

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

+ **RFA No.477/2001**

% **25th February, 2011**

HAFIZ BASHIRUDDIN, THROUGH HIS LEGAL REPRESENTATIVE, MOHD. YUNUS

..... Appellant

Through: Mr. Pawan Mathur, Advocate.

VERSUS

SHRI ABDUL WAHID & OTHERS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 6.9.2001 whereby the suit of the late plaintiff Hafiz Bashiruddin (who died during the pendency of the suit in the trial Court and is now represented by his legal heir as appellant) claiming declaration and rendition of accounts of a partnership was dismissed.

2. At the outset, it is worth noting that the partnership with respect to which rendition of accounts is claimed was entered into in the year 1960 and with respect to which the subject suit was filed in the year 1987. It is further worth noting that in the entire plaint, there is no averment as to till which month and year the plaintiff had received the profits from the partnership and from which month and year no profits were given. The partners of the firm were alleged to be defendant Nos.1 and 2/respondent Nos.1 and 2. The respondent No.2 died during the pendency of the appeal and his legal heirs have been substituted in his place.

3. The case as set out in the plaint by the predecessor in interest of the appellant was that there was a partnership entered into between the parties in the year 1960 for sale on commission of sheep and goats. It was alleged that the plaintiff was entitled to 1/3rd share in the business and assets of the partnership. It was further alleged that defendant Nos.1 and 2/respondent Nos.1 and 2 were maintaining the books of the partnership and hence were liable to render the accounts. It was then alleged that the share of the plaintiff would come to Rs.95,000/- and the plaintiff had served a notice on the defendant Nos.1 and 2 dated 2.7.1987 and which was replied to by the reply dated 9.7.1987 disputing the stand of the plaintiff and therefore the suit came to be filed.

4. The case of the defendant Nos.1 and 2/respondent Nos.1 and 2 in the written statement was that the partnership firm was actually dissolved

in the year 1962 itself, however, since the defendant No.1 had become insane, documentation of dissolution of partnership immediately could not be entered into. It was further pleaded that the plaintiff had raised similar disputes in the year 1971 and whereupon a written dissolution deed was entered into between the parties on 4.6.1971 and the accounts of the firm were settled and liabilities of each of the partners to the others stood absolved and it was acknowledged that the firm stood dissolved w.e.f. 31.3.1962.

5. The trial Court has dismissed the suit for dissolution of partnership and rendition of accounts by relying upon dissolution deed dated DW1/1. The trial Court has also discarded the handwriting expert's report as filed by the plaintiff to dispute the thumb impression of the plaintiff on the dissolution deed. To the abovesaid finding, I may add that if really there was a partnership which was surviving then the plaintiff would not have filed the suit almost 25 years after the firm was stated to be dissolved without atleast stating in the plaint that till what month and year he received profits from the business and in what manner. Obviously, the plaintiff was silent in this regard because the firm was already dissolved w.e.f. 1962 as per the dissolution deed Ex.DW1/1 dated 4.6.1971.

6. The learned counsel for the appellant argued before this Court three main points:

(i) The trial Court ought to have believed the report of plaintiff's handwriting expert as also the CFSL report to hold that the thumb impression on the dissolution deed Ex.DW1/1 was not of the plaintiff- Hafiz Bashiruddin.

(ii) There was no dissolution becomes clear from the fact that firstly when a copy of the dissolution deed was filed the same had five pages and subsequently when the original dissolution deed was filed it was only of one page.

(iii) It is not believable that if the firm was dissolved in the year 1962, then, why the dissolution deed be only of the year 1971, more so because the defendant Nos.1 and 2/respondent Nos.1 and 2 failed to prove any insanity of the defendant No.1/respondent No.1.

