REVISIONAL CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

DANMAL PARSHOTAMDAS (PLAINTIFF) *v.* BABURAM CHHOTELAL (DEFENDANT)*

1935 *September*, 26

Partnership Act (IX of 1932), sections 69, 74(b)—Suit by unregistered firm against third party—Not maintainable—Immaterial whether the right enforced by suit accrued before or after commencement of the Act—Subsequent registration of firm does not cure the defect—General Clauses Act (X of 1897), section 6 (e).

Held, (SULAIMAN, C.J., *dubitante*) that a suit by an unregistered firm against a third party, filed after the coming into force of section 69 of the Partnership Act, is barred by that section, and section 74(*b*) of the Act does not operate to save the suit even if the right sought to be enforced by the suit is one which had accrued prior to the commencement of the Act.

Held, also, *per* BENNET, J., that the registration of the firm subsequent to the filing of the suit did not cure the defect.

Held, per SULAIMAN, C.J., that section 6(*e*) of the General Clauses Act applies to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place.

Mr. *S. N. Seth*, for the applicant.

Dr. *N. C. Vaish*, for the opposite party.

BENNET, J.:—This is a civil revision by a plaintiff whose suit has been dismissed by the small cause court on the ground that the suit was brought by an unregistered firm and that section 1 and section 69 of the Indian Partnership Act (Act IX of 1932) bar the suit. The plaint was headed "Firm Danmal Parshotam Das", through Sidh Gopal, one of the owners of the said firm. Section 69(2) is as follows: "No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any 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." The argument for the

*Civil Revision No. 597 of 1934.

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applicant in revision is that section 74 of the Act prevents section 69(2) from applying to the present case, and therefore the present plaint is a valid plaint. In this connection we may observe that section 1(3) provides in regard to the Act "It shall come into force on the 1st day of October, 1932, except section 69, which shall come into force on the 1st day of October, 1933." The Act therefore provided that this particular section 69, which requires that a suit shall only be instituted on behalf of a registered firm, was not to apply for a period of one year after the rest of the Act came into force. The conclusion to be drawn from this provision is that the legislature intended that an opportunity should be given to unregistered firms to be registered before the somewhat drastic provisions of section 69 were enforced against those firms. For the applicant Mr. *Seth* argued that this provision was only intended to operate in regard to causes of action which had arisen after the main portion of the Act came into force. It appears that this would be a very small matter as it is not common for a suit to be brought in regard to a cause of action arising within one year from the suit; at least so far as suits on contracts are concerned. It is more probable that the provision in section 1, sub-section (3) was intended to have a wider effect and to apply to all suits which an unregistered firm desired to bring within one year after the main provisions of the Act came into force.

The argument of learned counsel for applicant was in regard to the meaning of section 74, and especially of the first three clauses (*a*), (*b*) and (*c*), which state as follows: "Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect (*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, or (*c*) anything done or suffered before the commencement of this Act." Now learned counsel for the applicant in revision argued that the meaning of section 74, sub-section (*b*) was that any legal proceeding or remedy in respect of a right, title, interest, obligation or liability which had been mentioned in sub-section (*a*), which was a right, title, interest, obligation or liability accrued or incurred before the commencement of the Act, would be altogether barred from the provisions of section 69. That is, he argued, that a suit could be brought at any time even many years after 1933, if the right, title, interest, obligation or liability had been acquired, accrued or incurred before the commencement of the Act. His argument was that the last two lines of section 74, sub-section (*b*), must be read apart from the rest of the section; that is, the words "anything done or suffered before the commencement of this Act" formed an entirely separate clause and that the words "before the commencement of this Act" did not modify any "legal proceeding or remedy". There are several points to be noted in regard to this theory. The conclusion which learned counsel desires to draw is that if the words "any legal proceeding or remedy" are not limited to any legal proceeding or remedy before the commencement of the Act, then the legal proceeding or remedy need not follow the procedure of the Act and in particular the procedure of section 69(2). Now, in the first place, even taking the interpretation of learned counsel, his conclusion is not a necessary result. The section may mean that a right will exist to take a legal proceeding or remedy, which is a vested right which came into existence before the Act. But it does not follow that the legal proceeding or remedy should not follow the procedure laid down by the Act. In other words the section deals with substantive rights and does not deal with legal procedure. In my opinion if the sub-section 74(*b*) was intended to deal with procedure it would begin "(*b*)

