

APPELLATE CIVIL.

Before Broadway and Tapp JJ.

ARURA MAL-UTTAM CHAND (DEFENDANT)

Appellant

versus

MAKHAN MAL-AMIR CHAND,

(PLAINTIFF)

NAND LAL-CHUNI LAL AND AN-

OTHER FIRM (DEFENDANTS)

} Respondents.

Civil Appeal No. 3060 of 1927.

Valuation of Appeal—for purpose of jurisdiction—Suit for dissolution of partnership and settlement of accounts—Decree against one of the defendants for Rs. 10,000 payable to plaintiff and the other defendants in certain proportions—Appeal by judgment-debtor—Forum.

In a suit by *M* against *A* and two other partners for dissolution of partnership and settlement of accounts, *A* was found liable in the sum of Rs. 10,000 and a decree was passed against him accordingly, in favour of *M* for Rs. 2,500 and of the other two partners for Rs. 4,500 and Rs. 3,000, respectively.

Held, that *A*'s appeal against *M* and the other two partners as respondents had been rightly instituted in the High Court, its pecuniary valuation being the aggregate of the specific amounts decreed, namely, Rs. 10,000.

Budha Mal v. Rallia Ram (1), *Harchand Singh v. Gurdip Singh* (2), and *Edulji Muncherji Wacha v. Vullebhoy Khanbhoy* (3), referred to.

First appeal from the decree of Sardar Sahib Bhai Hukam Singh, Senior Subordinate Judge, Shahpur, at Sargodha, dated the 12th November 1927, granting the plaintiff and defendant firms Nos. 2 and 3 a decree against the defendant firm No. 1.

(1) (1928) I. L. R. 9 Lah. 23. (2) (1927) I. L. R. 8 Lah. 241.

(3) (1883) I. L. R. 7 Bom. 167.

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Appellant.

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UTTAM CHAND

M. L. BATRA and R. A. JEREMY, for Respondents.

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TAPP J.—The firms of (1) Arura Mal-Uttam Chand, (2) Nand Lal-Chuni Lal, (3) Makhan Mal-Amir Chand and (4) Nathu Mal-Ram Ditta Mal represented, respectively, by their managing partners (1) Diwan Chand, (2) Nand Lal, (3) Amir Chand and (4) Bhagwan Das, entered into a partnership for a period of three years on the 26th May by a deed registered on the 15th June 1921, and styled Arura Mal and Company. The business of the firm was to work as Commission Agents for the promotion of trade and for the purchase and sale of wheat and other commodities. The capital was fixed at Rs. 64,000 of which half was to be paid on the formation of the Company and out of thirty-two shares Arura Mal-Uttam Chand held twelve, Nand Lal-Chuni Lal nine, Makhan Mal-Amir Chand five and Nathu Mal-Ram Ditta Mal six. A manager, secretary and other paid servants were required to be appointed to carry on the business of the Company and a president and vice-president for meetings, the two latter office-bearers to hold office for a period of one year. Diwan Chand was appointed president as specifically mentioned in clause 6 of the deed which is printed on pages 170 to 174 of the paper book, but no manager was appointed either by the deed or by any subsequent resolution or act of the Company as required by clause 4. Under the terms of the deed some of the capital was to be deposited with the firm of Arura Mal-Uttam Chand at 6 per cent. per annum and some elsewhere.

By some action of the executive authorities the business of this partnership, after running for some five months, was brought to an abrupt termination on the 18th October 1921. On the 13th January 1923,

the firm of Makhan Mal-Amir Chand, through Amir Chand, brought a suit against the other three partners for dissolution and rendition of accounts. The partnership and shares being admitted, a preliminary decree was passed on the 3rd February 1923, and one *Lala Mehr Chand* was appointed a Receiver on the 5th February 1923. He submitted a report on the 14th August, but after considering the objections of the parties this report was not accepted and the appointment of *Lala Mehr Chand* was cancelled by the Court on the 13th December 1923. *Lala Bhagwan Das*, Commission Agent, was then at the instance of the parties, appointed sole arbitrator, but on his failing to file an award, his appointment was set aside on the 19th June 1924. *Lala Kesho Das* was then appointed Receiver by common consent of the parties, but he failed to do anything and his appointment was also cancelled on the 4th November 1925. After the Receivership had been offered to and refused by various persons *Sardar Labh Singh*, an Advocate practising at Sargodha, was appointed Receiver on the 12th January 1926, and he submitted a detailed report, which appears on pages 108 to 138 of the paper book, on the 27th April 1926.

