

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2741 OF 2009
ARISING OUT OF SLP (C) NO. 15685 OF 2008

USHA GOPIRATHNAM & ORS.

..APPELLANT(S)

VERSUS

P.S.RANGANATHAN (D) THR. LRs. & ORS.

..RESPONDENT(S)

J U D G M E N T

1. This appeal is directed against the final judgement and order dated 22.01.2008 passed by the High Court of Karnataka at Bangalore, whereby the High Court dismissed an appeal filed by the Appellants herein and affirmed the order of the II Additional Civil Judge (Senior Division), Bangalore Rural, Bangalore dated 16.09.2006, which had dismissed a civil suit filed by the Plaintiff/Appellants seeking dissolution of Respondent No. 4/Partnership Firm, M/s. High Clere Stud and Agricultural Farm.

2. *Parties before this Court:* The Appellants before this Court are the legal heirs of late Mr. Gopirathnam. Mr. Gopirathnam

was one of the partners of the Respondent No. 4 Firm. The partnership firm originally comprised of Mr. P.S. Ranganathan, Mr. Lavakumar and Mr. Basanth Kumar, apart from Mr. Gopirathnam. Respondent Nos. 1.1 and 1.2 are the legal heirs of late Mr. P.S. Ranganathan. Respondent Nos. 2.1 and 2.2 are the legal heirs of Mr. Lavakumar and Respondent No. 3 is Mr. Basanth Kumar himself. Respondent Nos. 5 to 7 are subsequent purchasers of certain properties originally owned by the Firm.

3.1 Facts leading to the filing of this Appeal: The factual background of the present case has a long history, which can be traced back to 01.01.1966, when a deed of partnership was entered into between Late Mr. Gopirathnam, Late Mr. P.S. Ranganathan, Late Mr. Lavakumar and Mr. Basanth Kumar. The partners were related to each other with Gopirathnam, Lavakumar and Basanth Kumar being brothers and P.S. Ranganathan being the brother-in-law of Gopirathnam. The partnership firm, which was named as M/s. High Clere Stud and Agricultural Farms, was a “partnership at will”. In so far as profit-sharing ratio between the partners was concerned, the partnership deed provided that the share of P.S. Ranganathan

would be 50%, Gopirathnam's would be 20% and the other two partners would have a 15% share in the profits. The loss-sharing ratio was slightly different, with 50% of the losses to be borne by Ranganathan and 25% each by Gopirathnam and Lavakumar. Basanth Kumar did not have any share in the loss, because at the relevant time, he was a minor and was admitted only to the benefits of the firm.

3.2 The partnership firm was constituted with the object and purpose of breeding livestock and carrying on agricultural activities. For this purpose, the Firm purchased 39 acres of land from one Mr. P.S. Devdas. Soon after the purchase of the land, when the time came to repay Mr. Devdas, the Firm faced immense financial difficulties. In fact, the Firm came under severe pressure, with Mr. Devdas also having taken legal recourse by filing a criminal case.

3.3 On 29.03.1973, which is around the same time when the Firm was going through tough circumstances, it is alleged that Gopirathnam sent a letter to Ranganathan, expressing his desire to retire from the Firm. Ranganathan is said to have replied to this letter on 15.04.1973 and accepted the resignation of

Gopirathnam. Pursuant to this retirement, Gopirathnam is alleged to have been paid Rs. 20,000 as full and final satisfaction of his share in the Firm.

3.4 Parallely, in 1975, the Firm happened to take a loan from State Bank of India to meet the maintenance cost of race horses, sink two bore wells and clear off outstanding dues. Interestingly, the loan application mentioned Gopirathnam as a partner of the firm. Later, around 1982, when this loan was not repaid, SBI initiated legal proceedings to recover the loan and it arrayed Gopirathnam as a Respondent for being a partner of the firm and also for having executed a guarantee in favour of SBI.