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the procedure in any legal proceeding or remedy". It appears to me that the word procedure does not go well with the word remedy, and this is another reason why I think that the word "procedure" cannot be understood in this sub-section (*b*). The view which I take is that on this construction put forward by learned counsel the section merely lays down that for any right, title, interest, obligation or liability mentioned in (*a*), or for anything done or suffered before the Act, there will always be a legal proceeding or remedy, but such a legal proceeding or remedy must be taken in accordance with the Act. The second point is that this view that section 74 refers to substantive rights only and not to rules of procedure is supported by the analogy of the General Clauses Act (Act X of 1897), section 6. In section 6 it is stated that where an Act has been repealed the repeal shall not "affect any investigation, *legal proceeding or remedy* in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid". The words "any such right etc." refer to the right etc. in section 6(*d*). Similarly the words "any such right" in section 74(*b*) of the Partnership Act refer to the right etc. in sub-section (*a*). There is a parallel between the two provisions in the two Acts. And decisions have always held that under the General Clauses Act for matters of procedure a new Act must always be followed in the "legal proceeding or remedy", but any right etc. which has already accrued under the Act which has been repealed will remain.

On the theory of learned counsel for the applicant if a mortgage was executed before the present Code of Civil Procedure which came into force in 1908, a suit on that mortgage after 1908 would not be governed by the present Code of Civil Procedure but by the former Code. No ruling to this effect is produced by learned counsel. On the other hand, in regard to the Partnership Act there are two rulings which are produced against him. One of

these rulings is contained in the case of *Surendra Nath De* v. *Manohar De* (1), and is a ruling of a Bench of the Calcutta High Court. On page 216 it is stated in regard to section 74(*b*): "But the words 'before the commencement of the Act' may be taken also as referring to the legal proceedings or remedy in respect thereof. If the collocation of the words is in itself precise and unambiguous, no difficulty arises; but, if the terms are ambiguous, then the intention of the legislature must be sought for in the statute as a whole. As already pointed out, the other sections in the Act would go to indicate that the intention of the legislature was to bring section 69 into operation against the firms, if they do not register themselves or if they do not take proceedings respecting antecedent matters within a year from the date of the commencement of the Act. Section 74, clause (*b*), therefore, does not save litigation started after the 1st day of October, 1933." The matter has also been before a learned single Judge of this Court in the case of *Ram Prasad Thakur Prasad* v. *Kamta Prasad Sita Ram* (2). The learned single Judge took the same view of section 74 and held that a suit brought after the 1st of October, 1933, by an unregistered firm was barred by section 69 of the Partnership Act. I consider that these two rulings should be followed, and that the provisions of section 74 of the Partnership Act are intended to apply to substantive rights and not to matters of procedure and that the procedure laid down by section 69 must be followed in a suit which is filed after the 1st of October, 1933.

One further point arises in regard to this case, and that is that learned counsel points out that on the 27th of June, 1934, the firm did become a registered firm and the certificate was filed in court on the 27th of July, 1934, that is, two days before the case was heard. He accordingly makes an oral request that he should be

(1) (1934) I.L.R., 62 Cal., 213. (2) A.I.R., 1935 All., 898.

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allowed to amend his plaint. No such application was in his grounds of revision, which merely stated in ground No. 3, "Because the registration certificate having been filed during the pendency of the suit, any defect even if it existed was cured." The question arose before the learned single Judge of this Court, in the case cited above, in a form more favourable to the plaintiff, as in the case before him the plaint had been amended by the orders of the court, and the argument was that the suit should be deemed to have been instituted on that date. He held, however, that the terms of section 69 were imperative and that that section stated that "No suit . . . shall be instituted . . . unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm." I consider that this principle should be followed. Learned counsel argued that its parallel is to be found in section 17 of the Small Cause Courts Act. That provision however is for a defendant who is making an application for the restoration of a suit which has been decreed against him. The present case is more parallel to the provisions for the rejection of a plaint under order VII, rule 11 on the ground that the suit appears from the statement of the plaint to be barred by any law. Under rule 13 the remedy is to file a fresh plaint. Accordingly in the present case I think the remedy of the plaintiff is to file a fresh plaint so that no part of his plaint may be barred by limitation. I would therefore dismiss this civil revision with costs.

