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No.81 of 2013, dated 30.01.2013; 8th respondent herein also died and respondents 15 to 17 were brought on record as his legal heirs, vide order of this Court in A.S.M.P. No.13376 of 2003, dated 04.06.2010. 3. 1st appellant herein was the plaintiff and the respondents 1 to 14 herein were the defendants before the trial Court. For convenience of reference, the ranks given to the parties in O.S. No.7 of 1985 will be adopted throughout this judgment. 4. The plaintiff filed the suit for the declaratory relief that he was a partner in 13th defendant firm and for rendition of true and correct account of the firm alleging that the plaintiff, 12th defendant i.e., husband of 1st defendant and Kovvuri Soora Reddy, father of defendants 3 to 6 and husband of 7th defendant, brothers and sons of late Kovvuri Pullaiah, being the members of Hindu undivided joint family started different businesses with the joint family funds for the benefit of joint family; among those business concerns, 13th defendant firm is one of such business concerns. Therefore, the suit is limited only in respect of 13th defendant firm. Those business concerns were used to be managed either by 12th defendant or by late Soora Reddy and the plaintiff was put in-charge of cultivation of the joint family land as he was an illiterate. At the discretion of 12th defendant and late Soora Reddy, various business concerns started and run for the benefit of joint family, have been running not as joint family business concerns but as registered firms. The initial capital for starting 13th defendant firm was provided from the joint family funds of late Kovvuri Pullayya and his three sons, started the business originally in the year 1964 along with late Soora Reddy, P. Sreeramulu Naidu and K. Adinarayana Reddy as partners and Soora Reddy representing his joint family. As Sreeramulu Naidu and K. Adinarayana Reddy retired in the year 1968, the 13th defendant firm was reconstituted with Soora Reddy, Nagi Reddy, Adeyyamma (wife 12th defendant) and Sathi Subbayamma (sisters of plaintiff and 12th defendant and late Soora Reddy) and the share of these partners, was 30:30:20:20 in Rupee. The 13th defendant firm was dealing with sale of medicines and electrical goods and being managed by late Soora Reddy and 12th defendant. While so, differences arose between the plaintiff and his brothers, late Soora Reddy and 12th defendant secreted huge cash of the joint family and invested in money lending business; secreted profits earned on various business concerns by manipulating accounts of different firms, whereupon disputes arose among the partners. After secreting the cash and other liquid assets, 12th defendant in collusion with late Soora Reddy filed a suit in O.S. No.9 of 1978 on the file of Vacation Judge, East Godavari at Rajahmundry, which was transferred to the Court of Subordinate Judge, Rajahmundry and numbered as O.S. No.60 of 1978 and after constitution of Subordinate Judge Court at Ramachandrapuram renumbered as O.S. No.83 of 1980 for partition of the joint family immovable property against late Pullayya, Soora Reddy and another. As Soora Reddy was sailing with the plaintiff therein, 12th defendant herein, he remained exparte but late Pullayya, the plaintiff herein and his son contested the suit and the contentions therein are same as in the present suit. While so, Pullayya died and after his death, Sathi Subbayamma, 2nd defendant herein was impleaded as one of the legal heirs of late Pullayya. Late Pullayya, being conscious of the fraud, played by 12th defendant and late Soora Reddy in managing the business concern convinced that they had cheated him and the plaintiff herein and also out of love and affection towards Kovvuri Venkata Reddy, executed a Registered Will dated 27.06.1978, bequeathing his undivided 1/4th share in his joint family property and his business concerns to his grand son Venkata Reddy. Later, he executed a Registered Settlement Deed dated 10.01.1981 keeping in himself life estate in all his property viz., regarding his 1/4th share in the immovable property creating absolute rights to holder Venkata Reddy. In the suit in O.S. No.83 of 1980, the plaintiff herein had contended that all the business concerns including the 13th defendant firm was the joint family concern be equally divided among the four sharers viz., Pullayya and his three sons; while 12th defendant and late Soora Reddy contended that it is independent firm and had nothing to do with the joint family concerns and the assets and liabilities of the said firm belongs to the respective partners of each firm, according to their respective sharers. In any view, taking into consideration the contentions of 12th defendant herein and late Soora Reddy, as several business concerns were being assessed as registered firms by the Income Tax authorities and Sales Tax authorities, the plaintiff herein is entitled to the amount lying to his credit in his katha and the legitimate share of profits in each of the firms. Subsequently, Pullayya gifted away his 1/4th share in all the joint family property to the plaintiff's son Venkata Reddy, knowing that 12th defendant and late Soora Reddy became sore and deprived the plaintiff herein from his legitimate share in the assets of 13th defendant firm as considerable amount stood to his credit and the said concern was yielding good profits. Accordingly, late Soora Reddy, who was in management of the 13th defendant firm, manipulated the accounts of the firm in collusion and assistance of 12th defendant. But, the plaintiff has been under the wrong impression that even if his contention, that all the concerns