

(1962) 05 MAD CK 0003
In the Madras High Court
Case No : Second Appeal No. 808 of 1960

Murugan Oil Industries (Pr.) Ltd.

APPELLANT

Vs

Athi V. Suryanarayana Chettiar and Another

RESPONDENT

Date of Decision : 01-05-1962

Acts Referred:

Companies Act, 1913 — Section 4(2)
Companies Act, 1956 — Section 11(2)

Citation : AIR 1963 Mad 128 : (1963) 33 CompCas 833 : (1963) 76 LW 282 : (1963) 1 MLJ 250

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Advocate : K.S. Desikan and K. Raman, for the Appellant; R. Gopalaswami Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—The appellant herein is Sri Murugan Oil Industries, Private Ltd., by its Managing Agents, Kolandaiappan, defendant in

O. S. No. 291 of 1958 on the file of the District Munsif of Karur. The suit was filed by two partners of a firm, for dissolution and rendition of

accounts against the third partner. The trial court decreed the suit, and this was confirmed by the lower appellate court. Defendants appeal. The

prior circumstances necessary for a consideration of this second appeal are the following :

On 4-2-1955, a deed of partnership was entered into between (1) A. T. V. Suryanarayana Chettiar, (2) A. T. V. Ramachandran Chettiar and (3)

M. Kolandaiyappan, Managing Agent, Sri Murugan Oil Industries Ltd., for and on behalf of the said company. The agreement went on to recite

that Kolandaiyappan who is the proprietor of another company, M.

Kolandaiyappan and Co. conducted and managed in his capacity as managing agent, the Sri Murugan Oil Industries Ltd. In the course of the management of the latter company, it was found that there were no proper facilities for the conduct of the business, and in accordance with the resolution of the managing Committee of the said Murugan Oil Industries Ltd., dated 10-10-1954, and for the efficient conduct of the business, Kolandaiyappan had, on behalf of the above company, decided to form a partnership with individuals 1 and 2. The terms and conditions were (1) the partnership should be conducted under the name and style of Adi Venkatarama Chettiar Sons and Co., (2) Individual numbers 1 and 2 will contribute Rs. 3000 each to the capital and individual No. 3, that is, Kolandaiyappan, will contribute Rs. 3000. Individual No. 3 is prohibited from borrowing any amount from outsiders. (4) Individual No. 3 had no right to conduct any business separately either on behalf of the Mill (Sri Murugan Oil Industries Ltd.) or on behalf of Adi Venkatarama Chettiar Sons and Co., (5) Kolandaiyappan was required to keep regular accounts and manage without any remarks. If any breach of rules or regulations were found in connection with the management of Murugan Oil Industries, Kolandaiyappan will be responsible for the same. (G) In respect of the above business Kolandaiyappan will credit in the accounts a sum of Rs. 150 towards share of profit of Sri Murugan Oil Industries Ltd. (7) So long as the partnership trade is in existence the buildings etc. belonging to Murugan Oil Industries and used by the suit partnership shall not be alienated by individual No. 3 to any third person. (8) In respect of profits, individual No. 1 will be entitled to four annas, individual No. 2 will be entitled to four annas and the other eight annas should be taken by individual No. 3 for and on behalf of Sri Murugan Oil Industries Ltd.

2. The above specific recitals in the partnership agreement are important for the consideration of the principal question of law urged for determination in the second appeal. The defendant urged that the suit partnership was illegal because it contravened Section 4 (2) of the Indian Companies Act, 1913, which corresponds to Section 11(2) of the Indian Companies Act, 1956. Section 11(2) of the Indian Companies Act, 1956 reads:

No company, association or partnership consisting of more than 20 persons shall

be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law." It is not in dispute that the corresponding section in force prior to the Companies Act, 1956, Section 4 of Act VII of 1913, contained identical similar terms. In the present case, it is common ground that the Murugan Oil Industries (Ptd) Ltd. had more than 20 shareholders. The defendants therefore urged that when Murugan Oil industries entered into the suit partnership agreement with two other persons, the number of partners exceeded 20; it is an essential requirement that such partnership should be registered under the Indian Companies Act by virtue of old Section 4(2) as well as Section 11(2); admittedly, the suit partnership is not so registered; therefore it is illegal; a partnership agreement whose constitution is illegal, cannot give rise to a suit for dissolution and taking of accounts, and therefore the suit Should be dismissed. Both the trial court as well as the lower appellate court came to the conclusion that this contention is not sustainable. The trial court accordingly decreed the suit for dissolution of the partnership and taking of accounts, and the appellate court confirmed this decision. From that decision, the defendant appeals.

3. The lower appellate court in its judgment has set out in extenso Section 44 of the Indian Partnership Act which enumerates the circumstances in which a partnership can be dissolved. Its finding is that Section 44 Clause (c) that a partner other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business; Section 44 Clause (d) that the partner other than the partner suing, wilfully or persistently commits breach of agreements; Section 44 Clause (f) that the business of the firm cannot be carried on save at a loss, and Section 44(g) on any other ground which renders it just and equitable that the firm should be dissolved, will apply to the facts of the present case justifying a decree for dissolution.

4. Learned counsel who appeared for the appellant, after referring to this part of the decision of the lower appellate court was not in a position to challenge the finding of fact at least in regard to Clauses (f) and (g). Admittedly the firm was working at a loss after the very first year of its

working. The partners had developed such serious misunderstandings that they would not see each other and resorted to communication by post.

These are circumstances which attracted Clauses (f) and (g) of Section 44. Therefore this was a proper case for dissolution of the partnership.

