

ABDUL AZEEZ AND ANOTHER
v.
THE YOUNG MEN'S BUDDHIST
ASSOCIATION, KURUNEGALA

COURT OF APPEAL

WIJETUNGA, J. & WIJAYARATNE, J.

CA No. 643/81 (F)

D. C. KURUNEGALA 4508/L

JUNE 02, 1989

Vindictory suit – Defence of tenancy by partnership – Rent receipts issued in name of partnership firm – Legal persons – Attornment – Agency of partners.

A partnership business under the name of Seena Muna Mohamed Abdulla & Bros. was run in the premises in suit. The plaintiff landlord (The Young Men's Buddhist Association) accepted rent from the partners (Abdul Azeez and Mohamed Lebbe) for the time being of the business and issued receipts in the name of the partnership business. At the time material to the suit the original partners had ceased to be in the business and new partners had taken their place and had duly paid rents which the plaintiff accepted as rent from the partnership business.

Held –

1. The partnership name was a conventional name applicable only to the persons who on each particular occasion when the name was used, were members of the firm.
2. The partners for the time being were agents of one another and of the business.
3. Although the partnership was not a legal person the partners paid the rent. The plaintiff by accepting rent accepted whoever were the partners of the firm for the time being as his tenants and this created a valid contract of tenancy.

Cases referred to:

1. *Samsudeen v. Farook* [1986] 2 Sri LR 185, 188
2. *Perera v. Liyanagama* 58 NLR 454.

APPEAL from judgment of the District Judge of Kurunegala

Dr. H.W. Jayewardene, Q.C. with Ifthikar Hashim, Miss. T. Keenawinna, Miss. K. Wattage, Harsha Amarasekera and H. Cabraal for defendants-appellants.

H.L. de Silva, P.C. with Fritz Kodagoda and Senaka Walgampaya for plaintiff-respondent.

Cur. adv. vult.

August 25, 1989

WIJETUNGA, J.

The plaintiff instituted this action against the defendants for a declaration of title to the premises in suit, for ejection of the defendants therefrom and for damages. The action was on the basis that the plaintiff, who was the owner of the premises, had let the same on a monthly tenancy to M.M.A. Mohamed Abubakker and S.M.M.M. Meera Rawther who carried on business in partnership at the said premises under the name and style of Seena Mana Muna Mohamed Abdulla and Bro. It was claimed that the said tenants had left the said premises and that from November, 1971 the defendants had come into wrongful and unlawful occupation of the same.

The defendants in their answer stated that S.M.M. Mohamed Abdulla and S.M.M. Abdul Rahiman carried on business in partnership at the said premises from 1.3.1940 under the name and style of Seena Mana Muna Mohamed Abdulla & Bro. and that the partnership was the tenant of the said premises. They stated that at all times material to this action and for a long time prior to that, the defendants and one Seena Mana Muna Mohamed Rawther were the partners of the said firm and were the lawful tenants of the said premises under the plaintiff and that the partnership paid the rent for the same, which the plaintiff accepted. They, therefore, prayed for a dismissal of the plaintiff's action.

The defendants admitted that the tenancy had commenced on 1.3.1940 and that M.M.A. Mohamed Abubakker and A.M.M.M. Meera Rawther were the partners of the business called Seena Mana Muna Abdulla and Bro. from 30.08.1962, but that the business had been started on 1.3.1940 by S.M.M. Mohamed Abdulla and S.M.M. Abdul Rahiman and that from the very commencement of the tenancy receipts had been issued in the name of S.M.M.M. Abdulla and Bro. It was further stated that the present defendants are the partners of the said firm of S.M.M.M. Abdulla and Bro. The title of the plaintiff to the premises in suit was not denied by the defendants. The case went to trial on 8 issues and the learned District Judge entered judgment for the plaintiff as prayed for with costs.

