

# CALCUTTA HIGH COURT

Hansraj Manot

Vs.

Gorak Nath Champalal Pandey

Appeal from Appellate Decree Nos. 1215, 1216 and 1298 of 1959

(Chatterjee , J.)

30.11.1961

## JUDGMENT

### **Chatterjee , J.**

1. These are second appeals on behalf of the defendant in suits for ejection on the ground of default in payment of rent. Various issues were taken in each of the suits in the first court. The first was whether the suit was maintainable; the second issue was whether there were defaults and the third was whether the notice to quit that was served was a good and proper notice. So far as the last two points are concerned both the courts came to the same finding that there were defaults and the notice to quit was served and it was a valid and good notice. The point that was urged here very seriously and the point on which there has been a difference of opinion so far as the courts below are concerned is whether the suit is maintainable or not.

2. The suit was instituted by Messrs. Gorak Nath Champalal Pandey described as a firm. There is no dispute that Gorak Nath and Champalal Pandey entered into a partnership orally. That partnership was registered and the names of two partners appear in the Register of Firms as Gorak Nath and Champalal Pandey. Subsequently one of them died but the heirs were not brought on the said register. In spite of the death, the firm is said to have continued its business with the heirs of the deceased partner. The point that has been urged is that the suit is not maintainable in view of section 69(2) of the Partnership Act. When the plaintiff firm instituted the suit the defendant filed an interrogatory asking the plaintiff as to who the partners were. The plaintiff gave certain names, and there is no dispute about that matter. It is also undisputed that the names of the heirs of the deceased partner were stated as partners of the firm but their names do not appear in the said register before the Joint Stock Company. In these circumstances, the first court held that there was an oral contract between the partners Gorak Nath and Champalal by which they agreed that the firm would not be dissolved on the death of either or both the partners but would continue with the heirs of the deceased partner or partners. This oral contract

was accepted by the first court. The first court came to a finding that there was an oral agreement between them that the firm would subsist in spite of the death of one of the partners. This finding is based on evidence relating to subsequent conduct between the parties. This finding has not been reversed by the court of appeal below. On the other hand, the observation of the court of appeal below show that it accepted that finding of the trial court. The question, therefore, in this court cannot be raised that there was no oral agreement as between Gorak Nath and Champalal that their heirs would continue after the death of any of the partners and the firm would not stand dissolved by the death of either of the partners. But the courts below have differed on the question regarding the interpretation of section 69(2) and that is the main point which has been urged before me.

3. Mr Chakravarti on behalf of the defendant-appellant submitted that the provisions of section 42 of the Indian Partnership Act would not apply where the partnership is formed by only two members. According to Mr. Chakravarti, on the death of one member there remains only one partner and the definition of a firm shows that there cannot be any firm of a partnership with one partner and for that reason he says that the heirs could not come in the firm because the the heirs had no "firm" to come in. I am afraid, I cannot accept this argument. Mr. Chakravarti has referred to a decision in the case of *M.S.V. Narayanan Chettiar v. M.S.M. Umayal Achi*<sup>1</sup>, It was held in that case by Ramachandra Iyer. J. that the application of this rule will be difficult in the case of a firm composed only of two partners and that in that case if one of the partners died, there will not be any partnership existing to which the legal representatives of the deceased partner could be taken in. Mr. Chakravarti then referred to (*Aft. Sughra and others v. Babu*<sup>2</sup>), a judgment of a Division Bench of the Allahabad High Court, where it has been held that partnership is not a matter of statute, it is a matter of contract and no heir can be said to become a partner with another person without his own consent, express or implied. In this case Sapru and Agarwala. JJ. of the Allahabad High Court differed from another decision of a Division Bench of the same High Court reported in (*Lala Ram Kumar v. Kishori Lal and others*<sup>3</sup>), a judgment of Iqbal Ahmad. C.J. and Sinha. J. In the latter case of the Allahabad High Court their Lordships found that if there is a contract between the original partners, the firm would not stand dissolved on the death of a partner. The question here before me is what is the principle underlying section 42 and what is the application of that section. That section states that "subject to a contract between the partners a firm is dissolved by the death of a partner." Here the contract that has been referred to in the contract between the two partners Gorak Nath and Champlal. I have already found that there was a contract between Gorak Nath and Champalal. Therefore, it cannot be said that the contract ceased to have effect because a partner died. The contract was there. There was no new contract with the heirs and there was no question of a new contract with the heirs because of the original contract, and by virtue of the original contract the heirs become partners as soon as one of the partners died. It is stated that at the death of the partner there is no partnership; as long as there is no death there is the partnership As soon as there is the death, the heirs become the partners automatically without any agreement between the original partners by virtue of the original agreement between the partners while they were surviving. There is no question of

