

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

C.M.A. NOS.193, 194, 202 AND 308 OF 2016

DATED:25-11-2016

C.M.A. No.193 of 2016

Between:

Ketineni Chandrasekhar Rao ... Appellant

And

Boppana Seshagiri Rao
and others ... Respondents

COUNSEL FOR THE APPELLANT: - Mr. D. Prakash Reddy, Senior Counsel
for Mr. Sharad Sanghi

C.M.A. No.194 of 2016

Between:

Ketineni Sayaji Rao
and another ... Appellants

And

Boppana Seshagiri Rao
and others ... Respondents

COUNSEL FOR THE APPELLANT: - Mr. V.L.N.G.K. Murthy,
for Mr. E.V.V.S. Ravi Kumar

C.M.A. No.202 of 2016

Between:

M/s. Asian Builders & Developers
Rep. by its Managing Partner
Mr. Narayandas Kishandaas ... Appellant

And

Boppana Seshagiri Rao
and others ... Respondents

COUNSEL FOR THE APPELLANT: - Mr. S. Niranjan Reddy, Senior Counsel
for Mr. K.V. Rusheek Reddy

C.M.A. No.308 of 2016

Between:

Ketineni Sushmitha Rao ... Appellant

And

Boppana Seshagiri Rao
and others ... Respondents

COUNSEL FOR THE APPELLANT: - Mr. P. Sri Raghu Ram,
for Mr. V.V.N. Narayana Rao

COUNSEL FOR RESPONDENT NO.1/PLAINTIFF: Mr. Vedula Venkata Ramana,
Senior Counsel,
for M/s. Bharadwaj Associates

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT: *(per Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

This batch of civil miscellaneous appeals arise out of order dt.01.02.2016 in I.A. No.1114 of 2015 in O.S. No.747 of 2015, on the file of the X Additional Chief Judge, City Civil Court, Hyderabad.

For convenience, the parties are referred to as they are arrayed in the suit.

2. The facts in a nutshell leading to the filing of these CMAs are stated hereunder. The plaintiff filed O.S. No.747 of 2015 against the appellants and others for multiple reliefs, viz; (a) to pass a preliminary decree for partition of the suit schedule property, admeasuring 7250 sq. yards, situated at 7-1-208/2 in Sy. No.157, Ameerpet, Hyderabad, by metes and bounds, divide the immovable property of the said partnership firm and allot 1/5th share to the plaintiff; (b) to grant dissolution of the partnership firm by name "M/s. Satyam Brothers & Co." in respect of the property shown in (a) supra; and (c) to render true and correct account of the partnership business to the plaintiff and based on the same to pass a money decree for the share of the plaintiff.

3. It is the pleaded case of the plaintiff that himself and defendant Nos.1 to 14 are the partners of a registered partnership firm by name 'M/s. Satyam Brothers & Co.' as per the partnership deed dt.23.07.2005. That his son, by name, Mr. B. Srinivasa Rao, is also one of the partners in the above firm and that since he is sailing with the plaintiff he is not impleaded as a party to the suit. That though the said partnership firm was originally constituted sometime in the Month of June 1978, vide partnership deed dt.26.06.1978, the plaintiff had been the partner from the inception, that he had been continuing as such even on the date of filing of the suit and that the business of the partnership firm is running of

a cinema hall by name "Satyam Theatre", at Ameerpet, Hyderabad. That the business of the partnership firm is being managed by defendant No.1, that though the cinema hall is situated in a very prime area, the profits of the partnership business are not being distributed correctly, that the books of account of the partnership business are also not being maintained correctly and that the plaintiff has been requesting defendants 1 to 14 to account for the income and profits of the partnership firm, but the said defendants have been withholding the same. That the plaintiff has recently come to know that defendant Nos.1 to 4 entered into a development agreement on 27.07.2011 with defendant No.15 – M/s. Asian Builders and Developers in respect of the property of the partnership firm, without the consent and knowledge of the plaintiff and defendant No.1 is not sharing information about the business activity of the partnership firm. That defendant No.1 has issued a notice of dissolution of the partnership firm, vide legal notice dt.02.05.2011 informing the other partners that the business of the partnership firm will run only till it is legally and lawfully dissolved. That though the partnership firm stood dissolved on account of the said notice, defendant No.1 is trying to withdraw the said notice, which is impermissible in law. That the partnership firm stood dissolved by the said notice without any further event, that defendant No.1 is running the cinema hall even after the notice, but not disclosing the income correctly and that the plaintiff is under the impression that the notice of dissolution of the partnership firm will be adhered to and defendant No.1 would conduct the partnership business only for the purpose of working out the dissolution which has been brought about by defendant No.1 himself. That the partnership business stood dissolved from the date of the legal notice issued by

