

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2018

Coram

The Honourable Mr. Justice M.DHANDAPANI

S.A.No.864 of 2000

M. Sivakumar ... 2nd Defendant/2nd Respondent/Appellant

vs.

1. Tmt. R. Tamilselvi ...Plaintiff/Appellant/Respondent
2. M/s Swathi Textiles Mills,
rep by its Partner
M. Sivakumar,
Nasianoor Road,
Vettukattu Valasu,
Erode - 11 ...1st Defendant/1st Respondent/ Respondents

Second Appeal filed under Sec.100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.155/1999 on the file of the Principal District Judge, Erode dated 21.01.2000 preferred against the judgment and decree in O.S.No.1208/96 on the file of the First Additional District Munsif, Erode dated 25.08.1998.

For Appellant : M/s S. Kaithamalai Kumaran
For respondents : Ms. Zeenath Begum for R1.

JUDGMENT

The second defendant is the appellant, who lost his case before the lower Court in O.S.No.1208 of 1996, has come forward with this appeal.

2. The sum and substance of the plaint averments are as follows:

The plaintiff and the second defendant formed a partnership firm on 07.02.1994 under the name and style of M/s Swathy Textile Mills, having business premises at Nasianoor Road, Vettukattuvalasu, Erode-11 and carrying on business in doubling yarn and other textile yarn business. The first defendant's partnership firm has been registered as No.144/94 dated 25.02.1994 under the Indian Partnership Act. After formation of the partnership firm, the terms and conditions of the said

partnership firm were set out in detail in the plaint averments.

3. While so, the partnership business was carried on by the second defendant, but, the yearly accounts were not settled and the second defendant used to borrow recklessly and utilise the same for his own personal benefits that led to the loss of the partnership firm. The second defendant has been acting adversely to the interest of the partnership firm and he is guilty of mismanagement of the suit partnership business and also guilty of misappropriation of partnership funds. Further he has locked the premises and absconded himself. All these acts have led the plaintiff to dissolve the partnership firm.

4. Accordingly, paper publication has been made in Tamil daily "Dinamalar" dated 14.10.1996 expressing the intention of the plaintiff to dissolve the firm with effect from 16.10.96. It has been followed up with the notice of dissolution served on the second defendant by notice dated 14.10.1996. The said notice was acknowledged by the second defendant on 16.10.1996. Further, the fact of dissolution has been intimated to the Registrar of Firm.

5. Accordingly, the plaintiff filed a suit for declaration, declaring that the suit partnership firm run under the name and style of M/s Swathi Textiles stood dissolved with effect from 16.10.1996 and consequently a direction for the accounts of the suit partnership firm to be taken viz., assets, profits and liabilities with effect from 07.02.1994.

6. The defendant filed written statement and the sum and substance of the written statement are as follows:

The defendant denied the allegations made in the plaint. The contention of the plaintiff that he along with the second respondent formed a partnership firm on 07.02.1994 under the name and style of M/s Swathi Textiles was not fully correct. Even before 07.02.1994, the plaintiff and the second defendant orally formed partnership firm and were doing business. Moreover, it is his contention that, even though the terms and conditions stated in the plaint averments were incorporated in the partnership deed, some were not brought into practice. One Mr.P. Ramasamy, the husband of the plaintiff was the person, who was instrumental in bringing about the partnership into existence and since at the time of formation of the partnership firm, he was employed elsewhere, he did not want to come into the picture and therefore, the terms and conditions were incorporated as if the entire management of the first defendant firm was entrusted to this defendant. As a matter of fact, Mr.P. Ramasamy, the plaintiff's husband was the person who was in actual management of the entire affairs of the first defendant firm and this defendant was almost a sleeping partner.

7. The defendant further averred that the husband of the plaintiff, who was conducting the business, was maintaining the accounts of the first defendant's firm. The defendant denied that he used to borrow in a reckless manner and utilised them for his own personal benefit and that he was acting adverse to the interest of the partnership firm and he is guilty of mismanagement of the partnership funds and termed them all as false. The defendant was not aware of the paper publication and he had no opportunity to look at the same. It was only after the receipt of plaintiff's notice on 14.10.1996, this defendant came to know the evil designs of the plaintiff and her husband. On the receipt of the said notice, this defendant consulted some of his well wishers and he was advised to seek arbitration of the disputes and settlement of accounts. Accordingly, the well wishers of the defendant went to the plaintiff and her husband to settle the disputes and settlement of accounts. But they did not keep up their words, but filed a suit with fraudulent motive.

