APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Sen.

1938
August 17

REVAPPA NANDAPPA HATTARKI, A FIRM DOING BUSINESS AT BOMBAY, BY ITS PROPRIETORS NIJ LINGAPPA RAMAPPA HATTARKI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS *v.* BABU SIDAPPA ERANDOLE AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Indian Partnership Act (IX of 1932), ss. 69 and 74—Interpretation—Suit by firm to enforce mortgage of 1926—Suit brought in 1933—Unregistered firm—If suit maintainable.

In order to enforce a mortgage of 1926 a firm brought a suit on October 3, 1933. The firm, though unregistered at the date of the suit, was subsequently registered.

The Indian Partnership Act, 1932, came into force on October 1, 1932, except s. 69 which came into force on October 1, 1933. A question having arisen as to whether the suit was maintainable, having regard to s. 69 :

Held, (1) that s. 74, sub-cls. (*a*) and (*c*) of the Act saved existing rights, and sub-cl. (*b*) saved any legal proceeding or remedy in respect of any such rights ;

(2) that accordingly the suit was not barred by s. 69.

Danmal Parshotamdas v. *Baburam Chhotelal*[1] and *Soonoiram* v. *Jungilal*,[2] followed.

Surendranath De v. *Manohar De*,[3] not followed.

Girdharilal Son & Co. v. *K. Gowder*,[4] referred to.

Krishan Lal Ram Lal v. *Abdul Ghafur Khan*,[5] distinguished.

FIRST APPEAL from the decision of B. M. Butti, First Class Subordinate Judge, Satara, in Original Suit No. 1280 of 1933.

Suit to enforce mortgage.

On October 3, 1933, Revappa Nandappa Hattarki, a firm, sued to enforce a simple mortgage passed in its favour in 1926. The firm was an unregistered firm at the date of the suit though it was registered subsequently.

*First Appeal No. 111 of 1936.

[1] (1935) 58 All. 495.
[2] [1938] A. I. R. Ran. 273, F. B.
[3] (1934) 62 Cal. 213.
[4] [1938] A. I. R. Mad. 688.
[5] (1935) 17 Lah. 275.

The trial Judge raised a preliminary issue, viz. "Is the suit maintainable without a Registration certificate?" and he held that the suit was not maintainable, observing as follows:—

"The case in 62 Cal. 252 conclusively decides the matter. There is no other case on the point and the construction of ss. 69 and 74 is fully explained therein. It is argued that s. 74 of the Indian Partnership Act saves such suits in which the liability is already accrued but the case explains all these things and says that the law is badly drafted and in such a case the intention of the Legislature should be seen. Section 69 was not made applicable for a period of one year and hence s. 74 does not save suits filed after that period.

It is then argued that the production of the certificate at a later stage would validate the institution and I am asked to refer to the Pensions Act etc. But there is a difference in the language used by the Legislature and the words clearly say that no such action can be filed without a certificate being produced at first. When the Legislature requires a particular formality to be observed, at the initiation the Court cannot entertain a suit till that formality is strictly observed and no subsequent act would make the proceedings legal. It is a mandatory clause in the Act and should be strictly observed.

I therefore hold that the suit is not maintainable without a registration certificate and the subsequent production thereof would not make the suit a validly instituted suit.

I therefore dismiss the suit with costs."

The plaintiffs appealed.

D. A. Tulzapurkar and *B. M. Kalagate*, for the appellants.

S. A. Desai, with *A. G. Desai*, for the respondents.

S. A. Desai, with *G. A. Desai*, for respondent No. 1.

BEAUMONT C. J. This appeal raises a question of law which has given rise to some difference of opinion amongst the High Courts in India.

The plaintiffs were entitled to a simple mortgage made in the year 1926, and in this suit, which was filed on October 3, 1933, they sought to enforce that mortgage by an order for sale of the property and for repayment of any deficiency arising on the sale.

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The trial Court held that the suit was not maintainable, having regard to s. 69 of the Indian Partnership Act. The Indian Partnership Act came into operation on October 1, 1932, but by virtue of s. 1, sub-s. (*3*), s. 69 of the Act only came into force on October 1, 1933, that is two days before this suit was filed. Section 69, sub-s. (*2*), provides that :—

"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."

Now the plaintiffs at the time when the suit was filed were an unregistered firm. They have been registered since, but if s. 69 stood alone, there can be no doubt that the plaintiffs were not entitled to institute the suit. There are in s. 69 provisions excluding its operation in certain cases, but the present case does not fall within any of those exceptions.

The argument, however, of the appellants is that the bar imposed by s. 69 does not apply to a suit to enforce a right accrued before the Act came into operation, by virtue of s. 74 of the Act. Section 74 provides, so far as is relevant, that :—

"Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or

(c) anything done or suffered before the commencement of this Act."

