A S.V. CHANDRA PANDIAN AND ORS.

v.

S.V. SIVALINGA NADAR AND ORS.

JANUARY 11, 1993

B [A.M. AHMADI, M.M. PUNCHHI AND K. RAMASWAMY, JJ.]

Arbitration Act 1940:

Sections 14, 17, 30 and 33—Arbitration Award—Assests of partnership C *firm allocated to partners on dissolution—Assets comprising of immovable properties—Whether award to be registered under the Registration Act.*

Indian Partnership Act, 1932:

Sections 18, 22, 29 and 48—Partnership—Dissolution of—Settlement of D *accounts—Distribution of residue to partners—Assets comprising of immovable properties—Whether attracts Section 17 of Registration Act.*

Six brothers, viz. the four appellants and respondents 1 and 2, were carrying on the business in partnership. Disputes arose between the six E **brothers in regard to the business run by them. They entered into an arbitration agreement to resolve the disputes and referred the disputes to three arbitrators. The arbitrators entered upon the reference and after giving opportunity of hearing to the parties, circulated a draft award. After considering the reaction of the disputants, final award was made by the arbitrators by which various properties were allotted to each of the six** F **brothers.**

Some of the disputants filed a petition praying for a direction to the arbitrators to file their award in court. They also filed another petition requesting the court to pass a decree in terms of the award. Two other G **disputants filed a petition under Section 30 of the Arbitration Act to set aside the award. A Single Judge heard these matters. It was contended before him that having regard to the allotment of partnership properties including immovable properties under the award, it was incumbent that the award should have been registered as required by Section 17(1) of the Registration Act and since it lacked registration, the Court had no juris-** H **diction to make it the rule of the Court and grant a decree in terms**

thereof. The Single Judge directed taking steps for getting the award registered. A

In the meantime, one of the arbitrators passed away. At the request of some of the parties, the surviving arbitrators presented the award to the Registrar for registration. Thereupon one of the brothers served a notice on the Registrar not to register the document. B

Against the order of the Single Judge, an appeal was preferred to Division Bench and it reversed the finding of the Single Judge. It held that the award required registration under section 17(1) of the Registration Act; and in the absence of registration there was no valid award and the Court had no jurisdiction to grant a decree in terms of the award. Being aggrieved by this order, the present appeals were filed by four of the six brothers. C

On the question whether the award required registration under section 17(1) of the Registration Act: D

Allowing the appeals, this Court

HELD : 1.1. When a dissolution of a partnership takes place and the residue is distributed among the partners after settlement of accounts there is no partition, transfer or extinguishment of interest attracting section 17 of the Registration Act. [79F,G] E

1.2. Regardless of its character the property brought into the stock of a firm or acquired by a firm during its subsistence for the purposes and in the course of its business shall constitute the property of the firm unless the contract between the partners provides otherwise. On the dissolution of the firm each partner becomes entitled to his share in the profits, if any, after the accounts are settled in accordance with section 48 of the Partnership Act. In the entire asset of the firm all the partners have an interest, albeit in proportion to their share and the residue, if any, after the settlement of accounts on dissolution would have to be divided among the partners in the same proportion in which they were entitled to a share in the profit. Thus during the subsistence of the partnership a partner would be entitled to a share in the profits and after its dissolution to a share in the residue, if any, on settlement of accounts. The mode of settlement of accounts is clearly set out in section 48. It is obvious that the F G H

A residue would in the eye of law be movable property i.e. cash, and hence distribution of the residue among the partners in proportion to their shares in the profits would not attract section 17 of the Registration Act. Moreover, a partnership is not a legal entity but is only a compendious name and each and every partner has a beneficial interest in the property of the firm eventhough he cannot lay a claim on any earmarked portion B thereof as the same cannot be predicated. Therefore, when any property is allocated to him from the residue it cannot be said that he had only a definite limited interest in that property and that there is a transfer of the remaining interest in his favour within the meaning of seciton 17 of the Registration Act. [75C-H, 76A]

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1.3. Since no partner can claim a definite or earmarked interest in one or all of the properties of the firm because the interest is a fluctuating one depending on various factors, such as, the losses incurred by the firm, the advances made by the partners as distinguished from the capital brought in, it cannot be said unless the accounts are settled in the manner D indicated by section 48 of the Partnership Act, what would be the residue which would ultimately be allocable to the partners. In that residue, which becomes divisable among the partners, every partner has an interest and when a particular property is allocated to a partner in proportion to his share in the profits of the firm, there is no partition or transfer taking E place nor is there any extinguishment of interest of other partners in the allocated property in the sense of a transfer or extinguishment of interest under section 17 of the Registration Act. [76A-E]

Addanki Narayanappa & Anr. v. *Bhaskara Krishtappa & 13 Ors.*, [1966] 3 SCR 400; *Commissioner of Income Tax, West Bengal, Calcutta* v. F *Juggilal Kamalapat,* [1967] 1 SCR 784; *CIT Madhya Pradesh* v. *Dewas Cine Corporation,* [1968] 2 SCR 173; *CIT U.P.* v. *Bankey Lal Vaidya,* AIR 1971 SC 2270 and *Malabar Fisheries Co., Calicut* v. *CIT. Kerala,* [1980] 1 SCR 696, relied on.