7. I am afraid I do not agree with any of the arguments as raised on behalf of the learned counsel for the appellant. Learned counsel for the appellant is not justified in saying that the CFSL report of the year 2000 was in favour of the plaintiff. In fact, this CFSL report specifically states that no opinion could be given because the specimen left thumb impression of the plaintiff does not contain sufficient number of clear characteristics to establish identity with questioned finger print marked as Q on the original dissolution deed. This aspect has been duly noted by the trial Court while rejecting the handwriting expert's (V.K. Sakhuja) report of the plaintiff. The relevant paragraphs in this regard is para 13 of the impugned judgment and decree which reads as under:-

“13. As regards the report of Sh. V. K. Sakhuja, handwriting and finger print identification expert is concerned, he has stated in his cross-examination that a healthy body naturally will give comparatively the clear impact of the ridges but impact of ridges is not effected simply by sickness of the individual concerned. He was directed by the counsel for the plaintiff for the purpose of comparison of specimen thumb impression which was taken by the local commissioner and he compared the same with the specimen thumb impression only and not with the other. He did not take into consideration the other thumb impression of the plaintiff which were available on the judicial record. As such, this report of the handwriting expert does not help the plaintiff much. On the other hand, record reveals that thereafter, an application was moved by the defendants for sending the admitted thumb impression of the plaintiff to CFSL for comparison of the same with the disputed thumb impression. Admitted thumb impression were sent to CFSL. However, the report from CFSL was received that the questioned finger print are blurred and smudged and do not contain sufficient number of ridge characteristics for comparison and therefore, it was noted that fresh, clear and identifiable specimen left thumb impressions of Hafiz Bashiruddin may be sent for comparison.”

No fault can be found with the aforesaid findings and conclusions of the trial Court because the thumb impression which was taken was of the plaintiff by a Local Commissioner was when the plaintiff was about 84 years of age and therefore because of his advanced age and frail physical condition the thumb impression could not be properly obtained, and thus the CFSL refused to give any report. Also, it is a well known fact that a private handwriting expert always favours the person who calls the private handwriting expert and the trial Court has committed no illegality in discarding the report of the private handwriting expert of the plaintiff. Merely because two views are possible, this Court is not entitled to interfere

with the view as taken by the trial Court unless the view is perverse and illegal. I do not find any illegality or perversity in the view taken by the trial Court of discarding the private handwriting expert report of the plaintiff.

8. The second argument of the appellant is also clearly misconceived and in fact is a specious one. At the first blush, there appears to be substance in the argument that how can a dissolution deed of five pages become only one page, however, when the record was gone through, it became clear that so called first dissolution deed of five pages which was filed was in fact the written transcription of the original dissolution deed on stamp paper. The words and lines in the original dissolution deed are in Urdu, whereas, at the time of transcribing, inasmuch as the transcription is in hand of the transcriber, he has taken five pages to write out the original dissolution deed of one page of the stamp paper. Quite clearly therefore this argument on behalf of the appellant is of no substance because it is not as if originally there was a photocopy of five pages of the dissolution deed and which became only one page when the original dissolution deed came on record. I may only add that at the time of transcribing, the transcriber can write one paragraph of one page of an original document neatly even on one full page and which has in fact happened in the present case and therefore the argument on behalf of the appellant, is bereft of any logic.

9. The last argument raised on behalf of the appellant that why there should have been a dissolution deed in the year 1971 if the partnership

dissolved in the year 1962 is again without any substance because the respondent Nos.1 & 2/defendant Nos.1 & 2 have proved on record that the appellant had raised similar disputes and claims in the year 1971 with regard to the partnership firm, like was done at the time of filing of the subject suit and therefore to settle the issue once and for all a proper dissolution deed was executed between the parties in the year 1971. Therefore, even assuming that merely because it was not conclusively proved that defendant No.1 suffered from mental ill health would not make a difference because the late plaintiff had raised similar disputes as were raised in the subject suit, in the year 1971 also and therefore parties had entered into written documentation of the dissolution of the partnership in 1971. I may state that there is credibility in the stand of the respondent Nos.1 and 2 because immediately when the legal notice dated 2.7.1987 Ex.PW1/1 was served upon the respondents, the respondent Nos.1 and 2 by their reply dated 9.7.1987 Ex.PW1/5 denied the case as stated in the notice dated 2.7.1987 of the plaintiff by referring to the dissolution deed of the year 1971.

