
(1993) 01 BOM CK 0003
In the Bombay High Court
Case No : S.A. No. 14 of 1990

Ratilal R. Kamat and another APPELLANT
Vs
M/s Menlyn Transport Company RESPONDENT

Date of Decision : 07-01-1993

Acts Referred:

Partnership Act, 1932 — Section 69(2)

Citation : (1993) MhLj 780

Hon'ble Judges : A.A. Cazi, J

Bench : Single Bench

Advocate : R.G. Ramani, for the Appellant; V.P. Thali, for the Respondent

Final Decision : Dismissed

Judgement

A.A. Cazi, J.—This second appeal is directed against the judgment and decree dated 7th April, 1990 of the learned Addl. District and Sessions Judge, Panaji dismissing the appellants' appeal No. 27/1989 and thereby confirming the judgment and decree dated 24th February, 1989 of the learned Civil Judge. Senior Division, Panaji.

2. The respondent is a firm and they were the plaintiffs in the suit before the trial Court. They averred in their plaint that they were a firm registered under the Indian Partnership Act. This was disputed by the appellants who were the defendants in the suit. It was not contended that the firm suing as the plaintiff was a firm different from that of any other firm bearing the same name and registered as a firm. In other words there was no dispute about the identity of the firm. There was also no contention made in the written statement about any change in the constitution of the firm or about any partners of the firm of the plaintiff as not having been shown as partners of the firm in their register of firms. Accordingly on this point the issue that was raised by the Trial Court reads as follows:-

7. Whether the plaintiffs prove that their firm is registered partnership firm under

the Indian Partnership Act?

This issue was answered by the trial Court in the affirmative. The Court of first appeal has confirmed the finding of the trial Court on this issue.

3. Mr. Ramani, relying upon certain statements made by a witness on behalf of the respondent firm wherein the witness gave certain names of partners, urged that these names are not there in the names of partners shown in Exh. P.W. 1/J Which is the certificate of registration of the firm. On this footing he argued that there were some different persons who were partners of the plaintiff firm and whose names had not been shown in the register of firms and therefore the suit filed by the plaintiff firm was hit by the provisions of sub - section (2) of section 69 of the Partnership Act. In support of this submission Mr. Ramani relied upon *Shreeram Finance Corporation Vs. Yasin Khan and Others*, .

4. Mr. Thali, the Learned Counsel on behalf of the respondent, urged that all that the appellants had disputed on this point was the registration of the firm. and this had been proved by tendering P.W. 1/J and the respondent had not been called upon to prove anything else on this point. Whether it was regarding who were the partners or whether any partners had been shown in the register of partners. He submitted that as a matter of fact. If the question about who were the partners and whether their names had been shown in the register of-firms had been raised, then the respondent firm would have been able to show that Mrs. D" sliva and Mrs. Clarence Menezes who are now stated to be partners whose names are not shown in the register of firms are in fact none other than Miss Catherine Castellino and Miss Clare Castellino and that the names of Mrs. D" silva and Mrs. Clarence Menezes are the names of those very persons after marriage. It is not this Court to consider whether this submission is true or not true. In fact the trial Court was never called upon to considered the question as to whether the respondent Firm had any partners whose names had not been registered in the register of firms. The issue was properly framed on the basis of the pleadings before the Court and the issue, so far as the point under discussion is concerned was merely regarding the registration of the firm. The fact that somebody while giving evidence has made some statement, cannot be read to arrive at a finding which is not called for by any of the issues raised before the Court out of the pleadings.

5. In the circumstances, no interference is called for in the decrees of the trial Court and the Court of First Appeal which are confirmed and the Second Appeal is dismissed with costs.