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petent to impeach the alienations made by her father, even if her suit were held to be within time.

In my judgment the appeal fails and must be dismissed with costs.

BHIDE J. DIN MOHAMMAD J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

DHANI RAM-MANI RAM (PLAINTIFFS) Appellants

versus

SRI GOPAL-LACHHMAN DAS AND ANOTHER (DEFENDANTS) Respondents.

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May 28.

Civil Appeal No. 2001 of 1928.

Indian Contract Act, IX of 1872, Section 246—Partnership dissolved—Business carried on in old firm's name by one of the partners—No public notice of dissolution or individual notice to old customers given—Liability of retired partner for post-dissolution debts.

Defendant firm S. G.-L. D. had been dissolved on the 18th February 1921 and thereafter, L. D., who was the sole owner, continued to carry on business in the old firm's name. S. G. had been known to plaintiffs to be a partner of the firm. No public notice of dissolution had been given, nor was individual notice given to the plaintiffs, who had dealings with the firm before its dissolution. On 22nd November, 1923, L. D. executed a promissory note in favour of the plaintiffs in the old firm's name and borrowed Rs. 4,879. In a suit based on the promissory note, the plaintiffs sought to make S. G. also responsible for payment.

Held, where after a dissolution of partnership, the business is continued in the same firm-name, a partner who has retired at the dissolution is liable upon a contract made by the new firm with a person who has previously dealt with

the old firm, unless that person has received notice of the dissolution.

Jwaladutt R. Pillani v. *Bansi Lal-Moti Lal* (1), followed.

First appeal from the decree of Pandit *Onkar Nath* Zutshi, *Senior Subordinate Judge, Amritsar, dated 21st May, 1928, ordering that Lachhman Das, defendant, do pay to the plaintiff the sum of Rs. 5,318-14-0 with future interest, and dismissing the suit against Sri Gopal, defendant.*

MEHR CHAND MAHAJAN and MEHR CHAND SUD, for Appellants.

KISHEN DAYAL and SHAMSHER BAHADUR, for Respondents.

ABDUL RASHID J.

ABDUL RASHID J.—This appeal arises out of an action brought by the firm Dhani Ram-Mani Ram against the firm Sri Gopal-Lachhman Das for recovery of Rs. 5,318-14-0 on the basis of a promissory note. The allegations of the plaintiffs were that on the 22nd November, 1923, the firm of the defendants borrowed a sum of Rs. 4,879 from the plaintiffs, and agreed to pay interest at the rate of Re. 1 per cent. per mensem, that the defendants had repaid Rs. 1,000 only, and that a sum of Rs. 5,318-14-0 was due from them. Sri Gopal, defendant, pleaded *inter alia* that there was no firm known as Sri Gopal-Lachhman Das in existence at the time of the institution of the suit, that such a firm had previously existed, but that a dissolution had taken place on the 18th February, 1921, and that since that day the firm had ceased to exist. It was further pleaded that the fact that he had separated from Lachhman Das in 1921 was known to the plaintiffs as well as other persons. In his statement, re-

(1) (1929) I. L. R. 53 Bom. 414 (P. C.): 56 I. A. 175.

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corded before the framing of the issues, Sri Gopal deposed that he was only a sleeping member of the firm, that his brother Chhaju Ram used to check the accounts, and that he also checked the accounts when he was practising as a *Vakil* at Jullundur. According to him the business was carried on by Lachhman Das, but he also used to give some instructions. Lachhman Das did not put in a written statement. He made a statement on the 7th January, 1927, to the effect that he had executed the promissory note (exhibit P. 1), but had not received any consideration. The trial Court held that the dissolution of the firm Sri Gopal-Lachhman Das had taken place on the 18th February, 1921, that after that date Lachhman Das alone was the owner of the firm Sri Gopal-Lachhman Das, and that no notice of the dissolution was given to the public. On these findings the suit was dismissed against Sri Gopal and a decree for the full amount was awarded against Lachhman Das. The plaintiffs have preferred an appeal to this Court in order to obtain a decree against Sri Gopal defendant also.

