

# ALLAHABAD HIGH COURT

Ram Prasad-Thakur Prasad

Vs

Kamta Prasad-Sita Prasad

(Kendall, J.)

25.04.1935

## JUDGMENT

### **Kendall, J.**

1. This application has raised a technical question in connection with the Indian Partnership Act of 1932. The plaintiff, purporting to be a firm, entered a plaint on 27th. October 1933, which was admitted and registered on 28th November. On 23rd March 1934, he made an application to amend, the plaint after having obtained a certificate to the effect that the firm had been registered in accordance with Section 59 of the Act. The plaint was, amended accordingly, after which the written statement was filed in which the objection was raised that the suit, as framed, was barred by Section 69 of the Act. The trial Court appears to have rejected the plaint, giving as a reason that it was admitted by the plaintiff that the firm was not registered when the suit was filed.

2. It has been argued in the first place that this statement of the Court is incorrect, as the plaintiff never admitted that the firm had not been registered when the suit was filed. It has now been proved by an affidavit that the plaintiff made an application for registration on 25th October 1933, i.e., two days before the plaint was filed and it has been pointed out that under Section 58 of the Act The registration of a firm may be effected at any time by sending by post or delivering to the Registrar...a statement in the prescribed form....

3. This had been done and therefore it is argued the registration had been effected and the suit was good. If Section 58 stood alone, this argument might have some force, but Section 59 shows that registration amounts to more than what is said in Section 58. The Registrar, under Section 59, must be satisfied that the provisions of Section 58 have been duly complied with, and he must record an entry of the statement in his register. Further, it is provided in Section 69 as follows: No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm...unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm.

4. It is necessary therefore not only that the firm should be registered, but the person suing must be shown as a partner in the firm and it is admitted that on the date when the plaint was filed the second part of this condition had not been carried out. On behalf of the applicant it has been argued by Mr. Shanker Saran that Section 74 of the Act will have the effect of curing any irregularity in the procedure. Under that section Nothing in this Act...shall affect or be deemed to affect...; (a) any right, title, interest, obligation or liability already acquired, accrued or accrued before the commencement of this Act....

5. The plaintiff's right to realise money from the defendant by means of a suit, if necessary, had accrued before the Act came into force, and it is, therefore argued that nothing in the Act can affect that right. This is perfectly true. Nothing in the Act could affect the plaintiff's right to realise money from the defendant by means of a suit. The question however is not one of right, but of procedure. The Act lays down the proper procedure, namely, that the registration of the firm should be completed in the manner set forth in Section 59 before the suit can be instituted. The plaintiff never had a right to institute a suit in a manner that violated the provisions of the Act. Such a right, in fact, could not exist; and even if it could be deemed to exist, it certainly did not exist before the Act came into force. It appears to me to be clear that the Act has not affected the plaintiff's right in any way, but has only regulated his procedure, and this procedure he was bound to follow. The provisions of Section 69 are mandatory, and appear to be as rigid as those of Section 80, Civil P.C.

6. It has been finally argued on behalf of the applicant that, as the plaint was amended under the orders of the Court on 4th April 1934, the suit should have been deemed to have been instituted on that date, and as the certificate was obtained before that date, it ought to be held that the provisions of Section 69 have not been violated. The terms of Section 69 however are very specific, namely, that No suit...shall be instituted...unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm.

7. It cannot be said that the suit was instituted only when the plaint was amended. It was undoubtedly instituted before the provisions of the Act had been complied with. I am therefore of opinion that the decision of the trial Court is correct, though it may be inaccurate in stating that the plaintiff had admitted that, the firm was not registered when suit was filed. The plaintiff's proper remedy is, as the lower Court has pointed out, to file a fresh suit, and if necessary to ask the Court to give him the benefit of Section 14, Limitation Act. It will be for the trial Court to decide whether the provisions of that section apply. The application is dismissed with costs.

