

LECTURE XI

OTHER JUDICIAL PROCEEDINGS REGARDING PARTNERSHIP AND MATTERS SUPPLEMENTAL

- A. Suits by firms against third parties.**
- B. Suits by third parties against a firm.**
- C. Suits by a partner**
 - (i) against the firm,
 - (ii) against other partners
for
 - (a) dissolution
 - (b) for compensation.
 - (c) for prevention of injury and protection of.
 - (i) property and
 - (ii) rights.

As to **A**

- (1) *Description of a firm as plaintiff or defendant in a plaint.*
 - (i) Parties when one of the partners is a minor.
 - (ii) Parties in case of a reconstituted firm.
 - (iii) Parties in case of dissolved firms.
 - (iv) Parties in case of firms in which one or more partners are
 - (a) dead
 - (b) insolvent.
- (2) *Description of the firm on the heading of the plaint.*
- (3) *Subscription and verification of pleading on behalf of the firm.*
- (4) *Furnishing the names and addresses of the partners at the time of accrual of cause of action, if and when so required—*
 - (a) verification of such statements,
 - (b) form of disclosure of names and address of partners,
 - (c) affidavit, if necessary,
 - (i) order XXX. C. P. C.
 - (ii) English practice
(rules of Supreme Court order 48 A.)
 - (d) effect of such disclosure.
- (5) *Meaning of carrying on business in British India—*
 - (a) when some partners reside outside or in foreign countries,

- (b) when firm carries on business in U. K., or native states,
 - (c) when a foreign firm has agent in India,
 - (d) practice in case of such firms.
- (6) *Suit against managing partner of a firm.*
- (a) Suit by or against individual partners.
 - (b) Form of such suits.
 - (c) Effect of such suits under SS 43 and 45 I. C. A.
- (7) *Suit on a instrument executed in favour of one of the partners.*
- (a) Form of such suit.
 - (b) A firm when an agriculturist within S. 2. of the Deccan Agriculturists' Relief Act 1879.
- (8) *Suits on instrument executed by one of the partners binding the firm—*
- (a) form of such suit,
 - (b) form when the instrument is executed by one of the partners without mention of firm's liability.
- (9) *Mode of service of summons on firms.*
- (a) Service at the principal place of business.
 - (b) Service on manager.
 - (c) Service on partners.
 - (d) Service of summons in case of a dissolved firm.
 - (e) Difference between Indian and English practice.
- (10) *Mode of appearance in a suit against a firm—*
- (a) vakalatnama how to be filled in and signed,
 - (b) effect of exclusion of a party in suit,
 - (c) appearance in case of a manager,
 - (d) appearance under protest,
 - (e) when defence may be filed by a party appearing under protest.
 - (f) nature of defence in such cases under C. P. C. and English Supreme Court rules,
 - (g) substitution of legal representatives of deceased partner, if necessary¹.

Suits between co-partners

Suits for

- (a) dissolution of partnership and
- (b) accounts.

Parties to a suit for accounts and winding up the affairs of partnership.

Suit, if can proceed in the absence of a partner.

(1) *Utanka v. Tarak* 48 C. L. J. 357.

Question of substitution of his legal representatives in case of death *pendente lite*¹.

An account once taken if can be reopened—nature and form of such suit—a suit for taking accounts only if maintainable² form of a suit for dissolution and for accounts³. Suit for particular item without general account in exceptional cases—forms of plaint in suit for dissolution of partnership and account,—in respect of a suit for account of a dissolved firm—suits between firms having one or more partners in common.

Limitation for such suits—interlocutory petitions—petitions for injunctions—for inventory—for appointment of receiver—procedure for hearing of such petition—forms of such petition—objections to such petitions—grounds on which injunction may be granted against a firm⁴, against partners⁵—grounds for appointment of receiver—Or. 40 R. I. C. P. C.—evidence of such grounds—mode of proof. Form of decree in such suits—Or. XX, rules 15 and 17 and Appendix D form No. 21 C. P. C.—subsequent enquiries by direction of court—appointment of Commissioners—mode of enquiries and account.

Execution of decrees—leave of court when necessary—attachment of partnership property—execution against admitted partners and those appearing under protest—as also against those who did not appear—*procedure when liability disputed*—trial of such disputes by execution court—Or. XXI, rule 50 C. P. C.—order a decree—appeals—*Court-fee payable*—the court which should determine liability—*effect of award against a firm*—liability of minor partners—execution against partners of an adjudicated firm—participation in dividends of an adjudicated firm.

Execution for separate debts of an individual partner—charging order—appointment of receiver—accounts and enquiries—option of the partners to redeem or purchase—when copies of application and orders to be served—charging order if attachment⁶.

(1) Pulin v. Mohendra 34 C. J. J. 405.

(2) Munshilal Amarsing & anr. v. Bishenlal Dattaram

118 I. C. 741.

(3) Allah Ditta v. Shanker Das 33 I. C. 953.

(4) Dunlop v. Dunlop Motor Co (1907) Ac. 430, 436-438 as also Montreal Lithograph Co. v. Sebiston (1889) Ac. 610, 612-13. Change in the view of law—now even innocent use of name is enough—North Chesire and Manchester Brewery Co. v. Manchester Brewery Co. (1899) 83, 86-88.

(5) Mumtaz v. Kasim Ali, 11 A. I. J. 423.

(6) 34 C. W. N. 1051.

Mode of giving notice in case of (1) retirement of partners, (2) expulsion of a partner, (3) dissolution of a firm, (4) minor electing to remain partner after attainment of majority - notice of electing not to continue as a partner.

S. 72 I. P. A. is a departure from the old law as to public notice. Notice under both the English and the Indian law should be more specific when it is with reference to an old customer¹,—Advertisement in Gazette if sufficient².

Notice to the Registrar—mode of publication—rules made by the local governments—fees as prescribed in the Act, and by Rules—Rules made by the Governor-General-in-Council and by the Local Government noticed.

Repeal of the Indian Contract Act and Burma Registration of Business Names Act 1920—legal proceedings under those Acts rights and obligations under those Acts—rights and obligations under those Acts how enforceable—applicability of rules of equity—*how far procedural law affected by the New Act.*

Stamp fee—payable for instrument of partnership—article 46 of the Indian Stamp Act and the modifications by provincial legislation.

Suits by unregistered firms or by unregistered partners, when can proceed—forms in such suits.

(1) *Graham v Hope & Peake* 208.

(2) *Wrightson v. Pullam & Stork* 375 ; *Godfrey v. Turnbull* 1 Esp. 371.