

HIGH COURT OF GUJARAT

ARUNCHANDRA RATILAL BISCUITWALA

Versus

KANTILAL RATILAL BISCUITWALA & 7

Date of Decision: 24 March 2017

Citation: 2017 LawSuit(Guj) 397

Hon'ble Judges: [Rajesh H Shukla](#)

Case Type: Second Appeal; Civil Application

Case No: 330 of 2016; 13770 of 2016

Subject: Civil

Acts Referred:

[Code Of Civil Procedure, 1908 Sec 100](#)

Final Decision: Appeal dismissed

Advocates: [R C Jani](#)

Cases Referred in (+): 1

Rajesh H Shukla, J.

[1] The present Second Appeal has been filed by the appellant under Section 100 of the Civil Procedure Code being aggrieved with the impugned judgment and order in Regular Civil Appeal No.64 of 2007 by the learned Additional Sessions Judge, Valsad vide judgment and order dated 08.09.2016 confirming the judgment and decreed in Regular Civil Suit No.39/1985 passed by the learned 3rd Additional Sr. Civil Judge, Valsad dated 21.09.2007 posing the substantial questions of law and also on the grounds stated as mentioned in the memo of appeal in the memo of appeal-

[2] Heard learned advocate, Shri R.C. Jani for the appellant.

[3] Learned advocate, Shri Jani has referred to the R&P as well as paper book, which has been produced and has tried to submit that both the Courts below have misdirected in appreciating the evidence. He pointedly referred to the background of the facts regarding the dissolution of the firm and submitted that the Courts below have failed to appreciate that even the return of the Income Tax filed after the so-

called dissolution and, therefore, it has not been appreciated properly. Learned advocate, Shri Jani submitted that one sided documents, which have been produced recording the so-called compromise or the understanding between the parties regarding the arrangement, have been believed or accepted but the stand of the appellant has not been considered. He, therefore, submitted that the present Appeal may be entertained.

[4] Though the submissions have been made with background of the facts referring to the R&P and paper book in detailed, the first Appellate Court has clearly recorded in Para Nos.47 & 48 referring to the document at Exh.302 and Exh.547 that the present appellant and Pravinbhai Ratilal had retired on 15.03.1973 from the firm and their respective wives were taken as partners. Thereafter there was an understanding for the dissolution of the firm with consent and the assets and stock were also distributed. The first Appellate Court has also in Para No.48 of the judgment has considered that assuming that the partnership was at will and there is no dissolution even then, the document at Exh.557 clearly established that the appellant had retired from the firm and wife was inducted. Moreover as could be seen from the background of the facts, which has been recorded and discussed at length, the present appellant and other partners have arrived at understanding which has been reduced to writing from time to time like one samjuti karar, Exh.566, which is of 1984 and another karar is Exh.546 and this aspect has also been considered in the judgment of the first Appellate Court with all details. Therefore the contentions which are sought to be raised referring to the partnership or the claim as a partner and the right as a partner, is misconceived. Moreover, the substantial question of law, which have been posed, can hardly be said to be substantial question of law and it only refers to the appreciation of evidence as the Question Nos.[i], [ii] & [iii] all referred to appreciation of evidence. Again Question No.[v] also referred to the fact that the Courts below have committed an error by not appreciating the evidence at Exh.191, 390, 428, 65, 303 and 437, which would also be in the realm of appreciation of material and evidence. In other words, there is no question of law much less any substantial question of law, which can be said to have been involved. Therefore it is too late in light of the day to permit any such contentions, which are sought to be raised referring to the appreciation of evidence. It is required to be stated that both the Courts have on the contrary discussed the evidence in detail for arriving at conclusion, which cannot be said to be erroneous or perverse.

[5] The Hon'ble Apex Court has laid down guidelines with regard to the scope of exercise of discretion under Section 100 of the Civil Procedure Code in Second Appeal after the amendment in Civil Procedure Code in 1976. A word of caution has been expressed that the Court would be slow in disturbing the concurrent finding of facts.

Therefore the concurrent finding of facts on appreciation of material and evidence with detailed discussion on the aspect of partnership and more than one understanding, which have been reduced to writing amongst the partners including the appellant herein, it does not call for any interference. The Hon'ble Apex Court has also made the observations in a judgment in case of [Gurdev Kaur & Ors. V/s Kaki & Ors.](#), 2007 1 SCC 546, wherein, it has clearly observed that :-

"The legislative intention is very clear that legislature never wanted second appeal to become 'third trial on facts' or 'one more dice in the gamble'."

[6] Therefore having regard to the aforesaid discussions and background of the facts, the present Second Appeal cannot be entertained and deserves to be dismissed and accordingly stands dismissed.

[7] In view of the dismissal of Second Appeal, the Civil Application does not survive and stands disposed of accordingly.

