

• *Before Mr. Justice Sulaiman and Mr. Justice Mukerji.*

MEWA RAM (DEFENDANT) v. RAM GOPAL (PLAINTIFF)
AND HOTI LAL AND OTHERS (DEFENDANTS).*

1928
February,
17.

*Act No. VII of 1913 (Indian Companies' Act), section 4—
Partnership—"Person"—Joint Hindu family.*

For the purpose of reckoning whether a partnership exceeds or not the number of persons prescribed by section 4 of the Indian Companies Act, 1913, a Joint Hindu family as represented by its managing member counts only as one person: it is not necessary to reckon each individual member of the family separately. *Moti Ram v. Muhammad Abdul Jalil* (1), followed.

THE facts of this case, so far as they are necessary for the purposes of this report, sufficiently appear from the judgement of SULAIMAN, J.

Mr. B. E. O'Connor, Dr. Surendra Nath Sen and Munshi Kamla Kant Varma, for the appellant.

Sir Tej Bahadur Sapru, Dr. Kailas Nath Katju, Munshi Ram Nama Prasad and Pandit Shambhu Nath Chaube, for the respondent.

SULAIMAN, J.—First Appeals Nos. 373 and 374 of 1922 are connected and the same substantial questions of law arise in these appeals. These appeals arise out of two separate suits brought for dissolution of partnership. The substantial pleas raised on behalf of the defendant appellant, Rai Bahadur Lala Mewa Ram, were: (1) that the partnership in question consisted of more than 20 members and was therefore illegal within the meaning of section 4 of the Indian Companies' Act (VII of 1913) and (2) that the partnership being an illegal association, no suit for the dissolution of partnership was maintainable in a court of law. The learned Subordinate Judge has held that as a matter of fact the number of partners

* First Appeal No. 373 of 1922, from a decree of Ganga Nath, Subordinate Judge of Moradabad, dated the 10th of August, 1922.

(1) (1924) I. L. R., 46 All., 509.

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in either of these associations did not exceed 20 and therefore the association was not illegal. In these appeals it is unnecessary for us to express any opinion as to the rights *inter se* of the members of any illegal association because we are satisfied that in neither of these cases the number of partners exceeded 20.

Admittedly the numbers of persons who executed the two deeds of partnership are only 10 and 12, respectively. The only way in which the defendant can urge that the number exceeds 20 is by saying that many of these executants are members of joint Hindu families consisting of a large number of other members and if all the other members of each family were to be counted, the total number exceeded 20. We are of opinion that this is not the right method of calculating the number in order to ascertain whether the association consists of 20 or more members. If each of the executants entered into this partnership in his own individual capacity he admittedly counts as one. On the other hand, if he entered into the partnership in his representative capacity on behalf of his family, then his joint family must be considered to be a unit and must be deemed to be one person within section 4 of the Indian Companies' Act. This view is in accord with the pronouncement of a Division Bench of this Court in *Moti Ram v. Muhammad Abdul Jabil* (1). We, therefore, think that the view taken by the learned Subordinate Judge that the partnerships in question were not illegal associations was correct. There is, therefore, no force in these appeals.

MUKERJI, J.—I entirely agree. I have just one word to add and that is as to the interpretation of section 4 of the Indian Companies' Act (VII of 1913).

Where a person lends his name to a partnership contract he is one of the "persons" constituting the

total number of partners. Behind his back there may be a joint Hindu family, or he may be representing a firm consisting of himself and several other members. In either case, so far as the other partners are affected, the party joining in the contract is the only person with whom they are concerned. The share owned by the individual member may have to be, in the case of a partition in the family or dissolution of partnership, divided among other persons. But that fact cannot affect the other members in the partnership in question. In this view the party joining constitutes only one person and not more than one person.

By THE COURT.—These appeals are dismissed with costs.

Appeal dismissed.

[See also *Piari Lal v. Muir Mills Co.*, (1) where it was held that the *karta* was the member of the family alone entitled to be registered.—ED.]

REVISIONAL CRIMINAL.

Before Mr. Justice Daniels.

PARAMHANS PANDE *v.* SHEODARSHAN SINGH.*

Criminal Procedure Code, section 146—Applicability of section to parties whose rights in the disputed land have already been determined by civil court.

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Section 146 of the Code of Criminal Procedure cannot be applied where the civil court has not only determined the rights of the parties, but has also determined the possession so far as it was in its power to do so.

THE facts of this case sufficiently appear from the judgement of the Court.

Pandit *Ambika Prasad Pandey*, for the applicant.

Munshi *Janaki Prasad*, for the opposite party.

* Criminal Revision No. 3 of 1926, from an order of K. G. Banerji, Sessions Judge of Ghazipur, dated the 3rd of December, 1925.

(1) (1919) I.L.R., 41 All., 619.