

APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Sankaran-Nair.

SADHU NARAYANA AIYANGAR (FIRST DEFENDANT),

APPELLANT.

v.

RAMASWAMI AIYANGAR (PLAINTIFF), RESPONDENT.

1908.
October 1,
2, 28.

Partner, right of, to sue for contribution—One partner, compelled to pay the whole of a partnership debt after dissolution, may sue for contribution, although right to sue for account of, and share in, the partnership assets may be barred.

A partner who, after the dissolution of the partnership, has been compelled to pay a debt due by the partnership, can maintain a suit for contribution against his co partners, even though a suit for general account of the partnership and a share therein is barred by limitation. The defendant, however, will, in such a case, be entitled to show that in a settlement of accounts he will not be liable, or that his liability would be reduced.

Sokkanadha Vannimundar v. Sokkanadha Vannimundar, [(1905) I.L.R., 28 Mad., 344], principle applied.

Subbarayudu. v. Adinarayudu, [(1895) I.L.R., 18 Mad., 134], considered.

The principle will apply equally whether the party suing is a partner or his representative.

SECOND APPEAL against the decree of W. W. Phillips, District Judge of Tinnevely, in Appeal Suit No. 203 of 1905, presented against the decree of V. R. Kuppusami Aiyar, District Munsif of Srivilliputtur, in Original Suit No. 220 of 1904.

Suit for account of a partnership chit transaction carried on by plaintiff and first defendant, for the recovery of Rs. 12 due by the first defendant to the plaintiff in the partnership accounts and Rs. 533 for plaintiff's half share of the sum of Rs. 1,066 for which decrees were passed against plaintiff and first defendant jointly in respect of the partnership chit transactions, but which was realised wholly from plaintiff. Plaintiff also prayed that certain amounts due to the partnership may be directed to be collected jointly by the plaintiff and first defendant and equally divided between them.

The chit transactions ceased in May 1900, owing to disagreement between plaintiff and first defendant, and the suit was instituted in March 1904.

* Second Appeal No. 362 of 1906.

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Defendant contended *inter alia* that the suit was barred under article 106 of schedule II of the Limitation Act.

The Munsif held the suit was not barred in respect to the right of the contribution on account of the moneys realised from plaintiff under the decree, and gave a decree for a moiety of such amount and dismissed the rest of the claim as barred. His judgment was confirmed on appeal.

The first defendant appealed to the High Court. The plaintiff filed a memorandum of objections in respect of his claim for settlement of accounts, which was held to be barred by the Lower Courts, and of interest which was disallowed.

T. Rangachariar and *C. Aiyaswamy Sastriar* for appellant.

M. A. Tirumarayana Chariar for respondent.

JUDGMENT.—The first question we have to consider is whether the suit is barred by article 106 of schedule II of the Limitation Act. In support of the memorandum of objections filed on behalf of the respondent it is contended that the suit though a suit for an account of partnership dealings is not also a suit for a share of the profits of the dissolved partnership and is therefore not within article 106.

We think however that the plaintiff seeks to recover a share of the profits. He says in effect in his plaint that he has prepared an account himself which he sets out in schedules (see paragraphs 18—20 of the plaint) and that this shows that the defendant has to pay to him two sums under circumstances set out in paragraphs 8 and 12 of the plaint (*vide* paragraph 15). But he is willing, if this should not prove correct, to pay whatever may be found due by him (paragraph 17). Finally he prays this Court to settle the accounts and direct the defendant to pay him the two sums due to him, and to direct the defendant and himself to collect whatever assets of the partnership remain outstanding, and after deducting expenses to divide the balance. This last prayer makes it clear that the plaintiff is suing for a share of the profits if any.

The suit as a suit for an account and a share is clearly barred by limitation. The next question is whether as a suit for contribution it can be maintained.

The plaintiff was compelled at the suit of certain creditors of the partnership to pay the whole amount due to them and seeks to recover from the defendants one moiety of what he has paid

The decree and payment were after the dissolution of the partnership, but there was at dissolution no settlement of accounts.

