(1971) 01 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : First Appeal No. 64 of 1968

M/s. Badrimal Ramcharan and Co. APPELLANT

Vs

M/s. Gana Kaul and Sons and others RESPONDENT

Date of Decision : 12-01-1971

Acts Referred:
Partnership Act, 1932 — Section 58

Citation : AIR 1971 J&K 109

Hon'ble Judges : Syed Murtaza Fazl Ali, C.J;Janki Nath Bhat, J

Bench : Division Bench

Advocate : Ishwar Singh, for the Appellant; J.N. Bhan and R.N. Kaul, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhat, J.—This is an appeal against the decree of the learned Additional District Judge, Jammu, by means of which he has dismissed the

suit of the plaintiffs for Rs. 7,167.50 against the respondents. The plaintiffs M/s. Badrimall Ramcharan and Co. claimed that they were a registered

firm and carried on business at Jammu 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 27-5-2015 to 25-8-

2016. The net balance outstanding against the defendants was Rs. 6,159/9/- and adding interest at the rate of Rs. -/8/- per cent 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 the plea 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 dealing with Devicharan Omparkash and the latter had supplied ATTA to the former vide bills Ex. P. 2 to Ex. P. 5. The

plaintiffs firm Badrimal Ramcharan had not supplied any goods to the defendants nor has the defendant's firm purchased goods from the plaintiffs

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

Omparkash and Company, the present suit of the plaintiffs is misconceived and consequently is not maintainable in the present form.

Hence the suit was dismissed.

3. 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 & 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 Devicharan Omparkash. In this appeal he has argued that the original firm

Badrimall Ramcharan was started on 4th Poh 1992 (Bikarmi) then a fresh partnership deed was executed on 1-3-1955. He has further argued that

on 1-3-1961 another partnership deed was written and therein it was stated that the partnership will be carried on under the name and style of

Badrimall Ramcharan with its branches styled as Messrs Devicharan Omparkash. The real firm being Badrimall Ramcharan the dealings of the

defendants with the firm Devicharan Om Parkash should be construed on behalf of the parent firm M/s. Badrimall 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 that 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 admitted that Badrimal Ramcharan and Company; and Messrs. Devl Charan Om Parkash are two

separate firms dealing in separate goods and maintaining different sets of account books. Badrimal Ramcharan and Company 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 sign boards

also are different P.W. Kundan Lal admits that Devicharan Omparkash is a different shop (firm) from Badrimal Ramcharan the former carries on

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

added to the account of the firm Messrs Badrimal Ramcharan and the profits are distributed accordingly. In cross-examination this witness says

that a notice was sent to the defendants on behalf of Devicharan Om Parkash and not from Badrimall Ramcharan and the bills and challans

prepared and supplied to the defendants were also from Devicharan Om Parkash. Whatever payments were made by the defendants they were

credited in the account of Devi Charan Om Parkash.

6. The learned counsel for the respondents has argued that Messrs Devi Charan Om Parkash 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 Messrs.

Devicharan Om Prakash, 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 Messrs. Devicharan Om Parkash. It is of no consequence so far as

this suit is concerned that ultimately Messrs Devi charan Om Parkash submitted their accounts to Messrs Badrimall Ram Charan. It is only that the

firm Messrs. Devicharan Om Parkash and Company was not registered under the Partnership Act that the suit has been brought in the name of

Messrs Badrimall Ramcharan and Company 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 expressing 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 that of 1955 entered into between the partners of that firm on 1-3-1955. This partnership deed was renewed on 1-3-1961

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 Company. The suit was instituted on 30-1-1961 when the new partnership of 1-3-1961 had

come into force. Assuming that Badrimal Ramcharan and Company was the real firm, it had changed its constituents in 1961 by introducing a new

partner viz., Surai 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 1-3-1955. He has further admitted that no intimation of the

addition of one more partner i.e. Suraj Parkash in 1961 has been given to the Registrar of Firms. u/s 58 of the Partnership Act the Registrar of

Firms has to be supplied with the following information in a prescribed form and accompanied by the prescribed fee. What is to be required to be

conveyed to the Registrar is:-

a/- the firm name.

b/- the place or principal place of business of the firm.

c/- the names of any other places where the firm carries on business.

d/- the date when each partner Joined the firm.

e/- the names in full and permanent addresses of the partners: and

f/- the duration of the firm.

The statement has to be signed by all the partners of the firm or their especially 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. u/s 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. u/s 61 of the Act intimation of closing or opening of branches has to be given to the Registrar of firms. u/s 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. u/s 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.

9. In this case Surai 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. u/s 69(1)

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 a

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 sub-section (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 have been shown in the Register of Firms as partners in the firm.

Then there are some other clauses which are not relevant for the disposal of this suit.

10. 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 u/s 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 Procedure 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 mentioned.

11. In Dr. V.S. Bahal Vs. S.L. Kapur and Co., 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.

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 Section 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 'persons suing' are capable of bearing in this

context.

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......

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 been 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'.

In another authority of the same High Court reported as AIR 1964 P&H 270 a Division Bench of that Court re-affirmed 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, the plural can never mean the singular..................

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 Section 69(2) of the Act......................

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 joins 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.

In AIR 1955 TC. 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 this condition has not been carried out then Section 69(2) is not complied.

12. 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.

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

S.M.F. Ali, C.J.

14. I agree.

