

Krishan Lal  
Chopra  
v.  
Panna Lal  
and another  

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Pandit, J.

In view of what I have said above, this appeal succeeds, and the order of the learned Tribunal is set aside and that of the Controller is restored. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout. The respondents are, however, given six months' time to vacate the premises.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J. and Harbans Singh, J.

FIRM BUTA MAL-DEV RAJ,—Appellant

versus

CHANAN MAL AND OTHERS,—Respondents

Letters Patent Appeal No. 304 of 1960.

*Partnership Act (IX of 1932)—Section 69—Firm registered with the Registrar of Firms but one of the partners not shown as a partner—Suit by firm through a partner whose name shown in the register—Whether competent.*

1963  

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Dec., 3rd.

*Held*, that the phrase "the persons suing" occurring in section 69(2) of the Indian Partnership Act, 1932, must mean the partners in the firm. The use of the plural "persons" is obviously deliberate, since while a singular may also mean the plural, the plural can never mean the singular. The firm is obviously not meant to be covered by the word "persons" in this context, and although a firm may bring a suit through a manager who is only an employee and not a partner, though authorised by the partners to institute the suit on behalf of the firm, such a person cannot be regarded as covered by the word "persons" since under no circumstances would his name be included as a partner in the Register. All that Order XXX rule 1 does is to authorise the institution of a suit by or against two or more persons in the name of a firm of which they were partners at the time of accruing of the cause of action, and it empowers any party to the suit so instituted to apply for and to be furnished full particulars of all the partners in the firm at the material time. Obviously when a suit is instituted in the name of a firm the suit is on behalf of all the partners and not only such of them as are

shown in the Register as such, and all the partners must be "the persons suing" contemplated in section 69(2) of the Act. In order to institute a suit a partnership firm must not only be a registered firm but also all the persons who are partners in the firm at the time of the institution of the suit must be, or have been, shown as such in the Register. According to this decision the present suit was incompetent because one of the partners, who had been a partner from the beginning of the constitution of the partnership firm, was still a partner when the suit was instituted and he had never been shown as such in the Register.

*Appeal under Clause 10 of the Letters Patent from the decree of the Hon'ble Mr. Justice D. K. Mahajan, dated the 27th April, 1960, passed in R.S.A. No. 80 of 1956 reversing that of Shri Tirath Dass, District Judge, Gurdaspur, dated the 21st November, 1955, who affirmed that of Shri D. P. Sodhi, Senior Subordinate Judge, Gurdaspur, dated the 31st August, 1954, dismissing the plaintiff's suit. The Hon'ble Judge left the parties to bear their own costs throughout.*

D. N. AGGARWAL AND B. N. AGGARWAL, ADVOCATES, for the Appellant.

K. L. KAPUR AND RAJ KUMAR AGGARWAL, ADVOCATES, for the Respondents.

#### JUDGMENT

FALSHAW, C.J.—This is an appeal filed under clause 10 of the Letters Patent by firm Buta Mal-Dev Raj against the decision of D. K. Mahajan, J. accepting a second appeal and dismissing the suit of the plaintiff-appellant.

Falshaw, C.J.

The suit was instituted in October, 1951 for the recovery of Rs. 4,658 from the defendant Chanan Mal, the amount being made up of balance of purchase price of certain goods, damages for breach of contract and interest arising out of contract entered into between the parties for the supply of paddy in September, 1948. The trial Court granted a decree for

Firm Buta Mal-  
Dev Raj  
v.  
Chanan Mal  
and others  
            
Falshaw, C.J.

Rs. 1,642-10-0 and interest and no appeal was filed against that decree by the plaintiff, though the defendant filed an unsuccessful appeal. The learned Single Judge accepted the second appeal of the defendant and dismissed the suit simply on the ground that the suit was barred by section 69(2) of the Partnership Act and the case was covered by the decision of a Division Bench of this Court in *Dr. V. S. Bahal v. M/s. S. L. Kapur & Co.* (1) which came after the decision of the Court of First Appeal.

The plaintiff firm is a partnership firm constituted by a partnership deed dated the 14th of February, 1947, the three partners named in this deed being Dev Raj, Parkash Wati and Wadawa Mal. The firm was registered with the Registrar of Partnerships on the 1st of February, 1949, but only Dev Raj and Parkash Wati were registered as partners. It has, however, been admitted by Dev Raj in the course of the suit that Wadawa Mal remained a partner throughout, and there is no doubt that he was a partner when the suit was instituted in the name of the firm Buta Mal-Dev Raj through Dev Raj partner. Section 69 of the Partnership Act deals with the effect of non-registration of partnerships, and sub-section (1) deals with suits by a partner against a firm or against any person alleged to have been a partner in the firm. Sub-section (2) deals with suits by a partnership firm against a third party and reads—

“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.”

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(1) A.I.R. 1956 Punj. 24.

