## APPELLATE CIVIL.

*Before Mr. Justice Broadway and Mr. Justice Zafar Ali.*

HARCHAND SINGH (PLAINTIFF) Appellant

*versus*

GURDIP SINGH AND ANOTHER (DEFENDANTS) Respondents.

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*Nov. 25.*

**Civil Appeal No. 2152 of 1924.**

*Partnership—Suit for dissolution—Different allegations of plaintiff and defendants as to their respective shares in the partnership—whether on failure of proof of plaintiff's allegation defendants' should be accepted—or whether latter must also be proved—Presumption of equality of shares—Indian Contract Act, IX of 1872, section 253 (2)—Proper construction of cases cited as precedents.*

In a suit for dissolution of partnership and rendition of accounts the plaintiff set up a case to the effect that his share in the profits (and liabilities) arising from the firm's business had been fixed by a verbal contract at only one-fifth as compared with the shares of the two defendants whose shares, he stated, to be two-fifths each. The defendants, on the other hand, while admitting that there had been a contract making the shares unequal, set up a different allotment of shares, whereupon the trial Court, finding that the plaintiff had failed to substantiate his allegations, adopted the allegations made by the defendants, and accordingly made a decree declaring the shares of the partnership to be the following, *viz.*, plaintiff's share 13 annas in the rupee and defendants 2 annas and one anna, respectively. On appeal the plaintiff contended that the Court having found it impossible to accept the evidence of either party, section 253 (2) of the Contract Act applied, under which the shares must be deemed to have been equal.

*Held*, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.

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*Quinn* v. *Leatham* (1), followed.

*Held also*, that the position of parties in partnership suits is in some particulars different from that of the position of parties in an ordinary suit (say, for money) ;

*Thus*, each of the partners to a partnership suit, however he may be formally ranked, is really in turn plaintiff and defendant, and in both capacities comes before the Court for the adjudication of his rights relatively to the other partners, which the Court endeavours to determine by its decree ; and, that the omission from Order 1, rule 10 (2), of the Civil Procedure Code, 1908, of certain provisions which existed in section 32 of the old Code, did not affect that position.

*Edulji Muncherji Wacha* v. *Vallebhoy Khambhoy* (2), followed.

*Brojendra Kumar Das* v. *Gobind Mohan Das* (3), referred to.

*Held further*, therefore, that it was incumbent upon the Court in suits of this nature to weigh the evidence led by both sides and to give a decision as far as possible according to the weight of that evidence.

*Fazl Khan* v. *Mst. Karam Begam* (4), *Robinson* v. *Anderson* (5), and *Ram Charan* v. *Bulaqi* (6), distinguished.

*First appeal from the decree of* Khwaja *Abdus Samad, Senior Subordinate Judge, Lyallpur, dated the 4th August 1924, dissolving the partnership, etc.*

MOTI SAGAR, TEK CHAND, DEVI DITTA MAL, SANT SINGH and SHEO NARAIN, for Appellant.

MUHAMMAD SHAFI, MUHAMMAD RAFI and BADRI DAS, for Respondents.

JUDGMENT.

BROADWAY J. BROADWAY J.—On the 10th December 1919 a partnership was entered into between *Sardar* Harchand Singh, *Sardar* Gurdip Singh, and *Sardar* Dalip Singh by which they agreed to open a commission

(1) (1901) A. C. H. L. 495.
(2) (1883) I. L. R. 7 Bom. 167.
(3) (1916) 34 I C. 186.
(4) 105 P. R. 1914.
(5) (1855) 109 R. R. 362.
(6) (1924) I. L. R. 46 All. 858.

agents' shop at Lyallpur under the name of "Khalsa Dokan." The business of this partnership came to an end on the 23rd January 1922, and it is an admitted fact that the business of this partnership resulted in very heavy losses. On the 25th May 1923 Harchand Singh instituted a suit against Gurdip Singh and Dalip Singh, in which he sued for dissolution of partnership and rendition of accounts of the business of the firm. He valued the suit at Rs. 1,000, undertaking to pay court-fees on any sum that might be decreed in excess of that. In his plaint he stated that the partnership had been entered into verbally, that is, there was no documentary evidence or any deed by which the partnership had been drawn up. He alleged that his share was 1/5th, Gurdip Singh's 2/5ths and Dalip Singh's 2/5ths and that the partners had agreed to subscribe the capital in that proportion, but that while he had contributed the sum of Rs. 150 towards the capital neither of the partners had contributed anything. He also stated that Dalip Singh, defendant No. 2, was to be appointed as the Manager and the Agent of the firm and to receive remuneration at the rate of Rs. 80 *per mensem*, while he and Gurdip Singh were to act as advisers and supervisers without any remuneration and prayed for a decree to the following effect :—

(*a*) The partnership may be dissolved, date of dissolution fixed, and the shares of the parties declared.

