

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13 - 08 - 2015

Coram:

The Hon'ble SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 351 of 2014

and

M.P. No. 1 of 2014

and

M.P. No. 1 of 2015

A.K. Nithyanandham ... Appellant/2nd Appellant

vs.

1. Saraswathi Velusamy

2. M/s Kody Anand Real Estate
Rep. By its Partner A.K. Nithyanantham
No. 1, 8th Street, Kamaraj Nagar
Thiruvannmiyur
Chennai - 41

.. Respondents/Plaintiff &
Defendant.

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 23.10.2013 in A.S. No. 44 of 2013 on the file of the Court of Subordinate Judge, Tambaram confirming the judgment and decree dated 29.04.2013 made in O.S. No. 352 of 2011 on the file of the Additional District Munsif, Alandur.

For Appellant : Mr. R. Gandhi, SC
for Mr. R. Narendhiran

For Respondents : Mr. K. Doraisami, SC
for M/s Muthumani Doraisami

JUDGMENT

Aggrieved by the unanimous decision of decretal of the suit for dissolution of the unregistered firm, the second defendant has filed this Second Appeal.

2. The suit was one for dissolution of the first defendant unregistered Firm "Kody Anand Real Estate", for direction to the second defendant to render property and full account of the first defendant firm and for grant of decree for permanent injunction restraining the second defendant from in any manner alienating the suit properties or any part of the same without consent and concurrence of the plaintiff.

3. The case of the plaintiff is that she had joined the second defendant to start a partnership firm in the name and style of "Kody Anand Real Estate" which is the first defendant by contributing 50% of the share each and also opened a Bank account in the name of the first defendant by executing necessary partnership letter. It is stated that the second defendant canvassed his NRI friends and received funds from them and invested in the Real Estate business which is the main purpose of the partnership firm. It is also alleged that cheques and Demand Drafts were received besides cash payments. The further case of the plaintiff is that the suit properties were purchased by the second defendant in his capacity as Managing Partner of the firm for the Firm and that though the second defendant had purchased the properties in his name, in the recitals of the sale deeds, it has been stated that the second defendant as Managing Partner of Kody Anand Real Estate and the address given is also the first defendant's address. Therefore, according to the plaintiff, the first defendant firm is the owner of the properties and sale deeds have to be executed in favour of the investors and that the partners were to share only the dividends after executing the sales in favour of the prospective purchasers. As the second defendant was attempting to alienate the properties without the knowledge of the plaintiff, a legal notice was issued on 30.6.2010 which was replied by the second defendant with false and untenable allegations. The plaintiff further contended that payment for purchase of the properties was made from the first defendant firm's account with the Canara Bank, Guindy Branch. The plaintiff also claimed that the taxes for the properties purchased were all paid only by her. As the second defendant is trying to grab the properties, the suit has been filed.

4. The second defendant had resisted the suit contending that the partnership firm by name Kody Anand Real Estate was started but remained only on paper as there was not even a single transaction happened. The registration of the properties alleged in the plaint were purchased in his name by paying his personal money. The registration work was done by one Ganapathy, who was a part time employee of Tamil Nadu Hospitals in which the second defendant was a promoter. The defendant totally denied any receipt of money from investors and also denied the use of such money in the purchase of the properties. As the suit has been filed 27 years after the partnership firm was intended to be commenced, according to the second defendant, the suit is barred by limitation. Besides denying the particulars of investors in the plaint, the second defendant alleged that if really the investors had given money for the purchase of properties in India, they would have taken separate action against him or even against the firm for non-performance. The second defendant also had disclosed in his Income Tax returns that the monies were paid only through his HUF account and, therefore, according to him, the properties are his personal properties.

5. Before the trial Court, the husband of the plaintiff was examined as P.W.1 and as many as 16 documents, viz., Exs. A.1 to A.16 were marked. To nullify the case of the plaintiff, the second defendant examined himself as D.W.1 and marked Exs. B.1 to B.17.

6. The trial Court / learned Additional District Munsif, Alandur, on consideration of the evidence and the submissions advanced by the learned counsel for the parties, decreed the suit O.S. No. 352 of 2011 as prayed for. On appeal, the First Appellate Court / learned Subordinate Judge, Tambaram, on appreciation of facts and the materials available thereon, concurred with the finding of the trial Court and dismissed A.S. No. 44 of 2013 by judgment and decree dated 23.10.2013. It is the validity of this decree which is challenged before this Court by the second defendant.

