

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

+ **RFA No. 332/2001**

% **Judgment reserved on : 29th November, 2011**
Date of Pronouncement : 22nd December, 2011

BHAGWANTI & ORS. APPELLANTS

Through: Mr. B.K. Patel, Advocate.

versus

KANSHI RAM RESPONDENT

Through: Mr. Satish Kumar Tripathi,
Advocate for LRs (i), (iii) to (v).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J.

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 31.1.2001. By the impugned judgment, the trial Court dismissed the suit of the appellants/plaintiffs which was filed for dissolution of partnership and rendition of accounts.

2. The brief facts of the case are that appellants/plaintiffs filed the subject suit on the ground that the late husband of appellant No.1 had entered into a partnership with the original defendant-Shri Kanshi Ram, who has since expired and is now represented by his legal heirs/respondents. The late husband of appellant No.1-Shri Hari Kishan was the allottee of a shop No.136

at Shankar Road Market, New Rajinder Nagar, New Delhi. A partnership deed of February, 1963 was entered into between Shri Hari Kishan and the original defendant-Shri Kanshi Ram. As per this partnership deed, a bakery business was to be run in the back portion of shop No. 136. The front portion was being used by Shri Hari Kishan for his paints business. As per the partnership deed, the late defendant-Shri Kanshi Ram was responsible for running of the business, as he was already running a bakery business. Since the complete business was to be managed by late defendant-Shri Kanshi Ram, he was entitled to 75% share of the profits and complete losses and Shri Hari Kishan was entitled to 25% of the profits of the business. A sum of ₹185/- per month was to be paid to Shri Hari Kishan every month and which amount was adjustable towards his share of profit. It was alleged by the appellants/plaintiffs that appellant No.1 was told about the business by her husband a few days before his death on 14.7.1981. Since the defendant-Shri Kanshi Ram failed to render accounts of the partnership business, the subject suit came to be filed on 13.7.1984.

3. The original defendant-Shri Kanshi Ram, now represented by legal heirs/respondents, contested the suit and the only point of contest was that there was no partnership between late husband of appellant No.1/Shri Hari Kishan and the defendant-Shri Kanshi Ram. It was argued that the partnership deed was a camouflage and really the relationship between the

parties was that of a landlord and tenant. It was argued that the terms of partnership deed, more particularly, payment of ₹185/- per month showed that there was a relationship of landlord and tenant between the parties. The defendant had pleaded that the rent was originally ₹300/- per month which became ₹500/- per month when the bakery business started in the entire shop, once late Shri Hari Kishan, husband of appellant No.1 stopped his paints business.

4. The main issue, therefore, which was contested by both the parties in the trial Court, was whether the relationship between the parties was of a landlord and tenant or whether late Shri Hari Kishan/husband of appellant No.1 and late Shri Kanshi Ram/defendant were partners in a partnership business.

5. The trial Court has given a finding with respect to this issue while dealing with respect to issue No. 3 and issue Nos. 1 and 2. The trial Court has given the below mentioned relevant findings holding that the relationship between the parties was of a landlord and tenant and not partners in the partnership business by observing as under:-

“8. Issue no. 3 framed on 30.5.89

Whether a partnership deed was executed between the parties as alleged in the plaint? OPP

AND

Issue no. 1 & 2 framed on 25.9.92

Whether the partnership deed was executed

between the parties, if so whether the same is still existing? OPD

Whether the partnership deed between the parties was genuine partnership deed? OPD

I shall dispose of these three issues together as same question of fact is involved in all the three issues. In fact, the controversy between the parties is three fold. FIRSTLY, whether any partnership deed was executed between the parties. SECONDLY, if any, partnership deed executed between them is still subsisting and THIRDLY, whether partnership deed, if any, executed between the parties was a genuine partnership deed or a camouflage to let out the shop to the defendant. The evidence led by the parties in this regard is the statement of Bhagwanti as PW-1 and Kanshi Ram as DW-2. It is alleged that partnership deed was executed between Hari Kishan and Kanshi Ram in 1963. This suit has been filed three years after the death of so called partner. There is no dispute that during the life time of Hari Kishan no suit was ever filed by him against the defendant for rendition of accounts or for any other purpose. The controversy arose only after the death of Hari Kishan on 14.7.1981. PW-1 deposed that partnership was executed between her husband and the defendant prior to her marriage. She further deposed that one month prior to his death, her husband handed over a copy of the partnership deed to her and told her that he was a partner in shop in Shankar Road Market. Shop no. 136. He also told her that his partnership was with one Kanshi Ram. Her husband further orally told her that he was share-holder of 25% profits in the business being run in that shop. He further told her that till his death, all the accounts were not settled with Kanshi Ram. Original partnership deed was in possession of Kanshi Ram. No accounts were ever rendered by him. In cross-examination, she deposed that prior to his death, her husband was running a paints shop in Shankar Road Market and was running his house-hold expenses from that shop. She has proved on record copy of the partnership deed as Ex.PW1/2.”

