BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 09.07.2025

JUDGMENT PRONOUNCED ON : 25.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.(MD)No.220 of 2007

M.Sivakalai ....Appellant /1st Respondent/Plaintiff

Vs

1.Chettige Estate
A partnership firm
Having office at Chettige Village
Gandahalli Post, Belur Taluk
Hassan District
Karnataka State through its
Managing Partner
T.Arunachalam

2.T.Arunachalam ...Respondents 1 & 2/Appellants /Defendants 1 & 2

3.T.Meenakshi Achi ...3rd Respondent/2nd Respondent /3rd Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C, to set aside the judgment and decree passed in A.S.No.9 of 2006 dated 21.08.2006 on the file of the Sub Court, Devakkottai reversing the judgment and decree passed in O.S.No.119 of 2004 dated 30.08.2005 on the file of the Additional District Munsif, Karaikudi and to decree the said suit filed by the appellant herein with costs by allowing this appeal with costs throughout and thus render justice.

For Appellants : H.Lakshmi Shankar

For Respondents : Mr.S.Madhavan for R2

: No appearance for R1 & R3

JUDGMENT

The plaintiff in a suit for dissolution of partnership and rendition of accounts has filed the present second appeal challenging the judgment and decree of the First Appellate Court.

(A)Factual Matrix:

2.The plaintiff had contended that the first defendant is a partnership firm and the second defendant is the the managing partner. The plaintiff and the third defendant are the remaining partners of the said firm. According to the plaintiff, the partnership firm was commenced by her father Thanneermalai Chettiar in the year 1976 with himself, her mother and her maternal grandmother. It is further contended that the plaintiff was inducted as a partner in the said firm with effect from 01.06.1986 with a share capital of 20%. After the death of maternal grandmother in the year 1988, it was reconstituted with the plaintiff and the defendants 2 and 3. Thereafter, Thanneermalai Chettiar had passed away and on 06.12.1992, the plaintiff and the defendants 2 and 3 became continuous partners of the first defendant's partnership firm and it was further contended that the second defendant has took over as managing partner of the firm.

3.The plaintiff has further contended that the second defendant has given power of attorney in favour of another brother T.Subramanian to represent the firm, but subsequently due to misunderstanding, it was cancelled. When the plaintiff has raised objection to their activities and issued a legal notice, a reply notice was sent stating that she is not a partner in the firm. Hence, the present suit.

4.The second defendant has filed a written statement contending that another brother Subramanian is a partner from the year 1976 onwards. After the death of the father, he was the managing partner between 1993 to 2000. Since T.Subramanian was a minor, his shares were transferred as binami in the name of the plaintiff on 01.04.1986. It is reflected in the day ledger also. However, on 31.03.1999, the shares were re-transferred to Subramanian and the same is also reflected in the day ledger. Therefore, the plaintiff ceased to be a partner with effect from 31.03.1999. Hence, the present suit for dissolution of firm and rendition of accounts is not maintainable.

5.The defendant had further contended that the said T.Subramanian who is the brother, is a necessary party to the present suit and non-impleading of the said necessary party should result in dismissal of the suit. Right from 01.04.1999, the name of the plaintiff is not reflected in the records of the first defendant firm. Since the properties are located in Karnataka, the firm is assessed to income tax in Karnataka and taxes are also paid. The taxes are paid only by the second defendant and the said Subramanian. Hence, the present suit is not maintainable.

6.The trial Court after considering the oral and documentary evidence, especially the letters written by the second defendant under Exs.A3 to A6, arrived at a finding that the plaintiff was inducted into the firm as a partner with effect from 01.04.1986 and so far, she has not been removed from the partnership firm. The trial Court further found that since Subramanian is not a partner, the non-impleading of the said Subramanian would not be a fatal of the case. So far accounts have not been settled and hence, the second defendant, as a managing partner, is liable to render accounts.

7.The Appellate Court proceeded to reject Exs.A3 to A6 letters written by the second defendant on the ground that they were written based on the dispute between the second defendant and his brother Subramanian. Therefore, not much credence could be given to those documents. The Appellate Court further found that the shares standing in the name of the Mr.T.Subramanian were transferred in the name of the plaintiff on 01.04.1986 only as a name lender. In such circumstances, re-transferring of the shares from the plaintiff to the said T.Subramanian is believable. Therefore, on the date of filing of the suit, the plaintiff was not a partner. On the other hand, the said T.Subramanian being a partner, without impleading himself, the present suit for dissolution of partnership firm and rendition of accounts is not maintainable. The First Appellate Court found that on 03.10.2000, a registered document has been entered into between the second defendant and Subramanian which would clearly indicate that the plaintiff is not a partner in the first defendant firm. Based upon the said finding, the First Appellate Court reversed the judgement and decree of the trial Court and dismissed the suit. Hence, the present second appeal is filed by the plaintiff.

