

Judge of this Court in *Bisesar Ram Marwari v. Paras-nath* (1). The court below was, therefore, right in calculating the interest at the rate of $5\frac{1}{2}$ per cent. compoundable with yearly rests.

For the reasons given above, we dismiss this appeal with costs.

1939

TARA
CHANDP.
COLLECTOR
OF
ALIGARH

Before Justice Sir Edward Bennet and Mr. Justice Verma

MAGAN BEHARI LAL (PLAINTIFF) v. RAM PARTAP
SINGH (DEFENDANT)*

1939
February,
15

Partnership Act (IX of 1932), section 69—Unregistered firm—Suit for dissolution and rendition of accounts—Form of decree to be passed—No liability to render accounts can be enforced—Receiver may be appointed to take accounts—Civil Procedure Code, order XX, rule 15; Form No. 21 of Appendix D—Partnership Act, section 48—Does not deal with liability of a partner to render accounts.

In a suit by a partner of an unregistered firm against the other partner for dissolution of partnership and for rendition of accounts the defendant cannot, in view of the provisions of section 69 of the Partnership Act, be asked to render accounts; the prayer for an account to be taken may be granted in the limited terms of section 48 of the Act, that is to say the decree in question will be under order XX, rule 15 and form No. 21 of Appendix D of the Civil Procedure Code, and a receiver may, if the plaintiff desires, be appointed to take accounts of the firm, but the decree will state that the relief of making the defendant an accounting party is not granted.

The exception provided by sub-section (3)(a) of section 69 of the Partnership Act does not authorise a decree which would make the defendant an accounting party. It refers to a suit for the dissolution of a firm or for accounts of a dissolved firm; dissolution of a firm is dealt with in chapter VI of the Act, and there is no section in that chapter which gives a right to obtain a decree that the defendant be asked to render accounts; and section 48, which deals with the mode of settling accounts of a dissolved firm, does not deal with the question of making one of the partners an accounting party.

*First Appeal No. 103 of 1937, from a decree of Bind Basni Prasad, Civil Judge of Bulandshahr, dated the 9th of November, 1936.

1939

MAGAN
BEHARI
LAL
v.
RAM
PARTAP
SINGH

The words, "realise the property of a dissolved firm", in sub-section 3(a) of section 69 mean turning the property into money by sale and do not cover the question of taking accounts from a partner, to be followed by a decree directing the partner to pay the sum so ascertained.

Messrs. *P. L. Banerji, Din Dayal and C. B. Agarwala*, for the appellant.

Messrs. *S. K. Dar and S. N. Seth*, for the respondent.

BENNET and VERMA, JJ.:—This is a first appeal by the plaintiff and also cross-objections by the defendant. Learned counsel for defendant states that the cross-objections are not pressed and we dismiss them with costs. The plaintiff brought a suit for the following reliefs: "(a) That the partnership known as 'Magan Behari Lal Ram Partap Singh' may be declared as dissolved from a date to be fixed by the court; (b) That on its being declared dissolved, an account be taken of the said partnership and the defendant be asked to render its accounts from 1922 up to the date of decree and whatever is found due to the plaintiff be awarded to him."

The partnership had a wide scope according to the plaintiff, and the defendant admitted the partnership but did not admit the extent of the partnership. The plaintiff set out that the partnership with the defendant began in 1916 and comprised the following eight undertakings: [Details of the undertakings were set forth.]

The plaintiff admitted that the accounts of the undertakings 1, 2, 4 and 5 had already been made up and therefore nothing remained in regard to the accounts of those undertakings. The court below found that there was practically no evidence of the undertaking No. 8 and that no such undertaking was proved. There was no appeal against this finding. The three undertakings Nos. 3, 6 and 7 which remained for the consideration of the court were all in regard to the manufacture and supply of bricks and the case for the plaintiff was

that these three undertakings were of the joint partnership business. The court below has held in favour of the plaintiff that this was so.

It is admitted that the firm was not registered in accordance with the provisions of the Indian Partnership Act, Act IX of 1932. Accordingly issue No. 8 was framed: "Is the suit barred by section 69 of the Indian Partnership Act?" On this issue the court below found that the suit was barred except so far as a decree could be granted for the dissolution of the partnership and the court therefore granted a decree in the following terms: "It is declared that the partnership styled as 'Magan Behari Lal Ram Partap' shall stand dissolved from this date, the 9th day of November, 1936. Plaintiff's claim for the taking of accounts and for the recovery of amount that may be found due is hereby dismissed. Parties will bear their costs."