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10. The next question is whether the partnership deed executed between the parties still subsists or not. Though entering into partnership by the defendant with Hari Kishan is denied, still for the sake of arguments, it was argued that even if it is presumed that any partnership deed was executed between the parties, it has already out lived its life and no partnership subsists between the parties. Clause 8 of Ex.PW1/2 provided that partnership shall be for 10 years at the first instance and it may be extended further with mutual consent thereafter on the same terms and conditions. This partnership deed was executed in February, 63. It came to an end on the expiry period of 10 years in 1973. Hari Kishan died in 1981. There is not even an iota of evidence that this partnership deed was renewed for any further period after the expiry of 10 years in 1973. The onus was on the plaintiffs to prove that partnership still subsists. PW-1 has not deposed a word that after the expiry of initial period of 10 years, partnership was further extended even orally for any further period. She specifically deposed that one month prior to his death, her husband handed over the copy of the partnership deed to her and told her orally that he was in partnership with one Kanshi Ram in shop no:136, Shankar road Market. There is no evidence that even orally Hari Kishan told his wife that this partnership stood extended in 1973 for any further period. He died 8½ years after the expiry of this partnership. In the absence of any specific evidence to this effect there is no presumption that this partnership was further extended for any period. The circumstances also suggest the same. Hari Kishan entered into partnership with defendant in 1963 as per allegations of the plaintiff. Bhagwanti was married to Hari Kishan in 1966, her husband died 15 years after marriage but during this whole period of 15 years, she was never told that her husband is a partner with Kanshi Ram in shop no. 136. This fact itself is highly improbable that for long period of 15 years, a husband would not inform his wife that apart from running paints business he is also running a partnership business with Kanshi Ram. It is further improbable that one month prior to his death, he would hand over copy of

the partnership deed to his wife and then he would inform her that he is a partner with Kanshi Ram in shop no. 136 having 25% share. As per terms and conditions, settled between the parties in this so-called partnership deed, accounts were to be settled every year, but the plaintiff has deposed that her husband told her that Kanshi Ram was not rendering any accounts to him till that date. Hence, I hold that even if any, partnership deed was executed between the parties, it came to an end in 1973 as agreed between the parties. There was no further renewal of this partnership deed and hence no partnership subsisted between Hari Kishan and the defendant at the time of death of Hari Kishan as well as at the time of filing of the present suit by LR's of Shri Hari Kishan.

11. Third question to be considered is that whether there was any genuine partnership deed executed between the parties or Ex. PW1/2 was only a camouflage to let out the shop. It is not disputed that shop was allotted to Hari Kishan by the Rehabilitation department initially on rent. Hari Kishan was a displaced person who had migrated from Pakistan on partition of the country. Initially it was shop cum residence. It was allotted to him by Ministry of Rehabilitation and there was specific conditions imposed on the lessee that his allotment would be cancelled on his letting any portion of the shop no. 136. Hence in 1963 he was not legally authorized to let out the shop to any person and to part with possession. In the garb of this document, he simply intended to let out the shop to the defendant. Certain terms and conditions incorporated in this partnership deed make it abundantly clear. It was incorporated in the partnership deed that allottee was running his paints and hardware business in the front varanda of the shop and remaining portion of the ship cum residence he wants to utilize for his other business to add to his resources of income and for that purpose he joined hands with the defendant. The defendant was already running a bakery business in the adjoining shop no. 132 in the same market. It was agreed that all the finances and staff

