2024 INSC 427

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 4237 of 2015)

S. SHIVRAJ REDDY(DIED)
THR HIS LRS. AND ANOTHER ...APPELLANT(S)

VERSUS

S. RAGHURAJ REDDY AND OTHERS ...RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). OF 2024
(Arising out of SLP(Civil) No(s). 23143-23144 of 2016)

J U D G M E N T

Mehta, J.

Civil Appeal @ SLP(Civil) No(s). 4237 of 2015

1. Leave granted.

2. The present appeal is preferred for assailing the judgment dated 27th March, 2014 passed by the Division Bench of High Court of Judicature of Andhra Pradesh at Hyderabad, whereby the

learned Division Bench allowed LPA No. 47 of 2002 preferred by respondent No. 1- plaintiff.

3. The status and rank of the parties to the *lis* is as below: -

Party Name	**Position before this Court**	**Position in O.S. No. 67 of 1999**
S. Raghuraj Reddy	Respondent No. 1	Plaintiff
M/s Shivraj Reddy & Brothers	Appellant No. 6	Defendant No. 1
Late S. Shivraj Reddy	Through his LRs (Appellant No. 1-5)	Defendant No. 2
Dhanraj Reddy	Respondent No. 2	Defendant No. 3
B. Narayan Reddy	Respondent No. 3	Defendant No. 4

4. Respondent No. 1-plaintiff, along with defendant Nos. 2, 3, 4 and deceased M. Balraj Reddy[1] had constituted a partnership firm-defendant No. 1 namely "M/s Shivraj Reddy & Brothers" (hereinafter being referred to as 'firm') on 15th August, 1978 with its primary business being the construction of buildings on a contract basis with respect to the works of the Government and Municipalities.

5. Respondent No. 1-plaintiff instituted O.S. No. 67 of 1997[2] seeking relief of dissolution of the firm and rendition of accounts. The learned II Additional Chief Judge, City Civil Court, Hyderabad (hereinafter being referred to as 'trial Court'), allowed the original

[1] Died in 1984

[2] Initially filed as O.S. No. 3 of 1996 but later renumbered as (O.S. No. 67 of 1997)

suit filed by respondent No. 1-plaintiff and passed a decree dated 26th October, 1998 declaring the firm-defendant No. 1 to be dissolved and directed defendant Nos. 2 to 4 to tender accounts of the firm from the year 1979 onwards till October, 1998 and further, granted liberty to respondent No. 1-plaintiff to file a separate application seeking appointment of an Advocate Commissioner for taking accounts of the firm and for other appropriate reliefs.

6. Being aggrieved, the firm-defendant No. 1 and defendant No. 2 preferred C.C.C. Appeal No. 35 of 1999 before the High Court of Judicature of Andhra Pradesh at Hyderabad. Learned Single Judge of the High Court vide judgment dated 19th October, 2001 allowed C.C.C. Appeal No. 35 of 1999 on the ground that O.S. No. 67 of 1997 was barred by limitation as one of the partners in subsisting partnership firm, Shri M. Balraj Reddy expired in 1984, therefore the firm stood dissolved immediately on the death of the partner. Since the original suit was filed in 1996, it was barred by limitation.

7. Aggrieved by the decision of learned Single Judge, respondent No. 1-plaintiff preferred LPA No. 47 of 2002 before the learned Division Bench of the High Court, which allowed the appeal and

set aside the judgment dated 19th October, 2001 passed by the learned Single Judge in C.C.C. Appeal No. 35 of 1999, observing that the plea of limitation was never raised during the pleadings in the trial Court and learned Single Judge ought not to have dealt with that issue at all. Being aggrieved, appellants have preferred the present appeal by special leave.

Submissions of behalf of the appellants:-

8. Learned counsel representing the appellants urged that the suit was filed by respondent No. 1-plaintiff for dissolution of the defendant No. 1-firm and for the rendition of accounts in the year 1996. He referred to the partnership deed dated 25th April, 1978, whereby the firm-defendant No.1 was constituted and urged that the partnership was a partnership at will. He drew the attention of the Court to Section 42 of the Partnership Act, 1932 (hereinafter being referred to as 'the Act') which reads as below: -

> **"42. Dissolution on the happening of certain contingencies.**
> — Subject to contract between the partners a firm is dissolved—
> (*a*) if constituted for a fixed term, by the expiry of the term;
> (*b*) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
> (*c*) by the death of a partner; and
> (*d*) by the adjudication of a partner as an insolvent."

9. Learned counsel submitted that as per Section 42(c) of the Act, the death of a partner leads to automatic dissolution of the firm. He submitted that Shri M. Balraj Reddy i.e. Partner No. 3 in the firm admittedly expired in the year 1984 and consequent to his death, the firm stood dissolved automatically.