10. I may note that the trial Court has disbelieved the testimony of the son of the erstwhile plaintiff on account of inconsistency and lack of credibility in his statement and the trial Court has also relied upon the statement of Munshi who was an independent witness to hold that the firm was dissolved. Some of the relevant observations of the trial Court are found

in paras 10, 12 and 16 of the trial Court judgment, and with which I agree and which read as under:-

“10. As seen in the written statement filed by both the defendants, they took preliminary objection no.4 alleging that the partnership entered into between the plaintiff and defendants on 30/9/1960 was finally dissolved on 31/3/1962 and all documents due to each partner was settled, paid and accepted by each partner and only a formal deed of dissolution remains to be executed between the parties. Before the same could be executed, defendant No.1 got mental shock and he became insane and was treated in hospital. He regained his consciousness in 1971. Soon after getting consciousness, written deed of dissolution was executed on 4/6/1971 wherein the plaintiff admitted the dissolution of the firm, settlement of accounts, receipt of the amount due to each partner and also acknowledging that the firm had been dissolved w.e.f. 31/3/1962. The onus of proving this issue was on the defendants and in order to prove this issue, as stated above, besides appearing in the witness box themselves, defendants have examined two witnesses. DW-1 Munshi Piaju Din has deposed that the dissolution deed Ex.DW1/1 was executed on 4/6/1971 between Haji Mashiruddin, Mohd. Sayeed and Abdul Wahid. It was signed at point A by Mr. Bashiruddin and he himself has signed it at point A. Two other persons were also present besides the parties. The accounts were settled prior to the execution of Ex.DW1/1. DW-2 Chowdhary Mehar has deposed that partnership between the parties was dissolved in his presence. Nothing was paid at that time. After the execution of dissolution, there was no partnership between the parties. DW-3 Abdul Wahid, defendant no.1 has deposed that there was a partnership between him, plaintiff and defendant no.2 in 1959 and same was dissolved in 1962. Due to losses in the business, the same was dissolved. He became insane and still under the treatment ailment. The accounts of the partnership were settled before its dissolution. Plaintiff was looking after the business and was maintaining its accounts. The account books of the firm were with the plaintiff, other record was also with the plaintiff. He regained consciousness in 1971 and thereafter, document Ex.DW1/1 was executed between the parties. It is signed by him as well as by the plaintiff and defendant no.2. It was also attested by Munshi Piazu Din and one Munshi Khurshid who has died. DW-4 (wrongly numbered as DW-2) Mohd. Shahid has also deposed to the same effect as DW-3 that the partnership was entered into in the year 1960 and the same was dissolved in 1962, accounts were settled in

1962 itself. Dissolution deed, however, was executed in 1971 which bears his signature as well as signatures of defendant no.1 and the plaintiff. No dissolution deed could be recorded in 1962 because defendant no.1 was having some mental problem. He recovered from mental illness in 1971 and then dissolution deed was executed. He went on stating that all accounts were settled in 1962 itself and they are not liable to render any accounts to the plaintiff.

12. PW-2 Sh. V. K. Sakhuja, handwriting and finger print expert examined the thumb impression at point Q on Ex.DW1/1 and compared the same with specimen left thumb impression at point 1 to 5 and also the right thumb impression at S.No. 6 to 10 and after examining the thumb impression, he gave his report Ex.PW2/1 opining that the thumb impression at point Q on Ex.DW1/1 is not identical to any of the specimen. It was contended by the learned counsel for the plaintiff that the plaintiff was uneducated and illiterate, therefore, there was no question of putting any signature on dissolution deed Ex.DW.1/1. Moreover, no evidence has been led by the defendants to show that defendant no.1 became insane and as such, it was submitted that the defendants have failed to prove that any dissolution deed Ex.DW1/1 was executed between the parties. I have carefully perused the record which reveals that when the suit was filed, the plaintiff served a notice u/O 12 Rule 8 upon the defendants, in pursuance to which, the defendants filed photocopy of the partnership deed and original deed of dissolution. The case was fixed for admission/denial of documents, however, the plaintiff moved an application that he is not in a position to appear in the court and make statement because he is suffering from Parkinsons disease and otherwise is weak and body has become rigid being 84 years of age, therefore, the admission/denial may be got done at his residence. This application was allowed. Mr. Susham Lata Dhawan, advocate was appointed Local Commissioner and she was directed to visit the house of the plaintiff for admission/denial of the documents and she was further directed to take thumb impression of the plaintiff of both the hands. In pursuance thereof, Ms. Susham Lata Dhawan, advocate went to the house of the plaintiff and submitted her report stating therein that she obtained the thumb impression of the plaintiff on separate sheet. Original document was shown to the plaintiff, he could not identify because of less vision. Thereafter, issues were framed and since onus of issue no. 3 was on the defendants, the defendants led the evidence first. As seen above, DW-1 Munshi Piazi Din has categorically deposed that dissolution deed Ex.DW1/1 was signed by the plaintiff Mr. Bashiruddin as well as by both the defendants in his presence and he also signed the same. In cross-examination, it has