defendant No.1, but however, the plaintiff as a partner is entitled to dissolution of the partnership firm and rendition of accounts. That the plaintiff notionally estimated the value of his share of income in the partnership firm at Rs.10,00,000/- per annum subject to verification of the accounts and working out the actuals. The plaintiff further pleaded that the immovable property on which the cinema hall is existing is a land admeasuring 7250 sq. yards in Sy. No.157 at Ameerpet, Hyderabad, that the property does not belong to the partnership firm and that the same belongs to the plaintiff and his four brothers, who died, and their legal successors are defendant Nos.1 to 14 in the suit. That the plaintiff is having 1/5th share in the immovable property, which was acquired under a specific performance decree in O.S. No.514 of 1974 on the file of the I Additional Judge, City Civil Court, Hyderabad, confirmed in C.C.C.A. No.63 of 1980 and L.P.A. No.146 of 1988 and hence he is entitled to 1/5th share in the property on which the partnership firm business is run.

4. Along with the suit, the plaintiff filed I.A. No.1114 of 2015 for temporary injunction restraining defendant Nos.1, 4 and 15 and their men and agents from changing the nature of or otherwise dealing with the property admeasuring 7250 sq. yards in Sy. No.157, Ameerpet, Hyderabad, pending the suit. The plaintiff in his affidavit filed in support of the said I.A. almost reiterated the averments in the plaint.

5. Initially the lower Court has granted an ad interim order on 07.10.2015 and thereafter defendant Nos.1, 4 and 15 filed separate counter affidavits.

6. In his counter affidavit defendant No.1 *inter alia* raised two preliminary objections, namely, (i) that in a suit filed for dissolution of partnership and rendition of accounts, all the partners are necessary and

proper parties and that as Mr. B. Srinivas Rao, son of the plaintiff and the partner of the firm, was not impleaded, the suit is bad for non-joinder of necessary party; and (ii) that one Dr. K. Lakshmi, D/o. Mr. K. Rama Rao one of the five partners, filed O.S. No.596 of 2001 in the Court of the IX Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, seeking relief of partition of the suit schedule property, that the plaintiff herein is defendant No.4 in the said suit, that the said suit was dismissed holding that the suit schedule property forms part and parcel of the stock in trade of the partnership firm of M/s. Satyam Brothers and Co., that the plaintiff being defendant No.4 in the said suit, the same is binding on him and that therefore he cannot maintain the present suit claiming partition as one of the reliefs, while admitting the existence of the partnership deed dt.23.07.2005 and also the plaintiff has been the partner of the firm since inception on 26.06.1978. Defendant No.1 has denied the averment that the partnership is at will. He has further averred that himself and defendant No.4 have entered into a registered development agreement with defendant No.15 on 27.07.2011 and that the plaintiff has attended all the annual business accounts meetings dt.14.05.2011, 28.06.2011, 04.08.2011, 31.10.2011, and 08.08.2015, received copies of the balance sheets and statement of accounts in which he has confirmed in writing that the accounts have been checked by him and are found to be true and correct for the years 2011-12, 2012-13, 2013-14 and 2014-15. That the business of the firm continued even subsequent to notice dt.02.05.2011, but the averment that the firm's business was being continued only for working out the dissolution is incorrect. Defendant No.1 further averred that the plaintiff and his son had attended the meeting on 09.07.2011 and also subsequent meetings and that they were parties to all the

deliberations that took place in which the majority of the partners have decided to go ahead with the development of multiplex-cum-commercial complex as per Clauses 8 and 9 of the Partnership Deed dt.23.07.2005. While admitting that he has issued notice dt.02.05.2011 for dissolution of the partnership firm, defendant No.1 stated that defendant Nos.4, 13 and 14, and the plaintiff and his son Mr. B. Srinivasa Rao, have issued reply notices wherein it was stated that they are not willing for dissolution of the firm and that if defendant No.1 so desires he can retire from the firm and his account could be settled. Defendant No.1 accordingly pleaded that as all the other partners have expressed their unwillingness for dissolution of the firm and have shown interest to continue it, the firm's business was continued with due consent and knowledge of one and all, including the plaintiff, with the same set of the partners, which fact was communicated to defendant No.15 vide letter dt.11.05.2011 and that the same was followed by communication dt.03.06.2011 sent by registered post to all the partners, including the plaintiff. That in the meeting dt.09.07.2011, deliberations among the partners took place and majority of the partners desired and authorized the managing partners to enter into an irrevocable Development Agreement-cum-General Power of Attorney as permitted under clause 9 of the deed of partnership dt.23.07.2005, that the plaintiff has all along been aware of the same and that it is in the said circumstances, that defendant Nos.1 and 4 have executed the registered development agreement bearing document No.1416 of 2011, on 27.07.2011. That the plaintiff has been aware of the steps taken by defendant No.15/developer, originally to study the viability and nature of construction that can be raised and subsequently preparing and finalizing the plans to be submitted to the Corporation for necessary