4. *Civil Suit by Appellant:* Be that as it may, Gopirathnam passed away on 27.12.1997. Three years post his demise, in the year 2000, the legal heirs of Gopirathnam, who are also the Appellants before this Court, filed a civil suit seeking dissolution of the firm, rendition of accounts and partition of the Firm's property, on the ground that Ranganathan was acting against the interests of the Appellants and the Firm. Notably, the suit was filed by the Appellants in the capacity of partners of the firm. For

this purpose, they pressed into service Clause 17 of the partnership deed which provides as follows:

“17) The partnership firm shall not be dissolved by the death or insolvency of any one or more of the partners. The heirs or representatives in interest of such dead partners shall be entitled to be partners in the firm. The assessment of the share of such partner shall be on the basis of the audited statement of accounts for the year ending 31st December previous to such death or insolvency.”

5. *Interim Protection pending the suit:* On 25.10.2002, when the matter came up for hearing before the Trial Court, the Court passed an order restraining the Respondents from alienating the share of the Appellants. However, on 03.11.2004, during the subsistence and operation of the interim order, the Firm was dissolved with Lavakumar and Basanth Kumar giving up their share in favour of Ranganathan. Soon thereafter, Ranganathan also executed sale deeds qua the Firm's property and entered into joint development agreements with Respondent Nos. 5-7 herein. It is important to note that while developing the land in furtherance of the joint development agreements, 8 acres of land was kept aside towards the share of the Appellants, which was of course subject to the outcome of the suit.

6. *Decision of the Trial Court:* The Civil Suit ultimately came to be dismissed by the Trial Court on 16.09.2006. After perusing the evidence on record and the arguments advanced. While arriving at its decision, the Court held that the Appellants have no locus to claim the reliefs sought for, since Clause 17 of the partnership deed is not applicable as Gopirathnam had retired in 1973 and was not a partner till his death in 1997. The Court held that the Appellants herein had not produced any cogent evidence to disprove this factum of retirement, and even their argument on Gopirathnam's signature being fabricated, was left unsubstantiated. With respect to the issue of the Appellants becoming partners after the death of Gopirathnam, the Court held that there is no concept of legal heirs becoming partners automatically after the death of a partner. It was held that the Appellants were obligated to assert and claim their rights as partners by doing an overt act, which they did not. Lastly, the Court also held that the suit is barred by limitation, as Gopirathnam had retired in 1973 and the suit was instituted 27 years later.

7. *Appeal and interim orders pending appeals:* Aggrieved by the order of the Trial Court, the Appellants filed an appeal before the High Court of Karnataka. By its order dated 12.10.2007, the High Court also passed a similar interim order to that of the Trial Court by directing Respondent Nos. 5-7 herein to reserve 8 acres of land while carrying out the developmental works.

8.1 *Decision of the High Court:* The appeal came to be decided by the High Court on 22.01.2008. In order to decide the appeal, the High Court framed two questions, which are as follows:

a) *Whether Gopirathnam retired from the partnership firm because of the letter dated 29.03.1973 and hence he ceased to be a partner of the 4th Respondent Firm following the letter of acceptance dated 15.04.1973?*

b) *Whether the Appellants became the partners of the Firm automatically by virtue of Clause 17 of the Partnership Deed?*

8.2 The High Court answered the first question in the affirmative by holding that Gopirathnam had indeed retired in 1973. The argument of the Appellants that the letter dated 29.03.1973 was just an intention to retire and was not the final letter of retirement was rejected by the Court by observing that if his letter was not a final expression of retirement, then he should have replied to the letter dated 15.04.1973 sent by Ranganathan

accepting the retirement, which he evidently did not. The second factor which prompted the Court to come to a conclusion that Gopirathnam had retired in 1973 was by the fact that there was no evidence regarding Gopirathnam receiving profits after 1973, which ideally, he should have if he was a partner of the Firm. This made the Court draw such an inference as he never cared to protest about the non-payment of profits right from 1973 till, he died in 1997. With respect to the argument regarding non-compliance with Section 32 of the Partnership Act, 1932¹, the Court held that Section 24 of the Act² prevails over Section 32³, thereby meaning that the notice of retirement sent only to the managing partner is sufficient and there is no legal necessity to send a notice of retirement to each and every partner of a firm. Further, the High Court also held that Gopirathnam signing a loan application form and him being made a party to the suit

1 hereinafter referred to as 'the Act'.

