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of the three conditions precedent for the issue of a legal warrant under section 7 of the Extradition Act had not been fulfilled and this Court decided that it had the power to hold that in the absence of that condition precedent the Political Agent had no authority to issue a warrant under section 7 of the Extradition Act. I do not find any conflict at all between that decision and the view which I have taken in the present case. There was no question raised in that case that the Political Agent had not followed the rules and in consequence thereof the warrant issued by him was invalid. It does not afford any authority for the proposition that this Court can enter upon an inquiry into the conduct of the Political Agent before issuing a warrant of arrest under section 7 of the Extradition Act.

The result, therefore, is that I see no reason to interfere and dismiss this application. The stay order is discharged and the District Magistrate of Basti can now proceed to execute the warrant in accordance with law.

FULL BENCH

Before Sir John Thom, Chief Justice, Mr. Justice Allsop and Mr. Justice Ganga Nath

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SHIBBA MAL AND ANOTHER (DEFENDANTS) v. GULAB RAI
(PLAINTIFF)*

Partnership Act (IX of 1932), section 69(3)(a)—Unregistered firm—Suit for dissolution and rendition of accounts—No disability in respect of such suit—Form of decree and mode of accounting to be the same as if the firm was a registered firm—Civil Procedure Code, order XX, rule 15.

The right of a partner of an unregistered firm to obtain a decree for dissolution of the partnership and for accounts remain unaffected by the provisions of sub-sections (1) and (2) of section 69 of the Partnership Act, in view of the proviso contained in sub-section (3)(a) thereof. The form of the decree to be passed in such a suit, and the kind or manner of the accounting to be directed, are the same as they would be in a suit by a partner of a registered firm.

*Appeal No. 48 of 1937, under section 10 of the Letters Patent.

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The terms of order XX, rule 15, of the Civil Procedure Code show that it is unnecessary for a partner who seeks dissolution to include a prayer for accounts in his plaint, for the court when granting a preliminary decree for dissolution may proceed to order the taking of accounts. A partner of an unregistered firm, who is undoubtedly entitled to sue for dissolution, is thus automatically entitled to accounts also.

It was not the intention of the legislature, in enacting the proviso contained in sub-section 3(a) of section 69 of the Partnership Act, that a partner of an unregistered firm should have to bring two suits, the first for dissolution of the partnership and then the second for accounts of the dissolved partnership, and was not to be allowed to claim both in the same suit.

Magan Behari Lal v. Ram Partap Singh (1), overruled.

Messrs. *B. Malik* and *S. N. Misra*, for the appellants.

Messrs. *A. P. Pandey* and *J. C. Mukerji*, for the respondent.

THOM, C.J., ALLSOP and GANGA NATH, JJ.:—This is a defendants' appeal arising out of a suit for dissolution of partnership and rendition of accounts.

The appeal is against the order of a learned single Judge of this Court who disposed of the case in second appeal.

In August, 1931, the plaintiff, defendant No. 1 and one Lachhman Das entered into a partnership. In November of the same year Lachhman Das left the partnership and one Nanak Chand came in; in June, 1932, Nanak Chand left the partnership and defendant No. 2 became a partner. Differences arose between defendants Nos. 1 and 2 and the plaintiff, and in consequence the plaintiff filed the present suit for dissolution of the partnership and for accounts.

The main defence to the suit was that inasmuch as the partnership was not registered in accordance with law the plaintiff was not entitled to a decree for accounts in view of the provisions of section 69 of the Partnership Act.

The suit was decreed by the learned Munsif. In appeal, however, it was dismissed in the lower appellate

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court. The learned single Judge who heard the second appeal has restored the decree of the trial court.

Before us in appeal it was maintained for the defendants that the suit as framed was incompetent inasmuch as in view of the provisions of section 69(1) of the Partnership Act no suit for accounts by one partner against the other lies where the partnership was not dissolved. Section 69 imposes certain disabilities upon unregistered firms. An unregistered firm cannot, in view of the provisions of section 69, sue a third party on a contract. The section, however, in a proviso makes provision for suits for dissolution of a partnership and for accounts. The proviso is in the following terms: "(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceedings 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 would appear that the legislature intended that no disability should be attached to any partner in regard to winding up and accounting as between the partners on dissolution. For the appellants it was maintained that so far as accounting was concerned a suit would lie only where the partnership had already been dissolved. If the partnership were not dissolved, it was contended, a suit for dissolution which included a relief for accounts was incompetent at least so far as the claim for accounts was concerned. In support of this proposition reliance was placed upon the decision in the case of *Magan Behari Lal v. Ram Partap Singh* (1). A Bench of this Court held in that case that a decree for rendition of accounts could not be granted where the partnership was unregistered because the decree to be granted under order XX, rule 15 of the Code of Civil Procedure fell to be modified in view of the provisions of section 69 of the Partnership Act. We are unable to agree.

(1) I.L.R. [1939] All. 563.

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In our judgment the legislature intended to leave the right of a partner to sue for dissolution and accounts unaffected by the disabilities created by the provisions of section 69 of the Partnership Act. It is not disputed that a partner of an unregistered firm in virtue of the above proviso to section 69 may sue for dissolution of partnership. The proviso in so many words enjoins that the right to sue for dissolution shall remain unaffected. If, therefore, a partner of an unregistered firm sues for the dissolution of partnership he is entitled to the ordinary decree which the court passes in such a suit. Provision is made for this decree in order XX, rule 15. Rule 15 is in the following terms: "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." We observe from the terms of this provision that it is unnecessary for a partner who seeks dissolution to include a prayer for accounts in his plaint. If the court grants a preliminary decree for dissolution of partnership then it may in view of the provisions of order XX, rule 15 of the Code of Civil Procedure proceed to order the taking of accounts. The right of a partner, therefore, of an unregistered firm to a decree for accounts in a suit for dissolution remains unaffected by the provisions of section 69 of the Partnership Act, in view of the proviso contained in sub-section (3) thereof.

It was maintained for the appellants that the legislature intended to impose a restriction on partners of unregistered firms who sue for dissolution and that the restriction was the denial of the right to include a claim for accounts in a suit for dissolution. It was admitted that under the terms of the section a partner could file a suit for dissolution and a second suit for accounts.

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The disability, therefore, which, it was contended for the appellants, the legislature intended to place upon the partners of an unregistered firm in regard to their rights to a decree for dissolution and rendition of accounts was that instead of bringing one suit they should bring two. We have no hesitation in rejecting this contention. We are satisfied that the legislature intended nothing so unreasonable. Such a provision would lead simply to a multiplicity of suits and would not operate any real restriction or disability.

In our judgment the intention of the legislature is plain. It intended that the rights of the partners of an unregistered firm in regard to dissolution of the partnership and accounting were to remain unaffected by the provisions of sub-sections (1) and (2) of section 69 of the Partnership Act.

It would appear from the judgment of the Bench in the case already referred to, viz., *Magan Behari Lal v. Ram Partap Singh* (1), that the learned Judges who constituted this Bench took the view that in the case of an unregistered firm the partner who was seeking dissolution and accounts was entitled to a more limited form of accounting than was a partner of a registered firm who had sued for dissolution and accounts under the provisions of order XX, rule 15. We are unable to agree with this view which in our judgment finds no support in section 69 or in any other section of the Partnership Act. The only accounting contemplated by section 69 is the accounting which would be directed in a suit by a plaintiff who is the partner of a registered firm. To that the plaintiff in the present suit is entitled.

In the result the appeal is dismissed with costs.

(1) I.L.R. [1939] AII. 563.