7. Heard Mr. R. Gandhi, learned Senior Counsel appearing for the appellant / second defendant as well as Mr. K. Doraisami, learned Senior Counsel for the first respondent / plaintiff and perused the records.

8. When the Second Appeal came up for admission on 03.4.2014, only notice was issued. Even at the time of issuance of notice, learned Senior Counsels appearing for the parties had agreed for an order of status quo. Accordingly, this Court passed an order of status quo in favour of the appellant.

9. Subsequently, during the course of argument, this Court, with the consent of the learned counsel appearing for the parties across the Bar, has formulated the following questions of law for consideration in this Second Appeal and posted the case for orders.

- (i) Whether Exs. A.1 to A.3 would lead to a presumption that there was a partnership firm? If so, whether the plaintiff is entitled for dissolution of the same?
- (ii) Whether the suit is barred by limitation?

10. The first and foremost contention raised by Mr. R. Gandhi, learned Senior Counsel appearing for the appellant was that the suit itself is barred under Section 69 of the Partnership Act as well as by limitation.

11. For better appreciation of the case, Section 69 of the Partnership Act is usefully extracted below:-

"69. Effect of non-registration.-- (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person

alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right or power to realise the property of a dissolved firm, or

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner.

(4) This Section shall not apply, --

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories, are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim."

12. Assailing the said contention, Mr.K.Doraisami, learned Senior Counsel for the first respondent / plaintiff submitted that though the above section clearly bars a suit being filed against an

unregistered partnership firm, insofar as the dissolution of the partnership firm is concerned, the same may be filed even against unregistered one. In support of such submission, learned Senior Counsel placed reliance on the decision of the Hon'ble Supreme Court in V. Subramaniam vs. Rajesh Raghuvandra Rao [2009 (5) SCC 608].

13. While deciding the above question, the questions whether there was a partnership firm floated by the plaintiff and the second defendant and whether it continued to carry on business have to be decided.

14. For determining the above question, regard has to be had to the relationship between the parties. This may be a little difficult to decide as the plaintiff is the wife of one C.P.Velusamy, who is a distant relative of the appellant / second defendant, having wide contacts with NRI Doctors. However, there are certain other factors that indicate the existence of a partnership like books of account, existence of employees, proof of business dealing, etc.. According to the learned Senior Counsel for the respondent / plaintiff, the above indicators cannot be made available as, admittedly, it was a single venture partnership. The idea was to do business, realise profits, share it and wind up the show. Though this may not be probable, the same has to be proved and substantiated before the Court of law.

15. It is seen that though it is pleaded in paragraph 8 of the plaint that the properties were purchased at the cost of investors who sent the money for the firm with an agreement that after getting the properties the firm will have to execute the sale deeds in favour of the respective investors, but no such agreement is produced as alleged. It is further seen from the plaint that the partnership firm is eligible only for service charges payable by the investors. In this regard, it is to be pointed out that whether there was an existence of partnership can be decided only on the basis of an agreement to share services charges alone and such exercise would be fraught with danger.

16. It is also obscure that the parties had entered into an agreement of partnership without recording any of its terms and conditions. The appellant claims that it was a non-starter business and there was no transaction. But it is equally beyond one's comprehension that how the partnership business did not maintain account of its own, though it may be kept secret for the rest of the world. Non-maintenance of separate accounts by the parties would only negative the plea of partnership.

17. In the case on hand, admittedly, the venture was started for the purpose of investing in properties by NRIs. When such large extent as described in the plaint are purchased, it is unbelievable that only one person, viz., second defendant, alone was entrusted with the task of dealing with the property in the absence of any

written terms and conditions. This doubt is more likely because the plaintiff is a lady and her husband is a Doctor.

