

# Ram Kumar Ram Chandra vs The Dominion Of India on 21 December, 1951

**Equivalent citations: AIR1952ALL695, AIR 1952 ALLAHABAD 695**

## JUDGMENT

P.L. Bhargava, J.

1. This is an application in revision, under Section 25, Provincial Small Cause Courts Act. The applicant had instituted a suit, in the Court of the Judge, Small Cause Court, Kanpur, against the Dominion of India for recovery of damages resulting from the shortage and non-delivery of two bags of ginger, which were made over to the Administration of the G. I. P. Railway for transmission from Wadi Bunder to Kanpur. In the title of the suit in the plaint the applicant had described himself thus : "Messrs. Ram Kumar Ram Chandra through Ram Kumar Adult son of Sarjoo Prasad caste Vaisb residing at Naya Ganj Kanpur, partner of the firm". In para. 1 of the plaint the applicant had stated 'that the plaintiffs are a partnership firm registered under the Indian Partnership Act and Lala Ram Kumar who has signed and verified the plaint, is registered partner of the firm.'

2. On behalf of the defendant the allegation in para. 1 of the plaint was denied and the liability for payment of any damages was also disputed. One of the issues framed in the suit was : "Are plaintiffs entitled to sue?" The applicant attempted to prove by oral evidence that Ram Kumar was a partner in the firm Messrs. Ram Kumar Ram Chandra. The trial Court held that oral evidence to prove that Lala Ram Kumar was a partner of the firm was inadmissible and that fact could be proved only by production of a copy of the Register of Firms, which the plaintiff had failed to produce. The issue mentioned above was, therefore, decided against the plaintiff and it was held that it was not proved that Lala Ram Kumar was a partner in the firm. The suit was, accordingly, dismissed in view of the provisions of Section 69(2), Partnership Act.

3. The revision came up for hearing before a learned single Judge of this Court. He agreed with the opinion of the trial Court that the fact that the name of Lala Ram Kumar had been shown in the Register of Firms as a partner of Messrs. Ram Kumar Ram Chandra could not be proved otherwise than by the production of a certified copy of the Register of Firms. On behalf of the applicant it was contended before the learned single Judge that in the present case the person suing was not Lala Ram Kumar but the firm and as such the second condition laid down in Section 69(2) was not applicable and reliance was placed upon a decision of the late Chief Court of Oudh in *Sardar Singar Singh v. Sikri Brothers*, A. I. R. (31) 1944 Oudh 37, where it was held that in a case where the suit was brought in the name of a firm it was the firm that was the person suing and not any partner of the firm. The view taken in the Oudh case cited above did not find favour with the learned single Judge, and relying upon the provisions of Order 30, Rule 1, Civil P. C., it was observed by the learned Judge that no right of suit had been given to a firm; that the present suit was brought by a

partner in the name of the firm; and that the person suing was, therefore, the partner of the firm and not the firm itself. Another point raised before the learned single Judge was that the Register of Firms had no column for the names of the partners of the firm which is registered and, in the absence of the names of the partners in the Register of Firms, a copy of the said Register, even if produced, could not have proved the fact whether Ram Kumar was a partner of the firm or not. Consequently, the learned Judge observed that there was this obvious difficulty that the law requires that the person suing on behalf of the firm must show that his name is entered in the Register of Firms while the names of partners are not entered at all in the Register of Firms. Accordingly, he referred the whole case to a bench for decision.

4. The case has been argued at length on behalf of the applicant as well as on behalf of the opposite party. Learned Standing Counsel has not supported the view of the Court below or that expressed by the learned single Judge and he has pointed out that this suit was, in fact, a suit by the firm Ram Kumar Ram Chandra and not a suit by Ram Kumar, one of the partners of the firm.

5. Section 69(2), Partnership Act is as follows :

"No suit to enforce a right arising from 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."

6. The first question which arises for consideration in this case is whether the present suit was instituted by or on behalf of the firm. The suit has, no doubt, been instituted in the name of the firm, evidently in accordance with the provisions of Rule 1 of Order 30, Civil P. C. which lays down:

"(1) Any two or more persons claiming or being liable as partners and carrying on business in (British India) the Provinces may sue or be sued in the name of the firm (if any) of which such persona were partners at the time of the accruing of the cause of action, and any party to a suit may in such 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, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the names of their firm under Sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant suffice if such pleading or other document is signed, verified or certified by any one of such persons."

