

## APPELLATE CIVIL

Before Bhandari, C.J. and Falshaw, J.

DR. V. S. BAHL,—Defendant-Appellant

versus

M/S. S. L. KAPUR & CO.,—Plaintiff-Respondent.

Regular Second Appeal No. 275 of 1952.

1954

Nov., 16th

*Indian Partnership Act (IX of 1932)—Section 69(2)—Requirements of—“Persons suing”—Meaning of—Registered Firm—Partner retiring therefrom—Retirement notified to the Registrar of Firms—Another partner joining the firm later on—Name of new partner not notified to the Registrar till after the institution of the suit—Institution of the suit, whether defective—Defect whether can be removed pendente lite.*

*Held*, that in order to institute a suit, a partnership firm must not only be a registered firm but also all the persons who are partners in the firm at the time of the institution of the suit must be or have been shown as such in the Register of Firms. There is no doubt that in a sense the firm itself is a person but there can be no doubt that the words “persons suing” in section 69(2) of the Indian Partnership Act, mean persons in the sense of individuals and the only individuals referred to must be the partners of the firm.

*Held further*, that the suit, at the time of its institution suffered from the defect that one of the partners of the firm had not been shown in the Register of Firms as a partner and a defect of this kind, which is a bar to the institution of the suit, cannot be removed *pendente lite*.

*Nazir Ahmed, etc., v. Peoples Bank of Northern India Ltd.* (1), distinguished. *Joint Hindu family firm Des Raj-Prem Chand v. Registered firm Hira Lal-Kali Ram alias the Krishna Dehati Store* (2), relied on. *Sardar Singar Singh v. Sikri Brothers* (3), dissented.

(1) A.I.R. 1942 Lah. 289

(2) 54 P.L.R. 349

(3) A.I.R. 1944 Oudh 37

*Second Appeal from the decree of Shri S. L. Madhok, 1st Additional District Judge, Delhi, on 28th December, 1951, modifying that of Shri Banwari Lal, Sub-Judge, 1st Class, Delhi, on 6th August, 1951, and awarding a decree for Rs. 3,000 with proportionate costs instead of a decree for Rs. 3,500 as awarded by trial Court.*

S. N. CHOPRA, for Appellant.

HARDAYAL HARDY, for Respondent.

#### JUDGMENT

Falshaw, J. FALSHAW, J. The circumstances giving rise to these two second appeals (Regular Second Appeals Nos. 275 and 276 of 1952) are as follows. Separate suits were instituted by a firm named Messrs. S. L. Kapur and Co., through Maharaj Narain managing partner against Bhagwan Das and Dr. V. S. Bahal appellants for Rs. 3,500 and for Rs. 1,319-15-0 respectively. In both the cases the sums were claimed as arrears due from the defendants as occupants over a long period of certain rooms in the Coronation Hotel at Delhi which is run by the plaintiff firm. The suits were contested by the defendants on all possible grounds but both the suits were decreed by the trial Court, and the appeals of both the defendants were dismissed by the First Additional District Judge except to the extent that the decree against Dr. V. S. Bahal was reduced from Rs. 3,500 to Rs. 3,000. The defendants have filed these second appeals.

The only point now raised in the appeals is whether the suits could proceed in view of the provisions of section 69(2) of the Indian Partnership Act which reads—

“69(2). No suit 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.”

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The facts relevant for the decision of this point are as follows. The firm S. L. Kapur and Co., was originally registered under the Act on the 5th of April, 1940, when Maharaj Narain, through whom the present suits have been instituted, was shown as a partner along with Harjas Rai and Feroze Din. In 1942 Harjas Rai ceased to be partner. The resolutions of the partners of the firm dated the 6th of September, 1942, Exhibit 'A' and the 24th of October 1942 Exhibit 'B' show that in fact the partnership was dissolved and that Harjas Rai ceased to have anything to do with the business of the firm at Delhi including the Coronation Hotel, and accounts were settled between them, and it also appears that out of the liquor licences in the name of the partners the one at Delhi was henceforth taken in the name of Maharaj Narain and Feroze Din, while the licence at Kanpur was thereafter in the name Harjas Rai alone, who was to carry on his own business there. Copies of these resolutions were sent to the Registrar of Partnerships in November, 1942 under section 63 with an intimation that Harjas Rai had ceased to be a partner. Thereafter in 1946 Maharaj Narain and Feroze Din joined one Sultan Ahmad with them as a partner. This change in the constitution of the firm, however, was only notified to the Registrar in July 1951, the present suits having been instituted about a year before that in July 1950.