1939

MAGAN
BEHARI
LAL
v.
RAM
PARTAP
SINGH

The main ground of the appeal of the plaintiff is that the court below should have decreed the suit for accounts also. Learned counsel for the plaintiff has claimed that the court below should have granted a decree that the defendant be asked to render accounts from 1922 up to the date of the decree, that is, that the defendant should be held to be an accounting party. Section 69 of the Indian Partnership Act provides as follows:

"(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court 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 a 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.

"(2) 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.

1939

MAGAN
BEHARI
LAL
v.
RAM
PARTAP
SINGH

“(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

“(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm”

It is admitted by the learned counsel that the decree for defendant to render accounts is barred by section 69(1), but he claims that such a decree can be granted because of the exception in sub-section (3)(a). He claims that as that sub-section allows a decree for the dissolution of a firm or for the accounts of a dissolved firm, therefore the decree should be passed in the terms of relief (b). On the other hand, it is contended that this sub-section does not authorize a decree which would make the defendant an accounting party. Learned counsel referred to the provisions of the Civil Procedure Code, in order XX, rule 15, which states: “Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.” Corresponding to this rule there is in Appendix D a form No. 21 as follows:

“It is declared that the proportionate shares of the parties in the partnership are as follows

“It is declared that this partnership shall stand dissolved (or shall be deemed to have been dissolved) as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

“And it is ordered that be the receiver of the partnership estate and effects in this suit and do get in all the outstanding book debts and claims of the partnership.

“And it is ordered that the following accounts be taken:—

“1. An account of the credits, property and effects now belonging to the said partnership;

1939

MAGAN
BEHARI
LAL
v.
RAM
PARTAP
SINGH

Therefore up to 1932 there was no distinction in the form of decree to be granted either in England or in India in a case of a dissolution of partnership. It will be noted, however, that order XX, rule 15 in its final words gives the court power to pass a preliminary decree "directing such accounts to be taken as it thinks fit". The question now before us is what modifications in the form of the decree, form No. 21 in Appendix D, are necessary in view of the bar introduced by section 69 of the Indian Partnership Act of 1932. Learned counsel for the appellant argued that this sub-section (1) had no effect in a suit for dissolution of a firm or for accounts of a dissolved firm and that in such a case the decree in Appendix D, form No. 21, could be granted in precisely the same terms as a decree would be granted if the firm had been registered. We have a certain difficulty in accepting such an argument, because if that were so, the provisions of section 69(1) would have no effect at all. It is apparent that the Act intended to impose some penalty for want of registration. The Act provided a period of one year after the passing of the Act during which the public could take measures for the registration of firms, and it was only after the expiry of that year that these penal provisions for unregistered firms came into force. This is provided in section 1(3) which states: "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." Now section 69 in sub-section (1) refers to a right arising from contract or conferred by the Act and provides that no person can sue as a partner against the firm or any person alleged to be or to have been a partner if the firm is not registered. This appears to relate to chapter III of the Act which deals with relations of partners to one another. In section 9 of that chapter there is provision as follows: "Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and

1939

 MAGAN
 BEHARI
 LAL
 v.
 RAM
 PARTAP
 SINGH

full information of all things affecting the firm to any partner or his legal representative." This section imposes the duty on a partner to render true accounts and full information of all things to any other partner or his legal representative. The relief, therefore, asked by the plaintiff in relief (b) is the enforcement of this right under section 9 by obtaining a decree that the defendant is to render accounts to the plaintiff. Sub-section (2) of section 69 deals with a suit to enforce the right arising from contract against any third party and such a suit cannot be brought if the firm is not registered. There have been rulings on this section as follows: *Ram Prasad Thakur Prasad v. Kamta Prasad Sita Ram* (1) and *Danmal Parshotamdas v. Baburam Chhotelal* (2). The latter ruling was by a Bench and it was held in both these rulings that a suit by an unregistered firm against a third party was barred by section 69(2). The question now before us is in regard to sub-section (1). The exception in sub-section (3)(a) refers to a suit for the dissolution of a firm or for accounts of a dissolved firm. Dissolution of a firm is dealt with in the Act in chapter VI. There is no section in that chapter which gives a right to obtain a decree that the defendant be asked to render accounts. This provision comes apparently under section 9. The question, therefore, is whether in the exception the legislature intended to give the rights conferred on dissolution in chapter VI or intended to give any wider rights than are given by that chapter. In chapter VI there is a section 48 which provides as follows:

"In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—

"(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(1) [1935] A.L.J. 1243.