G *Ajudhia Pershad Ram Pershad* v. *Sham Sunder,* AIR 1947 Lahore 13, referred to.

2. The award read as a whole makes it absolutely clear that the arbitrators had confined themselves to the properties belonging to the two firms and had scrupulously avoided other properties in regard to which H they did not reach the conclusion that they belonged to the firm. It seeks

to distribute the residue after settlement of account on dissolution. While distributing the residue the arbitrators allocated the properties to the partners and showed them in the Schedules appended to the award. On a true reading of the award as a whole, there is no doubt that it essentially deals with the distribution of the surplus properties belonging to the dissolved firms. The award, therefore, did not require registration under section 17(1) of the Registration Act. [79E-G]

3. The matters are remanded to the Division Bench for answering the other contentions which arose in the appeal before it but which were not decided in view of its decision on the question of registration of the award. The award which is pending for registration may be registered by the Sub-Registrar notwithstanding the objection raised by one of the partners, if that is the only reason for withholding registration. [79H, 80A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1749-1752 of 1992.

From the Judgment and Order dated 13.11.91 of the Madras High Court in O.S.A. No. 191 of 1988, O.P. No. 230/84 and Application No. 3505 of 1984 and dated 27.1.1992 in O.S.A. No. 9 of 1992.

WITH

Special Leave Petition No. 9408 of 1992.

A.K. Sen, A.T.M. Sampath and Sitharanjandas for the Appellants.

T.S.K. Iyer, S. Sivasubramaniam, R. Thamodharan, Dr. A.F. Julian (For M/s Arputham, Aruna & Co.) and A. Mariarputham for the Respondents.

The following Judgment of the Court was delivered by

AHMADI, J. The four appellants and respondents 1 and 2 are brothers. They were carrying on business in partnership in the name and style of Messers Sivalinga Nadar and Brothers and S.V.S. Oil Mills, both partnerships being registered under the Partnership Act, 1932. Most of the properties were acquired by the firm of Sivalinag Nadar and Brothers. The firm of Messers S.V.S. Oil Mills merely had leasehold rights in the parcel of land belonging to the first-named firm on which the superstructure of

A the oil mill stood. Both the partnerships were of fixed durations. Disputes arose between the six brothers in regard to the business carried on in partnership in the aforesaid two names. For the resolution of these disputes the six brothers entered into an arbitration agreement dated 8th October, 1981, which was as under :

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> "We are carrying on business in Partnership together with other partners under several partnership names. We are also holding shares and Managing the Public Limited Company, namely. The Madras Vanaspati Ltd., at Villupuram. Disputes have arisen among us with respect to the several business concerns, immoveable and moveable properties standing in our names as well as other relatives.
>
> We are hereby referring all our disputes, the details of which would be given by us shortly to you, namely, Sri B.B. Naidu, Sri K.R. Ramamani and Sri Seatharaman.
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> We agree to abide by your award as to our disputes."

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All the three arbitrators were fairly well-conversant with the business carried on in different names by the aforesaid two partnership firms; the first two being their Tax Consultants and the third being their Chartered E Accountant. The parties, therefore, had complete faith and trust in their objectivity and impartiality

The arbitrators accepted and entered upon the reference and after giving the disputants full and complete opportunity to place their rival points of view before them, circulated a draft award and after considering F the response and reaction of the disputants thereon made their final award on 9th July, 1984. The concluding part of the award reads as under :

> "We hereby direct that each of the parties be allotted the schedule of properties mentioned in the various schedulas A to F annexed to this award.
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> |---|---|---|
> | 1. S.V. Sivalinga Nadar | – | Schedule 'A' |
> | 2. S.V. Harikrishnan | – | Schedule 'B' |
> | 3. S.V. Chandrapandian | – | Schedule 'C' |
> | 4. S.V. Kasilingam | – | Schedule 'D' |
> | 5. S.V. Ramchandran | – | Schedule 'E' |

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6. S.V. Natesan	Schedule 'F'	A

We direct that the firms of M/s Sivalinga Nadar & Bros. and M/s S.V.S. Oil Mills and also the joint house property Rent Account be dissolved as at the close of business on 14th July, 1984."

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The arbitrators then proceed to set out the properties belonging to or claimed to belong to the aforesaid two firms in paragraphs 6 to 24 of their award. Paragraph 25 is a residuary clause which says that any asset left out or realised hereafter or any liability found due other than those reflected in the account books, shall, likewise, be divided and/or borne C equally among the disputants. Paragraphs 26 and 27 deal with the use of the firm names. Paragraph 28 refers to the claim of Smt. C. Kanthimathi, sister of the six partners, with which we are not concerned in these appeals. Paragraph 29 refers to the business carried on by the relatives of the disputants in the names of Sri Brahmasakthi Agency and Srimagal Finance D Corporation. The arbitrators have recognised the fact that even though the said business is not carried on by the disputants it would be desirable to dissolve the said firms also w.e.f. 24th July, 1984 in the larger interest of peace and amity among the disputants and their relatives. Paragraph 30 refers to the properties standing in the name of the father of the six disputants, i.e., partners of the two firms in question. It is stated that E although initially the disputants had shown an inclination to refer the dispute concerning the properties owned by their father to the arbitration of the three arbitrators but when it was noticed that the deceased had left a will disposing of the properties the need for resolution of the dispute through arbitration did not survive. In paragraph 31 the arbitratros have F determined their fees and have directed the disputants to bear them equally. At the end of the award the properties falling to the share of the disputants have been set out in detail in Schedules A to F referred to earlier.

