Kerala High Court
V. R. Krishna Iyer, J.
P. T. Ramanujan And Others v. Bhaskaran
S. A. No. 229 of 1969
09 June, 1971

Practice and procedure - It is doubtful whether the lower Courts should dispose of cases on mere points of law set up as a preliminary bar to the suit, without taking pains to record findings on the other issues. (Para 1)

Partnership Act, 1932, S.69(2) - The section is attracted only when the suit is brought to enforce a right by or on behalf of a firm -- There is no case of invoking S.69(2), when the suit is brought by an individual proprietor. (Para 4, 5)

AIR 1942 Mad. 634; AIR 1960 Ori. 119; AIR 1952 Oudh 335; Referred to

K. P. Radhakrishna Menon; For Appellant
T. L. Viswanatha Iyer; E. R. Venkiteswaran; For Respondents

JUDGMENT

1 A short cut may often prove to be a wrong cut and the learned Subordinate Judge, in this case, in attempting a short cut in disposing of an appeal, has clearly made a wrong cut with the result that I am constrained to send the case back to the lower appellate court for a fresh disposal of the appeal on the merits. It is doubtful whether the lower courts should dispose of cases on mere points of law set up as a preliminary bar to the suit, without taking the pains to record findings on the other issues, so that in the second appeal there may be a final disposal of the whole case without driving the parties to a prolongation of the litigation by a remand, in the event of the High Court taking a different view on the question of law.

2 The plaintiff, who is the appellant before me, brought a suit for recovery of certain sums of money due on accounts from the defendant, setting out a contract for sawing of the defendant's timber at certain rates in the plaintiff's mill. The defendant admitted that his timber was sawn in the plaintiff's mill, but, according to his version, more sums were due to him from the plaintiff and so, be made a counter claim for a larger sum. The Trial Court decreed the; suit of the plaintiff and disallowed the counter claim. It may be mentioned even at this stage that the suit was brought by the plaintiff in his individual capacity. The cause title and the averments in the body of the plaint as well as the relief sought made it abundantly clear that the plaintiff was not setting up any cause of action on behalf of a firm but was pleading a claim in his own right as an individual. Ext. A 10, the lawyer notice which preceded the suit, also disclosed that the plaintiff was setting up an individual right. The defendant, in his written statement, not only did not dispute the individual status of the plaintiff but proceeded on the assumption that his agreement was with the plaintiff as an individual and pleaded further that he had to get a large sum from the plaintiff as an individual. The reply notice sent by the defendant's advocate to the plaintiff's advocate, Ext. A11, also is in the same tenor. Thus, as a fact and on the pleadings, the action was brought by one P. Raghavan as an individual and there was no suggestion anywhere in the plaint or in the written statement or in the notices that heralded the action that any claim was being laid on behalf of a firm. Parties went to trial on this basis as the original issues reveal but, however, when PW 1 was examined and cross examined, he proved himself to be obviously foolish by giving inconsistent answers on one aspect not germane to the

controversy at that time, and probably encouraged by his performance the cross examiner hopefully ventured questions to him and elicited answers to the effect that the saw mill was a partnership concern and that the plaintiff was a partner with his brother. PW 1 when pressed by a self defeating cross examination, swore further that the saw mill belonged to the joint family of which he was a junior member. Of course, he had earlier lent lip service to the case that he was the sole owner of the saw mill business. Thus, he had given slippery testimony and had supported three versions regarding the ownership of the saw mill in which the defendant's timber was sawn. Hoping to sustain a new plea on the adventitious vacillating gain derived from these answers, the defendant moved for an amendment of the written statement at that late stage and set up the defence that the suit was not maintainable as the claim made in the plaint was on behalf of an unregistered partnership and S.69(2) of the Indian Partnership Act operated as a bar to the maintainability of the action.

