

UNREPORTED

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 2370/1997

VN SHASTRI (DECEASED)

THROUGH LRs

..... Plaintiffs

Through: Mr. Vidhu Upadhyaya, Advocate.

versus

RAM KUMAR SHARMA & ORS. FC+

..... Defendants

Through: Ex. Parte.

RESERVED ON: December 11, 2008

%

DATE OF DECISION: January 19, 2009

CORAM:

* HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **REVA KHETRAPAL, J.**

The present suit is a suit for dissolution of partnership, rendition of accounts and permanent injunction.

2. The plaintiff avers that a partnership was entered into between the plaintiff and the defendants No.1 and 2 vide a partnership deed dated 13th December, 1996 with the sole object of carrying on the business of selling the land measuring 30 Bighas and 12 Biswas, forming part of various Khasra Numbers being 49/15 (4-15), 11 (5-5), 12 (5-9), 13 (5-11), 49/8 (2-8), 9 (2-8),

10 (10-8), 6(2-8), situate in the Revenue Estate of Village Najafgarh, Delhi.

The said land was to be sold in parts at the rate to be fixed by the plaintiff. It was also agreed that the money so received from the sale would be used for the payment of purchase price of the said land to the defendants No.3, who along with his sons was the owner of the afore-mentioned land sold to the defendants No.1 and 2 by a Sale Agreement dated 5th November, 1996 between the defendants No.1 and 2 on the one hand and the defendant No.3 and his sons on the other hand. It was further agreed between the parties that the plaintiff could purchase the share of the defendants by paying the amount at the rate of Rs.21,10,000/- (Rupees Twenty One Lacs Ten Thousand only) per killa, if so desired. It was also agreed between the parties that the plaintiff was to pay at the rate of Rs.50/- per sq. ft. as profits to the defendants out of the sale of the plots by either party.

3. It is the plaintiff's case that in furtherance of the aforesaid agreement, the plaintiff had paid a sum of Rs. 8 lacs (Rupees Eight Lacs only) to the defendants No.1 and 2 for the partnership business vide receipt dated 13.12.1996 (Ex.PW-1/B). In the month of December, 1996, the parties engaged the services of M/s.Mohinder Malhotra, Architect to carve out the lay out plans of Mini Farm Houses for their sale. The parties had also started making roads upon the said land and engaged the services of a road contractor,

one Mr.Tuhi Ram, having his office at Akrola Road, Najafgarh, Delhi. This work continued for a period of two to three months and the plaintiff invested a sum of Rs.3 lacs (Rupees Three Lacs only) towards the development and maintenance of the partnership properties.

4. Thereafter, according to the plaintiff, the intentions of the defendants became dishonest and they gave a legal notice dated 21st June, 1997 (Ex.PW-1/H) through their counsel, contending that as the plaintiff had failed to make the payment of Rs.21,10,000/-, the agreement dated 13.12.1996 stood cancelled. The tenor of the said legal notice, according to the plaintiff, showed that the defendants No.1 and 2 had been treating the partnership deed dated 13.12.1996 as an agreement to sell, for the sale and purchase of the land in question. The plaintiff also received a telegram from the defendants No.1 and 2 in line with the aforesaid legal notice dated 21st June, 1997 (Ex.PW-1/K). The aforesaid legal notice was duly replied by the plaintiff vide reply dated 30th June, 1997 (Ex.PW-1/J), clarifying his stand.

5. On 06.11.1997, the plaintiff visited the property in question where, on inquiry, it was revealed to the plaintiff that the defendants No.1 and 2, in connivance with the defendant No.3, were trying to sell the land in question and negotiating with third parties for the aforesaid purpose, with the object of making some profit at the back of the plaintiff. The plaintiff further avers that

in view of the aforesaid facts, it has become very difficult for the parties to work together in partnership and hence the dissolution of the partnership business, set up under the partnership deed dated 13.12.1996, has been necessitated.

6. Summons of the suit were issued to the defendants No.1 to 3, but the defendants No.1 and 2 having absented themselves from the proceedings, were proceeded ex parte by an order dated 15.04.1998 passed by this Court. Subsequently, the learned senior counsel for the plaintiff craved leave of the Court to delete the name of the defendant No.3 from the array of parties with liberty to take appropriate proceedings in law against the said defendant, and the name of the defendant No.3 was accordingly dropped from the array of parties.

7. On 02.08.2000, a preliminary decree was passed by this Court in the following terms:-

(a) A decree is passed for dissolution of the partnership between the parties, declaring that the partnership business under the Partnership Deed dated 13.12.1996 executed in between the parties stands dissolved and both the parties have got equal share in such assets of the said partnership business.

(b) A Decree is passed in favour of the plaintiff and against the defendants for rendition of true and correct accounts in regard to the land in question pertaining to the sales made and the monies received by them as also of the expenses incurred in regard thereto.

(c) Mr.V.N.Jha, Advocate, A/8, Pamposh Enclave, Greater Kailash-I, New Delhi-48 is appointed as Local Commissioner to visit the premises of the defendants and the defendants are hereby directed to render the true and correct accounts to the Local Commissioner. The fees of the Local Commissioner is fixed at Rs.7000/- plus actual expenses incurred by him in executing the commission”.