sanction/permission and subsequent actual submission thereof along with necessary permit fee etc. That the plaintiff never raised any objection for these steps and that he along with other partners continued to receive monies under different heads either drawing on their capital account (profit share) or as loans etc., for all these years. That the plaintiff has been aware that the sanction plan is likely to be released in immediate near future and the development work would start, and chose to file the present suit to harass the defendants. That one of the important items of the agenda in the meeting dt.17.8.2015 attended by the plaintiff was to discuss the development agreement (Multiplex & Commercial Complex). That the plaintiff is bound by the deliberations and the decision taken in the said meeting and that he and all other partners are aware that they would get rights in the constructed area on development, only commensurate with their share in the partnership as crystallized in clause 7 of the partnership deed dt.23.07.2005 and not otherwise. The counter affidavit filed by defendant No.4 is also on similar lines to that filed by defendant No.1.

7. On behalf of defendant No.15, its Managing Partner filed a counter affidavit wherein it was *inter alia* stated that one of the recitals of the partnership deed dt.26.06.1978 is to the effect that the parties have agreed to bring the piece of land admeasuring 7250 sq. yards in Sy.No.157 of Ameerpet, Hyderabad, into stock of the partnership property for constructing a cinema theatre for the partnership firm and for the said purpose the parties desired to reduce the terms and conditions of the partnership into writing. That the shareholding of the partners varied from time to time and as per the latest partnership deed executed on 23.07.2005 the share of the plaintiff in the partnership firm is 5% and that

of his son is also 5%. That under clause 9 of the partnership deed dt.23.07.2005 the managing partners with the consent of the majority of the partners shall be authorized to sell, mortgage, lease out any of the properties either movable or immovable of the firm/business in the best interest of the firm and the same shall be irrevocable and binding on all the partners. That in pursuance of the powers granted under Clause 9 of the partnership deed dt.23.07.2005, a meeting of the partners was convened on 09.07.2011 in which except plaintiff, defendant Nos.13 and 14 and B. Srinivasa Rao, all other partners have participated, constituting about 80% of the shareholding of the firm, and authorized the managing partners of the firm, i.e., defendant Nos.1 and 4, to enter into irrevocable Development Agreement-cum-General Power of Attorney with defendant No.15 for the development of the complex consisting of four numbers of state of the art multiplex screens along with food courts and entertainment centres. That based on the representation made by the managing partners of the firm, respondent No.15 has entered into a Development Agreement-cum-Irrevocable General Power of Attorney dt.27.07.2011 and registered the same vide document No.1416/2011. That the business of the firm continued even subsequent to issue of notice dt.02.05.2011, as the same was withdrawn by defendant No.1.

8. No oral evidence was let in on behalf of either party. The plaintiff got marked Exs.P.1 to P.6, defendant No.1 got marked Exs.R.1 to R.10, defendant No.4 got marked Exs.R.11 to R.64 and defendant No.15 got marked Exs.R.65 to 72.

9. Having regard to the respective pleadings of the parties the lower Court has framed the following points.

- i. "Whether the petitioner/plaintiff has made out conditions for grant of temporary injunction?"*

ii. To what relief ?”

On consideration of the pleadings and the documentary evidence, the lower Court has allowed the I.A. by order dt.01.02.2016 making the interim order dt.07.10.2015 absolute, restraining defendant Nos.1, 4 and 15, their men, and agents from changing the nature of the suit schedule property or otherwise dealing with the same.

10. Feeling aggrieved by the said order dt.01.02.2016 defendant Nos.1 and 2, 4, 5, and 15 filed C.M.A. Nos.194, 193, 308 and 202 of 2016 respectively.

11. Mr. V.L.N.G.K. Murthy, learned Senior Counsel appearing for the appellants in C.M.A No.194 of 2016/defendant Nos.1 and 2 advanced the following submissions. (i) That the very frame of the suit with mutually contradictory prayers sought in sub-paragraphs (a) and (b) of paragraph 10 of the plaint is legally defective, as in sub-paragraph (a) a preliminary decree for partition of the entire property and allotment of 1/5th share to the plaintiff was sought, while in sub-paragraph (b) dissolution of the partnership firm was sought; (ii) that the prayer in sub-paragraph (a) of paragraph 10, i.e., preliminary decree for partition is hit by the principle of *res judicata*, as the suit, namely, O.S. No.596 of 2001 filed by the daughter of one of the partners, Dr. K. Lakshmi, for an identical relief, i.e., for partition, was dismissed by the X Additional Chief Judge (Fast Track Court), FAC, IX Additional Chief Judge, City Civil Court, Hyderabad, that the plaintiff being defendant No.4 in the said suit, the said judgment binds him and that the plaintiff has deliberately suppressed the dismissal of said suit; (iii) That having taken a specific plea in the plaint that the land admeasuring 7250 sq. yards does not belong to the partnership firm, as the same belongs to the plaintiff and his four brothers, the plaintiff has

