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M.V. KARUNAKARAN
V.
KRISHANAN (DEAD) BY LRS .

DECEMBER 15 , 2006

B

[S.B. SINHA AND MARKANDEY KATJU , JJ .]

Partnership Act , 1932 :

C s . 29 (2) - Right of transferee under heirs of partner of dissolved partnership - partnership of two brothers being co - owners of property dissolved due to death of one of them - Heirs of deceased partner transferring suit property - Right of transferee in possession to obstruct delivery of possession to auction purchaser in execution of decree in a suit for recovery of dues against erstwhile partnership - Held , partnership having stood D dissolved after death of one partner , his heirs could transfer the property , and transferee having been put in possession had right to obstruct delivery of possession to auction purchaser - Code of Civil Procedure , 1908 - - Order 21 , r.97 . }

Two brothers being co - owners of certain property formed a partnership . E One of them died later and with that the partnership firm stood dissolved . Legal heirs of the deceased partner transferred the suit property through a sale deed to the predecessor - in - interest of the respondents . Thereafter a third party filed a suit for recovery of certain amount against the said partnership F firm . The vendee was not a party to the said suit . The suit was decreed and the suit property was auctioned in execution of the decree to the appellant , who claimed delivery of possession . The vendee under the sale deed obstructed thereto and the appellant - auction purchaser filed an application for removal of obstruction . The executing court dismissed the application holding that G legal heirs of deceased partner could sell the property and the respondents were lawful owner thereof . The appeal of the auction purchaser was dismissed so also was his second appeal .

In the instant appeal filed by the auction purchaser it was contended on his behalf that respondents not being the legal heirs of the dissolved firm they did not derive any share and as such they had no right to offer resistance .

H

Dismissing the appeal , the Court

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HELD : 1.1 . A distinction exists between the right of a partner to sell a property during subsistence of the partnership and the right of an erstwhile partner to sell the property of the firm after it stood dissolved . In the instant case , the partnership stood dissolved on the death of one partner , whose he and legal representatives , therefore , could transfer the property at least to B the extent of their own share . [1236 - G - H]

Addanki Narayanappa and Anr . v . Bhaskara Krishnappa (dead) and thereafter his heirs and Ors . , AIR (1966) SC 1300 , referred to .

1.2 . It has been found as of fact by all the three courts below that after purchasing the property from the heirs and legal representatives of the deceased partner , the respondents had been put in possession and they had been residing therein when the auction sale was effected . They had caused some improvements and a new building had also been constructed by them . As the suit was filed after the deed of sale was executed and registered , the respondents predecessor , in interest was a necessary party . He was not arrayed as a party in the suit . He having been found to be in possession of the property as on the date when the delivery of possession of the property was sought to be effected , a ' fortiori ' he had a right to obstruct thereto .

[1236 - H ; 1237 - A - B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10588 of 1995 .^E

From the Final Judgment and Order dated 10.10.1988 of the High Court of Kerala at Ernakulam in E.S.A. No. 4 of 1983 .

B.V. Deepak (NP) for the Appellant .

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C.S. Rajan , Fazlin Anam and E.M.S. Anam for the Respondent .

S.B. SINHA , J. Auction purchaser is the appellant before us being aggrieved by and dissatisfied with a judgment and order dated 10.10.1988 passed by the High Court of Kerala dismissing an appeal preferred by the appellant herein .

G

Three brothers , Madhavan , Bahuleyan and Karunakaran , were owners of the property . Madhavan and Bahuleyan started a partnership under the name and style of " The Trustful Daily Banking Company " . Madhavan died on 26.10.1960 , leaving behind Defendant Nos . 3 to 5 as his legal heirs and representatives . The partnership firm stood dissolved with his death . The H

A legal heirs and representatives of Madhavan by reason of a registered deed of sale dated 28.05.1963 transferred the property in question in favour of Krishnan (since deceased) being predecessors in interest of the respondents herein . A money suit for recovery of a sum of Rs.312.20 was filed against the said partnership firm by a third party . The said suit was marked as O.S. No. 523 of 1964. It was decreed .

B

The respondent admittedly was not a party to the said suit . The property in question was auction sold in execution of the said decree . Appellant purchased the same for a sum of Rs.5050 being the highest bid . The said sale was confirmed . The Auction Purchaser prayed for delivery of possession .