After the award was made on 9th July, 1984, O.P. No. 230 of 1984 G was filed by S.V. Chandrapandian & Ors. for a direction to the arbitrators to file their award in Court which was done. Thereupon, the applicants S.V. Chanrapandian and others filed a Misc. Application No. 3503 of 1984 requesting the Court to pass a decree in terms of the award. Before orders could be passed on that application, O.P. Nos. 247 & 275 of 1984 were H

A filed by S.V. Sivalinga Nadar and S.V. Harikrishnan respectively under section 30 of the Arbitration Act to set aside the award. The said applications came up for hearing before a learned Single Judge of the High Court. Various points were raised and decided by the learned Single Judge but it would be sufficient for our purpose to refer to the one which we are called upon to decide in these group of appeals. That is to be found in paragraph B 71 of the judgment of the learned Single Judge. The contention urged was that having regard to the allotment of partnership properties under the award, it was incumbent that the award should have been registered as required by Section 17(1) of the Registration Act and since it lacked registration, the Court had no jurisdiction to make it the rule of the Court C and grant a decree in terms thereof.

The learned Single Judge answered the aforesaid contention in paragraph 72 of his judgment as under :

> "The learned counsel for the respondents also contended that D Award falls under Schedule I Article 12 of the Stamp Act and the allocation of properties owned by partnership firm on dissolution to the erstwhile partners is not partition of immoveable properties. In this connection, learned counsel for the respondents placed reliance in the decision reported in AIR E 1959 Andhra Pradesh P.380 (FB) which decision has been confirmed in AIR 1966 SC 1300 = 1966 (2) MLJ 60 SC. *Addanki Narayanappa* v. *Bhaskara Krishnappa.* It was submitted by the learned counsel for the respondents that the contentions with regard to stamp and registration put forward by the petitioner cannot be accepted. It is to be pointed out that the F Award has been submitted for registration long ago on 27.10.1984 itself and it is stamped and if there is any deficiency, the Registering Authority could direct proper stamp to be affixed and therefore I feel there could be no impediment for the Award being made a rule of the Court and a decree being G passed in terms of the Award as contended by the learned counsel for the respondents."

The learned Single Judge thereafter proceeded to make the final order in paragraph 78 of the judgment in the following terms :

> H "Thus on a careful consideration of the materials available and

the contentions of either side it has to be decided that Application No. 3505 of 1984 in O.P. No. 230/84 filed by the petitioners therein praying for a decree in terms of the arbitration Award dated 9.7.1984 has to be allowed and O.P. Nos. 247 and 275 of 1984 and the application filed in those two petitions, i.e., Application Nos. 3474, 3476, 5030, 5031, 5032, 2827, 2828,3773, 3762, 3874 of 1984 and 4886 and 4887 of 1985, are dimissed. The petitioner in O.P. No. 230/84 and the applicants in Application No. 3505/84 are directed to take steps for getting the Award registered. The parties in all these proceedings are directed to bear their own costs."

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It may here be mentioned that after the making of the award one of the arbitrators Sri B.B. Naidu passed away on 20th October, 1984. At the request of some of the parties the surviving arbitrators presented the award before the District Registrar, Madras, for registration on 27.10.84. Even though the signature of the deceased arbitrator was identified by the surviving arbitrators the document was kept pending for registration. In the meantime, on 23rd January, 1987, advocate for Sivalinga Nadar served notice on the Registrar not to register the document and threatened to take proceedings in Court if the document was registered. It will thus be seen that the registration of the document was blocked by one of the disputants Sivalinga Nadar on the premise that the High Court had in O.P. No. 247/84 granted a stay against the operation of the award on 5th September, 1984.

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Against the judgment of the learned Single Judge, the matter was carried in appeal to a Division Bench of the High Court of Madras. The Division Bench of the High Court reversed the aforesaid finding recorded by the learned Single Judge and came to the conclusion that the award required registration under section 17(1) of the Registration Act. In this view that it took, it did not think it necessary to go into the other contentions dealt with by the learned Single Judge. It held that since the award required registration and was in fact not registered no proceeding for making the award the rule of the Court could be entertained because in the absence of a valid award the Court had no jurisdiction to grant a decree in terms of the award. It, however, took note of the fact that the award was presented for registration but on account of the conduct of one of the disputants it could not be registered as the Registering Authority was threatened with civil consequences. The correspondence in this behalf was

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A sought to be placed on record as additional evidence but the Division Bench though that would not alter the situation since the fact remained that the award was not registered even on the dated of its judgment. It, therefore, made the following observation in paragraph 46 of the judgment:

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> "It, however, does not mean that if the award is validly registered and presented to be made a rule of the Court in accordance with law, the Court cannot entertain the same."

