

Ram Sewak Vs. Ram Charan (Deceased by L. Rs.) and anr.

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Court : Allahabad

Decided On : Nov-27-1981

Reported in : AIR1982All177

Judge : Deoki Nandan, J.

Acts : [Contract Act, 1872](#) - Sections 23

Appeal No. : Second Appeal No. 509 of 1970

Appellant : Ram Sewak

Respondent : Ram Charan (Deceased by L. Rs.) and anr.

Advocate for Def. : G.P. Bhargava and ;A.N. Bhargava, Adv.

Advocate for Pet/Ap. : D.P. Bahadur, Adv.

Disposition : Appeal dismissed

Judgement :

Deoki Nandan, J.

1. This is a plaintiff's second appeal in a suit for accounts and for recovery of the amount found due to the plaintiff on the taking of accounts. The trial Court decreed the suit for recovery of Rs. 17,695.78 from defendants Nos, 1 and 3, but the lower appellate Court has dismissed the same. Ram Charan and Damordar Das. defendants Nos. 3 and 4, are father and son and members of a Hindu joint family. They carry on Kerana business. Ram Sewak, the plaintiff and Madan Lal, the first defendant were their servants and looked after the business. In Nov., 1953 Ram Charan decided to close the business. On the request of Ram Sewak and Madan Lal, Ram Charan handed over the business to them with the stock worth Rupees 40,125/- which was treated as a loan repayable with interest by them to Ram Charan. Ram Sewak and Madan Lal carried on the business as equal partners. It was decided that out of the profits one Anna in a rupee would be given for charity in favour of a temple of Rashik Siroman Ji Maharaj Biraj-man. The deity was impleaded as the second defendant in the suit through Ram Charan. The business continued in partnership till Nov., 1958 when difference arose between the parties and the plaintiff brought the suit giving rise to the present second appeal with the allegations that Madan Lal and Ram Charan had in collusion with each other taken possession over the shop, the stocks and cash therein, and had turned him out, and with effect from 11th Nov. 1958 Madan Lal and Ram Charan were carrying on the business to his exclusion.

2. The defence was that Ram Sewak the plaintiff had by an agreement dissolved the partnership and handed back the business to Ram Charan after accounting, as a result of which it was found that the stock-in-trade amounted to Rs. 45,500/-, the cash in hand to Rs. 2,793/-, the debts due from other persons to Rs. 31,758/-, and Miscellaneous items to, Rs. 639/- + Rs. 42/- and that whiic a sum of Rs. 5,779/- was due from the plaintiff, the sum of Rs. 1,067/- was due from the first defendant; and the liability of the business to Ram Charan equalled the total of these amounts. It was further alleged that Ram Sewak thereupon voluntarily retired from the business, promising to pay the sum of Rupees 5,000/- and odd that was due from him. Madan Lal and Ram Charan brought a suit for recovery of that amount, being Suit No. 45 of 1959.

3. It appears that after the institution of the suit giving rise to the present second appeal, the plaintiff Ram Sewak got a commission issued. An inventory was prepared on 41h Feb., 1959 which disclosed that the value of the goods in the shop was Rs. 54, 117/-.

4. The suit was decreed. The preliminary decree declared and directed-- (1) that the firm was dissolved on 10th of Nov., 1958; (2) that Ram Sewak had not been turned out and that the business had been closed by mutual consent; (3) that no accounting was done; (4) that Ram Sewak, that is, the plaintiff himself, and not Madan Lal, that is, the first defendant, was the accounting party. It was also found that the keys of the safe used to remain with Ram Sewak and it was he who handled cash.

5. A Commissioner was appointed to take the accounts. He found that apart from the profits disclosed by the books, there were concealed profits amounting to Rs. 27,000/- or Rs. 29,000/-. According to the finding of the trial Court, the amount of the concealed profit was Rs. 27,000/-. The trial Court further found that the concealed profits remained either in the safe or were given to Ram Charan. After making certain enquiry, the trial Court found that the plaintiff's share after adjusting the amount drawn by him came to Rs. 17,695.78 and passed the final decree for recovery of that amount from defendants Nos. 1 and 3.

