(1971) 01 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Civil First Appeal No. 64 of 1968

Badrimal Ram Charan & Co APPELLANT

Vs

Gana Kaul and Sons and Others RESPONDENT

Date of Decision : 12-01-1971

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 30
Jammu and Kashmir Partnership Act, 1996 — Section 58, 59, 61, 69

Citation : AIR 1971 J&K 109 : (1971) JKLR 469 : (1971) KashLJ 127

Hon'ble Judges : S.M.F.Ali, C.J and J.N.Bhat, J

Bench : Division Bench

Advocate : R.N.Kaul, J.N.Bhan, Ishwar Singh, Advocates appearing for the Parties

Judgement

Bhat, J.

(1) This is an appeal against the decree of the learned Additional District Judge Jammu, by"" means of which be has dismissed the suit of the

plaintiffs for Rs. 7,167,50 against the respondents. The plaintiffs M/S Radimal Rameharan and Co: claimed that they were . a registered firm and

carried on business ar Jatnmu and had a branch styled as Messrs Devicharan Omparkash. Devicharan being one of the partners in the said firm.

The defendant No: 1 a joint Hindu family firm had dealings with the plaintiffs branch Devicharan Omparkash from 2752015 to 2582016. The net

balance outstanding against the defendants was Rs 6,159/9/ and adding interest at the rate of Rs. /8/percent per annum to this amount, the net

balance against the defendants was Rs. 7.167/8/ which they claimed against the defendants by means of this suit.

(2) Many pleas were raised by the defendants in their written statement and

among other pleas that the suit was not maintainable in the present

form because the firm of the plaintiffs was not registered in accordance with law, was taken. The trial court framed as many as 12 issues in this

case but ultimately decided issues 1 and 4 against the plaintiffs and came to the conclusion from (the oral and documentary evidence adduced in

the suit that ""the defendants firm had dealings with Devicharan Omparkash and the latter had supplied ATT A to the former vide bills Ex. P. 2 to

Ex P. 5. The plaintiffs firm Badrimal Ramcharn had not supplied any goods to the defendants nor has the defendant's firm purchased goods from

the plaintiffs firm.1' The present suit has been instituted by Badrimal Ramcharan and Company. The suit should have been instituted by the firm M/s

Devi Charan Omparkash and Co. the present suit of the plaintiffs is misconceived and consequently is not maintainable in the present form"". Hence

the suit was dismissed.

O) In this appeal against this decree of the trial court, the only point that has to be decided is whether the suit has been instituted by a firm properly

registered under the partnership Act. The learned counsel for the appellants has argued that the firm Badrimal Ramcharan is the real firm. It had its

branches called Devicharan Omparkash and Sriram Silk and Cotton Mills. According to the learned counsel Devicharan Omparkash with whom

the defendants had dealings is only a branch of the original firm. The suit has been brought in the name of the real firm and therefore the trial court

was wrong in dismissing the suit, holding that the suit should have been by Davicharan Ompatkash In this appeal he has argued that the original firm

Badrimal Ramcharan was started on 4th Poh 1992 (Bikarmi) that a fresh partnership deed was executed on 131955. He has further argued that

on 131961 another partership deed was written and therein it was stated that the partnership will be carried on under the name and style of

Badrimal Ramcharan with its branches styled as Messrs Devi Charan Orn Parkash The real firm being Badrimal Ramcharan, the dealings of the

defendant with the firm Devicharan Om Parkash should be construed on behalf of the parent firm M/S Badrimal Ramcharan. This firm is registered

according to the learned counsel for the appellants and therefore the trial court was wrong in dismissing the suit.

(4) The matter is purely legal and has to be decided in terms of the provisions of

the Partnership Act; but before we take up that discussion we

shall briefly mention what the findings of the learned trial Judge are based on evidence produced in this case.