would be appointed by the second party. The accounts shall be maintained by the second party. It was left blank and unfilled that what would be the name of the partnership business. Further it was agreed that first party shall not share any losses and would share only profits of the business in the ratio of 25% and 75%/ Clause no. 6 provided that second party would pay Rs.185/- p.m. to the first party for expenditures which shall be adjustable towards his share of profit. Another interesting term of this partnership deed was that on dissolution of the partnership, the accounts shall be settled and second party shall be entitled to remove all his goods and trade, etc from the premises and vacate the premises. None of the parties was entitled to raise loans in the name of partnership business. Each party shall pay and discharge his own liabilities. These terms suggest only one thing that the shop was let out at a monthly rent of Rs.185/- that is why the first party was to receive a minimum of Rs.185/- every month and was not responsible for any losses otherwise there cannot be a partnership between two persons, with a stipulation that one party shall bear all the losses, if any, and the second party would share only the profits, and in genuine partnership deed, no amount can be fixed which would be payable to only one party and not to the other as in this partnership deed. A stipulation in partnership deed that no loan can be raised in the name of partnership business also suggests that this document was nothing but a camouflage to let out the shop to the defendant and to save the landlord from cancellation of his allotment on the ground of subletting by superior landlord. Had there been a genuine partnership existing between the parties, the family members of Hari Kishan must have been aware of it that he was running a partnership business with Kanshi Ram in shop no. 136. The partnership deed itself as well as attending circumstances suggest, that the shop was let out by Hari Kishan to the defendant initially at a monthly rent of Rs.185/- which is shown in the partnership deed as fixed amount payable to Hari Kishan every month.

12. Both the parties agreed that at the time of filing of the suit the defendant was in possession of entire shop. At the time of execution of Ex.PW1/2 only back portion was given to the defendant for running his bakery. The defendant has deposed that 5/6 years after execution of this document, the possession of whole shop was handed over to him but PW-1 is not aware of this fact that when remaining part of the shop was also handed over to the defendant. This fact shows that Hari Kishan was not a partner with the defendant. He was only a landlord and for that reasons he was not doing any service to the partnership business. He was not doing any canvassing for partnership business as envisaged in the partnership deed. As he was not devoting any time to the partnership business, his family members were not aware of this so-called partnership. It appears that only after his death while searching the old papers, the plaintiff came across this document and then made up this story of partnership business and in the grab of dissolution of this partnership deed, and rendition of accounts, they want to evict the defendant from this shop which they otherwise cannot do.

(underlining added)

6. Learned counsel for the appellant has argued that the relationship between the parties was of partnership, inasmuch as, the profit which was available to late Shri Hari Kishan was a variable figure and not a fixed amount. It was argued that though an amount of ₹185/- per month was payable, the said payments were actually advances towards the profits, and which payments made every month were to be adjusted at the end of the year from the share of profits payable to late Shri Hari Kishan. It was also argued that if really there was a tenancy, the defendant would have at least taken

some rent receipts from late Shri Hari Kishan, but admittedly there is not even a single receipt signed by Shri Hari Kishan which has been proved on record. It is argued that the partnership business, though, was for ten years from February, 1963, the same continued, on the same terms and conditions, till the death of Shri Hari Kishan/husband of appellant No.1 on 14.7.1981 by virtue of para 8 of the partnership deed.

7. In reply, learned counsel for the respondents have basically relied upon the findings and conclusions which have been given by the trial Court and has referred to and stressed upon Clause 6 of the partnership deed which entitled payment of an amount of ₹185/- per month to Shri Hari Kishan.

8. In order to decide the issue of whether there existed partnership between the parties or the relationship between the parties was of a landlord and tenant, it is necessary to refer to partnership deed, and which has been exhibited as Ex.PW1/2. The said deed reads as under:-

“Partnership deed.

This deed of partnership is made here in Delhi between (1) Shri Hari Kishan son of Shri Hem Raj, resident of Block 3, Quarter No:1, Old Rajinder Nagar, New Delhi, hereinafter called the “First Party” of one part and (2) Shri Kanshi Ram son of Sh. Ilahi Ram, resident of New Rajinder Nagar, New Delhi, hereinafter called the “Second Party” of the other part.

