

Privy Council Appeals Nos. 81 & 82 of 1934

Allahabad Appeal No. 13 of 1933

Lala Khunni Lal and others - - - - - *Appellants*
v.
Lala Damodar Das and others - - - - - *Respondents*
(No. 81 of 1934)
Lala Damodar Das and others - - - - - *Appellants*
v.
Lala Khunni Lal and others - - - - - *Respondents*
(No. 82 of 1934)

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH JULY, 1937

Present at the Hearing :

LORD THANKERTON
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

This appeal concerns five matters of dispute arising out of a partnership account. The partnership in question was known as Lalta Prasad Tota Ram and carried on business in the purchase of wool and cotton yarn in Bareilly, the appellants, who are brothers, having a half share and one Tota Ram the other half. Tota Ram died on the 26th May, 1920, and under his will his half share in the business was given to the respondents. The appellants' suit was brought on the 18th December, 1925, in the Court of the Subordinate Judge at Bareilly for dissolution of the partnership and an account. In due course, on the 15th November, 1926, the Subordinate Judge by his decree declared that the partnership was dissolved on the 17th October, 1925, and that the last account between the parties had been taken in May, 1920. He directed accounts to be taken for the period from 1st May, 1920, to the 17th October, 1925. The taking of the account under this decree did not at first proceed very successfully. A commissioner having died after appointment, and a vakil for the plaintiff and a vakil for the defendant having been appointed joint commissioners without much result, the learned Subordinate Judge in August, 1927, framed a large

number of issues. The appellants had throughout the period in question been managing the partnership affairs and were the accounting parties. The respondents were challenging the reliability of the partnership books, and in the judgment of 15th November, 1926, by which the account was directed it was stated that "The godown 'Bahi' or the stock book is the only book on which both parties have confidence and this shall form the basis of calculation of the accounts between the parties. As regards other account-books the parties will be allowed to produce their evidence as to whether they are genuine or not."

In August, 1927, some witnesses were examined but this was not done by way of vouching in detail the entries in the partnership books. On 23rd August, 1927, the order-sheet has the following entry:—"As prayed for by the defendants in their application the plaintiffs do confine their evidence to issue No. 4—(A) and (B)." Ultimately on the 7th September, 1927, the Subordinate Judge appointed a Mr. Lekhraj as commissioner, and the commissioner on the 15th September sought from the learned Judge a direction whether he was to take further evidence in the case oral or documentary: the learned Subordinate Judge thereupon ordered as follows:—

"The case was ready for judgment when it struck me that in order to understand the points of dispute the 'bahi-khatas' shall have to be scrutinised and I appointed Babu Lekhraj such a commissioner. There is no occasion for hearing any further evidence, documentary or oral. The commissioner must make up accounts on the evidence in the record."

The commissioner having made his report on the 14th December, 1927, the learned Subordinate Judge disposed of the case by his judgment dated 30th March, 1928. Both parties appealed to the High Court at Allahabad whose decree is dated 24th October, 1932.

This being in outline the history of the litigation, the five matters still in dispute may now be examined.

The first dispute arises out of the fact that a number of bales are entered in the godown book or stock book but are not accounted for in the ordinary books of account of the firm, there being no entries to show when they were bought or how much money was paid out to buy them or when they were sold or how much money was received by the firm as sale proceeds thereon. The commissioner found that 245 bales and 290 bundles had been purchased and disposed of without entry in the ordinary books of account; he found, however, that of these 196 bales were not a transaction by the firm but a private transaction of the appellants and that they appeared to have been sold at a loss. As regards 42 bales, the appellants' contention was that they related to transactions prior to May, 1920, when the accounting period began. The Subordinate Judge held that only 196 bales fell within the accounting period but he held that these bales were dealt in on the firm's account and he was not satisfied with the commissioner's finding that the bales had been sold at a loss. Upon the view that at one

time the firm was making a profit of as much as Rs.3 per bundle, and in the absence of proper materials produced by the appellants to show what in fact the bales had realised, he decided to charge the appellants at the rate of R.1 per bundle. The High Court agreed with the learned Subordinate Judge in this; and further held, as their Lordships think rightly, that the entire quantity of 245 bales and 290 bundles must come into the account and should be charged against the appellants at the same rate. On this question their Lordships are of opinion that the present appeal fails altogether.

