

Suleman and another - - - - - *Appellants*
v.
Haji Abdul Latif and others - - - - - *Respondents*
Haji Abdul Latif and others - - - - - *Appellants*
v.
Suleman and another - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF SIND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 28TH MARCH, 1930.

Present at the Hearing :

LORD BLANESBURGH.
LORD RUSSELL OF KILLOWEN.
SIR LANCELOT SANDERSON.

[*Delivered by LORD RUSSELL OF KILLOWEN.*]

The action in which these appeals arise is a partnership action in which the plaintiffs claimed (a) a decree for dissolution, and (b) that the accounts of the partnership be taken. Other relief was claimed in the following terms : “(c) That sums found due to the plaintiffs by the defendants be ordered to be paid by them.”

Up to a point the facts are not in dispute. The plaintiffs, or their predecessors in title, had for some years before 1902 carried on a business in Karachi, as partners, in the firm name of A. Haji Dossal & Sons. In the year 1902 the firm acquired a business of dealing in arms and ammunition, which originally belonged to one A. Haji Tar Mahomed and which in 1902 was being carried on by his son Haji Hamad. The firm having acquired the said business, carried it on as a branch or department of their general business which they continued to carry on

in their firm name, A. Haji Dossal & Sons. At the time the arms and ammunition business was acquired, the defendants (who were relations of Haji Tar Mahomed and Haji Mahomed and had worked in that business) became associated with the firm, and so continued in association with the firm until the dissolution decreed in this action. It is at this point that the facts cease to be undisputed, the principal issue in the action being as to the position occupied by the defendants in relation to the arms and ammunition branch or department from 1902 onwards.

The contention of the plaintiffs was that from 1902 to 1907 the defendants were employed as paid servants of the firm, that from 1907 to 1911 they were partners in the business of the arms and ammunition branch or department with a 2 anna share on the profits and losses of the said business, and that from the beginning of 1912 onwards their share was increased to 4 annas. The defendants contended that they were partners throughout with a 2 anna share from 1902 to 1911, and an 8 anna share from the commencement of 1912 onwards.

The action was heard in the Court of the Judicial Commissioner of Sind, the Court having framed the following issues :—

- “ 1. Is the suit not maintainable ?
- “ 2. On what terms did the defendants work in the business from 1902 to 1907 ?
- “ 3. What shares did the defendants possess in the business in suit and for what periods ?
- “ 4. To what amounts are the plaintiffs entitled on the accounts ? ”

The first issue has become immaterial.

The Additional Judicial Commissioner delivered judgment on the 22nd December, 1925, his findings of fact on the second and third issues being in accordance with the contentions of the plaintiffs.

The preliminary decree under the seal of the Court is (so far as material) in the following terms :—

It is ordered and decreed that the suit is maintainable and that the share of the defendants in the profits and losses were two annas from 1907 to 1912 and thereafter four annas up to 1922 when the defendants ceased to be active members in the firm.

It is further ordered that issue No. 4 be referred to Court Commissioner to take accounts and report within two months.

The reference of issue No. 4 to the Court Commissioner appears to their Lordships necessarily to involve the taking of the partnership accounts by that official in the manner customary when a partnership is dissolved by the Court.

In the course of his judgment the Additional Judicial Commissioner directed that the accounts should be taken from 1907, but that nothing was to be taken into account as regards goodwill. He made no provision as to costs, which he said would be provided for in the final order.

An appeal was presented against this preliminary decree, and judgment was delivered thereon by the Appellate Court on the

13th June, 1927. As regards the principal matter of dispute the Appellate Court used the following language :—

“After careful consideration of the evidence we have come to the conclusion that the findings on these issues should be that the defendants worked as servants from 1902 to 1907, and that they worked as 2 annas sharers from 1907 to 1911, and as 4 annas sharers from 1912 to 1922. . . . The conclusion at which we arrive therefore is that the contention of the plaintiffs is correct and that all the conclusions at which the learned additional Judicial Commissioner arrived as to the shares of the parties, for the reasons given by him in his judgment, are correct.”

In addition to the principal issue between the parties the judgment of the Appellate Court dealt with certain subsidiary matters arising on the accounts. It was stated in the judgment (1) that the defendants should not be charged with interest on any drawings by them in excess of their 2 annas or 4 annas share; (2) that in ascertaining the profits of the partnership business nothing should be charged against revenue in respect of rent, light, municipal rates and the like; (3) that goodwill should be brought into account; and (4) that interest at 6 per cent. was allowed to the plaintiffs “from the date of the plaint on the decretal amount found due to them.” As regards costs the Appellate Court, having regard to the special circumstances of the case, considered that each party should bear his own costs of all the proceedings up to that time.

