

(1937) 02 MAD CK 0041
In the Madras High Court

S. Soomar Sait and Sons

APPELLANT

Vs

P.V. Cherian

RESPONDENT

Date of Decision : 26-02-1937

Acts Referred:

Partnership Act, 1932 — Section 69

Citation : AIR 1937 Mad 666 : (1937) 2 MLJ 221

Hon'ble Judges : Horace Owen Compton Beasley, J

Bench : Division Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—The lower Court's decision is correct. The plaintiffs are Cutchi Memons carrying on business as motor dealers. They are members of the same family carrying on the business of their father's before he died. They sued in the lower Court for the price of a second-hand motor car sold by them to the defendant. One defence raised was that by reason of Section 69 of the Indian Partnership Act the plaintiffs being an unregistered partnership were not entitled to sue and that contention the lower Court upheld and dismissed the suit on that as well as on other grounds. The argument there was that Cutchi Memons are to be included in the latter part of Section 5 of the Indian Partnership Act which reads:

The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

2. It is argued here by Mr. V.G. Row that this is a partnership which arises from status and not from contract because it should be held that Cutchi Memons stand in an analogous position to Hindu undivided families carrying on their family business. The lower Court held that there was no substance in such a contention, and that Cutchi Memons are only governed by the Hindu Law as regards succession and inheritance and that the principles of Hindu Law cannot be applied to their property. I am quite satisfied that the Cutchi Memons bear no

resemblance to Hindu undivided families; and therefore the lower Court's decision upon this point was perfectly correct and the petition must be dismissed with costs.