are joint family concerns, was not upheld, in view of the long duration and assessment of the firms, he is at least entitled to his legitimate share of interest in the assets of each firm, liable to be given to him or to his son, representing his branch. While so, late Soora Reddy, who was examined as DW.2 in O.S. No.83 of 1980, on 27.01.1983, surprisingly stated that the 2nd defendant therein, who was plaintiff herein, retired from the 13th defendant firm receiving his share of amount as Rs.40,000/- but during his cross-examination, stated that though the plaintiff retired from the 13th defendant-firm during the months of June or July 1977 but neither any deed of dissolution of partnership was executed or obtained any letter from the plaintiff to prove that he had withdrawn from the firm. It was further revealed that Soora Reddy in collusion with 12th defendant, without his knowledge and consent, manipulated the accounts of 13th defendant firm for the year 1977-78 and brought into existence wrong entries in the plaintiff's katha to reduce the credit balance standing to his credit. Consequently, after perusal of the account books before the trial Court, that the name of the plaintiff was dropped as partner of the firm and the names of defendants 1, 2, 4, 8 and 9 herein and late Soora Reddy were shown as partners of the 13th defendant firm. The plaintiff was never informed about dissolution of 13th defendant firm and constitution of new firm. If really, the plaintiff had retired from the firm during the year 1977, he could not have been continued as partner till the year 1980-81, which established that there was manipulation of accounts. Another important fact to be noted is that none of the debit entries in the katha of the plaintiff herein neither bear his signatures nor thumb marks. Thus, the plaintiff could get full information only on 13.09.1984, when Soora Reddy was cross-examined at length, in relation to the books of said firm and an amount of Rs.39,000/- was falsely debited from his account to reduce his credit balance. While Soora Reddy died on 20.11.1984, the plaintiff made several attempts to restore his partnership in the 13th defendant firm by crediting Rs.39,000/-, which was falsely debited from his account, but the defendants did not heed to his request and deprived the plaintiff to his legitimate share in the said firm and to retain the ill-gotten benefit. The plaintiff estimates the amount due to him at Rs.80,000/- including the amount lying to his credit as on 01.04.1977, together with subsequent interest and his share of profit, by the time the firm stood dissolved on 20.11.1984, on the death of Soora Reddy, hence, the suit for the aforesaid reliefs. 5. Defendants 4 and 12 filed separate written statements denying material allegations of the plaint inter-alia contending that several business concerns were started with the joint family funds for the benefit of the joint family among which the 13th defendant firm is one such venture is not correct and that several businesses concerns including the 13th defendant firm were started along with others, who were not members of the joint family, with their own funds. The father of 4th defendant late Soora Reddy and Sreeramulu Naidu started medical shop business in the year 1960 at Pandalapaka and continued the same till 1967-68 and also started another medical shop at Rayavaram along with K. Adinarayana Reddy. As Sreeramulu Naidu and Adinarayana Reddy retired in the year 1968, late Soora Reddy inducted the plaintiff and defendants 1 and 2 herein as partners and continued the business. Therefore, it is not correct to say that the 13th defendant firm was started with late Soora Reddy, Sreeramulu Naidu and Adinarayana Reddy. Late Soora Reddy was a partner in his individual capacity but does not represent his family. They denied the contention that the said business was run on profits from the beginning and managed by 12th defendant and late Soora Reddy but, Soora Reddy alone managed the firm till his death and late Soora Reddy and 12th defendant never secreted huge cash and invested the same in money lending business. The plaintiff, his son and his henchmen brought into existence the registered lease deeds and a registered gift deed said to have been executed by late Pullayya in order to defraud 12th defendant and late Soora Reddy.

Thereupon, the 12th defendant filed O.S. No.83 of 1980, questioning the genuineness and binding nature of those documents. Subsequently also, the plaintiff brought into existence a registered will dated 27.06.1978 and registered settlement deed dated 10.01.1981, which were said to have been executed by Pullayya, during his old age. Late Pullayya filed written statement in O.S. No.83 of 1980 contending that the business firms are all joint family firms; the share of Soora Reddy would not get devolved on his death but his share would be devolved by survivorship. The plaintiff and his son, who filed written statements taking the same stand therein, cannot now approbate and reprobate. They further denied the contention that late Soora Reddy and 12th defendant became sore on the execution of gift deed and in order to deprive the plaintiff, manipulated the accounts in collusion with each other, though the plaintiff is fully aware that the 13th defendant firm is running with the joint family funds and the plaintiff retired from the said firm. If really, the accounts were manipulated as alleged by the plaintiff, he would not have waited for all these years and filed the suit leisurely for dissolution of the firm. Though the signatures or thumb impressions of the plaintiff were not obtained as on the date of dissolution of