

(1958) 12 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 644 of 1951

Durga Das Janak Raj

APPELLANT

Vs

Preete Shah Sant Ram
 Preete Shah Sant Ram Vs
Durga Das Janak Raj

RESPONDENT

Date of Decision : 10-12-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Partnership Act, 1932 — Section 58, 59, 60, 61, 62

Citation : AIR 1959 P&H 530

Hon'ble Judges : K.L. Gosain, J;A.N. Grover, J

Bench : Division Bench

Advocate : N.L. Salooja, for the Appellant; D.N. Awasthy, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been placed before us because the learned Single Judge was of the opinion that it should be decided by a larger Bench.

2. In order to appreciate the point involved the facts may be shortly stated. A sum of Rs. 1850/- was due from the appellant firm to firm known as Sukhi Ram Goverdhan Das. On 27-6-1949 the aforesaid firm transferred the debt in favour of the plaintiff-firm Prite Shah-Sant Ram. On 28-6-1949 Prite Shah Sant Ram filed a suit for recovery of Rs. 1,062/12/- as principal and Rs. 215/-as interest after adjusting a sum of Rs. 787/4/-which was said to be due from the plaintiff-firm to the defendant-firm.

The suit was resisted on various grounds and out of the issues that were framed issue No. 1 alone is material for the purposes of deciding the appeal. It is as follows:

Is the plaintiff-firm a registered one? If not, what is its effect?

It may be mentioned that the learned Single Judge has decided after treating certain findings given on other issues as binding that if the suit is to be decreed

it will have to be decreed in the sum of Hs. 1.277/12/- and the only question, therefore, is whether the decision of the court below on issue No. I was correct or erroneous. The trial Court while-deciding that issue relied on Exhibit P. 3 which was a copy of the entries in the Register of Firms: showing that Messrs. Prite Shah-Sant Ram was a registered firm.

That Court was of the view that although the plaintiff had stated as P. W. 4 that the firm had been dissolved in 1946, but for the purposes of the provisions contained in Section 69 of the Indian Partnership Act the registration would continue and so the suit was maintainable. Before the learned Additional District Judge in appeal it was contended on behalf of the defendants that the firm Prite Shat-Sant Ram had been registered in 1933 and it was subsequently dissolved on the death of one of its partners Sant Ram in June 1946; the transfer of the debt was made after the dissolution of the firm and that when the firm had been originally registered in 1933 Madan Mohan was not one of its-partners.

The learned Additional District Judge came to the conclusion that Madan Mohan had become a partner before the dissolution of the firm. It was also contended that the constitution of the firm as it existed at the time of dissolution was not the same as it was at the time of its registration. The learned Additional District Judge was of the view that these objections were never raised in the pleadings and he allowed additional evidence to be ad-duced on the point.

Exhibit G. 1, which was a certified copy of the form in which the names of the partners of the firm Prite Shah-Sant Ram were given, was allowed to be produced as additional evidence. After examining Exhibit C. 1 and Exhibit P. 3 he came to the conclusion that the partners at the time of dissolution were Sant Ram, Khushi Ram, Sukhi Ram, Goverdhan Das and Madan Mohan, and, therefore, the conclusion of the trial Court that the firm was duly registered and was competent to bring the suit was correct.

As regards the objection that the plaintiff-firm had purchased the debt after its dissolution, it was observed by the learned Additional District Judge that no objection had been raised on that point at any previous stage. He held that the firm at the time of assignment of the debt still remained a registered firm for the purposes of the Partnership Act. When the matter came up before the learned Single Judge on second appeal he was of the view that it had not been satisfactorily dealt with by the learned Additional District Judge and that the point involved was difficult and he was doubtful how far the decision in Pratapchand Ramchand and Co. Vs. Jehangirji Bomanji Chinoy, which was followed in Tapendra Chunder Goopta Vs. Jogendra Chunder Goopta and Others, would apply to the present case.

3. Mr. Nand Lal Salooja, who appears on behalf of the appellant, has invited our attention to the pleadings of the Parties relevant for deciding issue No. 1. In the plaint it was stated that the plaintiff-firm was a partnership firm and was registered under the Partnership Act. Khushi Ram was one of the partners and

the firm was doing the business of commission agents and of sale and purchase of goods (cloth).