In this view of the matter the Division Bench allowed the appeal and set aside the impugned judgment of the learned Single Judge and held that C as the award was not registered it could not be made the rule of the Court. It made no order as to costs. It is against this decision of the Division Bench of the High Court that present appeals by special leave (we also grant special leave in S.L.P. No. 9408 of 1992) have been filed.

D Before we examine the contention based on section 17 of the Registration Act we may notice a few relevant provisions bearing on the interest of partners in partnership property as found in the Partnership Act, 1932. Section 4 defines partnership as a relationship between persons who have agreed to share the profit of a business carried on by all or any E of them acting for all. Section 14 provides that subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business. It is also clarified that unless the contrary intention F appears, property and rights and interest in property acquired with money belonging to the firm shall be deemed to have been acquired for the firm. Section 15 says that the property of the firm shall be held and used by the partners exclusively for the purposes of the business subject of course to contract between the partners. Says section 18, subject to the provisions of G the Act, a partner is the agent of the firm for the purposes of the business of the firm. Under section 19 the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, shall bind the firm. This authority to bind the firm is termed as "implied authority". Section 22 lays down that in order to bind a firm, an act or instrument done H or executed by a partner or other person on behalf of the firm shall be

done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm. Section 29 deals with the rights of transferee of a partner's interest. Sub-section (1) thereof provides that such a transferee will not have the same rights as the transferor-partner but he would be entitled to receive the share of profits of his transferor on the account of profits agreed to by the partners. Sub-section (2) next provides that upon dissolution of the firm or upon a transferor-partner ceasing to be a partner, the transferee would be entitled against the remaining partners to receive the share of the assets of the firm to which the transferor-partner was entitled and will also be entitled to an account as from the date of dissolution. Section 30 deals with the case of a minor admitted to the benefits of partnership. Such a minor is given a right to his share of the property of the firm and also a right to share in the profits of the firm as may be agreed upon business share is made liable for the acts of the firm though he would not be personally liable for the same. Sub-section (4), however, debars a minor from suing the partners for an account or for his share of the property or profits of the firm except when he severes his connections with the firm, in which case for determining his share the law requires a valuation of his share in the property of the firm to be made in accordance with Section 48. Sections 31 to 38 relate to incoming and outgoing partners. Section 32 deals with the consequences of retirement. Sub-sections (2) and (3) of Section 32 deal with the consequences of retirement while Sections 36 and 37 speak about the rights of an outgoing partner to carry on competing business and in certain cases to share subsequent profits. Charpter VI deals with the dissolution of a firm. Section 40 provides that a firm may be dissolved with the consent of all the partners or in accordance with the contract between the partners. Sections 41 and 42 deal with dissolution on the happening of certain events while Section 43 permits a partner to dissolve a firm by notice if it is a partnership at will. Section 44 speaks of dissolution through Court. Section 48 indicates the mode of settlement of accounts between the partners on dissolution while Section 49 posits that where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the

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A surplus (if any) in the payment of the debts of the firm. Chapter VII deals with the registration of firm, etc,. and Chapter VIII contains the saving clause.

The above provisions make it clear that regardless of the character of the property brought in by the partners on the constitution of the partnership firm or that which is acquired in the course of business of the partnership, such property shall become the property of the firm and an individual partner shall only be entitled to his share of profits, if any, accruing to the partnership from the realisation of this property and upon dissolution of the partnership to a share in the money representing the value of the property. It is well-settled that the firm is not a legal entity, it has no legal existence, it is merely a compendious name and hence the partnership property would vest in all the partners of the firm. Accordingly, each and every partner of the firm would have an interest in the perperty or asset of the firm but during its subsistence no partner can deal with any portion of the property as belonging to him, nor can be assign his interest in any specific item thereof to anyone. By virtue of the implied authority conferred as agent of the firm his action would bind the firm if it is done to carry on, in the usual way, the business of the kind carried on by the firm but the act or instrument by which the firm is sought to be bound must be done or executed in the firm name or in any other manner expressing or implying an intention to bind the firm. His right is merely to obtain such profits, if any, as may fall to his share upon the dissolution of the firm which remain after satisfying the liabilities set out in the various sub-clauses (i) to (iv) of clause (b) of secton 48 of the Act.

In the present case the six brothers who were carrying on business in partnership fell out on account of disputes which they could not resolve *inter se.* The partnership being of fixed durations could not be dissolved by any partner by notice. As they could not resolve their disputes they decided to resort to arbitration. The three arbitrators chosen by them were men of their confidence and they after giving the partners full and complete opportunity took care to first circulate a proposed award to ascertain the reaction of the disputants therein. The letter written to the arbitrators by S.V. Sivalinga Nadar dated 16th February, 1983 indicates that he was quite satisfied with the hearing given by the arbitrators. He was also by and large satisfied with the proposed award but thought it warranted certain adujustments to make it acceptable and rationale. He was of the view that the