the firm, but the plaintiff took his share and retired from the firm. Subsequently, he withdrew the amount, invested in the businesses run by the plaintiff, his son and daughter-in-law. They further contended that the plaintiff never attempted to restore his share in the partnership firm and also tried to credit the amount, which was withdrawn at the time of his retirement. Dissolution of the firm can be in different ways but simply because the partners of the reconstituted firm happened to be relatives, it cannot be said that the partners are name lenders of late Soora Reddy and 12th defendant and they have no interest in the assets and liabilities of the firm. Therefore, except the 4th defendant, the other defendants are neither proper nor necessary parties to the suit. The liability of the partners, if any, is only of those who were partners as on 31.03.1978 but not the partners of the reconstituted firm and 12th defendant is not a partner of either 13th or 14th defendants-firms. It is further contended that the suit is barred by time and there is no cause of action for filing the suit and, hence, the suit is liable to be dismissed. 6. Defendants 1, 8 to 11, 13 and 14 filed memos adopting the written statement filed by the 4th defendant and defendants 2, 3 and 5 to 7 filed memos adopting the written statements filed by the defendants 4 and 12. 7. The 4th defendant filed additional written statement contending that he never represented or managed the 13th defendant firm and was never a partner of the 13th defendant firm till 1980. The 13th defendant firm was not properly described though it was registered with the income-tax department it was never registered with the Registrar of Firms under the Indian Partnership Act, 1932 and, hence, the suit is not maintainable and liable to be dismissed. 8. Defendants 1, 8 to 11, 13 and 14 filed memos adopting the additional written statement filed by 4th defendant. 9. Plaintiff filed rejoinder contending that the 4th defendant used to attend the business of 13th defendant firm on behalf of his father and actively assisted him. In the additional written statement, 12th defendant was referred as firm but it is actually 13th defendant, represented by late Soora Reddy, after whose death, 4th defendant was managing the same, came into possession of all the assets of 13th defendant firm and dissolved 13th defendant firm, reconstituted the said business by forming 14th defendant firm. The plaintiff does not admit that the 13th defendant firm was not registered as per the provisions of the Indian Partnership Act, even if it is not registered, the suit for dissolution and for rendition of true and correct account of dissolved firm is maintainable and, finally, prayed to decree the suit and grant the aforesaid reliefs. 10. Basing on the above pleadings, the trial Court framed the following issues, including one additional issue on 14.09.1990: 1) Whether the plaintiff is entitled to the declaration that he was a partner of M/s. Sri Satya Medical and Electrical Stores, Rayavaram with 30 paisa share in the rupee from 1968 till 20.11.1984? 2) Whether the plaintiff voluntarily retired from the firm of M/s. Sri Satya Medical and Electrical Stores by 31.03.1978 or abandoned his rights as a partner after taking away the amounts by 31.03.1978? 3) Whether the plaintiff can claim for rendition of account of all the assets and liabilities of the firm as on 20.11.1984, when he by his own conduct is estopped from claiming any account in this suit? 4) Whether the suit is in time? 5) Whether the suit is maintainable as framed? 6) Whether the defendants 3, 5 to 12 and 14 are necessary and proper parties to this suit? 7) Whether the defendants 13 and 14 are properly described in the plaint? 8) Whether the plaintiff is entitled to take a different stand from the plea he had taken in O.S.83 of 1980 on the file of Sub-Court, Ramachandrapuram? 9) Whether M/s. Sri Satya Medical and Electrical Stores firm was ever dissolved? If so, when? 10) Whether the plaintiff was paid Rs.39,000/- between 01.08.1977 to 31.03.1978? 11) To what relief? 12) Whether the 4th defendant is liable to render any account? 11. During course of trial on behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A-1 to A-30 were marked. On behalf of the defendants DWs.1 to 5 were examined, Exs.B-1 to B-46 and Exs.X-1 to X-8 were marked. 12. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court held issues 1 to 5, 8 and 9 in favour of the plaintiff while holding issues 6 and 7, 10 to 12 against the plaintiff on the ground that frame of the suit is bad observing that the plaintiff is entitled to file a suit for rendition of account as the firm was already dissolved but filed the suit for declaration and rendition of account, dismissed the suit. 13. Aggrieved thereby, the unsuccessful plaintiff therein preferred this Appeal on various grounds. The main contentions of the plaintiff-appellant are that the finding with regard to investment of Rs.40,000/- by the plaintiff's son and disbelieving the same; similarly, drawing an inference that a sum of Rs.15,000/- was borrowed by Soora Reddy on 30.08.1977 from one Muthareddi Venkataratnam Chowdari is erroneous. The trial Court also recorded a finding with regard to books of account maintained in the business in the cross-examination of Soora Reddy in O.S.No.83 of 1980 dated 13.09.1984 and committed an error in dismissing the suit. Likewise, the plaintiff-appellants raised several contentions regarding appreciation of evidence about obtaining signatures or thumb impressions of the partners by the managing partner etc., and, finally, prayed to allow the Appeal setting-aside the decree and judgment of the trial Court. 