(*b*) The rights in respect of the debts due to the parties and the liabilities in respect of the debts due from them may be determined and the amount due to or from each partner may be fixed or the account of the firm may be adjusted in some other way and the rights and liabilities of the parties may be declared.

(*c*) A decree for Rs. 5,250 or for the additional amount that may be found due may be passed in

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favour of the plaintiff, conditional on payment of the additional court-fee.

(*d*) The costs of the suit may also be awarded.

The defendants contested the suit and filed separate written statements. They both admitted that the partnership had been entered into between them and the plaintiff, but denied that the shares had been correctly stated in the plaint. According to them the share of the plaintiff Harchand Singh was 13/16ths, of Gurdip Singh 2/16ths and of Dalip Singh 1/16th. Gurdip Singh claimed merely to be a 'sleeping partner' while Dalip Singh stated that he had managed the business of the partnership, the remuneration fixed being Rs. 150 *per mensem*. Various pleas were also raised and the following issues were settled :—

(1) Has dissolution of partnership already taken place?

(2) How long (the period for which the account can be rendered) did the partnership last?

(3) What are the shares of the parties in this partnership?

(4) Is *Sardar* Gurdip Singh liable to render account?

(5) What was the scope of partnership?

Parties led evidence and then, on the 19th March 1924, their counsel made a certain statement which disposed of all but two issues. This statement is to be found at page 319 of the paper book and is to the following effect :—

We, both the parties, agree to the following points :—

1. The account of the partnership business from the 10th December 1919 up to the 23rd January 1922 may be caused to be rendered.

2. If any fresh business was made after that date the partnership shop would not be responsible for the loss and profit incurred therein.

3. If any outstandings were realized after that date or if any previous loan raised on the liability of the partnership business was paid off, the same shall be taken into consideration in the rendition of accounts and for this purpose a reasonable pay of the *Munim* shall be allowed.

Upon this the Senior Subordinate Judge recorded an order pointing out that only issues Nos. 3 and 5 remained to be considered and after hearing arguments he found that issue No. 5 could only be decided satisfactorily after the accounts had been checked. The parties agreed to the appointment of *Lala* Sohan Lal as Local Commissioner, and *Lala* Sohan Lal then went into the accounts, recorded statements, and furnished a report. To this report the plaintiff and the defendants filed objections. After hearing counsel the case was decided on the 4th August 1924. The learned Senior Subordinate Judge passed a preliminary decree declaring that the shares of the parties were as follows :—

| | | |
|---|---|---|
| Plaintiff | .. | 13 annas in a rupee, |
| Gurdit Singh | .. | 2 annas in a rupee, and |
| Dalp Singh | .. | 1 anna in a rupee. |

The partnership was declared dissolved as from the 22nd January 1922, and *Lala* Sohan Lal was appointed receiver of the partnership property and directed to make out the list of outstanding debts, etc.

In connection with the 5th issue, the learned Senior Subordinate Judge also issued certain directions to the receiver as to the method of calculating the capital, etc., of the partnership.

Against this preliminary decree the plaintiff has preferred an appeal to this Court and on his behalf

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we have heard Mr. Moti Sagar, while Sir Muhammad Shafi has addressed us on behalf of Gurdip Singh and Mr. Badri Das for Dalip Singh.

On behalf of the appellant it has been contended that the Senior Subordinate Judge has erred in (1) fixing the shares of the partners as he has fixed them and (2) his directions to the receiver in connection with the calculation of the capital and interest, etc., of the partnership. As to the second point counsel for the defendants-respondents have agreed that the directions should be expunged and that the capital and interest should be left to be decided in the proceedings that must be taken before passing the final decree. His directions are to be found in his judgment at page 362 of the paper book and from the words " The counsel (line 1) ..... to the word third person " on page 263, lines 4 to 14, are set aside.

The question raised in the first contention relates to issue No. 3, in deciding which the learned Senior Subordinate Judge, having rejected the evidence led by the plaintiff-appellant, followed certain principles enunciated in *Fazl Khan* v. *Mussammat Karam Begum* (1) and declared the shares of the partners to be as set out by the defendants-respondents.

Mr. Moti Sagar contended that in partnership suits of this nature all the parties are in the position of a plaintiff and that therefore it is incumbent on each of them to prove the allegations he makes. Applying this principle to the present case he urged that the defendants-respondents having alleged that certain specific shares had been fixed, the *onus* of proving the correctness of their allegations was on them—which *onus* they have failed to discharge.