(5) One of the witness P. W. Devidatta Mal has admittedithat Badrimal Ramcharan & Co: and Messrs Devi Charan Om Pdrkash are two

separate firms dealing' in separate goods and maintaining different sets of account books. Badrimal Ram Charan & Co: carries on the business of

sale of cloth and M/S Devicharan Om Parkash sell Ghee and sugar. The accounts of these two shops are different and the signboards also are

different P. W. Kundan Lal admits that Devicharan Om Parkash is a different shop (firm) from Badrimal Ram Charan, the former carries on the

business of flour. The plaintiff Devicharan as his own witness states that the profits of the business of Devicharan Om Parkash are being added to

the account of the firm Messrs Badrimal Ramcharan and the profits are distributed accordingly. In crossexamination this witness says that a notice

was sent to the defendants on behalf of Devicharan Omparkash and not from Badrimal Ramcharan and the bills and challans prepared and

supplied to the defendants: were also from Devicharan Omparkash. Whatever payments were made by the defendants they were credited in the

account of Devicharan Omparkash.

(6) The learned counsel for the respondents has argued that Messrs Devicharan Omparkash is a separate entity, they have separate account

books, they carry on different business from the one carried on by M/S Badrimal Ramcharan. The defendants had dealings with M/S Devicharan

Om Parkash, the transactions of the defendants are entered in their books of account, which are separately maintained. The notice for the payment

of the sum claimed also was sent to the defendants on behalf of M/S Devicharan Omparkash It is of no consequence so far as this suit is

concerned that ultimately M/S Devicharan Ompprkash submitted their accounts to M/S Badrimal Ram Charan. It is only that the firm M/S

Devicharan Om Parkash & Co: was not registered under the partnership Act that the suit has been brought in the name of M/S Badrimal

Rarncharan & Co: and it has been rightly dismissed.

(7) There is much force in this argument of the learned counsel for the respondents but we refrain from exercising our final opinion on this point of

the case but the matter may be examined purely from the legal point of view.

(8) The transactions between the parties were somewhere in fifties On the argument of the learned counsel for the appellant himself the partnership

deed then in force was chat of ^55 entered into between the partners of that firm on 131955 This partnership deed was renewed on 131961 by

means of a new partnership deed and one more partner Suraj Parkash son of Lala Harichand was added to the original five partners constituting

the firm M/S Badrimal Ramcharan and Co: The suit was instituted on 3011951 when the new partnership of l3l%l had come into force. Assuming

that BioTrimal Ramcharan and Co: was the real firm, it had changed its Constitutions in 1961 by introducing a new partner viz: Suraj Parkash. It

has been conceded before us by the learned counsel for the appellant that the firm, which was registered with the registrar of Firms was that which

was created by means of partnership deed dated 131955 He has further admitted that no intimation of the addition of one more partner i. e. Suraj

Parkash in 1971 has been given to the Registrar of Firms. Under Section 58 of the Partnership Act the Registrar of Firms has to be supplied with

the following information in a prescribed form and accompanied by prescribed fee; what is to be require d tobe conveyed to the Registrar is :.

(a) the firm name ;

(b) The place or principal place of business of the firm:

(c) the name of any other places where the firm carries on business:

(d) the date when each partner joined the firm :

(e) the name in full and permanent addresses of the partners: and

(f) the duration of the firm

(9) The statement has to be signed by the partners of the firm or their specially authorised agents and it has to be verified which shows that the

necessary informations to be conveyed to the Registrar is the date when each one of the partners joined the partnership and his full and permanent

address. Undersection 59 of the Act on getting the information as, required u/s 58 of the Act, the Registrar has to record all entries of the

statement in a Register Called the Register of firms Under Section 61 of the Act intimation of closing or opening of branches has to be given to the

Registrar of firms Under Section 62 when any partner in any registered firm alters his name or permanent address an intimation of the alteration has

to be given to the Registrar. Under section 63 when any change occurs in the constitution of any firm, any incoming or out going partner has to

inform the Registrar by notice of such change. The Registrar has to make a record of the notice in the Register of firms.

(10) In this case Suraj Parkash was inducted as a partner in 1961 but it is admitted that he did not send any intimation to the Registrar of his being

inducted in the firm as a partner, Under section 69 (I) no suit to enforce a right arising from a contract or conferred by this Act shall be instituted in

any court by or on behalf of any person suing as partner in a firm against the firm or any person alleged to be or to have been a partner in the firm

unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm. ""Under subsection (2) of the

said section"" no suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless

the firm is registered and the persons suing are or has been shown in the Register of Firms as a partner in the firm. Then there are some other

clauses which are not relevant for the disposal of this suit.