8.The second appeal was admitted on the following substantial questions of law:

> *"1.Whether the judgment and decree of the learned Subordinate Judge, Devakottai, in holding that the appellant is only a name lender in the 1st defendant partnership firm is sustainable in view of the provisions of the Binami Prohibition Act?*
>
> *2.Whether the findings of the lower appellate Court which is perverse and not supported by any material and without taking into account the documentary evidence and against the documents marked as Ex.A3 to A6 which are letters by the 2nd respondent and which are admitted by him is sustainable?*
>
> *3.Whether the learned Subordinate Judge is justified in holding that the suit is liable to be dismissed for non-joinder of necessary parties when no proof has been adduced that there is any other partner of the partnership firm and when the documents*

produced do not show that there is any other partner? "

(B).Submissions of the learned counsel appearing on either side:

9.The learned counsel for the appellant has submitted that it is an unregistered firm. The second defendant has admitted that the plaintiff was inducting as a partner on 01.04.1986. However, there are no records to show how the shares of the plaintiff were transferred to the said Subramanian without the consent of the plaintiff. The second defendant himself has addressed a letter to all the partners under Ex.A3 to A6 indicating the fact that the said Subramanian is not a partner and he is only acting as a power agent of the second defendant and managing the affairs of the firm. Those letters have also addressed to the statutory authority. Therefore, it is clear that the plaintiff is one of the partners in the first defendant firm and therefore, she has not been removed from the firm.

10.The learned counsel appearing for the appellant further submitted that though the second defendant had contended that the inclusion of the plaintiff and her removal from the firm are born out of the records, he has not chosen to produce any document. The second defendant in his custody of the document, has not chosen to produce the income tax return or other letters addressed to the statutory authority which would indicate the name of the partner. The learned counsel appearing for the appellant further submitted that the new firm was registered only on 28.01.2002 under Ex.B7. Without removing the plaintiff from the partnership firm and settling her account, a new firm cannot be registered. Merely because a new firm is registered that would not in any way take away the rights of the plaintiff to seek dissolution of the firm or rendition of accounts.

11.The learned counsel appearing for the appellant had further stated that the First Appellate Court was not right in upholding the pleadings of the second defendant that only as a name lender, the shares of T.Subramanian were transferred to the plaintiff. When the second defendant has admitted about the documents under Exhibit A3 to A6, no further evidence is necessary on the side of the plaintiff that she is also one of the partners of the firm. Hence, he prayed for for allowing the appeal.

12.Per contra, the learned counsel appearing for the respondent submitted that the husband of the plaintiff has addressed a communication under Ex.B4 dated 09.04.1997 in which it is clearly mentioned that only as a name lender, some shares were transferred in the name of the plaintiff. He further submitted that the shares standing in the name of the plaintiff were transferred to T.Subramanian in the year 1999 itself. Therefore, on the date of filing of the suit, the plaintiff is not a partner and hence, not entitled to seek the suit prayer. He further pointed out that the other brother namely Mr.T.Subramanian who is a partner from the date of commencement, is a necessary party to the suit. Therefore, the First Appellate Court has rightly dismissed the suit on the ground of non-joinder of necessary party. The plaintiff has not made any investment towards her share in the firm and therefore, she is not entitled to seek for rendition of accounts.

13.The learned counsel for the second respondent had further contended that in the year 2000, the third defendant has retired from the firm paving way for the second defendant and his brother Subramanian to manage the affairs. In such circumstances, the non-impleadment of the said Subramanian is fatal and the First Appellate Court has rightly dismissed the suit. Hence, he prayed for confirming the judgment and decree of the First Appellate Court.

14.Heard both sides and perused the material records.

(C).Discussion:

15.Even as per Paragraph No.4 of the written statement, the plaintiff was inducted as one of the partners with effect from 01.04.1986 and the shares standing in the name of her minor brother T.Subramanian were transferred in her name. However, it is contention of the second defendant that the shares in the name of the plaintiff were re-transferred to the name of T.Subramanian on 31.03.1999. In the written statement, it is clearly averred that the day ledger would reflect these transfer of shares. In Paragraph No.5 of the written statement, the second defendant has averred that every year, the income tax returns are submitted on behalf of the partnership firm in Karnataka. The other taxes are also being paid. During the cross examination, he has admitted that he was issued with a notice to produce those documents. However, he is not aware whether any reply was given to the said notice.

16.The defendant in his written statement as well as during the cross examination has admitted that the income tax returns are being filed every year for the partnership firm regularly. However, he has not chosen to produce the said statutory returns, despite a notice was issued to produce those documents.

17.The Hon'ble Supreme Court in a judgment reported in ***(2012) 8 SCC 148 (Union of India Vs. Ibrahim Uddin and another)*** in Paragraph No.24 has held as follows:

> *"24.Thus, in view of the above, the law on the issue can be summarised to the effect that, issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot loose sight of the fact that burden of proof is on the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents etc. as is required under Order XI*

CPC. Conduct and diligence of the other party is also of paramount importance. Presumption or adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to produce the document and other side failed to comply with the court's order, the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary."