6. A perusal of the judgment of the lower appellate Court shows that there was no dispute between the parties about the result or the determination of the amounts due or not due on the basis of the books of accounts. The dispute centered round the figure of the concealed profits and as to their destination. The lower appellate Court found that by adding three figures of Rs. 1,000/-, Rs. 2,000/- and Rs. 7,000/- total Rs. 10,000/- to the figure of Rs. 27,000/- found to be concealed profits by the Commissioner, the figure of concealed profits amounted to Rs. 37,000/-, but it found that only the sum of Rs. 12,000/- could be said to have reached the hands of Ram Charan and not the entire amount of Rs. 37,000/-. In the result the lower appellate Court held that no amount could be said to be due from the defendant to the plaintiff and dismissed the suit with the further observation that so far as the amount said to be due from the plaintiff was concerned, the defendant had already filed a suit which was pending and that will be determined in that suit and further that in view of the admission of the parties that they had been keeping double set of account for evading payment of income-tax and sales tax and that they had in fact evaded payment of taxes, the matter may be brought to the notice of the Income-tax and Sales Tax Authorities for such action as they may deem proper. The judgment of the lower appellate Court is dated 9th Sept., 1969. I do not know the result if any, of the direction made by the lower appellate Court for reporting the case to the Tax

Authorities. But when I read the judgment I felt that this is one of those cases where the Court should have refused to entertain the suit on the ground of public policy, as it involves directing the recovery of an amount found to be due to either party as a share of the profits which had been deliberately concealed by the parties from the books of account in order to evade the payment of taxes. No Court can countenance a deliberate evasion of the tax laws of the country, and to lend the aid of the Court for recovering an amount which had been deliberately kept concealed by the parties in order to evade payment of the taxes due thereon, would amount to aiding and abetment of the evasion of the laws by the Court itself. It was the case of the parties that all the transactions were not entered in the books of account in order to evade payment of income-tax as well as sales tax. It is highly probable that the entire amount of concealed profits represented the amount of sales tax evaded on the transactions of sale. I say so because the incidence of sales tax is in many cases much higher than the margin of profit of a dealer on a transaction of sale.

7. This is as far as the Court's conscience is concerned. In strict law Section 23 of the Contract Act provides that the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; orthe Court regards it as immoral, or opposed to public policy, 'and' in each of these cases, the consideration or object of an agreement is said to be unlawful 'and every agreement of which the object or consideration is unlawful, is void.' It is trite that a void agreement cannot be enforced by a Court.

8. In the present case the parties had agreed to carry on business in partnership. There was no illegality in that. The carrying on of business for earning profit was also lawful. But the parties further agreed in the course of carrying on their business that they would conceal some part of their business activity and would not enter certain items in the books of account maintained by them, in order to evade payment of Income-tax and sales tax. It needs no showing that evasion of income-tax and sales tax is forbidden by law and at any rate defeats the provision of the laws under which income-tax and sales tax are levied and collected. The object of the agreement to carry on business in partnership was to earn profits. The further object was that part of the profits will be earned in such a way or retained in such a manner as to evade the payment of taxes. That was forbidden by, and defeated the provisions of the tax laws. Therefore, the object of the agreement was, in part at least forbidden by law and such as defeated the provisions of law. Further, it cannot be disputed that evasion of taxes is opposed to public policy. What is permitted is lawful avoidance of taxes, or in other words to so arrange one's affairs as to reduce the incidence of taxes to the minimum leviable under the law, but evasion of the law, or falsification of accounts or deliberate non-payment of taxes though due or attempt to avoid payment of taxes by violating the tax laws is certainly not permitted. I have, therefore, not the slightest hesitation in holding that the agreement between the parties in so far as it related to earning of concealed profits, or concealment of the profits earned by falsification of accounts, was wholly void and no Court could enforce the agreement by directing an enquiry into the amount, or the destination, of the concealed profits in order to enforce the recovery of the share therein of one party from another.

9. The appeal fails and is dismissed with costs.