

REVISIONAL CIVIL.

Before Khaja Mohamad Noor and Varma, JJ.

SHAZAD KHAN

1936.

September,
15.

v.

DARBAR BABU KUCHHI.*

Partnership Act, 1932 (Act IX of 1932), sections 69 and 74(b)—unregistered firm, suit by—cause of action accruing before the passing of the Act—suit, whether maintainable—section 60, whether operates as a bar—section 74(b), effect of.

Section 69 of the Partnership Act, 1932, bars a suit by an unregistered firm even if the claim is based on a cause of action which accrued before the passing of the Act.

Section 74(b) of the Act only saves pending suits.

Surendra Nath De v. Manohar De(1), *Basanta Kumar Pal v. Lala Durgadas Akrur Chandra Banik*(2), *Ram Prasad Thakur Prasad v. Kamta Prasad Sita Ram*(3) and *Krishen Lal Ram Lal v. Abdul Ghafur Khan*(4), followed.

Application in revision by the plaintiffs.

The facts of the case material to this report are set out in the judgment of the Court.

The case was first heard by Varma, J. who referred it to a Division Bench.

S. C. Mazumdar, for the petitioner.

R. S. Chattarji, for the opposite party.

KHAJA MOHAMAD NOOR AND VARMA, JJ.—This application in revision is directed against a decree of

* Civil Revision no. 94 of 1936, from an order of Babu Ramesh Chandra Sur, Subordinate Judge of Dhanbad, dated the 21st of January, 1936.

(1) (1934) 39 Cal. W. N. 67.

(2) (1935) 39 Cal. W. N. 1080.

(3) (1935) A. I. R. (All.) 898.

(4) (1935) A. I. R. (Lah.) 893.

the Small Cause Court Judge of Dhanbad, dismissing the plaintiff's suit as barred under section 69 of the Partnership Act. The plaintiffs sued the defendant in the name of a firm on the basis of a hand-note. The execution of the hand-note and the passing of consideration were not disputed, but the defendant set up a plea of payment which was not believed by the learned Small Cause Court Judge. He, however, held that as the plaintiff-firm was not registered, their suit as such was not maintainable, and on this ground he dismissed the suit. The plaintiffs have filed this application for revision.

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It was contended by the learned Advocate for the petitioner that under section 74(b), section 69 does not bar suits by unregistered firms if the claim is based upon a cause of action which accrued before the passing of the Partnership Act. At first sight this contention may appear to be sound; but, as has been pointed out in two of the decisions of the Calcutta High Court [*Surendra Nath De v. Manohar De*⁽¹⁾ and *Basanta Kumar Pal v. Lala Durgadas Akrur Chandra Banik*⁽²⁾], section 74(b) only saves pending suits. Section 1(3) of the Act was referred to in those cases to show that section 69 had not come into force before the 1st of October, 1933. The learned Judges were of the view that this was intended to give time to unregistered firms to get themselves registered in order to enable them to bring suits, and we respectfully agree with them. The same view seems to have been taken in *Ram Prasad Thakur Prasad v. Kamta Prasad Sita Ram*⁽³⁾ and *Krishen Lal Ram Lal v. Abdul Ghafur Khan*⁽⁴⁾. There is, therefore, no merit in this application.

The learned Small Cause Court Judge has, however, dismissed the suit with costs. We do not

(1) (1934) 39 Cal. W. N. 67.

(2) (1935) 39 W. N. 1080.

(3) (1935) A. I. R. (All.) 898.

(4) (1935) A. I. R. (Lab.) 898.

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think it is a case in which the defendant ought to be allowed costs. The claim of the plaintiffs was just. We would, therefore, set aside the order of payment of costs passed by the learned Judge in the Court below, and with this modification reject the application.

Parties will bear their own costs in this Court.

Rule discharged.

KHAJA
MOHAMAD
NOOF
AND
VARMA, JJ.

REVISIONAL CIVIL.

Before Khaja Mohamad Noor and Madan, JJ.

1936.

September,
10, 18.

RANI CHHATER KUMARI DEBI

v.

BHAGWATI PRASAD.*

Bihar Tenancy Act, 1885 (Act VIII of 1885), section 170—decree for arrears of rent in respect of a tenure—attachment—Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 58, claim under, whether barred.

Section 170 of the Bihar Tenancy Act, 1885, operates as a bar to the maintainability of a claim under Order XXI, rule 58, Code of Civil Procedure, 1908, if it is not disputed that the decree-holder is the landlord of the tenure or holding and that the decree is for the rent due in respect thereof.

A claimant cannot be allowed to plead that the decree has been obtained against a wrong person.

Amrita Lal Bose v. Nemai Chandra Mukhopadhaya(1), *Deonandan Prasad v. Pirthi Narayan*(2), *Dwarka Singh v. Nema Singh*(3) and *Surpat Singh v. Shital Singh*(4), followed.

Jitendra Nath Ghose v. Monmohon Ghose(5), explained.

* Civil Revision no. 156 of 1936, from an order of Maulavi Nasir-uddin Khan, Munsif of Bettiah, dated the 13th of January, 1936.

(1) (1901) I. L. R. 28 Cal. 382.

(2) (1932) I. L. R. 11 Pat. 790.

(3) (1929) 10 Pat. L. T. 118.

(4) (1936) A. I. R. Pat. 480.

(5) (1930) 34 Cal. W. N. 321.