award should provide for the reallocation of the shareholdings of Madras Vanaspati Ltd., whereas Brahmaksthi Tin Factory owned by his sons should be kept out of the purview of the arbitrators since it was not the subject matter of arbitration. Then he raised some objection as to the percentage of his share and the amount found due to him. In the subsequent letter written on 9th September, 1983 he has reiterated these very objections while raising certain questions regarding valuation of partnership properties. Even the application filed under Sections 30 and 33 of the Arbitration Act in the High Court the objections to the award as enumerated in paragraph 15 mainly concerned (i) the conduct of the arbitrators who, it is alleged, acted negligently, with bias and against principles of natural justice (ii) deliberate act in leaving out certain properties from consideration e.g., shareholdings of Madras Vanaspati Ltd., stock-in-trade and cash deposits, the properties of Velayudha Perumal Nadar, etc., and (iii) failure to grant him a higher share to which he was entitled. No contention was raised regarding the want of registration of the award. However, being a question of law, the learned Single Judge entertained the plea and rejected it but it found favour with the Division Bench.

We now think it convenient to reproduce the relevant part of Section 17 of the Registration Act :

> "17(1) - The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely -
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> (a) instruments of gift of immoveable property;
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> (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;
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> (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the

A creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immoveable property from year to year, or for any terms exceeding one year, or reserving a yearly rent;

B (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property."

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The submission made in this behalf before the Courts below was that the award involved a partition of immoveable properties as a consequence of dissolution of the firms and since the value of the immoveable properties D which are the subject matter of the award indisputably exceed the value of Rs. 100, the award was compulsorily registrable in view of the mandatory nature of the language of Section 17(1) which uses the expression 'shall be registered'. On the mandatory character of the provision there is no dispute. The question which requires determination is whether on the E dissolution of the partnership the distribution of the assets of the firm comprising both moveable and immoveable properties after meating its obligations on settlement of accounts amongst the partners of the firm in proportion to their respective shares amounts to a partition of immoveable properties or a reliquishment or extinguishment of a share in immoveable property requiring registration under Section 17 of the Registration Act if F the allocation includes immoveable property of the value of Rs. 100 and above? In other words the question to the considered is whether the interest of a partner in partnership assets is to be treated as moveable property or both moveable and immoveable depending on the character of the property for the purposes of Section 17 of the Registration Act? This G question has been the subject matter of decision in a few cases.

In *Addanki Narayanappa & Anr.* v. *Bhaskara Krishtappa & 13 Ors.*, [1966] 3 SCR 400 the members of two Joint Hindu families, the Addanki family and the Bhaskara family, had entered into partnership for carrying on business of hulling rice, etc.; each family having half share in that H business. The capital of the partnership comprised, among other things,

certain lands belonging to the two families. The firm acquired more lands in the course of business. Differences arose whereupon two members of the Addanki family filed a suit for dissolution of the partnership and accounts. All the members of the two families were made parties to the suit either as plaintiffs or as defendants. The Bhaskara family contended in defence that the partnership was dissolved in 1936 and accounts were settled between the two families under a 'karar executed in favour of Bhaskara Gurappa Setty, the karta of the Bhaskara family, by five members of the Addanki family representing that family. The defendants, therefore, contended that the plaintiffs had no cause of action and the suit for dissolution of partnership and accounts was not maintainable. The relevant part of the agreement - *Karar* reads as under :

> "As disputes have arisen in our family regarding partition, it is not possible to carry on the business or to make investment in furture. Moreover, you yourself have undertaken to discharge some of the debts payable by us in the coastal parts in connection with our private business. Therefore, from this day onwards we have closed the joint business. So, from this day onwards, we have given up (our) share in the machine etc., and in the business, and we have made over the same to you alone completely by way of adjustment. You yourself shall carry on the business without ourselves having anything to do with the profit and loss. Herefor, you have given up to us the property forming our Venkatasubbayya's share which you have purchased and delivered possession of the same to us even previously. In case you want to execute and deliver a proper document in respect of the share which we have given to you, we shall at you own expense, execute and deliver a document registerd."

Ex-facie this document disclosed that the partnership business had come to a halt and the Addanki family had given up their share in the machine, etc., in the business and had made it over to the Bhaskara family. It also recites that the Addanki family had already received certain properties purchased by the partnership as its share in the partnership assets. The submission was that since the partnership assets included immovable property and the document racorded relinquishment by the members of the Addanki family of their interest therein which exceeded Rs. 100 in value, the document required registration under Section 17(1) (c) of the

A Registation Act. After referring to the provisions of law, treatise and the case law, both of English and Indian Courts, this Court reproduced the following passage from the decision in *Ajudhia Pershad Ram Pershad* v. *Sham Sunder*, AIR 1947 Lahore 13 with approval:

> B "These Sections require that the debts and liabilities should first be met out of the firm property and thereafter the assets should be applied in rateable payment to each partner of what is due to him firstly on account of advances as distinguished from capital and, secondly on account of capital, the residue, if any, being divided rateably among all the partners. It is obvious that C the Act contemplates complate liquidation of the assets of the partnership as a preliminary to the settlement of accounts between partners upon dissolution of the firm and it will, therefore, be correct to say that, for the purposes of the Indian Partnarship Act, and irrespective of any mutual agreement D between the partners, the share of each partner is, in the words of Lindley : his proportion of the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged."