shifted his stand during the hearing of the I.A. by pleading that the property is a firm property and that the same cannot be dealt with by the defendants after the firm was dissolved, on issue of dissolution notice dt.2.5.2011 by defendant No.1; (iv) That the trial Court erred in not rendering a *prima facie* finding as to whether the property is a partnership asset or joint family property; (v) That the plaintiff has only 5% shareholding in the partnership, besides his son having another 5%, and that they cannot prevent the majority shareholders from developing the property which will enure to their benefit also; (vi) That the trial Court failed to appreciate that the plaintiff failed to establish the essential elements for grant of injunction, namely, *prima facie* case, balance of convenience and irreparable injury.

12. Mr. D. Prakash Reddy, learned Senior Counsel appearing for the appellant in C.M.A. No.193 of 2016/defendant No.4, submitted that defendant Nos.2, 3 and 5 to 14, who were impleaded in the suit, have been shown as not necessary parties to the I.A., that the dispute being one pertaining to the dissolution of partnership and rendition of accounts, every partner is not only proper, but also necessary party to all the proceedings in the suit and that on this ground alone the lower Court ought to have dismissed the I.A. without considering the same on merits. That the evidence on record clearly shows that even after the issue of dissolution notice on 02.05.2011 by defendant No.1, the partnership was continued as defendant Nos.4, 13, 14, the plaintiff and his son have expressed their unwillingness for such dissolution and that the plaintiff and his son have participated in the meetings held by the firm and thereby they have acquiesced in raising the plea of dissolution.

13. Mr. P. Sriraghu Ram, learned Senior Counsel appearing for the appellant in C.M.A. No.308 of 2016/defendant No.5, submitted that the prayer for partition is misconceived for the reason that clause 3 of the deed of partnership clearly recites that the parties have agreed to bring the joint property into the stock of partnership firm for constructing a cinema theatre for the partnership, that under Section 14 of the Indian Partnership Act, 1932 (for short, "the Act"), subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business and that therefore the plaintiff cannot seek partition of the partnership assets. That the plaintiff sought mutually destructive prayers, namely, partition on one hand and dissolution on the other hand, evidently to save limitation. That the plaintiff has not challenged the development agreement entered into by the firm with defendant No.15 and therefore he cannot seek any injunction restraining the firm and defendant No.15 from proceeding with the development agreement.

14. Mr. S. Niranjan Reddy, learned Senior Counsel appearing for the appellant in C.M.A. No.202 of 2016/defendant No.15, submitted that his client has entered into a development agreement with the partnership firm on 27.07.2011 by paying a sum of Rs.50 lakhs to the firm and got the agreement registered, that the firm filed income tax returns on which the plaintiff also subscribed his signatures, that in pursuance of the development agreement, defendant No.15 has spent Rs.52 lakhs towards building and development fee and that the plaintiff has not sought the prayer to declare that the development agreement is not valid and binding

on him. He has further argued that even if the dissolution of the firm takes place with effect from 02.05.2011 when defendant No.1 has issued notice of dissolution, the development agreement continues to bind all the parties, including the plaintiff, as the latter has failed to issue public notice as envisaged under Section 45 read with Section 72 of the Act. That while the plaintiff has not issued any public notice, his son has issued a news paper advertisement on 14.9.2011, i.e., more than 1½ months after the development agreement was executed and registered by the firm, to the effect that the partnership firm was dissolved, and that since the steps envisaged under Section 72 of the Act to issue notice to the Registrar of Firms and publication of notice in Official Gazette were not taken by the plaintiff's son, even the said notice has no effect in law. In support of his submission, the learned Senior Counsel has relied upon the judgments in *Juggilal Kamlatpat v. Sew Chand Bagree*¹ and *Sri Ap. V. Sundaram v. Sri L. Karupusamy*². That having participated in the partnership affairs after 02.05.2011 and signed the income tax returns, the plaintiff is estopped by his conduct under Section 115 of the Indian Evidence Act, 1872 from pleading that the firm is deemed to have been dissolved. That the relief of injunction being an equitable one, the plaintiff having suppressed filing of O.S.No.596 of 2001 and the judgment therein, is not entitled to the relief of injunction. The learned Senior Counsel finally argued that the plaintiff has not raised the plea that the development agreement is fraudulent or it defeats the interests of the firm and, being a partner he is also a beneficiary under the development agreement and therefore the elements of balance of convenience and irreparable loss do not lie in his favour for grant of injunction.