18. Learned Senior Counsel appearing for the appellant placed reliance on the judgment of this Court in S.K. Parthasarathy Naidu and another vs. K. Rama Naidu and 7 others [2001 (3) CTC 741] and more particularly, referred to paragraph 10 of the judgment wherein it has been observed as follows:-

"10. Even when a deed is named a partnership deed, courts have held that the nature of the relationship is not determined by the mere use of the word 'partnership' either in the agreement or in the pleadings. There must be three elements before any relationship which can be called a partnership comes into existence: (1) there must be an agreement entered into by all the parties concerned; (2) the agreement must be to share the profits of the business, and (3) the business must be carried on by all or any of the persons concerned action for all. All these elements must exist in a partnership. One searches in vain for any satisfactory evidence even of an oral agreement entered into by all the persons concerned in this case namely, the two appellants in S.A.No.499 of 2000 and the 1st respondent. The third factor is also conspicuously absent. The Exhibits do not show that the 1st respondent agreed to do the business on behalf of the appellants and even in the oral evidence, nothing was pointed out to show that the 1st respondent was acting on behalf of the appellants. When two factors are missing, the court would have to strain its sinews to reach for an inference of partnership."

19. Per contra, the crucial documents relied on by the plaintiffs are Exs. A.2 and A.3, viz., Account opening form and Partnership letter respectively. In this regard, the relevant passage found in the finding of the trial Court paragraph 9 of the judgment may be usefully re-produced below:-

"Therefore, the claim of the 2nd defendant that he had only signed the Ex. A.2 and Ex. A.3 as nominal and it is the plaintiff and her husband took much efforts at the time of opening of firm is not acceptable. Therefore, he did not participate in any funds of the firm and stated in the reply notice Ex. A.12 that it had been a non starter from the very inception and did not function at all and except from the beginning and no such activity was never carried out by the firm or

any its behalf by anybody. Therefore this Court feels that having admitted the signature in Ex. A.2 and Ex. A.3 the 2nd defendant can not now say that he put the signature only as a nominal partner and without reading the conditions and the terms he put the signature is not at all acceptable one since he has admitted the signature in Ex. A.2 and Ex. A.3 he has become the partner of the 1st defendant which had opened the account in Account No. 1260 before Canara Bank, Guindy Branch."

20. The proper construction of these documents and the rights that the parties get from them, would decide the case of the first respondent / plaintiff. The appellant has admittedly received the money only to purchase lands and sell them. The alleged agreement is only to share the profits, ie., service charges. In fact, excepting the admitted signatures on Exs. A.2 and A.3, there is nothing in evidence to show that they were acted upon. There has not been even a single transaction said to have been done. The second defendant also had specifically spelt out in paragraph 11 of the additional written statement in the following lines:-

"Except the alleged receipt of 3000 dollars, there was no activity at all. Absolutely there was no fund in the 1st defendant firm and hence no books of account maintained by the 1st defendant firm. Another important factor is if the 1st defendant was running, there would have been Income Tax report. That is also not there. No scrap of paper is produced to show that the 1st defendant firm was doing real estate business for the past 26 years. There was no purchase in the name of the 1st defendant firm and also there was no sale made by the 1st defendant firm. So, it has to be assumed that the 1st defendant firm is a non starter."

21. In this connection, it would be relevant to refer to the evidence of P.W.1, husband of the plaintiff, who, during the course of cross-examination, has deposed with regard to the business transaction of the plaintiff with the second defendant, in the following words:-

"இது வரையிலும் வெளிநாட்டு முதலீட்டாளர்களுக்கு எந்த ஒரு கிரையப்பத் திரமும் எழுதிக் கொடுக்கப்படவில்லை, ஆகையால் 1வது நிறுவனத்தின் முக்கிய நோக்கம் எதுவும் நடக்கவில்லை என்றால் சரிதான்.... .."

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வங்கிக்கு கொடுத்த கடத்தத்தில் 2/ம் பிரதிவாதி மேனேஜிங் பார்ட்னர் என்று குறிப்பிடவில்லை என்றால் சரிதான். அது ஏற்கனவே

சொல்லிவிட்டேன். கிரயப்பத்திரத்திலும் மேனேஜிங் பார்ட்னர் என்று குறிப்பிடவில்லை. வா.சா.ஆ.4 முதல் வா.சா.ஆ.7 வரை கிரயம் செய்த 1984 முதல் வரி கட்டிய ரசீது தாக்கல் செய்துள்ளேன். 1984/லிருந்து செலுத்த வேண்டிய சொத்து வரியை 2010/ல் செலுத்தியுள்ளோம். நாங்கள் தான் வரி கட்டினோம். வேறு யாரும் வரி செலுத்தவில்லை....