E In *Commissioner of Income-Tax, West Bengal, Calcutta* v. *Juggilal Kamalapat*, [1967] 1 SCR 784 = AIR 1967 SC 401 the facts were that three brothers and one J. entered into a partnership business. The firm owned both moveable and immoveable properties. Sometime thereafter the three brothers created a Trust with themselves as the first three trustees and F simultaneously executed a deed of relinquishment relinquishing their rights in and claims to all the properties and assets of the firm in favour of J and of themselves in the capacity of trustees. Thereafter a new partnership firm was constituted between J and the Trust with specified shares. The Trust brought a sum of Rs. 50,000 as its capital in the new firm. The new firm applied for registration under Section 26-A of the Income Tax Act, 1922 G but the application was rejected by the authorities. The Tribunal held that the deed of relinquishment being unregistered could not legally transfer the rights and the title to the immoveable properties owned by the original firm to the Trust. Since the immoveable properties were not separable from the other business assets it held that there was no legal transfer of any H portion of the business assets of the original firm in favour of the Trust. A

reference was made to the High Court on the question whether the new partnership legally came into existence and as such should be registered under Section 26-A. The High Court held that there was no impediment to its registration. The matter was brought in appeal before this Court. This Court pointed out that the deed of relinquishment was in respect of individual interests of the three brothers in the assets of the patnership firm in favour of the Trust and consequently, did not require registration, even though the assets of the partnership included immoveable property. In taking this view reliance was placed on the decision, *Ajudhia Pershad's* case (supra) as well as the decision of this Court in *Addanki Narayanappa & Anr.* (Supra).

Again in *CIT Madhya Pradesh* v. *Dawas Cine Corporation,* [1968] 2 SCR 173 = AIR 1968 SC 676 the partnership firm was dissolved and on dissolution it was agreed between the partners that the theatres should be returned to their original owners who had brought them into the books of the partnership as its assets. In the books of accounts of the partnership the assets were shown as taken over on October 1. 1951 at the original price less depreciation, the depreciation being equally divided between the two partners. In the proceedings for the assessment year 1952-53 the firm was treated as a registered firm. The Appellate Tribunal held that restoration of the two theatres to the original owners amounted to transfer by the firm and the entries adjusting the depreciation and writing off the assets at the original value amounted to total recoupment of the entire depreciation by the partnership and on that account the second proviso to section 10(2)(vii) of the I.T. Act, 1922 applied. The High Court in reference upturned the decision of the Tribunal and held in favour of the assessee against which the Revenue appealed to this Court. This Court after referring to sections 46 and 48 of the Partnership Act held that on the dissolution of the partnership each theatre must be deemed to be returned to the original owner in satisfaction partially or wholly of his claim to a share in the residue of the assets after discharging the debts and other obligations. In law there was no sale or transfer by the partnership to the individual partners in consideration of their respective share in the residue. In taking this view reliance was once again placed on the decision of this court in *Addanki Narayanappa & Anr.* (supra)

In *CIT. U.P.* v. *Bankey Lal Vaidya,* AIR 1971 SC 2270 this court pointed out that on dissolution of partnership the assets of the firm are

A valued and the partner is paid a certain amount in lieu of his share of the assets, the transaction is not a sale, exchange or transfer of assets of the firm and the amount received by the partner cannot be taxed as capital gains. In taking this view reliance was placed on the decision of this Court in *CIT. Madhya Pradesh* v. *Dewas Cine Corpn.,* (supra).

B Again in *Malabar Fisheries Co. Calicut* v. *CIT. Kerala,* [1980] 1 SCR 696 = AIR 1980 SC 176 the facts were that the appellant firm which was constituted on April 1. 1959 with four partners carried on six different businesses in different names. The firm was dissolved on March 31, 1963 and under the deed of dissolution the first business concern was taken over C by one of the partners, the remaining five concerns by two of the other partners and the fourth partner received his share in cash. It appears that during the assessment years 1960-61 to 1963-64 the firm had installed various items of machinery in respect of which it had received Development Rebate under Section 33 of the I.T. Act. 1961. On dissolution, the D Income Tax officer took the view that section 34(3)(b) of the Act applied on the premiss that there was a sale or transfer of the machinery by the firm whereupon he withdrew the Development Rebate earlier allowed to the firm by amending the orders in that behalf. The appeal filed on behalf of the dissolved firm was dismissed by the Appallate Assistant Commis- E sioner but was allowed by the Tribunal. At the instance of the Revenue a reference was made to the High Court and the High Court allowed the reference holding that there was a transfer of assets within the meaning of section 34(3)(b). The dissolved firm approached this court in appeal. This court after referring to the definition of the expression 'transfer' in section F 2(47) of the Act and the case law on the point concluded as under :

> "Having regard to the above discussion, it seems to us clear that a partnership firm under the Indian Partnership Act, 1932 is not a distinct legal entity apart from the partners constituting it and equally in law the firm as such has no separate rights of G its own in the partnership assets and when one talks of the firm's property or firm's assets all that is meant is property or assets in which all partners have a joint or common interest. If that be the position, it is difficult to accept the contention that upon dissolution the firm's rights in the partnership assets are H extinguished. The firm as such has no separate rights of its own

in the partnership assets but it is the partners who own jointly in common the assets of the partnership and, therefore, the consequence of the distribution, division or allotment of assets to the partners which flows upon dissolution after discharge of liabilities is nothing but a mutual adjustment of rights between the partners and there is no question of any extinguishment of the firm's rights in the partnership assets amounting to a transfer of assets within the meaning of s. 2(47) of the Act."