8. The defendant further averred in the written statement that the plaintiff and her husband had fraudulently removed him and locked the business. Therefore, it is only the plaintiff, who is the accountable party and this defendant has no objection for the accounts being taken provided the plaintiff and her husband come with production of true accounts of the partnership business. If true and proper accounts of the defendant firm is taken the plaintiff will have to pay a large amount to this defendant. The defendant submitted that accounts of the firm should be taken from 10.01.1994. Since the defendant is not the accountable party, the suit, filed by the plaintiff is not maintainable and is liable to be dismissed.

9. After considering the documents filed by either parties and after framing issues, the lower Court decreed the suit in respect of declaration, however, rejected the alternative prayer of submission of accounts. Against the rejection of second prayer, the plaintiff preferred an appeal before the lower appellate court.

10. The lower Appellate Court, after confirming the decree granted by the lower court, also granted the consequent prayer for submission of accounts. As against the lower appellate court judgment, the defendant has filed this second appeal before this Court.

11. At the time of admission of appeal, this Court framed the following substantial questions of law:

- 1) Is the lower appellate court is justified in decreeing the suit for accounting after giving a finding that the account books and the documents of the partnership business are with the

plaintiff and her husband only?

2) After holding that the plaintiff is the accountable party, is the suit maintainable against the appellant/defendant?

12. The learned counsel appearing for the appellant would submit that in the entire plaint averments, the plaintiff made allegations against the defendant as if the appellant/defendant is responsible for the mismanagement and he is borrowing huge money from general public and misusing it for his own use and he maintains the entire account. However, the defendant acted only as a sleeping partner and the entire business was conducted by the plaintiff and her husband. The defendant/appellant is not responsible for any of the mismanagement as alleged by the plaintiff. The lower Court rightly decreed the suit in respect of dissolution of partnership firm and rejected the consequential prayer of submission of accounts, since no account is available with the second respondent/appellant. Without considering this aspect, the lower appellate Court erroneously granted the consequential prayer in favour of the plaintiff which is unsustainable and the same is liable to be set aside.

13. The learned counsel for the respondent/plaintiff would submit that admittedly the lower court as well as the lower appellate court granted the relief to the plaintiff for dissolution of partnership firm. Accordingly, the relief is granted in favour of the plaintiff. In respect of consequential prayer of production of accounts of the suit partnership firm viz., assets, profits and liabilities with effect from 07.02.1994, it was rightly granted by the lower appellate court though it was not granted by the lower court. Hence the well considered judgment of the lower appellate court need not be interfered with.

14. On perusal of the entire materials available on record, the appellant admitted that there was declaration in respect of dissolution of partnership firm and the defendants have no quarrel over the same. However, for production of accounts in respect of the first defendant partnership firm, his only objection with regard to taking of assets and liabilities of the first defendant alone. It is relevant to extract the relevant paragraph of the written statement as follows:

" This defendant has no objection for the accounts being taken provided the plaintiff and her husband come production of the true accounts of the partnership business. This defendant submits if true and proper accounts of

the 1st defendant firm is taken the plaintiff will have to pay a large amount to this defendant. This defendant submits that accounts of the firm should be taken from 10.1.94."

15. After perusal of the above said passage, it is clear that the defendant has no objection for the account being taken in respect of the first defendant partnership firm. When there is no objection with regard to the consequential prayer of production of the accounts of the partnership firm, there is no need to adjudicate in the appeal, in view of the categorical admission made in the written statement.

16. In view of the above, the lower appellate court has rightly granted the consequential prayer of submission of accounts, which was negatived by the lower court.

17. Therefore, I do not find any error or illegality in the order passed by the lower appellate court. Accordingly, the substantial questions of law are answered against the appellant.

18. In the result, the second appeal is dismissed and the judgment and decree passed by the learned Principal District Judge, Erode in A.S.No.155/1999 dated 21.01.2000 are confirmed. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

sr

To

1. The Principal District Judge, Erode
2. The I Additional District Munsif, Erode
3. The Section Officer, V.R. Section, High Court, Madras

+1 CC to Ms. Zeenath Begum, advocate sr 12264.

S.A.No.864 of 2000

PVS (CO)
SP(28/03/2018)