

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NOS. 68 AND 117 OF 2008

SECOND APPEAL NO. 68 OF 2008

Smt. Jyotsna H. Chodankar,
Major in age,
Married,
Residing at House no. 214,
Bhati Waddo, Nerul,
Bardez, Goa.

..... Appellants

V e r s u s

1. Smt. Janhvi N. Chodankar alias
Janvi Narsinha Chodankar,
Represented by
Advocate Umesh Kolwalkar,
having his
Office at Panaji, Goa.
2. Smt. Ratnabai P. Chodankar (deceased)
Through her legal representatives:
 - a. Shri Narahari Pandharinath Chodankar,
alias Narsinhva P. Chodankar,
Son of late P. Chodankar,
Major in age,
Married,
Residing at J. B. Nagar,
Shantinir,
B/14, Andheri East,
Mumbai.
 - b. Shri Ashok Pandharinath Chodankar,
son of late P. Chodankar,
Major in age,
Businessman,
Residing at House no. 214,
Bhati Waddo, Nerul,
Bardez, Goa.
 - c. Smt. Ankit Ashok Chodankar,
Wife of Ashok Chodankar,
Major in age,
Housewife,
Residing at House no. 214
Bhati Waddo, Nerul,

Bardez, Goa.

- d. Shri Ulhas Pandharinath Chodankar,
son of late P. Chodankar,
Major in age,
Married,
Residing at House no. 214,
Bhati Waddo, Nerul,
Bardez, Goa.
- e. Smt. Sapna Ulhas Chodankar,
Wife of Ulhas P. Chodankar,
Major in age,
Housewife,
Residing at House no. 214,
Bhati Waddo, Nerul,
Bardez, Goa.
- f. Shri Sandeep Pandharinath Chodankar,
son of late P. Chodankar,
Major in age,
Married,
Residing at House no. 214,
Bhati Waddo, Nerul,
Bardez, Goa.
- g. Smt. Shaila Sandeep Chodankar,
Wife of Sandeep P. Chodankar,
Major in age,
Housewife,
Residing at House no. 214,
Bhati Waddo, Nerul,
Bardez, Goa.

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for the Appellants.

Mr. Nitin Sardesai, Senior Advocate with Mr. V. Amonkar, Advocate for the Respondent nos. 1 and 2A.

Mr. J. P. Mulgaonkar, Advocate for the Respondent nos. 2E and 2F.

A N D

SECOND APPEAL NO. 117 OF 2008

- 1. Smt. Janhvi N. Chodankar alias

Janvi Narshinva Chodankar,
wife of Shri Narshinva Chodankar,
major of age, r/o. J. B. Nagar,
Shantinir, B/14, Andheri East,
Mumbai 59 (The Plaintiff in Regular
Civil Suit no. 426/2000/C)

2. Shri Narahari @ Narshinva
Pandharinath Chodankar, s/o late
Pandharinath Chodankar, major of age,
(husband of the Plaintiff), r/o J. B.
Nagar, Shantinir, B/14,
Andheri East, Mumbai 59
(Lr. No. 1 of the deceased the Defendant
no. 2 in Regular Civil Suit no. 426/2000/C) Appellants

V e r s u s

1. Shri Ashok Pandharinath Chodankar,
s/o late Pandharinath Chodankar,
Occupation business, major of age, and his wife,
(Lr. no. 2 of the original deceased Defendant
in the Regular Civil Suit no. 426/2000/C)
2. Smt. Ankit Ashok Chodankar,
Occupation housewife, major of age,
(Lr. no. 3 of the original deceased Defendant
in the Regular Civil Suit no. 426/2000/C)
Both r/o H. No. 214, Bhatiwada,
Nerul, Bardez, Goa.
3. Smt. Sapna Ulhas Chodankar,
wife of Shri Ulhas Chodankar,
Occupation housewife, major of age,
r/o H. No. 214/1, Bhatiwada, \
Nerul, Bardez, Goa (Lr. no. 5 of the original
deceased Defendant in the Regular Civil Suit
no. 426/2000/C)
4. Shri Sandeep Pandharinath Chodankar,
s/o late Pandharinath Chodankar,
Occupation business, major of age, and his wife,
(Lr. no. 6 of the original deceased Defendant
in the Regular Civil Suit no. 426/2000/C).
5. Smt. Shaila Sandeep Chodankar,
Occupation housewife, major of age,
(Lr. no. 7 of the original deceased Defendant

in the Regular Civil Suit no. 426/2000/C).
Both r/o H. No. 214, Bhatiwada, Nerul,
Bardez, Goa.

