ADDANKI NARAYANAPPA & ANR.

v.

BHASKARA KRISHTAPPA AND 13 ORS.

January 21, 1966

[A.K. SARKAR, K.N. WANCHOO AND J.R. MUDHOLKAR, JJ.]

Registration Act (16 *of* 1908), *s.* 17(1)(*c*)—*Partnership assets consisting of immovable property—Relinquishment by one partner of his share—Deed of relinquishment if should be registered.*

The members of two Joint Hindu families (Appellants and Respondents) entered into partnership for carrying on business. The members of one family filed a suit in 1949 for dissolution of the partnership and the taking of accounts. The members of the second family raised the defence that the partnership was dissolved even in 1936 and that accounts were then settled between the two families. In support of that plea they relied upon an unregistered document, which showed that the partnership had come to an end. It was contended by the appellants-plaintiffs, that since the partnership assets included immovable property and the document recorded the relinquishment by the members of the plaintiff-family of their interest in those assets, the document was compulsorily registerable under s. 17(1)(c) of the Registration Act, 1908; and that as it was not registered, it was inadmissible in evidence to prove the dissolution as well as the settlement of accounts.

HELD : The document only records the fact that the partnership had come to an end. It cannot be said to convey any immovable property by a partner to another, expressly or by necessary implication, nor is there any express reference to any immovable property, except a recital of a fact which had taken place earlier. Therefore, the unregistered deed of release by one family of its share in the partnership was admissible in evidence, even though the partnership owned immovable property. [410 D. E]

The interest of a partner in partnership assets comprising of movable as well as immovable property should be treated only as movable property. His right during the subsistence of the partnership is to get his share of the profits from time to time, as may be agreed upon among the partners, and his right after the dissolution of the partnership, or with his retirement from the partnership, is only to receive the money value of his share in the net partnership assets as on the date of dissolution or retirement, after a deduction of liabilities and prior charges. [406 E; 407 F-G]

Case law reviewed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 299 of 1961.

Appeal by special leave from the judgment and decree dated December 8, 1958 of the Andhra Pradesh High Court in Second Appeal No. 845 of 1953.

Alladi Kuppuswami and *R. Gopalakrishnan*, for the appellants.

N. C. Chatterjee, S.G. Patwardhan, S. Balakrishnan, R. Thiagarajan for *N.S. Mani*, for respondents Nos. 4, 7 and 8.

A The Judgment of the Court was delivered by

Mudholkar, J. In this appeal by special leave from a judgment of the High Court of Andhra Pradesh the question which arises for consideration is whether the interest of a partner in partnership assets comprising of movable as well as immovable property should be treated as movable or immovable property for the purposes of s. 17(1) of the Registration Act, 1908. The question arises in this way. Members of two joint Hindu families, to whom we would refer for convenience as the Addanki family and the Bhaskara family, entered into partnership for the purpose of carrying on business of hulling rice, decorticating groundnuts etc. Each family had half share in that business. The capital of the partnership consisted, among other things, of some lands belonging to the families. During the course of the business of the partnership some more lands were acquired by the partnership. The plaintiffs who are two members of the Addanki family instituted a suit in the court of Subordinate Judge, Chittoor on March 4, 1949 for the following reliefs :

> "(*a*) for a declaration that the suit properties belong to the plaintiffs and defendants 10 to 14 and defendants 1 to 9 equally for a division of the same into four equal shares, one share to be delivered to the plaintiffs or for a division of the same into two equal shares to be delivered to the plaintiffs and the defendants 10 to 14 jointly;
>
> (*b*) or in the alternative dissolving the partnership between the plaintiffs and defendants 10 to 14 on the one hand and defendants 1 to 9 on the other hand directing accounts to be taken;
>
> (*c*) directing the defendants 1 to 9 to render accounts of the income of the suit properties;
>
> (*d*) directing the defendants 1 to 9 to pay the costs of the suit to the plaintiffs;
>
> (*e*) and pass such further relief as may be deemed fit in the circumstances of the case."

It may be mentioned that in their suit the plaintiffs made all the members of the Bhaskara family as defendants and also joined those members of the Addanki family who had not joined as plaintiffs. We are concerned here only with the defence of the members of the Bhaskara family. According to them the partnership was dissolved in the year 1936 and accounts were settled between the two families. In support of this plea they have relied upon a *karar* executed in favour of Bhaskara Gurappa

Setty, who was presumably the *karta* of the Bhaskara family, by five members of the Addanki family, who presumably represented all the members of the Addanki family. Therefore, according to the Bhaskara defendants, the plaintiffs had no cause of action. Alternatively they contended that the suit was barred by time. In the view which we take it would not be necessary to consider the second defence raised by the Addanki family.

