

be punishable" etc. That being so, I think with respect that the contrary view which prevailed in the Allahabad High Court (see *Munshi Ram v. Emperor*<sup>(1)</sup>), is not in consonance with the spirit of the enactment.

I would, therefore, confirm the order of the learned Sessions Judge and dismiss this appeal.

BEAUMONT C. J. I agree.

*Order confirmed and appeal dismissed.*

J. G. R.

<sup>(1)</sup> [1936] A. I. R. All. 11.

ORIGINAL CIVIL.

*Before Mr. Justice Blackwell.*

FRATAPCHAND RAMCHAND AND COMPANY, A FIRM, PLAINTIFFS v.  
JAHANGIRJI BOMANJI CHINYOY, DEFENDANT.\*

1940  
February 7

*Indian Partnership Act (IX of 1932), ss. 60, 63—Registered firm—Death of partner not notified to Registrar—Whether firm continued a registered firm—Suit by firm, whether maintainable.*

On November 13, 1933, the plaintiff firm was registered under the Indian Partnership Act. The firm in respect of certain of its transactions with the defendant filed the suit on October 26, 1939, and on January 24, 1940, notified the Registrar of firms of the change in the constitution of the firm by reason of the death of one of the partners on May 11, 1937. On issue raised whether the plaintiffs were a firm duly registered under the Indian Partnership Act, 1932:

*Held*, that notwithstanding the dissolution of a partnership by death of a partner, the firm so far as registration is concerned is to be deemed to be still registered.

That so long as the partners suing were shown in the register as partners, the firm, notwithstanding the death of one of the original partners, remained a registered firm and could sue.

\* O. C. J. Suit No. 1544 of 1939.

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THE facts material for the purposes of the preliminary issue and the arguments of counsel are fully set out in the Judgment.

*M. L. Manekshaw*, with *Murzban Mistree*, for the plaintiffs.

*J. D. Davar*, for the defendant.

BLACKWELL J. In this suit the plaintiffs claim to recover Rs. 3,880-5-0 with further interest thereon at two per cent. per Gujarati month with monthly rests from October 13, 1939, till payment, a declaration that they have a first charge on certain property consisting of furniture and a motor car mentioned in the plaint, and for a preliminary mortgage decree in respect of that property. The defendant denies the amount alleged to have been advanced, and alleges that on a proper account being taken on the basis set out in paragraph 2 of his written statement a much smaller sum than that claimed would be found due to the plaintiffs. The defendant also puts the plaintiffs to prove their allegation that they are a firm registered under the Indian Partnership Act, 1932. Five issues were raised of which the first is, whether the plaintiffs are a firm duly registered under the Indian Partnership Act of 1932. It was agreed by learned counsel that I should try that issue as a preliminary issue.

In support of that issue the plaintiffs tendered a certified copy of the registration, exhibit B, which shows that the firm was registered on November 13, 1933, under the name of Pratapchand Ramchand & Co. The document gives the particulars which are required by s. 58 (1) of the Indian Partnership Act, and it shows that at the date of registration there were three partners, viz., (1) Pratapchand Ramchand, (2) Chhogamal Dhanaji, and (3) Chumilal Idanji. On behalf of the defendant two letters were put in collectively as exhibit No. 1. They are both dated January 24, 1940. The first is from the defendant's solicitors to the plaintiffs'

solicitors. It refers to the fact that on taking search of the Register of Firms the solicitors found that the firm was registered with three partners and that in the affidavit made by Mr. Chhogamal, who is one of the partners, only two names were disclosed, and the plaintiffs' attorneys were requested to let the defendant's attorneys know why the name of Pratapchand Ramchand was not disclosed in the affidavit. In their reply the plaintiffs' attorneys said that Pratapchand Ramchand died before the date of the transaction in suit, and that was the reason why his name was not mentioned in the affidavit, though the names of the surviving partners were shown in the affidavit.

Anant D. Parab, a clerk in the office of the Registrar of Companies, was then called on behalf of the defendant and he produced a notice of change of constitution of the firm dated January 24, 1940, the suit having been filed on October 26, 1939. By that notice Chhogamal Dhanaji, a partner in the firm, gave notice that the constitution of the firm had been altered by removing the name of Pratapchand Ramchand, who died on May 11, 1937. That notice was put in as exhibit No. 2.

