

(2001) 02 KL CK 0021
In the High Court Of Kerala
Case No : C.R.P. No. 2495 of 2000

Popular Automobiles

APPELLANT

Vs

G.K. Chami

RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(3), Order 6 Rule 17
Partnership Act, 1932 — Section 18, 19(2), 69, 69(2)

Citation : (2001) 2 CivCC 344 : (2001) 1 KLJ 360 : (2002) 2 RCR(Civil) 725

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : Haridas Thaikkandy and Daisy Thambi, for the Appellant; M.K. Sumod, for the Respondent

Judgement

K.A. Mohamed Shafi

1. This C.R.P. is filed by the plaintiff in O.S.No.373/1998 on the file of the Munsiff's Court, Kannur challenging the order in I.A. No. 3587/2000 dated 16.10.2000. The plaintiff filed the suit against the respondent-defendant for realisation of Rs. 36, 379/- with interest being the value of the automobile spare parts purchased by him from the plaintiff. The plaintiff is a partnership firm and the above plaint is verified, signed and filed by one A.C. Jose as the manager of the plaintiff-firm claiming that he has been authorised to do so by one John K. Paul, who is one of the partners of the firm. The plaintiff filed the above petition of amend the plaint in order to incorporate that the plaint is verified and signed by one of its partners in stead of the Manager of the firm. The lower court found that the suit is filed in violation of the mandatory provisions of Section 69(2) of the Indian Partnership Act and therefore, the petition to amend the plaint is not sustainable and hence dismissed the petition.

2. The counsel for the petitioner submitted that by the amendment sought for by the plaintiff-petitioner absolutely no prejudice is caused to the defendant and the nature and character of the suit claiming the amount due from the defendant to

the plaintiff is also not changed. According to him, only an inadvertent mistake committed if filing the suit is sought to be remedied by the amendment by incorporating that the plaint is verified and signed by one of the partners of the firm as provided under the Partnership Act in the place of the plaint verified and signed by its Manager.

3. It is seen that in the plaint it is stated that A.C. Jose who is stated to be the Manager of the plaintiff-firm is authorised to verify and sign the plaint by Sri. John K. Paul, one of its partners and an authorisation letter alleged to have been given to him by the partner is produced before the court. It is thereafter the above petition to amend the plaint is filed by the plaintiff.

4. Section 69 of the Indian Partnership Act reads as follows:

69. Effect of non-registration:-(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.

(2) No suits 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.

5. Therefore, it is clear that u/s 69(2) of the Partnership Act no suit can be filed by or on behalf of a firm unless the person suing is or has been shown in the register of firms as partner of the firm. In this case the person verified and signed the plaint is admittedly not a partner of the firm. But according to the plaintiff the plaint is signed by the Manager of the firm as authorised by one of its partners.

6. The counsel for the petitioner submitted that the petitioner has only committed a procedural error in not verifying and signing the plaint by one of its partners and such technicalities cannot stand in the way of advancing substantial justice. According to him, if the amendment of the plaint is refused on the technical ground that it is not verified and signed by one of the partners of the firm, the petitioner will be put to irreparable loss and injury since it will be prevented from recovering a large amount due from the respondent-defendant. He has also submitted that amendment of plaint should be liberally allowed under Order VI Rule 17 of the C.P.C. In support of this argument the counsel for the petitioner relied upon the decision in Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, wherein the Supreme Court has observed as follows:

7. In the present case, the plaintiff was carrying on business as commission agent in the name of Jai Jai Ram Manohar Lal". The plaintiff was competent to

sue in his own name as Manager of the Hindu undivided family to which the business belonged; he says he sued on behalf of the family in the business name. The observations made by the High Court that the application for amendment of the plaint could not be granted because there was no averment therein that the misdescription was on account of a bona fide mistake, and on that account the suit must fail, cannot be accepted. In our view, there is no rule that unless in an application for amendment of the plaint it is expressly averred that the error, omission or misdescription is due to a bona fide mistake, the Court has no power to grant leave to amend the plaint. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.