Now to my mind the language of s. 74, which operates upon the whole Act and not merely upon s. 69, admits of no doubt. The Act is not to affect any right already acquired before the commencement of the Act. That is the effect of sub-cl. (*a*), and it saves from the operation of the Act the right which the plaintiffs had to enforce their mortgage, such right having accrued before the Act came into operation. Then sub-cl. (*b*) saves any legal proceeding or remedy in

respect of any such right; which must mean any right already acquired, and falling within sub-cl. (*a*). The words " or anything done or suffered before the commencement of the Act " in sub-cl. (*b*) seem to me to be governed by the previous words " any legal proceeding or remedy in respect of any such right ", and I think those words apply to legal proceedings to enforce any subsisting rights which are saved by sub-cl. (*c*) of the section. Section 74, sub-cls. (*a*) and (*c*), save existing rights, and sub-cl. (*b*) saves any legal proceeding or remedy in respect of any such rights. That seems to me to be the plain meaning of the section. However, that view has not prevailed with some of the High Courts.

In *Surendranath De* v. *Manohar De*,[1] which the learned Judge in the lower Court followed, a division bench of the Calcutta High Court held that s. 74 did not take out of the operation of s. 69 a suit to enforce a right accrued before s. 69 came into operation. The Court took the view that inasmuch as the legislature had postponed the operation of s. 69 for a year they must have intended the section to have retrospective effect when it came into operation. I agree that one may feel a doubt as to whether the legislature really intended s. 74 to operate to save a suit which was barred by s. 69. It certainly looks as if the legislature had intended to give unregistered firms one year in which to effect registration, and one would have expected that if they did not avail themselves of the opportunity given to them they would have to suffer the consequences. But in my opinion where the words of a section in a statute are plain, the Court must give effect to them, and is not justified in depriving the words of their only proper meaning in order to give effect to some intention which the Court imputes to the legislature from other provisions of the Act. Such a course can only be justified where a literal construction of the section is inconsistent with the meaning of the statute as a whole, and in my opinion no such case exists here.

[1] (1934) 62 Cal. 213.

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The matter then came before Sir Shah Sulaiman C. J. and Mr. Justice Bennet in the Allahabad High Court [*Danmal Parshotamdas* v. *Baburam Chhotelal*[1]] in a revision application, and the Court refused to interfere in revision with the order of the lower Court, holding that the suit was barred under s. 69. But the learned Judges took different views as to the true construction of s. 74. The learned Chief Justice took the same view of the section as I do, namely, that the language of s. 74 is plain and saves a suit which would otherwise be barred by s. 69. Mr. Justice Bennet took the contrary view and followed the Calcutta case to which I have referred. I must confess that I have very great difficulty in appreciating the view of Mr. Justice Bennet that the whole of s. 74 deals only with subsisting rights and not with procedure. It seems to me that s. 74, cl. (*b*), deals with procedure and nothing else, that is to say, it deals with methods of enforcing rights and not with the rights themselves.

The matter then came before a full bench of the Rangoon High Court, *Soonoiram* v. *Junjilal*.[2] The full bench in that case took the same view of s. 74 as I do. They held that the language was perfectly plain and that the Court was not justified in departing from the natural meaning of the words which the legislature had used, and they differed from the case of *Surendranath De* v. *Manohar De*[3] and agreed with the reasoning of Sir Shah Sulaiman C. J. in the Allahabad case. I see no answer to the judgment of the learned Judges of the High Court of Rangoon in that case.

In *Krishan Lal Ram Lal* v. *Abdul Ghafur Khan*[4] a division bench followed *Surendranath De* v. *Manohar De*[3] but the case is really distinguishable on the facts because the cause of action arose after s. 69 came into operation, so that there was no question of saving an existing right.

[1] (1935) 58 All. 495.
[2] [1938] A. I. R. Ran. 273, F. B.
[3] (1934) 62 Cal. 213.
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The matter has also been considered in the Madras High Court. The most recent ruling is *Girdharilal Son & Co.* v. *K. Gowder*,[1] when the question came before a division bench and the learned Judges differed and referred the matter to a third Judge. He took the view that s. 74 saved a suit which would otherwise have been barred by s. 69. So that two Judges out of three took the same view of s. 74 as I do, and the actual decision is in that sense.

For the reasons which I have given, I am of opinion that this suit is not barred by s. 69 of the Indian Partnership Act. We must, therefore, allow the appeal with costs, and remand the case to the lower Court to be tried on merits.

SEN J. I agree.

Appeal allowed.

Y. V. D.

[1] [1938] A. I. R. Mad. 688.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

GAJRAJ SHEOKARANDAS (APPLICANT DEFENDANT), APPELLANT *v.* SIR HUKAMCHAND SARUPCHAND (FIRST PLAINTIFF), RESPONDENT.* 1938 *September* 30

Execution proceedings—Civil Procedure Code (Act V of 1908), O. XXI, r. 46 (i) c—Deposit of a member of the East India Cotton Association—Attachment of.

The sum deposited with the East India Cotton Association, Limited, by a member to secure membership of the Association is not movable property belonging to the member and is therefore not attachable under O. XXI, r. 46 (*i*) *c*.

Observation to the contrary in *Jetha Devji & Co.* v. *Durgadutt*,[1] disapproved.

Until the judgment-debtor has ceased to be a member of the Association and his rights in the deposit under the rules have been ascertained there is no debt due to the member by the Association which can be attached in the hands of the Association.

Hutt v. *Shaw*,[2] followed.

*O. C. J. Appeal No. 34 of 1938 : Suit No. 916 of 1926.

[1] (1926) 29 Bom. L. R. 416. [2] (1887) 3 T. L. R. 354.