In the case followed by the learned Single Judge the firm which was the plaintiff in the suit had originally consisted of three partners, but one of them had gone out and taken a separate share of the business at another place outside Delhi, and a third partner had been taken in some years before the suit, but this third partner had not been declared as a partner with the Registrar until the suit had been pending for a year or so. A number of points arose in the second appeals, which were before Bhandari, C.J. and myself, and one of them was the effect of not having registered the name of the third partner before the suit was instituted. We held that the proper interpretation of section 69(2) of the Act was that in order to institute a suit a partnership firm must not only be a registered firm but also all the persons who are partners in the firm at the time of the institution of the suit must be, or have been, shown as such in the Register. According to this decision the present suit was incompetent because one of the partners, Wadawa Mal, who had been a partner from the beginning of the constitution of the partnership firm, was still a partner when the suit was instituted and he had never been shown as such in the Register.

Firm Buta Mal-  
Dev Raj  
v.  
Chanan Mal  
and others  

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Falshaw, C.J.

The learned counsel for the appellant-firm could not deny that the case was covered by that decision, but he sought to argue that it did not lay down correct law. He has not, however, been able to cite any subsequent decision of any Court in which the view of this Court has been considered and dissented from, although a different view has been expressed by a Division Bench in *Chiman Lal and another v. Firm New India Traders Mica Merchants & others* (2). The whole of this view and the reasoning on which it is

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(2) A.I.R. 1962 Pat. 25.

Firm Buta Mal-  
Dev Raj

v.

Chanan Mal  
and others

Falshaw, C.J.

based is contained in a single paragraph of the judgment as follows:—

“The next point urged by Mr. Mukherji was that the firm was not properly registered. Exhibit 12 is the registration certificate of the firm and it shows that the firm was registered on the 10th April, 1948 with two partners, namely, Chand Mull and Satyanarain Sarda only. According to the plaint, there are three other partners besides Chand Mull and Satyanarain Sarda. It is obvious that these new partners became partners of the firm subsequent to the registration of the firm and they did not care to get their names entered subsequently in the registration certificate as partners. But, there is nothing in the Partnership Act to indicate that in such a contingency the suit shall fail. Section 69(2) of the Act lays down that no suit to enforce a right arising from a contract shall be instituted 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. This has, however, to be read with Order XXX rule 1 of the Code of Civil Procedure. These provisions read together apparently mean that when a suit is instituted in the name of a registered firm only those persons who are registered as partners of the firm can get the benefit of a decree in favour of the firm or shall be liable for a decree against the firm. Subject to these conditions, the suit is maintainable, and for purposes of this suit only Chand Mull and Satyanarain Sarda, who

are registered in the registration certificate shall be deemed to be partners of the plaintiff firm."

Firm Buta Mal-  
Dev Raj  
v.

Chanan Mal  
and others

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Falshaw, C.J.

It is thus apparent that the decision of this Court was not cited before the learned Judges who decided that case, and no useful purpose would be served by speculating as to what the view would have been if our decision had been cited and considered. On the other hand case law on this point has been considered by Chatterjee J. in *Hansraj Manot v. Messrs. Gorak Nath Champalal Pandey*, (3) and the view of this Court has been accepted as correct.

The question turns on what interpretation is to be placed on the words "and the persons suing are or have been shown in the Register of Firms as partners in the firm". It was, and still is, my view that "the persons suing" must mean the partners in the firm. The use of the plural "persons" is obviously deliberate, since while a singular may also mean the plural, the plural can never mean the singular. The firm is obviously not meant to be covered by the word "persons" in this context, and although a firm may bring a suit through a Manager who is only an employee and not a partner, though authorised by the partners to institute the suit on behalf of the firm, such a person cannot be regarded as covered by the word "persons" since under no circumstances would his name be included as a partner in the Register. All that Order XXX rule 1 does is to authorise the institution of a suit by or against two or more persons in the name of a firm of which they were partners at the time of the accruing of the cause of action, and it empowers any party to the suit so instituted to apply for and to be furnished full particulars of all the partners in the firm at the material time. Obviously when a suit is instituted in the name of a firm the suit is on

Firm Buta Mal-  
Dev Raj  
v.  
Chanan Mal  
and others  
Falshaw, C.J.

behalf of all the partners, and not only such of them as are shown in the Register as such, and all the partners must be "the persons suing" contemplated in section 69(2) of the Act. I am, therefore, of the opinion that the appeal was correctly decided by the learned Single Judge and the present appeal must be dismissed. As was quite proper, the parties have already been left to bear their own costs throughout, and they may also be left to do so in this appeal.

Harbans Singh,  
J.

HARBANS SINGH, J.—I agree.

B.R.T.

#### CIVIL MISCELLANEOUS

*Before Inder Dev Dua and Harbans Singh, JJ.*

SATYA DEV,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 696 of 1963.

1963

Dec., 3rd.

*Punjab Municipal Act (III of 1911)—Section 16(1)(c) and (2)—Continuing an encroachment, which came into existence long before a person became a member of the committee—Whether amounts to "flagrant abuse of his position as a member"—Government's decision that the member is guilty of flagrant abuse of his position as a member—Whether justiciable.*

*Held*, that continuing an encroachment, which came into existence long before a person became a member, and not demolishing the same, cannot be said to be an act directly connected with his position as a member particularly when there is no allegation or suggestion that he, by his influence or presence in the municipal committee, had prevented any proper action to be taken in the matter. The act which can properly form the basis of formation of an opinion by the State Government that a member had been guilty of a flagrant abuse of his position as a member