

which an inference is fairly to be deduced that the father intended to recognise him and give him the status of a son capable of inheriting. Upon that point both the Courts come to one conclusion; and that conclusion their Lordships adopt. They think that the status of Selim as son has been sufficiently established by recognition so as to enable him to claim as heir. Other questions have been raised in the case; but, in accordance with what has been stated as their Lordships' view, they think they ought not in a case of this kind to go beyond what is necessary for the decision.

Their Lordships will, therefore, humbly advise Her Majesty to dismiss the appeal, and to affirm the decision of the Court below. There will, of course, be no costs in this case."

Appeal dismissed.

Solicitors for the appellant: Messrs. *Watkins and Lattey.*

APPELLATE CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Beverley.
JUGGUT CHUNDER DUTT (PLAINTIFF) *v.* RADA NATH DHUR
(DEFENDANT.)*

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Partnership—Suit for an Account—Introduction of new member into firm—Contract Act IX of 1872, s. 253, cl. 6 and s. 265—Jurisdiction.

The effect of cl. 6 of s. 253 of the Contract Act is not to render an assignment of a share in a partnership concern illegal or void as between the parties to the assignment, but only so far void as between those parties and the other partners as to cause an immediate dissolution of the partnership.

If no assent is given by the other partners to the assignment, the assignee is upon dissolution at liberty to sue for an account and for distribution, not as a partner, but as assignee of the right of his assignor in the partnership property.

Section 265 of the Contract Act commented on.

THE plaintiff in this case stated that, in the year 1284, Rada Nath Dhur, the defendant No. 1, and one Gopal Chunder Dhur opened a shop agreeing to share profit and loss equally between them, this business being managed by Mohesh Chunder

* Appeal from Appellate Decree No. 2334 of 1882, against the order of Colonel T. Lamb, Deputy Commissioner of Nowgong, dated the 28th of August 1882, reversing the decree of Gunabhi Ram Borua, Munsiff of that district, dated the 21st of September 1881.

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That on the 12th March 1880 Gopal Chunder Dhur sold his share in the business to the plaintiff and Modhu Sudun Roy under a registered deed of sale; that subsequently to this sale, the defendants 2, 3 and 4 colluded with Rada Nath Dhur (defendant No. 1) and collected and appropriated moneys owing to the firm; that he, the plaintiff, on the 10th Aghran 1287 (25th November 1879) purchased the share of Modhu Sudun Roy; that he demanded from the defendants the papers and books of the firm and asked for an account, but on their at first promising to comply and then failing in their promise, he filed the present suit against them on the 28th November 1880, asking for an account.

Defendant No. 1 contended that all that the plaintiff purchased in 1880 was, the articles in store and the debts due to the concern, and that the assignment was made secretly and without his consent, and further contended that the business had been closed since 1286 (April 1880), and that nothing was due to the plaintiff.

The other defendants contended that being gohmastas only they were not liable to be sued.

The Munsiff found that the plaintiff had obtained possession of Gopal Chunder Dhur's share in the business, and that there was evidence to show that the defendants had at one time agreed to account, but that the business had closed in 1286; that the plaintiff was entitled to an account from the defendants, and after going into the accounts he made a decree in favor of the plaintiff for Rs. 442-15-12.

The defendants appealed to the Deputy Commissioner, contending that a new partner could not be introduced into the business without the consent of the other partner, under s. 253, cl. 6 of the Contract Act.

The Deputy Commissioner, after stating that it appeared that Gopal Chunder Dhur had introduced the plaintiff into the business without the consent of Rada Nath, and that the plaintiff had not asked for a dissolution of the partnership by his plaint, but had sued for an account, held that the sale to the plaintiff in

1880 was invalid, as it introduced a new partner into the business without the consent of the other partners, and he therefore reversed the decision of the Munsiff.

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The plaintiff appealed to the High Court.

Baboo Bhooban Mohan Dass, for the appellant contended that the plaintiff was entitled to sue for an account, and that one partner was at liberty to sell his share without the consent of the other partners, and that it having been found by the Munsiff that the defendants had recognized the sale by allowing the plaintiff to take possession and by promising to render him an account, s. 253 of the Contract Act should not have been applied when these facts had not been displaced.

Baboo Huri Mohun Chuckerbuti for the respondents cross objected, that under s. 265 of the Contract Act the District Judge had alone jurisdiction to try the case.

Judgment of the High Court was delivered by

GARTH, C.J., (BEVERLEY, J., concurring).—The plaintiff's case is, that the defendant No. 1 and a person named Gopal Chunder Dhur opened a shop and carried on business in co-partnership for about three years. Gopal Chunder Dhur then sold his share to the plaintiff; and the plaintiff says that after this purchase he continued to carry on the business with the defendant No. 1, but that the defendant No. 1, in collusion with the other defendants, who are his gohmastas, have been receiving moneys due to the firm, and keeping back papers and accounts in fraud of him, the plaintiff. He therefore brings this suit against them for production of the papers and for an account.

Two of the defendants say, they have nothing to do with the partnership, and that they are merely employed as gohmastas. But the defendant No. 1 says that the business has been closed since the end of the Bengalee year 1286, and that nothing is due to the plaintiff.

