

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**WRIT PETITION NO. 7531 OF 2019**

M/s Columbia Hospital & Research Centre Pvt. Ltd., HYATT Medicare, N.B. Marg, Near Get Well Hospital, Nagpur through its Director Dr. Praveen Madhukar Gantewar, age – 46 years, R/o 503, Fortune, Residency, Plot No. 96, 96-A, Farmland Ramdaspath, Nagpur.

**Petitioner**

**Versus**

1. M/s Maharashtra Industries  
A Registered Partnership Firm Bearing No. 907 of 1978-79, Through its Partners  
(i) Shri. Kailashchandra Jankilal Bundiwal, Aged about 62 years, and  
(ii) Shri. Mohanlal Balmukund Bundiwal, Resident of 1<sup>st</sup> Floor, Gupta Building, Near Kasturba Library, Sadar, Nagpur
2. Ashok Jagdishchandra Bundiwal,  
Aged 55 years, Occ : Business,  
R/o Swastik Metals, Plot No. 4/B, Sector – C, Manideep, Raisen, Madhya Pradesh – 462040
3. Sanjay Jagdishchandra Bundiwal,  
Aged about 52 years, Occ : Business,  
R/o Swastik Engineering, Pandit Malviya Road, Near Shani Mandir, Sitabuldi, Nagpur – 440012
4. Madhubala D/o Jagdishchandra Bundiwal @ Madhubala Soni,  
Aged 62 years, Occ : Household,  
R/o Flat No. 301, S.P. Apartment, Near Jagat Public School, Wathoda, Nagpur

**Respondents**

5. Ajay Jagdishchandra Bundiwal  
Aged 54 years, Occ : Business

6. Vijay Jagdishchandra Bundiwal,  
Aged 55 years, Occ : Business,  
Both Resp. No.5 & 6 are R/o 303, Shiv Gaurav  
Apartment, Bhagwaghar Layout, Dharampeth,  
Nagpur - 440010

**Respondents**

Mr. J.T. Gilda, Senior Advocate & Mr. A.B. Patil, Advocate for  
petitioner

Mr. R.M. Sharma, Advocate for respondent No.1

**CORAM :** MANISH PITALE, J.

**RESERVED ON:** 04/05/2022

**PRONOUNCED ON:** 06 /06/2022

**JUDGMENT**

The original defendant No.9 is the petitioner before this Court, challenging concurrent orders passed by the two Courts below. The respondent No.1 is the original plaintiff while respondent Nos. 2 to 6 are the original defendant Nos. 2 to 6 before the Courts below.

2. The respondent No.1 filed a suit for declaration, perpetual and mandatory injunction under Section 33 of the Maharashtra

Rent Control Act, 1999, before the Small Causes Court at Nagpur, against the original defendant Nos.1 to 8. Thereafter, the defendant No.9 i.e. the present petitioner was added as a party to the aforesaid suit. The said suit was filed on 21/05/2009, wherein it was stated that the respondent No.1 i.e. M/s Maharashtra Industries was a registered partnership firm in which Kailashchandra Jankilal Bundiwal and Mohanlal Balmukund Bundiwal, were partners. The plaintiff firm was stated to be a registered partnership firm bearing registration No. 907 of 1978-79. The plaintiff firm claimed that the suit property in its possession was wrongly and illegally taken over by the original defendant Nos.1 and 2 in the intervening night of 14/05/2009 and 15/05/2009. It was submitted that the said act was carried out by the said defendants with the help of anti-social elements, which necessitated filing of the aforesaid suit.

3. On the basis of such claims, the plaintiff firm sought a declaration that the aforesaid act of taking forcible possession by original defendant Nos.1 and 2 was illegal, with a further declaration that the plaintiff firm was entitled to enter into the

suit premises to carry on its business, requiring a direction to the defendants to restore possession of the suit property i.e. tenanted plot admeasuring 2178 sq.ft. to the plaintiff firm. A further declaration was sought to the effect that the defendants ought not to disturb the possession of the plaintiff over the suit property, without following due process of law.

