

(1926) 02 AHC CK 0043
In the Allahabad High Court

L. Mewaram

APPELLANT

Vs

Seth Ram Gopal and Lala Hotilal and Others

RESPONDENT

Date of Decision : 17-02-1926

Acts Referred:

Citation : (1926) 02 AHC CK 0043

Final Decision : Dismissed

Judgement

Sulaiman, J.—First Appeals Nos. 373 and 374 of 1922 are connected and the same substantial questions of law arise in. these appeals. These appeals arise out of two separate suits brought for dissolution of partnership. The substantial pleas raised on behalf of the defendant-appellant Rai Bahadur Lala Mewa Ram were that the partnership in question consisted of more than 20 members and was, therefore, illegal within the meaning of Section 4 of the Indian Companies Act (Act VII of 1913) and (2) that the partnership being an illegal association no suit for the dissolution of partnership was maintainable in a Court of law. The learned Subordinate Judge has held that, as a matter of fact, the number of partners in either of these associations did not exceed 20 and, therefore, the association was not illegal. In these appeals it is unnecessary for us to express any opinion as to the right inter se of the members of any illegal association because we are satisfied that in neither of these cases the number of partners exceeded 20.

2. Admittedly the number of persons who executed the two deeds of partnership is only 10 and 12 respectively. The only way in which the defendant can urge that the number Exceeds 20 is by saying that many of these executants are members of joint Hindu families consisting of a large number of other members and if all other members of this family were to be counted the total number exceeded 20 We are of opinion that this is not the right method of calculating the number in order to ascertain whether the association consists of 20 or more members. If each of the executants entered into this partnership in his own individual capacity he admittedly counts as one. On the other hand, if he entered

into the partnership in his representative capacity on behalf of his family, then his joint family must be considered to be a unit and must be deemed to be one person within Section 4 of the Indian Companies Act. This view is in accord with the pronouncement of a Division Bench of this Court in Motiram Vs. Kunwar Muhammad Abdul Jalil Khan, We, therefore, think that the view taken by the learned Subordinate Judge that the partnership in question were not illegal associations was correct. There is, therefore, no force in these appeals.

Mukerji, J.

3. I entirely agree I have just one word to add and that is as to the interpretation of Section 4 of the Indian Companies Act (Act VII 1913).

4. Where a person lends his name to a partnership contract he is a "person" constituting the total number of partners. Behind his back there may be a joint Hindu family or he may be representing a firm consisting of himself and several other members. In either case, so far as the other partners are affected, the party joining in the contract is the only person with whom they are concerned. The share owned by the individual member may have to be, in the case of a partition in the family or dissolution of partnership divided among certain parties. But that fact cannot affect the other members in the partnership in question. In this view the party joining constitutes only one person and not more than one person.

5. These appeals are dismissed with costs including in this Court-fees on the higher scale.