It was strenuously urged on behalf of the appellants that, as the lower Court had held that there was no proof that notice of dissolution was given to the public, or that the dissolution was known to the plaintiffs, it was incumbent on the trial Court to pass a decree against Sri Gopal as well as Lachhman Das. Reliance was placed in this connection on section 264 of the Indian Contract Act which runs in the following terms :—

" Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution."

In support of this contention the learned counsel for the appellants invited our attention to the case of *Harbhajan Singh - Sohan Singh* v. *Sri Gopal - Lachhman Das* (1). The present defendants were the defendants in the reported case also, and it was held that had the above firm been a going concern at the time of the execution of the *hundi* the mere fact that Sri Gopal had retired from it some years before, would not have absolved him from liability unless the plaintiffs had notice of the dissolution. It was observed, however, that as Lachhman Das, a *quondam* partner of a defunct firm (which had long ceased to do any business), had raised a new loan, wrongly describing himself as the representative of the firm there was no presumption of implied agency such as was applicable to the case of a going concern. This case is not of much assistance as the observations regarding the liability of Sri Gopal were merely *obiter dicta*, the loan in that case having been raised when admittedly Lachhman Das had ceased to carry on business in the name of Sri Gopal-Lachhman Das. In *Jagat Chandra Bhattacharjee* v. *Gunny Hajee Ahmed* (2), it was argued on behalf of the appellants that section 264 applied only to persons who dealt with the firm before the dissolution, and therefore the plaintiff, who had no dealings with the firm before the dissolution, was not entitled to notice, and he could make liable only those persons who were *in fact partners at the time the* hundis *were executed*. This contention was repelled by Sanderson C. J. who observed as follows :—

" In the first place the section says ' persons dealing with a firm.' It does not say ' persons dealing with a firm before its dissolution,' and, I see no reason

(1) (1933) I. L. R. 14 Lah. 188. (2) (1926) I. L. R. 53 Cal. 214.

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why the words 'before its dissolution' should be interpolated in the section." Buckland J. concurred with this interpretation of section 264 of the Indian Contract Act. In *Pramathachandra Kar* v. *Bhagwandas Madanlal* (1), it was held that persons who were not known to be partners were not excluded from the operation of section 264 of the Indian Contract Act, and could not escape liability in the absence of notice. Rankin C. J. made the following observations at page 53 :—

"I do not agree with all that was said by Mr. Justice Beaman, but I am entirely unable to say that there is any sufficient reason to cut down the *prima facie* and direct meaning of the words of this section so as to exclude from its operation persons who were not known to be partners. It is quite true that the principles of agency to be found in the Contract Act and in section 115 of the Evidence Act would not, by themselves, take one so far as section 264, on this footing, take us. That is very likely why section 264 was specially enacted with reference to the particular case of partnership. * * * * * It is to my mind not paradoxical or, in any way, impossible to suppose that the legislature meant to say that if a firm is dissolved and no notice is given, and people continue to trade with the firm under the old firm's name they are not to be affected by a secret dissolution." While I find myself in respectful agreement with the observations of Rankin C. J., I must hold that it is established on the present record that the plaintiffs knew that Sri Gopal was one of the partners of the firm Sri Gopal-Lachhman Das, and that even after the dis-

(1) (1931) I. L. R. 59 Cal. 40, 53.

solution Lachhman Das carried on business in the name of the firm Sri Gopal-Lachhman Das until 1924.

In *Jwaladutt R. Pillani* v. *Bansilal Motilal* (1), it was laid down by their Lordships of the Privy Council that where after a dissolution of partnership the business is continued in the same firm name, a partner who has retired at the dissolution is liable upon a contract made by the new firm with a person who has previously dealt with the old firm, unless that person has received notice of the dissolution, even though public notice by advertisement has been given. It follows, therefore, that an additional personal notice is necessary in the case of old customers, while in the case of the new customers a public notice would be quite sufficient.

