HIGH COURT OF TRIPURA
AGARTALA

R.F.A. 4 OF 2009

1. **Shri Indrajit Debnath.**

2. **Shri Biswajit Debnath.**

   Both are the sons of Shri Jogesh Chandra Debnath
   of Vill & P.O. Saidabari, P.S. Kumarghat,
   District-North Tripura.

....**Principal Defendant-Appellants.**

- Vrs –

1. **Sri Bablu Deb,**
   S/o Shri Himangshu Deb of
   Kumarghat (Sunaimuri area)
   P.O. Sunaimuri, P.S. Kumarghat,
   District- North Tripura.

.... Plaintiff-respondent.

2. **Shri Shyamal Roy,**
   S/o Late Prafulla Chandra Roy of
   Melarmath, P.O. Agartala,
   P.S. West Agartala, District- West Tripura.

3. **Shri Nivas Indu Dhar,**
   S/o Shri Manik Ranjan Dhar of
   Vill & P.O. Saidarpar, P.S. Kumarghat,
   District-North Tripura.

....**Proforma Defendant-respondents.**

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the appellants	**:**	Mr. S.M. Chakraborty, Sr. Advocate.
For the respondents	**:**	Mr. D.K.Biswas, Advocate.

Date of hearing : 10.02.2015

Date delivery of judgment and order : 19.02.2015

Whether fit for reporting : No

JUDGMENT & ORDER

This Civil first appeal under Section 96 of the Code of Civil Procedure,1908 is directed against judgment and decree dated 03.04.2009, passed by learned Civil Judge, Sr. Division, North Tripura, Kailashahar in Money Suit No. 3 of 2007.

2. Plaintiff-respondent No.1 (hereinafter mentioned as plaintiff) instituted Money Suit No.3/07 seeking a decree for realization of an amount of Rs.6,44,180/- with compensation @ 10% per annum from the principal defendant-appellant Nos. 1 and 2 (hereinafter mentioned as defendant Nos. 1 and 2) and in that suit, proforma defendant-respondent Nos. 3 and 4 were arrayed as proforma defendants Nos. 3 and 4 (hereinafter mentioned as proforma defendants Nos. 3 and 4) and the learned Civil Judge, Sr. Division by impugned judgment and decree, challenged in this appeal, decreed the suit for recovery of an amount of Rs.6,44,180/- with 10% interest thereon w.e.f. the date of decree and having felt aggrieved, the principal defendant Nos. 1 and 2 filed the present appeal.

3. Let us have a glimpse to the pleadings of the parties.

4. The plaintiff in his pleadings, *inter alia,* contended that the principal defendant Nos. 1 and 2 and the proforma defendant Nos. 3 and 4 formed a partnership farm on 08.11.2005 for running business of distributorship of Airtel and the principal defendant No.1 Indrajit Debnath and proforma defendant No.3 Shyamal Roy were appointed as Attorney of the other partners by a registered Power of Attorney dated 20.11.2005. The partnership farm worked for about 10 months and thereafter because of some anomalies, it could not function and thereafter meetings were held on 11.08.2006 and 12.08.2006 between the partners and other well wishers including the plaintiff and it was decided that principal defendant Nos. 1 and 2 shall run the business of Airtel distributorship and that they shall pay back and refund the money/fund they received from outsiders including the plaintiff and another Anup Chowdhury and those resolutions dated 11.08.2006 and 12.08.2006 were signed by all the partners and the well wishers including the plaintiff. On 21.08.2006 another meeting was held between the plaintiff and the principal defendants for accounting of the amounts contributed by the parties and in an old stamp paper partly used earlier, Indrajit Debnath, the principal defendant No.1 erased out old part writings and thereafter in that stamp paper wrote the amount contributed by the parties i.e. the plaintiff and principal defendant Nos. 1 and 2 and it was specifically mentioned in that document dated 21.08.2006 that the plaintiff invested an amount of Rs.5,95,000/- and that paper was signed by both the principal defendants admitting their liability of Rs.5,95,000/-.