> The relevant portion of the *karar* reads thus : "As disputes have arisen in our family regarding partition, it is not possible to carry on the business or to make investment in future. Moreover, you yourself have undertaken to discharge some of the debts payable by us in the coastal parts in connection with our private business. Therefore, from this day onwards we have closed the joint business. So, from this day onwards, we have given up (our) share in the machine etc., and in the business, and we have made over the same to you alone completely by way of adjustment. You yourself shall carry on the business without ourselves having anything to do with the profit and loss. Herefor, you have given up to us the property forming our Venkatasubbayya's share which you have purchased and delivered possession of the same to us even previously. In case you want to execute and deliver a proper document in respect of the share which we have given up to you, we shall at your own expense, execute and deliver a document registered."

This document on its face shows that the partnership business had come to an end and that the Addanki family had given up their share in the "machine etc., in the business" and had made it over to the Bhaskara family. It also recites the fact that the Addanki family had already received certain property which was purchased by the partnership presumably as that family's share in the partnership assets. The argument advanced by Mr. Alladi Kuppuswami is that since the partnership assets included immovable property and the document records relinquishment by the members of the Addanki family of their interest in those assets, this document was compulsorily registerable under s. 17(1)(c) of the Registration Act and that as it was not registered it is inadmissible in evidence to prove the dissolution of the partnership as well as the settlement of accounts.

Direct cases upon this point of the courts in India are few but before we examine them it would be desirable to advert to the provisions of the Partnership Act itself bearing on the interest of partners in partnership property. Section 14 provides that subject to contract between the partners the property of the firm includes all property originally brought into the stock of the firm or acquired

A by the firm for the purposes and in the course of the business of the firm. Section 15 provides that such property shall ordinarily be held and used by the partners exclusively for the purposes of the business of the firm. Though that is so a firm has no legal existence under the Act and the partnership property will, therefore, be deemed to be held by the partners for the business of the part-
B nership. Section 29 deals with the rights of a transferee of a partner's interest and sub-s. (1) provides that such a transferee will not have the same rights as the transferor partner but he would be entitled to receive the share of profits of his transferor and that he will be bound to accept the account of profits agreed to by the partners. Sub-section (2) provides that upon dissolution of
C the firm or upon a transferor-partner ceasing to be a partner the transferee would be entitled as against the remaining partners to receive the share of the assets of the firm to which his transferor was entitled and will also be entitled to an account as from the date of dissolution. Section 30 deals with the case of a minor admitted to the benefits of partnerships. Such minor is given a right to his share of the property of the firm and also a right to
D a share in the profits of the firm as may be agreed upon. But his share will be liable for the acts of the firm though he would not be personally liable for them. Sub-section (4) however, debars a minor from suing the partners for accounts or for his share of the property or profits of the firm save when severing his connection with the firm. It also provides that when he is severing his connec-
E tion with the firm the court shall make a valuation of his share in the property of the firm. Sections 31 to 38 deal with incoming and outgoing partners. Some of the consequences of retirement of a partner are dealt with in sub-ss. (2) and (3) of s. 32 while some others are dealt with in ss. 36 and 37. Under s. 37 the outgoing partner or the estate of a deceased partner, in the absence of a contract to the contrary, would be, entitled to at the option of
F himself or his representatives to such share of profits made since he ceased to be a partner as may be attributable to the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm. The subject of dissolution of a firm and the consequences are dealt with in chapter VI, ss. 39 to 55. Of these the one which is relevant for
G this discussion is s. 48 which runs thus :

> "In settling the accounts of a firm after dissolution the following rules shall, subject to agreement by the partners, be observed :
>
> H (*a*) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(*b*) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order :—

(*i*) in paying the debts of the firm to third parties;

(*ii*) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(*iii*) in paying to each partner rateable what is due to him on account of capital; and

(*iv*) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits."

From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing, to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in cl. (a) and sub-cls. (*i*), (*ii*) and (*iii*) of cl. (*b*) of s. 48. It has been stated in Lindley on Partnership, 12th ed. at p. 375 :

"What is meant by the share of a partner is his proportion of the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged. This it is, and this only which on the death of a partner passes to his representatives, or to a legatee of his share .....and which on his bankruptcy passes to his trustee."

This statement of law is based upon a number of decisions of the English courts. One of these is *Rodriguez* v. *Speyer Bros.*(1) where at p. 68 it has been observed :

(1) 1919] A.C. 59.