2 Section 24: Effect of notice to acting partner — Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates, as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

3 Section 32: Retirement of a partner —

(1) A partner may retire—

(a) With the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2)

(3)

(4)

filed by SBI is immaterial, as the said suit was decided without any contest. Before concluding its findings on this issue, the Court observed that Gopirathnam retired when the Firm was going through tough times. Therefore, now when the Firm is doing well, his legal heirs are not entitled to come back and seek a share in the Firm, especially after a delay of 27 long years.

8.3 With respect to the second issue, the Court answered it in the negative by holding that the Appellants do not automatically become partners of the Firm by virtue of Clause 17 of the partnership deed. The Court held that one of the fundamental principles of partnership law is that the existence of a contract is a sine-quo-non for the relationship of partnership. It was held that the phrase 'entitled to', as it appears in Clause 17, does not confer an automatic right but the said right is to be asserted by doing a positive act, which the Appellants did not in this case.

9. After taking note of the basic facts we were of the opinion that this is a fit case for amicable settlement as the contesting parties are all closely related to each other. We put forth our suggestion to the learned counsel appearing for the parties that it would be in the larger interest, that they resolve the dispute in an

amicable and peaceful manner. We must place on record the positive response received from the learned counsels, who agreed with the suggestion of the Court. We also indicated to the learned counsels that as an extent of eight acres of land has all along been secured, we may also consider passing an appropriate order granting a portion of the land to the Appellants for doing complete justice between the parties. However, we were not inclined to take a unilateral decision. We, therefore, suggested that we will proceed with the hearing and upon conclusion of the submissions we will reserve the case for orders and the parties may resort to mediation and intimate the result thereof within four weeks.

10.1 *Submission of parties:* Shri Ranjit Kumar, Senior Advocate along with Shri Ankur S. Kulkarni, AOR, appeared on behalf of the Appellants. Their submissions can be broadly categorised into 3 parts. *First*, that there can be no retirement which is contrary to the intention of the parties. *Second*, that a retirement is non-est in law if it has taken place in disregard to the statutory framework. *Third*, that the Appellants herein became partners of the Firm automatically after the death of Gopirathnam.

10.2 In support of their first contention, it was submitted by Shri Ranjit Kumar that no valid retirement had taken place because-(i) Gopirathnam's signature on the letter dated 29.03.1973 through which he is said to have expressed his intention to retire is different from his signature on other admitted documents; (ii) the loan applications submitted before SBI in 1975 and the suit instituted by SBI in 1982, show Gopirathnam as a partner of the Firm; (iii) Gopirathnam had given a personal guarantee to the loan and had also signed a form for opening a bank account in the name of the Firm, both, in the capacity of a partner after the alleged date of retirement; (iv) the records maintained by the Stud Book Authority, Pune, indicated that Gopirathnam was a partner of the Firm till his death; (v) Clause 16 of the partnership deed allows a partner to retire by giving a one-month notice. However, there is no evidence that Gopirathnam gave such a time-bound notice; and (vi) by a communication dated 09.10.2002, Ranganathan had called upon the Appellants to meet the tax recovery officer to resolve the property issues of the Firm. According to the Appellants, this clearly shows that they were treated as partners and such conduct of the Respondents should act as estoppel.