¹ AIR 1960 Cal 463

² MANU/TN/0012/2004 (Judgment of Madras High Court, dt.4.2.2004 in CrI.R.C.No.1596 of 2003 and CrI. M.P. Nos.9982 and 9983 of 2003)

15. Opposing the above submissions, Mr. Vendula Venkata Ramana, learned Senior Counsel appearing for respondent No.1/plaintiff submitted that the suit property was originally purchased by five persons including the plaintiff, that he has 1/5th share therein, that the land was mixed with the asset of the partnership firm, that the partnership is one at will and the same is governed by Section 43 of the Act under which it gets dissolved if any of the partners issues notice to that effect, that the notice of dissolution having been admittedly issued by defendant No.1 on 02.05.2011 the dissolution is deemed to have taken place and that therefore the question of withdrawal of the notice does not arise. That under Section 47 of the Act even after dissolution of a firm, the authority of each partner binds the firm and the other mutual rights and obligations of the partners continue, notwithstanding the dissolution, till the affairs of the firm are wound up and the transactions are completed and that therefore the continuance of the business and participation of the plaintiff and his son in the meetings of the firm and their subscribing signatures on the income tax returns do not constitute acquiescence. That Sections 45 and 47 of the Act have to be read together and on such reading it cannot be said that the plaintiff has acquiesced in his right to question the action of the managing partners of the firm to enter development agreement with defendant No.15, that even assuming that the managing partners of the firm have a right to enter into development agreement under clause 9 of the partnership agreement, consent of the majority of the partners shall be obtained for doing acts such as, sale, mortgage, or leasing out any of the properties of the firm, that the development agreement does not refer to any resolution passed by the majority and that therefore the unilateral act of the managing partners in entering into the development

agreement cannot be sustained in law. In support of his submissions, he has placed reliance on the judgments in *Addanki Narayanappa v. Bhaskara Krishnappa*³ and *Saligram Ruplal Khanna v. Kanwar Rajnath*⁴.

16. In reply, Mr. V.L.N.G.K. Murthy, learned counsel for the appellants in C.M.A. No.194 of 2016/defendant Nos.1 and 2, submitted that the plaintiff has not raised any plea that no resolution was passed by majority for entering into the agreement and that the lower Court has rendered a clear finding in its order under appeal that the defendants have claimed that the plaintiff and his son have attended the meeting of the partners conducted on 09.07.2011 as evident from Exs.R.3 and R.4. He has drawn our attention to C.M.A.M.P. No.417 of 2016 in C.M.A. No.202 of 2016 for receiving the resolution copy in order to show that the resolution was passed with the consent of the majority of the partners.

17. We have carefully considered the respective submissions of the learned counsel for the parties and perused the record. Various aspects touching the merits of the suit as noted above have been advanced by the learned counsel for both sides. Since the suit is pending, we do not propose to record our conclusive opinion on any of these aspects. The observations made and the findings rendered in this judgment shall be understood as having been made only for the limited purpose of determination whether the plaintiff is entitled to injunction by applying the well-known parameters of *prima facie* case, balance of convenience and irreparable injury. With this caveat, we would like to proceed further.

Prima facie case:

18. A catena of decisions of various jurisdictions conceptualized *prima facie* case. *American Cyanamid Co. v. Ethicon Ltd.*⁵ is a celebrated case

³ AIR 1966 SC 1300

⁴ AIR 1974 SC 1094

where the House of Lords while terming the use of expression such as “a probability”, “a *prima facie* case”, or “a strong *prima facie* case” in the context of the exercise of a discretionary power to grant an interlocutory injunction as leading to confusion as to the object sought to be achieved by this form of temporary relief, however, held that the Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.

19. In *M. Gurudas v. Rasaranjan*⁶, the Supreme Court has reiterated the well-settled principles of law that while considering the applications for injunction the Court must pass an order having regard to the *prima facie* case, balance of convenience and irreparable injury. In the said case, the Supreme Court has profitably quoted many English decisions apart from the judgments of our Supreme Court and observed that the question sought to be tried must be a serious question and not only a mere triable issue. Dealing with the finding on *prima facie* case, the Supreme Court held that a finding on ‘*prima facie* case’ would be a finding of fact. That however, while arriving at such finding of fact, the Court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist.

20. In *S.M. Dyechem Ltd. v. Cadbury (India) Ltd.*⁷ the Supreme Court while dealing with the issue of grant of injunction held that in trade mark matters the Court has to go into the question of “comparable strength” of the cases of either party, apart from balance of convenience. In *Martin Burn Ltd. v. R.N. Banerjee*⁸ the Supreme Court has succinctly explained the concept of *prima facie* case. It was held therein that “a *prima facie*

⁵ (1975) 1 All ER 504

⁶ (2006) 8 SCC 367

⁷ (2000) 5 SCC 573

⁸ AIR 1958 SC 79

case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima facie* case had been made out the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. ...It has only got to consider whether the view taken is a possible view on the evidence on record...".