The decree made on the appeal runs thus :—

“It is ordered and decreed that the case should be sent back to Commissioner who should go into the question of goodwill and decide what the goodwill of the business amounted to and award to the defendants 4 annas share of that goodwill with interest from the date of the dissolution of the partnership and it is further ordered that the defendants are also entitled to 4 annas share of the assets of the firm at the date of the dissolution of the partnership with interest thereon.

“It is further ordered that each party should bear his own costs throughout.”

The defendants have appealed to His Majesty in Council against that decree and complain of the findings as regards their shares in the partnership business and of the allowance of interest from the date of the plaint.

The plaintiffs have appealed by way of cross appeal and complain of the disallowance of interest on the amounts overdrawn by the defendants and of the allowance to the defendants of a share in the goodwill of the partnership business or in the assets thereof.

Counsel for the plaintiffs in the course of the arguments before this Board also contended that in ascertaining the profits of the partnership business something should be charged against revenue in respect of rent, light, municipal rates and the like, but

no such point is raised by their case on this appeal, and their Lordships are therefore of opinion that the instructions by the Appellate Court to the Commissioner in this respect must stand.

As regards the appeal of the defendants their Lordships find that upon the main contention between the parties there are separate findings of facts by two Courts, which findings are concurrent and adverse to the defendants, and that no reason can be suggested for departing from the ordinary rule applicable in such circumstances. The appeal must fail so far as it seeks to reverse or alter those findings. In regard to the statement in the Appellate Court judgment that interest was allowed to the plaintiffs from the date of the plaint on the decretal amount found due to them their Lordships are unable to accept the correctness of this view. This is not an action to recover some debt of which it can be said that it was due at the date of the plaint. It is an action to dissolve and wind up the affairs of a partnership; and until the accounts have been taken it is impossible to say what if anything is due from any partner to his copartners. In their Lordships' opinion interest should only be allowed to the plaintiffs from the date of the final decree by which the amount (if any) is found due from the defendants to the plaintiffs.

As regards the cross appeal their Lordships agree with the view of the Appellate Court that the defendants were at the date of dissolution entitled to a 4 annas share of the assets of the partnership firm, *i.e.*, the assets properly attributable to the arms and ammunition branch or department. Among these assets must necessarily be included the goodwill attaching to that branch or department, and the value thereof must be brought into the accounts. Their Lordships realise that in the peculiar circumstances of this case the value may not be either large or easy of ascertainment; but what amount should be included is a matter for the Court Commissioner to determine upon proper evidence.

Their Lordships also agree with the decision of the Appellate Court that the defendants are not chargeable with interest on overdrawings. No case is made out or even alleged against the defendants which would justify a departure from the ordinary rule that a partner is not charged with interest in respect of over-drawings.

The net result is that the defendants' appeal fails in so far as it seeks to vary the decree appealed from. It is true that it has resulted in obtaining a correction by this Board of the statement in the judgment of the Appellate Court as to the date from which interest should be allowed in favour of the plaintiffs in respect of any amount found due to them from the defendants, but that statement formed no part of the decree. The defendants' appeal upon the main dispute has failed. The plaintiffs' cross appeal has also failed. As regards costs the Appellate Court in view of the special circumstances of the case exercised their discretion and imposed upon each party the liability to bear their own costs up to the

date of the Appellate Court decree. Their Lordships see no reason for criticising or altering the order so made ; indeed, they are of opinion that the example may well be followed on the present occasion and that the parties may be left to bear their respective costs of the appeal and cross appeal.

Their Lordships have considered whether it is necessary or advisable to incorporate in any order to be made on these appeals any specific reference to the various matters of detail upon which they have indicated their views. They think such a proceeding is unnecessary. These matters of detail form no part of either of the decrees made in this action, and their Lordships feel no doubt that in taking the accounts and working out the rights of the parties the judicial authorities in Sind will act in accordance with the views expressed in this judgment.

Their Lordships are accordingly of opinion and will humbly advise His Majesty that an order should be made dismissing the appeal and cross appeal without costs.

In the Privy Council.

SULEMAN AND ANOTHER

v.

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DELIVERED BY LORD RUSSELL OF
KILLOWEN.

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