It is also contended by the plaintiff that though the defendant Nos. 1 and 2 did not refund the amount but good relation between the plaintiff and the defendants Nos. 1 and 2 continued and therefore, the plaintiff even thereafter by several installments paid another Rs.1,00,000/- to the principal defendants after 21.08.2006 and as a result, the total amount contributed by the plaintiff stood at Rs.6,95,000/-.

Because of their incapability the principal defendant Nos. 1 and 2 surrendered their distributorship business to the Airtel authority in January,2007 and reached an amicable settlement with the Airtel authority and thereby the Airtel authority engaged some other persons for their business. After amicable calculation of accounts, the Airtel authority took up responsibility of refunding to the plaintiff an amount of Rs.50,820/- out of the amount of Rs.1,00,000/- which the plaintiff contributed after 21.08.2006 and so there remain an amount of Rs.49,180/- and so the total outstanding of plaintiff remain recoverable from the principal defendant Nos. 1 and 2 was Rs.5,95,000/- + Rs.49,180/- i.e. total Rs. 6,44,180/-.

It is also contended by the plaintiff that he contributed the amount to the principal defendants for the distributorship business of Airtel by taking loan from others as well as taking loan from Machmara Branch of UBI, having account No.TDL 191 but the principal defendants did not pay back the amount. The plaintiff being an educated unemployed contributed the fund with a view to earn profit but the defendants even did not pay back the amount contributed by the plaintiff. The plaintiff thereafter issued notice to the principal defendants on 02.08.2007 through his engaged learned counsel Kamal Md. Masaddar but the notice was incomplete and defective and therefore, the plaintiff subsequently issued another notice through his engaged counsel, S.P. Dutta Purakayastha on 22.08.2007 and demanded the amount of Rs.6,44,180/-. The principal defendants in response to notice dated 02.08.2007 made false statement with suppression of fact but did not give any response of the notice dated 22.08.2007. The plaintiff, therefore, instituted the suit for realization of the amount with compensation @10% per annum.

5. The defendant Nos. 1 and 2 contested the suit by filing written statement inter alia contending that the suit is bad for defect of parties since Airtel authority (Bharati Hexacom Ltd.) was not made a party in the suit. It is also contended by the principal defendant Nos. 1 and 2 that the plaintiff was the Manager of the farm and he concealed the account books, vouchers, memos etc. and further contended that the plaintiff is not entitled to get any relief as prayed for. The defendants further denied that on 11.08.2006 and 12.08.2006 any resolution was adopted after amicable arrangement or that on 21.08.2006 any stamp paper was signed by them admitting Rs.5,95,000/- due to be paid by them. They have denied about writing of any stamp paper acknowledging amount. They have also contended that after 21.08.2006 no such amount of Rs.1,00,000/- was paid by the plaintiff for running the business. It is also contended that the plaintiff presenting a false plea before the Airtel authority received Rs.50,820/- and that the defendants surrendered the distributorship business because of their incapability to run the business. The defendants denied other allegations made in the plaint and prayed for dismissal of the suit.

6. The proforma defendant Nos 3 and 4 did not file any written statement and did not contest the suit.

7. The principal defendant Nos. 1 and 2 set up a counter claim but subsequently abandoned the counter claim.

8. Considering the pleadings, following issues were framed by the trial Court for decision:-

1. Is the suit of the plaintiff maintainable in its present form and nature?
2. Is there any cause of action for this suit?
3. Is the plaintiff entitled to get decree for an amount of Rs.6,44,180/-?
4.
5. Are the parties entitled to get any other relief/reliefs?

9. It may be mentioned here that one issue (Issue No.4- Is the defendants entitled to get counter decree for an amount of Rs.3,64,000/-?) was framed regarding counter claim but that issue was deleted as per order dated 19.09.2008 passed by the learned trial Judge.

10. In course of trial, the plaintiff examined himself as P.W.1 and also examined 3(three) more witnesses in support of his case namely P.W.2 Jagadish Paul, P.W.3 Sri Niva Sindhu Dhar (proforma defendant No.4) and P.W.4 Jogesh Chandra Debnath (father of the principal defendants). The plaintiff to prove his case exhibited following documents:-

Exhibit-1 series: Advocate's Notice dated 02.08.2007 and 22.08.2007.