8. Pursuant to the aforesaid order passed by this Court, the learned Local Commissioner, Mr.V.N.Jha, Advocate, filed his report dated 17.12.2000. It bears mentioning that in the said report, the learned Local Commissioner submitted that Mr. Satvir Singh (the defendant No.2) stated that there was no accounts at all in respect of the land in question as no sale of land or any part thereof was ever made or executed in pursuance of the said partnership deed. Significantly also, the learned Local Commissioner recorded that the defendant No.2 admitted that a partnership deed had been executed on 13.12.1996 between Shri Ram Kumar Sharma (the defendant No.1), Shri Satvir Singh (the defendant No.2) and Shri V.N.Shastri (the plaintiff) and that in the said partnership deed, 25% share in the profit or loss was fixed each for Shri Ram Kumar Sharma and Shri Satvir Singh (the defendants No.1 and 2) and rest of the 50% share in the profit or loss was fixed for Shri V.N.Shastri (the plaintiff herein) in respect of the said partnership business. It was also stated that Shri V.N.Shastri had actually paid a sum of Rs.4 lacs (Rupees Four lacs only) to the defendant No.1, Shri Ram Kumar Sharma, although a sum of Rs.8 lacs

(Rupees Eight Lacs only) was mentioned as paid to Shri Ram Kumar Sharma in the partnership deed.

9. Since the defendants No.1 and 2 had been proceeded ex parte, an affidavit by way of evidence was ordered to be filed by the plaintiff, Shri V.N.Shastri and was filed. In the said affidavit, the plaintiff proved on record the original partnership deed dated 13.12.1996 as Ex.PW-1/A and the receipt issued by the defendants No.1 and 2 on 13.12.1996 in token of having received a sum of Rs. 8 lacs (Rupees Eight lacs only) from the plaintiff as Ex.PW-1/B. The plaintiff further stated on oath that he had invested a sum of Rs.3 lacs (Rupees Three Lacs only) towards the development and maintenance of the suit property by making payments to a road contractor, one Mr.Tuhi Ram, having his office at Akrola Road, Najafgarh, Delhi from his account as well as from the accounts of his sons as follows:

- (i) A sum of Rs.25,000/- by cheque dated 15.01.97 bearing No.894086 in favour of Self drawn on Punjab National Bank was given to the aforesaid Tuhi Ram from the account of one of the sons of the plaintiff, Shri Om Mishra. However, the said cheque could not be encashed. On the following day, that is, 16.01.1997, Shri Om Mishra withdrew money by another cheque bearing No.894087 and gave it to Shri Tuhi Ram. A certificate of

the Punjab National Bank in this respect was duly proved on record as Ex.PW-1/C, along with the acknowledgment of Tuhi Ram of having received the payment of Rs.25,000/- (Rupees Twenty Five Thousand only) on the backside of the cheque No.894086 as Ex.PW-1/D.

- (ii) A sum of Rs.17,000/- (Rupees Seventeen Thousand only) by cheque dated 16.01.1997 bearing No.924841 in favour of Self drawn on Punjab National Bank was given to Shri Tuhi Ram from the account of the plaintiff's son, Mr.Shashi Kumar Mishra bearing account No.41497 and the same was encashed by him.

The certificate of the Bank in this regard is Ex.PW-1/E.

- (iii) A sum of Rs.20,000/- (Rupees Twenty Thousand only) by cheque dated 13.04.1997 bearing No.186511 in favour of Chhotu Ram, who was the partner of Mr.Tuhi Ram, drawn on the Central Bank of India from the account of the plaintiff, bearing account No.1205 was also duly proved and that the same was encashed by him. The certificate of the Central Bank of India in this regard is Ex.PW-1/F.

- (iv) A sum of Rs.80,000/- (Eighty Thousand only) was given by the plaintiff to Mr. Tuhi Ram in cash on 25.10.1997 and the receipt

to this effect was duly issued by him, which is proved on record
as Ex.PW-1/G.

10. The plaintiff further stated in his evidence that apart from the aforesaid payments, various payments were also made by him to the Architect and the Contractor on account of the material bought for development and maintenance of the partnership property, in total amounting to Rs.3 lacs (Rupees Three Lacs only).

11. A statement of account was also duly filed by the plaintiff under orders of this Court dated 26th November, 2001. The said statement of account is as follows:

“STATEMENT OF ACCOUNT

<i>On 13.12.96, the Plaintiff paid to the defendants a sum of (Receipt of the same is Ex.PW 1/B</i>	<i>Rs.8,00,000/-</i>
---	----------------------

<i>On 16.1.97, plaintiff got a cheque dated 16.1.97, bearing No.894087 issued from the account of his son, withdrew the money and gave it to Sh.Tuhiram, Contractor (Ex.PW 1/C & D)</i>	<i>Rs.25,000/-</i>
---	--------------------

<i>On 15.1.97, plaintiff got a cheque dated 15.1.97, bearing No.924841 issued from the account of his son, to Sh.Tuhiram, Contractor (Ex.PW 1/E)</i>	<i>Rs.17,000/-</i>
--	--------------------

