

RÁMALAKSH-
AMMA
v.
RAMANNA.

reversed, that the decree of the First Court be affirmed, and that the respondent do pay the costs of the appellant in the High Court.

The respondent must also pay the costs of this appeal.

Solicitor for the appellant—*H. Treasure.*

c. B.

Solicitors for the respondent—*T. Luemore Wilson & Co.*

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

RÁMÁSÁMI AND ANOTHER (PLAINTIFFS), APPELLANTS,
and

KADAR BIBI (DEFENDANT No. 1), RESPONDENT.*

Contract Act, s. 264—Partnership—Notice of dissolution—Sleeping partner.

A, B and C traded together in partnership as B, C & Co., A being a sleeping partner. After the partnership was dissolved, B and C continued to trade together under the same name and incurred debts to the plaintiffs, who sued to recover the amounts from A, B and C. The plaintiffs had not dealt with the old partnership nor received notice of its dissolution, and it was not alleged that they knew of A's previous connection with it:

Held, that the suits did not lie against A.

THESE were appeals against the decrees of J. W. Reid, District Judge of Coimbatore, modifying the decrees of P. Náráyanasámi Ayyar, District Múnsif of Coimbatore, in original suits 325 and 490 of 1885.

The respondent (defendant No. 1) entered into partnership with defendants Nos. 2 and 3 on 21st June 1883 and traded with them as a sleeping partner. The names of defendants Nos. 2 and 3 alone appeared in the trade name of the firm. The partnership was dissolved on 30th June 1884 on the retirement of the respondent; defendants Nos. 2 and 3 however constituted a new firm and carried on the business under the old partnership name. The new firm dealt with the plaintiffs (appellants) for skins and bark, and then suits were brought against defendants Nos. 1, 2 and 3 to recover money due on accounts stated. The plaintiffs had not dealt with the old partnership and had not received notice of its dissolution, and it was not averred that they knew of respondent's

* Second Appeals 948 and 977 of 1885.

previous connection with it. The Múnsif passed decrees for the sums claimed against all three defendants.

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Defendant No. 1 appealed against these decrees, and the District Judge modified them by ordering the suits as against defendant No. 1 to be dismissed.

Plaintiffs appealed to the High Court, on the ground, *inter alia*, that the Lower Court was wrong in holding that in respect of a new customer no notice is necessary.

Sundaram Ayyar and *Krishna Ayyar* for appellants.

Bhāshyam Ayyangār and *Desikāchāryar* for respondent.

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT :—Defendants 1-3 entered into partnership on 21st June 1883 to trade at Coimbatore under the name of “Padsha Rowten, Peer Muhammad Meraooyer and Co.,” *i.e.*, the names of defendants 2 and 3 only appeared in the designation of the firm. The partnership was dissolved on 30th June 1884 by exhibit E, on which date defendant No. 1 retired, and defendants 2 and 3 continued to trade under the same designation as before. The two appellants are found by the District Judge to be “new customers” of the firm after the date of exhibit E; one of them lives at Annúr, near Mettupálayam, in the Coimbatore District, and about 40 miles from Coimbatore; the other in Madras, over 300 miles from Coimbatore; and the question in these appeals is whether the defendant No. 1 can be held liable to their claims against the firm.

From the judgment of the District Court we do not understand that it was denied on the appeal that these appellants were “new customers” of the firm, and we must accept the finding upon the question of fact.

It was then urged that the Judge had misconstrued s. 264 of the Indian Contract Act, and the judgment of Garth, C.J., in *Chundee Churn Dutt v. Eduljee Cowasjee Bijnee*, (1) in holding that no notice of dissolution of partnership was necessary in respect of new customers.

Section 264 enacts that persons dealing with a firm will not be affected by a dissolution, of which no public notice has been given, unless they themselves had notice of such dissolution. In the present case the firm with which appellants opened dealings con-

(1) I.L.R., 3 Cal., 672.

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sisted of defendants 2 and 3, and there has been no change in the firm since the dealings were commenced. It would certainly, therefore, lie upon appellants to aver and prove that they commenced dealings with the firm on the strength of their belief that defendant No. 1 was a partner. This they have not done, and the presumption would be against any such supposition, since the name of defendant No. 1 did not appear in the designation of the firm.

It appears, moreover, from paragraph 3 of the judgment of the Lower Appellate Court, that defendant No. 1 was never at any time more than a dormant partner, since the articles of agreement (A) stipulated that defendants Nos. 2 and 3 should conduct the business, and defendant No. 3 was specially employed to do many acts for her and represent her in dealing with third parties—an arrangement only natural and such as we should expect in the case of a Muhammadan lady. The retirement of a dormant partner is an exception to the usual rule that a partner's agency ends by notice (see Lindley on Partnership, 4th edition, pages 405-408), and it was not averred that appellants knew defendant No. 1 to be a dormant partner notwithstanding that her name did not appear in the designation of the firm. An old customer might possibly be supposed to have known the fact, but there would be no such presumption in the case of a new customer, and there is no evidence that appellants ever heard of defendant No. 1 being a partner. Under these circumstances, we dismiss these second appeals with costs.
