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BRIJ KISHORE SHARMA AND ANR.

v.

M/S RAM SINGH AND SONS AND ORS.

OCTOBER 1, 1996

B

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Code of Civil Procedure, 1908/Contract Act, 1872.

C

Order 30, Rule 4/s.45—Parties to suit—Suit for recovery of money lent by a partnership firm under a promissory note—Trial Court dismissing the suit on the ground that since one of the partners died pending suit and neither he had been made co-nominee party nor his legal representatives were brought on record, the suit was bad for non-joinder of necessary and proper parties—Held, by operation of Sub-rule(1) of Rule 4 of Order XXX, despite the embargo u/s.45 of Contract Act, it is not necessary that legal representatives of deceased partner who dies whether before institution of the proceedings or during the pendency of the proceedings should be substituted as a co-nominee party plaintiff-defendant to the suit—High Court was right in its view that the suit is maintainable—As regards execution of promissory note by all the persons, it is a question of appreciation of evidence and the High Court as the final court of fact has held that the promissory note was executed by all the persons and, therefore, the defendants are liable for payment of the amount due thereunder.

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Partnership Act, 1932.

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S.69—Suit by partners—One of the partners not made party plaintiff—Held, suit is not bad for non-joinder of necessary and proper parties.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1562 of 1980.

G

From the Judgment and Order dated 2.5.80 of the Patna High Court in A. No. 306 of 1969.

C.L. Sahu for the Appellants.

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S.K. Dhokakia and Ms. Manjeet Chawla for the Respondents.

The following Order of the Court was delivered:

This appeal by special leave arises from the judgment of the Division Bench of the Patna High Court made on May 2, 1980 in appeal from Original Decree No. 306/69.

The respondents filed a suit to recover a sum of Rs. 58,880 on the foot of a promissory note dated April 1, 1960 to recover the principal sum of Rs. 46,380 and interest which accrued thereon. The trial Court dismissed the suit. But on appeal, the High Court allowed the appeal and decreed the suit. Thus, this appeal by special leave.

Two points were raised in the written statement and argued by the respondents. The first point that was addressed and pressed for consideration is that the respondent-plaintiff being a partnership firm, has not impleaded all the partners co-nominees as plaintiff-party to the suit. Resultantly, the suit is not maintainable. Pending suit, one of the partners died and the legal representatives were not brought on record. The question, therefore, was: whether the suit is liable to be dismissed for non-joinder of the necessary and proper parties? The trial Court as well as the High Court recorded as a fact that the respondent- firm is a registered partnership firm and, therefore, under Section 69 of the Partnership Act, the suit is maintainable. The trial Court dismissed the suit on the ground that since one of the partners died pending suit and the legal representatives were not brought on record, suit was bad for non-joinder of necessary and proper parties. The controversy is covered by the provisions of Order XXX of the CPC which gives special procedure for filing the suit by or against a partnership firm carrying on business in the name other than its own. In this case, the relevant provision is Rule 4 of Order XXX which provides thus:

"Order XXX Rule 4: (1) Notwithstanding anything contained in Section 45 of the Indian Contract Act, 1872 (of 1872), where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representatives of the deceased as a party to the suit.

(2) Noting in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have.—

- A (a) to apply to be made a party to the suit, or
(b) to enforce any claim against the survivor or survivors."

B Sub-rule (2) is not relevant for the purpose of this case. By operation of sub-rule (1) of Rule 4 of Order XXX, despite the embargo under Section 45 of the Indian Contract Act, it is not necessary that the legal representatives of the deceased partner who dies whether before institution of the proceedings or during the pendency of proceedings, should be substituted as a co-nominee party plaintiff/defendant to the suit. The trial Court, therefore, was not correct in holding that the suit is bad for non-joinder of necessary party. The High Court was right in the conclusion that the suit is maintainable.

D The next plea raised was that the renewal of promissory note was not executed by the appellants. The ground in support thereof was that one of the coparceners who was the signatory to the promissory note was hospitalised. Consequently, he could not have executed the promissory note on the even date. The High Court has gone into depth of this aspect by consideration of the entire evidence on record, mostly documentary evidence. Since it is a question of appreciation of evidence and the High Court, as the final court of fact, on appreciation thereof came to the conclusion that the promissory note came to be executed by all the persons and, therefore, the appellants-defendants are liable for the payment of the amount due thereunder. This being the finding of fact, we do not find any error of law in the finding recorded by the High Court.

E The appeal is accordingly dismissed. No costs.

F R.P.

Appeal dismissed.