6. Smt. Jotsna H. Chodankar,
widow of late Harischandra
Pandharinath Chodankar, major of age,
r/o Mala Fontainhas, Panaji, Goa,
(House no. not known) (The Defendant no. 2
in Regular Civil Suit no. 426/2000).
 7. Shri Ulhas Pandharinath Chodankar,
s/o late Pandharinath Chodankar,
major of age, r/o H. No. 214/1, Bhatiwada,
Nerul, Bardez, Goa (Lr. no. 4 of the original
deceased Defendant no. 2 in the Regular Civil
Suit no. 426/2000/C).
- Respondents

Mr. Nitin Sardessai, Senior Advocate with Mr. V. Amonkar, Advocate for the Appellants.

Mr. J. P. Mulgaonkar, Advocate for the Respondent nos. 3 and 4.

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for the Respondent no. 6.

Coram :- F. M. REIS, J

Judgment Reserved on : 12th August, 2016
Judgment Pronounced on: 15th October, 2016

JUDGMENT

Heard Mr. S. D. Lotlikar, learned Senior Advocate appearing for the Appellants in Second Appeal no. 68 of 2008 and Respondent no. 6 in Second Appeal no. 117 of 2008, Mr. Nitin Sardessai, learned Senior Advocate appearing for the Appellants in Second Appeal no. 117 of 2008 and Respondent nos. 1 and 2A in Second Appeal no. 68 of 2008 and Mr. J. P. Mulgaonkar, learned Counsel appearing for Respondent nos. 2E and 2F in Second Appeal no. 68 of 2008 and

Respondent nos. 3 and 4 in Second Appeal no. 117 of 2008.

2. The parties shall be referred to in the manner as they appear so in the cause title of the records in the learned Trial Court.

3. The above Second Appeal no. 68 of 2008 came to be admitted by Order dated 23.07.2010 on the following substantial questions of law :

(a) Whether in the facts and circumstances of the case, the direction of the Courts below that the Respondent no.1/Plaintiff will be entitled to share to the extent of 20% of articles and things lying in the shop on the ground floor of Trionara Apartment and the ownership rights in the said shop, is perverse, being contrary to the admissions made by the Respondent no.1, to the effect that the agreement for purchase was in the name of deceased husband of the Appellant, besides being contrary to Clause-10 of the Deed of partnership dated 12th July 1984 and being rendered in the absence of any evidence supporting such a finding?

(b) Whether in the absence of any evidence to establish that the suit shop was acquired by the Partnership Firm, that partnership firm did not run any partnership business in the suit shop and that the articles and things lying in the said shop belonged to the said firm, the decree directing that 20% of the value of the said shop and articles and things be paid to the Respondent no.1 and 40% to the legal representatives of the defendant

no.2/respondent no.2, could have been legally made by the Courts below, and that, therefore the impugned Judgment and Decree stands vitiated?

4. Second Appeal no. 117 of 2008 came to be admitted by Order dated 23.07.2010 on the following substantial question of law :

(a) Whether the Honourable Appellate Court was justified in directing only 20% share to be given to the Plaintiff in the capital assets and other articles of the partnership property i.e. M/s. Chodankar Jewellers when neither the evidence on record nor the law of Partnership warrants such direction?

5. Briefly, the case of the Plaintiffs is that the Plaintiffs/Respondent no. 1 instituted a suit in the Court of Civil Judge at Panaji bearing Regular Civil Suit no. 426/2000/C against the Appellant and Smt. Ratnabai P. Chodankar (since deceased) for the accounts of the Firm and for a declaration that she is entitled to 50% share in such Firm and that the other 50% being declared to be belonging to the Defendant/Appellant herein and her mother in law, the said Ratnabai.

