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S.A.L.S. CHETTYAR FIRM v. DAW SAW.

HEALD AND MAUNG BA, JJ.

follows that the pledge was invalid and that appellant cannot retain the jewellery.

We therefore dismiss the appeal.

APPELLATE CIVIL.

Before Mr. Justice Chari and Mr. Justice Brown.

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June 1.

MAUNG SHWE HTEIN AND ANOTHER v. MA LON MA GALE. *

Partnership debt—Suit by surviving partner alone without joining legal representatives of deceased partner—Civil Procedure Code (Act V of 1908), O. 30, r. 4.

A surviving partner is competent to file a suit to recover a partnership debt without joining the legal representatives of the deceased partner. Order XXX, rule 4 of the Civil Procedure Code provides that when two or more persons may sue or be sued in the name of a firm, the provisions of that order apply. It does not prevent a surviving partner alone to file a suit in respect of a partnership debt.

K.V.P.L. Chetty v. *Armuga Pather*, 4 L.B.R. 99—*referred to.*

Ram Narain v. *Ram Chundur*, 18 Cal. 86; *U Guna* v. *U Kyaw Gaung*, (1892-96) II U.B.R. 204—*dissented from.*

Darwood for the appellants.

Basu for the respondent.

CHARI and BROWN, JJ.—The facts of this case are very simple. The suit was instituted by Ma Lon Ma Gale against the defendants, who are husband and wife.

It is alleged in the plaint that the husband borrowed the sum of money for which the promissory note was executed for the family purposes and benefit of himself and his wife. The promissory note was in favour of two persons, namely, Ma Lon Ma Gale and Ma Mya Bu. These two were sisters and carried on a money-lending business in partnership.

* Civil First Appeal No. 31 of 1929 from the judgment of the District Court of Henzada in Civil Regular No. 10 of 1928.

The trial Court gave a decree for the amount claimed and the defendants now appeal.

The sole ground argued in the appeal is that no decree can be passed in favour of Ma Lon Ma Gale unless the legal representatives of Ma Mya Bu, the deceased partner, are also added as parties to the suit. Reliance is placed for this argument of a ruling in 1892-96, II Upper Burma, 204, in which the Judicial Commissioner of Upper Burma followed an Indian ruling and held that a suit by the surviving partner was not competent without joining the legal representatives of the deceased partner. The majority of the Indian High Courts have taken a contrary view. In *K.V.P.L. Perianen Chetty* v. *Armuga Pather* (1), Sir Charles Fox, Chief Judge of the late Chief Court of Lower Burma, followed the decision of the other Indian High Courts and dissented from the Calcutta Ruling in *Ram Narain Nursing Doss* v. *Ram Chunder Jankee Loll* (2).

In the present Civil Procedure Code, Order XXX, rule 4, enacts that where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representatives of the deceased as a party to the suit. In cases of partnership, it is competent for the surviving partner to file a suit in respect of partnership debts without joining the legal representatives of the deceased partner.

The learned advocate for the appellant argues that it is only when a suit is instituted in the name of a firm that Order XXX, rule 4 applies. Order XXX, rule 4 does not say so in terms and merely provides that when two or more persons may sue or be sued in the name of

(1) (1907) 4 L.B.R. 99. (2) (1890) 18 Cal. 86.

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a firm, the provisions of that order apply. In this case the two Burmese ladies had no firm name though undoubtedly they carried on business in partnership. Since they cannot sue in a firm name, it is argued that the legal representatives of the deceased person are a necessary party. We cannot accept this contention. All that Order XXX, rule 4 contemplates is the existence of a partnership. Even if Order XXX, rule 4 were not applicable, the previous rulings certainly are. We are therefore of opinion that it was competent for Ma Lon Ma Gale to maintain the suit and it was properly decreed.

The only other point taken before us is that the promissory note having been signed by Maung Shwe Htein alone, his wife, the second appellant Ma Bu Ma, is not bound by it. It is suggested that the presumption that Maung Shwe Htein was acting on behalf of his wife as well as of himself cannot be drawn in this case because the money purports to have been taken for Maung Shwe Htein and his sister. That does not seem to us to be sufficient reason for not drawing the ordinary presumption in such cases.

We dismiss the appeal with costs.