Bennet, J.

SULAIMAN, C.J.:—Undoubtedly it is a significant fact that as provided in section 1(3), section 69 came into force one year after the coming into force of the Partnership Act. The reasonable inference is that the enforcement of this section was deliberately postponed in order to give unregistered firms a reasonable chance to get themselves registered before the section began to operate against them. Accordingly if there were nothing else in

the Act it would be a legitimate conclusion that section 69 would apply to all suits filed after the expiry of the period of one year. But there is also a possibility that the intention was to allow time to people, trading under the name of an unregistered firm, to come to know of the drastic change in the law, which should affect all contracts entered into after the expiry of that period.

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Again, the fact that section 69 *prima facie* enacts a rule of procedure is one which supports the inference that it should apply to all the suits filed after the expiry of one year.

If there were nothing else in the Partnership Act, section 69 would in terms apply to this case as it lays down that "No suit to enforce a right arising from a contract . . . shall be instituted in any court or by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been partner in the firm, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm." But there is section 74, which provides that "Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect (*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, or (*c*) anything done or suffered before the commencement of this Act" etc. So the main question for consideration is whether the provisions of section 69 are not made subject to the provisions of section 74, which is a saving clause for the protection of persons who had acquired certain rights prior to the commencement of the Act.

There can be no doubt that the words "any such right" in sub-section (*b*) refer to "any right, title, interest, obligation or liability, already acquired, accrued or incurred before the commencement of the Act" mentioned in

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sub-section (*a*). Sub-section (*b*) must, therefore, read as "any legal proceeding or remedy in respect of any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or anything done or suffered before the commencement of this Act". It follows, therefore, that the legal proceeding or remedy referred to in sub-section (*b*) is in respect of any right, title, etc. which has already been acquired, accrued or incurred before the commencement of the Act.

The next question is whether sub-section (*b*) refers only to a legal proceeding or remedy in respect of such right etc., that was started before the commencement of the Act. The words are general and would ordinarily include any suit or application for execution or any enforcement of a legal remedy in respect of a right, title, etc., already acquired, accrued or incurred. The difficulty is caused by the use of the expression "before the commencement of the Act" at the end of sub-section (*b*). Now I quite agree that these words, if they were confined to "anything done or suffered", would *prima facie* make sub-section (*c*) altogether redundant, because the last words of sub-section (*b*) are repeated therein. But if it be also understood that the noun "anything" is governed by the prepositional clause "in respect of", then the section would read as follows: "any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or in respect of anything done or suffered before the commencement of the Act." On such a view, sub-section (*c*) would not at all be redundant, for that sub-section would apply to the thing done or suffered before the commencement of the Act, whereas sub-section (*b*) would apply to any legal proceeding or remedy in respect of such thing. There is great difficulty in my mind in interpreting sub-section (*b*) as if the words "before the commencement of the Act" were an adjectival clause qualifying the nouns "legal proceeding or

remedy" and not an adverbial clause indicating a point of time modifying the words "done or suffered". If the former had been the intention, then the words should have been "any legal proceeding or remedy *taken* before the commencement of this Act", for the words "done or suffered" are inappropriate for being used in connection with "proceeding or remedy". On the other hand, as a mere adverbial clause, they can very well modify the words "done or suffered", without any difficulty from the point of view of grammar or meaning. The section would then mean that nothing in the Act, including the provisions of section 69, can affect any right, title, interest or liability, already acquired, accrued or incurred before the commencement of the Act, or can affect any legal proceeding or remedy in respect of any right, title, etc. acquired before the commencement of the Act. It will then follow that a suit which is brought to enforce a right which had already accrued would not be governed by the provisions of section 69 of the Act.