From the foregoing discussion it seems clear to us that regardless of its character the property brought into stock of the firm or acquired by the firm during its subsistence for the purposes and in the course of the business of the firm shall constitute the property of the firm unless the contract between the partners provides otherwise. On the dissolution of the firm each partner becomes entitled to his share in the profits, if any, after the accounts are settled in accordance with section 48 of the Partnership Act. Thus in the entire asset of the firm all the partners have an interest albeit in proportion to their share and the residue, if any, after the settlement of accounts on dissolution would have to be divided among the partners in the same proportion in which they were entitled to a share in the profit. Thus during the subsistence of the partnership a partner would be entitled to a share in the profits and after its dissolution to a share in the residue, if any, on settlement of accounts. The mode of settlement of accounts sat out in section 48 clearly indicates that the partnership asset in its entirety must be converted into money and from the pool the disbursement has to be made as set out in clause (a) and sub-clauses (i), (ii) and (iii) of clause (b) and thereafter if there is any residue that has to be divided among the partners in the proportions in which they were entitled to a share in the profits of the firm. So viewed, it becomes obvious that the residue would in the eye of law be moveable property i.e. cash, and hence distribution of the residue among the partners in proportion to their shares in the profits would not attract section 17 of the Registration Act. Viewed from another angle it must be reaslised that since a partnership is not a legal entity but is only a compendious name each and every partner has a beneficial interest in the property of the firm eventhough he cannot lay a claim on any earmarked portion thereof as the same cannot be predicated. Therefore, when any property is allocated to him from the residue it cannot be said that he had only a definite limited interest in that

A property and that there is a transfer of the remaining interest in his favour within the meaning of section 17 of the Registration Act. Each and every partner of a firm has an undefined interest in each and every property of the firm and it is not possible to say unless the accounts are settled and the residue of surplus determined what would be the extent of the interest
B of each partner in the property. It is, however, clear that since no partner can claim a definite or earmarked interest in one or all of the properties of the firm because the interest is a fluctuating one depending on various factors, such as, the losses incurred by the firm, the advances made by the partners as distinguished from the capital brought in the firm, etc, it cannot
C be said, unless the accounts are settled in the manner indicated by section 48 of the partnership Act, what would be the residue which would ultimately be allocable to the partners. In that residue, which becomes divisible among the partners, every partner has an interest and when a particular property is allocated to a partner in proportion to his share in the profits of the firm, there is no partition or transfer taking place nor is there any
D extinguishment of interest of other partners in the allocated property in the sense of a transfer or extinguishment of interest under section 17 of the Registration Act. Therefore, viewed from this angle also it seems clear to us that when a dissolution of the partnership takes place and the residue is distributed among the partners after sattlement of accounts there is no
E partition, transfer or extinguishment of interest attracting section 17 of the Registration Act.

Strong reliance was, however, placed by the learned counsel for the respondents on two decisions of this court, namely (1) *Ratan Lal Sharma* v. *Purshottam Harit,* [1974] 3 SCR 109 and (2) *Lachman Das* v. *Ram Lal*
F *and Anr,* [1989] 3 SCC 99. Insofar as the first mentioned case is concerned, the facts reveal that the appellant and the respondent who had set up a partnership business in December 1962 soon fell out. The partnership had a factory and other moveable and immoveable properties. On August 22, 1963, the partners entered into an agreement to refer the dispute to the
G arbitration of two persons and gave the arbitrators full authority to decide their dispute. The arbitrators made their award on September 10. 1963. Under the award exclusive allotment of the partnership assets, including the factory, and liabilities was made in favour of the appellant and it was provided that he shall be absolutely entitled to the same in consideration

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of a sum of Rs. 17,000 plus half the amount of realisable debts of the business to the respondent. The arbitrators filed the award in the High Court on November 8, 1963. On September 10, 1964, the respondent filed an application for determining the validity of the agreement and for setting aside the award. On May 27, 1966, a learned Single Judge of the High Court dismissed the application as barred by time but declined to make the award the rule of the court because in his view the award was void for uncertainty and created rights in favour of the appellant over immoveable property worth over Rs. 100 requiring registration. The Division Banch dismissed the appeal as not maintainable whereupon this Court was moved by special leave. Before this Court it was contended (i) that the award is not void for uncertainty; (ii) that the award seeks to assign the respondent's share in the partnership to the appellant and therefore does not require registration; and (iii) that under section 17 of the Arbitration Act, the court was bound to pronounce judgment in accordance with the award. This court while reiterating that the share of a partner in the assets of the partnership comprising even immoveable properties, is moveable property and the assignment of the share does not require registration under section 17 of the Registration Act. The legal position is thus affirmed. However, since the award did not seek to assign the share of the respondent to the appellant but on the contrary made an exclusive allotment of the partnership asset including the factory and liabilities to the appellant, thereby creating an absolute interest on payment of consideration of Rs. 17,000 plus half the amount of the realisable debts, it was held to be compulsorily registrable under section 17 of the Registration Act. The Court did not depart from the principle that the share of a partner in the asset of the partnership inclusive of immoveable properties, is moveable property and the assignment of the share on dissolution of the partnership did not require registration under section 17 of the Registration Act. The decision, therefore, turned on the interpretation of the award in regard to the nature of the assignment made in favour of the appellant. So far as the second case is concerned, we think it has no bearing since that was not a case of assignment of partnership property under a dissolution deed. In that case, the dispute was between two brothers in 2-1/2 killas of land situate in Panipat, Haryana. The said land stood in the name of one brother - the appellant. The respondent contended that he was a banamidar and that was the dispute which was referred to arbitration. The arbitrator made his