It appears that on 1.3.1940, the partnership of Abdulla and Bro. had been formed by S.M.M. Mohamed Abdulla and S.M.M. Abdul Rahiman (D3). In November, 1958, Mohamed Abdulla had been

replaced by Mohamed Abubakker, (D4). In August, 1962, S.M. Abdul Rahiman had ceased to be a partner and had been replaced by Meera Rawther, (D5 & D6) In February, 1971, the 1st and 2nd defendants had become partners, together with the said Mohamed Abubakker and Meera Rawther, (D8). In October 1971, the said Mohamed Abubakker ceased to be a partner and the present partners are the said Meera Rawther and the 1st and 2nd defendants. the partnership business has remained unchanged although the constitution of the partnership had changed from time to time.

Learned Queen's Counsel for the defendants-appellants submits that as the premises in question had been occupied by the firm of Abdulla and Bro. the firm was the tenant of the premises and the changes in the constitution of the firm did not affect the legal rights of the partners. The premises had been let by the plaintiff to this firm and at all times material to this action, the firm was the tenant. Rent receipts had been issued in the name of the firm: The tenancy thus was the tenancy of the business. The plaintiff, he submits, cannot, therefore, obtain ejectment of the defendants and the action is misconceived.

The learned District Judge has considered the question whether a partnership or a firm can be the tenant of premises. He states that the entire defence of the defendants was that the premises were let to the partnership or firm with a registered business name, but that a firm is not a separate and distinct legal person and that there cannot be a contract of tenancy with a body of persons which is not a legal person and that such a contract is a nullity. No contract is a nullity. No contract of tenancy arises between them unless there is an agreement to the effect that the partners of the business shall be the tenants. He holds that even on the evidence of the 1st defendant and on the documentary evidence the defendants have failed to discharge the burden of establishing lawful tenancy whereby they were entitled to occupy the premises. He further states that as there cannot be a legal persona in a business, there could not have been a tenancy with the business unless it was clearly stated and acted upon. It is on this basis that he has entered judgment for the plaintiff as prayed for with costs.

As was held in *Samsudeen V. Farook* (1) it is undoubtedly a correct statement of the law that a partnership could not in law be the

tenant of premises. But, the Court there considered the further question of a notice to attorn sent to a firm and came to the conclusion that it was meant for no other than those who were partners of the firm at that time. In that connection, Lindley on Partnership (15th Ed. page 36 at seq) was quoted as follows:-

"..... the name under which a firm carries on business is in point of law a conventional name applicable only to the persons who on each particular occasion when the name is used, are members of the firm as the name of a firm is only a conventional mode of designating the persons composing it; any variance among these persons is productive of a new signification of the name..... Thus in *Wray V Wray*, it was held that a conveyance of freeholds to 'William Wray in fee simple' passed the legal estate in to the persons who were at the date of the conveyance members of the firm trading under that name If therefore a legacy is left to a firm the legacy is payable, unless otherwise expressed, to those who compose the firm at the date of the will".

The notice to attorn referred to above was held to be an offer of the tenancy to those who were partners of the firm at that time and the defendant, who was one of the partners, having accepted this offer and having sent the rent, a contract of tenancy was thus created between the offeror and the defendant as a partner of the firm.

The position that a partnership cannot enter into a contract of tenancy is also supported by the decision in *Perera V. Liyanagama* (2). There, it has been held that although the partners in their individual capacity can enter into a contract of tenancy, a partnership as such cannot do so. It has been further held that if a landlord is aware before he lets his premises to a tenant, that a partnership business is to be carried on in the premises by the tenant and certain other persons, no contract of tenancy arises between the landlord and the partners unless it is agreed between the landlord and the partners that the latter are to be the tenants.

But that case can be distinguished from the facts of the instant case. In that case, the defendants, in their answer while admitting that their deceased brother Charles Liyanagama was the tenant of the plaintiff averred that he had taken the premises in question on rent "for the purpose of the business known as 'Sri Ramya Hotel & Stores' of which the defendants were partners". Even during the life

time of the deceased Charles Liyanagama, the 1st defendant had paid the rents to the plaintiff and asked for receipts in the name of the partnership, but the plaintiff continued to issue receipts in the name of Charles Liyanagama. This was held to be clear proof that the plaintiff was unwilling to accept any persons other than Charles Liyanagama as his tenant. But in the instant case, the rent receipts have been issued in the name of the firm of Abdulla & Bro. Clearly, these premises had been occupied by this firm for the purpose of their business from 1940. There had no doubt been changes in the constitution of the firm of Abdulla & Bro. from time to time, but the plaintiff had accepted whoever were the partners of the firm for the time being as its tenants and continued to place the premises at the disposal of the partnership. A partnership name being only a conventional mode of designating the persons composing it, the contract of tenancy, therefore, was with the partners of the firm for the time being.

