

ALLAHABAD HIGH COURT

Jamiat Ulama-I-Hind

Vs

Maulana Mahmood Asad Madni

(S Bhat , J.)

25.08.2008

Judgment

S Bhat , J.

1. same allegations. Therefore, unless the second plaintiff shows his competence in some manner to represent the first plaintiff, the CS (OS) 685/2008 Page 9 suit is not maintainable. It is contended that even otherwise, the suit cannot be maintained since the mandatory provisions of Order I Rule 8 have not been complied with. Furthermore, non-disclosure of the persons on whose behalf the suit is sought to be filed - assuming it to be in representative capacity - is a fatal infirmity. 13. It was contended that a suit, on behalf of a non-registered association, such as a club or society cannot be maintained; reliance was placed on the decisions reported as *GIP Railway Senior Institute -vs- Mohit Kumar¹ Rajendra Nath Tikku -vs- Royal Calcutta Turf Club²* and *S. N. Nadar - vs- N.G. High School³* Mr. Salman Khurshid, learned senior counsel, on the other hand, submitted that the allegations by the applicants do not constitute sufficient material to justify rejection of the plaint. It was urged that as long as a plaint disclosed some cause of action, triable by the court, provisions of Order VII Rule such that leave cannot be granted; they also contend that neither has the second plaintiff shown authorization or right to represent the membership of the Jamat as a whole, nor has he disclosed the Jamat's membership, to enable the court to take effective steps toward issuing notice to them, and granting leave, under Order I Rule 8, to pursue this suit in a representative capacity, to him. 23. In this context, the reliance, by the defendants, on the decision in *Rajendra Nath Tikku*, appears to be appropriate. That was a case of an unincorporated entity, viz a club; the contention raised was that the mis-description of the party was curable, by amendment of the cause title. The Calcutta High Court negatived the plea, in the following terms: "5. The term 'misdescription' a fortiori means that a defendant has not been correctly described. It has been recently held by the Supreme Court in the decision of *Purushottam Umedbhai and Co. Vs. Manilal*, reported in⁴ that if a foreign firm is sued in the firm name though the Code does not recognize such a procedure, the plaint is not bad and such

CS (OS) 685/2008 Page 18 Club cannot be suit in its Club name. It may be stated here that Lord parker in the London Association for *Protection of Trade V. Greenlands Ltd.*⁵, said that an association which is not a corporate body, nor a partnership nor a creation of statute could not be made of defendant in its name. A member's club which is an unincorporated and unregistered body is not a legal entity which can be sued in its own name. If that is so, is the amendment of the nature sought in the present case an attempt to describe the defendant correctly? In my opinion, counsel for the respondent is right in his contention that it is not a case of misdescription. Special Bench of the Allahabad High Court in *N.F. Barwell v. John Jackson*⁶ was concerned with a resolution by a majority vote that an unregistered Club should be dissolved. It was held by the Special Bench that in the absence of any provision in the rules of the Club laying down the circumstances and the manner in which the dissolution of the Club could take place, the dissolution of the Club would not be brought about by a majority vote. The Club could be dissolved only if all the members unanimously agreed to such dissolution. Similarly, the Madras High Court, in *D.Gopalan, Vs. Raghava Naicker & Others*⁷ held that: "From the answers given by the deponent to the affidavit as could

Cases Referred.

1AIR 1954 Nag. 29

2AIR 1964 Cal 57

3AIR 1978 Mad 383. 14

4(1961) 1 SCR 982; (AIR 1961 SC 325)

5(1916) 2 AC 15

6AIR 1948 All 146

7AIR 1990 Mad 314