18.In view of the judgment of the Hon'ble Supreme Court cited supra, it is clear that a party who is admittedly having custody of the documents and despite notice to produce the documents, if he had not complied with the said notice, the Court would be justified in drawing adverse inference. Therefore, the Court is constrained to draw adverse inference as against the second defendant to the effect that in case if the statutory income tax returns are produced before the Court, that would be not in favour of the second defendant.

19.The second defendant having admitted in his written statement that the plaintiff was inducted as a partner with effect from 01.04.1986 by transfer of shares from other brother T.Subramanian, it is for him to explain how the shares of the plaintiff got re-transferred to the said Subramanian without consent of the plaintiff. The contention of the second defendant is that the shares were transferred from Subramanian in the name of the plaintiff only as a name lender, is not a legally acceptable submission.

20.A perusal of Ex.A3 shows that it is a letter addressed by the second defendant to Mr.T.Subramanian wherein it has been specifically pointed out that he is only a power holder. This letter also indicates that the plaintiff is one of the partners. On the same day, the second defendant has addressed a communication to the office manager of the first defendant firm pointing out that the plaintiff is one of the partners and the manager was informed that the power of attorney given in favour of T.Subramanian has been cancelled. The manager was warned not to obey the orders of T.Subramanian hereafter.

21.Ex.A5 is also dated 04.05.2000 where he has addressed a communication to one of the customers. marking a copy to the plaintiff, wherein he had pointed out that he had cancelled the power of attorney in favour of Subramanian. The second defendant had further pointed out that T.Subramanian is having 0% of share holding in the first defendant society. Though a copy has been marked to the said Subramanian, there are no records to show that he had responded. Ex.A6 is a communication by the second defendant dated 04.05.2000 to the auditor of the first defendant firm. Again the second defendant has pointed out that he had cancelled the power of attorney in favour of T.Subramanian and he had marked a copy to the plaintiff indicating that the she is also one of the partners of the first defendant firm. During cross examination, the second defendant has made an attempt to explain Ex.A3 to A6. According to him, those letters reflected the partners' name as on 31.03.1999. However, this explanation is not acceptable in view of the fact that in the written statement, the second defendant has averred that Mr.T.Subramanian was inducted as a partner on 31.03.1999 itself. But the letters Ex.A3 to A6 have been addressed only on 04.05.2000. Therefore, the explanation offered by the second defendant is not legally acceptable.

22.The First Appellate Court has proceeded to allow the appeal on the ground that T.Subramanian being a partner is a necessary party and without impleading him, the suit is bad for non-joinder of necessary party. Though the second defendant has averred in his written statement that T.Subramanian was re-inducted as a partner with effect from 01.04.1999, his four letters dated 04.05.2000 (Exs.A3 to A6) clearly point out that the said T.Subramanian was only the power agent of the second defendant.

23.As already pointed out that the second defendant has not produced day ledger books or income tax returns, subsequent to 01.04.1999 to establish that Mr.T.Subramanian was also one of the partners. The First Appellate Court was not right in simply believing the pleadings of the second defendant, when he had not produced any document in relation to the re-induction of the said T.Subramanian as one of the partners. Though T.Subramanian may be the brother of the plaintiff and the second defendant, he being a stranger to the partnership firm, is not a necessary party. Therefore, the First Appellate Court was not right in holding that the suit is bad for non-joinder of necessary party.

24.The First Appellate Court was not right in arriving at a finding that there was no investment from the side of the plaintiff. Even as per the case of the second defendant, the shares of T.Subramanian were transferred in favour of the plaintiff on 01.04.1986. Though the second defendant contends that the plaintiff is just a name lender, such an argument is not legally acceptable. When Exs.A3 to A6 letters clearly reveal who are all the partners and who is not a partner, the findings of the First Appellate Court that those letters were addressed by the second defendant due to some dispute with Mr.T.Subramanian is clearly perverse.

25.Once it is found that the plaintiff is one of the partners of the firm, without her consent, a new partnership deed cannot be entered into excluding her. Therefore, merely because Ex.B7 partnership deed was registered on 28.01.2002 excluding the plaintiff, that would not exonerate the second defendant from answering the prayer of the plaintiff seeking dissolution of the firm and rendition of accounts.

26.In view of the provisions of Benami Transactions (Prohibition) Act, the finding of the First Appellate Court that the shares of T.Subramanian were transferred in favour of the plaintiff as a mere name lender is clearly unsustainable in the eye of law. Exs.A3 to A6 letters will clearly establish the fact that the plaintiff is one of the partners and the said T.Subramanian is not a partner. In such circumstances, the findings of the First Appellate Court that the non-impleadment of the said T.Subramanian would result in dismissal of the suit for non-joinder of necessary party is also not legally sustainable.

(D)Conclusion:

27.In view of the above said deliberations, all the substantial questions of law are answered in favour of the appellant. The judgment and decree of the First Appellate Court are set aside and the judgment and decree of the trial Court are restored. The second appeal stands allowed. No costs.

25.07.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes/No
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To

1.The Subordinate Judge
Devakkottai

2.The Additional District Munsif
Karaikudi

3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai

R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
S.A.(MD)No.220 of 2007

25.07.2025