14. This Court being the Court of first appeal is under an obligation to reappraise the entire material to come to an independent conclusion, therefore, this Court need not extract each and every contention raised by the learned counsel for the plaintiff-appellants, in the grounds of appeal. 15. During pendency of the Appeal, Sri Srinivas Basava, learned counsel for the plaintiff-appellants, filed a memo running into four pages pointing out certain irregularities allegedly committed by the trial Court in appreciation of evidence and during pendency of this Appeal, filed A.S.M.P. Nos.20377 of 2000, 24115, 24116, 1737 and 1738 of 2001 and 23385 of 2000 and A.S. No.2251 of 1986 and Cross-Objection (SR) No.10150 of 1988 as confirmed in SLP (Civil) C.C. No.4392 of 2010 dated 30.04.2010, wherein the 1st appellant herein was held to be the Class-II legal heir of 12th respondent; therefore, the 2nd appellant was brought on record as the legal representative of 1st respondent and 12th respondent vide order dated 30.01.2013 passed in A.S.M.P. No.81 of 2013 and the said fact was brought to the notice of this Court by Memo dated 25.11.2013 filed in this Appeal. In view of the subsequent change of the circumstances, the 2nd appellant is entitled to the share of 1st appellant-1st respondent in 13th respondent firm, in view of the subsequent change in the circumstances. 16. During pendency of the appeal, learned counsel for the appellants filed a memo not pressing the relief of declaration that the plaintiff is a partner of the 13th defendant firm and requested this Court to pass a decree for rendition of true and correct account and allow the Appeal to that extent. The memo is, accordingly, recorded on 24.12.2014 17. Learned counsel for the appellants would contend that the 2nd appellant being class-II legal heir is entitled to claim share in the estate of 1st defendant-respondent, however, the judgment of the trial Court is against the law, but the trial Court failed to appreciate various contentions raised before it and dismissed the suit erroneously and prayed to pass a decree for rendition of true and correct account of 13th defendant firm. 18. Per contra, learned counsel for the defendants-respondents opposed the Appeal even to the extent of passing the relief of rendition of true and correct account of the 13th defendant firm for the reason that the status of the plaintiff-1st appellant as a partner was denied long prior to filing of the appeal and to cover up the inherent defect in the appeal, the memo is filed limiting the relief to accounting of 13th defendant firm and the same cannot be granted since the relief, if any claimed, based on memo would take away the valuable right that accrued to the defendants and prayed to dismiss the Appeal. 19. Considering rival contentions, perusing the material available on record including the decree and judgment under challenge, the points that arise for consideration are: 1) Whether the plaintiff-appellants are entitled to claim any share as class-II legal heirs of 12th defendant-respondent in view of the decree and judgment in SLP (Civil) C.C. No.4392 of 2010 dated 30.04.2010? 2) Whether the appellants are entitled to claim the relief of accounting of 13th defendant firm without seeking a declaration that the 1st appellant is the partner of the firm? If so, a decree directing the defendants to render true and correct account of 13th defendant-firm be passed? 20. POINT No.1: Admittedly, the suit was filed by the plaintiff for both the reliefs of declaration that the plaintiff is the partner of 13th defendant firm and for rendition of true and correct account of the 13th defendant firm as on 20.11.1984. The trial Court framed as many as 11 issues and one additional issue, however, issues 1 to 3 and 9 were decided together by common consideration and held all the 4 issues in favour of the plaintiff but no Cross-objection or an independent Appeal was filed challenging those finding on issues 1 to 3 and 9 by the defendants, though the findings are adverse, therefore, I myself refrained to disturb the finding recorded by the trial Court on Issues 1 to 3 and 9. 21. During pendency of this Appeal, strangely, the 2nd appellant filed a memo dated 24.12.2014 not pressing the relief of declaration that the plaintiff is the partner of the 13th defendant firm having 30 paisa share in it. In view of the changed circumstances and based on the judgment in SLP (Civil) C.C. No.4392 of 2010, the plaintiff-1st appellant became entitled to a share being the class-II legal heir of 12th defendant in the suit and requested to pass a decree for rendition of true and correct account of 13th defendant firm. By virtue of the memo, the 2nd appellant abandoned the claim for declaration that the plaintiff was the partner of 13th defendant firm having 30 paisa share in it. By filing a memo, the plaintiff cannot abandon the part of his claim. However Order XXIII Rule 1 permits the plaintiff to abandon part of his claim at any time after institution of the suit against any one or all the defendants but where the plaintiff sought for liberty to file a fresh suit based on the same cause of action an application is required to be filed under Order XXIII Rule 1 of C.P.C. but here no such liberty was sought for while giving up the claim of declaration that the 1st plaintiff is the partner of 13th defendant firm having 30 paisa share in the Rupee. As there is no requirement to file an application for abandoning the claim of declaration against the defendants-respondents, the memo is, accordingly, recorded by this Court on 24.12.2014. 