaintiff. The result of the learned Judge's refusal to do so has been that the plaintiff has been denied his application and the defendants have been in control of the partnership assets and business to the exclusion of the plaintiff.

92. In these circumstances, I am not inclined to accede to Mr. Meghani's request for stay of the operation of the order with regards to the appointment of the Court receiver. However, as it will take a few day's time for the judgment t be typed and ready, I direct that the Court receiver. However, as it will take a few days' time for the judgment to be typed and ready, I direct that the Court receiver should not take possession till the 29th of January 1976. As far as possible the Court receiver will see that the business of the partnership is carried on in so far as it may be on such terms and conditions as he may consider proper.

93. Mr. Meghani makes a further application that the temporary injunction granted by this Court in terms of prayer (b) of the notice of motion should be modified for purpose of preventing the business form being closed down immediately.

94. I have heard Mr. Meghani and Mr. Gill on this application and they are agreeable that in order to preserve the continuity of the business, defendant No. 1 may for the time being be appointed as the agent of the Court receiver to be fully accountable to the Court receiver for the period from today till the date on which the Court receiver takes charge.

95. I, therefore, appoint defendant No. 1, Rameshwarnath Premnath Anand who is present in Court and who accepts the appointment, as the agent of the Court receiver from today till the sate that the Court receiver takes charge.

96. I wish to make it clear the Mr. Rameshwarnath Anand will keep a full and detailed account of his actions as the agent of the court receiver and furnish to the Court receiver when the Court receiver takes charge a full report of what he was done in relation to the partnership business during the said period.

97. Order accordingly.