interregnum. As soon as the death occurs the right of somebody else occurs. The question of interregnum does not arise. The heirs become partners not because of a contract between the heirs on the one hand and the other partners on the other but because of the contract between the original partners of the firm. The words of the section, I think completely support that subject to contract between the partners a firm is dissolved by the death of a partner. Therefore, there is no doubt that section 42 refers to the partners who enter into a contract and has no reference to the heirs of the deceased partner. I, therefore, overrule the first objection of Mr. Chakravarti.

<sup>1</sup> AIR 1959 Mad. 283

<sup>3</sup> AIR 1946 All. 259

<sup>2</sup> AIR 1952 All 506

4. The next point is regarding the interpretation of section 69(2) of the Indian Partnership Act. According to Mr. Chakravarti there is a bar on the ground that section 69(2) provides that no suit to enforce a right arising from a contract shall be instituted by a firm or on behalf of a firm unless two conditions are fulfilled, (1) the firm is registered and (2) the persons suing are or have been shown in the register of firms as partners in the firm. According to Mr. Chakravarti if the suit is instituted by a firm the two conditions must be satisfied And even if the suit is instituted not by a firm but on behalf of a firm, the said two conditions are still required to be fulfilled. According to Mr. Chakravarti the word "and" does not mean "or". But according to Mr. Ghose section 69(2) of the Act should be read in the following manner. No suit to enforce a right arising from a contract shall be instituted in any court by a firm unless the firm is registered and further no suit to enforce a right arising from a contract shall be instituted on behalf of or by the firm unless the persons suing are or have been shown in the register of firms as partners in the firm Mr. Ghose says that he is supported by certain decisions. I would now refer to the decisions and then consider the principle. The first decision referred to by Mr. Ghose is the case of *Sardar Singar Singh and Son v. Sikri Brothers*<sup>4</sup>, a judgment of Thomas, C.J. and Ghulam Hasan, J. Their Lordships observed at page 38 :

"There can be no doubt whatever that the first condition is satisfied, as is clear from Ex. 10, the registration certificate. Indeed this fact was admitted on behalf of the appellant in the lower appellate court. Whether it contains the names of two partners or more, does not alter the fact that the firm is registered. As regards the second condition, we are of opinion that that is satisfied too \*\*\*\*\*

We do not think that the provisions of sub-s. (2) of s. 69, Partnership Act, are a bar to the maintainability of the suit in the form in which it was brought. In our judgment Sikri Brothers as a registered firm were entitled to sue and actually sued as the plaintiff in the case."

5. It appears to me that their Lordships considered the two conditions separately, the first condition in the first part, the second condition in the second part and then they say, "We do not think that the provisions of sub-s. (2) of s. 69, Partnership Act, are a bar to the maintainability of the suit in the form in which it was brought." Mr. Ghose relies on the next sentence, namely, they are entitled to sue as a registered firm. Mr. Ghose says when they are saying "as a registered firm" they mean to say whether the names of the heirs of the partners are on the register or not.

But they never stated it. On the other hand, they considered the second condition and stated "we are of opinion that that is satisfied too." In fact regarding the satisfaction of the second condition there was no dispute in that case and, therefore, it was not necessary for their Lordships to consider the matter further, except to take that into account just to see whether the conditions have been satisfied or not. I am afraid, I cannot accept this judgment as a judgment in support of the proposition of Mr. Ghose. The next case referred to by Mr Ghose is the case of *Pratapchand Ramchand and company v. Jahangirji Bomanji Chinoy*<sup>5</sup>, a judgment of a Division Bench of the Bombay High Court. There their Lordships held that so long as the partners suing were shown in the register as partners, the firm notwithstanding the death of one of the original partners, remained a registered firm and could sue. Mr. Ghose says that on the principle of this case as the firm still remains a registered firm and as the registration has