Both the defendants raised the plea that the plaintiff firm was not a registered firm and that Maharaj Narain was not shown in the Register as a partner in the firm and therefore the suit could

Dr. V. S. Bahl not proceed under section 69 of the Act. The issue  
 v. was framed in each case—

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“Is the plaintiff firm a registered firm? If  
 not, to what effect?”

The trial Court found that the firm had been duly registered in the year 1940, and the only aspect of the matter which it considered was the effect of the withdrawal of Harjas Rai in 1942, regarding which it was held that this did not affect the plaintiff's right to bring the suits.

The matter was more exhaustively considered by the lower appellate Court, which agreed with the trial Court regarding the effect of the withdrawal of Harjas Rai, but also went into the question of the effect of the fact that in 1946 Maharaj Narain and Feroze Din had joined with them Sultan Ahmad as a partner and had not notified the Registrar of the change in the constitution of the firm under section 63 of the Act until after the suit had been pending for a year or so. It seems that in fact the details regarding the joining of Sultan Ahmad as a partner and the notification of this fact to the Registrar in July 1951 were only brought out in certain evidence which was led before the lower appellate Court. It was, however, held that this was not a defect in the form of the suit.

Two points thus arise for consideration in the appeals, firstly, whether the so-called retirement of Harjas Rai in 1942 amounted to a dissolution of the firm S. L. Kapur and Co., which necessitated a fresh registration of the re-constituted firm, and secondly, even if no fresh registration of the firm was necessary after the withdrawal of Harjas Rai, the suit could be filed on behalf of the firm in view

of the fact that a third partner had subsequently been added whose name was only communicated to the Registrar during the pendency of the suit.

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On the first of these points I consider that the decision of the Courts below was correct. Admittedly *inter se* the partners passed resolutions regarding the dissolution of the firm, which appears in fact to have been a division of the business of the firm between them, Maharaj Narain and Feroze Din retaining the business at Delhi while Harjas Rai separately took on the business hitherto carried on by the firm at Kanpur. However, two of the partners continued to carry on the business of the firm at Delhi in the same name and although the partnership was technically dissolved for the purpose of settling accounts with Harjas Rai and separating a part of the business of the firm outside Delhi for him to carry on, it was a sufficient compliance with the law for them to notify the Registrar under section 63 that Harjas Rai had ceased to be a partner in the firm and that the partnership would now continue with only Maharaj Narain and Feroze Din as partners.

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The second point is more difficult. This point was decided in favour of the plaintiff by the lower appellate Court on the basis that a suit which had been defective under section 69(2) at the time of its institution could be validated by a rectification of the defect *pendente lite*. In deciding the matter in this way the learned Additional District Judge purported to follow the decision of a Full Bench of the Lahore High Court in *Nazir Ahmad etc. v. Peoples Bank of Northern India Limited*, (1) in which the point before the Full Bench, which consisted of Tek Chand, Ram Lall and Beckett, JJ. was whether when a plaintiff institutes a suit

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(1) A.I.R. 1942 Lah. 289

Dr. V. S. Bahlagainst a company in liquidation without the leave  
v. of the Court under section 171 and subsequently  
M/s. S. L. applies for such leave within the period of limita-  
Kapur and Co. tion of the suit, and the leave is granted only after  
Falshaw, J. the period of limitation has expired, the suit  
should be dismissed, and it was held that the suit  
should not be dismissed. In the first place the  
words of section 171 of the Companies Act are not  
identical with those of section 69 of the Partner-  
ship Act, and the observation that the proceedings  
in a suit brought by an unregistered partnership  
firm are validated by registration of the firm *pen-  
dente lite* was simply an *obiter dictum* of Ram  
Lall, J., which was not endorsed or referred to by  
either of the other two learned Judges. This ques-  
tion came up for consideration by Kapur, J., and  
myself in *Joint Hindu Family Firm Des Raj-Prem  
Chand v. Registered Firm Hira Lal-Kali Ram alias  
the Krishna Dehati Store* (1), in which, after con-  
sidering the numerous authorities on the point,  
we came to the conclusion that the view expressed  
by Ram Lall, J. was wrong and, that in order to  
institute a suit a partnership must be a registered  
firm on the date on which the suit is instituted and  
that subsequent registration cannot validate the  
defect.

