

(1926) 02 AHC CK 0035
In the Allahabad High Court

Mewa Ram

APPELLANT

Vs

Ram Gopal

RESPONDENT

Date of Decision : 17-02-1926

Acts Referred:

Citation : (1926) 02 AHC CK 0035

Hon'ble Judges : Sulaiman, J; Mukerji, J

Bench : Division Bench

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: (1) 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 (7 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 tight 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 partnerships 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 (7 of 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 parson.

5. These appeals are dismissed with costs.