Keeping in view the settled legal principle on the meaning of "*prima facie* case" as discussed above, we need to examine whether the plaintiff has established *prima facie* case.

21. The suit is filed for multiple reliefs. Paragraphs (a) and (b) in paragraph 10 of the plaint read as under:

"a) To pass a preliminary decree for partition of suit schedule property by metes and bounds situated at 7-1-208/2 in Sy.No.157, Ameerpet, Hyderabad, admeasuring 7250 sq. yards and also divide the immovable property of the said partnership firm and allot 1/5th share to the plaintiff;

b) By granting a decree for dissolution of the partnership firm by name "M/s. Satyam Brothers & Co" situated at 7-1-208/2 in Sy. No.157, Ameerpet, Hyderabad, admeasuring 7250 sq. yards..."

In paragraph 1 of the plaint, the plaintiff pleaded that himself, defendant Nos.1 to 14 and his son Mr. B. Srinivasa Rao are the partners of the firm by name "Satyam Brothers & Co." as per the partnership deed dt.23.07.2005, that the said partnership firm was originally constituted on 26.06.1978, and that the business of the partnership firm is running of a cinema hall by name "Satyam Theatre" at Ameerpet, Hyderabad. The plaintiff further averred that the partnership stood dissolved on account of notice dt.02.05.2011 issued by defendant No.1.

In paragraph 2 of the plaint the plaintiff *inter alia* averred as under:

"It is submitted that the immovable property on which the cinema hall is existing is a land admeasuring 7250 sq. yards in Sy. No.157 at Ameerpet, Hyderabad. This immovable property does not belong to the partnership firm and the said property (is) belongs to plaintiff and his four brothers who (are) died and their legal successors are defendant Nos.1 to 14 in the suit. It is submitted that the plaintiff is having 1/5th share in the said immovable property which was acquired under a specific performance decree in O.S. No.514 of 1974 on the file of the I Additional Judge, City Civil Court, Hyderabad, confirmed in C.C.C.A. No.63 of 1980 and L.P.A. No.146 of 1988. Hence, the plaintiff is entitled to 1/5th share in the said immovable property on which the partnership firm business is run."

In our opinion the aforementioned averments as well as the prayers (a) and (b) extracted above are mutually contradictory. Section 14 of the Act postulates that subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, and unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm. Therefore, once a partnership is formed, all the properties brought into the stock of the firm by the partners become the part of the firm's properties.

22. Under the first partnership deed dt.26.06.1978, the entire land of 7250 sq. yards acquired by all the five original partners, including the plaintiff, was thrown into the partnership stock and accordingly it became the property of the partnership firm. A theatre was constructed on the land and the partnership firm was running the theatre. A fresh partnership deed was executed among the pre-existing and new partners

on 23.07.2005. Under this partnership deed, the plaintiff and his son by name, Boppana Srinivasa Rao, have 5% share each, while the remaining partners including the appellants herein hold the balance shares. It is the pleaded case of the appellants, which is not disputed by the plaintiff, that one Dr. K. Lakshmi, D/o. K. Rama Rao, one of the original co-sharers and partners under the partnership deed dt.26.6.1978, filed O.S. No.596 of 2001 for partition and separate possession of the subject property and the said suit was dismissed by judgment dt.11.4.2007 of the X Additional Chief Judge (Fast Track Court), FAC, IX Additional Chief Judge, City Civil Court, Hyderabad, mainly on the ground that the subject property being firm property is not liable for partition. Admittedly, the plaintiff, who is defendant No.4 in the said suit, has not disclosed the said fact in the present suit or in the I.A. filed by him for injunction. Thus, we find that the plaintiff has not revealed material facts. When there is no dispute about the fact that the entire extent of 7250 sq. yards was thrown into partnership stock and the same forms part of 'M/s.Satyam Brothers & Co.' partnership firm, the plaintiff is not entitled to the grant of prayer (a) namely, preliminary decree for partition. The submission of Mr. V.L.N.G.K. Murthy that the said prayer is also hit by the doctrine of *res judicata* in view of dismissal of O.S. No.596 of 2001, is seriously disputed by Mr. Vedula Venkata Ramana. For adjudication of these CMAs, this aspect need not be discussed as *prima facie* even in the absence of application of doctrine of *res judicata*, decree for partition in respect of the property of a partnership firm cannot be granted. Once the plaintiff is not entitled to passing of a preliminary decree for partition, all that he can seek in the suit is passing of a decree for dissolution of the partnership and rendition of accounts as per the existing partnership deed. This view of ours is

fortified by the judgment of the Supreme Court in *Addanki Narayanappa* (3 supra) wherein it was held that the provisions of Sections 14, 15, 29, 32, 37, 38 and 48 of the Act make it clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership, it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realization of the property, and upon dissolution of the partnership to a share in the money representing the value of the property. Admittedly, the plaintiff being a partner cannot claim partition of his original share and he may be entitled to a share in the partnership assets calculated in terms of the money or otherwise in the pending suit.

