W. Krishnamachariar Vs. A. Sankara Sah

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Court : Mumbai

Decided On : Jul-19-1920

Reported in : (1920)22BOMLR1343

Judge : Buckmaster,; Atkinson,; John Edge and ;Ameer Ali, JJ.

Appellant : W. Krishnamachariar

Respondent : A. Sankara Sah

Disposition : Appeal allowed

Judgement :

Buckmaster, J.

1. This appeal involves the construction of an inartistic document and the application of clear provisions of law to ascertained facts.

2. In December, 1910, the Corporation of Madras were inviting tenders for a contract to mend roads and supply the necessary material. The first appellant introduced the matter to the respondent who is a man of means. The father of the second appellant appears to have possessed considerable knowledge of the work that was required, but unfortunately he was insolvent. Negotiations then took place between the two appellants and the respondent as to the best means by which the tender for the contract might be put forward and the resulting profits divided between them. Ultimately it was arranged that a lease of certain quarries from which the metal would be obtained should be taken from the Corporation in the name of the first appellant who should then transfer it to the respondent, the tender for the work being made in the name of the defendant. The defendant was to provide all the money, the appellants doing all the work, it being understood that the second appellant would discharge his duties vicariously through his father. This arrangement was put in writing and its terms appear in a letter which was signed by the respondent on the 30th December, 1910, and was addressed to the two appellants. It is as follows:-

To M. B. Ry.

W. Krishnama Chariar and A. V. Subramania Ayyar.

In respect of the work to be sanctioned in my name in the tender which is going to be given in the year lull by the Municipality the advance and the money required therefor should be supplied by me alone. That sum should bear interest at 1-2 annas per cent. You two should do the works taking pains. In respect of the profit and loss W. Kriahnama Chariar should have 5-16th share and A. V. bubramania Ayyar 1/4th

share for doing the work taking pains and 5-16th share. In this manner the one share should be divided and taken at the end. Accounts, cash and all, should remain with me alone. The expenses of gumastha, etc., should be borne in common.

(Signed) A. SANKABA SAH.

3. The tender was made and accepted, and a contract entered into with the Corporation to do the work for three years from April, 1911. The actual contract is not before their Lordships, but it is agreed that it ran for three years from the date mentioned and that its purpose was to the effect already stated.

4. The work proceeded under the contract, the father of the second appellant coming in and doing his work, until October, 1911. On that date it appears that the first appellant abandoned his duties, and it is found by the learned Judge in the High Court of Madras that thereafter he ceased to attend to the partnership business. The second appellant never appears to have performed much work on his own account, and the work that his father was to undertake ended on the 31st March, 1912, when he declined to do anything more in the matter. The respondent thereafter performed what other work was required, either himself or through his agents, until the completion, of the contract in April, 1914. The appellants, thereupon, started an action, claiming that the relationship between themselves and the respondent was that of partners, and asking for a declaration that the partnership terminated from the 31st March, 1914, with the usual and proper accounts and enquiries. The respondent denied that the relationship between himself and the appellants was that of partners at all. He asserted that he had employed them to potions work for him in connection with the contract on terms that their payment should be measured by a fraction of the profits to be earned, and consequently when they left his service all their claims against him were at an end. Both the Judge of the High Court of Madras and the learned Judges on appeal have decided against this contention, and held that the relationship was that of partners and not master and servants. With this conclusion their Lordships are in entire agreement.

5. The history of the transaction and the terms of the document itself show that the three people were together concerned in carrying out the contract obtained from the Madras Corporation upon the terms that the work was to be rendered by the two appellants, the second appellant being represented by his father, and that the money was to be provided by the respondent. Almost every word of the letter points to this conclusion; the first sentence which throws upon the respondent the duty of paying the money necessary for the work taken in his name is inconsistent with the view that he had already undertaken this obligation entirely on his own account, and was going to bring in the two appellants as salaried servants to discharge the work.

6. The division of the profits and loss in the fractions mentioned and the rate of interest fixed for the capital introduced, though capable of being made applicable to provision for payment of salaries by a share in profits, are far more nearly allied to the usual provisions of a partnership; if indeed the profit and loss be taken as meaning shares in profit and in loss, and this their Lordships think is the true interpretation the only possible construction open is that of partnership. The final words which provide for the division of the share, the accounts remaining with the respondents, and the common' share of expenses, are all proper partnership provisions and have no application to a contract of service.

7. The respondent, however, further pleaded that if the partnership were established, it was ended owing to the action of the appellants in refusing to perform their work, and it is this view which was accepted in the appellate Court, though not by the learned judge in the Court of first instance. The view of the appellate Court is that the partnership was ended by the first plaintiff in October, 1911; that the first plaintiff then gave up the work and the defendant accepted that position. But this, if that be the true view of the evidence, is not sufficient to determine the partnership between three people. Refusal and neglect on the part of any one to perform the duties undertaken by him would give to any other partner the right to apply for dissolution, or without legal proceedings the partnership could by agreement be dissolved, but for such agreement the consent of all the partners is necessary, and it is nowhere suggested that any such consent was obtained. The rights, therefore, given to the defendant by the action of the first appellant were not exercised, and the partnership continued. The same result occurred when the father of the second appellant himself declined to go on. The consequence is that the partnership never came to an end except by efflux ion of time and that the plaintiffs are entitled both to the declaration they seek as to the period of dissolution and to the account of profits earned.

8. In taking these accounts, however, it will be essential to bear in mind that the two appellants withheld, the first as from October, 1911, and the other as from March. 1912, the duties which under the partnership agreement they were bound to perform. They alleged indeed that as from the date when they ceased working there was little more work to do, that the work really depended upon the initial organisation of the whole enterprise and that when this was once done, the matter could easily proceed. This may or may not be the fact, and it is quite possible that services rendered during the first twelve months of the partnership may be of greater value than those rendered during the remaining portion of the time, But the claim of the plaintiffs for an account of the profits without a proper allowance being made for the fact that their services were deliberately withheld, is a claim which cannot be maintained.

9. The learned Judge who tried the case appears to their Lordships to have directed the accounts in the proper form, subject to this that their Lordships think it should be made plain upon the face of the order that the work which the respondent was called upon to perform was that very part of the partnership which the appellants had undertaken to execute.

10. The enquiry, therefore, should be as to what is a proper allowance to b3 made to the defendant by reason of the fact that owing to the refusal of the plaintiffs to perform their obligation under the partnership agreement, the business was continued by him from the 31st October, 1911, without the assistance of the first plaintiff, and from the 31st March, 1912, without the assistance of the father of the second plaintiff. Subject to this slight variation, their Lordships think that the judgment of the learned judge in the Court of first instance was correct, and should be restored, and that the appeal against the judgment of the High Court of Madras (Appellate should be allowed and that the respondent; should pay the costs here and below, and their Lordships will humbly advise His Majesty accordingly.