The additional difficulty to be faced is that the provisions of the section are somewhat analogous to the provisions of section 6 of the General Clauses Act. In section 6(*c*) the words "affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed" are mentioned, and then in subsection (*e*) it is provided that the repeal shall not "affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid". Indeed section 6(*e*) goes still farther and lays down that "any such investigation, legal proceeding or remedy may be instituted, continued or enforced . . . as if the repealing Act or Regulation had not been passed". Section 6 therefore indicates that any institution, continuance or enforcement of any legal proceeding in respect of any right so previously acquired is not barred.

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There are a large number of cases in which it has been held that suits filed after the coming into force of the Civil Procedure Code or the Limitation Act are generally governed by the later Acts and not by the earlier Acts under which the right might have accrued, but those decisions, I understand, proceeded mainly on the interpretation of the provisions of the Civil Procedure Code and the Limitation Act themselves and not on the application of section 6(*e*). It seems that section 6(*e*) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed, then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right previously so acquired. But where there is a new law which not only repeals the old law, but is substituted in place of the old law, section 6(*e*) of the General Clauses Act is not applicable, and we would have to fall back on the provisions of the new Act itself.

I would therefore have great reluctance in holding that section 74 of the Partnership Act should be given a restrictive meaning and that although it specifically provides that any legal proceeding in respect of a right, title, etc., acquired, accrued or incurred before the commencement of this Act should not be affected by anything in this Act, section 69 still governs such suits.

I have, however, a feeling that although the words chosen were altogether unhappy, the real intention might probably have been what my learned brother infers. The case of *Surendra Nath De* v. *Manohar De* (1) certainly supports his view, for the learned Judges in that case laid down that where a suit is instituted after the commencement of the Partnership Act, though the cause of action accrued before the commencement of the Act, it was not saved by section 74(*b*), and that that section applies only to pending proceedings, that is to

(1) (1934) I.L.R., 62 Cal., 213.

say, proceedings which were pending at the time when the Act came into force. This interpretation would unfortunately involve the introduction of words like "pending" in sub-section (*b*) of the Act. The case of *Ram Prasad Thakur Prasad* v. *Kamta Prasad Sita Ram* (1) is also directly in favour of the same view. As the case comes up before us in revision, I am not bound to interfere. Accordingly I think that on the whole I should concur in the order proposed by my learned brother that the revision be dismissed.

APPELLATE CIVIL

Before Mr. Justice Allsop and Mr. Justice Bajpai

GOVIND RAM AND OTHERS (DEFENDANTS) *v.* KASHI NATH (PLAINTIFF) AND PHULCHAND ROSHANLAL AND OTHERS (DEFENDANTS)*

1935 *September*, 26

Composition Deed—Arrangement—Nature and essentials—Debtor conveying bulk of his property to trustees for the benefit of his creditors—Debtor thereby divested of his interest in the property—Not attachable subsequently by a decree-holder—Whether knowledge and consent of all the creditors is essential—Whether reservation of a small portion of the property for the debtor invalidates the transaction—Registration whether necessary—Registration Act (XVI of 1908), section 17(2)(i)—Trusts Act (II of 1882), section 5—Interpretation of statutes—General law and special law.

An arrangement was effected as a result of meetings between the representative of a firm, which was in difficulties on account of heavy liabilities, and some of the creditors and a composition was decided upon. The creditors present nominated seven persons from among themselves as trustees and a deed was executed by which the proprietors of the debtor firm assigned the bulk of their property, movable and immovable, to the trustees for the benefit of the creditors, giving them full powers to realise all the property and apply the proceeds towards the composition and payment of the debts. The deed was signed by the debtor and the seven trustees, and later on by some other

*First Appeal No. 107 of 1932, from a decree of Ram Saran Das Raizada, Subordinate Judge of Aligarh, dated the 12th of February, 1932.

(1) A.I.R., 1935 All., 898.