

**Shivananjappa Vs. Marulasiddappa Sons**

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**Court :** Karnataka

**Decided On :** Sep-25-1991

**Reported in :** ILR1992KAR955

**Judge :** B.N. Krishnan, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 30, Rule 1

**Appeal No. :** R.S.A. No. 584 of 1982

**Appellant :** Shivananjappa

**Respondent :** Marulasiddappa Sons

**Advocate for Def. :** Shylendra Kumar, Adv.

**Advocate for Pet/Ap. :** M.S. Gopal, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**B.N. Krishnan, J.**

1. The appellant was the defendant in Original Suit No. 295 of 1977 on the file of the Munsiff, Shimoga. That was a suit filed by the plaintiff, a registered partnership firm against the defendant for recovery of a sum of Rs. 6,613-64 due on the basis of a pronote executed by him in favour of the plaintiff-firm. The suit was instituted

in the name of the firm by one of its partners-K.M. Renuka. The defendant took up a number of contentions to resist the claim of the plaintiff. He disputed that the plaintiff is a registered partnership firm. He also denied that he borrowed a sum of Rs. 4,000/- from the plaintiff-firm or executed the suit pronote. The defendant has also taken up another contention that the plaintiff is liable to give deduction in the suit claim in respect of the value of 30 bags of arecanuts realized by it. He has further pleaded that he had subscribed his signature on a blank pronote in connection with the arecanut matter. He has further pleaded that he is a debtor within the meaning of Karnataka Debt Relief Act 1976, and if at all the suit is to be decreed, it should be decreed only for a sum of Rs. 1,800/- and he should be granted yearly instalments of Rs. 500/-. On these pleadings the learned Munsiff raised the following issues:

1. Whether the plaintiff is a registered partnership firm?
2. Whether the defendant had borrowed a sum of Rs. 4000/-executing the suit pronote?
3. Whether the defendant is a debtor as per the definition in the Karnataka Debt Relief Act?
4. If so, is he not entitled for the reliefs under the said Act?
5. Whether the defendant is entitled for any instalments? If so, at what rate?
6. What order or decree?

2. The learned Munsiff answered issue No. 2 in affirmative and issue Nos. 3 and 4 were answered in the negative. So far as issue No. 1 is concerned, though he came to a conclusion that the plaintiff is a registered partnership firm, he answered issue No. 1 in the negative on the basis of his conclusion that the suit filed in the name of the firm by only one of the partners was not maintainable in view of the language of Order 30 Rule 1 C.P.C. Consequently, he dismissed the suit.

3. The plaintiff being aggrieved by the judgment and decree of the trial Court preferred R.A.No.140/1980 on the file of the Prl.Civil Judge, Shimoga, who

affirmed the findings recorded by the learned Munsiff with reference to the execution of the pronote as also the claim of the defendant that he was a debtor within the meaning of Karnataka Debt Relief Act and he reversed the finding of the learned Munsiff on issue No. 1 and came to the conclusion that the suit brought by one of the partners in the name of the firm was perfectly maintainable and in accordance with Order.30 Rule.1 C.P.C. and consequently he set aside the judgment and decree of the trial Court and decreed the suit as prayed for.

4. It is being aggrieved by the judgment and decree of the 1 st Appellate Court, that the defendant has preferred the present Second Appeal. At the time of admission of this Appeal, this Court has raised the following substantial questions of law:

1. Whether the first appellate Court was justified in not raising specifically the points for consideration?
2. Whether the first appellate Court was justified in not discussing the material evidence on record?
3. Whether the first appellate Court was justified in not applying the Karnataka Debt Relief Act of 1980 to the facts of the case?

After the matter was heard in part, this Court has raised the following additional substantial point of law.

Whether in a case where the suit is filed in the name of the firm, whether Order 30 Rule 1 mandates that the plaint shall be signed by two or more of the partners and if so, whether the suit filed in the name of the firm by only one of the partners is liable to be dismissed?

5. During the course of arguments the learned Advocates urged only in respect of this additional substantial point of law raised by this Court and the learned Advocate for the appellant did not press any of the contentions taken in the appeal memorandum on the basis of which points 1 to 3 have been raised. Therefore, it would be more appropriate to take up for consideration, in the first instance this additional substantial question of law.

6. Order 30 Rules 1 and 2 CP.C. read as here under:

Order 30, Rules 1 and 2 C.P.C.

1. (1) Any two or more persons, claiming or being liable as partners and carrying on business in (India) may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of 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 name of their firm under Sub-rule (1), if 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.

2.(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under Sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in Sub-rule (1) the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint: (Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in Sub-rule (1) shall be entered in the decree.)