4. As the suit property was purchased by the petitioner i.e. the original defendant No.9 on 23/06/2015, the petitioner was added as a party to the suit and the plaint was amended to claim that the petitioner had illegally demolished an RCC structure admeasuring 809 sq.ft. existing on the suit property. A prayer was also made for restoring the said structure.

5. The original defendant Nos.1 and 2 filed their written statement to the aforesaid suit, denying the claims made in the plaint. It was specifically stated that the plaintiff firm stood dissolved by death of one of the partners, as the firm consisted of only two partners. It was stated that even in the records of the Registrar of Firms, the death of one of the partners of the firm

had been recorded and it was also recorded that, as a consequence, the firm stood dissolved on 17/12/2007. On this basis, it was stated that in the plaint it was wrongly claimed that the firm was continued and that it was re-registered on 14/05/2009. A question was raised as regards the maintainability of the suit in view of the said facts.

6. It was further contended that the possession of the suit property was willingly handed over by the surviving partner of the original firm in April, 2009 and that certain amount had also been paid in cash in that regard, thereby indicating that the theory of illegal dispossession in the intervening night of 14/05/2009 and 15/05/2009, was false and misleading. The said defendants denied the reliefs claimed on behalf of the plaintiff.

7. The petitioner also filed written statement in the aforesaid suit, upon being added as a party. In this written statement also, a specific ground was taken that the plaintiff firm stood dissolved and that it did not exist, thereby indicating that the

suit itself ought to fail on that ground. The petitioner also denied the reliefs claimed on behalf of the plaintiff and it was stated that the suit itself was vexatious and that it deserved to be dismissed.

8. The parties led evidence in support of their respective pleadings. The Small Causes Court took into consideration the pleadings, evidence and the material on record. By judgment and order dated 06/02/2018, the Small Causes Court partly decreed the suit. It was declared that the original defendant Nos.1 and 2 had illegally put their lock on the suit premises and that the plaintiff was entitled to open the lock and to enter the suit premises to carry on its business. The defendants were directed to restore the possession of the tenanted suit property to the plaintiff admeasuring 2178 sq.ft. The defendants were further directed not to disturb the possession of the plaintiff over the suit premises, without following due process of law.

9. Aggrieved by the aforesaid judgment and decree passed by the Small Causes Court, the petitioner filed appeal before the

District Court. The petitioner specifically raised grounds pertaining to maintainability of the suit and contended that the findings rendered by the Small Causes Court on the aforesaid issue were unsustainable. Grounds were also raised on the merits of the matter.

10. By judgment and order dated 13/08/2019, the Court of District Judge-10, Nagpur (Appellate Court) dismissed the appeal and confirmed the decree passed by the Small Causes Court. The original defendant Nos.1, 2 and 9 (petitioner herein) were directed to restore possession in favour of the plaintiff within eight weeks and the original defendants were further restrained from disturbing possession of the plaintiff over the suit property upon restoration, without following due process of law.

11. Aggrieved by the said judgments and orders passed by the two Courts below, the petitioner filed the present writ petition. On 26/11/2019, a statement was made on behalf of respondent No.1 that the Execution Petition would not be pressed. The said

statement was continued during pendency of the Writ Petition. On 22/01/2020, this Court granted Rule in the petition, calling for the record and proceedings. In the meanwhile, interim stay was granted in favour of the petitioner. The parties were given opportunity to mention the petition for final hearing upon the record being received. Thereafter, the petition was taken up for final hearing.

12. Mr. J.T. Gilda, learned Senior Counsel appearing for the petitioner submitted that both the Courts below erred in rendering findings on the question of maintainability of the suit. It was submitted that the suit was filed on behalf of a dissolved firm, which was impermissible under Section 69 of the Partnership Act, 1932. It was submitted that the objection regarding maintainability of the suit was raised at the outset in the written statements filed on behalf of the original defendants and yet, the proceedings continued with the plaintiff being the dissolved firm. It was submitted that the aforesaid substantial defect in the suit was brought out by placing on record documents from the office of the Registrar of Firms and the

witness for respondent No.1 i.e. original plaintiff being cross-examined on the basis of the same. Despite such material available on record, the Courts below wrongly held that the suit was maintainable.

