

Dharam Vir *v.* Jagan Nath, etc. (Kapur, J.)

LETTERS PATENT APPEAL

*Before A. N. Grover and S. K. Kapur, JJ.*

DHARAM VIR,—*Appellant*

*versus*

JAGAN NATH AND OTHERS,—*Respondents*

L.P.A. No. 22-D of 1963

August 4, 1966

*Partnership Act (IX of 1932)—S. 30—Partnership wherein minor made a full-fledged partner—Whether valid qua partners other than the minor—Suit for dissolution and rendition of accounts—Whether maintainable.*

*Held*, that a partnership wherein the minor is made a full-fledged partner and not only admitted to the benefits of the partnership is not valid. Such a partnership is also not valid *qua* the parties other than the minor for the reasons that, no valid workable or intelligible contract can survive. In such a case the document of partnership *qua* the major partners shall have to be re-written altering their shares in profits and losses and other matters which the Court cannot do. The suit for dissolution and rendition of accounts of such a firm is not competent by any of the partners.

*Letters Patent Appeal from the judgment of the Hon'ble Mr. Justice S. B. Kapoor, dated the 14th day of December, 1962 in F.A.O. No. 50-D of 1957, accepting the appeal with costs thus reversing the decree passed by Shri Jasmer Singh, Additional Senior Sub-Judge, Delhi, with enhanced Appellate powers, on the 13th February, 1957 who reversed that of Shri N. R. Sharma, Sub-Judge, 1st Class, Delhi, dated the 20th December, 1955, dismissing the plaintiff's suit without costs in the trial Court.*

R. L. AGGARWAL AND P. P. ANAND, ADVOCATES, for the Appellant.

SHYAM KISHORE, ADVOCATE, for the Respondent.

JUDGMENT

KAPUR, J.—This Letters Patent Appeal against the order of the learned Single Judge, dated 14th December, 1962, arises in the following circumstances:—

On 10th November, 1949, a partnership deed was executed between Dharam Vir, plaintiff, and Jagan Nath, Ram Saran Das,

Bhim Sen and Sat Pal, defendants. The partnership was formed to take over the business of "Bhartia Kam Kaj Corporation" and its allied concern "Bhartia Art Pictures". The preamble of the said deed mentions Dharam Vir as the owner of the said two concerns. Sat Pal was, on the date of execution of the partnership deed, a minor being 8/9 years old and the fact of his minority is expressed in the document itself. Disputes arose between the partners and the firm was agreed to be dissolved with effect from 7th March, 1950, Sat Pal minor, acting through his father, brought a suit on 22nd May, 1951, for rendition of accounts of the dissolved partnership, or in the alternative, for dissolution of the partnership and rendition of accounts. His brother Dharam Vir, appellant, who was defendant No. 4 in that suit, supported the plaintiff in his written-statement, but the remaining partners contested the suit. Before the Court trying that suit a preliminary objection was raised by the contesting defendants that since a minor could not enter into any contract of partnership the contract was void and unenforceable. This objection prevailed with the trial Court which rejected the plaint by its order, dated 25th January, 1952. An appeal against the said judgment also failed and on 4th of March, 1953, Dharam Vir, appellant, filed a suit out of which the present appeal arises. The trial Court framed the following four issues:—

- "(1) Whether the suit for accounts lies in view of the decision, dated 25th January, 1952 of Shri H. D. Lamba, Sub-Judge, 1st Class, Delhi, in a previously instituted and decided suit No. 616 of 1951 between the parties ?
- (2) Whether the plaintiff is estopped from bringing the present suit ?
- (3) Whether the suit does not disclose any cause of action.
- (4) Whether the partnership contract has already been held to be void and unenforceable ? If so, with what effect ?"

Issue No. 4 was decided against the plaintiff and the suit was dismissed. The Additional Senior Subordinate Judge, Delhi, by his judgment, dated 13th February, 1957, allowed the appeal filed by Dharam Vir and decided that the contract of partnership could not be treated as void in so far as the parties other than the minor were concerned. The suit was, therefore, remanded to the trial Court for

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disposal in accordance with law. Aggrieved by the said judgment of the Additional Senior Subordinate Judge, Delhi, Jagan Nath, defendant, filed an appeal in this Court. The said appeal was, it appears, by mistake registered as first appeal from order No. 59-D of 1957, though this was a second appeal. The appeal was heard by our learned brother S. B. Capoor, J., who allowed the same by his judgment, dated 14th December, 1962, and the present Letters Patent Appeal is directed against the said judgment.