வா.சா.ஆ.4 முதல் வா.சா.ஆ.7 ஆவணங்களில் வெளிநாட்டு முதலீட்டாளர்களின் நன்மைக்காக அந்த கிரயப் பத்திரங்கள் முடிக்கப்பட்டது என்று குறிப்பிடவில்லை என்றால் சரிதான். எந்தெந்த தேதியில் யார் யார் வெளிநாட்டு முதலீட்டாளர் கொடுத்தார்கள் என்ற விபரம் பிரதிலும், முதல் விசாரணை பிரமாண வாக்குமூலத்திலும் சொல்லியுள்ளீர்களா என்றால் அந்த விபரங்கள் அனைத்தும் 1/ம் பிரதிவாதியின் வங்கி கணக்கில் முழுவதுமாக இருக்கும்...."

22. The case of the plaintiff / first respondent, as disclosed from the materials, is that there was a partnership sought to be supported by the following factors:-

- (a) that Exs. A.2 and A.3 are documents to support the existence of a partnership firm; and
- (b) that the firm is eligible only for service charges payable by the investors.

23. However, the second defendant has stated in his written statement that if at all any service charge is to be paid, it is to be paid by the investor. According to him, in the absence of rendering any service, question of service charges will not arise.

24. Expatiating his arguments, learned Senior Counsel appearing for the appellant submitted that there would be no occasion for him to agree to share the profits unless there was a partnership amongst the parties. He further submitted that even presuming that the legal existence of a partnership is proved by facts, nothing is produced to show that the business was run.

25. The strong test to decide a partnership would be a right to participate in the profits of the trade. Though the first respondent / plaintiff had claimed that 50% was invested by her, there is no evidence to show as to what is the said 50% and it is whether in terms of cash or properties. Even such test is not conclusive. When it is said to be an oral partnership, it is for the plaintiff to establish that the partnership had taken its shape and it was functioning with the active participation of the partners and that there was a profit sharing ratio as per which the partners

were acting. Admittedly, there is no evidence in this case excepting that there is a partnership letter and an account opening form presented before the Bank.

26. When the plaintiff has not substantiated the existence of partnership firm, whether the prayer for dissolution of the firm can be sustained has to be seen.

27. In this regard, it is seen that though the appellant / first defendant had admitted by saying that the partnership firm was started, it was only a non-starter firm as no transaction happened through the same. Though the first respondent / plaintiff alleged that the monies were routed through the Bank in which the partnership had action, there is no pleadings or evidence to the same. Another missing link in this regard is that if the properties were purchased with the money that was invested by the NRIs, then the investors would not have kept silent. There is also no iota of evidence for the same. In the absence of any notice or request or demand from any of the investors who are alleged to have paid money to the first defendant firm and as alleged by the plaintiff, Demand Drafts were drawn only with that money to purchase the suit properties, it can be very well concluded that the plaintiff, who has the burden of proving the allegations in the plaint, has not discharged the same.

28. On the contrary, the appellant / second defendant had produced his Income Tax returns under Exs. B.10 to B.12 and also Income Tax statement Exs. B.13 to B.17 to show that the income from the suit properties were shown as agricultural income and also that he had paid the monies for purchasing the properties.

29. The Lower Appellate Court had held that the second defendant had taken inconsistency pleas with respect to payment of the sale consideration for the suit properties and hence, discredited his evidence and decreed the suit. The Lower Appellate Court had lost sight of the fact that the burden is always on the plaintiff when specific allegations are made and it is open to the defendant to make inconsistent pleas. The Lower Appellate Court had also held that the suit properties were purchased by the NRI investors, who had sent money from abroad to the Bank account in the name of the first defendant and the said sums were utilised for the purchase of properties. The above finding of the Lower Appellate Court is absolutely baseless in the absence of any evidence to that effect.

30. Inasmuch as the plaintiff had not discharged her burden of proving her case, the onus never shifts on the defendant. It is the consistent plea of the appellant / second defendant that the properties were purchased in his name individually, though it has been spelt in the recitals that Nithyanandam, Managing Partner, Kodi Anand Real Estate, having its office at East Street, Kamarajar Nagar, Thiruvannamiyur. The said address is not the address of the second

defendant but the address given for the partnership firm. That alone would not discharge the burden cast on the plaintiff to prove that the properties were purchased not in the name of the individual but in the name of the firm.