6. It is the case of the Plaintiff that in the year 1984, the husband of the Defendant no. 1/Appellant herein and the Plaintiff constituted themselves into a Partnership Firm by executing a Deed of Partnership on 12.07.1984 and that as per the terms of the said Partnership Deed, it was agreed between the parties that till the Plaintiff's husband came down from Bombay and assisted in the work of the said Firm, the Plaintiff and the said Harischandra shall share the profits and losses in the business of the proportion of 20%:80% respectively and on the Plaintiff's

husband coming down to Goa and assisting in the conduct of the business of the said Firm, the losses and profits shall be shared equally and accordingly the Defendant no. 1 and her husband started assisting the said Harischandra in the business of the said Firm w.e.f. 01.10.1984 and that as such she became entitled to share the profits and losses of the Firm equally with the husband of the defendant no. 1/Appellant herein. It is further the case of the Plaintiff that with a view to carry on partnership business, it was agreed that some premises shall be obtained on ownership basis at Panaji for running the shop on partnership and accordingly the said Harischandra entered into negotiations with M/s. Kamat Real Estate Developers, in the building known as "Trionora Apartments and it was expressly agreed between the Plaintiff and the said Harischandra that the said room shall belong absolutely to the said Firm and that the Sale Deed in respect of the said room shall be in the name of the said Firm.

7. The Defendant no. 1/Appellant herein, filed Written Statement in the said suit denying the existence of the partnership between her deceased husband and the Plaintiff. She denied that the signature on the Partnership Deed dated 12.07.1984 was of her husband or that the husband of the Plaintiff had invested any capital in the capital of any Firm. It was her specific case that the shop in Trionora Apartments exclusively belonged to her husband who agreed to purchase on payment of the purchase price.

8. After issues were framed and evidence was recorded, the learned Trial Judge by Judgment dated 25.01.2007, decreed the suit of the

Plaintiff/Respondent no. 1 herein partly holding that there was a Partnership under the name and style of Chodankar Jewellers constituted between the Plaintiff/Respondent no. 1 and Harischandra Chodankar, deceased husband of the Appellant. The learned Trial Judge ordered that the accounts be drawn of the capital assets and their articles and things pertaining to the Partnership Firm carrying on business in the shop of the ground floor of Trionora Apartments including the articles and things lying in the said shop as the ownership rights of the said shop as well as the profits and losses of the said Partnership Firm and 50% share therein be paid to the Respondent no. 1/Plaintiff.

9. Aggrieved by the said Judgment and Decree passed by the learned Trial Judge, the Appellants filed an Appeal before the learned Adhoc District Judge, Fast Track Court, Panaji, being Regular Civil Appeal no. 60/2007. By the impugned Judgment and Decree dated 28.02.2008, the Appellate Court partly allowed the Appeal filed by the Defendant no. 1/Appellant herein to the extent that instead of directions by the Trial Court, that the capital assets, profits and losses of the Firm shall be paid equally, the Appellate Court directed that the Plaintiff/Respondent no. 1 shall be entitled to 20% share in the amount and the remaining 80% shall be distributed equally between the Appellant/Defendant no. 1 herein and the legal representatives of the deceased Defendant no. 2 i.e. 40% share to the Appellant/Defendant no. 1 and 40% share to all the legal representatives of the deceased defendant no. 2/Respondent no. 2 herein. By Judgment dated 28.02.2008 in Regular Civil Appeal no. 60 of 2007, the Lower Appellate court disposed of the Appeal accordingly.

10. Being aggrieved by the said Judgment, the Appellants filed the above Appeal which came to be admitted on the aforesaid substantial questions of law.

11. Shri S. D. Lotlikar, learned Senior Advocate appearing for the original defendant no. 1, has pointed out that the Courts below have failed to consider that there was no Partnership Firm existing which had taken off between the Original Plaintiff-Respondent no. 1 herein and the husband of the Appellant. It is further pointed out that the shop itself was agreed to be purchased by the husband of the Defendant no. 1 and, as such, the deceased husband of the Defendant no. 1 was exclusive owner of such shop. Learned Senior Advocate further pointed out that upon the death of her husband, half share in the shop devolved upon the original Defendant no. 2 who was his mother and who has now expired. Learned Senior Advocate further pointed out that the Courts below have misconstrued the Partnership Deed and pointed out that all the assets in the shop belonged exclusively to the husband of the Defendant no. 1. The learned Senior Advocate has taken me through the findings of the Courts below to point out that there is no material on record to show that any Partnership Firm existed or had started business between the husband of the Defendant no. 1 and the husband of the Plaintiff. The learned Senior Advocate further submits that there is no material on record to show that there was any contribution between the husband of the Defendant no. 1 and husband of the Plaintiff which could give any right to the Plaintiff in the suit shop. The learned Senior Advocate has thereafter taken me through the documents on record to point out that both the Courts below have

misconstrued the documents on record to come to a erroneous conclusion that the original Plaintiff had any right to the suit shop.