In the written statement the defendants did not admit para 1 of the plaint and denied that the plaintiff-firm was a registered firm or that Khushi Ram was a partner thereof. A replication was filed in which it was reiterated that the plaintiff-firm was registered and it was added that in fact the firm had been dissolved in June 1946 and did not require registration under the law. Thus, the only issue that was framed was whether the plaintiff-firm was registered and if it was not registered, what would be its effect.

Sukhi Ram who appeared as P. W. 1 has stated that Khushi Ram, Goverdhan Das, Sukhi Ram, Sant Ram are the partners of firm Prite Shah-Sant Ram. Khushi Ram who appeared as P. W, 4 stated in examination-in-chief that Khushi Ram, Sukhi Ram, Goverdhan Das, Sant Ram and Madan Mohan were the partners of the firm Prite Shah-Sant Ram and that the firm was dissolved on the death of Sant Ram in 1946 and that it had been finally wound up recently after a suit had been filed.

It is obvious that the statements of the aforesaid two witnesses did not show, as has been contended by Mr. Salooja, that the previous firm Prite Shah-Sant Ram had been dissolved and that a new firm had come into existence of the same name. There can be no doubt that when P. W. 1 used the present tense with regard to the partners of the firm Prite Shah Sant Ram he was doing so under a misapprehension as he mentioned Sant Ram also when admittedly Sant Ram had died in 1946.

The case which Mr. Salooja has tried to make out is that although the original firm Prite Shah-Sant Ram was a registered firm, it was dissolved on the death of Sant Rani, one of its partners in 1946, and a new firm of the same name was formed by some of the erstwhile partners of the original firm.

This is entirely a new case which is being sought to be made out as the pleadings of the parties do not warrant any facts having been alleged according to which the existence of a new firm can be considered to have ever been pleaded or put into issue.

It is well settled that a party cannot be allowed to travel beyond the pleadings and make out a totally new case in appeal. It is not, therefore, possible to entertain the aforesaid contention which has been raised on behalf of the appellant,

4. The next contention raised by Mr. Salooja is that firm Prite Shah-Sant Ram having been dissolved, as admitted in the replication, the registration of that firm which was made in the year 1933 ipso facto came to an end and the present suit by firm Prite Shah Sant Rani would be barred under the provisions of Section 69 of the Indian Partnership Act. It is noteworthy that in the replication two matters were stated.

It was repeated, as had been originally stated in the plaint, that the plaintiff-firm

was a duly registered firm. A new fact was, however, introduced to the effect that the firm had been dissolved in June 1946 and did not require registration. This plea obviously was meant as an alternative plea. The dissolution in June 1946 had reference to the result of the death of Sant Ram who was one of the partners of firm Prite Shah-Sant Ram.

It is nowhere admitted in the pleadings of the plaintiff-firm that dissolution in 1946 had taken place by means of an action or in any other manner. It was after the institution of the suit in January 1950 when P. W. 4 stated that it had been dissolved by a regular action about the same time as the statement was being made. The essential question, therefore, is that if a firm is duly registered and if one of its partners dies, does the registration for the purposes of Section 69 of the Indian Partnership Act come to an end?

The statutory provisions relating to registration may be briefly noticed. Section 58 provides the method by which a firm may be registered and prescribes what must be contained in the statement which is to be delivered to the Registrar. Section 59 says that when the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

Section 60 lays down the mode for recording of alterations in firm name and principal place of business. Similarly, Section 61 provides for noting of closing and opening of branches. Section 62 deals with noting of changes in names and addresses of partners. Section 63 is of some importance and may be set out fully:

"(1) When a change occurs in the constitution of a registered firm by incoming continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change Or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed u/s 59.

(2) When a minor who has "been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm he, or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in Sub-section (1)."