10.3 In so far as the second submission goes, Shri Ranjit Kumar contended that – (i) there is non-compliance with Section 32 of the Act as Gopirathnam did not give a notice in writing to the other two partners indicting his intention to retire from the Firm and simultaneously, there is no proof that the other partners agreed to his alleged retirement; (ii) there is non-compliance with Sections 63⁴ and 72⁵ of the Act as the change in the constitution of the Firm, post the retirement of Gopirathnam, was not informed to the Registrar and, no public notice regarding the retirement was given.

10.4 The last leg of Shri Ranjit Kumar’s submission dealt with the Appellants becoming partners of the Firm automatically after

4 Section 63: Recording of changes in and dissolution of a firm.

(1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partners, and when a registered firm is dissolved any person who was a partner immediately before the dissolution or the agent of any such partner or person specially authorised in this behalf may give notice to the Registrar of such change or dissolution specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

(2) **Recording of withdrawal of a minor –**

5 Section 72: Mode of giving public notice — A public notice under this Act is given —

(a) Where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and

(b) in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

the death of Gopirathnam. To buttress his submission, he relied upon a judgement of this Court in *Khushal Khemgar Shah and Ors. v. Mrs. Khorshed Banu Dadiba Boatwalla and Anr.*⁶.

11.1 The main thrust of Shri Gurukrishna Kumar, Senior Advocate appearing on behalf of Respondent Nos. 5 to 7 is that the Appellants do not automatically become partners after the death of Gopirathnam. He contended that such is the scheme of the Act too. In support of his submissions, he relied on Sections 4 and 5 of the Act to contend that a partnership is creature of a contract and not of status, with the only exception being Section 30(5)⁷ of the Act. Further, he also placed reliance on Section 31 of the Act to contend that any new partner can be inducted only with the consent of all the then existing partners. He stated that such a consent is absent in the facts of this case. In support of these submissions, he relied on the decisions of this Court in

6 (1970) 1 SCC 415

7 **Section 30: Minors admitted to the benefits of partnership –**

(1) to (4)

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that - if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6)

*Commissioner of Income Tax v. Seth Govindram Sugar Mills*⁸, and *S.P. Misra & Ors. v. Mohd. Laiquddin Khan & Anr.*⁹.

11.2 Shri Gurukrishna Kumar, further countered the submissions made by Shri Ranjit Kumar by contending that – (i) no dispute qua the signature of Gopirathnam should be raised before this Court, as there are concurrent findings by the courts below on the same point; (ii) the communication dated 09.10.2002 was issued by Ranganathan to the Appellants when they were arrayed as LRs of Gopirathnam in a decree for recovery in favor of a Bank. Immediately thereafter, Ranganathan even filed an application before the DRT expressly stating that Gopirathnam had retired and that his LRs have nothing to do with the Firm; (iii) even if certain documents bear the name of Gopirathnam, it is immaterial as they will not create any rights in favour of the Appellants, as the doctrine of holding out which is applicable in cases like these, is meant only for the protection of third parties and it does not affect the inter-se relationship of the parties; and (iv) Gopirathnam never took any action for rendition of accounts for twenty-five long years.

8 (1965) 3 SCR 488

9 (2019) 10 SCC 329

11.3 Responding to the contentions of Shri Ranjit Kumar made on certain legal aspects concerning Sections 24, 32, 63 and 72 of the Act, Shri Gurukrishna Kumar contended that – (i) a reading of Sections 32(i)(c) with Section 24 points that notice to the acting partner who habitually acts in business of the firm operates as notice to the firm. In light of this, it was submitted that a notice given to Ranganathan would operate as a notice on the Firm; and (ii) Sections 63 and 72 are only intended to protect third parties. Not following the mandate of these provisions will not inure any rights to the Appellants herein.

