

1884

JAGJIVANDÁS
JÁVHERDÁS
v.
NÁRÁYAN.

There was no appearance for the respondent.

The judgment of the Court was delivered by

WEST, J.—The engagement in the *kabuláyat* in this case was, on its acceptance by the landlord, an agreement under which the tenant might claim possession for one year. But as the undertaking was to pay rent for “so long as you” (the landlord) “shall leave the land with me” (the tenant), there was no interest created by way of lease extending beyond one year. This appears from *Apu Budgaṛda v. Narhari Annáji*⁽¹⁾. Besides the case mentioned there, reference may be made to *Morton v. Woods*⁽²⁾. In that case the primary engagement was for ten years; but as there was a stipulation that the landlord might re-enter when he pleased, it was construed as creating only a tenancy-at-will. The *kabuláyat* being of such a purport as we have said, it did not require registration under Act XX of 1866, sec. 17. We, therefore, reverse the decrees of the Courts below, and remand the cause for retrial and a new decree. Costs to follow the final decision.

Decree reversed and case remanded.

(1) 1. L. R., 3 Bom., 21.

(2) L. R., 3 Q. B., 658.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánabhái Haridás.

June 16.

KISANDA'S HAJA'RIMAL (ORIGINAL PLAINTIFF), APPELLANT, v. GULA'BCHAND AND ANRUP SADA'RAM, DECEASED, BY THEIR SONS AND HEIRS KUNDA'NLA'L AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.)*

Partnership—Indian Contract Act IX of 1872, Sec. 265—Jurisdiction of District Court—Jurisdiction of Subordinate Court—Practice.

Section 265 of the Indian Contract Act (IX of 1872) assumes that there has been a partnership, and enables the District Court to wind it up, but does not deprive the ordinary Courts of their jurisdiction in cases seriously contested as to the existence of partnership. Such contests ought to be decided as in ordinary cases.

THIS was an appeal from the order of E. Cordeaux, District Judge of Poona, returning the plaint to be presented to the proper Court.

* Appeal, No. 34 of 1883.

The plaintiff and the defendants were the representatives of certain persons alleged to have had carried on a partnership business. The plaintiff brought a suit against the defendants in the First Class Subordinate Judge's Court at Poona to establish his right to a share in the partnership which the defendants denied. After the suit had been partly heard, the Subordinate Judge thought that he had no jurisdiction to entertain it, and that, under section 265 of the Indian Contract Act, the District Judge's Court was the proper tribunal for such a suit, as it related to the winding up of the partnership. Accordingly he returned the plaint, under section 57 of the Civil Procedure Code Act XIV of 1882, in order that it might be presented to the District Court. The District Judge, being of opinion that he had no jurisdiction to proceed with the suit, returned the plaint with the following remarks :—

“ This is a suit by the representative of a deceased partner against the representatives of other partners who are likewise deceased. Section 263 of the Indian Contract Act provides that after a dissolution of partnership the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership. and section 265 of the same Act provides that, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business, pay off the debts, and distribute the surplus according to the shares of the partners respectively. These sections are applicable so long as any of the partners survive. The personal representatives of a deceased partner become tenants in common with the surviving partners of the partnership property and effects in possession. A community of interests subsists between them which is necessary for the winding up of the partnership, for the discharge of its debts, and final distribution of the surplus (see Story on Partnership, sec. 346). Where there are no surviving partners their representatives have their remedy in respect of any property in dispute among themselves by an administration suit under section 213 of the Civil Procedure Code Act XIV of 1882, and such a suit the present one appears to me to be, and one which is within the jurisdiction of the First Class Subordinate Judge. I accordingly return the plaint for presentation in the proper Court.”

From this order the plaintiffs appealed to the High Court.

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Ganesh Rámchandra Kírloskar and *Máháder B. Chowbal* for the appellant.

Gokuldás Kahándás for the respondents.

WEST, J.—The plaintiff in this case apparently regarded the partnership as still subsisting when he filed his plaint, though one of the original partners had died ten years before. The plaintiff's right and his share in the partnership are denied by the defendants. This, therefore, is a case which manifestly goes beyond the auxiliary jurisdiction of the District Court constituted by section 265 of the Indian Contract Act. That section assumes that there has been a partnership, and enables the District Court to bring its machinery to bear on winding it up; but it does not deprive the ordinary Courts of their jurisdiction in cases seriously contested as to the existence of a partnership or as to the plaintiff having been a partner. Such contests, it is obvious, must be decided on the same principles and by the same examination of evidence as those in ordinary cases. Here the suit was proceeding on these terms when it occurred to the Subordinate Judge that a winding up by the District Court would be the appropriate course, but there could be no winding up until the existence or non-existence of the partnership had been ascertained; and the Court ascertaining this could very well in the same inquiry determine what portion of the assets, if any, was due to the plaintiff. It could also take measures for realizing the assets by appointing a receiver. The Subordinate Judge was wrong, therefore, we think, in returning the plaint and sending the plaintiff to the District Court. His order must be reversed, and that of the District Court confirmed. The costs of these appeals, made necessary by the action of the Courts below, are to be costs in the original suit in the Subordinate Judge's Court.

Order reversed.