Changes in the constitution of a firm may occur in the event of introduction of a new partner (Section 31), retirement (Section 32), expulsion (S. 83), and insolvency (Section 34(1)). Dissolution may take place in accordance with the provisions contained in Sections 40, 41, 42, 43 and 44. In the present case we are concerned with the dissolution of the plaintiff-firm having taken place under the provisions of S. 42(c) by the death of Sant Ram who was one of the partners.

In accordance with the provisions of Section 63 a notice was to be given to the Registrar of such dissolution and the Registrar was to make a record of the notice in the entry relating to the firm in the Register of Firms, and was to file the notice along with the statement relating to the firm filed u/s 59. The next section which is material is Section 69(2) which is in the following terms:

"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 have been shown in the Register of Firms as partners in the firm."

While considering the provisions contained in Sections 58 to 63 it is noteworthy that they are permissive and enabling provisions. Section 69(2) does create a bar to the institution of a suit by or on behalf of a firm against a third party, but the only conditions which are provided and which have to be fulfilled for institution and trial of the suit are -- (a) that the firm should be registered, and (b) the persons suing should be shown in the Register of Firms as partners. There is no provision in Section "69, or in Chapter VII dealing with registration of firms which makes fresh registration necessary in any of the contingencies provided for by Sections 61 to 63.

Blackwell J., in Pratapchand Ramchand and Co. Vs. Jehangirji Bomanji Chinoy, while considering a similar situation was of the opinion that the Act contemplates notwithstanding a change in respect of the matters which have to be set out in the original statement accompanying registration, that the firm should be deemed to, be continued to be registered although by reason of the alteration the original statement as filed had become inaccurate.

In the Bombay case the learned Judge proceeded on the footing, that the firm was in fact dissolved on the death of one of the partners. After considering the relevant provisions the learned Judge made the following observations which are significant:

"dealing in particular with Section 63(1), that sub-section among other things provides that when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof, and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed u/s 59.

Pausing there, that Section evidently contemplates in the case of a dissolution of a firm by death that notwithstanding the death the firm should still be treated for the purpose of the Act as still registered."

After referring to Section 69(2), the learned Judge came to the conclusion that in that case the firm was registered and continued to be registered at the date of the institution of the suit. Moreover; he considered that the fact that the firm

was registered at the date of the institution of the suit and that the names of the persons sued were shown in the register at the date of the institution of the suit constituted compliance with Section 69(2) of the Act. Applying the same test here which with respect, I accept as the correct one, it must be held that in the present case the requirements of Section 69(2) were fully satisfied inasmuch as the firm was registered and the name of the person through whom it sued appeared on the register as a partner at the relevant time which was the date of the institution of the suit,

It may be mentioned that the Bombay view was accepted by Panckridge J., in *Tapendra Chunder Goopta Vs. Jogendra Chunder Goopta and Others*, which was a case of dissolution of a firm by retirement of a partner. It was held that notwithstanding such dissolution by retirement, the firm remained a registered one and was entitled to institute a suit.

5. It is then urged that there is nothing to show that the death of Sant Ram was ever notified to the Registrar u/s 63(1) of the Indian Partnership Act and, therefore, as there had been non-compliance with the provisions of the statute it should be deemed that the plaintiff-firm was not duly registered on the date of the institution of the suit.

In the *Pratapchand Ramchand and Co. Vs. Jehangirji Bomanji Chinoy*, also the notice u/s. 63 of the death of the partner and change of constitution of the firm was given after the institution of the suit and the learned Judge did not consider that the absence of giving any notice u/s 63 had any such effect on the registration of the firm that the same should be considered to be not registered for the purposes of Section 69. Subba Rao C. J. (as he then was) in *Sudarsanam v. Viswa-nadham Bros.*, (S) AIR 1955 Andhra 12, has expressed the view that there is an essential distinction between the constitution of a firm and its dissolution.

Non-compliance with the provisions of Section 63(1) may have other consequences but u/s 69(2) only two conditions had to be complied with by a firm to enforce a right arising from a contract.

6. In view of the above discussion all the contentions that have been raised to the entertainability of the suit must be repelled and the decree that has been granted by the Courts below must be sustained. The appeal is consequently dismissed, but in the circumstances of the case there will be no order as to costs.