31. Whether a relationship of partners exists or not, depends on what was intended by parties. Although the right to participate in the profits of a business is a strong test of partnership, the existence of relationship must depend upon the real intention and contract of parties.

32. In the instant case, there is no such agreement to suggest to carry on business. As held earlier, the responsibility of investing and selling the lands appeared to have been left completely on the second defendant. A partnership being a contractual relationship, which creates mutual rights and liabilities between partners, it has to be established. The only commitment alleged is to share the service charges. The said agreement may even arise out of a mutual understanding evidenced by a consistent course of conduct.

33. It is also pertinent to note that though there is a reference to partnership in the plaint, there is no averment to show that the appellant / second defendant was asked to act on behalf of the other. There is also no averment as to why the properties were purchased in the name of the second defendant and not in the name of the first defendant.

34. The next objection raised by the learned Senior Counsel for the appellant is on the question of limitation. Admittedly, the partnership firm was agreed to be started in the year 1984. The only action done by the partners was to open an account in a Bank and submit a partnership letter in that regard. Other than that, there is no evidence to show that the partnership took off and was carrying on any business. The appellant opposed the suit contending that he had come to Court after 27 years for the relief of dissolution which is clearly barred by Section 5 of the Limitation Act. According to the learned Senior Counsel, unless the first respondent / plaintiff establishes that the suit was based on a continuing cause of action, the question of limitation would be a bar.

35. Conversely, the learned Senior Counsel for the first respondent / plaintiff, with great vehemence, contended that the findings of the Courts below are fully justified and this Court ought not to interfere with the same. He further submitted that the jurisdiction of this Court under Section 100 CPC is very limited. In support of such contention, he sought in aid the decision of the Hon'ble Supreme Court in *Paras Nath Thakur vs. Smt. Mohani Dasi* (deceased) [AIR 1959 SC 1204] and more particularly, relied on paragraph 3 of the judgment wherein it has been observed as under:-

"It is manifest that the question to be determined by the High Court on the second appeal, was essentially one of fact. That the High Court was cognizant of this aspect of the case, appears from the following observation with which the decision of the High Court begins :-

" In second appeal the substantial point urged before us is whether the evidence, both oral and documentary, would warrant an inference that the properties had in fact been dedicated to the deity."

It is well-settled by a long series of decisions of the Judicial Committee of the Privy Council and of this Court, that a High Court, on second appeal, cannot go into questions of fact, however erroneous the findings of fact recorded by the courts of fact, may be. It is not necessary to cite those decisions. Indeed, the learned counsel for the plaintiff-respondents did not and could not contend that the High Court was competent to go behind the findings of fact concurrently recorded by the two courts of fact. The High Court then set out to examine the evidence', both oral and documentary, and after an elaborate examination of the large volume of evidence adduced by the parties, recorded the finding that:

" defendant No. 1 has failed to prove his title and that the plaintiffs are entitled to have the suit properties sold with a view to satisfy the decree obtained by them against the judgment-debtors."

In our opinion, the High Court has completely misdirected itself both in law and on facts, as will presently appear, even assuming that it was open to it to go behind findings of facts."

Besides, learned Senior Counsel representing the first respondent / plaintiff also relied on the evidence of D.W.1 who had admitted in his evidence that he was negotiating to sell the suit properties in the month of June 2010 and was holding documents for the prospective buyers.

36. The said admission was relied on by the Courts below to get over the point of limitation which, in my opinion, is wrong. From a mere glance of the plaint, it can be seen that there is no whisper in the plaint to that effect and she has also not even mentioned in the cause of action paragraph with respect to the same. It is settled principle that a suit has to be filed based on a cause of action which is within the knowledge of the plaintiff and not on one which has been admitted subsequently, during the trial of the suit. Excepting Exs. A1 to A.3, viz., authorisation letter, account opening form and partnership letter dated 26.10.1984 respectively, which were presented to the Bank, there are no other documents to show that there was a partnership firm and that it did do certain business. It is admitted by both the parties that there was no transaction after 1984. The plaintiff also had not questioned the sale deeds standing in the names of the appellant / second defendant till such time the suit has been filed. The appellant has dealt with the properties only as that of his own. If the allegation of the plaintiff is that the properties, which belong to the partnership firm, are standing in the name of the appellant / second defendant under documents Exs. A.4 to A.7, there is no reason why she had to keep quiet for more than 27 years to challenge the same. The Courts below, without going into the said aspect, have decreed the suit. As such, I am of the view that the Courts below have proceeded on an erroneous proposition of law.