Now this is not a case of a transaction outside the partnership : certain persons having dealings with the firm in respect of the partnership business became entitled in the course of the dealings to receive money from the firm. They sued and obtained decrees against the partners : the liability is beyond any doubt a partnership liability. The English cases referred to in *Subbarayudu v. Adinarayudu*(1) have therefore no application and the facts of(1) itself are not sufficiently clear either in the report or in the printed papers to enable us to say certainly that that case is on all fours with the present case. But, if that case is not distinguishable on the facts, we should find some difficulty in following it on the grounds stated in the judgment ; for, it is not easy to see how the making of a decree against the partners imposes upon them any liability which did not attach to them as partners before the suit.

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But in *Sokkanadha Vannimundar v. Sokkanadha Vannimundar*(2) a representative of a deceased partner was allowed to sue for a share of assets collected after dissolution by a surviving partner, though a suit for a general account was barred by limitation. The fact that neither partner has thought fit in proper time to secure a settlement of accounts does not, it is there pointed out, afford a reason why one partner should be enabled to secure an advantage over the other. Justice is done if the defendant is allowed to show that on a settlement of accounts he would not be liable. This principle is, we think, applicable and should be applied to the present case ; the fact that here the plaintiff has paid a debt, while there the defendant had realized assets, does not affect the principle, nor are we able to distinguish this case on the ground that in *Sokkanadha Vannimundar v. Sokkanadha Vannimundar*(2), and the other cases which support the view there taken, the suit was by a representative of a deceased partner. The suit is therefore good as a suit for contribution, but the first defendant must be allowed to show, if he can, that on a settlement of accounts the amount payable by him as contribution is wiped out or reduced. The District Munsif has gone into the account, but the District Judge has not done so ; and, unless the parties agree either to accept the District Munsif's findings or to fix

(1) (1895) I.L.R., 18 Mad., 134.

(2) (1905) I.L.R., 28 Mad., 344.

MILLER some other amount, a finding by the District Judge will be
AND required.

SANKARAN- The District Munsif finds that the plaintiffs was entirely
NAIR, J.J. responsible for the suits by the creditors as he alone declined
SADHU and unnecessarily declined, to admit their claims: if this is so
NARAYANA and (the District Judge has not expressed his opinion yet), the first
AIYANGAR defendant is not liable to repay a share of the interest which the
v. plaintiff was compelled to pay, but he should pay interest at 6 per
RAMASWAMI cent. on the share due from him, from the date of payment by
AIYANGAR. the plaintiff to date of payment to the plaintiff by him.

The parties agree to judgment for the plaintiff for Rs. 385 instead of Rs. 364-0-5 awarded by the District Munsif: the decree will be amended accordingly, the defendant undertaking to withdraw the appeal preferred by him against the decision of the District Munsif of Srivilliputtur in Original Suit No. 64 of 1907.

Each party will pay and receive proportionate costs throughout.

APPELLATE CIVL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

MUTHUVEERU MUDALIAR (FIRST DEFENDANT), APPELLANT,

v.

VYTHILINGA MUDALIAR AND ANOTHER (PLAINTIFFS),
RESPONDENTS.*

1908.
January 20.
April 6.
December 18.

*Hindu Law—Alienation by widow of part of her widow's estate, validity of
—Consent of reversioners Transfer by reversioner of reversionary
interest—Estoppel of actual reversioner claiming through one who had
given consent.*

An alienation, without justifying necessity, by a widow of a portion only of her limited estate, will not be validated by the consent of the next reversioners.

Marudamuthu Nadan v. Srinivasa Pillai, [(1898) I.L.R., 21 Mad., 128], followed.

Bajrangji Singh v. Manokarnika Bahsh Singh, [(1908) I.L.R., 30 All., 1], referred to.

A conveyance during the widow's life by a reversioner of his reversionary right is inoperative.