22. In view of the memo recorded by this Court, the claim of the appellants to the extent of declaration that the 1st appellant is a partner of 13th defendant firm having 30 paisa share is dismissed. In Para 3 of the memo, the plaintiff relied on the orders passed in A.S.M.P. Nos.20377 of 2000, 24115, 24116, 1737 and 1738 of 2001, 23385 of 2000 and A.S. No.2251 of 1986 and Cross-Objection (SR) No.10150 of 1988 as confirmed by the Apex Court in SLP (Civil) C.C. No.4392 of 2010, dated 30.04.2010 and the Appeals referred in Para 3 of the memo do not pertain to the present suit and they relate to a partition suit in O.S. No.83 of 1980 on the file of Subordinate Judge, Ramachandrapuram. Strangely, no orders referred in Para 3 of the memo are brought on record to take advantage of the subsequent changed circumstances. Undoubtedly, the law is well settled that subsequent changed circumstances can be taken note of by the Courts to mould the relief appropriately and to do complete justice, if those changed circumstances are brought to the notice of this Court by following appropriate procedure. Here, the appellants relied on the subsequent changes due to passing of orders in A.S.M.P. Nos.20377 of 2000, 24115, 24116, 1737 and 1738 of 2001, 23385 of 2000 and A.S. No.2251 of 1986 and Cross-Objection (SR) No.10150 of 1988 as confirmed by the Apex Court in SLP (Civil) C.C. No.4392 of 2010, dated 30.04.2010 referred in Para 3 of the memo. Thus, the claim of the appellants is based on the findings recorded by the Apex Court in SLP (Civil) C.C. No.4392 of 2010, dated 30.04.2010 and this Court in A.S.M.P. No.20377 of 2000, 24115, 24116, 1737 and 1738 of 2001, 23385 of 2000 and A.S. No.2251 of 1986 and Cross-Objection (SR) No.10150 of 1988, dated 28.07.2009 but no piece of paper is brought on record to establish that the 2nd appellant was declared as class-II legal heir of 12th respondent. 23. Normally, the Courts shall not take note of the subsequent events unless those changed circumstances are brought to the notice by way of amendment to the pleadings. Therefore, change in the circumstances is a ground to amend the pleadings appropriately by fling the petition under Order VI Rule 17 of C.P.C. subject to permissibility, so as to bring the subsequent changed circumstances to mould the relief before the Courts. The plaintiff did not amend the plaint suitably in view of the subsequent change in the circumstances of the case on account of passing of decree and judgment by the Apex Court in SLP (Civil) C.C. No.4392 of 2010, dated 30.04.2010 and in A.S.M.P. NoS.20377 of 2000, 24115, 24116, 1737 and 1738 of 2001, 23385 of 2000 and A.S. No.2251 of 1986 and Cross-Objection (SR) No.10150 of 1988 by this Court on 28.07.2009 and in the absence of any pleading as to the entitlement of the 2nd appellant to claim share being the class-II heir of 12th defendant-respondent, it is difficult for me to take note of this subsequent change as the pleadings were not suitably amended and those documents were not marked as exhibits before this Court. However, the appellants filed a memo dated 24.12.2014 enclosing copies of various orders referred in Para 3 of the memo but receiving those documents as additional evidence based on the memo is almost an unknown procedure to the Courts and, in fact, memo is not contemplated either in the C.P.C. or under Civil Rules of Practice and, at best, the appellants are required to file a Petition under Order XLI Rule 27 of C.P.C. with a request to receive additional evidence, either oral or documentary, but instead of following the procedure contemplated under Order XLI Rule 27 of C.P.C. the appellants adopted a short cut method of filing documents along with memo hence, the same cannot be received. Added to that, the plaint was not suitable amended in view of the changed circumstances to take note of those changed circumstances, during pendency of this Appeal. Hence, there is absolutely no material on record to establish that the 2nd appellant is entitled to a share in the estate of 12th respondent, who was managing the 13th defendant firm being the class-II legal heir in view of various orders referred in Para 3 of the memo. In the absence of amendment to the plaint, bringing the subsequent changes on record to take note of those changes and exhibiting the documents before the Court, this Court is disabled to receive those documents as additional evidence and consider those documents for moulding the relief appropriately. 24. In view of the memo filed by the appellants, the finding of the trial Court on Issues 1 to 3 and 9 is liable to be set-aside as the 2nd appellant abandoned the claim of declaration that the 1st appellant is the partner of the 13th defendant firm having 30 paisa share in the Rupee. If the finding recorded by the trial Court on Issues 1 to 3 and 9 is set-aside, it is for the appellants to establish that the 1st appellant continued as a partner in the 13 defendant firm so as to claim accounting relief in the 13th defendant firm. Since the 1st appellant’s claim was denied as per the books of account and paid major part of his capital to the 1st appellant, therefore the appellants having felt that a declaration is required to be sought for and claimed declaratory relief but on account of filing the memo referred supra, the 2nd appellant is still under obligation to prove that the 1st appellant was the partner during his life time in the business of 13th defendant firm. 25. The claim of the 2nd appellant that he became entitled to a share in the share of 12th respondent being class-II legal heir was unfounded in the pleadings and no evidence is brought on record, strictly adhering to the procedure contemplated in the C.P.C. to receive additional evidence in the Appeal by exercising power under Order XLI Rule 27 of C.P.C. therefore, I find absolutely no pleading to the claim of the 2nd appellant that he became class-II legal heir of 12th respondent and entitled to claim accounting relief. In the absence of pleading and proof, I am afraid to accept the contentions of the learned counsel for the plaintiff-appellants that the 2nd appellant is entitled to claim accounting relief being the class-II legal heir of 12th respondent. Hence, the appellants miserably failed to plead and prove the claim that 1st appellant being class-II legal heir of 12th respondent is entitled to claim rendition of account of the 13th defendant firm. Hence, this point is held against the appellants and in favour of the respondents. 