13. Attention of this Court was invited to pleadings in the plaint, the written statements and the documents on record, as also statements made by the witness for the respondent No.1 in cross-examination. The learned Senior Counsel submitted that when the suit itself was fundamentally defective, it could not have been entertained by the Small Causes Court under the provisions of the Maharashtra Rent Control Act, 1999. On this basis, it was submitted that the decree passed in favour of respondent No.1 deserved to be set aside.

14. On this aspect of the matter, the learned Senior Counsel placed reliance on the judgments of the Hon'ble Supreme Court in the cases of **Commissioner of Income Tax M.P., Nagpur and Bhandara, Nagpur Vs. Seth Govindram Sugar Mills, AIR 1966 SC 24; S.P. Misra and others Vs. Mohd. Laiquddin Khan and**

another (2019) 10 SCC 329 and judgments of this Court in the cases of **Bhagwanji Morarji Goculdas Vs. Alembic Chemical Works Co. Ltd. And others AIR 1943 BOM 385; Gandhi and Co. Vs. Krishna Glass Pvt. Ltd. 1987 Mh.L.J. 885 and M.B. Development Corporation Vs. Manilal Patel and Co. 2001(3) Mh.L.J. 685.**

15. The learned Senior Counsel further submitted that without prejudice to the aforesaid contention raised on behalf of the petitioner that the suit itself was not maintainable, it was the case of the petitioner that when possession as a tenant was claimed on the basis of an agreement dated 01/07/1978, the Courts below could not have granted the decree in favour of respondent No.1 for an area beyond what was specifically given on rent as per the aforesaid agreement. It was submitted that as per the said agreement only two rooms and one hall were given in tenancy, which covered an area of only about 809 sq.ft. Hence, the Courts below clearly erred in granting decree in respect of the entire plot admeasuring 2178 sq.ft. Attention of this Court was invited to admissions given in cross-examination

by the witness for respondent No.1, in support of the aforesaid contention. On this basis, it was submitted that even if the decree was to be confirmed, it ought to be restricted only to an area of about 809 sq.ft., which was the subject matter of the tenancy agreement dated 01/07/1978.

16. On the other hand, Mr. R.M. Sharma, learned counsel appearing for the contesting respondent No.1 i.e. original plaintiff submitted that the two Courts below had concurrently found that the suit was maintainable. It was submitted that in the plaint itself, candid statements were made as regards the death of one of the partners of the firm in December, 2007 and the manner in which the new partner was inducted, resulting in re-registration of the firm. It was submitted that no facts were suppressed and there was no question of the Courts below being misled by the respondent No.1. It was further submitted that the prohibition under Section 69(2) of the Partnership Act, 1932, was not absolute and that the case of the respondent No.1 fell in Section 69(3)(a), as the prohibition under Section 69 (1) and (2) does not apply to a dissolved firm.

17. It was submitted that at least one of the partners i.e. Mohanlal Balmukund Bundiwal was a partner in the earlier firm, which stood dissolved and the subsequent firm of the same name registered on 14/05/2009. Much emphasis was placed on the judgments, which state that a partnership firm is only a compendious way of describing partners of the firm and that when such a suit is filed, it is the partners, who are seeking relief because occupation of property by a firm is occupation by its partners. It was further submitted that at worst, the present case could be said to be a case of misdescription of the plaintiff, which was a minor defect, not going to the root of the matter. On this basis, it was submitted that the Courts below had correctly applied the position of law laid down by this Court and the Hon'ble Supreme Court to hold that the suit filed by the respondent No.1 was maintainable.

18. In support of the aforesaid contention, the learned counsel placed reliance of the judgments of the Hon'ble Supreme Court in the cases of **Purshootam Co. Vs. Manilal & Sons, AIR 1961**

SC 325, Amar Nath Agarwalla VS. Dhillon Transport Agency (2007) 4 SCC 306; V. Subramaniam Vs. Rajesh Raghuvendra Rao (2009) 5 SCC 608; M/s Ganesh Trading Co. Vs. Moji Ram, (1978) 2 SCC 91 and Bhupesh Rathod Vs. Dayashankar Prasad Chaurasiya 2021 SCC Online SC 1031 and judgments of this Court in the case of Bhagwanji Morarji Gokuldas Vs. Almbic Chemical AIR 1943 Bom 385; Appaya Nijlingappa Vs. Subrao Babaji Teli, 1938 Indian Law Reporter 102; Shiv Developers Vs. Aksharay Developers 2022 SC Online 114; Guruprasad and etc. Vs. Additional District Magistrate, Nagpur and others AIR 1986 BOM 288 and judgment of Nagpur High Court in the case of Agrawal Jorawarmal Vs. Kasam and another AIR 1937 Nag 314.