S. B. Capoor, J., decided that when the partnership document, dated 10th November, 1949, was executed there was no partnership in existence and, therefore, the minor could not have been admitted to its benefits, for no one can be admitted to what does not exist. He further held that even on the construction of the partnership document the minor was made a full partner in the firm and not merely admitted to its benefits and the partnership deed was invalid not only *qua* the minor but also in regard to the other partners. Three principal contentions have been raised before us by Mr. Radhey Lal Aggarwal, the learned counsel for the appellants:—

(1) The finding of the learned Single Judge is erroneous inasmuch as there was a partnership in existence when the partnership deed, dated 10th November, 1949, was entered into.

He, however, does not dispute that if the finding about non-existence of any partnership be correct, then the question of admission of the minor to the partnership will not arise.

(2) On the correct reading of the partnership deed it ought to have been held that the minor was merely admitted to the benefits of the partnership.

(3) Even if the minor was made a full-fledged partner, the partnership deed could not be invalid *qua* the partners other than the minor.

In elaboration of his first contention Mr. Radhey Lal placed considerable reliance on clause 14 of the partnership deed which provides—

“That the new partnership shall not be responsible for any other commitments, than those enumerated in para 16

below, made by the old partners, previous to the agreement in question.....”.

As has been observed by the learned Single Judge, this position stands contradicted by the preamble of the document itself and it appears that reference to “the old partners” was to some partnership unconnected with these two concerns. Mr. Radhey Lal has not drawn our attention to any cogent material on the record in support of his plea. In these circumstances, it is hardly possible to take a contrary view in the Letters Patent Appeal.

This takes me to the second contention of Mr. Aggarwal and on that too I find myself in complete agreement with the learned Single Judge. Section 30 of the Partnership Act lays down that a minor cannot become a partner though, with the consent of the adult partners, he may be admitted to the benefits of the partnership. The partnership document shows that it was signed by the minor; that all the five partners, including the minor, were entitled to and liable for the profits and losses of the partnership business in equal shares; that the minor was required to contribute equally to the capital of the firm with other partners; that besides the contribution towards capital the minor, along with Dharam Vir, was to contribute Rs. 30,000 by way of loan; and that all the partners including the minor were given a right of inspection of account-books. It is, therefore, clear that no distinction was made in the partnership deed between the adult partners and the minor and to all intents and purposes the minor was made a full partner. This leads me to the conclusion that the minor was not merely admitted to the benefits of the partnership but was made a full-fledged partner of the partnership. In this conclusion I am supported by the decision of their Lordships of the Supreme Court in *Commissioner of Income Tax, Bombay v. M/s Dwarkadas Khetan & Co.* (1).

There then remains to consider the last contention on behalf of the appellant and Mr. Radhey Lal's contention is that all the partners knew that Sat Pal was a minor and even if he was made a full-fledged partner that would not kill the partnership document *in toto*. He says that if a minor is made a partner the partnership is not rendered illegal and should, therefore, be given effect to and recognised *qua* the major partners. There is no direct authorities on this

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(1) A.I.R. 1961 S.C. 680.

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point and Mr. Radhey Lal relies on *Lovell and Christmas v. Beauchamp* (2). In this case the House of Lords modified a receiving order against a firm and added the words "except the minor". From this judgment, Mr. Radhey Lal wants to deduce that the Courts can give effect to a document by excluding the minor. He then referred to *Jamna Bai Saheb Mohital Avergaj v. Vasanta Rao Anand Rao Dhybar* (3). In this case a suit was instituted to enforce a promissory note executed by two persons one of whom was a minor. It was held that the fact that on account of non-observance of the requirements of Order 32, rule 7, Civil Procedure Code, the minor executant could not be held liable under the promissory note, would be no bar to the promisee's claim against the other executant. It is unnecessary to multiply authorities referred to on behalf of the appellant as none of them refers to partnership. *Lovell's case* is of no assistance to the appellant for there an infant was excluded from the operation of the receiving order. Lord Herschell observed—

"Although an infant he was a partner, and the firm name Beauchamp Brothers applied as much to him as to an adult partner. The Court of Appeal took the view that the judgment against the firm was good, and might be made available against the partnership property, though it would be ineffectual as against the infant partner. I have a difficulty in seeing how it can be supported. Although the judgment may be pronounced against the firm in the firm's name, it is in reality a judgment against all the persons who are in fact members of the firm; and it is because such a judgment exists that the right of execution follows. It cannot be regarded as a judgment merely against the assets of the firm. The right of execution, whatever it may be, arises from the fact that certain persons have been adjudged debtors. I have already said that, in my opinion, the infant could not be so adjudged. It is true that Order 48-A, rule 8, which sanctions, in a case of judgment against a firm, execution against the property of the partnership, restricts any further execution except in specified cases

(2) (1891-4) All EL. Rep. 1184—(1894) A.C. 607.

