

Evidence Act, s. 30; *Reg. v. Amrita Govinda* (1). The evidence being legally inadmissible, the case against Bala fails. But even if that evidence had been legally admissible, it would have been extremely dangerous to have acted upon it, inasmuch as Bayaji had, in his previous confession to the Third Class Magistrate, stated that the goods which he gave to Bala were "wrapped in a piece of cloth" which bundle he (Bayaji) did not open to see which it contained.

The Court quashes the conviction and sentence, and directs the prisoner to be discharged, and the fine, if paid, to be returned.

Conviction and sentence reversed.

5 B. 65 = 5 Ind. Jur. 426.

APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice F.D. Melvill.

SORABJI FARDUNJI (*Original Defendant*) v. DULABHBHAI HARGOVANDAS AND OTHERS (*Original Plaintiffs*), Respondent.*
[7th June, 1880.]

Partnership—Jurisdiction of District Court to wind up under s. 265 of Indian Contract Act—The Indian Contract Act, IX of 1872, ss. 354 and 265—The Bombay Civil Courts Act No XIV of 1869—Power of District Judge to refer to Assistant Judge a case falling under s. 265 of Contract Act.

A previous dissolution of partnership is necessary, in order to give jurisdiction to the District Court under s. 265 of the Indian Contract Act.

Accordingly, where a suit was instituted in the District Court of Ahmedabad, by some members of a partnership (which, however, was not dissolved at the date of the suit) for the winding up of the business of a ginning factory and for distributing among the shareholders any surplus that might remain, after providing for the payment of its debts, under s. 265 of Act IX of 1872, and the Assistant Judge, to whom it was referred for trial by the District Judge, directed the dissolution of the partnership and the winding up of its business, the High Court, on appeal, reversed the decree of the Assistant Judge and returned the plaint to the plaintiffs for its presentation to the proper Court.

[66] *Quære*.—Whether the District Judge had power, under the Bombay Civil Courts' Act XIV of 1869 to refer to the Assistant Judge a case falling under s. 265 of the Act IX of 1872.

[R., 6 B. 143 (144) ; 10 O.C. 669 (674).]

THIS was an appeal from the decision of A. L. P. Larken, Assistant Judge at Ahmedabad.

The plaintiffs, Dulabhbhai and others, brought this suit against Sorabji Fardunji, under s. 265 of the Indian Contract Act. The plaintiffs alleged in the plaint that on the 7th October 1877, they, the defendant, and one Kavasji Ratanji (who subsequently joined the suit as a plaintiff) opened a ginning factory in partnership and appointed the defendant as manager for conducting its business, under a deed dated the 17th of the same month; that the defendant mismanaged the business and acted fraudulently and contrary to the condition stipulated in the deed; that he did not furnish the shareholders with a statement of the accounts of the factory, and that his mismanagement caused loss to the concern.

* Appeal No. 7 of 1880.

(1) 10 B.H.C.R. 497.

1880:
APRIL 7.
—
APPELLATE
LATE
CRIMINAL.
5 B. 63 =
5 Ind. Jur.
425.

1880. They therefore prayed that the business of the partnership might be wound up and that any surplus that might remain, after providing for the payment of debts, might be distributed among the shareholders. The suit was filed in the Court of the District Judge of Ahmedabad, who, however, instead of trying it himself, referred it to the Assistant Judge for disposal. The plaintiffs valued their suit at Rs. 6,000.

5 B. 65 = The defendant answered that the plaintiffs ought to have sued for a dissolution of partnership under s. 254 of the Contract Act, and that s. 265 did not apply as the partnership had not been dissolved. The other allegations in his written statement were immaterial.

5 Ind. Jar. 426.

Two of the issues raised in the case, were, whether the Court had jurisdiction to try the suit, and whether the plaintiffs were entitled to ask for a dissolution of the partnership. The Assistant Judge found both the issues in the affirmative. He was of opinion that the ill-feeling between the parties was such as to justify him in dissolving the partnership and winding up its affairs under s. 254, cl. 6 of the Contract Act. He accordingly directed that the partnership should be dissolved and its business wound up. He did not, however, award costs to the plaintiffs.

[67] The defendant thereupon appealed to the High Court.

Bhatshankar Nanabhai, for the appellant.—The plaintiffs brought this suit, under s. 265 of the Contract Act, for the winding up of the partnership business, without a previous dissolution of the partnership, as required by that section. The District Judge, therefore, had no jurisdiction to accept the plaint. He was also wrong in referring it to the Assistant Judge for his disposal, under the Bombay Civil Courts' Act. The jurisdiction given by s. 265 of the Contract Act to the District Judge is exclusively vested in him and cannot be transferred by him. The decision of the Assistant Judge is also without jurisdiction, both because the partnership had not been previously dissolved, and because the value of the suit was fixed at Rs. 6,000. Taking the suit to be one for a dissolution of partnership, it ought to go before another Court, according to its pecuniary valuation.

Manekshah Jehangirshah, for the respondents, objected to the decree of the lower Court on the ground that the defendant ought to have been ordered to pay the plaintiffs' costs of the suit.

JUDGMENT.

WESTROPP, C. J.—The plaintiffs have failed to prove any termination of the partnership previously to the institution of this suit. Such a termination, *i.e.*, dissolution of the partnership, was necessary in order to give the District Court jurisdiction under s. 265 of the Indian Contract Act IX of 1872, and we observe in the decree of the Assistant Judge that he directs the dissolution of the partnership. Assuming that the District Judge had power to refer a case properly falling under s. 265 of that Act to the Assistant Judge under the Bombay Civil Courts' Act of 1869 (a point which we do not decide), still, it being evident that this case did not fall within s. 265 of the Indian Contract Act, we must reverse the Assistant Judge's decree, and order the plaint to be restored to the plaintiffs for presentation by them in the proper Court, *viz.*, that of the First Class Subordinate Judge, with such amendments as they may be advised to make.

The plaintiffs having resorted to the wrong Court, must pay to the defendant the costs of this suit and appeal.

Decree reversed.