Following the above discussion, we are of the opinion that the plaintiff failed to *prima facie* establish that he has a reasonable chance of securing the relief of decree for partition as claimed in sub-paragraph (a) of paragraph 10 of the plaint.

23. Learned counsel for all the parties have made detailed submissions as to whether the dissolution notice dt.02.05.2011 issued by defendant No.1 brought the partnership to an end, or reply notices dt.06.05.2011, 09.5.2011 and 11.05.2011 of defendant No.4, 13, 14, the plaintiff and his son opposing such dissolution resulted in continuance of the partnership, and whether their conduct in addressing such letters and participating in the partnership affairs thereafter constitutes estoppel by conduct on the part of the plaintiff and his son. Undoubtedly, under Section 43 of the Act, where the partnership is at will, the firm is dissolved from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, from the date of the communication of the notice. In the

registered notice dt.02.05.2011 defendant No.1 has informed all the partners that the firm stands dissolved with effect from 12.05.2011. Therefore, we are *prima facie* in agreement with the learned Senior Counsel for the plaintiff that the firm stood dissolved with effect from 12.05.2011 and the subsequent acts of the plaintiff and some of the defendants in not agreeing for such dissolution or the act of defendant No.1 in withdrawing such dissolution have no legal effect on the dissolution. Similarly, the plea of estoppel by conduct may not be available to the appellants where by operation of Section 43(2) the dissolution of the firm has come about.

24. The next question which, in our opinion, is crucial for determination is what will be the effect of decree for dissolution, if granted in favour of the plaintiff, on a third party, such as defendant No.15.

Section 45 of the Act deals with the liability of the partners of a dissolved firm for the acts of partners done after dissolution. This Section reads as under:

45. Liability for acts of partners done after dissolution:-

(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner."

Section 72 of the Act envisages mode of giving public notice. This provision reads:

"72. Mode of giving public notice: - A public notice under this Act is given

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- (a) *where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to Registrar of Firms under Section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and*
- (b) *in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business."*

25. Admittedly, the development agreement was executed on 27.07.2011. It is not the pleaded case of the plaintiff that he has issued any notice disowning the development agreement. The plaintiff's son, one of the partners holding 5% share, has issued a newspaper advertisement on 14.09.2011. Therefore, as far as the plaintiff is concerned as he has failed to issue public notice, he is bound by the acts of other partners and he cannot therefore wriggle out of the liability created under the development agreement. The question whether the development agreement binds the son of the plaintiff does not arise in the present proceedings. Even otherwise, it is not the pleaded case of the plaintiff that his son has complied with the requirements envisaged under Section 72(b) of the Act, under which besides publication of notice in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, publication in Official Gazette is also mandatory. In the light of these facts, we are *prima facie* of the opinion that the plaintiff is bound by the development agreement, even though the same was entered into after issue of dissolution notice dt.02.05.2011 by defendant No.1.

26. As regards the submission of the learned Senior Counsel for the plaintiff that under clause 9 of the partnership deed dt.23.07.2005, the managing partners cannot sell, mortgage or lease any of the firm properties without the consent of the majority of the partners and that no *prima facie* evidence was placed by the appellants that resolution by majority was passed for giving the property on development to defendant No.15, the lower Court in its order under appeals referred to Exs.R.3 and R.4 and recorded its *prima facie* conclusion that these documents do not show that any resolution by majority was passed for giving the property on development. Defendant No.15, who is the appellant in C.M.A. No.202 of 2016, filed C.M.A.M.P. No.417 of 2016 for receiving resolution dt.09.07.2011. In paragraph 5 of the affidavit of the managing partner of defendant No.15 it is *inter alia* averred that the development agreement executed by the partnership firm with defendant No.15 specifically records the majority decision of the partnership firm authorizing its managing partners to enter into a development agreement and that however the said resolution evidencing the same could not be filed along with the counter affidavits as the same was not traced at that time. A copy of the minutes of the meeting of the partners held on 09.07.2011 at the theatre office is filed along with the said application. No counter affidavit was filed opposing this application. Therefore we have allowed this application by a separate order.

27. Clause 5(b)(2) of the development agreement dt.27.07.2011 reads as under:

“The ownership of the land is held by a registered partnership firm M/s. Satyam Brothers & Co., whose Managing Partners have full rights vested into them with the consent of the majority of the partners to enter into this agreement. The partnership deed and resolution passed by the majority of the partners is herewith enclosed as a part of this agreement. It is

also be agreed by the Managing Partners with the consent of the majority of the partners that if any partners dissolves the said partnership, the terms & conditions rights under this agreement shall not be affected or suspended and the said development will be carried on without any hindrance. Any disputes among the Partners of M/s. Satyam Brothers & Co., (Owners) it shall be responsibility of the Partners and shall not affect the Developers in any manner and the partners shall indemnify the developers.”