On behalf of the respondents reliance was placed on *Chand Mal* v. *Ganga Ram* (2), *Bichhia Lal* v. *Munshi Ram* (3), and *Nanna Mal-Banarsi Das* v. *Bal Mokand* (4). The case reported as *Chand Mal* v. *Ganga Ram* (2), is, however, not of any great assistance to the respondents as in that case it was definitely established that the person who was sought to be charged with liability as a partner had no dealings with the plaintiff's firm prior to the dissolution and also the plaintiff's firm was not even aware that he was a partner in the defendant's firm. In *Bichhia Lal* v. *Munshi Ram* (3) it was laid down that the mere fact that the continuing partner was allowed to carry on business in the old firm's name, would not render the retired partner liable for debts contracted by the firm long after his retirement. This observation

(1) (1929) I. L. R. 53 Bom. 414 (P. C.) : 56 I. A. 175.
(2) 78 P. R. 1903.
(3) 1922 A. I. R. (Lah.) 466 : 68 I. C. 932.
(4) 1933 A. I. R. (Lah.) 591 : 34 P. L. R. 1022 : 146 I. C. 847.

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must, however, be regarded as *obiter* as it was found in that case that the plaintiffs had full knowledge of the dissolution and knew as a fact that the partner sought to be made liable had definitely retired from partnership a long time before liability was incurred by the other partner in the name of the firm. *Nanna Mal-Banarsi Das* v. *Bal Mokand* (1), is a Single Bench ruling, and it was observed therein that even if it was held that section 264 applied to new customers, the appellants had still to prove that they knew that the objectors were partners in the firm when they started their dealings. This shows that there was no indication in that case that the person sought to be made liable as a partner was known to the plaintiffs to be a partner of the firm at any time. The observations of Beaman J. in *B. Giovani Gorio and Co.* v. *Vallabhdas Kalianji* (2) have been fully discussed in *Pramathachandra Kar* v. *Bhagwandas Madanlal* (3) and it is, therefore, unnecessary to refer to them in detail. For the reasons given above I hold that this case is fully covered by the provisions of section 264 of the Indian Contract Act, and that the lower Court has erred in dismissing the suit against Sri Gopal.

It was urged by Mr. Mehr Chand Mahajan on behalf of the appellants that it had not been proved that a dissolution of the firm Sri Gopal-Lachhman Das had taken place on the 18th February, 1921. He maintained that the terms of the deed of dissolution, dated the 18th February, 1921, showed that so long as the sum of Rs. 26,500 due to Sri Gopal was not paid by Lachhman Das, Sri Gopal was entitled to a share

(1) 1933 A. I. R. (Lah.) 591: 34 P. L. R. 1022: 146 I. C. 847.
(2) (1915) 30 I. C. 864: S.C. 17 Bom. L. R. 762.
(3) (1931) I. L. R. 59 Cal. 40.

in the profits by receiving a lump sum of Rs. 2,000 a year on that account. Mr. Kishen Dyal, however, contended that the sum of Rs. 2,000 payable to Sri Gopal was merely interest on Rs. 26,500 due to him at the rate of 7½ p. c. per annum. As I have already held that Sri Gopal cannot escape liability in the present case, in view of the provisions of section 264 of the Indian Contract Act, it is unnecessary to determine whether a complete dissolution took place on the 18th February, 1921. After considering the whole evidence on the record, I am of the opinion that it has not been established that the finding of the trial Court that the dissolution of the firm Sri Gopal-Lachhman Das took place on the 18th February, 1921, is incorrect. I, therefore, hold that the firm was dissolved on the 18th February, 1921, and that thereafter Lachhman Das alone carried on business in the name of the firm Sri Gopal-Lachhman Das.

For the reasons already given I would accept the appeal and decree the claim of the plaintiffs against Sri Gopal also with costs throughout.

ADDISON J.—I agree.

ADDISON J.

C. H. O.

Appeal accepted.