(11) What is required is that any change in the constitution of the firm has to be intimated to the Registrar of the Firms who has to make

consequent changes in his register and secondly under section 69 (2) no suit can be brought on behalf of a firm unless the persons suing have been

shown in the Register of Firms as partners in the firm. The present suit is on behalf of the firm under order 30 of the Civil Pr : Code. It will be

deemed to be on behalf of all the partners of the firm, may be signed by any one or more of them. But what is obligatory, the body of persons as a

whole i. e all the partners of the firm must be shown as partners in the records of the Registrar Unless that is so, the suit is not maintainable. This

matter has been the subject matter of discussion in various authorities and only a few of them may be mentiond.

(12) In AIR 1956 Punjab 24 a Division Bench of that court consisting of Chief Justice Bhandari and Falshaw J. held that :

In order to institute a suit a partnership firm must not only be a registered firm but also all the persons who are partners in the firm at the time of

the institution of the suit, must be or have been shown as such in the Register.

(13) In paragraph 9 of the judgment their Lordships have held that:

The question which arises in the present case is whether in order to institute a suit a partnership firm must not only be a registered firm, but also all

the persons who are partners in the firm at the time of the institution of the suit must be or have been shown as such in the Register. This certainly

appears to be the plain meaning of the words in Sec. 69 (2) ""unless the firm is registered and the persons suing are or have been shown in the

Register of Firms as partners in the firm."" It is difficult to imagine what other meaning the words ""person suing"" are capable of bearing in this

context.''

(14) Their Lordships further say that :

''There is no doubt that in a sense the firm itself is a person but to my mind there can be no doubt that the words ""persons suing"" here mean

persons in the sense of individuals, and that the only individuals referred to must in my opinion be the partners in the firm.......

(15) In the end it was observed in paragraph 10 of the judgment that:

In the circumstances although I hesitate to throw out the two apparently well, founded claims of the plaintiff firm on such a technical ground as this,

I feel constrained to hold that the suit at the time of its institution suffered from the defect that one of the partners of the firm who had beer, a

partner for several years, had not at the time of the institution of the suit been shown in the Register of Firms as a partner and in my opinion the

same principle which applies to the registration of firm itself must also be held to apply to the individual partners and a defect of this kind, which is a

bar to the institution of the suit, cannot be removed 'Pendente lite'.''

(16) In another authority of the same High Court reported as AIR 1964 Punjab 270 a Division Bench of that court reaffirmed this view, and further

in paragraph 6 of the judgment added that :

The question turns on what interpretation is to be placed on the words ""and the persons suing are or have been shown in the Register of Firms as

partners in the firm"". It was and still is, my view that ''the persons suing*' must mean the partners in the firm The use of the plural ""persons"" is

obviously deliberate, since while a singular may also mean the plural can never mean the singular.......

(17) And in the end it was observed that :

.....Obviously when a suit is instituted in the name of a firm the suit is on behalf of all the partners, and not only such of them as are shown in the

Register as such, and all the partners must be ""the persons suing"" contemplated in Sec : 69 (2) of the Act.....

(18) In another authority reported as AIR 1922 Sind 13. it has been held that :

If a partner of a firm retires after the firm has entered into a contract and a new partner join s the firm the newly constituted firm is different from

the old firm and cannot institute a suit on the contract entered into by the latter except when the new firm took over by arrangement all the liabilities

and outstandings of the old firm.

(19) In AIR 1955 TravancoreCochin 155 it was held that :

''It is necessary not only that the firm should be registered, but the person suing must be shown as a partner in the firm. And when it is found that on

the date when the plaint is filed the second part of the condition has not been carried out then. Sec. 69 (.2) is not complied.

(20) We are in perfect agreement with the view taken by the Punjab High Court which is directly in point here and we adopt the reasoning given in

both those judgments. As the suit has not been instituted by a firm which is legally registered, the suit is not maintainable and has been rightly

dismissed.

(21) The appeal therefore fails and is hereby dismissed but without any order as to costs.