

**(1991) 12 MAD CK 0033**  
**In the Madras High Court**  
**Case No : Appeal No. 672 of 1981**

Shri Rabindra Nath

APPELLANT

Vs

P.A. Padmanabhan (deceased) and others

RESPONDENT

**Date of Decision :** 04-12-1991

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 2  
Partnership Act, 1932 — Section 69

**Citation :** AIR 1992 Mad 264

**Hon'ble Judges :** Abdul Hadi, J

**Bench :** Single Bench

**Advocate :** S. Subramanian, for the Appellant; M. Muninarayanan, for the Respondent

## Judgement

Abdul Hadi, J.—This appeal is by the defendant in O.S. No. 9722 of 1976 on the file of the 5th Assistant Judge, City Civil Court, Madras.

The suit is for recovery of a sum of Rs. 43,000/-, which according to the plaint allegations represented the deposit which was given to the

defendant and the interest thereon. The suit has been decreed to the extent of Rs. 41,700/- and aggrieved by the said decree, the defendant has

preferred this appeal.

2. The suit was originally filed by Madras Steel Rolling Mills represented by its managing partner Sri P. A. Padmanabhan. But, apart, from other

defences, the defendant also raised the contention in the written statement that the said Madras Steel Rolling Mills was not a registered firm and

that hence, in view of Section 69 of the Partnership Act, the suit was not maintainable at all. However, subsequently, the said plaintiff filed I. A.

No. 18755 of 1979 for amending the cause title and thereby substituting 14

individuals in the place of the above said ""Madras Steel Rolling Mills"", the first of whom no doubt was the above said P. A. Padmanabhan in support of the said I.A. stated inter alia as follows:--

1 was under the bona fide mistaken belief that Madras Steel Rolling Mills is a registered partnership firm. But it is not so. It is only an associate of individuals.

The said 1. A. was opposed by the defendant. However, the said 1, A. was allowed and accordingly instead of the above said Madras Steel

Rolling Mills, 14 persons were substituted as plaintiffs as already stated. No doubt, a civil revision petition was filed by the defendant against the

said order of amendment. viz., C. R. P. No. 242 of 1980 on the file of this Court. But the said civil revision petition was dismissed on the ground

that at the time when the civil revision petition was taken up for admission, decree had been passed in the suit and even the present appeal was pending,

3. In the above circumstances, the learned Counsel for the appellant argued that the said amendment itself was bad. One ground urged by him is

that only some individuals have come on record pursuant to the amendment and even the affidavit in support of the I.A. did not say that they were

partners of the alleged firm ""Madras Steel Rolling Mills"". That apart, he also urged that even the partners of an unregistered firm could not maintain

a suit for recovery of the sum due to the said firm in view of the bar u/s 69 of the Partnership Act. He also cited certain decisions to substantiate his

contentions. But, I feel that there is no necessity to go into the said question. Even assuming that the amendment was in order, I feel that the suit

cannot be maintained, because there was no amendment of the body of the plaint at all. The body of the plaint states that the above said amount

claimed in the suit was due to the above said firm Madras Steel Rolling Mills. But, it is not stated anywhere how the present plaintiffs 14 in number

are connected with the said firm or how the amount claimed is due to them. On that short, point, the suit has to necessarily fail.

4. Pending this appeal, the 1st respondent Padmanabhan died and his legal representatives are respondents 15 to 17 in the appeal. They are alone

represented by the Counsel in this appeal. All the other 13 respondents remain unrepresented. The counsel appearing for respondents 15 to 17

also could not urge any thing to show how the suit is maintainable.

5. In the light of the said conclusion, there is no necessity to set out the rival pleadings or the findings of the Court below. On the above said short point, the suit is dismissed, the judgment and decree of the Court below are set aside and the appeal is consequently allowed. However, in the circumstances of the case, no costs.

6. Appeal allowed.