

Civil Judgment No. 3

Judgment in a suit for dissolution of partnership and accounts.

Received on – 01/10/2017

Registered On – 02/10/2017

Decided on - 18/08/2020

Duration – 02 09 17

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IN THE COURT OF CIVIL JUDGE SENIOR DIVISION SOLAPUR, AT SOLAPUR

(Presided over by Shri. X.Y.Z.)

Exhibit No. – 75

Regular Civil Suit NO. 15/2017

Mr. B. ...

Age – 42 years,

Occ. – Business,

- Plaintiff

R/o. – Bale, Tal. – North Solapur,

Solapur

V/s

1. Mr. A. ...

Age – 40 years.

Occ. – Business,.

– Defendants

R/o. – Bale, Tal. – North Solapur,

Solapur

2. Mr. C. ...

Age – 44 years,

Occ. – Business,.

– Defendants

R/o. – Bale, Tal. – North Solapur,
Solapur

Claim for the purpose of court fee
and jurisdiction is at Rs.320/-

Advocate's Appearance

1. Shri M.N.O. – Advocate for plaintiff
2. Shri. E.F.G. – Advocate for defendant no. 1
3. Shri. L.M.N. – Advocate for defendant no. 2

JUDGMENT

Delivered on 18/08/2020

1. The plaintiff has filed the suit for dissolution of partnership and for accounts of the partnership firm 'A & B Traders'.
2. The plaintiff has examined himself at exh. No. 50 and also examined PW2 Ram at exh. No. 52.
The def. no. 1 has examined himself at exh. No. 54
The def. no. 2 has examined himself at exh. No. 57.
3. The plaintiff has filed following documents in support of his case –
 - a. Original partition deed dated 01/10/2006 at exh. No. 10
 - b. Registration certificate of partnership at exh. No. 11
 - c. Balance-sheet at the end of 31/03/2020 at exh. No. 12
 - d. Profit and loss account at the end of 31/03/2020 at exh. No. 13

The def. no. 1 and 2 has not filed any documents in support of his case.

4. Plaintiff's case in brief is as under –

The plaintiff and def. no. 1 started partnership firm in the name and style 'A & B Traders' doing the business of grocery from 01/10/2006. Initially plaintiff and def. no. 1 invested Rs.5 lakh each in the capital of the partnership business. The share of plaintiff and def. no. 1 in partnership profit and loss is 50% each. Def. no. 2 is the brother of def. no. 1, def. no. 2 gives his premises for running the business without charging any rent. Thereafter on 01/10/2016 def. no. 1 retires and his minor son is accepted as a partner. In the month of April 2020, there was a quarrel between plaintiff and def. no. 1 and def.no.1 raised objections to the balance-sheet and profit and loss account of the partnership of the year ending on 31/03/2020. Thereafter the plaintiff dissolved the partnership by giving a notice through his advocate M.N.O. dated 15/05/2020 and partnership firm is declared dissolved at the end of 31/05/2020. But the def. no. 1 failed to give replay to the said notice and also failed to settle the accounts and partnership. Therefore the plaintiff files a suit for dissolution of partnership firm claiming half share in capital and profit and requested the court for settlement of accounts. Hence this suit.
5. The def. no. 1's case in brief is as under –

The def. no. 1 appeared and filed his W.S. at exh. No. 8. The def. no. 1 admitted the fact of the starting of partnership business but raised the following grounds of objections –

 - a. As partnership firm is not registered suit itself is not teneable.

- b. Plaintiff alone cannot take a decision of dissolution of partnership. Def. no. 1 wants to continue with the business.
- c. Plaintiff does not have half share in capital and profit.
- d. As the son of def. no. 1 is minor, a suit is not tenable against him and his share cannot be held liable for the loss in the business.

Def. no. 2's case in brief is as under –

The premises in which the partnership firm has started is of the ownership of the def. no. 2. It was orally agreed between plaintiff and defendants that def. no. 2 is entitled to 1/3rd share in the profit of the partnership every year at the end of 31st March. The def. no. 2 also submitted that he has taken Rs.12 lakhs every year after the end of 31st March until now as his 1/3rd share in the partnership. Hence def. no 2 is entitled to 1/3rd share.