<i>On 13.4.97 plaintiff issued a cheque dated 13.4.97, bearing No.186511 in favour of Sh.Choturam, partner of Sh.Tuhiram, Contractor (Ex.PW 1/F)</i>	<i>Rs.20,000/-</i>
--	--------------------

On 25.10.97, plaintiff gave a sum of

<i>Rs.80,000/- in cash to Sh.Tuhiram</i>	
<i>(Receipt is Ex.PW 1/G)</i>	<i>Rs.80,000/-</i>
<i>On various dates, plaintiff gave cash</i>	
<i>total amounting to Rs.1,58,000/- to</i>	
<i>Sh.Tuhiram, receipts of which are not</i>	
<i>available with the plaintiff.</i>	<i>Rs.1,58,000/-</i>
=====	=====
Total	Rs.11,00,000/-”
=====	=====

12. During the pendency of the suit, the sole plaintiff died on 16.12.2004, leaving behind his legal representatives, who were brought on record as the plaintiffs No.1 to 8 on an application under Order XXII Rule 3 CPC, being I.A.No.9557/2005.

13. I have heard the learned counsel for the plaintiffs and gone through the record, including the affidavit by way of evidence filed by the plaintiff and the documents proved on record by him, exhibited as Ex.PW-1/A to PW-1/H, Ex.PW-1/J and Ex.PW-1/K.

14. The evidence on record adduced by the plaintiffs satisfactorily establishes that a partnership business was formed by execution of the partnership deed dated 13.12.1996 (Ex.PW-1/A), which was formed only with the object of carrying on the business of sale of land in question, in parts, and at the rates to be fixed by the predecessor of the plaintiffs, late Shri V.N. Shastri. The receipt Ex.PW-1/B executed on 13.12.1996 by the defendants No.1 and 2 also establishes beyond doubt that the plaintiff had paid a sum of

Rs. 8 lacs (Rupees Eight Lacs only) to the defendants No.1 and 2. It is further established from the evidence adduced by the plaintiff that the plaintiff had paid a sum of Rs.1,42,000/- (Rupees One Lac Forty Two Thousand only) to one Mr.Tuhi Ram, whose services were hired by the plaintiff for laying out the roads on the land in question. The plaintiff had made the aforesaid payments during the period intervening 16.01.1997 and 25.10.1997 through bank cheques. The certificates in respect of the same have been issued by the concerned banks viz. Punjab National Bank, Tilak Nagar Branch, New Delhi and the Central Bank of India, Gole Market Branch, New Delhi, exhibited as PW-1/C, Ex.PW-1/E and Ex.PW-1/F. The receipt on the backside of the cheque dated 15.01.1997, acknowledging the receipt of a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) duly signed by Mr.Tuhi Ram is Ex.PW-1/D. Another receipt acknowledging receipt of the sum of Rs.80,000/- (Rupees Eighty Thousand only) is Ex.PW-1/G.

15. The aforesaid documents conclusively establish that the plaintiff had invested funds to the tune of Rs. 8 lacs (Rupees Eight Lacs only) plus Rs.1.42 lacs (Rupees One Lac and Forty Two Thousand only) in the aforesaid business. The evidence of the plaintiff, which is supported by the documentary evidence adduced by the plaintiff, is unrebutted on the record and as a matter of fact, the defendant No.2 had clearly stated before the Local Commissioner, Shri

V.N.Jha appointed by this Court that no accounts books were being maintained by the defendants No.1 and 2, but a sum of Rs. 8 lakhs had been received from the plaintiff.

16. In view of the fact that the defendants No.1 and 2 chose not to contest the proceedings and were proceeded ex parte by this Court as far back as on 15.04.1998, and, in view of the further fact that the defendants No.1 and 2 after the passing of the preliminary decree for dissolution of the partnership firm and rendition of accounts, failed to render accounts to the Local Commissioner appointed by this Court, I have no hesitation in accepting the un rebutted evidence of the plaintiff on record, which is duly supported by receipts (Ex.PW-1/D and Ex.PW-1/G) to the extent of Rs.8 lacs (Rupees Eight Lacs only) and Rs.1.42 lacs (Rupees One Lac and Forty Two Thousand only). As regards the sum of Rs.1.58 lacs (Rupees One Lac Fifty Eight Thousand only) shown to have been given by the plaintiff in cash on various dates to Shri Tuhi Ram, the plaintiff has stated that the receipts in respect of the same are not available with the plaintiff. In this view of the matter, the plaintiff cannot be held entitled to receive the aforesaid amount of Rs.1.58 lacs.

17. Resultantly, a final decree for the recovery of a sum of Rs.9.42 lacs (Rupees Nine Lacs Forty Two Thousand only) is passed in favour of the plaintiff and against the defendants No.1 and 2, who shall be **jointly and**

severally liable to pay the same along with interest at the rate of 9% per annum from the date of the institution of the suit till realisation. The plaintiff shall also be entitled to costs as calculated by the Registry.

CS(OS) 2370/1997 stands decreed in the above terms.

REVA KHETRAPAL,J

JANUARY 19, 2009

dc