

AIR 1958 MP 408 : (1959) ILR (MP) 121 : (1958) 3 MPLJ 742**Madhya Pradesh High Court (Gwalior Bench)****Case No:** First Appeal No. 39 of 1953Firm Narain Das
Mangal Sen

APPELLANT

Vs

Anand Behari Mishra

RESPONDENT

Date of Decision: Aug. 7, 1958**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(5), Order 30 Rule 1, Order 30 Rule 2
- Limitation Act, 1908 - Section 22
- Partnership Act, 1932 - Section 4

Citation: AIR 1958 MP 408 : (1959) ILR (MP) 121 : (1958) 3 MPLJ 742**Hon'ble Judges:** H.R. Krishnan, J; A.H. Khan, J**Bench:** Division Bench**Advocate:** G.P. Patankar, for the Appellant; Murli Dhar Maheshwari, for the Respondent

Judgement

A.H. Khan, J.

The facts leading to this first appeal in brier are that the plaintiffs filed a suit against the defendant on 19-9-49 for the recovery of a sum of Rs. 7379/4/9. The suit was instituted in the name of "Firm Narain Das Mangalsen." During its pendency in the trial Court, mid about 4 years after its institution on 23-2-53, the defendant applied under Order 30, Rule 2, C. P. C., for the disclosure of the names of the partners. In reply to the application for disclosure of the names, the plaintiffs said that Order 30, R. 2 did not apply to the suit, because the plaintiff-Firm was not a partnership firm but was a joint family trading firm.

The plaintiffs, however, disclosed the names of such members of the joint family firm, who were major and stated that Mangalsen was the Karta of the joint Hindu Family Firm, and that Naraindas. who had filed the suit, was the Mukhtaram of Mangalsen, the Karta. The defendant again applied to the Court on 26-3-53 for the disclosure of the names of the minor members of the family as well.

On 2-4-53, the plaintiff also disclosed the names of the minor members of the Firm. Although the disclosure of the names was thus made on the demand of the defendant, yet the trial Court dismissed the suit on the ground that the minors, whose names were disclosed on 26-3-53, were necessary parties and as their names were added on 26-3-53, the suit had become time-barred. It is against this dismissal of the suit that the present appeal has been filed.

The trial Court has based its decision on a case reported in [Bhairobux Mangilal Vs. Deokaran and Others](#), in which Amir Ali, J., has held that

"Once partners have been declared, the persons whose names have been declared are to be regarded as parties to the suit. Any fresh declaration will be equivalent to the addition of a party and this can be done by giving leave to put in a further declaration, but such a thing should be made within limitation period."

With great respect to the learned Judge, I beg to differ from the view he has taken in the case referred to above, for the reason stated below :

The expression "Firm" is a compendious, term which describes the association of several persons who are interested in a business. The general law "knows nothing of the term as a body." But the judicature enables partners of a firm to sue or be sued in the name of their firm. With that end in view, the legislature formulated Order 30 of the CPC which is, in fact, taken from Order 48A of the English Rules. The marginal note of Order 30, Rule 2, C. P. C., is "disclosure of partners names" and it is obvious that disclosure of names is distinct from addition of parties as contemplated in Order 1 of the C. P. Code.

I invite reference to Order 1, Rule 10 of the C. P. C., clause 5 of which after referring to Section 22 of the Limitation Act lays down that when after the institution of the suit, a party is added as a plaintiff or defendant, the suit shall as regards the party so added be deemed to have been instituted when he had been so made a party. In other words, where necessary parties are not joined within the period of limitation, the suit stands dismissed.

The non-joinder of parties in a suit is the defect in the constitution of the suit. But the nondisclosure of the names of partners and the filing of a suit in the name of a firm is permissible and there is no defect in the constitution of the suit. The object of Order 30, Rule 2, Civil "Procedure Code is to let the defendant know who the members of the firm are. Such a disclosure is not tantamount to addition of parties.

Furthermore, Section 22 of the Limitation Act, is not mentioned in Order 30, Rule 2, as it is mentioned in Order 1, Rule 10 of the Civil Procedure Code. In the absence of any reference to Section 22 of the Limitation Act in Order 30, Rule 2, C. P. C., it would not be proper to apply it to the disclosure of names. Amir Ali, J., does not apply Section 22 of the Limitation Act to the first declaration of the names of partners. But a subsequent declaration, he treats as being equivalent to addition of parties. What if the first

declaration of names was beyond the period of limitation?

If the Limitation Act does not apply to the first declaration, I fail to see how it is made applicable to a subsequent disclosure of names. As I have said already, the addition of names and disclosures of names are two separate things and as there is no reference to Section 22 of the Limitation Act, it does not seem proper to import it in the construction of Order 30, Rule 2, Civil Procedure Code. The marginal note of Section .22 of the Limitation Act is "Effect of substituting or adding new plaintiff or defendant." The disclosure of name under Order 30, Rule 2 C. P. C., is neither substitution nor addition of parties and it is obvious that Section 22 of the Limitation Act would not apply.

I feel fortified in my view by a decision given in M.A.R. and Co., Marayya Chetti v. Sami Chetti AIR 1916 Mad 649, which followed Kasturchand Bahiravdas v. Sagarmal Shriram ILR 17 Bom 413 and Vadilal Lallubhai v. Shan Khushal Dalpatram ILR 27 Bom 157 .

For reason stated above, I set aside the order of dismissal of the suit and remit it to the trial Court to proceed further with it according to law. Parties to bear their own costs.

H.R. Krishnan, J.

I agree.