1949 *Present:* **Nagalingam J. and Gratiaen J.**

RAHIMAN, Appellant, *and* PITCHAI KAGOO, Respondent

S. C. 71—D. C. (Inty.) Colombo, 18,597

Partnership—Action filed against partners subsequent to dissoution of partnership—Service of summons on past Manager—Is it valid ?—Civil Procedure Code, Section 64.

In regard to service of summons on the Manager of a partnership business, it must be shown (1) that the cause of action is one in respect of the partnership business, (2) that the defendants were partners of such business at the date of the cause of action, (3) that at the date of institution of the action the partnership business was yet in subsistence, (4) that at the date of service of summons also the partnership continued to exist, (5) that the person on whom summons is served was at the date of the service of summons the Manager of such business, and (6) that where there is more than one place of business of the partnership, such person was Manager at the principal place of such business. If any one or more of these requirements is not satisfied, then the service of summons cannot be regarded as one binding on the partners so as to make the judgment valid and effectual as against them.

APPEAL from a judgment of the District Court, Colombo.

C. Renganathan, for the 1st defendant appellant.

H. W. Tambiah, for the plaintiff respondent.

Cur. adv. vult.

November 30, 1949. NAGALINGAM J.—

The question that arises for decision on this appeal is whether service of summons on a person who had been the manager of a partnership business since dissolved is a good and proper service so as to bind the erstwhile partners.

The undisputed facts are that the two defendants carried on business in partnership under the name, style and firm of Indian Cargo Boat Company. That partnership was dissolved on 15th September, 1947, as is evidenced by the deed of dissolution 1D1 of that date. The cause of action in respect of which this action was instituted was one which arose against the partnership business prior to the dissolution. With the dissolution of the partnership, the services of the Manager of the partnership business, it would follow, were also terminated, though, no doubt, one of the partners who carried on the business may have employed him as his Manager. Though the action, as stated earlier, arose against the defendants during the subsistence of the partnership, the action, however, was instituted on 23rd October, 1947, subsequent to the dissolution. Summons in this case was reported by the Fiscal to have been served on the Manager of the business. It is common ground that the person who was described by the Fiscal as the Manager had in fact been the manager of the partnership prior to its dissolution and that subsequent to the dissolution one of the partners, who took over the firm, name and assets of the business, employed him as his Manager.

It has been contended that the service of summons on the person who is described as the Manager is not a good service as against either defendant. The learned Judge has taken the view that as the cause of action had arisen anterior to the dissolution the service of summons on the person who was the Manager of the business at the date on which the cause of action arose was a valid service within the meaning of section 64 of the Civil Procedure Code.

Section 64, generally speaking, deals with the mode of service of summons on an agent of the defendant. The section in its first part refers to (1) an agent appointed under section 30 of the Code, that is to say, either a recognized agent or an agent especially appointed to accept service of summons, and (2) a Proctor holding a warrant or power of attorney. The section then proceeds to deal with the case of service of summons on partners and, adopting the well-known principle of Partnership Law that each partner is the agent of the other partner or partners in regard to any partnership transaction, enacts that service of summons on any one partner would be an adequate service of the summons on all the partners.

Finally, the section proceeds to set down the proposition that any person other than a partner " who has the management of the business of the partnership at the principal place of such business " is also an agent empowered to accept service of summons on behalf of the partners.

It will be seen that the doctrine of agency is the foundation to sustain the validity of the service of summons in each and everyone of this class of cases. It would therefore follow that, where the relationship of principal and agent has ceased to exist, it cannot be argued that service on an erstwhile agent is a proper service so as to bind the principal. If this principle is borne in mind, it would be obvious that with the dissolution of the partnership not only did each partner cease to be an agent for the other but also the manager of the partners had no further authority to act on behalf of the partners for, in fact, there were no partners at the date of the service of summons, the partnership having been dissolved prior to that date.

Counsel for the respondent contended that in regard to a partnership transaction service of summons on the Manager, though the partnership may have been dissolved, would be a good service. The fallacy of this argument becomes apparent when one has to consider the question as to whether service of summons on the dismissed Manager of a partnership business in regard, no doubt, to a transaction that took place during the time of the employment of the dismissed Manager, is a proper and valid service. Should the contention be upheld, judgment may be obtained against the partnership business without the partners themselves being aware of the institution of the proceedings ; but it is pointed out that the section requires that the summons should be served at the principal place of the business and that a dismissed Manager may not be found there. The answer to that argument is that when a partnership is dissolved there is not only no place of business but no principal place of business of the partnership at which summons could be served. I need only point out that the language of the section, which is in the present tense, and which reads: " who has the management of the business ", excludes the contention that any past manager is also one of the persons who is empowered to accept service of summons under the terms of the section.

In regard to service of summons on the Manager of a partnership business, it must be shown (1) that the cause of action is one in respect of the partnership business, (2) that the defendants were partners of such business at the date of the cause of action, (3) that at the date of institution of the action the partnership business was yet in subsistence, (4) that at the date of service of summons also the partnership continued to exist, (5) that the person on whom summons is served was at the date of the service of summons the Manager of such business, and (6) that where there is more than one place of business of the partnership, such person was Manager at the principal place of such business. If any one or more of these requirements is not satisfied, then the service of summons cannot be regarded as one binding on the defendants so as to make the judgment valid and effectual as against them.

Counsel for the respondent cited both English and Indian cases but the value to be attached to those judgments has been, if I may respectfully

say so, properly assessed in the case of *Mohamedo Cassim v. Periannan Chetty* [1]. I do not therefore propose to make any comments in regard to them.

For the reasons already given by me I would set aside the order appealed from and direct that summons be reissued for service on the defendants personally. The 1st defendant-appellant will have costs both of appeal and of the proceedings in the lower court.

GRATIAEN J.—I agree.

Order set aside.