

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Bhugwandas Mitharam v. Rivett-Carnac,
from the High Court of Judicature at Bombay ;
delivered 10th December 1898.*

Present :

LORD ASHBOURNE.

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

It appears that one Hemanmal carried on business with the Defendant Gokuldas in Scind and in the Persian Gulf until his death in 1894. He left a widow named Hemabai but no issue. After his death the business was continued by Gokuldas and Hemabai. On the 7th of August 1889 the Appellant Bhugwandas was admitted into the firm and a partnership agreement of that date was made between the three Hemabai Gokuldas and Bhugwandas. Hemabai was admittedly the moneyed partner if not the owner of the business. She died on the 1st of September 1889. On her death the partnership was dissolved. But the affairs of the partnership were not wound up and apparently her moneys were retained by the surviving partners and employed in the business. In 1890 an application for letters of administration was made on behalf of one Kissondas then about 10 years old claiming to be the heir. But the application

was resisted by Bhugwandas who alleged that Kissondas was not heir and alleged also that Hemabai left a will. The case came before the Court. No will was forthcoming nor was it suggested then that there was a nearer heir. The Court however directed that the Administrator-General should take out administration without prejudice to any question and made provision for the costs of all parties. In the meantime Gokuldas and Bhugwandas as surviving partners took proceedings in Bombay to recover certain debts or the balance of certain debts owing to the business. Ultimately the amount claimed which came to about Rs. 28,000 was paid to a Receiver appointed by the Court. On the 30th of March 1894 the Administrator-General took out representation to Hemabai and in April following he brought this suit against Gokuldas and Bhugwandas claiming (a) to have the whole amount in the Receiver's hands paid to him in his representative character alleging that Gokuldas and Bhugwandas had nothing to receive but were in fact debtors to the partnership and (b) if necessary to have the accounts of the partnership taken. He also asked for such further relief as the circumstances might require. Gokuldas did not resist the Plaintiff's claim. Bhugwandas set up every possible defence. He submitted that the Court in Bombay had no jurisdiction in the matter. He relied on the Law of Limitation. And he alleged what was perfectly true that the accounts of the partnership had never been taken. By a supplemental defence he insisted that the Plaintiff was bound to account to Gokuldas and himself for their shares in a sum of Rs. 5292 which admittedly had been recovered from a debtor to the partnership by the Plaintiff himself since the institution of the suit.

Candy J. before whom the case came in the first instance gave effect in a great measure to the points raised by way of defence on behalf of Bhugwandas. He held that the Court had jurisdiction only in regard to the assets recovered in Bombay. He also held that the Plaintiff's right to a general account was barred by limitation and in the result he ordered the costs of all parties to be paid out of the fund in the hands of the Receiver and divided the balance of that fund as well as the moneys recovered by the Plaintiff between the Plaintiff and Bhugwandas giving to the latter the proportionate share to which he would have been entitled under the partnership agreement if the assets in dispute had been profits of the partnership business.

The learned Judges of the High Court on appeal held that the jurisdiction of the Court was not limited to the assets recovered in Bombay. It was not disputed at the Bar that the judgment of the Appeal Court was right so far. Then they held that the suit was not barred by limitation. They considered—and their Lordships agree in their view—that on the materials before the Court it must be taken that the Administrator-General is suing on behalf of the infant heir. As far as the evidence goes the opposition on the part of Bhugwandas in the Probate suit was a mere pretence put forward in order to defeat or delay the infant's right to an account against Hemabai's surviving partners. The Appeal Court ordered Bhugwandas to pay all the costs and adjudged to the Plaintiff the whole fund in the hands of the Receiver.

Although their Lordships agree with the Appeal Court in the main they are unable to find sufficient evidence to justify the decree in the form in which it was drawn up. In his

pleadings Bhugwandas insisted that an order in the Plaintiff's favour ought not to be made without taking the accounts. And that was his principal contention before their Lordships. Nor does it appear that he ever receded from that position. To a certain extent indeed it was common ground that the accounts must be taken. One of the Plaintiff's reasons in his memorandum of appeal from the judgment of the Lower Court was "that the Plaintiff was entitled to insist on "the partnership account being taken before the "second Defendant"—that is Bhugwandas—"could be allowed any share in the moneys "recovered by the Plaintiff." And it would appear from the language of the judgment delivered by the Chief Justice that it was intended that provision should be made for taking the accounts unless they were waived by Bhugwandas. His conclusion was that the decree of the Lower Court "must be varied by "making a decree in terms of paragraphs (a) "and (b) of the plaint." Now paragraph (b) asked for an account while paragraph (a) asked for payment, without an account. There is nothing to show how it was that the decree came to be drawn up in its present form. Probably both parties are to blame for the error and for the expense which has resulted from it.

It seems to their Lordships that the proper order will be to direct an account to be taken of the partnership dealings and transactions, to enquire what was due to the estate of Hemabai in respect of her share at the time of her death and how the amount due to her estate has been dealt with and if it appears that such amount or any part thereof has been employed in the business continued by the surviving partners to direct the accounts of such business to be taken. Further consideration and costs must be reserved.

This order will enable the Administrator-General to make such claim as he may be advised in respect of interest or profits since Hemabai's death. Bhugwandas must pay the Plaintiff's costs up to and including the hearing by the Lower Court. Each party must bear his own costs here and in the Appeal Court.

Their Lordships will therefore humbly advise Her Majesty that an order be made to that effect.