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In these circumstances, he argued, when the Court finds it impossible to accept the evidence of either party, the proper course was to fall back on section 253 of the Indian Contract Act and give effect to its provisions, the principles enunciated in *Fazl Khan* v. *Mussammat Karam Begum* (1) being inapplicable to cases of this nature. We have been taken through the evidence on the record and I have no hesitation in agreeing with the learned Senior Subordinate Judge's estimate of that led by the plaintiff-appellant. *Sardar* Harchand Singh himself says that when the shares were fixed, the only persons present were the partners concerned. Jiwan Singh's statement that he was present at the time is therefore clearly incredible. The only other witness produced by *Sardar* Harchand Singh on this point was *Sardar* Janmeja Singh, who says that he had dealings with " the Khalsa Dokan " and, before starting these dealings, had questioned the two defendants-respondents who had told him that they each owned two shares and Harchand Singh one share in the business. He says " I had a mind to join with them as a partner," but he did not do so. Neither Harchand Singh nor any other witness has hinted even that it was ever contemplated to take in any one as a partner and this witness's statement is to my mind of no weight. It must, therefore, be held that the plaintiff-appellant has failed to prove that the shares of the partners were fixed as set out in the plaint.

Sir Muhammad Shafi contended that the plaintiff-appellant having failed to prove the correctness of his allegation as to the shares fixed, the learned Senior Subordinate Judge was right in applying the principles laid down in *Fazl Khan* v. *Mussammat Karam*

(1) 105 P. R. 1914.

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*Begum* (1), and that he had no jurisdiction to resort to section 253 of the Indian Contract Act. In support of his latter contention he referred to *Eshenchundar Singh* v. *Shamchurn Bhutto* (2), *Ramasami Nadan* v. *Ulaganatha* (3), *Malraju Lakhshmi Venkayyamma Row* v. *Venkatadri Appa Row* (4), *Maharaja of Vizianagram* v. *Secretary of State for India in Council* (5), *Tika Ram* v. *The Deputy Commissioner of Bara Banki* (6), *Nabi Bakhsh* v. *Sajid Ali* (7), *Ram Rattan* v. *Labhu Ram* (8), *Ram Diwaya Ram* v. *Milkhi Ram* (9), *Badar-ud-Din Biswas* v. *Harajtulla Joordar* (10), *Radhe Mander* v. *Fakir Mander* (11), *Wong Mun Khee* v. *Teong Shain* (12), *Bakhtawar Begum* v. *Hussaini Khanum* (13), *Dwijendra Narain Roy* v. *Jogesh Chandra Dey* (14). I have examined these authorities and am of course bound by the pronouncement of their Lordships of the Judicial Committee. I am also in full agreement with the authorities of the various High Courts that have been cited, but I do not consider it necessary to discuss these authorities for it seems to me that they deal with their own set of facts. As pointed out in *Quinn* v. *Leatham* (15) (also cited by Sir Muhammad Shafi) "every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found." None of these authorities deal with a partnership suit,

(1) 105 P. R. 1914.
(2) (1866) 11 Moo. I. A. 7.
(3) (1898) I.L.R. 22 Mad. 49, 64 (F.B.).
(4) (1920) 59 I. C. 767, 769 (P.C.).
(5) (1926) I.L.R. 49 Mad. 249 (P.C.).
(6) (1899) I.L.R. 26 Cal. 707 (P.C.).
(7) (1919) 50 I. C. 160.
(8) (1919) 50 I. C. 366.
(9) 220 P. W. R. 1913.
(10) (1919) 54 I. C. 797.
(11) (1920) 56 I. C. 970.
(12) (1916) 36 I. C. 464.
(13) (1913) I.L.R. 36 All. 195.
(14) (1923) 79 I. C. 520.
(15) 1901 A. C. H. L. 495.

and *Edulji Muncharji Wacha* v. *Vullebhoy Khanbhoy* (1) is an authority for the proposition propounded by Mr. Moti Sagar that the position of parties in partnership suits is in some particulars different from that of the position of parties in an ordinary suit—say for money. In that case the plaintiff had filed a suit for rendition of accounts, etc., against 21 defendants. Some of the defendants had filed written statements. The plaintiff then applied for leave to withdraw the suit or that the suit might be dismissed. Two of the defendants objected, and applied to be made plaintiffs, at the same time praying that the plaintiff should be made a defendant in the suit. The prayer was granted and West J. is reported to have said as follows :—

"Each of the parties to a partnership suit, however he may be formally ranked, is really in turn plaintiff and defendant, and in both capacities comes before the Court for the adjudication of his rights relatively to the other partners, which the Court endeavours to determine by its decree" (page 168).