12. On the other hand, Shri Nitin Sardessai, learned Senior Advocate appearing for the Plaintiff/Respondent no. 1, has pointed out that the Courts below rightly construed the evidence on record to come to the conclusion that the Plaintiff had a right to the suit shop. It is further pointed out that as far as the Appeal preferred by the Original Defendant no. 1, there is no merit therein and deserves to be rejected. Learned Senior Advocate further pointed out that as far as the Appeal preferred by the Original Plaintiff, there is an erroneous finding by the learned Judge to restrict the shares of the Plaintiff to 20% in the Partnership assets by misconstruing the Partnership Deed. The learned Senior Advocate has thereafter taken me through the Judgments passed by the Courts below to point out that the Courts below have rightly interpreted the Partnership Deed to hold that the claim of the Defendant no. 1 that there was no Partnership existing between the husband of the Defendant no. 1 and the Plaintiff is totally misconceived. Learned Senior Advocate further pointed out that as such the impugned Judgment passed by the Lower Appellate Court deserves to be accordingly corrected in terms of the reliefs sought by the Plaintiff herein.

13. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. On perusal of the Judgment passed by the learned Trial Judge, I find that the learned Judge framed four issues. Whilst examining issue no. 1, the learned Judge found that the Plaintiff established that

there was a Deed of Partnership between the Plaintiff and the husband of the Defendant no. 1 dated 12.07.1984 and that the Partnership was registered with the Registrar of Firms under serial no. 84/84 on 07.08.1984. The learned Judge further noted that the Plaintiff had also proved that it was agreed between the Plaintiff and the said Harischandra that the shop for running such business at Panaji shall belong absolutely to the Firm. Whilst drawing such conclusion, the learned Judge also noted that the Defendant no. 1 had initiated Inventory Proceedings bearing no.,116/87 to partition the assets of the said Harischandra in which the Defendants are parties and pursuant to an Order passed by this Court in the said proceedings, the suit shop which had been kept closed ever since the demise of Harischandra was sealed and it was further ordered that all the gold articles lying therein be weighed and enlisted. The learned Judge also noted that Defendant no. 2 in reply to the said application had pointed out that the shop and the said business belonged to the said Partnership and that the keys of the lock of the said shops were with the Plaintiff and not with the Defendant no. 1. After detailed examination of the material on record, the learned Judge found that the Defendant no. 1 has merely produced her affidavit in evidence without producing any documentary evidence to rebut the case of the Plaintiff and, therefore, the issue nos. 1, 2 and 3 were decided in the affirmative in favour of the Plaintiff. The learned Judge as such Decreed the suit filed by the Plaintiff partly thereby it was ordered that the accounts be taken of the capital assets and other articles and things pertaining to the Partnership Firm M/s. Chodankar Jewellers carrying on business on the ground floor of Trionora Apartments near the Municipal Market inclusive of the articles and things lying in the said shop and the ownership rights in the said shop as well as

the profit and losses of the said Firm and 50% share therein pertaining to the Plaintiff was ordered to be paid to the Plaintiff.