<sup>4</sup> AIR 1944 Oudh 37

<sup>5</sup> ILR 1940 Bom. 715

not yet been cancelled and as the names of one of the partners is still there, therefore, the suit is still maintainable and section 69(2) is not a bar. The difficulty in applying the principle of that case to the present case is that in answer to an interrogatory on the question as to who the partners were the plaintiff disclosed the names and certain persons whose names did not appear in the register, whereas in the aforesaid reported case the persons who were then suing were persons whose names appeared in the register. I am afraid, this is not a decision in support of the proposition of Mr. Ghose. The next case referred to by Mr. Ghose is the case of *Tapendra Chunder Goopta v. Jogendra Chunder Goopta and others*<sup>6</sup>, a judgment of Panckridge. J. sitting on the Original Side. There also one of the partners retired and the two persons who instituted the suit were persons whose names appeared in the register and it was held that the suit was maintainable. The distinction that I have pointed out is that so far as the case before me there are persons who are stated to be partners but whose names did not appear in the register at the date when the suit was instituted. I am afraid, this decision does not help Mr. Ghose. The last decision on this point referred to by Mr. Ghose is the case of *Messrs Ram Kumar Ram Chandra v. The Dominion of India*<sup>7</sup>, The observation there is that the firm being registered the provisions of section 69(2) are complied with and hence the plaint cannot be rejected. Mr. Ghose says that here also the firm being registered the suit is maintainable, no matter whether the names of the persons appear in the register or not. Mr. Ghose says that all these decisions point out that only one of the conditions need be satisfied, because, according to him, the condition relating to a suit by a firm is mere registration and the condition of a suit by persons on behalf of the firm is that the names of the persons suing should be shown in the register of firms; he further says as it is a suit by the firm, there is no question of the second condition being satisfied. But this question was not considered in any of the aforesaid cases. Mr. Chakravarti says, however, that this point is concluded by certain decisions He refers to the case of *Dr. V.S. Bahal v. M/s. S.L. Kapur and Co*<sup>8</sup>, In paragraph (9) their Lordships observed as follows:

"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 S. 69(2). \*\*\*\* It is difficult to imagine what other meaning the words "person suing" are capable of bearing in this context."

6. The other meaning or the other interpretation of Mr. Ghose was not advanced there and all that was found there was that the section cannot be interpreted in any other alternative manner and, therefore the plain meaning must be the one which must be accepted. I cannot say this is an authority for negating the proposition of Mr. Ghose, though it is a decision where it has been held that both the conditions should be fulfilled. The next case referred to by Mr. Chakravarti is the case of *Kapurchand Bhagaji Firm v. Laxman Trimbak and others*<sup>9</sup>, a decision of Deo, J. sitting singly. His Lordship observed that it is not enough to prove that the firm was registered but it must also be proved that the persons suing are or have been shown in the register of firms as partners

<sup>6</sup> AIR 1942 Cal. 76

<sup>8</sup> AIR 1956 P&H 24

<sup>7</sup> AIR 1952 All 695

<sup>9</sup> AIR 1952 Nag 57

of the firm. The alternative construction suggested by Mr. Ghose was not raised nor decided in this case as well. The next case referred to by Mr. Chakravarti is the case of *Sohanlal Pachisia & Co. v. Bilasray Khemani and others*<sup>10</sup>, a judgment of Bose, J., as he then was. His Lordship observed that section 69 of the Indian Partnership Act requires that in order that a suit can be properly instituted to enforce a right arising from a contract by or on behalf of firm against any third party, the firm must be registered and the persons suing must be shown in the Register of Firms as partners in the firm. Here also the argument of Mr. Ghose was not raised. The last case referred to by Mr. Chakravarti is the case of *Sri Meenakshi Mills Ltd. v. Swaminatha Mudaliar and Bros*<sup>11</sup>., The facts in this case were somewhat similar; the father and the son were partners of a firm and the son died and then there was a suit. The argument that was advanced was that the registration of the father's name holds good for the son, as if the relationship were that of a coparcenary and that argument was overruled. Therefore, no case has been pointed out before me where the argument of Mr. Ghose was ever considered. It is indeed true that there is a large number of decisions where this proposition is accepted and the two conditions have to be satisfied. But interpretation of the statute as made by Mr. Ghosh has never been considered in any of the cases which have been referred to by the learned Advocates on either side. I have, therefore, to construe the section. The purpose of section 69 is to protect third parties against frauds and against omissions. Really this is not anything which affects the partners between or among themselves. They may know the position as well. But a third party is expected to know who are the partners of the firm with which a third party is dealing, unless there is some record kept by some person authorised by law to keep a record, there may be various difficulties. One day somebody will say that such and such was a partner, the next day it would be said that he was not, and the third parties would be in jeopardy as they do not know with whom they were actually dealing, and it is for the protection of their interest that this section was provided in the Act. But whatever may be the object of the Act, that will not control the plain meaning. Therefore, we have to see what is the plain meaning. The interpretation which has been advanced