come that he had purchased a stamp paper on 6.4.1971. He has further deposed that all the parties and attesting witnesses signed the dissolution deed. All the 3 partners, besides signing the dissolution deed, also thumb marked the same. He denied the suggestion that dissolution deed Ex.DW1/1 was not signed or thumb marked by the plaintiff. Nothing has come in the cross-examination of this witness as to why he will depose falsely in favour of the defendants. The contention of the learned counsel for the plaintiff that the plaintiff was illiterate and therefore, he did not know how to sign, is devoid of any merits inasmuch as firstly, there is no suggestion to any of the defendants witnesses that plaintiff did not know how to put his signature. Even, Mohd. Yunus, son of the plaintiff has nowhere deposed that the plaintiff did not know how to sign. Although, he has deposed that Hafiz Bashiruddin was illiterate but that does not mean that he could not even sign the document. It was further submitted by the learned counsel for the plaintiff that if Hafiz Bashiruddin had signed the deed. Where was the question of obtaining his thumb impression on the same. It may be mentioned that this submission is also without any merit because it has come on record that all the three partners have affixed their thumb impression besides signing the same.

16. It is the case of the defendants that after the partnership business came to an end in the year 1962, the parties started their own business. PW-1 has deposed that his father was working in the slaughter house in Idgah Slaughter House. He was doing the business of sale and purchase of Goat and Sheep. According to him, when he became elder, he joined the business which was being carried on by his father alongwith the defendants, then it is surprising that how he is ignorant as to whether his father and defendants used to meet for their business purpose. He pleads his ignorance about the business or other affairs of the partnership. In pursuance to a specific question put to the witness that his father and defendants continued with the business of partnership upto 31.3.1962, he replied that he was told that business continued till the death of his father. As per the application u/O 22 Rule 3 CPC moved by Mohd.Yunus, his father died on 22.12.1989. He went on stating that his father was looking after the business till he was alive and he volunteered by stating that business was carried on under his supervision by him. However, he does not maintain any account of the business carried on by him. Although, he stated that he is an income tax payee but went on stating that he filed income tax return for the business carried on by him only. If the testimony of this witness is believed as correct that he had been carrying on the business under the supervision of his father then it does not appeal

to reason as to how he is ignorant about the details of the business. He could not say how much amount was paid by the defendants to his father. He has deposed that he is making a statement on the basis of facts informed to him by his father and he has no personal knowledge about the same. According to him, defendants paid profits for some time earlier to filing the suit by his father. However, he could not tell whether it was week, month or a year before and subsequently, he admitted that he did not attend the partnership business. His father was a shopkeeper and was running the shop at S-44, Shanker Market, Connaught Place, New Delhi. He continued business in the said shop till he fell ill in 1988. Thereafter, he used to attend his business with the help of some other persons. His father fell ill sometime in the year 1987-88 and thereafter he did not attend to any business."

11. In view of the above, I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this Court in appeal. The appeal being therefore devoid of merits, is dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

FEBRUARY 25, 2011
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VALMIKI J. MEHTA, J.