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After giving this report and the objections raised thereto by the parties his consideration the learned Senior Subordinate Judge held that Diwan Chand, the managing partner of Arura Mal-Uttam Chand, was accountable and found that after deducting a net loss of Rs. 1,079-15-6 from the capital of Rs. 16,000 (half of the Rs. 32,000 subscribed having been admittedly returned), thus leaving Rs. 14,920-0-6, adding Rs. 5,079-15-6 on account of interest and allowing a sum of Rs. 4,000 to him, Diwan Chand, as representative of the firm of Arura Mal-Uttam Chand, was liable

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for a sum of Rs. 16,000, including Rs. 6,000 due to himself. The learned Senior Subordinate Judge thereupon passed a decree for Rs. 10,000 with proportionate costs against Arura Mal-Uttam Chand in favour of the other three partners in the following proportions:—

	Rs.
Plaintiff—Makhan Mal-Amir Chand ..	2,500
Defendant—Nand Lal-Chuni Lal ..	4,500
Defendant—Nathu Mal-Ram Ditta Mal ..	3,000

Against this decree an appeal was preferred on the 25th of November 1927 by Arura Mal-Uttam Chand, who further claimed a sum of Rs. 6,222-2-6 as due to them by the other three partners as follows:—

	Rs.	A.	P.
Nakhan Mal-Amir Chand ..	1,198	13	6
Nand Lal-Chuni Lal ..	4,877	5	0
Nathu Mal-Ram Ditta Mal ..	147	0	0

The appellants valued their appeal, however, for jurisdiction and court-fees at Rs. 10,000 only and paid stamp duty accordingly and, on our holding that if they counterclaimed for the above amount they must pay additional court-fee thereon, they withdrew this claim—*vide* orders dated the 11th and 21st November 1929.

The plaintiffs and the other two defendants making common cause preferred a cross-appeal on the 21st February 1928, claiming a further sum of Rs. 7,237-3-9 by enhancement of the decree to Rs. 17,237-3-9.

In respect of the appeal preferred by Arura Mal-Uttam Chand, Mr. M. L. Batra on behalf of the respondents in that appeal has raised a preliminary objection that the appeal does not lie to this Court,

but should have been preferred to the District Judge as the amount decreed in favour of the plaintiffs is only Rs. 2,500. It was urged that the value of the suit as given in the plaint and where this is a tentative value (as in the present case) the value of the suit for determination as to the course of appeal is the amount found due to the plaintiff. He referred to pages 58 and 59, volume III of the Rules and Orders of this Court, and *Budha Mal v. Rallia Ram* (1). Pages 58 and 59, referred to above, merely contain a schedule showing the value of suits for purposes of computing court-fees and determining jurisdiction of the Courts respectively and the material given therein affords no help to a determination of the point raised by the learned counsel. In the ruling cited it was held that it was the amount ascertained by the trial Court to be due to the plaintiff, and not the sum at which he had valued his claim tentatively and approximately, which should be regarded as the value of the suit for the purpose of determining the forum of the appeal. Now, in the present case it will be noticed that a decree has been passed for Rs. 10,000—in favour of the plaintiffs for Rs. 2,500 and in favour of the other two defendants for Rs. 4,500 and Rs. 3,000 respectively. As held by a Division Bench of this Court in *Harchand Singh v. Gurdip Singh* (2) 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.

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The above finding is based on a passage appearing in *Edulji Muncherji Wacha v. Vullebhoy Khanbhoy* (1). Further in a partnership case the positions of the parties may be transposed, that is a defendant may become a plaintiff or one or more defendants may be found entitled with the plaintiff to certain sums of money payable by one or more of the remaining defendants. In such latter case there is one decree divisible in certain fixed proportions among the plaintiff or plaintiffs and the particular defendant or defendants. The subject matter of such a suit would be the severance of the jural relationship and determination of the relative shares of the partners. The aggregate of the specific amounts will represent the value of the subject matter of the suit even though the tentative value fixed by the plaintiff be less or more. It will be apparent from the above reasoning that there is no conflict between the two decisions of this Court as in the present case the two defendants who have been found entitled to sums of Rs. 4,500 and Rs. 3,000 respectively will rank as plaintiffs for this purpose and the total amount of the decree being Rs. 10,000, this for the purposes of appeal must be treated as the value of the suit; hence the appeal lies to this Court and the preliminary objection is overruled.

[*The remainder of this judgment is not required for the purposes of the report.* ED.]

BROADWAY J.

BROADWAY J.—I concur.

N. F. E.

Appeal accepted.