

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

1936
November 11

S. H. PATEL (ORIGINAL PLAINTIFF), APPLICANT *v.* HUSSEINBHAI MAHOMED
(ORIGINAL DEFENDANT), OPPONENT.*

Indian Partnership Act (IX of 1932), section 69—Unregistered firm—Applicability of section to dissolved firm—Firm assessed to income-tax—Defendant not assessed as individual—Plaintiff suing to recover moiety of amount of assessment—Indian Contract Act (IX of 1872), section 70.

An unregistered firm in which plaintiff and defendant were partners was dissolved in 1934. Accounts were made up when the defendant paid the plaintiff his share of the estimated amount of income-tax. The firm then came to be assessed to income-tax and the plaintiff paid the whole amount of the tax. The plaintiff, after giving credit for the amount already paid by the defendant, sued to recover the balance :

Held, (1) that section 70 of the Indian Contract Act, 1872, did not apply since the assessment had not been made against the defendant by name ;

(2) that the case fell under section 69 of the Indian Partnership Act, 1932, and that the suit could not lie.

Sub-section (1) of section 69 of the Indian Partnership Act, 1932, covers a suit by a plaintiff suing in respect of a right vested in him or acquired by him as a partner in a firm, and that it is not essential that the firm should be actually in existence at the date when the suit was instituted.

It seems to be clear that the language of sub-sections (1) and (2) of section 69 when read with the language of sub-section (3) of the section is wide enough to cover suits relating to a dissolved firm.

CIVIL REVISION APPLICATION from an order of the Full Court of the Small Cause Court (Indranarayan B., Ag. Chief Judge, and Noronha, Judge), Bombay, in suit No. 152/6665 of 1935.

S. H. Patel (applicant) and Husseinbhai Mahomed (opponent) started a business in the name and style of the Union Trading Agency. The business went on from June 1, 1932, to August 31, 1934, when the partnership was dissolved and the accounts were made up.

* Civil Revision Application No. 500 of 1935.

For the year ending March 31, 1934, the business was in February 1935 assessed to income-tax in the sum of Rs. 3,405-1-0 which the plaintiff paid.

On March 4, 1935, the plaintiff sued the defendant to recover Rs. 1,079-5-3, *i.e.*, Rs. 1,702-8-6 (being half the amount of the tax paid by the plaintiff) *minus* Rs. 623-3-3 already paid by the defendant as his share of the estimated amount of the income-tax at the time of dissolution.

The defendant contended that according to the Indian Partnership Act, 1932, which came into force on October 1, 1933, the partnership was not registered and the Court had no jurisdiction to entertain the suit.

The trial Judge upheld the defendant's plea and dismissed the suit.

The plaintiff moved the Full Court for a rule, but the Court did not issue a rule.

The plaintiff applied to the High Court.

V. R. Laud, for the applicant.

V. B. Karnik, for the opponent.

BEAUMONT C. J. This is an application in revision against an order dismissing the plaintiff's suit made by a Judge of the Small Cause Court, Bombay, and the basis of the application is that the learned Judge refused to exercise a jurisdiction which was vested in him. The facts are that the plaintiff and the defendant were partners in a business carried on in the name of the Union Trading Agency, and that the partnership was dissolved in August 1934. The accounts were then made up, and the defendant paid to the plaintiff a sum of Rs. 600 odd on account of the income-tax which it was estimated the firm would be liable for. Subsequently an assessment was made against the plaintiff on account of the Union Trading Agency for income-tax for the year ending March 31, 1934. The assessment was for Rs. 3,400 odd. The plaintiff paid the whole amount, and

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he now sues the defendant for half the amount, giving credit for the sum of Rs. 600 odd already paid by the defendant. The learned Judge held that the suit did not lie, having regard to section 69 of the Partnership Act.

Beaumont C. J.

The plaintiff's first contention is that he is entitled to recover this sum against the defendant not in respect of a partnership, but as being moneys paid to the use of the defendant, and recoverable under section 70 of the Indian Contract Act, and that section 69 of the Indian Partnership Act has no application. That argument might perhaps have prevailed, had the assessment been made on the plaintiff and defendant by name, so that the assessment showed on the face of it that the defendant was liable for a part of the amount of tax charged. But the assessment is not made against the defendant by name, and in order to establish any right of action against the defendant it seems to me that the plaintiff must rely on the partnership. He must show that the defendant was a partner in the firm referred to in the assessment, and was liable in that capacity for a half share of the tax. Therefore, so far as that point is concerned, I think the learned Judge was right in holding that the case fell under section 69 of the Indian Partnership Act.

The next point taken by the applicant—and in view of the absence of any authority on the construction of section 69, it is a point of some general importance,—is that the provisions of section 69 only apply where the suit is brought by or on behalf of a person suing as a partner in an existing firm, and does not cover the case of a dissolved firm. It is pointed out that so long as a firm is existing, it can be registered under section 58 of the Act, and any difficulty arising under section 69 can thus be overcome, but that if the latter section applies to a dissolved firm, the bar imposed by section 69 becomes absolute at the date of dissolution. It is suggested, therefore, that the legislature may well have intended that

the bar should only apply to suits in relation to an existing firm. Sub-section (1) of section 69 is in the following terms :—

“ No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.”

Sub-section (2) provides as follows :—

“ No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.”

On the construction of those two sub-sections, if they stood alone, it might, I think, be held that they cover only suits relating to existing firms. But then one has to notice the language of sub-section (3) which provides, so far as material, that the provisions of sub-sections (1) and (2) shall not affect (a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm. It seems to me clear, therefore, that the legislature contemplated that the language of sub-sections (1) and (2) is wide enough to cover suits relating to a dissolved firm. Reading the section as a whole, in my opinion, sub-section (1) covers a suit by a plaintiff suing in respect of a right vested in him or acquired by him as a partner in a firm, and that it is not essential that the firm should be actually in existence at the date when the suit was instituted.

In my judgment, therefore, the decision of the learned Judge was right, and the application must be dismissed with costs.

Application dismissed.

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