A "When a debt due to a firm is got in no partner, has any definite share or interest in that debt; his right is merely to have the money so received applied, together with the other assets, in discharging the liabilities of the firm, and to receive his share of any surplus there may be when the liquidation has been completed."

B No doubt this decision was subsequent to the enactment of the English Partnership Act of 1890. Even in several earlier cases, as for instance, *Darby* v. *Darby*(1) the same view has been expressed. That was a case where two persons purchased lands on a joint speculation with their joint monies for the purpose of converting them into building plots and reselling them at a profit C or loss. It was held by Kindersley V.C. that there was a conversion of the property purchased out and out and upon the death of one of the partners his share in the part of the unrealised estate passed to his personal representatives. After examining the earlier cases the learned Vice-Chancellor observed at p. 995 :

D "The result then of the authorities may be thus stated :—Lord Thurlow was of opinion that a special contract was necessary to convert the land into personalty : and Sir W. Grant followed that decision. Lord Eldon on more than one occasion strongly expressed his opinion that Lord Thurlow's decision was wrong. Sir J. Leach E clearly decided in three cases that there was conversion out and out : and Sir L. Shadwell, in the last case before him, clearly decided in the same way. That is the state of the authorities.

Now it appears to me that, irrespective of authority, and looking at the matter with reference to principles well F established in this Court, if partners purchase land merely for the purpose of their trade, and pay for it out of the partnership property, that transaction makes the property personalty, and effects a conversion out and out."

He then observed :

G "This principle is clearly laid down by Lord Eldon in *Crawshav* v. *Collins*(2) and by Sir W. Grant in *Featherstonhaugh* v. *Fenwick*(3) and the right of each partner to insist on a sale of all the partnership property, which arises from *what is implied in the contract of partnership*, is just as stringent as a special contract would be. If, then, H this rule applies to ordinary stock-in-trade, why should it

(1) 61 E.R. 992. (2) 15 Ves. 218.

(3) 17 Ves. 298.

not apply to *all* kinds of partnership property ? Suppose that partners, for the purpose of carrying on their business, purchase, out of the funds of the partnership, leasehold estate, or take a lease of land, paying the rent out of the partnership funds, can it be doubted that the same rule which applies to ordinary chattels would apply to such leasehold property ? I do not think it was ever questioned that, on a dissolution, the right of each partner to have the partnership effects sold applies to leasehold property belonging to the partnership as much as to any other stock-in-trade. No one partner can insist on retaining his share unsold. Nor would it make any difference in whom the legal estate was vested, whether in one of the partners or in all; this Court would regulate the matter according to the equities. And Sir W. Grant so decided in *Featherstonhaugh* v. *Fenwick*.( )"

We have quoted extensively from this decision because of the argument that the decision in *Rodriguez's* case(2) would have been otherwise but for s. 22 of the English Act. Adverting to this Lindley has said :

"From the principle that a share of a partner is nothing more than his proportion of the partnership assets after they have been turned into money and applied in liquidation of the partnership, whether its property consists of land or not, must, as between the real and personal representatives of a deceased partner, be deemed to be personal and not real estate, unless indeed such conversion is inconsistent with the agreement between the parties. Although the decisions upon this point were conflicting, the authorities which were in favour of the foregoing conclusion certainly preponderated over the others, and all doubt upon the point has been removed by the Partnership Act, 1890, which contains the following section :

22. Where land or any heritable interest therein has become partnership, property it shall, unless the contrary intention appears, be treated as between the partners (including the representative of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal or movable and not real or heritable estate."

Even in a still earlier case *Foster* v. *Hale*(3) a person attempted to obtain an account of the profits of a colliery on the ground that it was partnership property and it was objected that

(1) 17 Ves. 298. (2) [1919] A.C. 59.
(3) 5 Ves. 308.

A there was no signed writing, such as the Statute of Frauds required. Dealing with it the Lord Chancellor observed :

> "That was not the question : it was whether there was a partnership. The subject being an agreement for land, the question then is whether there was a resulting trust for that partnership by operation of law. The question
B of partnership must be tried as a fact, and as if there was an issue upon it. If by facts and circumstances it is established as a fact that these persons were partners in the colliery, in which land was necessary to carry on the trade, the lease goes as an incident. The partnership being established by evidence upon which a partnership may be
C found, the premises necessary for the purposes of that partnership are by *operation of law* held for the purposes of that partnership."

It is pointed out by Lindley that this principle is carried to its extreme limit by Vice-Chancellor Wigram in *Dale* v. *Hamilton* (1). Even so, it is pointed out that it must be treated as a binding
D authority in the absence of any decision of the Court of Appeal to the contrary.