19. As regards the contention of the petitioner that the decree ought to be restricted to only about 809 sq.ft. and not the entire area of 2178 sq.ft., it was submitted on behalf of respondent No.1 that the said contention was not based on pleadings and material on record and that it deserved to be rejected at the outset. It was submitted that the two Courts below had

concurrently found on merits in favour of respondent No.1 and that, therefore, no interference was warranted in the decree passed in favour of the said respondent.

20. Heard learned counsel for the rival parties and perused the material on record. The first contention raised on behalf of the petitioner goes to the very root of the matter and strikes at the very maintainability of the suit filed by respondent No.1 before the Small Causes Court. The said contention is based upon the material on record indicating that the suit was filed by the plaintiff firm, which stood dissolved by death of one of the partners on 17/12/2007. It was submitted that once the said suit stood dissolved by operation of Section 42(c) of the Partnership Act, 1932, there was no question of a new partner being inducted in the said firm. The firm of the same name which was registered subsequently on 14/05/2009, was indeed a new independent entity.

21. In order to appreciate the aforesaid contention raised on behalf of the petitioner, it would be necessary to peruse the

documents, pleadings, evidence and material available on record. A perusal of the plaint shows that the suit was filed by the partnership firm “M/s Maharashtra Industries”, having registration No. 907 of 1978-79. Relevant extract of the register from the office of the Registrar of Firms at Exh.65 shows that the said firm bearing the aforesaid registration number was entered in the register on 06/03/1979, wherein two partners were shown as Mohanlal Balmukund Bundiwal and Smt. Manorama Devi W/o Jagdishchandra Bundiwal. Entry dated 18/04/1992 shows that the aforesaid Manorama Devi w/o Jagdishchandra Bundiwal, retired from the firm on 31/03/1990 and Chandrashekhar Jankilal Bundiwal joined as a partner on the same day. Thereafter, entry dated 29/04/2009, shows that Chandrashekhar Jankilal Bundiwal retired due to his death on 17/12/2007 and that the firm stood dissolved on 17/12/2007. This was obviously by operation of the statute i.e. Section 42 (c) of the Partnership Act.

22. The learned Senior Counsel appearing for the petitioner was justified in relying upon judgment of the Supreme Court in

the case of **Commissioner of Income Tax Vs. Seth Govindram Sugar Mills** (supra), wherein it was held that when there are only two partners in a partnership firm, death of one of the partners leads to dissolution of the firm and since there is no partnership in existence, no new partner can be inducted in the same. The same view was reiterated by the Supreme Court in the case of **S.P. Misra Vs. Mohd. Laiquddin Khan** (supra), wherein after referring to Section 42(c) of the Partnership Act, 1932, it was held that when there are only two partners in a partnership firm, upon the death of one of the partners, the firm stands dissolved. Thus, the entry made in the register of firms maintained by the Registrar of Firms about dissolution of the partnership firm i.e. M/s Maharashtra Industries having registration No. 907 of 1978-79, upon the death of one of the partners on 17/12/2007, was in accordance with the aforesaid position of law. The learned counsel appearing for the respondent No.1 could not dispute the aforesaid position.