Exhibit-2: Reply to the Advocate's Notice dated Nil sent by Sri Chiranjib Bhattacharjee, Advocate, addressed to the plaintiff.

Exhibit-3 : A certificate of Manager, UBI, Machmara Branch dated 26.07.2007 in the name of the plaintiff.

Exhibit-4 : A certificate of Manager, UBI, Machmara Branch dated 10.08.2007 in the name of one Anup Kumar Chowdhury.

Exhibit-5 series: Postal receipts of registered letter and A.D. card.

Exhibit-6 : A copy of the deed of partnership between the defendants.

Exhibit-7 : A copy of the general Power of Attorney executed by principal defendant No.2 and proforma defendant No.4.

Exhibit-8 Series : copy of resolution dated 11.08.2006 and 12.08.2006 (marked as Exhibit subject to objection).

Exhibit-9 : A document of investment dated 21.08.2006 on a stamp paper of Rs.10/- (exhibited subject to objection by the defence).

Exhibit-10: A bank statement of Account No.10083 in the name of the plaintiff issued by UBI, Machmara Branch.

Exhibit-11: A bank statement of Account No.10083 in the name of the plaintiff issued by UBI, Machmara Branch.

Exhibit-12 : A bank statement of Account No.10083 in the name of the plaintiff issued by UBI, Machmara Branch.

Exhibit-13 : A bank statement of Account No.10083 in the name of the plaintiff issued by UBI, Machmara Branch.

Exhibit-14 series: 8(eight) nos. of counter-foil of bank drafts.

Exhibit-15 series: Three vouchers of Airtel (Bharati Hexacom Ltd.)

Exhibit-16 : A reply of the Advocate Notice dated 05.09.2007 by Advocate Chiranjeeb Bhattacharjee addressed to the plaintiff.

Exhibit-17 : A notice given by P.W.3 (Pro-defendant No.4) addressed to the principal defendants and others.

Exhibit-17/1: Signature of P.W.3 at the bottom of Exhibit-17.

11. The principal defendant Nos. 1 and 2 examined themselves as D.Ws 1 and 2 and they did not adduce any documentary evidence.

12. The trial judge decided all the issues in favour of the plaintiff and accordingly decreed the suit.

13. Felt aggrieved, the principal defendants filed the present appeal.

14. Learned Sr. counsel Mr. Chakraborty appearing for the defendants has submitted that there is nothing either in the pleadings or in the evidence as to when and in what manner the plaintiff contributed the fund to the partnership business of the defendants. There is neither documentary evidence nor oral evidence regarding contribution of the alleged amount by the plaintiff for the business of the defendants. The plaintiff in his cross examination clearly stated that the stamp paper which has been marked as Exhibit-9 is the only document to show in support of his claim of his contribution of an amount of Rs.5,95,000/- and he has no other document. That Exhibit-9 was marked as exhibit subject to objection. The defendants denied execution of any such document and so, the plaintiff has to prove not only the document itself but also the contents of the same. Neither the document nor its content proved by the plaintiff and so, the plaintiff has no case at all. Exhibit-8 series, submits learned Sr. counsel Mr. Chakraborty are minutes of meeting which are also photocopies and those were marked as exhibits subject to objection. Those documents simply speak about some amount due to be paid to the plaintiff and some others but nothing specified as to what was the amount. It is the case of the plaintiff himself that he got an amount of Rs.50,820/- from Airtel authority. How he got that amount has also not been specified because he had no business with the Airtel authority. The other documents marked as Exhibits 10,11,12,13 and 14 series have nothing to decide the case of the plaintiff. P.W.2 has made a statement about a document written by him at the instance of P.W.4. The evidence of P.W.2 has in no way supported the case of the plaintiff. P.W.3 simply stated that he has also contributed to the business and he has also issued a notice claiming certain amount and that notice has been marked as Exhibit-17 and he has not supported the case of the plaintiff. P.W.4 is the father of the principal defendants and he has been called to support the contention of P.W.2 but P.W.4 did not support the contention of P.W.2. Therefore, submits learned Sr. counsel Mr. Chakraborty that the plaintiff has failed to prove his claim and the trial Court wrongly passed the decree. Criticising the judgment passed by the trial Court, learned Sr. counsel submits that Exhibit-9 which is the basis of the claim of plaintiff has not even been discussed by the trial Court and the trial Court referring to Exhibits-10,11,12,13 and 15 series passed the judgment which has no relevance at all in deciding the issues.