C

Respondent obstructed thereto . An application for removal of obstruction was filed by the appellant . The Executing Court by a judgment and order dated 9.10.1979 dismissed the said application , directing the respondent to deposit a sum of Rs.590.07 , inter alia , on the premise that on the death of Madhavan , the partnership became dissolved and keeping in view the fact that the other partner was also dealing with certain items of the partnership

D

assets , the legal heirs and representatives of Madhavan could sell the property . The respondent , therefore , was the lawful owner thereof .

The appellate court , however , while dismissing the appeal also opined that the respondent being a co - owner of the property along with the auction purchaser , the trial court was not correct in directing the respondent to deposit a sum of Rs.590.07 . In the second appeal preferred by the appellant , the High Court having not found any error in the said judgment , dismissed the same .It was opined that the partnership having been dissolved , the dissolved firm cannot have status of partnership subsequently .

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F Contention of Appellant is that Respondents are not the legal heirs of the dissolved firm and they have not derived any share . Therefore , the respondents had no right to offer resistance .

G

It is not in dispute that the partnership stood dissolved on the death of Madhavan . The heirs and legal representatives , therefore , could transfer the property at least to the extent of their own share .

A distinction exists between the right of a partner to sell a property during subsistence of the partnership and the right of an erstwhile partner to sell the property of the firm after it stood dissolved .

H

It has been found as of fact by all the three courts that after purchasing

the property from the heirs and legal representatives of Madhavan , the respondent herein had been put in possession and they had been residing therein when the auction sale was effected . He had caused some improvements and a new building had also been constructed by him . As a suit was filed after the deed of sale was executed and registered , the respondent was a necessary party . He was not arrayed as a party in the suit . He having been found to be in possession of the property as on the date when the delivery of possession of the property was sought to be effected ; a ' fortiori he had a right to obstruct thereto . Once the title in respect of the property in question is found to be existing in the obstructionist , an application for removal of the obstruction as envisaged under Order 21 Rule 97 of the Code of Civil Procedure has rightly been determined in favour of the appellant . c

What could be sold in the auction was the right , title and interest of the judgment - debtor in the property . The right of the auction purchaser , any , keeping in view of the facts and circumstances of the case , could not have been determined in such a proceeding . Section 29 of the Indian Partnership Act , 1932 states as to what would be the interest of transferee of a partner . Sub - section (2) thereof determines the right of a transferee the firm is dissolved or if the transferring partner ceases to be a partner thereof . The right the respective purchaser from the erstwhile partner of dissolved partnership , therefore , was required to be worked out in an independent proceeding .

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In Addanki Narayanappa and Anr . v . Bhaskara Krishnappa (dead) and thereafter his heirs and Ors . , AIR (1966) SC 1300 , this Court opined

" ... The whole concept of partnership is to embark upon a joint venture and for that purchase to bring in as capital money or even property including immovable property . Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in . It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership . The person who brought it in would , therefore , not be able to claim or exercise any exclusive right over any property which he has brought in , much less over any other partnership property . He would not be able to exercise his right even to the extent of his share in the business of the partnership . As already stated his right during the subsistence of the partnership is to get his share of profits from time to time as maybe agreed upon

H

A among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of solution or retirement after a deduction of liabilities and prior charges "

Herein we have to consider the case from altogether a different angle .

B It is not a case where the partners of the firm were not the owners of the property . It is also not a case where the property was owned by the partnership firm . The partners as pre - existing co - owners had a definite share of the property . They merely applied their own property for running a business in partnership . On dissolution of the partnership , their right in the property revived . Using of a premises for business purpose would not automatically
C lead to the conclusion that the premises belonged to the partnership firm .

The terms and conditions of the partnership agreement , in any event , are not known . It is also not the case where the partners ceased to be co owners . If they continued to have undivided share in the property even
D during subsistence of partnership , question of their ceasing to have any interest therein on its automatic dissolution would not arise .

Respondents were found to be in possession of the property . They were found to have some interest therein . In that view of the matter , we do not find any legal infirmity in the impugned judgment .

E For the reasons aforementioned , we do not find any ground to interfere with the impugned judgment . The appeal is dismissed accordingly . No costs .

R.P.

Appeal dismissed .