23. In this regard, a perusal of Exh.74, which is the extract of the register of firms maintained by the Registrar of Firms,

Nagpur, shows that the partnership firm “Maharashtra Industries” bearing registration No. NGP-11069/2009-10, was registered on 14/05/2009, wherein Mohanlal Balmukund Bundiwal and Kailashchandra Jankilal Bundiwal were partners, with the duration of the firm being at will. This partnership firm was indeed a new, separate and independent entity, which came into existence as per the aforesaid entries made in the register of firms, showing the registration number of the said firm as NGP-11069/2009-10. The statutory scheme under the Partnership Act, 1932 and the position of law laid down by the Supreme Court in this regard clearly show that it was wrongly claimed in the plaint that the plaintiff firm underwent a change when one of the partners died on 17/12/2007 and Kailashchandra Jankilal Bundiwal stood inducted as a partner, with the firm being re-registered on 14/05/2009. There was no question of said Kailashchandra Jankilal Bundiwal being inducted as a partner in the partnership firm “M/s Maharashtra Industries” bearing registration No. 907 of 1978-79 and the same firm being re-registered on 14/05/2009. In fact, the

plaintiff firm bearing registration No. 907 of 1978-79, stood dissolved on 17/12/2007 itself.

24. In this context, it becomes necessary to now have a look at the pleadings in the plaint as well as the written statements filed on behalf of the original defendants. A perusal of the plaint shows that the plaintiff is stated to be a registered partnership firm “Maharashtra Industries”, bearing registration No. 907 of 1978-79. In the plaint, at various places, the plaintiff is shown as the “plaintiff firm”. In paragraph No.7 of the plaint it is stated that one of the partners of the plaintiff firm i.e. Chandrashekhar Jankilal Bundiwal died on 17/12/2007 and that in his place his younger brother Kailashchandra Jankilal Bundiwal was inducted as a partner in the plaintiff firm on or about 10/02/2009. Thereafter, it was stated that Mohanlal Balmukund Bundiwal and Kailashchandra Jankilal Bundiwal were running the business of the said firm till date and that while the original registration number was 907 of 1978-79, subsequently it was given fresh registration No. NGP-11069/2009-10.

25. As noted above, there was no question of the dissolved plaintiff firm inducting Kailashchandra Jankilal Bundiwal as a partner and carrying on business with the original registration being given a fresh registration number. Such a procedure is not contemplated under the provisions of the Partnership Act, 1932 and the aforementioned position of law clarified by the Supreme Court. It is significant that the original defendant Nos. 1 and 2 had specifically stated in their written statements that the old partnership firm had dissolved and that a new partnership firm had come into existence bearing registration No.NGP-11069/2009-10. This was specifically stated in response to the contents of the aforesaid paragraph No. 7 of the plaint. The petitioner i.e. the original defendant No.9, on being added as a party to the aforesaid suit, filed its written statement and specifically stated that with the death of Chandrashekhar Jankilal Bundiwal, the partnership firm M/s Maharashtra Industries bearing registration No. 907 of 1978-79, stood dissolved and ceased to exist, while a new and different firm came into existence bearing registration No. NGP-

11069/2009-10. Such objections were specifically raised and it was specifically pleaded on behalf of the petitioner that on the aforesaid ground, the plaintiff firm was not entitled to any relief and that the litigation was vexatious because the plaintiff firm had no right to file or continue the suit.

26. A perusal of the evidence on record shows that the witness for the respondent No.1 i.e. the original plaintiff was specifically cross-examined on the documents pertaining to the register of firms maintained by the Registrar of Firms. In cross-examination, witness for respondent No.1 specifically admitted that the contents of the aforesaid Exh.65 i.e. the extract of the register of firm recording that the partnership firm M/s Maharashtra Industries bearing registration No. 907 of 1978-79 stood dissolved on 17/12/2007, were true and correct. The said witness conceded that the written tenancy agreement dated 01/07/1978, was in his possession and that he would produce the same. He also admitted that apart from the aforesaid agreement, there was no other agreement in existence. The said witness further admitted that it was not true to say that the firm

which stood dissolved in the year 2007 and the firm which was formed on 14/05/2009, was the same. It was even conceded that after the death of Chandrashekhar Jankilal Bundiwal, witness i.e. Mohanlal had not entered into an agreement for continuing the old firm with the legal heirs of deceased Chandrashekhar Jankilal Bundiwal. It was further conceded that there was no bank account of the new partnership firm and that the bank account of the earlier partnership firm was closed.

