

APPELLATE CIVIL.

Before Mr. Justice Carr.

MUTHU K. M. MEYYAPPA CHETTYAR

v.

PERIYAH.*

1930

Jan. 13.

Partnership name, use of—Dissolution of partnership—Partner using old firm name—Suit to recover debts.

After the dissolution of a firm, each of the partners is entitled, in the absence of contrary agreement, to use the name of the old firm, unless the other partners would thereby be exposed to a risk of litigation or responsibility.

A partner, on dissolution, may therefore use the old firm name to recover debts which have fallen to his share, provided he does not thereby harm his late partner.

P. C. D. Chari for the appellant.

Venkelram for the respondent.

CARR, J.—The essential question in these two cases is the same. The parties were partners in the firm of S.P.S.T.M., which was dissolved, the assets being divided between the partners. The defendant has since the dissolution made use of the old firm name in suits and execution proceedings for the recovery of debts which fell to his share at the division. The plaintiff claims an injunction to restrain the defendant from using the old firm name.

It may be noted that the defendant himself has since the dissolution made use of the old firm name in the same way in respect of debts which fell to his share.

In one suit the trial Court held that a suit would not lie against the defendant personally, he being only the agent of the former partner, but that question need not now be considered. Both Courts have found that the plaintiff is not entitled to an injunction.

* Civil Second Appeal Nos. 418 and 419 of 1930, from the judgment of the District Court of Insein in Civil Appeal Nos. 31 and 32 of 1930.

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CARR, J.

In my view of section 263 of the Contract Act it permits the use of the old firm name by the defendant in the manner alleged. I also find it definitely stated in Halsbury's Laws of England, Vol. 22, paragraph 162, that "after dissolution, if the assets are divided between the partners, each of them is entitled, in the absence of contrary agreement, to use the name of the old firm, unless the other partners would thereby be exposed to a risk of litigation or responsibility and an injunction will not be granted to restrain such use; unless it exposes the other partners to risk of liability."

The appellant's advocate has been unable to produce any authority to the contrary, and I cannot see that the defendant's use of the old firm name to recover outstandings can cause any risk of liability to the plaintiff.

The appeals are dismissed with costs. Advocate's fee three gold mohurs in each case.

APPELLATE CIVIL.

Before Mr. Justice Otter.

MA MYA THIN

v.

MA CHU AND ANOTHER.*

1931

Jan. 13.

Civil Procedure Code (Act V of 1908) s. 115—Order rejecting application to sue as a pauper—Revision.

An order rejecting an application to sue *in forma pauperis* is open to revision in a proper case.

Dhapi v. Ram Pershad, I.L.R. 14 Cal. 768; *Ma Shopjambi v. Mubarak Ali*, I.L.R. 7 Ran. 361; *Mani Lal v. Durga Prasad*, I.L.R. 3 Pat. 930; *Maung Pe Kye v. Ma Shwe Zin*, I.L.R. 7 Ran. 361; *Muhammad Husain v. Ajudhia Prasad*, I.L.R. 10 All. 467; *P. Baba Sah v. V.M. Purushothama*, I.L.R. 48 Mad. 700;

* Civil Revision No. 70 of 1930 (at Mandalay) from the order of the Subdivisional Court of Mandalay in Civil Misc. No. 87 of 1929.