It was urged by Sir Muhammad Shafi that that was a decision under the old Code and that the corresponding provisions to be found in Order I, rule 10, Civil Procedure Code, had rendered that authority obsolete. It appears, however, that this authority was considered in *Brojendra Kumar Das* v. *Gobind Mohan Das* (2), and it was held that certain provisions which existed in section 32 of the old Code had been omitted in Order I, rule 10 (2), as they had been considered to be redundant. The decision of West J. was approved.

Section 253 of the Indian Contract Act lays down that in the absence of any contract to the contrary all partners are entitled to share equally in the profits of

(1) (1883) I. L. R. 7 Bom. 167. (2) (1916) 34 I. C. 186.

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the partnership business, and must contribute equally towards the losses sustained by the partnership. It has been urged by Mr. Moti Sagar that if it be held that the plaintiff had failed to make out his allegations as to what shares had been fixed, the allegations made by the defendants, unless substantially proved by them, should be disregarded and the partners should be held to have had equal shares. He referred to *Robinson* v. *Anderson* (1), and *Ram Charan* v. *Bulaqi* (2), in support of his contention. The facts in the latter authority are not on all fours with the case now under consideration. In *Robinson* v. *Anderson* (1) the plaintiff had brought an action claiming to be entitled as a partner holding an equal share. The defendant alleged that the shares agreed upon were unequal. The Master of the Rolls after examining the evidence led by the defendant says at page 365; "It appears to me to be impossible to say, that there was that which Mr. Anderson is bound to establish, namely, any agreement or any contract between the parties, that each party should carry on his own business separately, and be paid for the business which he himself conducted, totally irrespective of the plaintiff. I think not only that the contrary is proved, but that, in the absence of any evidence the presumption of law would have been in favour of an opposite conclusion, upon the mere fact of a joint employment." This view was upheld by Lord Justice Knight Bruce and Lord Justice Turner on appeal. It will be seen however that in that case the plaintiff had claimed that the agreement between him and the defendant was that they should share equally, that is to say he alleged as a fact what the law would presume in the absence of evidence of an agreement to the contrary.

(1) (1855) 109 R. R. 362. (2) (1924) I. L. R. 46 All. 858.

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In the present case the plaintiff does not allege the shares which would be presumed to have been agreed on in the absence of an agreement or contract to the contrary, but has set up a case showing that the shares agreed upon were unequal. Having failed to establish his allegations, he asks that the presumption raised by law should be given effect to despite the fact that the defendants-respondents have, while admitting that there had been a contract making the shares unequal, set up a different allotment of shares. In considering this point the learned Senior Subordinate Judge came to the conclusion that he should act in accordance with what is laid down in *Fazl Khan* v. *Mussammat Karam Begum* (1). In that case *Mussammat* Karam Begam as plaintiff, had sued Fazl Khan, as defendant, for recovery of her prompt dower, alleging in her plaint that her dower had been fixed at the time of her marriage at Rs. 10,000 and 100 gold *mohars* of the value of Rs. 25 each and that one half of this amount was the prompt dower. She accordingly claimed the sum of Rs. 6,250. Fazal Khan, while admitting that the dower had been fixed at the time of the marriage, alleged that it had been fixed at Rs. 100 and one gold *mohar* of the value of Rs. 18 and that therefore all that the plaintiff was entitled to was Rs. 59. The trial Court rejected the evidence led by *Mussammat* Karam Begum as unworthy of credence and after enquiry as to the amount of *mehr-ul-misl* or customary dower, fixed it at Rs. 3,000 and granted a decree for Rs. 1,500. Their Lordships of the Chief Court held that it was not justifiable to hold any enquiry into what was the customary dower and that the plaintiff having failed to prove the allegations made by her, the utmost that

(1) 105 P. R. 1914.

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could be decreed in her favour would be the amount admitted by the defendant, namely, Rs. 59 and that was the amount decreed.

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Now it seems to me obvious that the principle laid down in that case cannot be universally applied, because there the decree was given on the admission of the defendant. The difficulty of applying the principle there laid down would be apparent at once if in the present case Gurdip Singh and Dalip Singh had set up a different inequality of shares. It seems to me that in suits of the nature now under consideration it is incumbent on the Courts to weigh carefully the evidence led by both sides and to give a decision as far as possible according to the weight of that evidence.

[*His Lordship then discussed the evidence produced by the parties and continued as follows*:—]

After taking all the facts into consideration and giving all possible consideration to the evidence led by the parties, in my judgment the evidence of the defendants-respondents, must be held to carry weight and the conclusion arrived at by the learned Senior Subordinate Judge on the question of shares must be accepted.

I would therefore dismiss this appeal with costs.

ZAFAR ALI J.

ZAFAR ALI J.—I agree.

*N. F. E.*

*Appeal dismissed.*