- 6. On the basis of pleadings of the parties, the issues are framed at exh. No. 19 and my findings are recorded thereon as follows –

Sr. No.	Issues	Findings
1.	Whether plaintiff proves that he has ½ share in the partnership business ?	Yes
2.	Whether plaintiff proves that partnership firm is registered under the Partnership Act ?	Yes
3.	Whether def. no. 2 proved that he is a silent partner and entitled to 1/3 rd share in partnership capital and profit ?	No
4.	Whether def. no. 1 proves that suit is not tenable against him as his son is minor partner ?	No
5.	Whether plaintiff is entitled to decree for dissolution of partnership and accounts ?	Yes
6.	What order and decree ?	As per final order

REASONS

- 7. Issue no. 1

The plaintiff has pleaded that he has ½ share in the partnership firm name and style as 'A & B Traders". In support of his plea plaintiff has examined himself and PW2. The plaintiff has submitted the original partnership deed dated 01/10/2006 which is registered under Partnership Act. In the said partnership deed it is clearly mentioned that plaintiff and def. no. 1 is entitled to ½ share each. PW2 deposed that he is a one of the witness on partnership deed which is at exh. No. 10. He further stated that in his presence the partnership deed dated 01/10/2006 was signed by def. no. 1 and 2 and admitted ½ share of each in partnership business. The balance-sheet and profit and loss account at exh. 13 and 13 respectively also shows that the plaintiff and def. no. 1 have taken half of the profits of the partnership business at the end of 31/03/2020. Hence I am of the opinion that the plaintiff and def. no. 1 have ½ share in the partnership business and the plaintiff has proved that he has ½ share in the partnership capital and profit. Hence I answer issue no. 1 in affirmative.

- 8. Issue no. 2 –

The def. no. 1 pleaded that the said partnership firm is not registered under the Indian Partnership Act, 1932 hence, the suit is liable to be dismissed. The plaintiff deposed that partnership firm is registered at Registrar of Firm, Pune on 01/02/2007. The plaintiff has submitted the original registration certificate of partnership at exh. 11 dated 01/02/2007. The registration certificate is a public document. Therefore I am of the opinion that the partnership firm is registered and under the Partnership Act and the plaintiff has proved that the partnership firm is registered under Partnership Act. Hence I answer issue no. 2 in affirmative.

9. Issue no. 3 –

The def. no. 2 pleaded that he is a silent partner and he is entitled to 1/3rd share in the partnership capital and profit. Def. no. 2 examined himself at exh. No. 57. Def. no. 2 has not filed any documentary evidence and also failed to examine any independent witness in support of his case. The registered deed of partnership at exh. 10 shows that the plaintiff and def. no. 1 are the only two partners and the def. no. 2 is entitled Rs.12 lakh per year as a rent. The balance-sheet and profit and loss account at exh. No. 12 and 13 respectively also shows that the plaintiff has paid Rs.12 lakh as a rent to the def. no. 2. Hence I am of the opinion that def. no. 2 has failed to prove that he is a silent partner and entitled to 1/3rd share in partnership capital and profit. Hence I answer issue no. 3 in negative.

10. Issue no. 4 –

The def. no. 1 pleaded that he has retired from partnership firm on 01/10/2016 and his minor son is accepted as a partner. Even though def. no. 1's son is a partner he is entitled to benefits of partnership and also liable to his half share in partnership. As a minor he is not liable individually. In this case, there is no loss to the firm upto 31/03/2020 according to balance-sheet and profit and loss account respectively at exh. No. 12 and 13. Considering the legal position as the suit is filed against the minor son through guardian def. no. 1 I am of the opinion that the suit is tenable against the def. no. 1. Hence def. no. 1 failed to prove that suit is not tenable against him as his son is minor. Hence I answer issue no. 4 in negative.

11. Issue no. 5 –

As discussed above I am of the opinion that the plaintiff and def. no. 1 has ½ share each in partnership business and def. no. 2 is not entitled to any share, I am of the opinion that plaintiff is entitled to the decree for dissolution of partnership and account, as the partnership is at will and def. no. 1 cannot continue with the business. Hence I answer the issue no. 5 in affirmative.

Hence I pass the following order

ORDER

1. Suit of the plaintiff is hereby decreed.
2. The partnership firm is hereby declared dissolved with effect from 31/05/2020.
3. The plaintiff and def. no. 1 is entitled to ½ share each in the partnership capital and profit.
4. The plaintiff is entitled to take account of partnership firm through court commissioner and after taking the accounts, the plaintiff and def. no. 1 is entitled to ½ share each in partnership capital and profit.
5. Preliminary decree be drawn up accordingly.
6. No order as to costs.

Dictated and pronounced in open court today, on 18th August, 2020

Place : Solapur
Date : 18/08/2020

Sd/-
Civil Judge Senior Division
Solapur