(3) A.I.R. 1916 P.C. 2.

without leave of the court or judge. But I do not think this affords warrant for a judgment against a firm including a person who, though a member of the firm, was not a debtor."

That principle cannot, in my opinion, be extended to the case of a partnership. If an infant could not be adjudged a debtor, then obviously the receiving order could not be made operative against him. Even *Jamna Bai's case* is of no assistance to us in deciding the question arising in this case. That decision gives effect to the principle laid down in section 42 onwards of the Indian Contract Act, 1872. These sections vary the rules of English Common Law as to the devolution of the benefit of and liability in respect of joint contracts and appear to make all joint contracts joint and several. Section 43 allows a promises to sue such one or more of several joint promisors as he chooses and naturally, therefore, the minority of one of the joint promisors would not affect the liability of the others. The relation of partnership arises from contract and not from status (section 5). One of the chief characteristics of partnership relation, therefore, is that it is created only by voluntary contract of the parties. The element of contract, therefore, is fundamental to the coming into existence of a partnership. Such a contract may be express or implied. Where the parties have, therefore, become partners under an agreement, express or implied, whereunder the minor is given equal rights with other partners and is made equally liable for losses, I fail to see how, after the minor is taken out of the array of the parties any valid workable or intelligible contract can survive. Take the case at hand : The minor is liable to contribute 1/5th towards the losses and so are other partners. The minor is also required to contribute and if effect is given to the agreement without the minor, the whole contract will have to be re-written. If after omitting the minor as a party to the contract no workable contract can survive, no effect, I think, can be given to that document *qua* the major partners. The learned counsel for the respondents has placed a strong reliance on the decision of their Lordships of the Supreme Court in *Commissioner of Income Tax's case*. He says that the Supreme Court has therein decided that such a document is invalid. That case, however, does not directly support the respondents. There Lordships were considering the question of registration of a document under the Income-tax Act and in that connection observed—

"Registration can only be granted of a document between persons who are parties to it and on the covenants set

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out in it. If the Income-tax Authorities register the partnership as between the adults only contrary to the terms of the document, in substance a new contract is made out."

That decision, however, does show that the partnership document, to which a minor is a party contrary to section 30 of the partnership Act, would be invalid. Mr. Radhey Lal says that that document by itself may be invalid but still for the purposes of taking accounts effect can be given to the document *qua* other partners. That, as I have already said, will require re-writing of the entire contract and compelling the major partners to do something contrary to the express terms thereof. The Court will then have to say that each major partner's liability in losses extends to 1/4th and not to 1/5th as expressed in the document. In the view that I have taken I am supported by a Division Bench decision of the Calcutta High Court reported as *Durga Charan v. Akkari Das* (4). In these circumstances, I am in agreement with the view of the learned Single Judge that the suit deserves to be dismissed.

Mr. Radhey Lal sought to canvass certain points relating to the frame of the issues, which do not appear to have been raised in any of the Courts below or in the grounds of appeal. I cannot, therefore, permit those points to be raised in the Letters Patent Appeal for the first time.

In the result, the appeal fails and is dismissed. The parties will bear their own costs in this appeal.

A. N. GROVER, J.—I agree.

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B.R.T.

CIVIL MISCELLANEOUS

*Before R. S. Narula, J.*

THE SURGICAL DRESSINGS MANUFACTURING CO., PRIVATE

LTD.,—*Petitioner*

*versus*

THE PUNJAB STATE AND ANOTHER,—*Respondents*

Civil Writ No. 1334 of 1965

August 5, 1966

*Minimum Wages Act (XI of 1948)—Item 17 of the Schedule added by the Punjab Government—"Employment in textile industry"—Whether includes*

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(4) A.I.R. 1949 Cal. 617.