The law of partnership has often being described as nothing but an extension of the law of agency and each partner is the agent of his co-partners for the purpose of partnership business. Thus, every partner is an accredited or acknowledged agent of the firm and may consequently bind all the other partners by his acts in all matters which are within the scope and objects of the partnership. Each individual partner constitutes the others his agents for the purpose of entering into all contracts for him within the scope of the partnership concern and consequently is liable to the performance of all such contracts in the same manner as if entered into personally by himself. Vide Law of Partnership, Avtar Singh, (1981 with Supplement 1984) pages 199 & 200.

Therefore, once it is established that the landlord had accepted the partners as his tenants, then the tenancy could continue in favour of those constituting the partnership although there may be changes in the individuals who constitute the same. Thus, the tenant is not the partnership as such, but the individual partners who are agents for each other in all matters pertaining to the purposes of the partnership.

As was indicated earlier, although there were changes in the constitution of the firm of Abdulla & Bro. from time to time there was continuity as regards the partnership as a business firm. The certificates of registration in respect thereof under the Business Names Ordinance have been produced marked (D3) to (D4) and (D6)

to (D9) and the statement of change dated 24.8.1962 as (D5). According to (D9), Mohamed Meera Rawther who became a partner in August, 1962 vide (D5) and (D6) continued to be a partner even as at 1.10.1971. Abdul Azeez, the 1st defendant and Mohamed Lebbe the 2nd defendant had become partners by 15.2.1971. One of the original partners, Mohamed Abdulla, had ceased to be a partner by 4.11.1958, when Mohamed Abubakker became a partner with Abdul Rahiman, the other original partner (D4). By 24.8.1962, Abdul Rahiman himself ceased to be a partner and Mohamed Abubakker admitted Mohamed Meera Rawther as a new partner, (D5) & (D6). Even as at 9.7.1964, Mohamed Abubakker and Mohamed Meera Rawther were the partners (D7). By 15.2.1971 the two defendants had been admitted as new partners together with the partners referred to in (D7). Of them, Mohamed Abubakker ceased to be a partner by 1.10.1971.

It is thus evident that despite the changes which took place in the constitution of the firm in 1958, 1962 and 1971, the firm continued as the tenant of the premises acting through the partners for the time being. Even as at 1.10.1971 Mohamed Meera Rawther who had become a partner in August, 1962 continued to be a partner of the firm. It is thus clear that the contract of tenancy had not been entered into in their personal capacity, but on behalf of the partnership as is evidenced by the fact that the rent receipts were issued in the name of the partnership. (D1) is such a receipt in respect of the month of December, 1970, which indicates that the plaintiff had acknowledged S.M.M. Mohamed Abdulla & Bro. the partnership, as its tenant.

The learned District Judge, though he was right when he held that a partnership as such could not in law be the tenant of the premises, has failed to consider the important question whether any one or more of the partners, as an agent of the partnership and not acting in his personal capacity, could enter into a contract of tenancy for and on behalf of the partnership. In the instant case, it seems to me that the firm of Abdulla & Bro., which was in point of law a conventional name applicable to the persons who on each particular occasion when the name was used were members of the firm, were the tenants of the premises in suit and there was no legal impediment for the persons constituting that firm to enter into a contract of tenancy for and on behalf of the firm. In my view, therefore, the learned District Judge was in error when he held that the defendants have failed to establish lawful tenancy whereby they

were entitled to occupy the premises. Their occupation of the premises from 1971, qua partners of the firm of Abdulla & Bro., cannot be wrongful or unlawful and the plaintiff is, therefore not entitled to the reliefs claimed in the prayer to the plaint. In the result, I would allow this appeal and dismiss the plaintiff's action, but I make no order as regards costs.

WIJEYARATNE, J. – I agree

Appeal allowed.