It seems to us that looking to the scheme of the Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease
E to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in,
F much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as
G on the date of dissolution or retirement after a deduction of liabilities and prior charges. It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by s. 29(1), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to
H by the partners. There are not many decisions of the High Courts on the point. In the few that there are the preponderating view is

(1) 5 Ha. 369 on appeal 2 Ph. 266.

in support of the position which we have stated. In *Joharmal* v. *Tejram Jagrup*(1) which was decided by Jardine and Telang JJ., the latter took the view that though a partner's share does not include any specific part of any specific item of partnership property, still where the partnership is entitled to immovable property, such share does include an interest in immovable property and, therefore, every instrument operating to create or transfer a right to such share requires to be registered under the Registration Act. In coming to this conclusion he mainly purported to rely upon an observation contained in the fifth edition of Lindley on Partnership at p. 347. This observation is not to be found in the present edition of Lindley's Partnership nor in the 9th or 10th editions which were brought to our notice. The 5th edition, however, is not available. The learned Judge after quoting an earlier statement which is that the "doctrine merely amounts to this that on the death of a partner his share in the partnership property is to be treated as money, not as land" says : "This obviously would not affect matters either during the lifetime of a partner—Lindley, L.J., says in so many words that it has no practical operation till his death (p. 348)—or as against parties strangers to the partnership, *e.g.*, the firm's debtors." While it is true that the position so far as third persons are concerned would be different it may be pointed out that in *Forbes* v. *Steven*(2) James V.C., has, as quoted by the learned Judge, said : "It has long been the settled law of this Court that real estate bought or acquired by a partnership for partnership purposes (in the absence of some controlling agreement or direction to the contrary), is, as between the partners and as between the real and personal representatives of a partner deceased personal property, and devolves and is distributable and applicable as personal estate and as legal assets." Telang J., seems to have overlooked, and we say so with great respect, the words "as between the partners" which precede the words "and as between the real and personal representative of the partner deceased" and to have confined his attention solely to the latter. We have not found in any of the editions of Lindley's Partnership an adverse criticism of the view of the Vice-Chancellor. But, on the contrary, as already stated, the view expressed is in full accord with these observations. Jardine J., has discussed the English authorities at length and after referring to the documents upon which reliance was placed on behalf of the defendant stated his opinion thus :

> "To lay down that the three letters in question, which deal generally with the assets, movable and immovable, without specifying any particular mortgage or other interest in real property require registration, would, I incline to think, in the present state of the authorities, go

(1) I.L.R. 17Bom. 235. (2) L.R. 10 Eq, 178.

A too far. It may be argued that such letters are not 'instruments of gift of immovable property' but rather disposals of a share in a partnership of which the business is money lending, and the mortgage securities merely incidental thereto."

B The view of Telang J., was not accepted by the Madras High Court in *Chitturi Venkataratnam* v. *Siram Subba Rao*(1). The learned Judges there discussed all the English decisions as also the decisions in *Sudarsanam Maistri* v. *Narasimhulu Maistri*(2) and *Gopala Chetty* v. *Vijayaraghavachariar*(3) and the opinion of Jardine J., in *Joharmal's* case(4) held that an unregistered deed of release by a partner of his share in the partnership business is C admissible in evidence, even where the partnership owns immovable property. The learned Judges pointed out that though a partner may be a co-owner in the partnership property he has no right to ask for a share in the property but only that the partnership business should be wound up including therein the sale of immovable property and to ask for his share in the resulting assets. D This decision was not accepted as laying down the correct law by a Division Bench of the same High Court in *Samuvier* v. *Ramasubbier*(5). The learned Judges there relied upon the decision in *Ashworth* v. *Munn*(6) in addition to the opinion of Telang J., and also referred to the decision *Gray v. Smith*(7) in coming to a conclusion contrary to the one in the earlier case. It may be E pointed out that the learned Judges have made no reference to the decision of the Privy Council in *Gopla Chetty's* case(3) though that was one of the decision relied upon by Phillips J., in the earlier case. In so far as *Ashworth's* case(6) is concerned that was a case which turned on the provisions of the Mortmain Acts and is not quite pertinent for the decision on the point which was before them and which is now before us. In *Gray.* v. *Smith*(7) Kake- F wich J., held that an agreement by one of the partners to retire and to assign his share in the partnership assets including immovable property, is an agreement to assign an interest in land and falls within the Statute of Frauds. The view of Kekewich J., seems to have received the approval of Cotton L.J., one of the Judges of the Court of Appeal, though no argument was raised G before it challenging its correctness. It may, however, be observed that even according to Kekewich J., the authorities (*Foster* v. *Hale*(8) and *Dale* v. *Hamilton*(9) establish that one may have an agreement of partnership by parol, notwithstanding that the partnership is to deal with land. He, however, went on to observe :

