ZAMINDAR OF UDAYARPALAYAM v. SUDAI UDAYAN.

free from ambiguity in this case and we consider that the Collector read them correctly.

The petition consequently fails and will be dismissed with costs. We fix the Advocate's fee at Rs. 100.

A.S.V.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Patanjali Sastri.

1939, March 16.

A. P. M. SYED IBRAHIM SAHIB AND BROTHER (APPELLANT), APPELLANT,

v.

V. S. GURULINGA AIYAR (RESPONDENT), RESPONDENT.*

Indian Partnership Act (IX of 1932), ss. 69 (2) and 74—Former section, if prevails over latter—Suit by firm to enforce rights which accrued before commencement of Act—Maintainability—Firm not registered.

Section 69 (2) of the Indian Partnership Act of 1932, which requires a firm to be registered before instituting a suit to enforce rights, does not prevail over section 74 of that Act, which saves rights and remedies which existed before the Act came into force. Therefore a suit filed by a firm to enforce rights which accrued before the commencement of the Act can be maintained in spite of the non-registration of the firm.

The majority decision in *Girdharilal Son & Co.* v. *Kappini Gowder*(1) followed.

APPEAL under Clause 15 of the Letters Patent against the judgment of STODART J., dated 1st March 1937 and passed in Second Appeal No. 138 of 1936 preferred

---

* Letters Patent Appeal No. 74 of 1937.

(1) (1938) 48 L.W. 81.

to the High Court against the decree of the Court of the Subordinate Judge of Vellore in Appeal Suit No. 97 of 1935 (Original Suit No. 716 of 1933, District Munsif's Court, Vellore).

S. Ramachandra Ayyar for appellant.

K. Bhashyam for *V. C. Veeraraghavan* for respondent.

The JUDGMENT of the Court was delivered by LEACH C.J.—The question which arises in this appeal is whether section 74 of the Indian Partnership Act, 1932, which saves rights and remedies which existed before the Act came into force, should be read as being subordinate to section 69 (2), which requires a firm to be registered before instituting a suit to enforce rights, or whether section 74 should prevail. The facts are simple. The appellant firm filed a suit in the Court of the District Munsif of Vellore claiming from the respondent a sum of Rs. 846–13–2 with interest. The respondent was in the employ of the appellant firm and was given charge of a branch office. It was said that he had overdrawn his account to the extent of the amount claimed. The defence was that the respondent was entitled to a share in the profits of the firm and that if the profits were taken into account there was no indebtedness. The firm had not been registered under the provisions of section 58 of the Partnership Act when the suit was filed, but during its pendency registration was effected. When the respondent discovered that the appellant firm had not been registered before the institution of the suit he applied for leave to amend his written statement and include a plea that the suit could not be maintained by reason of the non-compliance with the Act. The amendment was allowed and an additional issue was framed. The District

IBRAHIM SAHIB & BROTHER v. GURULINGA.

LEACH C.J.

Munsif found that the respondent was indebted to the appellant firm in the amount claimed, but refused to grant a decree on the ground that the firm had not been registered before the plaint was filed. The suit was accordingly dismissed. The appellant firm appealed to the Subordinate Judge of Vellore, who concurred in the decision of the District Munsif. The appellant firm then appealed to this Court. The appeal was heard by STODART J., who also accepted the contention of the respondent that the suit was bad on account of the failure to register the firm before the suit was launched. The learned Judge, however, granted a certificate under Clause 15 of the Letters Patent and the question now comes before this Court for decision.

Section 69 (2) of the Partnership Act states that no suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against a third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm. Section 74, however, states that nothing in the Act or any repeal effected thereby shall affect or be deemed to affect, *inter alia*,

> " (*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or (*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act ".

The question now under discussion arose in the case of *Girdharilal Son & Co.* v. *Kappini Gowder*(1) which came in the first instance before PANDRANG ROW and VENKATARAMANA RAO JJ. PANDRANG ROW J., having in mind the fundamental principle that existing rights

(1) (1938) 48 L.W. 81.

are not to be taken away except by an express enactment or by an enactment which clearly expresses this intention, held that section 69 (2) does not prevail over section 74 and that a suit filed by a firm to enforce rights which had accrued before the commencement of the Act could be maintained in spite of the non-registration of the firm. On the other hand VENKATARAMANA RAO J. considered that section 69 (2) must prevail and was apparently of the opinion that section 74 was merely inserted in order to save a suit which was pending at the time the Act came into force. As the result of the disagreement the case was re-argued before VARADACHARIAR J. who agreed with PANDRANG ROW J.