15. Learned counsel Mr. D.K.Biswas appearing on behalf of the plaintiff has submitted that the defendants in their written statement though denied meeting dated 11.08.2006 and 12.08.2006 but in his cross examination D.W.1 clearly admitted that meetings were held on those dates and so the contents of Exhibit-8 series i.e. minutes of meeting dated 11.08.2006 and 12.08.2006 have been admitted. It is clearly stated in those minutes of meeting that the principal defendants shall remain bound to repay the money which they have received/collected from different persons including plaintiff for the purpose of business so, submits learned counsel Mr. Biswas that the defendants admitted the fact that they took money for running the distributorship business of Airtel through their partnership farm 'Jupiter Consortium' and after meeting dated 11.08.2006 and 12.08.2006 another meeting was held on 21.08.2006 between the plaintiff and the principal defendants and on that day Exhibit-9 was prepared wherein both the defendants put their signatures and admitted that an amount of Rs.5,95,000/- was due to be paid to the plaintiff. The plaintiff in his evidence stated about the total amount which he contributed in the business of the defendants on different dates and mere non-mention of the dates on which the money was contributed is not at all a matter for disbelieving the claim of the plaintiff. The plaintiff clearly stated that he had very good relation with principal defendants having close neibhbours and father of the principal defendants was the teacher of the plaintiff and on good faith the plaintiff even after taking loan contributed money to the business of the defendants and so there is nothing to disbelieve the claim of the plaintiff. The trial Court rightly decreed the suit and so, the appeal should be dismissed and the decree should be maintained.

16. Regarding maintainability and cause of action of the suit, there is no serious argument advanced by the learned Sr. counsel Mr. Chakraborty, appearing for the defendants. As I find the trial Court decided both the issues in favour of the plaintiff and I find nothing wrong in the decision. In the written statement, the principal defendants pleaded that the Airtel authority is a necessary party and since the Airtel authority has not been made a necessary party, the suit is defective for non-joinder of parties, but I find no substance in the said pleading of the defendants since regarding the transaction between the plaintiff and the principal defendants Airtel authority was no way in the connection. The transaction was between the principal defendants and the Airtel authority relating to their business. So Airtel authority was neither a necessary party nor a proper party for decision of the suit. Learned Sr. counsel Mr. Chakraborty in course of his argument has submitted that partnership farm of the defendants ought to have been made a party in the suit but I find that there was no such pleading in the written statement of the defendants and so this argument has no basis.

17. Issue No.3 is the main issue which has been decided by the trial Court in favour of the plaintiff. The plaintiff claimed that he contributed an amount of Rs.5,95,000/- time to time to the business of principal defendants and in the meeting dated 21.08.2006 between the plaintiff and the defendant Nos. 1 and 2, it was settled that an amount of Rs.5,95,000/- was due to be paid by the defendants to the plaintiff and accordingly Exhibit-9 was written. The plaintiff put in evidence Exhibit-9 written on a stamp paper of Rs.10/- which was earlier used and it is in the pleadings of the plaintiff that after erasing out some writings, exhibit-9 was prepared.