The question which arises in the present case is whether in order to institute a suit a partnership firm must not only be a registered firm, but also all the persons who are partners in the firm at the time of the institution of the suit must be or have been shown as such in the Register. This certainly appears to be the plain meaning of the words in section 69(2) "unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm." It is difficult to imagine what other meaning the words

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(1) 54 P.L.R. 345

“persons suing” are capable of bearing in this con-<sup>Dr. V. S. Bahl</sup>text. There is no doubt that in a sense the firm itself is a person but to my mind there can be no<sup>v.</sup> doubt that the words “persons suing” here mean<sup>M/s. S. L. Kapur and Co.</sup> persons in the sense of individuals, and that the<sup>Falshaw, J.</sup> only individuals referred to must, in my opinion, be the partners in the firm. Indeed, Mr. Hardy for the respondent in these appeals was unable to suggest what other meaning there could be in this context. He relied, however, on the decision in *Sardar Singar Singh v. Sikri Brothers* (1). In that case a suit was instituted on behalf of the firm named Sikri Brothers by one N. R. Nagpal who described himself both in the body of the plaint and in the verification as a partner in the firm. The defendant raised the plea that the suit was not competent as the firm was not a registered partnership. The facts found were that the firm was a registered partnership but that only the names of two partners were entered in the Register, and that before the institution of the suit two partners had joined N. R. Nagpal with them as a partner. It was held that the suit could proceed on the ground that the real plaintiff was the firm Sikri Brothers and that the mere mention of N. R. Nagpal through whom the suit was brought did not make him the plaintiff. With the utmost respect I am unable to agree with this decision. I would certainly agree with it to the extent that it was not necessary for the suit to be instituted by the firm through a partner, and the suit could be instituted by the firm on behalf of the partners through a mere employee or attorney, but in my opinion once it was established that N. R. Nagpal was a partner of the firm it ought to have been held that he was one of the persons suing within the meaning of section 69(2) of the Partnership Act, and that therefore it was

(1) A.I.R. 1944 Oudh 37

Dr. V. S. Bahl necessary, for the suit to be instituted at all, that  
 v. his name should be shown as a partner in the Re-  
 M/s. S. L. Kapur and Co. gister of Firms.

Falshaw, J.

In the circumstances although I hesitate to throw out the two apparently well-founded claims of the plaintiff firm on such a technical ground as this, I feel constrained to hold that the suit at the time of its institution suffered from the defect that one of the partners of the firm, who had been a partner for several years, had not at the time of the institution of the suit been shown in the Register of Firms as a partner, and in my opinion the same principle which applies to the registration of the firm itself must also be held to apply to the individual partners and a defect of this kind, which is a bar to the institution of the suit, cannot be removed *pendente lite*. I would accordingly accept the appeals and order that the plaintiff's suits be dismissed, but at the same time, in the circumstances, order that the parties shall bear their own costs throughout.

Bhandari, C.J.

BHANDARI, C. J. I agree.

APPELLATE CIVIL

Before Bhandari, C.J. and Kapur, J.

NIAMAT SINGH,—Appellant.

versus

DARBARI SINGH, etc.—Respondents

Regular Second Appeal No. 2-D of 1953.

1955

Oct., 7th

Indian Limitation Act (IX of 1908)—Article 120—Right to sue—When accrues—Adverse entry in the Revenue record against person in actual physical possession—Such person retaining possession despite the adverse entry—Suit by such person for declaration—Starting point for limitation.

Evidence Act (I of 1872)—Section 115—Estoppel by conduct—Mutation Proceedings—Plaintiff agreeing to property being divided on Pag-Wand rule of succession—Whether