14. Being aggrieved by the said Judgment, an Appeal came to be preferred by some of the legal representatives of the deceased Defendant no. 2 as well as the Defendant no. 1. The Lower Appellate Court framed two points for determination. Whilst discussing point no. 2, the learned Judge found that there was no error committed by the learned Trial Judge in coming to the conclusion that the Partnership was in existence between the Plaintiff and the husband of Defendant no. 1. The learned Judge rejected the contention of the Defendant no. 1 that the Partnership Deed did not have the signature of the Husband of Defendant no. 1. The learned Judge further noted that admittedly the Plaintiff and the children continued to reside in Mumbai and that the business in Jewellery shop in Mumbai was never closed by the husband of the Plaintiff and he continued looking after his Jewellery shop in Mumbai even after the execution of the said Partnership Deed. The learned Judge further noted that from the evidence on record, it clearly reveals that the husband of the plaintiff never assisted the late Harischandra in the business of the said Partnership regularly or w.e.f. 1.10.1984. The learned Judge as such noted that the Plaintiff and the said Harischandra are not entitled to equal share in the Partnership profit and losses in the business of the Partnership but the Plaintiff is entitled to 20% of the share whereas late Harischandra was entitled to 80% share in the Partnership. The learned Judge as such found that the said 80% share of the deceased Harischandra would be distributed 40% to the Defendant no. 1 being the widow and moiety sharer and rest 40% would go to the legal

representatives of the deceased Defendant no. 2 who are already brought on record. The learned Trial Judge was not justified to grant the relief of equal shares in the assets of the subject Partnership Firm. The learned Judge as such modified the Judgment of the learned Trial Judge.

15. On perusal of the findings of the fact finding Courts below, it clearly shows that the contention of Mr. S. D. Lotlikar, learned Senior Advocate appearing for the Appellant that the Partnership Firm never took off cannot be accepted. The fact finding Courts on the basis of the material on record and appreciating the evidence of the Plaintiff/Pw.1 as well as the admission in the cross examination, has come to the conclusion that the husband of the Plaintiff never assisted the said Harischandra in conducting the Partnership business in the said shop. The learned Judge also noted that the said shop was an asset of the Partnership Firm based on the clauses in the Partnership Deed. These findings of facts cannot be re-appreciated by this Court in a Second Appeal. There is no perversity in the said findings as the clause in the Partnership Deed as noted by the Courts below clearly disclose that the shop in question was an asset of the Partnership Firm. The fact that the business was being carried out in the shop in question and that the Partnership Firm has been duly registered has been rightly noted by the Courts below whilst coming to the conclusion that the said shop was an asset of the Partnership Firm. In such circumstances, I find that the contention of Mr. S. D. Lotlikar, learned Senior Advocate to that effect deserves to be rejected.

16. The relevant Clauses 4 and 10 in the Deed of Partnership executed

between the husband of the Appellant and the Respondent no.1/Plaintiff reads thus :

“4. All affairs of the partners shall be conducted and all its assets and properties shall be held in the name of the partnership.

...

...

10. Both the partners have agreed that the shop in TRIONORA APARTMENTS at Panaji which Shri H. P. Chodanker has agreed to purchase from M/s. Kamat Real Estate Developers shall be registered in the Sub-Registrar's office, Panaji, in the name of the firm at the time of executing and registering the sale deed and that the same shall belong to the said firm.”

The said clauses clearly show that late husband of the Appellant-Defendant no. 1, agreed that the shop in question which was agreed to be purchased from M/s. Kamat Real Estate Developers shall be registered in the sub-Registrar Office in the name of the Firm at the time of the execution and the registration of the said Deed and that the same shall belong to the said Firm. The fact that the business carried out by said Harischandra in the said shop is not in dispute. The Partnership Deed clearly shows that such shop was intended to be an asset of the Partnership Firm. In such circumstances, learned Senior Advocate appearing for the Appellant/Defendant no. 1 that the said shop was not an asset of the Partnership Firm, cannot be accepted.

17. Consequently, the substantial questions of law nos. 1 and 2 framed in

Second Appeal no. 68 of 2008 are to be answered against the Appellant/Defendant no. 1. As far as the manner in which the losses and profits of the other Company have to be distributed, would be examined while considering the substantial questions of law framed in Second Appeal no. 117 of 2008 filed by the Original Plaintiff/Respondent no. 1 herein.