27. This Court has referred to the aforesaid portion of the evidence and admissions given by the witness for respondent No.1, for the reason that the said material clearly discloses that in the pleadings as well as during the course of cross-examination, the petitioner and the other defendants laid emphasis on the fact that the plaintiff firm was dissolved, which hit at the very maintainability of the suit. Yet, at no stage did the respondent No.1 take any effort to make amends as regards the aforesaid fundamental defect in filing of the suit. In this regard, reliance placed on the judgment of this Court in the case of **M.B. Development Corporation Vs. Manilal Patel** (supra) on

behalf of the petitioners is appropriate. In the said judgment, this Court found that the suit filed in the name of the firm, which was already dissolved before institution of the suit, cannot be said to be a formal defect and that it is unquestionably a substantial defect. It is specifically held in the said judgment that such a suit is not maintainable in law and it ought to be dismissed at the threshold by the Courts. In fact, this Court went on to hold that even liberty to file a fresh suit could not be granted to the plaintiff because no suit could be filed and maintained by a firm already dissolved. It is significant that in paragraph 6 of the said judgment, this Court recorded that the partners of the respondent therein i.e. the erstwhile firm, which stood already dissolved, had instituted a fresh suit. It was directed that the said suit would be decided in accordance with law.

28. Thus, it becomes clear that the defect in the present case was fundamental and substantial as the respondent firm already stood dissolved on 17/12/2007, while the suit was filed on 21/05/2009. The contentions raised on behalf of the respondent

No.1 cannot be accepted that the defect was minor and that it was only a misdescription of the plaintiff. The pleadings, documents, evidence and other material on record clearly show that the suit filed by the dissolved plaintiff firm i.e. respondent no.1 herein was fundamentally defective.

29. At this stage, it becomes necessary to refer to the judgments relied upon by the rival parties. It is also necessary to refer to Section 69 of the Indian Partnership Act, which reads as follows :

“69. Effect of non-registration.— (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) 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.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,—

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm,

or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) This section shall not apply,—

(a) to firms or to partners in firms which have no place of business in <sup>8</sup> [the territories to which this Act extends], or whose places of business in <sup>9</sup> [the said territories], are situated in areas to which, by notification under <sup>10</sup> [section 56], this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.”

30. The aforesaid provision indicates that under Section 69(2) of the Partnership Act, no suit can be filed by a firm unless it is registered and the names of the persons suing are shown in the register of firms as partners of the firm. Under Section 69(3)(a) of the Partnership Act, an exception is carved out to the said prohibition, to the extent that the right to sue for dissolution of

a firm or accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, would remain intact. The said provision has come up for consideration in the context of dissolved firms. In the case of **Bhagwanji Morarji Goculdas Vs. Alembic Chemical Works Co. Ltd.** (supra), which has been referred to by the learned counsel appearing for the rival parties, it has laid down that even if a right is invoked in respect of a property of a firm which has been dissolved and which was not even registered, a suit by partners of the dissolved firm for realising the property of such a dissolved firm could be maintained. It is crucial that the plaintiff in the said case was a partner of a dissolved firm and not the dissolved firm itself.

31. In the case of **Gandhi and Co. Vs. Krishna Glass Pvt. Ltd.**, a Division Bench of this Court considered the effect of Section 69(2) of the Indian Partnership Act, 1932. It was found that a suit wherein the plaintiff was a registered firm but the name of one of the partners was not recorded with the Registrar of Firms as a partner on the date of filing of the suit would attract the bar under the aforesaid provision, notwithstanding the fact that the

name of such a partner was recorded in the register subsequent to filing of the suit. In the present case, as found hereinabove, the plaintiff firm was a dissolved firm and, therefore, there was no question of the names of the partners stated in the plaint being recorded as partners of the firm in the register of firms.