37. By going through the points for determination framed by the Courts below, this Court opines that the Courts below have framed only an Omnibus in a mechanical way of framing of determination instead of framing necessary points that have arisen for consideration in regard to the pleadings projected by the parties in the case on hand. Be that as it may, that is not a matter which entail automatic remand of the case to be made by this Court. Yet, even in the absence of necessary points for determination being framed or formulated by the Lower Appellate Court, yet, this Court is empowered to look into the entire gamut of pleadings, oral and documentary evidence available on record and to arrive at an independent conclusion. सत्यमेव जयते

38. It is true that there can be no gainsaying the above position that unless a substantial question of law is involved, the concurrent findings cannot be disturbed and the High Court cannot come to independent conclusion unless the findings of the Courts below are contrary to the mandatory provisions of law. Significantly, it is pertinent to point out that the scope of proviso to Section 100 of the Code of the Civil Procedure which acknowledges the power of High Court.

39. At this juncture, it would not be out of place for this Court to make a reference to the decision of the Hon'ble Apex Court in Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Others [AIR

1999 SC 2213] wherein Their Lordships, in very clear terms, have explained and interpreted the scope of proviso to Section 100 of the Code of the Civil Procedure which acknowledges the power of High Court to hear an appeal on a substantial point of law though not formulated by it, with the object of ensuring that no injustice is done to the litigant where such a question was not formulated at the time of admission either by mistake or by inadvertence.

40. Subsequently, the Hon'ble Supreme Court in Yadarao Dajiba Shrawane (dead) by L.Rs. vs. Nanilal Harakchand Shah (dead) & others [2002 (6) SCC 404] held that the admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by Courts. It was further observed that a finding of fact ignoring such admissions and concessions is vitiated in law and can be interfered with by the High Court in Second Appeal.

41. Recently, a Three Judges Bench of the Hon'ble Supreme Court in Sebastiao Luis Fernandes (dead) through LRs and others vs. K.V.P. Shastri (dead) through LRs. and others [(2013) 15 SCC 161] has held that the High Court can interfere with the perverse findings of fact at the stage of Second Appeal and upholding the view taken by the High Court, the Bench observed in paragraph 34 of the judgment, observed as follows:-

"In our considered view, the substantial questions of law framed by the High Court at the time of the admission of the second appeal is based on law laid down by this Court in the above referred case of Hira Lal which view is supported by other cases referred to supra. Therefore, answer to the said substantial questions of law by the High Court by recording cogent and valid reasons to annul the concurrent findings that the non-appreciation of the pleadings and evidence on record by the courts below rendered their finding on the contentious issues/points as perverse and arbitrary, and therefore the same have been rightly set aside by answering the substantial questions of law in favour of the defendants."

42. Hence, following the aforesaid judgments of the Hon'ble Supreme Court in the cases cited supra, this Court, with a view to prevent an aberration of justice, formulated the above substantial questions of law at the time of hearing of the instant appeal.

43. All the factors involved in this case and the foregoing discussions go to show that there was no partnership though there was an agreement to share profits. A perusal of the materials put forth before this Court and a reading of the evidence as a whole, would show that the first respondent / plaintiff, placing reliance on

Exs. A.2 and A.3, has termed the agreement as partnership. As a matter of fact, this Court has traversed upon the entire subject of the matter in issues and dealt with the same as per law. In view of the discussions above, the findings of the Courts below, in the considered opinion of this Court, are incorrect and liable to be set aside. Accordingly, the substantial questions of law are answered in favour of the appellant / second defendant.

In the result, the Second Appeal stands allowed setting aside the concurrent finding of the Courts below and the suit is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. As a sequel thereto, the Miscellaneous Petitions are closed.

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s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. Subordinate Judge
Tambaram

2. Additional District Munsif
Alandur

+ 2 ccs to M/s.V.R.Appaswamee, Advocate SR 42737

+ 1 cc to M/s.R.G.Narendhiran, Advocate SR 42298

ug(co)
pmk25/8

S.A. No. 351 of 2014

सत्यमेव जयते

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