by Mr. Ghose proceeds on the footing as if the word "and" does not really mean "and" but means "or" and further as if the word "respectively" was added thereafter. According to him, a suit by a firm refers to the first part, namely, unless the firm is registered, "a suit on behalf of a firm" refers to "the persons suing are or have been shown in the register of firms as partners in the firm". But in order to do that we have to strain the language, we have to add the word "respectively" and to substitute the word "and" by "or". The courts are reluctant to do so. It is true that the word "and" has been used in a large number of cases in the sense of "or" and the word "or" has equally been used in a large number of cases for "and". But unless there is some compelling necessity, we interpret a word in its ordinary grammatical meaning but any other meaning, the courts should be reluctant to do that. The courts may so construe where it leads to manifest contradiction of the apparent purpose to some absurdity or injustice not intended. The plain meaning is that if the firm institutes a suit, two conditions are to be satisfied, namely, whether the firm is registered and the persons suing are or have been shown in the register of firms. The same conditions will have to be satisfied even it is a suit on behalf of the firm. The plain meaning certainly supports that. The further difficulty that I find is that if a firm is registered and all the partners are dead or retired at the date of the suit, what useful purpose will be served by such registration ? The registration

<sup>10</sup> AIR 1954 Cal. 179

<sup>11</sup> AIR 1944 Mad. 443

column includes a column for the names of the partners. If that column is left blank it would not be any registration within the meaning of that Act. I believe the idea was that both the two conditions should be existing. But sec. 69(2) of the Act has been interpreted only to mean that if all of the persons suing are still on the Register, they can institute a suit notwithstanding the fact that some others are dead or some others have retired at the date of the suit. That would not be any violation of the words of the statute I therefore hold that a suit on behalf of a firm by certain persons or by a firm may be instituted provided the firm is registered and the persons suing which means the persons then suing must have their names shown in the register of firms. In this case it might have been so if it had been, disclosed by the plaintiff that only the surviving person is the partner of the alleged firm but they have disclosed the names of other persons whose names are not there in the Register. On a plain meaning of the section, I cannot accept Mr. Ghose's contention. I find if this contention is accepted the purpose of section 69(2) would be defeated completely. A firm registered in once would will remain a registered firm for all times even though all recorded partners are dead. I am afraid, I cannot accept any interpretation of the section which would completely defeat the purpose of the section in question. In that view of the matter, I must overrule this contention of Mr. Ghose and accept the contention of Mr. Chakravarti that the two conditions set forth in section 69(2) are mandatory and have not been complied with.

7. The last point of Mr. Ghose is that a suit for ejectment does not come under the mischief of section 69(2). It is not a suit arising out of a contract but arising apart from a contract. The contract was a contract of lease and there was a transfer. But a right to eject a tenant arises from that, and it is not independent of the lease and, therefore, I cannot accept Mr. Ghose's argument that a right to eject a tenant is not a right arising from a contract or that a lease ends with the

transfer of property. It arises out of a contract, though ejectment is not a term of the contract for the enforcement of which the present suit has been instituted. Evidently the contract is for tenancy and if the term of tenancy is terminated, a suit can be filed and, therefore, this suit is intimately connected with the contract and arises from the contract and is not independent of the contract.

8. In that view of the matter, I must allow the appeals with costs, set aside the judgment of the appeal court, restore that of the trial court and direct that the suits should be dismissed.

9. Leave to appeal under Clause 15 of the Letters Patent asked for is granted.  
Appeal allowed.