7. The learned Munsiff has relied upon the Decision in DINA NATH v. FIRM METRO HOTEL, AIR 1963 J&K; 19 wherein the learned Judge has held that Rule

1 of Order 30 C.P.C. enables only two or more persons to bring a suit in the name of the firm and a suit by just one partner is therefore not a suit by the firm as contemplated therein. No doubt, this observation of the Jammu and Kashmir High Court supports the conclusion of the learned Munsiff. But it has to be seen as to how far the learned Single Judge of the Jammu and Kashmir High Court was right in interpreting Rule 1 of Order 30 C.P.C. as above. A mere perusal of Rule One extracted above indicates that there is nothing in the said Rule which enjoins that in any suit filed in the name of the partnership, two or more persons must necessarily join as plaintiffs. Any two or more persons mentioned therein is a provision relating to the persons carrying on business. It is only an enabling provision which has been clarified by the Supreme Court in *PURUSHOTTAM & CO. v. MANILAL & SONS.*, : [1961]1SCR982 After referring to both Rules 1 and 2, this is what has been observed by the Supreme Court at page 329:

'The provisions of Rule 2 would indicate that although the suit is filed in the name of a firm, it is none the less a suit by all the partners of the firm because if a disclosure of the names of the partners is asked for by any defendant on such disclosure, the suit shall proceed as if the partners had been named as plaintiffs in the suit, even though the proceedings shall nevertheless be continued in the name of the firm. It is clear, therefore, that the provisions of Order XXX. Rule 1 and Rule 2 are enabling provisions to permit several persons who are doing business as partners to sue or be sued in the name of the firm. Rule 2 would not have been in the form it is if the suit instituted in the name of the firm was not regarded as, in fact, a suit by the partners of the firm.'

As pointed out by the Supreme Court once the plaintiff complies with the requirement of Rule 2 by disclosure of the name of the partners, by a legal fiction the suit shall proceed in the same manner and same consequences in all respects will follow as if all the partners have been named as plaintiffs in the plaint. The proviso again makes it clear that the proceedings shall nevertheless continue in the name of the firm only and the amendment introduced this proviso by Act No. 104 of 1976 enjoins that the name of the partners so disclosed shall be entered in the decree. In the absence of any mandate that in the minimum two persons should join in any case, where the suit is filed in the name of the firm and in view

of Order 30 Rule 2(3) C.P.C. the interpretation given by the Jammu and Kashmir High Court, with all respect to learned Single Judge, cannot at all be supported. This interpretation gains further support by the form of pleading prescribed by Appendix 'A' to C.P.C. relating to the cause title of the suit filed in the name of a firm. That reads as hereunder:

'A.B., a firm carrying on business in partnership at'

There is no further mention therein as represented by partners t and 2. In the Decision which came up for consideration before the Calcutta High Court in *GENERAL ENTERPRISES v. J. HANDERSON LTD.*, AIR 1978 Calcutta 409 a contention was taken that the suit filed against the defendant a partnership firm without impleading all the partners was not maintainable. The said contention was negatived and it was held that there was no defect. A suit against the registered partnership firm is in law, against all the persons. In the Decision in *RABINDRANATH SEN AND ORS. v. 1ST ADDL. TRIBUNAL, BENGAL*, : AIR1963 Cal310 it has been pointed out that where the partner only may sue in the name of the firm, if the other partners do not object for his so doing and if they object they may apply for indemnity against cost.

In view of the clear language of Rules 1 and 2 of Order 30 C.P.C. and also the decision of the Supreme Court and Calcutta High Court I am not at all persuaded by the reasoning of the learned Judge of Jammu and Kashmir High Court to hold that Order 30 Rule 1 mandates that when a suit is filed in the name of the firm the plaint should be signed by two or more persons or that otherwise that suit is not maintainable. Hence I express my respectful dissent to the view taken by the Jammu and Kashmir High Court. On the other hand it has to be necessarily held that the suit filed by only one person in the name of the partnership firm is clearly maintainable and there is nothing wrong with the institution of the suit. Hence the additional substantial point of law raised is answered accordingly against the appellant.

8. When my finding on this point is as above, and when a perusal of the judgment of the learned Civil Judge shows that though he has not raised the specific point on the other aspects of the case, but nevertheless has discussed all the aspects

that arise for consideration after advertent to the evidence, it has to be held that though the 1st appellate Court was not justified in not raising all the points specifically, for consideration, it has discussed all the material evidence on record and arrived at categorical conclusions on several aspects that arise for consideration and therefore on this ground there is no scope to interfere with the order of the learned first Appellate Judge. As already pointed out, even the learned Advocate for the appellant did not press the Appeal on any of these points. Even in respect of the third substantial question of law, the learned Advocate for the appellant did not press the same and the learned first Appellate Judge was right in affirming the finding of the learned Munsiff in this regard.

9. Having regard to several findings arrived at above, it is clear that the Appeal is devoid of any merit.

10. In the result, the Appeal is dismissed with costs.

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