26. POINT No.2: As seen from the material available on record, the claim of the 1st appellant is that he is the partner of the 13th defendant firm was initially accepted, however, it is the specific case of the respondents that the 1st appellant retired from the business and thereby not entitled to claim accounting relief of the 13th defendant firm. The trial Court negated the relief on the technical ground that the suit was not framed properly and, at best, the plaintiff is entitled to claim the accounting relief of dissolved firm but not relief of declaration and accounting together. The trial Court framed as many as 11 issues and one additional issue. However, the 10th issue was held in favour of the defendants and against the plaintiff but the 10th issue pertains to drawing of Rs.40,000/- from the 13th defendant firm on various dates. The plaintiff withdraw Rs.20,000/- on 01.08.1977, Rs.15,000/- on 30.08.1977, Rs.2,000/- on 26.02.1978 and again Rs.2,000/- on 31.03.1978. This fact was substantiated by evidence. The trial Court believed the factum of drawing the said amount and the same was not challenged during hearing of this Appeal, however, held that the plaintiff-1st appellant is continuing as partner even after withdrawing the above amount. Thus, the plaintiff-1st appellant is continuing as partner in the 13th defendant firm even after withdrawing the above amount, on various dates, and the factum of his continuation as partner is evidenced by the Income-Tax returns submitted to the authorities concerned, by the 13th defendant. If, as per Ex.A-27, the balance payable for the plaintiff-1st appellant to the credit of his account was Rs.487/-, therefore the plaintiff-1st appellant is continuing as partner though he has drawn Rs.39,000/- on various above dates. Therefore, the amount lying to the credit of the plaintiff-1st appellant is only Rs.487/- but continuing as a partner. This finding of the trial Court regarding withdrawing of different amount on various dates remained un-challenged. 27. The trial Court answered Issues 1 to 3 and 9 against the defendants and in favour of the plaintiff; while deciding those issues, discussed about the modes of dissolution of firms, however, the finding of the trial Court on issues 1 to 3 and 9 was not challenged by the defendants, though the finding was adverse to them, by filing a separate Appeal or Cross-objection. Hence, this Court need not interfere with the finding recorded by the trial Court on Issues 1 to 3 and 9. Similarly, the trial Court also framed an issue relating to limitation i.e., 4th issue but this issue was held in favour of the plaintiff and against the defendants. Similarly, Issues 6 and 7 pertains to failure to implead proper and necessary parties, but those two issues were also held in favour of the plaintiff and against the defendants and no separate Appeal or Cross-objections has been preferred against the findings on Issues 4, 6 and 7, defendants-respondents allowed those findings to attain finality. Therefore, I need not re-appreciate the material available on record with regard to findings on Issues 4, 6 and 7 since those findings remained unchallenged. 28. The trial Court also framed issue No.8 with regard to estoppel and the trial Court recorded a finding against the defendants and in favour of the plaintiff on issue No.8, however, the same is not challenged. The only issue held in favour of the defendants is 5th issue i.e., regarding maintainability of the suit due to defective framing. The trial Court while answering issues 1 to 3 and 9 held that the Partnership Firm was not dissolved till death of Soora Reddy in the year 1984. After 1984, the 13th defendant firm is deemed to have been dissolved on account of death since the partnership has no registration and it is a partnership at will, but now the question is maintainability of the suit in view of the bar under Section 69 of the Indian Partnership Act. 29. According to Section 69(1) of the Partnership Act, 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 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 Registrar of Firms as a partner in the firm. 30. Section 69 (2) creates an interdict to enforce a right arising from a contract and no suit shall be instituted in any Court by or on behalf of a firm against any third party. However, Section 69 clause (3) is in the nature of proviso to Section 69(1) and (2) which saves the right to enforce to sue for 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 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. 