1937 *Present* : **Hearne J. and Fernando A.J.**

MURUGAPPAH CHETTIAR *et al.* *v.* RAMANATHAN CHETTIAR

162—D. C. Colombo, 3,131.

Registration of business names—Erroneous statement in return—No default in furnishing particulars—Ordinance No. 6 of 1918, ss. 4 and 9.

Where the particulars contained in a return made under section 4 of the Registration of Business Names Ordinance are otherwise correctly set out, an erroneous statement with regard to the residence of a partner would not alone amount to a default within the meaning of section 9 of the Ordinance.

[1] *21 Bom. 784.* [2] *16 Law Rec. 75.*

[3] *26 N. L. R. 41.*

APPEAL from a judgment of the District Judge of Colombo.

C. Nagalingam, for defendant, appellant.

H. V. Perera, K.C. (with him *Aiyar*), for plaintiffs, respondents.

Cur. adv. vult.

July 30, 1937. HEARNE J.—

The plaintiffs who described themselves as Murugappa Chettiar son of Raman Chettiar and Murugappa Chettiar son of Adaikalam Chettiar, "carrying on business under the name, firm, and style of Moona Roona Rawenna Mana" sued the defendant in order to recover a sum of Rs. 11,134.63, and in my opinion the trial Judge was justified, on the evidence, in holding that this sum was due and that the claim was not prescribed.

It was pleaded by the defendant that the plaintiffs could not maintain their suit as "their business name had not been duly registered under the Business Names Registration Ordinance" and that the suit was not properly constituted "in that all the partners of the firm of 'M. R. R. M.' had not been joined as plaintiffs". Issues arising out of these pleadings were framed and the Judge decided them in favour of the plaintiffs.

Having regard to the facts which emerged in evidence it would appear that the defendant misconceived the issues. The name of the firm had been duly registered as "Moona Roona Rawenna Mana" and the only partners of the firm, as registered, are Murugappa Chettiar son of Raman Chettiar and one Murugappa Chettiar son of Adaikalam Chettiar, the same name and the same father's name as appear in the caption of the plaint except that Murugappa is preceded by the words, whatever they signify, "Kana Yayna Ana."

Now although the defendant's objections proceeded, as I have indicated, upon a misconception it has been decided by this Court that "if it comes to the notice of the Court that the provisions of the Ordinance (the Registration of Business Names Ordinance) had not been complied with, the Court should, *ex mero motu,* give effect to the terms of section 9 of the Ordinance". The trial Judge who was clearly aware of this decision considered the matter and held that there "was no proof that the person registered as 'Kana Yayna Ana Murugappa Chetty' and the person referred to in the plaint as 'Murugappa Chettiar' are not one and the same person". No question was put to the first plaintiff when he was in the witness box. It is true that the Judge was acting on his own knowledge of the customs of Chetties rather than on evidence when he says "it might be noted that Chetties even as individuals do take initials of their illustrious forbears", but it is clear that the most that can be said to have come to the notice of the Court is not that Murugappa Chettiar did not give his full name for purposes of registration, but that for the purpose of suing he used the name by which he was ordinarily known in business. In my opinion the Judge was right in not giving effect to the provisions of section 9 of the Ordinance.

Another objection under the same Ordinance was taken in what appears to me rather a disingenuous way. For the purpose of registration under

section 4 the plaintiffs had in 1926, given their usual residence as "Pudukotah State, India". When a witness of the plaintiffs was in the box the answer was elicited from him in cross-examination that the first plaintiff was from Ramnad and had never lived at Pudukotah. On the basis of this answer the Judge was invited to hold that the erroneous information given to the Registrar of Business Names amounted to a "default" which under section 9 disabled the plaintiffs from recovering in the suit they had brought. In my opinion, if the defendant desired that the Court should give effect to the terms of section 9 of the Ordinance, the first plaintiff who gave evidence should have been given the opportunity of explaining the discrepancy between the registered "residence" on the one hand and the evidence of one of his witnesses on the other. Merely to rely upon the answer of a witness who may have been misinformed and who may not have realized the implication of the matter, especially as no issue had been framed, falls short in my opinion of the necessary minimum of evidence or of "notice" on which a Court, following *Karuppen Chetty v. Harrisons & Crosfield, Ltd.*[1], would act.

Apart, however, from the facts which, in my opinion, determine this appeal, I would find it difficult to hold that where a firm delivers a statement in writing in the prescribed form containing the particulars required by section 4 of the Ordinance, and where those particulars set out faithfully the name of the business, its general nature, the names of the partners, and the place of business an erroneous statement in regard to the usual residence of a partner can be regarded as a "default in furnishing a statement of particulars" under section 9. Clearly the person who verifies the particulars by signing them is liable to the penalties prescribed by section 10 if the particular is "material" and false to the knowledge of the person who signs the particulars, but there has not been, in my opinion, default in the furnishing of a statement of particulars. It is possible to conceive of a statement of particulars being so erroneous and misleading as to amount to a "default" but a mis-statement in regard to the one particular of "usual residence" does not fall within the category of default contemplated by section 9.

In *O'Connor and Ould v. Ralston*[2] Lord Darling considered the question of the description of themselves by a firm of bookmakers as "accountants". He said that while "turf accountants" might pass as a synonym for "bookmakers", the expression "accountant" was a misdescription.

"As to whether" he went on to say "the plaintiffs by describing themselves as accountants made 'default' in furnishing a statement of particulars within the meaning of section 8, sub-section (1), of the Registration of Business Names Act, 1916, I incline to think that the word 'default' in the sub-section means not furnishing any particulars at all, and does not mean furnishing insufficient particulars. But I do not decide the point, because I base my decision in the present case upon another ground".

I would dismiss the appeal with costs.

FERNANDO A.J.—I agree.

Appeal dismissed.

[1] *24 N. L. R. 317.*

[2] *(1920) 3 K. B. 451.*