5. I next take up the legal ground urged that the partnership was illegal because it did not comply with Section 4(2) of the Indian Companies Act,

1913, which corresponds to Section 11(2) of the Companies Act, 1956. In the first place, on the facts of the case, bearing in mind the terms of the

partnership agreement, it is clear that the partners of the company concerned were only three individuals of whom the third was Kolandaiappan,

the managing agent of Sri Murugan Oil Industries. Now u/s 34(2) of the Companies Act, a registered company will be a body corporate by the

name contained in the Memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession

and a common seal. In the suit partnership agreement it is not Murugan Oil Industries as a body corporate that has figured as a partner, but only its

managing agent who is described repeatedly in the agreement as appearing in the partnership only as an individual. It is important to bear in mind

that the partnership was formed after Murugan Oil Industries Ltd. was found not working satisfactorily. It was decided to use the machinery and

other valuable assets of that company for running the suit partnership. On account of that fact the company's managing agent joined the suit

partnership as an individual. Therefore it cannot be said that Ex. A-1 involves a partnership between the first two persons mentioned therein on the

one hand and the body of corporate members, forming the company of Murugan Oil Industries Ltd. on the other. Therefore, on the facts of the

case, there can be no doubt that this is not a partnership of more than 20 persons, but it is only a partnership of three persons named as individuals.

6. There was an elaborate argument both in the lower courts, and before me as to whether a registered incorporated company as such which

enters into a partnership with two other individuals will function in the partnership agreement only as a single person within the meaning of Section

4(2) of the old Act and 11(2) of the new Act, or whether the company is only a compendious name for its shareholders. Strictly speaking, in view

of the specific terms of the agreement in the case, It is not necessary to give a decision on this point. If a decision is required, it appears reasonable

to hold that a registered company in such circumstances functions only as a single person, and is not a compendious name for the several persons

who are its constituent members. Salmond on Jurisprudence 11th Edn at page 360 says: ""It is essential to recognise clearly that in neither of these

forms of incorporation is the legal person identical with any single human being. A company is in law something different from its shareholders or

members. The property of the company is not in law the property of the shareholders. The debts and liabilities of the company are not attributed in

law to its members. The company may become insolvent, while its members remain rich. Contracts may be made between the company and a

shareholder, as if between two persons entirely distinct from each other. The shareholders may become so reduced in number that there is only

one of them left; but he and the company will be distinct persons for all that In all these respects, a corporation is essentially different from

unincorporated partnership. A firm is not a person in the eye of law; it is nothing else than the sum of its individual members. There is no legal entity

standing over against the partners, as a company stands over against its shareholders."" We can also add to these features the right of perpetual

succession which Section 34 confers on a registered company, showing that it is a legal person different from its shareholders, whereas a

partnership is only a compendious method of describing its component individuate. The death of a partner dissolves the partnership; on the other

hand a registered company has the right of perpetual succession. A partnership is formed by contract among its members; a registered company is

a creature of the statute -- Vide the definition in Section 2(2) and Section 2(7) of the Companies Act of 1913.

7. The cases which have been referred to in this connection deal only with situations where several partnership firms joined together to form a fresh

partnership. In the decision of the Madras High Court in *The Firm of Pannaji Devichand consisting of partners and Others Vs. Kapurchand and*

Others, , Kumaraswami Sastri J. and Curgenyen J. dealt with a partnership between four unregistered firms. The total number of partners came to

22. The definition of ""person"" u/s 3 Clause 39 of the General Clauses Act which included ""any company or association, or body of individuals

whether incorporated or not"" was referred to, as well as a decision of the Judicial Commissioner's court of Nagpur in *Akola Gin Combination v.*

Northcote Ginning Factory 26 Ind Cas 613 : AIR 1914 Nag 261. The latter decision contained an observation that

to say that persons forming unregistered companies should be taken as units for the purpose of Section 4 of the Companies Act would be to

defeat the intention of the Act"" The decision in 51 MLJ 667 : AIR 1927 Had 123, was confirmed by the Privy Council in AIR 1930 300 (Privy

Council) The judgment of the Privy Council merely states that it agreed with the judgment of the court below and with its reasons. But these

decisions do not throw any light as to whether a company registered under the Companies Act cannot be regarded as a person, for the purpose of

Section 4(2) of the Companies Act 1913 or 11(2) of the Act of 1956, or should be viewed as a group of several persons for that purpose. In

Raghunath Prasad v. Lucknow Sugar Works Ltd., AIR 1936 Oudh 56, the court after referring to AIR 1930 300 (Privy Council) observed,

That case can hardly be considered a clear authority for the view that registered companies cannot be taken to be units for the purpose of Section

4, Companies Act, as only unregistered firms were under consideration in that case.

But after stating this position, the court observed that it was not necessary to decide that point for the purpose of disposing of the case before

them.

8. In my view, it will not be proper to extend the decision in AIR 1930 300 (Privy Council) as well as the decision in The Firm of Pannaji

Devichand consisting of partners and Others Vs. Kapurchand and Others, , out of which the Privy Council case arose, to a case of a registered

company for the purpose of Section 4 of the Companies Act, 1913 or Section 11(2) of the Indian Companies Act of 1956. But as observed at the

outset, the circumstances of the case show that only three individuals had joined the suit partnership, therefore it is unnecessary to decide the point

raised as to whether a registered company should be deemed to be a person or not. But if a decision is required I am inclined to hold the view that

a registered company entering into a partnership enters it as a single legal person, and not as a group of individuals comprising of its shareholders.

9. The second appeal is, therefore, dismissed with costs. No leave.