The Munsiff found, as a fact, that the business was closed at the end of the year 1286; but he considered that the plaintiff was entitled to the investigation which he claimed, and after appointing an ameen and examining the accounts, he made a decree in the plaintiff's favor for Rs. 442-15-12.

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The Deputy Commissioner took a different view. He considered that the purchase by the plaintiff from Gopal Chunder Dhur of the share in the partnership was invalid, and that (apparently for that reason) the plaintiff had no right to sue the defendant for an account.

It has now been contended before us that the view taken by the Deputy Commissioner was wrong, and that the judgment of the Munsiff ought to be restored.

We think it very doubtful, however, whether upon the plaintiff's own showing, and upon the facts found by the Munsiff, the plaintiff is entitled to a decree.

It is not actually stated in the plaint, although it may certainly be inferred, that the business of the partnership had been carried on up to the time when the suit was brought in November 1880.

The defendant No. 1 says that this was not so, and that the business came to a close at the end of the Bengalee year 1286, which would be about the 11th of April 1880, or about a month after the plaintiff bought his share in the concern; and the defendant No. 1 also says, though the fact is not distinctly found by either Court, that the sale of the share to the plaintiff *was made secretly, and without his consent.*

Now, the Deputy Commissioner is so far right in his view of the law that no partner has a right to transfer his share in the partnership to a stranger without the consent of the other partners. (See cl. 6 of s. 253 of the Contract Act.)

But the Deputy Commissioner does not quite understand the true meaning of this rule. Its effect is, not to render an assignment of a share in a partnership concern illegal or void as between the parties to the assignment, but only so far void as between those parties and the other partner or partners, as to cause an immediate dissolution of the partnership.

In other words, one partner cannot by assigning his share make any one else a partner in his stead with his co-partners; and therefore upon his assigning his share the partnership ceases to exist, unless the other partners consent to accept the purchaser as a partner in the place of the latter.

If they do so consent, the partnership may continue to be carried on as before. If they do not consent, the plaintiff would

upon the dissolution have a right to sue, not as a partner, but as an assignee of the rights of his assignor in the partnership property, for an account of that property, and for such a distribution share as belonged to his assignor.

Now, in this case it does not appear to have been distinctly found by either of the lower Courts whether the defendant No. 1 consented to receive the plaintiff as a partner in the concern or not. The defendant No. 1 says that the transfer was made *secretly and without his consent*; and, although he says that the business continued to be carried on for about a month after the transfer was made, it does not appear whether the plaintiff was considered to have any share in it.

It will be found that this point has a very material bearing upon the question whether in point of law the plaintiff has any right to bring this suit.

If he never became a partner with the defendant No. 1, he might, as I have just now explained, have a right, *not as a partner, but as an assignee of Gopal Chunder Dhur's share*, to sue for an account against the defendant No. 1, and the judgment of the Munsiff may then be substantially right; although it is difficult to see how the plaintiff would have any right of suit against the defendants Nos. 2, 3 and 4 if they were only *gohmastas*.

If, on the other hand, the plaintiff, after the transfer to him, became a partner with the defendant No. 1 for ever so short a time, and that partnership came to an end on or about the 11th of April 1880, then we think this suit would come within section 265 of the Contract Act, and could only be brought in the Court of the District Judge.

This principle seems now to be pretty clearly established by several decisions in this Court. It has led to a good deal of inconvenience and injustice that suits of this description should only be brought in the Court of the District Judge; but so long as that section continues to be the law, the Court has no power to prevent the mischief.

It was certainly a matter of doubt at one time, both in this Court and elsewhere, whether the provisions of s. 265 were not intended to provide additional remedy otherwise than by a

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regular suit in cases where a partnership had determined. But the Civil Procedure Code has provided no other proceeding except a regular suit, under which accounts may be taken under such circumstances; and it has accordingly been held in several subsequent cases in this Court that a regular suit is the only remedy, and that such a suit can only be brought in the Court of the District Judge. See *Prosad Dass Mullick v. Russick Lall Mullick* (1); *Ramayya v. Chandra Sekara Rau* (2); *Harrison v. Delhi and London Bank* (3); *Sorabji Fardunji v. Dulabhbai Hargovan- das* (4); *Ladubhai Premchand v. Revichand Venichand* (5); *Ram Chunder Shaha v. Manick Chunder Banikya* (6). We think therefore that, as the Deputy Commissioner has misconceived the effect of the plaintiff's purchase, and as neither Court has tried what appears to be a very important question in the case, namely, whether the plaintiff ever really became a partner in the concern with the defendant No. 1, the case ought to go back to the Munsiff's Court for re-trial; and if in the result it should turn out that the suit can only be brought in the Court of the District Judge, as being a suit by an accepted partner after determination of the partnership, the plaint should be given back to the plaintiff to be there presented. The plaintiff, we presume, will not be prejudiced, so far as limitation is concerned, because he would have brought this suit *bond fide* in a Court which has no jurisdiction to entertain it.

Case remanded.

(1) I. L. R., 7 Calc., 157.

(2) I. L. R., 5 Mad., 256.

(3) I. L. R., 4 All., 437.

(4) I. L. R., 5 Bom., 65.

(5) I. L. R., 6 Bom., 143.

(6) I. L. R., 7 Calc., 428.