

Rampur Tannery And Mfg. Co. Ltd. vs Umar Uddin on 23 July, 1953

Equivalent citations: AIR1954ALL11, AIR 1954 ALLAHABAD 11

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a revision under Section 115, Civil P. C. The point raised by learned counsel is that there is no provision of law under which when a suit was filed on behalf of a partnership by a partner the other partners could apply that their names be also brought on the record and they might be allowed to continue the suit on behalf of the partnership. Learned counsel has relied on the provisions of Order 30, Civil P. C. (Act 5 of 1908) and has urged that the order relates only to an application by a party to the suit applying for disclosure of names of partners of a firm, in the name of which or against which a suit has been filed, and the other partners, who were not parties to the suit, had no right to apply that their names be disclosed and they be allowed to continue the suit in the name of the partnership.

The provisions of Order 30, Civil P. C. are, however, enabling provisions and they enable any two or more persons to sue or be sued in the name of a firm. If the provision was not there it may make it necessary, where there is no agreement that one partner is entitled to represent the firm and to sue or be sued in the name of the firm, for all partners to join as parties when a suit has to be filed in the name of a partnership firm or against it. The provisions of Order 30, Rule 1 do not make a suit filed in the name of a firm through all the partners of the firm a defective suit.

2. The facts of this case are that a suit was originally filed by one Umaruddin in his own name, The plaintiff was, however, subsequently amended by an order dated 22-4-1950, and it became a suit on behalf of the firm Messrs. Umaruddin and Sons, through Umaruddin partner. From the registered deed of partnership and other documents on the record it appeared that the partners of the firm were Umaruddin, Abdul Karim, Mardan Khan and Saheb Khan. Umaruddin, according to the defendant, had migrated to Pakistan. The plaintiffs probably do not admit this fact. Be that as it may, the other partners applied that their names be also disclosed in the plaintiff so that they may be able to continue the suit on behalf of Messrs. Umaruddin and Sons. This application was granted by the learned District Judge on 30-4-1952, and this revision has been filed against that order.

3. The argument advanced by learned counsel is that the learned Judge had no right to pass the order either under Order 30, Rule 1 or Rule 2, or under Order 1, Rule 10, Civil P. C. Order 30, Rules 1 and 2 in short provide that two or more persons claiming or being liable as partners may sue or be sued in the name of the firm of which they are partners, and any party to a suit may in such a case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm. Sub-rule (2) of Rule 1 allows the pleading etc., to be verified or signed by one partner on behalf of the partnership. Rule 2 of Order 30 provides that the plaintiffs will be bound to disclose the names of the partners on an application being made to that effect by the defendant.

4. The submission made by learned counsel is that Rule 2 only applies to a disclosure by the plaintiff on an application by the defendant and Rule 1 applies to a disclosure of the names and addresses of all the partners on an application by any party to a suit. The question, therefore, is whether in a case where a suit has been filed on behalf of a firm by a partner the other partners can apply under Order 30, Rule 1. The suit being in the name of and on behalf of the partnership, all the partners should be deemed to be parties in their capacity as partners and there appears to be no reason why they should not be able to apply under Order 30, Rule 1.

5. In -- 'Abrahams and Co. v. Dunlop Pneumatic Tyre Co.', (1905) 1 KB 46 (A) a decision by the Court of Appeal in England -- an application was filed by a person supported by an affidavit that though her name had not been disclosed by the plaintiff she was a partner of the firm and her name should be disclosed. The learned Judges held that such a disclosure could be made under the provisions of Order 48, Rule 1, which are very similar to the provisions of our Order 30, Rule 1, Civil P. C.

6. Learned counsel has pointed out that the disclosure could only be of the names of persons who were partners on the date when the cause of action accrued. The partnership deed is of the year 1945. The suit is on behalf of the partnership for realisation of dues which, it is claimed, are due to the partnership. The point mentioned by learned counsel after all other points urged by him had failed appears to be an after-thought. The point was not raised in the lower Court and it raises a question of fact. In any case, if the amounts claimed are not due to the partnership the suit will fail on that ground. We need not, therefore, go into that question at this stage.

7. Learned counsel's further contention is that Order 1, Rule 10, Civil P.C. does not apply as that rule applies only to a case where a suit has been instituted in the name of a wrong person or where it is doubtful whether it has been instituted in the name of the right plaintiff. It may be that on a strict view Rule 10 of Order 1 may not apply to this application but even if Order 30, Rule 1 or Order 1, Rule 10, is not applicable, the Court had ample jurisdiction under Section 151 of the Code to pass the order. The suit being on behalf of the firm, the partners of the firm were interested in the result, and as we have already said, all of them could have from the very beginning joined in the suit and the suit could have been filed through all of them.

If for some reason the other partners thought that their interest was not safe in the hands of Umaruddin and he might not be able to look after the interest of the firm properly and they applied

that their names be also disclosed and the learned Judge passed an order to that effect, it cannot be said that he did anything improper or that the disclosure of the names of the other partners in any way adversely affected the rights of the defendant.

8. The law is well settled that under the inherent powers of the Court the Court can implead any person where it considers that the addition of that party is in the interest of justice and even where a party may not be a necessary party but merely a proper party his name can be added. The Federal Court in -- 'United Provinces v. Mt. Atiqa Begum', A. I. R. 1941 FC 16 (B) held that the language of Order 41, Rule 20, Civil P. C., does not show that it is exclusive or exhaustive so as to deprive a Court of any inherent power which it may possess and can exercise in special circumstances, and which has been saved by Section 151.

After the decision of the Federal Court it is not necessary to quote other cases but we may mention only two which have been cited at the Bar. -- 'Shanti Lal v. Hira Lal Sheo Narain', AIR 1941 Lah 402 (C); and -- 'Nanda Kishore Singh v. Ram Golam Sahu', 40 Cal 955 (D). Dealing with the question of the existence of inherent power and the extent to which it should be exercised, after having discussed the law on the subject the learned Judge (Mookerjee J.) held that amongst obvious cases may be mentioned-

"enquiry as to whether all the proper parties are before the Court, entertaining an application of a stranger to be made a party, the addition of a party".

It is not necessary for us to examine all the instances mentioned by the learned Judge but we have no doubt that the Court has inherent jurisdiction to entertain an application of a stranger to be made a party and to implead any person as a party to a suit where it considers the addition to be in the interest of justice. It cannot, therefore, be said that the order passed by the lower Court was beyond its jurisdiction.

9. The revision has no force and is dismissed.