The next three matters in dispute fall, in their Lordships' opinion, to be dealt with on a common principle. The first of these three questions relates to two sums of Rs.3,607 and Rs.785, due to the firm which have been set off against cross claims made against the firm. The names of the parties concerned are Bidhi Chand Indar Chand of Agra and Shib Das Dewan Chand of Lahore. The only question of importance upon each of these matters is the question whether the counter claim against the firm was well founded. If so it does not appear that any question of the appellants' authority to compromise can usefully be raised by the respondents. The appellants have, however, produced no real evidence as to either of these cross claims; they must establish the validity of the claims against the firm so as to show the propriety of their action in compromising in respect of them.

The second of the three matters is a sum of Rs.19,000 which the appellants claim to have paid on behalf of the firm to Moti Lal Ram Chandar. The commissioner and the Subordinate Judge were satisfied that the appellants had made this payment; the High Court was not. Apart from the entries made by the appellants in the firm's books to that effect, the only evidence thereof was a transliteration of the firm's account (for one year) in the books of Moti Lal Ram Chandar which transliteration had been produced by the appellants before the Subordinate Judge. This account, however, does not show the transaction alleged and the appellants now explain that they have produced a copy of the accounts for the wrong year; the High Court think that this account disproves the payment alleged. In any view their Lordships are not prepared to accept the entries made by the appellants in the books of the firm as sufficient proof that they had, out of their own money, made this advance on the firm's account.

The last of the three items in this group is a sum of Rs.16,350 alleged by the appellants to have been advanced on behalf of the firm and paid to Moti Lal Bisheshar Lal in discharge of a debt due from the firm. The commissioner and the Subordinate Judge had accepted the entries in the partnership books; there was no other evidence in support of the claim. The High Court rightly thought that this was insufficient proof.

While it is true that upon these three heads of dispute, the appellants, before the Subordinate Judge and the High

Court, contested the questions of fact on the basis that the books of the firm and any other material already in evidence afforded sufficient proof of their claim, their Lordships fail to find that the course adopted by the learned Subordinate Judge had provided the appellants with any proper opportunity to vouch by sufficient evidence the entries now in contest. Such evidence as had been taken by the Subordinate Judge prior to the appointment of Mr. Lekhraj in September, 1927, as commissioner was not directed to any of these three items, and after the learned Judge refused to authorise Mr. Lakhraj to take any further evidence the appellants had no further opportunity by independent evidence to make good their case. It is true that upon two at least of these three matters the defendants in August, 1927, had given particulars of objection and had applied that the appellants should give a written statement of their case in respect of them. The appellants reply of 17th August, 1927, had shown that they were unable to give particulars as to how the Rs.19,000 had been sent to Moti Lal of Agra and that the sum of Rs.16,350 was said to have been advanced in connection with a transaction in sugar and may have been sent either in currency notes or hundis. On these transactions the books cannot be regarded as above suspicion, but it does not appear to their Lordships reasonable that the dispute should be decided without giving to the appellants a full opportunity of supporting the entries made by them in the firm's account books by independent evidence of payment. Though the appellants are seriously in fault for having attempted to succeed upon these points without producing independent evidence, their Lordships think it necessary (on terms as to costs) to allow the appeal in respect of all three of the matters just mentioned, and to send all three back to the High Court in order that the High Court may frame issues and refer the issues to the Court of the Subordinate Judge for evidence and findings. Their Lordships do not consider that these matters can properly be dealt with by admitting as further evidence upon this appeal the documents now put forward by the appellants and printed in the supplemental record.

The last of the five matters in dispute before their Lordships is a sum of Rs.28,350. The appellants claim to have been authorised by Tota Ram to appropriate this sum in view of the fact that Tota Ram had taken an equivalent amount for himself. Both the Subordinate Judge and the High Court disbelieve the appellants' case on this item and their Lordships see no reason to depart from their ordinary practice in the case of concurrent findings of fact. The appeal as to this item must fail.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the decree of the High Court be set aside, and that the case be remanded to the High Court with a direction to frame issues upon the second, third and fourth of the matters in dispute hereinbefore mentioned under Rule 25 of Order ~~25~~ C.P.C. and upon

receipt of the record of the evidence and of the findings of the trial Court to make a new decree disposing of the appeal. The appellants must pay the respondents' costs of this appeal, including any costs of applications to admit further evidence, but as the respondents brought a cross-appeal which they abandoned by letter dated 5th August, 1936, the appellants may set off the costs incurred by them in the cross-appeal before abandonment.

In the Privy Council

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v.

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