It was argued by Mr. J. D. Davar for the defendant that the firm had been dissolved, as in fact it had, by the death of Pratapchand Ramchand, that by reason of the dissolution the firm had ceased to be registered, that no notice of change in the constitution of the firm had been given until after the suit was filed, and that therefore the suit was bad by reason of s. 69 (2) of the Indian Partnership Act.

For the purpose of determining whether this argument is sound it is necessary to refer to certain sections of the Indian Partnership Act. Section 42 of the Act provides that subject to contract between the partners a firm is dissolved, among other things, by the death of a partner. It will be seen from exhibit B that the duration of the

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partnership was therein described as a partnership at will. The partners therefore had not made any contract providing that the firm should be deemed to continue notwithstanding the death of a partner. I therefore proceed upon the footing that this firm was in fact dissolved on the death of Pratapchand Ramchand.

Chapter VII of the Indian Partnership Act deals with the registration of firms. The Act does not make the registration of firms compulsory but voluntary. Section 58 provides the method by which a firm may be registered and prescribes what must be contained in the statement delivered to the Registrar. Among other things that statement must contain the names in full and permanent addresses of the partners, and the statement must be signed by all the partners, or by their agents specially authorised in that behalf. Sections 60 to 63 provide for the recording of various alterations, such as in the firm name, the principal place of business, the opening of branches, changes in the names and addresses of partners, and changes in and dissolution of a firm. In each of those sections the word used is 'may' and not 'shall'. They are permissive and not compulsory. The point to be observed in connection with those sections, in my opinion, is that the Act contemplates notwithstanding a change in respect of the matters which have to be set out in the original statement accompanying registration that the firm should be deemed to be continued to be registered although by reason of the alteration the original statement as filed had become inaccurate. Dealing in particular with s. 63 (1), that subsection among other things provides that when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof, and the Registrar shall make a record of the notice in the entry relating to the firm in the Register

of Firms, and shall file the notice along with the statement relating to the firm filed under s. 59. Pausing there, that section evidently contemplates in the case of a dissolution of a firm by death that notwithstanding the death the firm should still be treated for the purpose of the Act as still registered. Mr. Davar has argued that by reason of the death and the dissolution of the firm the firm ceased to be registered, and in his argument he went so far as to say that the firm ought to have been registered again. No doubt it would have been logical having regard to s. 42 if the Act had so provided. But in fact it has not. The Act does contemplate notwithstanding dissolution by death that so far as registration is concerned the firm is to be deemed still to be registered, and it empowers any person who was a partner immediately before the dissolution to give notice of the change and requires the Registrar to record that notice in the entry relating to the registration of the firm and to file it along with the original statement which had been filed.

The next section requiring notice is s. 69 (2). That is in these terms :—

“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.”

Applying that sub-section to the present case the firm was registered and in my opinion continued to be registered at the date of the institution of this suit on October 26, 1939. There is no time limit fixed in any of the ss. 60 to 63 as to when notice of alterations or changes should be given. Mr. Davar argued that the word ‘when’ with which each of those sections begins involves an obligation upon the person proposing to give notice of the change to give it immediately upon the change occurring. The sections do not say so. The position therefore is this: The firm was registered at the time of the institution of the suit. The

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firm then consisted of Chhogamal Dhanaji and Chunilal Idanji, two of the original partners whose names were shown on the register at the date of registration and were shown on the register at the date of the institution of the suit. The fact that the firm was registered at the date of the institution of the suit and that the names of the persons suing (the firm being a compendious name for the persons suing) were shown in the register at the date of the institution of the suit appears to me to be a compliance with s. 69 (2) of the Act. It would seem that the Legislature introduced the words with which that sub-section concludes, viz., "and the persons suing are or have been shown in the Register of Firms as partners in the firm" advisedly. If additional partners had come into the firm as partners since the date of registration and their names had not been entered on the register in accordance with notice of a change in the constitution of the firm given to the Registrar, it may well be that the firm as then constituted could not sue, because although it was a registered firm some of the persons then suing would not be shown in the Register of Firms as partners in the firm at the date of the suit. That is not this case. The partners who are suing were shown in the register originally and are still shown, and the firm according to my construction of the Act remained registered notwithstanding the death of one of the original partners.

That being my view of this matter, I answer this preliminary issue in the affirmative.

Attorneys for plaintiffs: Messrs. *Vaccha & Co.*

Attorneys for defendant: Messrs. *Patell & Ezekiel.*

*Answer accordingly.*

N. K. A.