

(1937) 09 MAD CK 0040
In the Madras High Court

S. Parasurama Iyer

APPELLANT

Vs

R.V. Subburamachari and Others

RESPONDENT

Date of Decision : 27-09-1937

Acts Referred:

Citation : AIR 1938 Mad 151

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The plaintiff became a partner in the firm of the defendants and in course of time the number of partners increased until, at the time of bringing the suit in 1921, the number of partners was 96. The partnership then became converted into a joint stock company. The plaintiff, though one of the partners, was not allotted any shares in the newly formed company. He therefore brought a suit for a declaration that there had been a dissolution of the partnership, for the taking of accounts, and for recovery of his share capital and his share of the profits with interest thereon. The trial Court went into all the matters raised very fully and decided against the plaintiff. In appeal, the lower Appellate Court decided against the plaintiff on two technical grounds, without considering the allegations made by the plaintiff. It found that as the number of partners was more than 20, no suit could be filed and secondly, that in any event the suit could not be maintained as all the partners had not been brought on record. The plaintiff appeals and contends that both the findings of the lower Appellate Court are wrong. If, as the plaintiff alleges, he was nothing more than the manager of the restaurant kitchen and one who had contributed Rs. 1000 to the business to become a partner, and that thereafter he had no knowledge of what took place and was unaware of the fact that the number of partners had increased beyond 20, then clearly the plaintiff should not be without a remedy of some sort. As was said in *Greenberg v. Cooperstein* (1926) Ch. 657 where two persons, as secretary and treasurer, collected sums of money from various persons to form a club and the members themselves had no knowledge of what the secretary and treasurer had done, the law is not so powerless that when the money is in the

hands of persons who have received it for application for an illegal purpose, it cannot protect the contributors or enable them to recover it before it has been applied for this illegal purpose.

2. If the plaintiff was entitled to a share of the profits of the firm when the membership was below 20, surely he was not to lose that right because the number of partners had increased beyond 20 without his knowledge. The appeal however has to be dismissed on the other ground, i.e. that the plaintiff should have impleaded all the partners as defendants. It may be true that at the time of filing the suit he was not aware of the number of partners; but he could readily have ascertained that because an objection to the maintainability of the suit on the ground of non-joinder was taken in the written statement itself. The learned advocate for the appellant has cited certain cases as instances where it was not thought necessary to implead every member of the partnership or firm. According to certain provisions of English Company law, the managing director or some other director is authorized to bring suits on behalf of the company and the question arose in *Hichens v. Congreve* (1828) 38 E.R. 917 whether a suit brought by three shareholders purporting to sue on behalf of the general body of shareholders was maintainable against the directors, who were accused of misusing the share-holders' money. It was held that the nature of the case precluded the possibility of the directors joining in the suit as plaintiffs and that as the directors, who were ordinarily empowered to bring a suit, were themselves the defendants, they could not represent in a suit of that nature the general body of share-holders. Another case relied on by the appellant is *In re South Wales Atlantic Steamship Corporation* (1876) 2 Ch. D. 763. which was a suit for dissolution of a partnership where the membership was very large. A meeting was held¹ in which a large majority of members of all classes were in favour of dissolution, and a suit was brought by representatives of all classes. It was held that some representatives of all classes could bring a suit on behalf of the general body of members. A third case is *Wood v. Dun* (1865) 1 Q.B. 77. That was an ordinary representative suit in which a provision similar to Order 1, Rule 8, Civil P.C. was invoked. In *Appa Dada v. Ramkrishna Vasudeo* (1930) 17 AIR Bom 5 a creditor brought a suit against certain prominent members of the company who had induced him to trade with the company. It was held that the suit was maintainable against the defendants because the liability of all the defendants was joint, as well as several, and that those defendants who were responsible for the creditors dealing with the company were liable. Similarly in *Gangulu Naidu v. Chengama Naidu* (1925) 12 AIR Mad 237 it was held that it was not necessary to implead all the partners in appeal because the liability of the defendants was joint as well as several. The liability in the present case is the liability of the individual partners and of the partnership and not jointly of the various members constituting the partnership. No suit is therefore maintainable without impleading all the partners and the lower Appellate Court was right in dismissing the appeal on this ground.

3. As soon as the written statement was filed, the plaintiff was aware of the

existence of other partners and could have impleaded them. Instead of doing this, he obstinately contested the suit on this issue and so was prepared to have the suit dismissed on this technical ground. Even in the Appellate Court, he made no attempt to amend the plaint. Nor has he made such a request in this Court. The plaintiff has only to thank himself for having this suit dismissed on this technical ground. The appeal is therefore dismissed with costs. Leave to appeal is refused.