18. The Lower Appellate Court whilst examining the second point for determination framed in the Appeal preferred by the Defendant no. 1 has correctly found that the contention of the Plaintiff that the husband of the Plaintiff started regularly carrying on business of the Partnership Firm w.e.f. 01.10.1984, has not been accepted. Apart from that, it is admitted position that Inventory Proceedings initiated upon the death of said Harischandra, the shop in question has been enlisted and even Jewellery in the said shop has been duly enlisted in the said Proceedings. The parties to the Inventory Proceedings including the legal representatives of the deceased Defendant no. 2 have clearly contended that the shop in question was an asset of the Partnership Firm. Apart from that, the contention of Mr. S. D. Lotlikar, learned Senior Advocate, that there was no Partnership business carried out, cannot be accepted as the fact finding Courts have correctly come to the conclusion based on the material on record. The records also reveal that though the husband of the Plaintiff did not assist the husband of the Defendant no. 1, nevertheless, he used to come regularly to Goa and look into the affairs of the Partnership business. In such circumstances, the finding of the Lower Appellate Court that the share in the profits of the Plaintiff is restricted to 20% and the shop of the said Harischandra which has devolved upon

the Defendant no. 1 and the legal representatives of the Defendant no. 2 is 80%, cannot be faulted. But, however, as far as the capital assets are concerned, the Lower Appellate Court has failed to note clauses 9 and 12 of the Partnership Deed which reads thus :

“9. The partner Shri Harischandra Chodankar shall share the profits and/or losses of the firm at the rate of 80% and Mrs. Janavi Chodankar of the rate of 20%. However both the Partners shall share the profits and/or losses of the firm in equal shares when the husband of Mrs. J. N. Chodankar come down to Goa, whenever he desires so and assist/work alongwith Shri H. P. Chodanker in the business in the shop.

10. ...

11. ...

12. On the dissolution of the partnership an account shall be taken of the property, assets, stock-in-trade and other effects and property capable of sale shall be sold either by public auction or by private contract with liberty to any of the parties hereto to bid for and purchase the same or any part thereof and the money which shall arise by means of aforesaid and all other moneys shall be applied in the manner following that is to say first in the payment of costs and expenses attending the winding of the partnership business and secondly in the payment and discharge of the debts and liabilities of the partnership and then the balance in hand shall be distributed among the partners equally, the share of the deceased partner, if the dissolution is brought about in the consequence of the death of such

partner, going to be his/her heirs and legal representatives.”

19. On plain reading of the said clauses, it clearly reveals that the Partners Shri Harischandra Chodankar would have a share in the profits and/or losses of the Firm at the rate of 80% and the Appellant/Plaintiff no. 1 of 20%. However, the shares would have been equal when the husband of the Appellant-Plaintiff comes down to Goa and assists/works along with said Harischandra in the business of the said shop. As already pointed out herein above, the said husband of the Plaintiff never came to assist said Harischandra to carry out the business in the said shop. Consequently, the share of said Harischandra in the profit and losses of the Firm would be 80% whereas the share of the Plaintiff no. 1-Appellant would be 20%. As far as the shares of the parties in the property, assets, stock-in-trade and other property capable of sale in terms of clause 12 of the Partnership Deed as referred to herein above, it clearly provides that after the sale of such assets, the amount shall defray the expenses of the winding up and discharge the debts and liabilities of the Partnership Firm and the balance amount shall be distributed among the partners equally. In such circumstances, the Lower Appellate Court was not justified to hold that the shop and the assets and stock-in-trade, etc., were to be shared at 80% to the deceased Harischandra and 20% to the Appellant-Plaintiff no. 1 herein. The surplus amount in terms of clause 12 of the Partnership Deed has to be distributed equally between the Respondent no. 1 and the legal representatives of the deceased Respondent no. 2 pertaining to half and the remaining one half in favour of the Plaintiff-Appellant no. 1 herein. To that extent, the Judgment passed by the Lower Appellate Court deserves to be modified.

20. In view of the above, I pass the following :

ORDER

(i) Second Appeal no. 68 of 2008 stands dismissed.

(ii) Second Appeal no. 117 of 2008 is partly allowed.

(iii) The Judgment of the Lower Appellate Court stands modified whereby the share of the Plaintiff in the profit and losses of the Partnership Firm in question is restricted to 20% and the remaining 80% of the profits accrued to the Defendant no. 1 and the legal representatives of the Defendant no. 2.

(iv) The shares in the assets of the Partnership Firm referred to in clause 12 of the Partnership Deed shall be distributed in terms thereof, 50% to the Plaintiff and the remaining 50% to the Defendant no. 1 to the extent of half moiety share and the legal representatives of the deceased Defendant no. 2.

(v) Both the Appeals stand disposed of accordingly with no orders as to costs.

F .M. REIS, J.

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