WHEREAS the first party is allottee of Shop No. 136 Shankar Road, New Rajinder Nagar, Market and in front veranda of the same shop he is carrying on his

business of Paints and Hardware etc, and the remaining portion of the said Shop cum residence No. 136, Shankar Road, New Rajinder Nagar, New Delhi comprising of Main Shop, Veranda and compound opening in service lane, she wants to utilize in his other business to add to his resources of income, hence he has joined hands with the Second party to carry on the business of Bakery in the remaining portion of the said shop as described above and the second party has agreed to work in partnership with him on the following terms and conditions, hence this partnership deed witnesses:-

1. That all investment required for the new Bakery Business shall be arranged by the Second Party and all staff etc shall be engaged and arranged by him as he is conversant with the said line. The First Party shall be a working partner and his duties shall only be of canvassing.
2. That the partnership business shall be carried out only in the said premises consisting of main shop room, back veranda and courtyard etc opening service lane, pertaining to Shop No 136, Shankar Road, New Rajinder Nagar Market. The partnership business shall be named and styled as “
3. That the Accounts of partnership shall be kept and maintained by the second party and the first party shall have access and right of check thereto.
4. That the share in profit and loss of the business shall be borne by the parties in following proportions:-
(a) Second party for Capital and investment shall be entitled to 50% of the profit & loss and for his management 25% and the Second Party shall thus be entitled to 75% of the profit and loss and the First Party shall be entitled to 25% for his working and canvassing etc.
5. That as the accounts and management shall be in hands of Second Party and the business is profitable hence if the second party shows any loss in the business, the first party shall not be responsible for payment of any loss.
6. That the partnership shall pay to the first party amounts not exceeding Rs.185/- per month for

expenditure of First Party which shall be adjustable towards his share of profit.

7. That the accounts of Partnership shall be settled annually when shares of profit and loss shall be determined and distributed.

8. That the partnership shall be for ten years at first instance and it may be extended further with mutual consent thereafter on the same terms and conditions.

9. That on dissolution of partnership the accounts shall be settled and the Second Party shall be entitled to remove his goods in trade etc from the premises and vacate the premises.

10. Neither party shall be settled to raise loans in name of the partnership. Each party shall pay and discharge his own liabilities.

11. In case of any dispute or clarification of the above terms, the same shall be referred to the sole arbitration of Sh. Chowdhry Ram 12/25 E.P.N. whose decision on such matter shall be final.

IN WITNESS WHEREOF the parties have hereunto set their respective hands this th day of February, 1963.

FIRST PARTY

SECOND PARTY

Witnessed By:-

1.

2.”

9. A reading of the partnership deed shows that it was not as if only a fixed amount every month was payable to late Shri Hari Kishan for therefore arguing that the relationship was of a landlord and tenant. It was only if a fixed amount was being paid every month, and no other amount was to be paid, that it would have been argued that the fixed monthly payment

represented the rent. Admittedly, as per Clause 6, the payment of ₹185/- per month was to be adjusted towards the final variable share of profit of late Shri Hari Kishan and such clauses are usual in a partnership deed, which permits withdrawal by a partner from his capital account/profit share. If, nothing else except ₹185/- per month was payable, then in such circumstances, it could have been asserted that the relationship between the parties was of a landlord and tenant, however, in view of the existence of a profit sharing ratio giving variable amounts to Shri Hari Kishan every year, and the amount of ₹185/- per month being adjusted towards the final share of profit, the conclusion would be that the relationship between late Shri Hari Kishan and defendant was of partners in a partnership firm, and not that Shri Kanshi Ram was a tenant under Shri Hari Kishan. Further, it is also nothing unusual that in some partnerships only one party bears the losses, inasmuch as such clauses exist in certain partnerships because only one partner carries on the complete business. A partnership is the relation between the persons who have agreed to share profits of business, carried on by all or any one of them acting for all. Partnership is a joint venture where different persons contribute their different resources together as per their abilities i.e. someone may give capital, someone may give labour, someone may give a property where business is carried on or each one may give one or more of the other. There is very much recognized under the Partnership Act, 1932, a working partner and a sleeping

partner. In view of the fact that the husband of appellant No.1/Shri Hari Kishan was giving valuable capital to the partnership firm in the form of property owned by him where the business was to be carried on, it was therefore not unusual that the entire other working capital and other requirements were met by the late defendant. Since the late defendant was also to carry on the business, he was given a higher share of profits at 75% and he was also to bear the losses for the business which he was to carry on for and on behalf of the firm. Therefore, there is nothing unusual of the husband of the appellant No.1 receiving 25% of the share of the profits without any liability towards losses. It is again reiterated at the cost of repetition, that the profit payable to late Shri Hari Kishan was a variable figure each year and not a fixed amount which could be taken as rent for the premises.