(2) (1935) I.L.R. 58 All. 495.

1939

MAGAN
BEHARI
LAL
v.
RAM
PARTAP
SINGH

“(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—

“(i) in paying the debts of the firm to third parties;

“(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

“(iii) in paying to each partner rateably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.”

This section deals with the question of settling accounts between partners after dissolution. Our view of the section is that the section does not deal with the question of making one of the partners an accounting party, but the section only deals with the question in sub-section (a) of the partners being liable for losses to third parties. There is no bar in section 69 of the Act against a suit being brought by third parties against an unregistered partnership and therefore in a dissolution the partnership firm would have to pay whatever debts were due to third parties and the provision in section 48 (a) is for the partners to contribute rateably to those debts. In sub-section (b) there is a question of the application of the assets of the firm. Learned counsel argued that this means that assets could be realised and that if a debt were due to the firm from a partner then the partner could be made to pay. We do not think that this is within the scope of section 48. That section in sub-section (b) merely states that the assets are to be applied in a particular manner and it does not deal with the bringing of suits for payment of assets.

Learned counsel also argued that the provision in sub-section 3(a) of section 69—“any right or power to realise the property of a dissolved firm”—would include the right to sue for debts due to the firm from a partner or for sums of money realised by a partner which he held on behalf of the firm. Now the words

used are "realise the property". It appears to us that the words "realise the property" mean turning the property into money by sale and do not cover the question of taking accounts from a partner to be followed by a final decree directing the partner to pay the sum as ascertained. Learned counsel then argued that on that view of the law there would be no remedy for a partner in an unregistered firm as against another partner in regard to sums which the other party had received on behalf of the firm. The bar in section 69 of the Partnership Act is in regard to a civil suit. If the case were sufficiently clear, no doubt the partner in question could file a criminal complaint against the defaulting partner and the criminal case is not in any way barred by section 69. We are not, however, concerned with this aspect of the matter but it is desirable to point out that in a proper case the law has not failed to provide an appropriate remedy. As regards the interpretation of section 69, we feel that this is no doubt a difficult matter but on a consideration of the circumstances the view which has been put forward for the appellant does not commend itself to us as correct.

1939

 MAGAN
 BEHARI
 LAL
 v.
 RAM
 PARTAP
 SINGH

It was claimed that this view for the appellant is supported by the ruling of a learned single Judge of this Court in *Gulab Rai v. Shibba Mal* (1). In regard to this ruling we need not make any detailed observation because we are informed that there is a Letters Patent appeal pending against this decision. We may observe that the learned Judge set out that the suit was for dissolution of partnership and settlement of accounts. He did not state that the suit was one for a preliminary decree that the defendant was an accounting party, and on page 826 he referred to the provisions of section 48 for settlement of accounts between the partners. It is difficult, therefore, to see from the words used in this ruling that the learned Judge intended to hold that the

(1) [1937] A.L.J. 825.

1939

MAGAN
BEHARI
LAL
v.
RAM
PARTAP
SINGH

relief of a preliminary decree for rendition of accounts could have been granted against a defendant as an accounting party in a case where the firm was unregistered. On page 827 it is apparent that the argument before the learned Judge was whether two suits would be necessary in accordance with a certain interpretation of section 69(3) (a) and the learned Judge repelled that argument. This argument has been adopted by the court below in the present case, but we do not think that this argument is correct. On the other hand we think that the appellant cannot obtain a decree for rendition of accounts against the defendant because in our view the decree to be granted under order XX, rule 15 must be modified in accordance with the provision of law in section 69 of the Partnership Act.

It now remains to consider to what extent a decree can be granted under the claim in relief (b). The claim is firstly that an account be taken of the said partnership, and secondly that the defendant be asked to render its accounts from 1922 up to the date of the decree. In our view the defendant cannot be asked to render the account, but the first prayer for an account to be taken may be granted in the limited terms of section 48; that is to say, the decree in question will be under order XX, rule 15 and form No. 21 of Appendix D, and a receiver may, if the plaintiff desires, be appointed to take accounts of that firm. But the decree will state that the relief of making the defendant an accounting party is not granted. Let the case be remanded to the court below for preparation of a decree in form No. 21, Appendix D, as indicated above.

The appeal has succeeded only to a very small extent which we might estimate as 1/10 of the appeal. Accordingly we direct that parties pay and receive costs of this appeal in proportion to 1/10 success and 9/10 failure of the appellant.