

## ORIGINAL CIVIL.

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Murphy.

LAKSHMANSA BABASA CHOWDHARY (ORIGINAL DEFENDANTS), APPELLANTS v. LAKSHMANSA BABOOSA POWAR (ORIGINAL PLAINTIFFS), RESPONDENTS.\* 1929  
September 19.

*Civil Procedure Code (Act V of 1908), Order XXX, rule 2—Suit by firm—Plaint declared by Munim—Re-declaration of plaint by a partner—Non-disclosure of name of partner under Order XXX, rule 2—Letters Patent of the High Court of Bombay, clause 15—Order directing re-declaration of plaint, whether ‘judgment’—Practice and procedure.*

A plaint filed on behalf of a firm and declared by the Munim of the firm, can be allowed to be re-declared by a partner of that firm, although the name of that partner was not declared in writing under Order XXX, rule 2, of the Civil Procedure Code.

A wrong declaration of the names of the partners under Order XXX, rule 2, of the Civil Procedure Code, by itself is not a defect which is fatal to the suit.

*Imperial Pressing Co. v. British Crown Assurance Corporation, Ltd.*,<sup>(1)</sup> referred to.

An order allowing a plaint to be re-declared is not a ‘Judgment’ within the meaning of clause 15 of the Letters Patent of the High Court of Bombay.

SUIT to recover a sum of money.

On November 8, 1926, the firm of Lakshmansa Baboosa Powar filed a suit against Lakshmansa Babasa Chowdhary and others to recover a sum of Rs. 20,074-4-0. The plaint in the suit was signed by one Narhar Ramkrishna Kulkarni, a munim of the firm. On a demand being made for disclosure of the names of the partners in the plaintiff firm under the provisions of Order XXX, rule 2, Narhar stated that the names of the partners were Lakshmansa, a minor and Lakshmansa Baloosa, defendant No. 1.

The defendant No. 1 denied that Narhar was a munim of the plaintiff firm, and contended that he was not competent to declare the plaint. He further denied that he was a partner in the firm and alleged that the real owner of the firm was Baloosa Anandsa Powar.

On December 20, 1927, the plaintiffs took out a summons calling upon the defendants to show cause why

\*O. C. J. Appeal No. 19 of 1928 : Suit No. 2664 of 1926.

<sup>(1)</sup> (1913) 41 Cal. 581.

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Baloosa Anandsa Powar, a partner in the plaintiff firm, and father of the minor Lakshmansa, should not be allowed to re-declare the plaint. The defendants objected to this being done.

The summons was heard by Davar J. who allowed Baloosa to re-declare the plaint.

The defendants appealed. The plaintiffs, respondents, at the hearing of the appeal took a preliminary objection that no appeal lay, as the order appealed from, was not a "Judgment" within the meaning of clause 15 of the Letters Patent.

*Coltman*, for the appellants.

*M. C. Setalvad*, for the respondents.

KEMP, AG. C. J. :—This suit was filed in the name of Lakshmansa Baloosa Powar, a firm, under the terms of Order XXX, rule 1, of the Civil Procedure Code, against the defendants. Lakshmansa Baloosa Powar appears to be the minor son of Baloosa Anandsa Powar. The plaint was declared by one Narhar Ramkrishna Kulkarni, who, it transpires, is the munim of the plaintiff firm. An application was made subsequently for Baloosa Anandsa Powar himself to re-affirm the plaint on the ground that he and defendant No. 1 were the partners in the plaintiff firm. I do not wish at this stage to enter into the question of a firm suing one of its partners

When the defendants applied under Order XXX, rule 2, for the names of the partners in the plaintiff firm, Narhar Ramkrishna Kulkarni declared that they were the minor Lakshmansa and defendant No. 1. Assuming that the declaration is untrue and that the real partners are defendant No. 1 and Baloosa Anandsa Powar, all that it amounts to is that there has been a wrong declaration of the partners in the plaintiff firm. This itself is not a defect which is fatal to the suit. The suit was by the firm and it continues to be by the firm, the defect

being that the names of the partners have been wrong in the declaration. It is not necessary here for us to decide whether there exists the bar of limitation assuming that the application by Baloosa Anandsa was out of time. The appellant's learned counsel contends that the form of the order passed by Mr. Justice Davar amounted to an adjudication that Baloosa Anandsa Powar and defendant No. 1 were partners in the firm. But turning to the judgment we are of opinion that it is clear that what the learned Judge said was that he did not wish to determine that question at that stage. All that he decided was to give permission to Baloosa Anandsa Powar to re-affirm the plaint describing himself as a partner in the firm, and if this has not been made sufficiently clear in the order we think that it would be as well that the order should be construed as meaning this that Baloosa Anandsa Powar be allowed to re-declare the plaint describing himself as one of the partners of the plaintiff firm. We cannot vary the order in appeal because in the view which we take of the case there is no judgment from which under clause 15 of the Letters Patent an appeal will lie to this Court, but the construction which we put on the order is sufficiently disclosed by the form which we have suggested the order should have taken.

The case of *Imperial Pressing Co. v. British Crown Assurance Corporation, Ltd.*<sup>(1)</sup> supports the view which we have taken as to the effect of a wrong disclosure of partners in a declaration under Order XXX, rule 2.

The appeal is, therefore, dismissed with costs.

Attorneys for appellants: Messrs. *Choksey & Co.*

Attorneys for respondents: Messrs. *Dharamsi, Dada-chanji & Co.*

*Appeal dismissed.*

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<sup>(1)</sup> (1918) 41 Cal. 581.

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