(Emphasis is added)

A perusal of the minutes of the meeting dt.09.07.2011 *inter alia* shows that all the partners unanimously authorized the managing partners to enter into an Irrevocable Development-cum-General Power of Attorney in favour of defendant No.15 and register the same. The minutes were signed by twelve out of sixteen partners. Thus *prima facie* we are of the opinion that the development agreement was preceded by valid resolution in conformity with clause 9 of the partnership deed dt.23.07.2005.

28. In *Juggilal Kamiapat* (1 supra), the Calcutta High Court, after referring to some English and Indian case law, held in paragraph 19 as under:

“Section 45 sub-section (1) of our Act without the proviso is no doubt somewhat similar to Section 36 Sub-section (1) of the English Act but the provisions of the two Acts are not identical. Under Section 45 notwithstanding the dissolution of a firm the liability of the partners continues until public notice is given of the dissolution in respect of any act which would have bound the firm if done before the dissolution...”

While dealing with the liability of a retiring partner, in *C. Assiamma v. State Bank of India*⁹ a Division Bench of the Kerala High Court held that “notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.” This view

⁹ AIR 1990 Kerala 157

was followed by the learned single Judge of the Madras High Court in *Sri Ap. V. Sundaram* (2 supra).

29. In the light of the above discussion, we are of the *prima facie* opinion that the development agreement, though entered after the firm was purportedly dissolved, still binds the plaintiff and all other partners irrespective of whether they were parties to the resolution dt.09.07.2011 or not. For all these reasons, we hold that the plaintiff failed to establish *prima facie* case for grant of injunction.

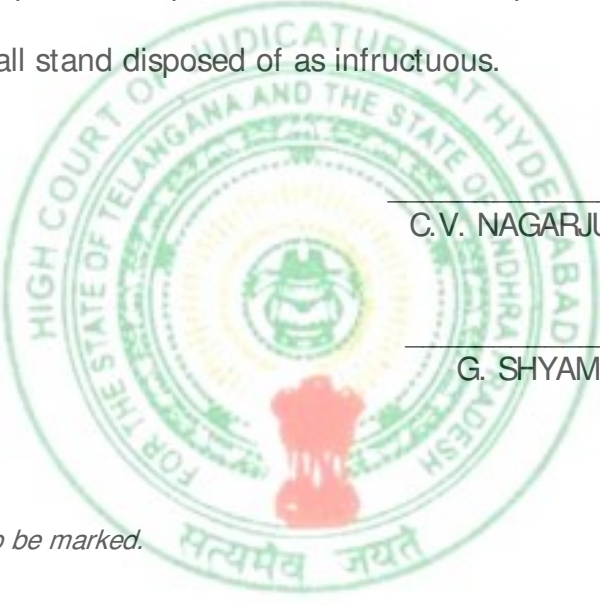
Balance of convenience and irreparable injury

30. The plaintiff proceeded on the premise that he is entitled to 1/5th share in the suit schedule property and allotment of 1/5th share ignoring the fact that he has only 5% share in the partnership firm. After the asset is thrown into partnership stock, his pre-existing right over the property cannot be recognized. Since the development agreement binds the plaintiff, he cannot prevent defendant No.15 from proceeding in accordance with the same. As rightly submitted by the learned Senior Counsel appearing for the appellants, the plaintiff has not raised the plea that the development agreement is vitiated by fraud or that if the same is implemented it affects his interests either financial or otherwise. The plaintiff has neither claimed the relief of invalidating the development agreement, nor raised any plea that the terms of the development agreement are commercially not viable. Absent these averments, the plaintiff has failed to establish that execution of development agreement would cause irreparable loss or injury to his interests and consequently he failed to establish existence of elements of balance of convenience in his favour for grant of injunction. The plaintiff has not disputed the fact that in pursuance of the development agreement, defendant No.15 has paid

Rs.50 lakhs to the firm and Rs.52 lakhs towards building and development fee. We are therefore of the opinion that the loss that may be suffered by the defendants would outweigh the advantage that may be conferred on the plaintiff, if injunction is granted. Accordingly, we hold that the plaintiff failed to prove the existence of the elements of balance of convenience and irreparable injury in his favour.

31. For the aforementioned reasons, impugned order dt.01.02.2016 in I.A. No.1114 of 2015 in O.S. No.747 of 2015, is set aside and the C.M.As are allowed.

As a sequel to disposal of the C.M.As., pending miscellaneous applications shall stand disposed of as infructuous.



C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

25-11-2016

bnr

*Note: LR copies to be marked.
(B.O)
bnr*