32. It is necessary to deal with the judgments on which the learned counsel for respondent No.1 has placed much reliance. It is claimed that the said judgments indicate that notwithstanding dissolution of the firm, a suit could be maintained by a dissolved firm, since a partnership firm is nothing but a compendious way of describing the partners and that the right in the property of the firm really vests in the partners. But, a perusal of the judgments in the cases of **Agrawal Jorawarmal Vs. Kasam; Bhagwanji Morarji Goculdas Vs. Alembic Chemical and Appaya Nijlingappa Vs. Subrao Babaji Teli** (supra), shows that these were cases where the suits were filed by partners of a dissolved firm. It is in such factual matrix that the Courts held that such suits were maintainable as Section 69(3)(a) of the Indian Partnership Act, 1932, would come into

operation only when a partner of a dissolved firm files a suit. None of these judgments come to the aid of the respondent No.1 as the suit in the present case was filed by the respondent No.1, which was a dissolved firm.

33. Reliance was placed on the judgment of the Supreme Court in the case of **Amar Nath Agarwalla VS. Dhillon Transport Agency** (supra) to contend that since one of the partners i.e. Mohanlal Balmukund Bundiwal was a partner in the dissolved firm as well as the subsequent firm, the suit was maintainable. But, a perusal of the said judgment of the Supreme Court would show that it considered a controversy of subletting of premises by a partnership firm, in a situation where one of the partners of the original firm was partner in the new firm. In such peculiar circumstances, it was held that a case of subletting was not made out, but, the said controversy had nothing to do with the question about fundamental defect in the suit filed by the respondent that arises in the facts and circumstances of the present case. The material on record shows that in the present case, the suit was filed by a dissolved firm and

not by the new partnership firm that came into being and was registered on 14/05/2009. The suit was not filed by a partner of a dissolved firm. On this ground, the aforesaid judgments relied upon, on behalf of the respondent No.1, are clearly distinguishable.

34. The judgment in the case of **Guruprasad Vs. Additional District Magistrate, Nagpur** (supra) is also distinguishable, because it was rendered in the context of a proprietary concern, wherein the proprietor was held to be a tenant in his personal capacity. The said judgment cannot come to the aid of the respondent No.1, to hold that a dissolved firm can file a suit. Similarly, judgment in the case of **M/s Ganesh Trading Co. Vs. Moji Ram** (supra), is distinguishable, for the reason that it concerned the question of application for amendment moved by the plaintiff to cure the defect of the original suit being filed by a dissolved firm. The judgment is more on the question of the power of amendment being exercised by Courts. As noted above, in the present case, no such attempt was ever made on behalf of the respondent No.1, despite the fact that the aforesaid

objection about the plaintiff firm being a dissolved firm was raised at the outset in the written statements filed on behalf of the original defendants as well as the petitioner i.e. defendant No.9. The defect in the present case was fundamental as also substantial, going to the very root of the matter, hitting at the very maintainability of the suit filed by respondent No.1, which the two Courts below failed to appreciate in the correct perspective.

35. Similarly, the judgment in the case of **Purshootam Co. Vs. Manilal & Sons** (supra), rendered by the Supreme Court is distinguishable, because the said case concerned a situation where the plaintiff firm was doing business outside India and it had five partners. An amendment application was moved to strike out name of the firm as plaintiff and to state the names of five partners. In the facts of the said case, the Supreme Court held that there was a misdescription, which was capable of amendment and that it was not a case where the plaint had been filed by a non-existing person and therefore, a nullity. In the present case, the respondent No.1 / plaintiff firm was a dissolved

firm and hence, a non-existent entity, which the two Courts below completely failed to appreciate.

36. Reliance placed on the judgment of the Supreme Court in the case of **Shiv Developers Vs. Aksharay Developers** (supra), is also misplaced for the reason that in the present case the plaintiff firm / respondent No.1 i.e. a dissolved firm filed the suit on the basis of a tenancy agreement i.e. a contract and not for enforcement of a statutory or common law right. Therefore, bar under Section 69(2) of the Partnership Act would certainly come into play in the facts and circumstances of the present case. In any event, Section 69(3)(a) of the Indian Partnership Act, 1932, would come into operation when a suit is filed by a partner of a dissolved firm, concerning enforcement of a right for accounts of the dissolved firm or any right or power to realize the property of a dissolved firm.