31. The present suit, at best, comes within the exception contained under Section 69(3)(a), which permits a partner of a firm to seek dissolution of a firm or for accounts of a dissolved firm, but here the plaintiff-1st appellant claimed the substantive relief of declaration that he is a partner of the 13th defendant firm and, secondly, the relief of rendition of true and correct account of the said firm. The first part of the relief is only to enforce a right under the contract or a right conferred under the Indian Partnership Act. 32. The relief cannot be granted in view of Section 16(1) of Indian Partnership Act since clause (1) of Section 69 created a fetter or interdict to enforce a right under an un-registered partnership deed. Therefore, the plaintiff-1st appellant is not entitled to claim the first part of the relief of declaration that he is a partner of the 13th defendant firm from 1968 till 20.11.1984. 33. Thus, the trial Court rightly rejected the primary relief of declaration while holding that frame of the suit is not in accordance with law for the reason that Section 69(3)(a) enables a partner to seek rendition of true and correct account of the dissolved firm and the plaintiff-1st appellant is entitled to seek the relief of accounting of 13th defendant firm which is a dissolved firm. Taking advantage of the observations while answering Issue No.5 by the trial Court, the appellants filed a memo before this Court not pressing the relief of declaration that the plaintiff-1st appellant is the partner of the 13th defendant firm. However, the claim that the 2nd appellant is entitled to claim share in the 1st appellant's share being the partner of 13th respondent and, therefore, entitled to claim rendition of true and correct account of the 13th defendant firm. In fact, the plaintiff-1st appellant claimed right in his individual capacity claiming right as a partner of the firm but the 2nd appellant was impleaded as per orders of this Court in A.S.M.P. No.81 of 2013, dated 30.01.2013 as legal heir of deceased 1st appellant. At best, the 2nd appellant can claim right through the 1st appellant, not as a legal heir of the 1st respondent Adeyammaa, who died during pendency of the suit, since the claim is not based on the cause of action arose during pendency of the suit, due to death to Adeyyamma. Even otherwise, the specific case of the plaintiff-1st appellant from the beginning is that the firm was re-constituted after the year 1980-81, but the said fact was not intimated to the plaintiff-1st appellant by either of the partners; however, in the absence of proof of dissolution as per any one of the modes contemplated under Section 40 to 44 of the Partnership Act, the trial Court rightly concluded that the partnership firm was not dissolved and the same was not challenged by filing any separate Appeal or Cross-objection, as discussed by me earlier. However, the firm is deemed to have been dissolved on 20.11.1984 certainly, the plaintiff-1st appellant is entitled to claim relief of rendition of true and correct account. If the claim of the plaintiff-1st appellant is purely based on dissolution of the firm, in Para 10 of the plaint, a specific allegation is made that Soora Reddy suddenly died on 20.11.1984 and after his death, the plaintiff made several attempts to restore his partnership in the 13th defendant-firm and also to re-credit Rs.39,000/- together with interest which is falsely debited to his account but the defendants did not heed to his request. This allegation, at best, could show that Soora Reddy died on 20.11.1984 and since the partnership is un-registered and it is at will, the firm is deemed to have been dissolved. At the end of Para 13 of the plaint, the plaintiff made a feeble attempt to contend that the plaintiff had not retired from partnership firm, continued to be the partner till 20.11.1984, when the firm legally stood dissolved on account of the death of Soora Reddy. So, it is clear from the allegations made in Para 13 of the plaint, the plaintiff claimed to be a partner till dissolution of the firm on account of death of Soora Reddy on 20.11.1984. At page 21 of the plaint, last 5 lines of Para 17, a specific allegation is made which extracted hereunder "………………………….., when the plaintiff's advocate cross-examined Kovvuri Soora Reddy with the aid of the account books of the firm, and when the plaintiff came to know the details of the manipulations made by Kovvuri Soora Reddy and others, on 20.11.1984, when Kovvuri Soora Reddy died, and when the firm legally stood dissolved on 21.11.1984,……….." 34. Thus, the cause of action also disclosed that on account of death of Soora Reddy, the firm stood dissolved, legally, on 20.11.1984; to claim relief of declaration that he is the partner of the firm and rendition of true and correct account, moreover, the defendants denied continuation of the plaintiff as partner while contending that the plaintiff retired as a partner from the 13th defendant firm but the trial Court after discussing the modes of retirement contemplated under Section 32 of the Indian Partnership Act disbelieved the retirement of the plaintiff as a partner in the firm and the same has attained finality, as the defendants failed to challenge the same by filing Cross-objection or an independent Appeal. Therefore, the finding of the trial Court that the plaintiff did not retire from the 13th defendant firm needs no interference by this Court, even after reappraisal. 