

(1927) 08 MAD CK 0042
In the Madras High Court

K. Chenchuvenkatanagiah Chetti and Co.	APPELLANT
Vs	
M. Padmanabhan Chetti	RESPONDENT

Date of Decision : 03-08-1927

Acts Referred:

Contract Act, 1872 — Section 264

Citation : AIR 1928 Mad 125

Judgement

1. The only question that has been tried in this suit is whether defendant 2 was a partner in the firm of B.P. Sreeramulu Chetty & Co., a firm with which the plaintiffs had dealings. Three persons were made defendants with an allegation that they were the partners of B.P. Sreeramulu Chetty & Co. Defendants 1 and 3 admitted partnership and also their liability, but defendant 2 contended that he was not a partner in the firm. At the trial it has been found that defendant 2 was a partner till 31st March 1921 and the respondent (defendant 2) does not appear to impeach that finding here. The plaint transactions took place in June 1921. The plaintiffs (appellants) now contend that, although defendant 2 may not have been a partner of the defendant's firm in June 1921, yet inasmuch as he was a partner in that firm up to 31st March and no notice was given either to the customers or to the general public of the dissolution of partnership, defendant 1 is liable u/s 264, Contract Act, for the transaction carried on shortly after he actually left the partnership. Section 264 is as follows:

Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

2. This section has been considered in various cases, the first of which is Chundee Churn Dutt v. Eduljee Cowasjee Bijnee [1882] 8 Cal. 678, and there it was held that, when a partner ceased to be a partner in a firm and no notice of such cessation was given to old customers, he was still liable for acts done by the remaining partners. The question which was mainly considered in that case was what form of notice was requisite in order that such liability should cease. A

similar view was taken in a recent Calcutta case Jagat Chandra Bhattacharyya v. Gunny Hajee Ahmed AIR 1926 Cal. 271, where it was further held that Section 264 referred not only to persons dealing with the firm prior to dissolution but to all persons dealing with that firm. The law in England is similar and we may refer to Parkins v. Carruthers 170 E.R. 604. There is one Court in India which seems to take a different view, and that is the Lahore High Court. In Bichhiak Lal v. Munshi Ram AIR 1922 Lah. 466, it was held that Section 264 did not include persons dealing with a firm for the "first time after the dissolution of partnership. That case is based on prior decisions of the Punjab Chief Court and of the Sindh Judicial Commissioner's Court. It also relies on a case in Giovani Gorio Vs. Vallabhdas Kalianji, , as another authority. Undoubtedly, in that case Beaman, J., does say that the expression "persons dealing with a firm" Section 264, Indian Contract Act, means

persons who have been in the habit of dealing with, and at the time of the dissolution were contemplating further dealing with the firm, on the faith of the firm remaining the same as that with which their dealings commenced.

3. The learned Judge was considering a case in which an old customer of a firm was concerned and, although he distinctly says that Section 264 refers to such old customers, he has not considered the converse case of whether Section 264 definitely excludes new customers, and the arguments in his judgment set forth good reasons for treating old and new customers alike. The Calcutta High Court is distinctly of opinion that it includes new customers. In Mahadeva Aiyar v. Ramkrishna Reddiar AIR 1926 Mad. 114, Odgers, J., observes that Section 264, Contract Act, is clear that, in the absence of such notice, persons dealing with the firm are entitled to assume that the partnership still continues; but the question of this distinction between the old and new customers was not considered. With all respect we agree with the view taken by the Calcutta High Court for the reasons therein given and also because it is clearly in accordance with the English law on the subject; we must hold that, provided a "person had knowledge of a partnership, he would not be affected by the dissolution of that partnership in his dealings with the firm unless he had adequate notice of the same as provided in Section 264, Contract Act. In this view and on the learned Judge's finding that defendant 2 was a partner up to the 31st March 1921, we must hold that he is liable to the plaintiffs' claim equally with the other defendants.

4. The appeal is, therefore, allowed with costs and the lower Court's decree will be modified accordingly.