10. One of the issues which was sought to be argued on behalf of the respondents was that there was no name written of the partnership in the partnership deed and, therefore, it should be held that there is no partnership. This argument, in my opinion, is really without any substance, inasmuch as the partnership deed which has been filed on record as Ex. PW1/2 is the carbon copy of the partnership deed which was available to the widow of Shri Hari Kishan, namely, appellant No.1 and the original of the partnership deed was with the original defendant, who failed to produce the same, in spite of a

notice being given to produce the original. Infact, the defendant after originally disputing the existence of a partnership deed, subsequently admitted to his signatures on the partnership deed and whereafter, there remains no dispute that there existed the partnership deed between Shri Hari Kishan and the defendant-Shri Kanshi Ram. Obviously, there must have been a name of the partnership firm, but the defendant chose to take up the defence of lack of name of the partnership firm only to suit his convenience, and the legal heirs of Shri Hari Kishan i.e. the plaintiffs/appellants would have no personal knowledge as the personal knowledge of the partnership business was with Shri Hari Kishan who had expired and the defendant/Shri Kanshi Ram was wanting to take advantage of the same by not providing the original of the partnership deed which was with him. I, therefore, hold that it makes no difference that the name of the partnership firm is found blank in the carbon copy of the partnership deed which has been exhibited as Ex.PW1/2.

11. Another argument raised on behalf of the respondents/defendants was that the partnership deed came to an end on the expiry of ten years from February, 1963 and, therefore, the partnership thereafter could not have existed. This argument again is without any merit inasmuch as para 8 of the partnership deed clearly provided that though originally the period of the partnership will be of ten years, however, the same can be further extended by mutual consent on the same terms and conditions. Obviously, this partnership

therefore by mutual consent had continued after the original period of ten years on the same terms and conditions, however, the defendant wanted to take un-necessary advantage of the death of the other partner Shri Hari Kishan, and who was the husband of the widow-appellant No.1 and who was the person who had knowledge of the complete facts. I, therefore, hold that it cannot be said that partnership deed exhausted itself after ten years from February, 1963.

12. In addition to what is stated above, a few of the important aspects which are to be noted for allowing the appeal in favour of the appellants are as follows:-

(i) If really the original defendant was a tenant, then atleast few rent receipts signed by late Shri Hari Kishan would have been filed by the late defendant on record. After all, the tenancy as per the stand of the original defendant continued for no less than 18 years and, therefore, it is not believable that late defendant would not have with him even a single receipt signed by late Shri Hari Kishan.

(ii) The defendant tried to file and prove certain rent receipts as signed by appellant No.1 and her daughter-Neeru after the death of Shri Hari Kishan, however, the same were rightly denied by appellant No.1. The defendant did not lead any evidence to show from some admitted records that the signatures on the four receipts filed, signed by either appellant No.1 or her daughter-

Neeru, were infact signed by appellant No.1 or her daughter-Neeru. Obviously, these receipts were fabricated after the death of the husband of appellant No.1, but the late defendant realizing the forgery in these receipts did not take the aspect of proving of the rent receipts any further by summoning any admitted record containing the signatures of appellant No. 1 and her daughter-Neeru.

(iii) Defendant originally summoned the record from Food and Supplies Department to show that a rent receipt existed in the records of Food and Civil Supplies Department, however, during the examination-in-chief of this witness being DW1 on 7.9.1993, the witness was discharged in the middle of examination-in-chief without proving the alleged rent receipt. Thereafter, an application was filed by the defendant under Section 151 CPC for removing alleged original rent receipt from the file of the Food and Civil Supplies Department for being filed in the Court but this application was dismissed with the liberty to the defendant to re-summon the witness with the file of the Food and Civil Supplies Department containing the alleged original receipt and thereafter for the same to be filed and proved. The defendant however took no steps thereafter to re-summon the witness from the Food and Civil Supplies Department to prove the alleged rent receipt in the records of Food and Civil Supplies Department.