12. Shri Raghavendra S. Srivatsa, AOR, who appeared on behalf of Respondents Nos. 1-4 put forth the contention that – (i) postal acknowledgement to Ranganathan's letter dated 15.04.1973 bears the signature of Gopirathnam. In that view of the matter, it is clear that it was the intention of Gopirathnam to retire from the Firm; (ii) no reliance should be placed on the records of the Stud Book Authority, as Gopirathnam was shown as a partner in 1998 even though he died in 1997 and that the name of Lavakumar was never shown although he was a partner; and (iii) Gopirathnam retired when the firm was going through tough times. It was Ranganathan who rescued the sinking ship and

gave it a new lease of life. It would be unfair to allow the Appellants to come back and seek a share in the Firm, especially at a time when the Firm is thriving.

13. Having heard the parties in detail we reserved the case for orders on 03.08.2022. After four weeks, on 01.09.2022 the learned counsels informed this Court that the parties could not arrive at any settlement.

14. *Conclusion:* We have given our anxious consideration to the dispute in hand. Our impression that the parties must settle their disputes amicably got strengthened after we heard the parties in detail. Adversarial litigation focuses on the enquiry into the truth or otherwise of every disputed fact, which most of the time is technical in nature. By the end of it, when a Court takes a decision, there is no scope for reconciliation or sharing, which is essential for enduring happiness in a family. We are of the view that a decision based on adjustment of equities between the parties will be far more beneficial than rendering a decision based on inferences drawn on contested facts and pure legalities.

15. It is apparent from the record that from the very inception of the legal proceedings, the interests of the parties were secured

with the Trial Court passing an order directing the Defendant/Respondent to set aside an extent of eight acres of land. This was an interim order subject to the outcome of the proceedings. Though the suit was dismissed, the interim order continued during the subsistence of the appeal before the High Court. Even this Court by its order dated 13.04.2009 had directed the Respondents to ensure that the said eight acres are kept vacant. In fact, even Respondents Nos. 5 to 7 have kept aside the eight acres of land outside the development that they have undertaken. This submission was recorded in the order dated 28.01.2013. By virtue of these two orders, eight acres of land is vacant and free from any encumbrance.

16. Orders passed by the Trial Court, High Court as well as this Court to keep aside eight acres of land was only to secure the probable share of the Appellants, in the event they succeeded. Though, the Appellants have lost in the suit as well as in the appeal, a direction can be given for granting a portion of the said land to the Appellants so that their claim to some extent stands satisfied. We are inclined to take this step because the parties are closely related to each other. Our order is confined only to a small extent and this will not deprive the Respondents of the

fruits of the litigation in which they have succeeded concurrently. The Appellants have also been contesting the case for more than two decades. Having considered the matter in detail, we are of the opinion that such an order could enure to the benefit of not only the Appellants, but also that of the Respondents herein, for building and reviving the relationship between the close members of the family.

17. In view of the above, while upholding the impugned judgment passed by the High Court of Karnataka, we direct that the Appellants will be entitled to three acres, out of the eight acres of land set aside under the orders passed by the Trial Court, the High Court and also by this Court. It has come on record that the Firm had leased an extent of one acre to M/s Karnataka Dyeing and Processing Company, a registered partnership firm in which the first Appellant is one of the partners and this partnership had also made certain investments in the leased portion of the property. We direct that the three acres to be allotted to the Appellant should include this one acre of land. The remaining two acres shall be allotted by the Respondents to the Appellants from the eight acres, which may ideally be abutting the said one acre so that the Appellants can

enjoy a contiguous piece of three acres of land. We will, however, leave it to the Respondents to decide upon the location of the two acres as per their choice. These directions shall be complied within a period of three months from today.

18. For the reasons stated above, Civil Appeal No. 2741 of 2009 against the judgment of the High Court of Karnataka dated 22.01.2008 is disposed of with the direction that the Appellants be entitled to an extent of three acres out of the eight acres of land set aside as per the orders of this Court dated 13.04.2009 and 28.01.2013. The specific area to be allotted to the Appellants shall be in accordance with the directions given in the above paragraph. These directions shall be complied by the Respondents within a period of three months from today.

19. The parties shall bear their own costs.

.....J.
[B.R. GAVAI]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
SEPTEMBER 23, 2022