1960

October 7.

PURUSHOTTAM UMEDBHAI & CO.

v.

M/S. MANILAL AND SONS
(IN CONNECTED APPEALS)

(S. J. IMAM, A. K. SARKAR and RAGHUBAR DAYAL, JJ.)

Pleadings--Suit by foreign firm in firm name--Plaint, if a nullity--Application for amendment of plaint for substitution of names of partners instead of the name of the firm--Maintainability --Code of Civil Procedure, 1908 (Act V of 1908), s. 153--O. XXX rr. 1, 2--O. 1, rr. 10(1), 10(2).

Partnership--Power of Attorney--Partner if can execute power on behalf of all partners--Indian Partnership Act, 1932 (IX of 1932) ss. 4, 18 and 19(2).

The respondent a firm carrying on business in Singapore filed a plaint in the firm name against the appellants for the breach of contract. The plaint had been signed and verified on behalf of the firm by one 'D' on a power of attorney executed by one of the partners only. After about 6 years the respondents made an application for the amendment of the plaint. The amendment sought was to the effect that the name of the firm as plaintiff be struck off, as it was a misdescription and in its place and stead the names of five partners of the firm should be brought on record in order to bring the controversy between the proper parties into clear relief.

The amendment petition was rejected, inter alia, on the grounds that the original plaint was no plaint in law and it was not a case of misnomer or misdescription, nor a case of a non-existent firm or a non-existent person, but a legal bar, as the plaint was a nullity. The proper course when there is such a mistake is not to amend disregarding the condition of O. 1 r. 10 of the Code of Civil Procedure but to seek the Court's permission to withdraw the suit with liberty to file a fresh suit under O. 23 r. 1 of the Civil Procedure Code on the ground of formal defect and which should be done before limitation.

In appeal the High Court came to the conclusion that the description of a plaintiff by a firm name in a case where the Code of Civil Procedure does not permit a suit to be brought in the firm name should properly be considered a case of description of the individual partners of the business and as such a misdescription, which in law can be corrected and should not be considered to amount to a description of non-existent person.

It also rejected the contention that the power of attorney in favour of 'D' was insufficient.

Held, that the word "firm" or the "firm name" in s. 4 of the Indian Partnership Act is merely a compendious description of all the partners collectively. Where a suit is filed in the name of a firm it is still a suit by all the partners of the firm unless it is proved that all the partners had not authorised the suit.

The provision of O. XXX r. 1 & 2 of the Code of Civil Procedure are enabling provisions to permit several firms who are doing business as partners to sue or be sued in the name of the firm and do not prevent the partners of a firm from suing or being sued in their individual names, nor do they prohibit the partners of a firm suing in India in their names individually although they may be doing business outside India; since a firm is not a legal entity the privilege of suing in the name of a firm is permissible only to those persons, who as partners are doing business in India. Such privilege is not extended to persons who are doing business as partners outside India. In their case they still have to sue in their individual names. If however, under some misapprehension, persons doing business as partners outside India do file a plaint in the name of their firm they are misdescribing themselves, as the suit instituted is by them, they being known collectively as a firm.

A plaint filed in a court in India in the name of a firm doing business outside India is not by itself a nullity. It is a plaint by all the partners of the firm with a defective description of themselves for the purpose of the Code of Civil Procedure. A civil court could permit under provisions of s. 153 of the Code an amendment of the plaint to enable a proper description of the plaintiffs to appear in it in order to assist the court in determining the real question or issue between the parties. Neither r. 10(1) nor r. 10(2) of Order I have any application to a case of this kind, as the suit had been from its very inception a suit by the partners of the firm and no question of adding or substituting any person arises, the partners collectively being described as a firm with a particular name.

Held, further, that it is not necessary that the power of attorney should be signed by all the partners of the firm. A partner is an agent of the firm and there is no prohibition to a partner executing a power of attorney in favour of an individual authorising him to institute a suit on behalf of the firm.

Vyankatesh Oil Mill Co. v. *Velamahomed*, A.I.R. 1928 Bom. 191, disapproved.