10. He further urged that it is settled law that it is the duty of the Court to dismiss any suit instituted after the prescribed period of limitation, although limitation has not been set up as a defence and thus, the learned Division Bench erred in allowing LPA No. 47 of 2002 and interfering with the judgment dated 19th October, 2001 passed by the learned Single Judge on the basis that the plea of limitation was never raised during the pleadings and thus, the learned Single Judge ought not to have dealt with the issue of limitation.

11. On these grounds, learned counsel for the appellants urged that the impugned judgment whereby, the decree passed by the learned trial Court to dissolve the firm- defendant No. 1 and directing the partners to tender the accounts was upheld is *ex facie* illegal, and therefore, deserves to be quashed and set aside.

Submissions on behalf of Respondents: -

12. *Per contra*, learned counsel representing respondent No. 1-plaintiff disputed the contentions of the learned counsel representing the appellants and urged that there is documentary evidence on record to show that the firm-defendant No.1 continued to exist and its business activities continued even after the death of Shri M. Balraj Reddy. He, therefore, urged that the contentions put forth by the learned counsel for the appellants that the firm stood dissolved automatically on the death of Shri M. Balaraj Reddy is misconceived.

13. He further contended that the issue of limitation was never raised before the trial Court and thus, the same could not have been allowed to be taken at the first appellate stage. On these grounds, he sought dismissal of the appeal.

14. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and the material placed on record.

Discussion and Conclusion: -

15. In the facts and circumstances of the case, we find that the reasoning given by the learned Division Bench while dismissing LPA No. 47 of 2002, that the learned Single Judge ought not to

have considered the question of limitation as the defendants did not choose to raise the plea of limitation in the trial Court is *ex-facie* erroneous. Law in this regard has been settled by this Court through a catena of decisions. We may refer to the judgment in the case of ***V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao and Another***[3], wherein this Court held as follows**:**

> "**20. <u>The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence.</u>** If a suit is ex facie barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.
>
> **21.** This Court in Manindra Land & Building Corpn. Ltd. v. Bhutnath Banerjee [(1964) 3 SCR 495 : AIR 1964 SC 1336] held (AIR para 9):
>
> > "Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. **<u>It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed.</u>** The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter.**"**
>
> (emphasis supplied)

[3] (2005) 4 SCC 613

16. Thus, it is a settled law that even if the plea of limitation is not set up as a defence, the Court has to dismiss the suit if it is barred by limitation.

17. The fact that the firm-defendant No.1 namely "M/s Shivraj Reddy & Brothers", was a partnership at will, is not in dispute. It is also not disputed that one of the partners of the firm, namely, Shri M. Balraj Reddy expired in the year 1984. This event leaves no room for doubt that the partnership would stand dissolved automatically on the death of the partner as per Section 42(c) of the Act. In the case of ***Davesh Nagalya(Dead) and Ors. v. Pradeep Kumar(Dead) through Legal Representatives and Ors.***[4], this Court held that in terms of Section 42(c) of the Act, the partnership stands dissolved upon the death of the partner.

18. The question of limitation in the admitted facts of the present case is pure question of law and not mixed question of fact and law, because the fact regarding the death of one of the partners i.e. Shri M. Balraj Reddy is not disputed. This Court in the case of ***Narne Rama Murthy v. Ravula Somasundaram and Ors.***[5]**,** observed as follows: -

> **"5.** We also see no substance in the contention that the suit was barred by limitation and that the courts below should have

[4] (2021) 9 SCC 796
[5] (2005) 6 SCC 614

> decided the question of limitation. **When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the court to decide limitation at the outset even in the absence of a plea.** However, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the agreement to sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and overt act, there can be no adverse possession and the suit would also not be barred by limitation. The only hostile act which could be shown was the advertisement issued in 1989. The suit filed almost immediately thereafter**."**
>
> (emphasis supplied)

19. A fervent plea was raised by learned counsel for the respondents that the firm continued to exist even after the death of Shri M. Balraj Reddy, and the business activities were continued by the firm. Even if it is assumed for the sake of argument that the partners were carrying on the business activities after the death of Shri M. Balraj Reddy, there cannot be any doubt that the firm stood dissolved automatically in the year 1984 as mandated under Section 42(c) of the Act unless and until there was a contract between the remaining partners of the firm to the contrary. There is of course, no such averment by the respondents. The business activities even if carried on by the remaining partners of the firm

after the death of Shri M. Balraj Reddy, would be deemed to be carried in their individual capacity in the circumstances noted above.

20. The period of limitation for filing a suit for rendition of account is three years from the date of dissolution. In the present case, the firm dissolved in year 1984 by virtue of death of Shri M. Balraj Reddy and thus, the suit could only have been instituted within a period of three years from that event. Indisputably, the suit came to be filed in the year 1996 and was clearly time-barred, therefore, learned Single Judge was justified in accepting the C.C.C. Appeal No. 35 of 1999 and rejecting the suit as being hopelessly barred by limitation.