(iv) When we look at the photocopy of the alleged rent receipt stated to be

filed in the record of Food and Civil Supplies Department and a photocopy of which exists in the the trial Court record, which we can look into being a document filed by defendant himself, it is obvious that this rent receipt appears to be a forged and fabricated document, inasmuch as, the alleged signatures of late Shri Hari Kishan appear after a blank space of three and a half inches after the hand written content of the documents/rent receipt for the month of June, 1975 and signed on 7.7.1975. Even a single glance at this alleged rent receipt shows that the same is a forged and fabricated document. The finding as to forgery and fabrication gets further strengthened by the fact that why would there be a solitary receipt dated 7.7.1975 whereas, as per the case of the defendant, the tenancy continued right from February, 1963 till April, 1981, i.e. after about eighteen years during the life time of late Shri Hari Kishan.

13. A civil case is decided on balance of probabilities. The admitted partnership deed proved on record as Ex. PW1/2 as per its terms shows that the same was a partnership as envisaged in law and its terms are not such that the deed can be taken to be a camouflage for the alleged relationship of a landlord and tenant between Late Shri Hari Kishan-the husband of appellant No.1 and late defendant-Shri Kanshi Ram. Further, there having not been filed any proof on record of even a single rent receipt for about eighteen years, and the only rent receipt (though not proved) filed by the defendant is

shown as an *ex facie* forged and fabricated document, it is indeed not possible to arrive at a conclusion that the relationship between the parties was of a landlord and tenant and not of partners in a partnership firm.

14. A curious and important aspect which emerged during the course of hearing was that the legal heirs of the original defendant are no longer in control and possession of the premises, and possession of which premises has been handed over to the third party on execution of a 'Power of Attorney'. Obviously, this Power of Attorney would have been executed for consideration, and the legal heirs of the defendant are nowhere at the spot. It seems that the legal heirs of late defendant-Shri Kanshi Ram are making money by transferring possession of the valuable immovable property belonging to the appellants i.e. a clear cut case of making hay/money while the sun shines.

15. In view of the above, the appeal is accepted and the impugned judgment is set aside. It is held that the relationship between the late defendant-Shri Kanshi Ram and late Shri Hari Kishan, husband of appellant No.1 was of partners in a partnership firm and there was no relationship of a landlord and tenant between these persons. The appellants are entitled to rendition of accounts of the business for a period of three years prior to the filing of the suit (before which period of three years the same is beyond limitation and hence such relief for the period beyond three years prior to

filing of the suit cannot be granted) pendent lite and till the business is/was carried on in the Shankar Road Market premises in view of Section 37 of the Partnership Act, 1932. It is held that the possession of late defendant-Shri Kanshi Ram and thereafter his legal heirs is only permissive possession of the premises being shop No. 136 at Shankar Road Market, New Rajinder Nagar, New Delhi and not a possession of a tenant and in view of Clause 9 of the partnership deed the respondents are bound to remove their goods and handover possession of the shop to the appellants.

16. A preliminary decree is passed holding that the partnership was dissolved on the death of Shri Hari Kishan on 14.7.81 and the respondents are directed to render accounts for the period of three years before the filing of the suit till the passing of this judgment and thereafter in terms of Section 37 of the Partnership Act, 1932. The share of the appellants is held to be 25% share in the profits of the business. A receiver is to be appointed to take control and possession of the property of the partnership, and which for the present is only the shop No. 136 at Shankar Road Market, New Rajinder Nagar, New Delhi, so that the possession of the same is handed over to the appellants. Parties are left to bear their own costs.

Let the file of the suit along with a copy of this judgment be transmitted to the trial Court for taking further proceedings in terms of this judgment including of appointment of receiver and taking proceedings with respect to

the final decree of rendition of accounts against the respondents.

Parties to appear before the District and Sessions Judge, Tis Hazari Courts, Delhi on 24.1.2012 and on which date the District and Sessions Judge will mark the suit for further proceedings with respect to handing over possession of Shankar Market Road shop to the appellants and for passing a final decree in accordance with law after the rendition of accounts. Trial Court record be sent back so that it is made available to the District and Sessions Judge on 24.1.2012.

17. The present appeal is allowed and disposed of accordingly.

VALMIKI J. MEHTA, J.

DECEMBER 22, 2011

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