

# **Kanhaiya Lal And Anr. vs Firm Ramdayal Bhagwan Das on 26 February, 1952**

**Equivalent citations: AIR1952ALL923, AIR 1952 ALLAHABAD 923**

**Author: V. Bhargava**

**Bench: V. Bhargava**

## **JUDGMENT**

1. This second appeal arises out of a suit brought by the plaintiffs-appellants for a declaration that the decree in Suit No. 375 of 1942 is not binding on them. The decree in Suit No. 375 of 1942 was sought to be avoided on the allegation that it had been obtained by fraud. The fraud alleged by the appellants was that in that suit, the joint family firm of the appellants had been sued through Dwarka Prasad when the respondent very well knew that the firm belonged to Kan-haiya Lal, appellant.

For this proposition, reliance was placed on an admission made by the respondent in a still earlier suit. That admission was to the effect that Kanhaiya Lal appellant was carrying on business in the name of Dwarka Prasad Madan Lal. It is contended by the learned counsel for the appellants that this admission amounted to saying that Kanhaiya Lal was the sole owner of this firm and, therefore, a fraud was committed when the firm Dwarka Prasad Madan Lal was sued through Dwarka Prasad and not through Kanhaiya Lal.

The language of the admission, however, does not support this proposition. The admission that Kanhaiya Lal was carrying on business in the name of Dwarka Prasad Madan Lal did not mean that this firm Dwarka Prasad Madan Lal was solely his property and was not joint family property. In the present suit itself, learned counsel appearing for the present appellants in the lower Court himself urged that the firm Dwarka Prasad Madan Lal was a joint family firm and Kanhaiya Lal and Dwarka Prasad were both interested in the firm as members of a joint Hindu family. It was not, therefore, necessary that the firm must have been sued through Kanhaiya Lal.

Learned counsel has argued that, even if this firm be treated as joint family firm the suit should have been brought against the manager of the joint family firm as representing the firm and not against a junior member like Dwarka Prasad. Firstly, there are the circumstances that Dwarka Prasad's name occurs in the firm name, that Dwarka Prasad is a member of the joint Hindu family owning the firm, that he used to sit at the shop and that he used to carry on the correspondence in the name of the firm. In these circumstances, it cannot be said that Dwarka Prasad could not have represented the firm at all and that it was necessary that, in that suit the firm should have been sued through Kanhaiya Lal and could not be sued through Dwarka Prasad.

Secondly, at best, this argument advanced by the learned counsel may raise a question of a legal error in that suit. It can, in no way, amount to fraud. It cannot possibly be urged that, if a joint Hindu family firm is sued through a member whose name occurs as the first name in the firm name and who sits at the shop and carries on correspondence in the name of the firm, fraud is committed in suing the firm in the name of that member. Consequently, in this separate suit, the decree in the earlier Suit No. 375 of 1942 was not liable to be set aside.

2. The appeal has no force and is dismissed with costs.