21. As a consequence, the impugned judgment dated 27th March, 2014 passed by the Division Bench in LPA No. 47 of 2002 does not stand to scrutiny and is hereby reversed and set aside.

22. The appeal is allowed accordingly. No order as to costs.

23. Decree be prepared accordingly.

24. Pending application(s), if any, shall stand disposed of.

Civil Appeals @ SLP(Civil) No(s). 23143-23144 of 2016

25. Leave granted.

26. The present appeals by special leave are preferred against the judgment dated 27th March, 2014 passed by the Division Bench of High Court of Judicature of Andhra Pradesh at Hyderabad, whereby the learned Division Bench vide a common judgment dismissed LPA No. 37 of 2002 preferred by defendant No. 1 and the firm-defendant No. 9 and allowed LPA No. 48 of 2002[6] preferred by respondent No. 1-plaintiff.

27. The status and rank of the parties to the *lis* is as below: -

Party Name	**Position before this Court**	**Position in O.S. No. 121 of 1999**
S. Raghuraj Reddy	Respondent No. 1	Plaintiff
Late S. Shivraj Reddy	Through his LRs. (Appellant No. 1 to 5)	Defendant No. 1
B. Narayan Reddy	-	Defendant No. 2
K. Mohan Reddy	-	Defendant No. 3
K. Janga Reddy	-	Defendant No. 4
B. Arjun Reddy	-	Defendant No. 5
Smt. B. Suseela	-	Defendant No. 6
Smt. Kalavathi	-	Defendant No. 7
Smt. B. Sharada	-	Defendant No. 8
M/s Shivraj Reddy & Brothers, B. Arjun Reddy and Co.	Appellant No. 6	Defendant No. 9

28. Respondent No. 1-plaintiff along with defendants Nos. 1 to 8 constituted themselves into a partnership firm-defendant No.9 namely "M/s Shiva Reddy & Brothers, B. Arjun Reddy &

Co"(hereinafter being referred to as 'firm') on 10th October, 1983 to run a business of construction, film production, distribution, exhibition of cinemas, etc. Respondent No. 1-plaintiff preferred O.S. No. 121 of 1997[7] before the trial Court for dissolution of the firm-defendant No.9 and for a direction to defendant Nos. 1 to 5 to render accounts of the said firm and for payment of his share of profits and assets.

29. A preliminary decree came to be passed in the said original suit on 26th October, 1988 directing that the firm-defendant No.9 be dissolved and defendant Nos. 1 to 5 to tender accounts of the firm. Respondent No. 1- plaintiff was left at liberty to file separate applications for the appointment of Advocate Commissioner for taking the accounts in respect of the firm and for other appropriate reliefs. Being aggrieved, the defendant No. 1 and the firm-defendant No. 9 preferred C.C.C. Appeal No. 40 of 1999 which came to be rejected vide judgment and decree dated 19th October, 2001, however, a declaration was passed that respondent No. 1-plaintiff can seek rendition of accounts for a period of three years prior to the date of filing of the suit and not beyond that.

[7] O.S. No. 754 of 1991 later renumbered as O.S. No. 121 of 1997.

30. Being aggrieved, defendant No. 1 and firm-defendant No. 9 filed LPA No. 37 of 2002 challenging the said judgment and respondent No. 1-plaintiff filed LPA No. 48 of 2002 challenging the observation that respondent No. 1- plaintiff cannot seek rendition of accounts beyond a period of three years prior to filing of the suit.

31. Learned Division Bench of the High Court of the Andhra Pradesh vide judgment dated 27th March 2014, dismissed the LPA No. 37 of 2002 preferred by defendant No. 1 and the firm-defendant No. 9 and allowed the LPA No. 48 of 2002 preferred by respondent No. 1-plaintiff, which are assailed in these appeals by special leave.

32. We have considered the submissions advanced by learned counsel for the parties and have gone through the impugned judgments and the material placed on record.

Discussion and Conclusion: -

33. *Ex facie*, learned counsel for the appellants could not satisfy the Court regarding the infirmity, if any, in the impugned judgment dated 27th March, 2014 in LPA No. 37 of 2002 and LPA No. 48 of 2002 and decree in O.S No. 121 of 1997 dated 26th October, 1998, whereby the firm-defendant No. 9 namely "M/s Shiva Reddy &

brothers, B. Arjun Reddy & Co" was directed to be dissolved and defendant Nos. 1 to 5 were directed to tender accounts of the firm.

34. Three Courts of the competent jurisdiction have recorded the concurrent findings on facts in decreeing the suit in favour of respondent No. 1- plaintiff. Hence, this is not a fit case warranting interference in such a concurrent finding of facts in the exercise of the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India.

35. Hence, the appeals fail and are dismissed. No costs.

36. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
May 16, 2024