37. The judgment of the Supreme Court in the case of **V. Subramaniam Vs. Rajesh Raghuvendra Rao** (supra) concerned challenge to constitutional validity of Section 69(2A)

introduced in the Indian Partnership Act, 1932, as the Maharashtra Amendment. The Supreme Court held that the said Section violated Articles 14, 19(1)(g) and 300-A and hence, it was declared *ultra vires*. The said controversy has nothing to do with the question that arises for consideration in the present petition. Therefore, it becomes clear that the two Courts below erred in holding that the suit filed by respondent No.1 i.e. a dissolved partnership firm was maintainable.

38. In fact, a perusal of the judgment of the Small Causes Court would show that an issue was indeed framed as regards the maintainability of the suit, but, after discussion on the said aspect, the Small Causes Court proceeded on the basis that although the Registrar of firms did record that the partnership firm bearing registration No. 907 of 1978-79, stood dissolved on 17/12/2007, it was a partnership firm dated 10/02/2009, named “Maharashtra Industries” that came into existence and it was in existence at the time of filing of the suit. The relevant findings read as follows:

“32) Considering the recital of above documents, it is seen that the partnership was at will. It will not dissolve

for the reason of death or retirement of partners. There is no dissolution deed between the parties in respect of partnership dated 1.7.1978 or 1.4.1990. Though Register of Firm (Exh.65) shows that firm No. 907 of 1978-79 is dissolved on 17/12/2007, as *supra dictus*, there was a partnership firm dated 10.02.2009 in the name of Maharashtra Industries. Hence, the partnership firm was in existence at the time of filing of suit. It has come in cross-examination of Sanjay (DW 1) that, Jagdishchandra Bundiwal had inducted the Maharashtra Industries as a tenant and the machineries of plaintiffs are lying in the suit premises even till the date of execution of sale deed in favour of defendant No.9. Therefore, though the suit is filed in the name of Maharashtra Industries, registered partnership firm No. 907 of 1978-79, it does not affect the status of partnership firm Maharashtra Industries. Because of new number is given, it cannot be said that partnership firm Maharashtra Industries was not in existence.”

39. This Court is of the opinion that the aforesaid finding is unsustainable and not in tune with the provisions of the Indian Partnership Act, 1932, and the law laid down by this Court and the Supreme Court in the aforementioned judgments.

40. The Appellate Court did not even frame a point as regards the maintainability of the suit, thereby indicating the grave error in its approach. Yet, there is some discussion in the judgment of the Appellate Court as regards the dissolution of the firm on 17/12/2007, but, it has been erroneously held that the same did

not matter since Mohanlal Balmukund Bundiwal was one of the partners in the new firm and he could be said to have continued in possession of the suit property. Such an approach is wholly unsustainable. Thus, it is found that the two Courts below concurrently erred in holding that the suit filed by the respondent No.1 i.e. the dissolved partnership firm was maintainable.

41. On the second contention raised on behalf of the petitioner, without prejudice to the aforesaid contention pertaining to maintainability of the suit, it is found that the witness for respondent No.1 i.e. Mohanlal Balmukund Bundiwal himself in cross-examination conceded that tenancy agreement dated 01/07/1978 at Exh.188 was the only agreement and that there was no other agreement. Thus, the claim to possession under the said tenancy agreement could be only to the extent of the area of the property subject matter of the said agreement i.e. about 809 sq.ft. Hence, it becomes obvious that the decree could not have been passed for the entire area of the plot i.e. 2178 sq.ft. in favour of respondent

No.1. This was also completely missed by the two Courts below while granting the decree in favour of respondent No.1.

42. In any case, even if findings on the second contention raised on behalf of the petitioner would lead to a decree restricted to the said area of only 809 sq.ft., in view of the fact that this Court has found hereinabove that the suit filed by the respondent No.1 i.e. a dissolved firm was not maintainable, it must lead to setting aside of the entire decree. The two Courts below completely erred on the aforesaid issue of maintainability of the suit, thereby rendering the decree passed in favour of respondent No.1 wholly unsustainable and liable to be set aside.

43. Accordingly, the Writ Petition is allowed. The impugned judgments and orders passed by the Small Causes Court and Appellate Court are quashed and set aside.

44. The suit filed by respondent No.1 is held to be not maintainable and accordingly, it is dismissed.

45. There shall be no order as to costs.

Rule is made absolute in above terms.

**JUDGE**