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award and applied to the court for making it the rule of the court. Objections were filed by the appellant raising various contentions. The award declared that half share of the ownership of the appallant shall "be now owned by Shri Ram Lal, the respondent in addition to his half share owned in those lands". Therefore, the award transferred half share of the appellant to the respondent and since the value thereof exceeded Rs. 100, it was held that it required registration. It is, therefore, obvious that this case has no bearing on the point in issue herein.

In the present case, the Division Bench of the High Court concluded that the award required registration because of an erroneous reading of the award. The Division Bench after extensively reproducing from the Schedules A to F of the award proceeded to state in paragraph 39 that the allotments are exclusive to the brothers and they get independent rights of their own under the award in the properties allotted under the schedule and hence it is not a case pūrely of assignment of the shares in the partnership but it confers exclusive rights to the allottees. On this line of reasoning it concluded that the award required registration. The court next pointed out in paragraph 42 of the judgment that the award also partitions certain immoveable properties jointly owned by the disputants. In this connection it has placed reliance on paragraph 10(c) of the award which reads as under :

> "(c) Other Lands and Buildings and House properties belonging to S.V. Sivalinga Nadar & Bros. standing in the name of the firm and or otherwise jointly owned by the disputants. These have been allotted by us to one or other or jointly to some of the disputants as per schedules annexed hereto."

The reasons which weighed with the Division Bench of the High Court in concluding that the award requires registration appear to be based on an erroneous reading of the award. We have carefully read the award and it is manifest therefrom that the arbitrators had confined themselves to the properties belonging to the two firms in question and scruplously avoided dealing with the properties not belonging to the firm. This is manifest from paragraphs 15 to 18 of the award. However, properties standing in the names of disputants, individually or jointly, and others as benamidars but belonging to the firm also came to be included in the

distribution of the surplus partnership asset under the award. That is the purport of paragraph 10(c) extracted hereinabove. When on settlement of accounts the residue is required to be divided among the partners in proportions in which they were entitled to share profits under sub-clause (iv) of clause (b) of section 48, the properties will have to be allocated to the partnes as falling to their share on the distribution of the residue and, therefore, the arbitrators indicated in the schedules the properties falling to the share of each brother. Mere statements that a certain property will now exclusively belong to one partner or the other, as the case may be, cannot change the character of the document or the nature of assignment because that would in any case be the effect on the distribution of the residue. The property falling to the share of the partner on the distribution of the residue would naturally then belong to him exclusively but so long as in the eye of law it is money and not immoveable property there is no question of registration under section 17 of the Registration Act. Besides, as stated earlier, even if one looks at the award as allocating certain immoveable property since there is no transfer, no partition or extinguishment of any right therein there is no question of application of section 17(1) of the Registration Act. The reference to other land and buildings and house properties jointly owned by the disputants in clause (c) of paragraph 10 of the award merely indicates that certain properties belonging to the firm stood in the names of individual partners or in their joint names but they belonged to the firm and, therefore, they were taken into account for the purpose of settlement of accounts under section 48 of the partnership Act and distributed on the determination of the residue. The award read as a whole makes it absolutely clear that the arbitrators had confined themselves to the properties belonging to the two firms and had scrupulously avoided other properties in regard to which they did not reach the conclusion that they belonged to the firm. On a correct reading of the award, we are satisfied that the award seeks to distribute the rasidue after settlement of accounts on dissolution. While distributing the residue the arbitrators allocated the properties to the partners and showed them in the Schedules appended to the award. We are, therefore, of the opinion that on a true reading of the award as a whole, there is no doubt that it essentially deals with the distribution of the surplus properties belonging to the dissolved firms. The award, therefore, did not require registration under section 17(1) of the Registration Act.

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For the above reasons, we allow these appeals and set aside the H

A impugned orders of the Division Bench and remit the matters to the Division Bench for answering the other contentions which arose in the appeal before it but which were not decided in view of its decision on the question of registration of the award. We also make it clear that the award which is pending for registration may be registered by the Sub-Registrar
B notwithstanding the objection raised by one of the partners S.V. Sivalings Nadar through his lawyer if that is the only reason for withholding registration. The appeals are allowed accordingly with costs.

G.N. Appeals allowed.