

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.2580 OF 2005  
(Arising out of SLP(C) No.7461/2004)

K.GOPALAN NAIR

.. APPELLANT

vs.

K.BALAKRISHNAN NAIR & ORS.

.. RESPONDENTS

O R D E R

Leave granted.

A suit was filed by the appellant claiming that he had 50 per cent share in the firm of which the respondents were partners. According to the appellant, he had agreed that he would retire from the firm upon receipt of Rs.9,95,205/-. He claims that only Rs.1,00,000/- was paid to him and he filed a suit for the balance. The Trial Court decreed the suit for Rs.6,85,750/- and also accepted the claim that the appellant had 50 per cent share in the partnership firm. The High Court decided the appeal partly in favour of the respondents and remanded the matter for consideration of two issues to be re-decided by the Trial Court. The grievance of the appellant is that the High Court should have decided the matter on the evidence on record without remitting the matter back to the Trial Court for admission of fresh evidence.

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For appreciating the submission, the conclusion of the High Court as expressed in paragraph 12 of the impugned judgment is set out below :-

1. It is declared that the Partnership of  
which the plaintiff and defendants 1 and 2

were partners was dissolved by Exts.B2.

2. Ext.B7 is accepted in evidence.

3.The question whether Rs.5 lakhs and odd was paid by the first Defendants to the plaintiff is to be proved by the defendants by appropriate evidence

4.The question whether the claim of the plaintiff is barred by limitation is to be considered by the Court below."

Once the trial had been concluded, there was no question of the defendants being given a second opportunity to prove their case before the Trial Court. The High Court should have decided the matter on the basis of the material on record not only as regards the third conclusion but also with record to the issue of limitation.

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In view of the above, third and fourth conclusions of the impugned judgment are set aside and the matter is remitted back to the High Court to decide it afresh on the basis of the material on record. We make it clear that this Order should not be read as an affirmation of conclusions (i) and (ii).

The appeal is disposed of accordingly.

J.

.....  
(RUMA PAL)

.....J.  
(C.K.THAKKER)

New Delhi;  
April 11, 2005.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).7461/2004

(From the judgement and order dated 18/11/2003 in AS No. 546/1999 of The  
HIGH COURT OF KERALA AT ERNAKULAM)

K. GOPALAN NAIR

Petitioner(s)

VERSUS

K. BALAKRISHNAN NAIR &amp; ORS.

Respondent(s)

(With appln(s) for permission to place addl. documents on record and with  
h  
prayer for interim relief and office report )  
(For Final Disposal)

Date: 11/04/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL  
HON'BLE MR. JUSTICE C.K. THAKKERFor Petitioner(s) Mr. P.B.Suresh,Adv.  
Mr.Vipin Nair,adv.for  
M/s Temple Law Firm,Adv.For Respondent(s) Mr.L.Nageshwar Rao, Sr.Adv.  
Mr.Alex Joseph, Adv.  
Mr. K. Rajeev,Adv.UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

[SATISH K.YADAV]  
COURT MASTER

( Signed order is placed on the file )

[MADHU SAXENA]  
COURT MASTER