The opinion of PANDRANG ROW and VARADACHARIAR JJ. is supported by the decison of SULAIMAN C.J. in *Danmal Parshotamdas* v. *Baburam Chhotelal*(1), the decision of the Bombay High Court in *Revappa Nandappa* v. *Babu Sidappa*(2) and the decision of the Rangoon High Court in *In re Sooniram Ramniranjandas* v. *Junjilal*(3). In his judgment in *Revappa Nandappa* v. *Babu Sidappa*(2), BEAUMONT C.J. referred to *Girdharilal Son & Co.* v. *Kappini Gowder*(4) and concurred in the judgment of SULAIMAN C.J. in the Allahabad case. In the last-mentioned case BENNET J. was not in agreement with SULAIMAN C.J. He preferred the decision of the Calcutta High Court in *Surendranath De* v. *Manohar De*(5) where it was held that section 69 (2) would apply to suits for enforcement of claims which accrued before the commencement of the Act, if such suits were started after section 69 (2) had come into operation. The Calcutta High Court laid great stress on

(1) (1935) I.L.R. 58 All. 495.
(2) I.L.R. [1939] Bom. 104.
(3) I.L.R. [1938] Ran. 371 (F.B.).
(4) (1938) 48 L.W. 81.
(5) (1934) I.L.R. 62 Cal. 213.

IBRAHIM SAHIB & BROTHER v. GURULINGA.

LEACH C.J.

the provision in the Act that section 69 (2) should not come into operation until twelve months after the rest of the Act had come into force. The Calcutta decision has been followed by the Patna High Court in *Shazad Khan* v. *Darbar Babu Kuchhi*(1) and by the Lahore High Court in *Krishnan Lal-Ram Lal* v. *Abdul Ghafur Khan*(2), but the judgments in those cases do not carry the matter any further. The majority decision of this Court in *Girdharilal Son & Co.* v. *Kappini Gowder*(3) is binding on us and the matter could be left there, but, as it has been suggested that we should refer the question to a Full Bench, I will set out our reasons for agreeing with it.

There is no ambiguity in the wording of section 74. It says definitely that nothing in the Act shall affect or be deemed to affect any right, title, interest, obligation or liability acquired or accrued before the commencement of the Act and that the Act shall not affect any legal proceeding in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of the Act. Therefore the rights and remedies which accrued before the commencement of the Act are left entirely untouched. Before the Act came into force there was no register and a firm therefore had the right to file a suit without any formalities other than those required by the Code of Civil Procedure and the Stamp Act. In the Calcutta case, *Surendranath De* v. *Manohar De*(4), it was suggested that the words " before the commencement of this Act " should be read in conjunction with the words " any legal proceeding or remedy ", but, in our opinion, to do this would be doing violence

(1) (1936). I.L.R. 15 Pat. 810.
(2) (1935) I.L.R. 17 Lah. 275.
(3) (1938) 48 L.W. 81.
(4) (1934) I.L.R. 62 Cal. 213.

to the wording of the section. The section is a saving section and, if effect is to be given to the words used, section 69 (2) cannot apply in a case like the one before us.

After we had indicated our opinion on the question of law, the learned Advocate for the respondent suggested that we should send the case back to the Subordinate Judge for his finding on the issue as to the amount due to the appellant firm. This suggestion cannot be accepted. The District Munsif's findings of fact were not challenged before the Subordinate Judge. The appeal was confined to the question of law, and the respondent must therefore be deemed to have accepted the findings of the District Munsif. The Subordinate Judge has stated in his judgment that the respondent did not seem to have any real case on the merits and had not attacked the findings of the District Munsif. It is now too late to do so. The District Munsif has found that the appellant firm was entitled to a sum of Rs. 846-13-2 with interest at nine per cent per annum from 7th March 1934. Therefore there will be a decree in favour of the appellant firm for this amount with interest at the agreed rate from the date just mentioned to the date of the judgment of the District Munsif, namely 27th March 1935, with further interest at the Court rate on the decretal amount from that date until payment or realization. The appellant firm will also be entitled to costs throughout on the principal amount.

A.S.V.