7. The above judgment of the Supreme Court has no application to the facts of this case. In that reported case the Manager of a Hindu undivided family who was competent to sue in his own name as Manager of the Hindu undivided family sued on behalf of the family in respect of the business belonging to the joint family in the business name and amendment was allowed to incorporate the names of the partners of the firm since it was an unregistered partnership firm.

8. The counsel for the petitioner also relied upon another decision in *Purushottam Umedbhai and Co. Vs. Manilal and Sons*, . In that judgment the Supreme Court has observed as follows:

No doubt the Power of Attorney is not signed by all the partners of Manilal & Sons but only by Manubhai Maganbhai Amin. In our opinion, it was not necessary that the Power should have been signed by all the partners of the firm because Manubhai Maganbhai Amin was the manager of the firm. Under S. 18 of the Act a partner is an agent of the firm for the purposes of the business of the firm. Manubhai Maganbhai Amin was therefore the agent of the firm as well as its manager. It is to be noticed that under S. 19(2) of the Act instances are stated where, in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do matters mentioned in cls. (a) to (b). It is significant that in these clauses there is no prohibition to a partner executing a Power of Attorney in favour of an individual authorizing him to institute a suit on behalf of the firm. In these circumstances, it cannot be said that at the time the plaint was filed it was defective because the Power of Attorney in favour of Dunderdale was not a Power of Attorney on behalf of the firm and its partners.

9. The above decision of the Supreme Court is also of no help to the petitioner in this case since in that case one of the partners of the firm who was the Manager of the firm had executed a Power of Attorney in favour of the person who has verified and signed the plaint on behalf of the firm. In this case, admittedly no Power of Attorney is executed by any of the partners in favour of Sri. Jose, the manager of the firm who has verified and signed the plaint and by the amendment sought for the plaintiff wants to incorporate one of its partners as the person verifying and signing the plaint.

10. In the decision in Shreeram Finance Corporation Vs. Yasin Khan and Others, the Supreme Court has held that the suit verified and signed by the partners as on the date of the suit who were not shown as partners in the register of firms, is not maintainable in view of Section 69(2) of the Indian Partnership Act. In para 6 of the judgment the Supreme Court has observed as follows:

6. In the present case the suit filed by the appellants is clearly hit by the provisions of sub-sec. (2) of S. 69 of the said Partnership Act, as on the date when the suit was filed, two of the partners shown as partners as per the relevant entries in the Register of Firms were not, in fact, partners, one new partner had come in and two minors had been admitted to the benefit of the partnership firm regarding which no notice was given to the Registrar of Firms. Thus, the persons suing, namely, the current partners as on the date of the suit were not shown as partners in the Register of Firms. The result is that the suit was not maintainable in view of the provisions of sub-sec. (2) of S. 69 of the said Partnership Act and the view taken by the Trial Court and confirmed by the High Court in this connection is correct.

11. In the decision in T. Savariraj Pillai Vs. M/s. R.S.S. vastrad and Company, a single Judge of the Madras High Court has observed as follows:

This decision of the learned Judge, could not apply in relation to a suit covered by S. 69(2) of the Act, which had been held by the Supreme Court as mandatory; The concept of formal defect which could be available under O.23, R. 1(3), C.P.C. would have no relevance when a mandatory requirement is not complied with, for the institution of a suit.

Therefore, it is clear that compliance of the provisions of Section 69(2) of the Indian Partnership Act is mandatory and as the person who has verified and signed the plaint was not shown as a partner in the register of firms and no Power of Attorney is given by the partner of the firm to him to verify and sign the plaint on behalf of the firm, the very institution of the suit is bad for non-compliance of the mandatory provisions of Section 69(2) of the Partnership Act. Therefore, that defect cannot be cured by subsequent amendment incorporating that the suit is verified and signed by a partner of the firm.

Therefore, the lower court is perfectly justified in dismissing the petition to amend the plaint. Hence this C.R.P. being devoid of any merits, is dismissed.