There is nothing in the evidence as to who wrote exhibit-9. If it was a document prepared in presence of the plaintiff and the defendants it could have been signed at least by both side but even the plaintiff's signature is not there. The plaintiff claimed that both the defendants put their signatures in exhibit-9 but the principal defendant Nos. 1 and 2 in their pleadings as well as in their evidence clearly stated that they knew nothing about exhibit-9 and it was neither prepared in their presence and that document do not bear their signatures. Exhibit-9, therefore, has not been proved according to law. Mere presentation of a document or mere marking of it as exhibit does not prove the contents of the document. The contents have to be proved by adducing proper evidence. The document has to be proved by the person who wrote it and the contents also have to be proved according to the provisions of the Evidence Act. The plaintiff in his cross examination clearly stated that exhibit-9 is the only document to show the transaction. Since exhibit-9 has not been proved according to law, the plaintiff has failed to prove his claim.

18. Let us now further scrutiny the other evidence on record. The defendant No.1 in his cross examination clearly admitted that there were meetings held on 11.08.2006 and 12.08.2006 and the decision of the meeting was written down. He also admitted to have signed the resolution dated

11.08.2006 and 12.08.2006 i.e. the documents marked exhibit-8 series. Though in their pleadings the defendants denied the fact of meeting dated 11.08.2006 and 12.08.2006 but in his cross examination the principal defendant No.1 i.e. D.W.1 clearly admitted that on 11.08.2006 and 12.08.2006 meetings were held and resolutions were taken. The contents of Exhibit-8 series makes it clear that the defendants made promise to make refund of the amount they took from the plaintiff and others. There is nothing specified in exhibit-8 series as to what was the amount due to the plaintiff or the other creditors. The admission that certain amount was due to be paid to the plaintiff cannot prove the claim of the plaintiff that an amount of Rs.6,44,180/- was due to be paid to the plaintiff by the defendants. This burden lies on the plaintiff to prove that the said amount was due to be paid by the defendants. The plaintiff in his examination-in-chief stated about the fact what he stated in his pleadings in the plaint. He has not clarified in his evidence as to when and in what manner the fund was contributed and what was the purpose of contributing the fund. The bank statements proved by the plaintiff do not in any way prove that the plaintiff diverted the fund through bank to the partnership farm. Mere fact that the plaintiff transacted with the bank on different dates in connection with his account cannot prove that those transactions were made relating to the business of the defendants.

19. Let us now scrutiny the evidence of P.Ws 2, 3 and 4 as to whether they in any manner supported the case of the plaintiff or not. P.W.2 in his examination-in-chief simply stated about a document alleged to have written by him in the end of April,2007 at the instance of P.W.4 and he stated that P.W.4 told him that Indrajit Debnath and Biswajit Debnath (defendants) had taken Rs. 5,95,000/- from Bablu Deb (plaintiff) and he stood responsible for it. He stated that the document written was signed by P.W.4 and his son Biswajit and that it was written on a stamp paper of Rs.10/- and he also put his signature and that document was retained by P.W.4. Whereas P.W.4 in his deposition virtually denied execution of any such document as claimed by P.W.2. So the evidence of P.W.2 has not supported the case of the plaintiff in any manner. P.W.3 has stated about his own claim and he proved his notice which is marked as Exhibit-17. He has not stated anything that the plaintiff contributed the fund of Rs.6,44,180/- which the plaintiff claimed. So, the evidence of P.W.3 also has not supported the case of the plaintiff.

20. In exhibit-8 series, we find that apart from the plaintiff and defendants some other people namely Shyamal Das and Anup Chowdhury signed the minutes of meeting but the plaintiff did not examine any such person as witness in support of his case. The witnesses who are examined by the plaintiff have not supported his case and I find practically no legal evidence in support of the claim of the plaintiff.

21. I have, therefore, no hesitation to arrive at a conclusion that the trial Court wrongly decided issue No.3 in favour of the plaintiff and wrongly decreed the suit. The plaintiff has failed to prove his claim that he contributed Rs.6,44,180/- in the business of the defendants and the document on the basis of which the plaintiff raised his claim since not proved, the claim of the plaintiff cannot be decreed.

22. Accordingly, the appeal is allowed.

23. The judgment and decree dated 03.04.2009 passed by the learned Civil Judge, Sr. Division, North Tripura, Kailashahar in Money Suit No.3 of 2007 is set aside.

24. I made easy the costs of the appeal.

25. Send back the L.C. records along with a copy of this judgment.

JUDGE