3 The learned Munsiff dismissed the amendment application I should say, rightly at that very late stage and based upon the flimsy ground of a foolish admission made in the course of a fishing cross examination but curiously enough framed an additional issue (issue 8) which highlighted the contention that the Puthiyara saw mill was an unregistered firm and consequently the suit was barred under S.69 of the Indian Partnership Act. He discussed the issue at great length and referred to the various rulings cited before him and came to the conclusion which I regard as right that the suit was maintainable since S.69(2) of the Partnership Act had no application whatever. The learned Subordinate Judge in appeal avoided consideration of the merits and confined himself to the bar of S.69(2) of the Partnership Act. After a study of practically the same decisions and analysing the evidence of PW 1 he persuaded himself to the conclusion that the suit was barred. I must express my mild surprise at this result since I find that the learned Subordinate Judge has had the advantage of going through the ruling reported in Goverdhandoss Takersey v. Abdul Rahiman (AIR 1942 Mad. 634) which could have ordinarily left no doubt in his mind that the suit was maintainable. Of course, he brushed aside the decision as it "does not in my view help the plaintiff in any way."

4 S.69(2) runs 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.*"

It is obvious, and indeed elementary, that the provision is attracted only when the suit is brought to enforce a right "by or on behalf of a firm". The simple Malayalam used in the plaint sufficiently establishes that the suit has been instituted by

പുതിയറ സൗമിൽ ഉടമസ്ഥൻ തിരുവോത് രാഘവൻ

The plaintiff claims to be the proprietor of the saw mill and there is no hint of any partnership. The written statement of the defendant, as stated by me earlier, only confirms this impression. Thus, the suit having been brought by an individual proprietor, there is no case of invoking S.69(2)(a) of the Partnership Act. The ruling reported in AIR 1942 Mad. 634 lays down the indubitable proposition that S.69(2) must be construed strictly and that it is attracted only in cases of suits instituted by or on behalf of a firm, "that is to say, ex facie, it purports to be filed either by or on behalf of the firm or even, as urged by Mr. Sitarama Rao, in the interest of the firm. But this must be clear from the plaint itself and must not in any case depend on the liability

of a plaintiff to restore the benefit .... The law has been thus stated in Lindley on Partnership at page 350 (Edition 19):

"*One partner may sue alone on a written contract made with himself if it does not appear from the contract itself that he was acting as agent of the firm; and one partner ought to sue alone on a contract entered into with himself, if such contract is in fact made with him as principal, and not on behalf of himself and others.* "

But after having read these passages in the ruling I am not able to understand how he could have reached the conclusion he did. The decision in Balasore Textile Distributors Association v. Indian Union (B. N. Rly:) (AIR 1960 Orissa 119) cannot possibly have any application because in that case "*the plaintiff appellant is a partnership firm*", it being admitted that the action was by a firm and further that the firm had not been registered. The court permitted the legal plea based upon S.69(2) being raised and upheld the same notwithstanding the defect in the framing of the issue. The other ruling in the same volume also cannot be of any avail because the suit had been brought in that case by Popsingh Mahadeo Prasad and it was found that "Popsingh Mahadeo Prasad is not the name of any individual but it was the name of a registered firm." It was found as a fact that the suit was brought by Mahadeo Prasad as the managing partner of the firm Popsingh Mahadeo Prasad. Since the action was ex facie instituted by a firm, the court rightly, if I may say so with all deference, considered the bar of S.69(2) of the Partnership Act. The ruling reported in Behari Lal v. Rum Chandra (AIR 1952 Oudh 335) cannot also help one way or other because there the suit debt was jointly due to the firm and not to the plaintiff in his individual capacity.

5 The confusion in the reasoning of the learned Subordinate Judge which has led to the wrong conclusion is simple. He mixed up two distinct questions, namely, the plaintiff's right to sue and the altogether different point as to who the plaintiff in fact was. If the claim set up in the plaint was due only to the firm, of which the plaintiff was but a partner, the suit was liable to be dismissed because the plaintiff in his individual capacity had no. cause of action in his favour. There, the bar of S.69(2) obviously could not arise although the suit may fail for absence of his right to claim the sum. It is very different from saying that the plaintiff is a firm and being an unregistered one could not maintain the action on account of a legal bar although it had a right to sue. In this view, I am constrained to set aside the judgment of the lower appellate court and remand the case for fresh disposal. The Sub Court shall take back the appeal on file and rehear it. The costs of this second appeal will be suffered by both parties. The court fee paid will be refunded.