7. Order 30 prescribes the procedure in suits by or against Firms and persons carrying on business in names other than their own, and Rule 1 of the said Order, which has been quoted above, permits any two or more persons claiming or being liable as partners and carrying on business to sue and be sued in the name of the firm. The procedure laid down in Rule 1 is obviously intended to avoid a

long array of the plaintiffs or defendants and it prescribes a convenient mode of institution of suits by or against the partners collectively in the names of the partners who carry on business under a particular name. Such a suit is, no doubt, a suit by the partners collectively in the name of the firm; but when we consider the partners collectively as a firm it will, in effect, be a suit by a firm. As Order 30 prescribes the procedure for a suit by or against a firm a suit instituted in the manner laid down in Rule 1 of Order 30 will be a suit by the firm. Appendix A to the Code of Civil Procedure which refers to pleadings gives some model titles of suits of different kinds and the title of a suit by a firm is given as "A. B., a firm carrying on business in partnership at. ...." It is, therefore, clear that, even though a firm has got no legal entity and as a firm it is not entitled to institute a suit, a suit can be filed by the firm in accordance with the provisions contained in Order 30, and when such a suit is instituted the firm is to be described as "A, B, a firm carrying on business in partnership at ....."

8. In the present case the firm was so described in the plaint, but the words "through Ram! Kumar Adult son of Sarjoo Prasad caste Vaish residing at Naya Ganj, Kanpur, partner of the firm" were added. In law this addition was unnecessary and as such it can be treated as redundant and ignored. The above addition does not and cannot alter the fact that the firm is, in fact, the plaintiff. As the firm had no legal status as such, the suit has been instituted by the firm as representing all the partners. Here we may notice the definition of the term "firm" in the Partnership Act. It has been defined in the said Act in this way :

"Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm," and the name under which their business is carried on is called the "firm name."

It would thus appear that where a suit is instituted in the name of a firm under Rule 1 of Order 30, Civil P. C , it is really a suit by the partners of the firm collectively. The present suit was, therefore, a suit by the firm and the addition of the words through so and so was redundant and of no consequence.

9. The description of the plaintiff and the title of the suit have been quoted in extenso in the opening part of this judgment, and it is difficult to hold that it was a suit by Ram Kumar on behalf of the firm. As, the language of para, 1 of the plaint shows, the name of Ham Kumar was evidently mentioned as the person who was to sign and verify the plaint on behalf of the firm in terms of Sub-rule (2) of Rule 1 of Order 30, Civil P. C.

10. The present suit being by the firm and they firm having been registered the provisions of Sub-section (2) of Section 69 of the Partnership Act were fully complied with. In the circumstances, it was wholly unnecessary for the trial Court to consider whether Ram Kumar was or was not a partner in the firm.

11. The view expressed above is in accord with the view taken in *Sardar Singar Singh v. Sikri Brothers* (A. I. R. 1944 Oudh 37). In that case the plaintiff was described in the plaint as "Sikri Brothers, Coal Merchants, Latouche Road, Lucknow, through N. R. Nagpal partner and Manager." N. R. Nagpal described himself as plaintiff under his signature in the plaint and in the verification

he described himself as "N. R. Nagpal Manager and partner general attorney." The suit was for price of coal supplied to the defendant. The defence was that it was not shown in the plaint that the plaintiff's firm was registered as a firm, nor had N. R. Nagpal any right to sue. It was further contended that the suit was not maintainable and liable to dismissal under the provisions of the Partnership Act. It was held in that suit that the firm was registered, but the name of N. R. Nagpal was not shown in the Register of Firms as a partner in the firm and though he was not entitled to bring the suit as a partner of Sikri Brothers he could maintain the suit in the name of the firm as its manager. It was held by a Division Bench of the Oadh Chief Court that Sikri Brothers were the real plaintiff in the case and that the mere mention of the name of Nagpal through whom the suit was brought did not make him the plaintiff and that the defect, if any, was one of form and not of substance.

12. For the reasons stated above, it must be held that the suit was properly instituted and was not hit by Section 69(2) of the Partnership Act and it was wrongly rejected on that ground by the trial Court. In our opinion, therefore, this revision ought to be allowed, the decision of the Court below set aside and the suit should be remanded to the Court below for disposal according to law. We order accordingly. Costs here and hitherto shall abide the ultimate result of the suit.