(1) I.L.R. 49 Mad. 738. (2) I.L.R. 1925 Mad. 149.
H (3) I.L.R. 45 Mad. 378 (P.C.)=[1922] A.C. 1 (4) I.L.R. 17 Bom. 235.
(5) I.L.R. 55 Mad. 72. (6) (1880) 15 Ch. D. 363.
(7) 43 Ch. D. 208. (8) 5 Ves. 308.
(9) 5 Ha. 369 on appeal 2 Ph. 266

"But it does not seem to me to follow that an agreement for the dissolution of such a partnership need not be expressed in writing, or rather than there need not be a memorandum of the agreement for dissolution when one of the terms of the agreement, either expressly or by necessary implication, is that the party sought to be charged must part with and assign to others an interest in land. That seems to me to give rise to entirely different considerations. In the one case you prove the partnership by parol; you prove the object, the terms of the partnership, and so on. But in the other case it is one of the essential terms of the agreement that the party to be charged shall convey an interest in land, and that seems therefore to bring it necessarily within the 4th section of the Statute of Frauds".

In the case before, us also in *Samuvier's* case(1) the document cannot be said to convey any immovable property by a partner to another expressly or by necessary implication. If we may recall, the document executed by the Addanki partners in favour of the Bhaskara partners records the fact that the partnership business has come to an end and that the latter have given up their share in "the machine etc., and in the business" and that they have "made over same to you alone completely by way of adjustment". There is no express reference to any immovable property herein. No doubt, the document does recite the fact that the Bhaskara family has given to the Addanki family certain property. This, however, is merely a recital of a fact which had taken place earlier. To cases of this type the observations of Kekewich J., which we have quoted do not apply. The view taken in *Samuvier's* case(1) seemed to commend itself to Varadachariar J., in *Thirumalappa* v. *Ramappa* but he was reversed in *Ramappa* v. *Thirumalappa*.(2)

We may also refer to the decision of a Full Bench in *Ajudhia Pershad Ram Pershad* v. *Sham Sunder & Ors.*(3) in which Cornelius J., has discussed most of the decisions we have earlier referred to in addition to several others and reached the conclusion that while a partnership is in existence, no partner can point to any part of the assets of the partnership as belonging to him alone. After examining the relevant provisions of the Act, the learned judge observed :

"These sections require that the debts and liabilities should first be met out of the firm property and there-

(1) I.L.R. 55 Mad. 72. (2) A.I.R. 1939 Mad. 884.

(3) A.I.R. 1947 Lah. 13.

A after the assets should be applied in rateable payment to each partner of what is due to him firstly on account of advances as distinguished from capital and, secondly on account of capital, the residue, if any, being divided rateably among all the partners. It is obvious that the Act contemplates complete liquidation of the assets of the B partnership as a preliminary to the settlement of accounts between partners upon dissolution of the firm and it will, therefore, be correct to say that, for the purposes of the Indian Partnership Act, and irrespective of any mutual agreement between the partners, the share of each partner is, in the words of Lindley : "his proportion C of the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged."

This indeed is the view which has commended itself to us.

Mr. Kuppuswamy then referred us to two decisions of English courts in *In re Fuller's Contract*(1) and *Burdett-Coutts* v. *Inland* D *Revenue Commissioners*(2) and on the passage at pp. 394 and 395 in *Lindley's Partnership* under the head "Form of Transfer" in support of his argument. Both the cases relied upon deal with contracts with third parties and not with agreements between partners *inter se* concerning retirement or dissolution. The passage from Lindley deals with a case where there is an actual E transfer of immovable property and is, therefore, not in point.

Mr. Chatterjee brought to our notice some English decisions in addition to those we have adverted to in support, which agree with the view taken in those cases. He has also referred to the decisions in *Prem Raj Brahmin* v. *Bhani Ram Brahmin*(3) and F *Firm Ram Sahay* v. *Bishwanath*(4). We do not think it necessary to discuss them because they do not add to what we have already said in support of our view.

For these reasons we uphold the decree of the High Court and dismiss the appeal with costs.

Appeal dismissed.

(1) [1933] Ch. D. 652.
(2) [1960] 1 W.L.R. 1027.
(3) I.L.R. [1946] 1 Cal. 191.
(4) A.I.R. 1963 Patna 221.