35. One of the major contentions of the defendants-respondents is that when the plaintiff did not retire from partnership firm and the firm is not legally dissolved as per Sections 39 to 44 of the Indian Partnership Act, the plaintiff is deemed to be continuing as partner, till it is dissolved legally on account of death of Soora Reddy on 20.11.1984 since the partnership is un-registered and at will but the plaintiff did not file a suit for rendition of account of dissolved firm but filed the present suit for two different reliefs as discussed above, but the trial Court having found that the frame of the suit is bad declined to grant the relief, while deciding 5th issue. Taking advantage of those observations, the 2nd appellant not pressed the claim for declaration but the same is impermissible in view of the law declared by Calcutta High Court in Abani Kanta Pal, wherein the division Bench of the Calcutta High Court held as follows: "If a firm is not registered, excepting a suit as contemplated by Section 69(3), the Court will have no jurisdiction to entertain the suit in violation of Section 69(1). In other words, the plaint that has been filed by the plaintiff will be considered as void plaint, if it contravenes the provisions of Sub-Sections (1) and (2) of Section 69. If the plaint is treated as void plaint the question of amendment of such a plaint does not arise at all. If the plaint is not a void plaint, but a defective one, in that case, an amendment may be made for the purpose of curing or removing the defect. It is true that under Sub-Section (3) enforcement of any right to sue for dissolution of a firm or for accounts of a dissolved firm is not hit by the provisions of Sub-Sections (1) and (2) of Section 69 of the Partnership Act. But, where the plaint is void, there is no question of bringing the same within the purview of Sub-Section 3 of Section 69 by way of amendment." 36. The facts of the above judgment are that the suit was filed by the plaintiff for a declaration that he is a partner of a partnership firm having 1/4th share therein and carrying on business of the husking mill in question. He has also prayed for appointment of a Commissioner for accounts and other incidental reliefs. 37. The present facts of the case are almost identical to the facts of the above judgment except nature of business and dissolution of the firm on account of death. The Calcutta High Court while deciding the similar question held that the plaint filed by a partner of an un-registered firm is a void plaint, but it will not come under Sub-section 3 of Section 69 of Indian Partnership Act. Under Section 69(3) of Partnership Act, a person is entitled to file a suit for dissolution or for rendition of account only. But here, the plaintiff filed the suit for declaration that he is continuing as a partner of the firm from 1968 till 20.11.1984; when the firm stood dissolved legally on account of untimely death of Soora Reddy it is not exempted under Section 69(3). Therefore, it is not covered under Section 69(3) of but hit by Section 69 (1) and (2) of Partnership Act since the firm is un-registered and right arising out of contract cannot be enforced under Section 69(1) of Indian Partnership Act. 38. The trial Court further relied on the principle laid down by the Apex Court in Ioonkaran Sethia Vs. Ivan E. John, wherein at Para 21 of the Judgment it was held as follows: "A bare glance at the section is enough to show that it is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner or an unregistered firm, whether existing or dissolved, void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of Section 69 of the Partnership Act." 39. Taking into consideration of the principle laid down by the Calcutta High Court and Apex Court in the decisions referred supra, the trial Court concluded that the declaratory relief is hit by Section 69(1) only, but the relief of rendition of account is permissible under Section 69(3) of the Partnership Act though it is un-registered but dissolved due to death of Soora Reddy, ultimately recorded a finding that the suit as framed is bad. 40. In view of the principle laid down by the Calcutta High Court and Apex Court in the decisions referred supra, presentation of plaint for both the reliefs of declaration and rendition of account is void. When presentation of plaint itself is void, the finding of the trial Court that frame of the suit is bad is sustainable and the subsequent giving up the claim for declaration would not make the situation better which enabled the 2nd appellant to claim the relief of rendition of true and correct account taking advantage of Section 69(3) of Indian Partnership Act; therefore, on account of the subsequent incident of giving up the claim for declaration, the relief of rendition of true and correct account cannot be granted. Hence, I hold that the plaintiff-appellants are not entitled to claim the relief of rendition of true and correct account of 13th defendant firm from 1968 to 20.11.1984, when the firm stood legally dissolved, or the 2nd appellant is not entitled to claim rendition of true and correct account being the class-II legal heir of the 1st defendant-respondent for the reason that the 2nd appellant never claimed such right and no material is brought on record. 41. In view of my foregoing discussion, I hold that the appellants are not entitled to claim even the relief of rendition of true and correct account of 13th defendant firm from 1968 till 20.11.1984, when the firm stood legally dissolved on account of the death of Soora Reddy. Accordingly, the point is answered against the plaintiff-appellants and in favour of the defendants-respondents. In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 11.11.1991, passed in Original Suit No.7 of 1985, by the learned Subordinate Judge, Ramachandrapuram, East Godavari District. In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs. ______________________________ M. SATYANARAYANA MURTHY, J Date: 01-06-2015. Dsh HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY 127 02062015 APPEAL SUIT No. 1616 OF 1994 Date. 01-06-2015 DSH AIR 1986 Calcutta 143 AIR 1977 SC 336 PAGE PAGE 26 MSM, J A.S. No.1616/1994

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