Amulakchand Mewaram v. *Babulal Kanalal*, A.I.R. 1933 Bom. 304, *Sadler* v. *Whiteman*, [1910] 1 K.B. 868, *Mura Mohideen* v. *V. O. A. Mohomed*, A.I.R. 1955 Mad. 294 and *Kasturchand Bahiravdas* v. *Sagarmal Shriram*, (1892) I.L.R. 17 Bom. 413, discussed.

Hajee Sattar Hajee Peer Mohomad v. *Khusiram Benarsilal*, I.L.R. [1952] 1 Cal. 153, referred to.

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CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 178 and 179 of 1960.

Appeals by Special Leave from the Judgment and Decree dated the 18th December, 1958, of the Calcutta High Court in Appeals from Original Orders Nos. 108 and 138 of 1957 respectively.

B. R. L. Iyengar for the Appellants (In both the appeals.)

N. C. Chatterjee and *D. N. Mukherjee* for the Respondents (In both the appeals).

1960. October 7. The Judgment of the Court was delivered by

Imam J.

IMAM J.—These are appeals by special leave against the order of a Division Bench of the Calcutta High Court dated December 18, 1958, setting aside the order of P. B. Mukherjea, J., dated February 8, 1957, whereby he rejected the petition of the respondent for amendment of the plaint, filed in Suit No. 1452 of 1951 in the High Court, in exercise of its Ordinary Original Civil jurisdiction.

The plaint in Suit No. 1452 of 1951 was filed in the name of Manilal & Sons, a firm carrying on business at No. 11A, Malacca Street, Singapore. The partners of this firm were five in number. They were (1) Manubhai Maganbhai Amin (2) Pravinbhai Dahyabhai Patel (3) Gangabhai Iswarbhai Patel (4) Bachubhai Manibhai Amin and (5) Dahyabhai Trikambhai. The defendant was the firm of Purushottam Umedbhai & Co. (now the appellant)—a firm registered under the Indian Partnership Act, 1932—carrying on business at No. 55 Canning Street, Calcutta. In July, 1949, there was a contract between the plaintiff and the defendant under which the defendant was to sell to the former, subject to certain conditions, 950 bales of Heavy Cees gunny bags c. i. f. Singapore to be shipped from Calcutta in August, 1949. It was also agreed between the plaintiff and the defendant in July-August, 1949, that the latter would sell, subject to certain conditions, 600 bales of Heavy Cees gunny bags c. i. f. Hong Kong to be shipped from Calcutta

in August, 1949. According to the plaintiff, the defendant did not perform the contract entered into by the parties and as a result of the default on the part of the defendant the plaintiff had suffered loss The plaintiff accordingly claimed compensation to the extent of Rs. 2,73,864 and Rs. 7,850 towards expenses incurred, in all Rs. 2,81,714. The breach of the contract is alleged to have taken place in October and November, 1949. The suit was instituted on April 2, 1951. The defendant's written statement was filed on or about May 21, 1951. The petition for amendment of the plaint was filed on January 31, 1957. The amendment sought was to the effect that the name of the firm Manilal & Sons as plaintiff be struck off and in its place and stead the names of the five persons who were the partners of the firm may be entered in the plaint as plaintiffs. The petitioner also sought the necessary consequential amendments in the body of the plaint. According to the petition praying for amendment, on January 29, 1957, the solicitors of the plaintiff reeeived a letter from the attorney of the defendant to the effect that inasmuch as the firm Manilal & Sons was carrying on business at Singapore, an objection would be taken on behalf of the defendant that the suit, as framed, was null and void and not maintainable. The suit had been pending in the court of P. B. Mukherjea, J., and appeared on the peremptory list, for the first time, on January 3, 1957. According to the petition, the petitioner was advised that as the misdescription of the plaintiff was a bona fide one, the names of the partners of the firm Manilal & Sons should be brought on to the record in order to bring the controversy between the proper parties into clear relief. Accordingly, the petitioner filed the petition for amendment.

On a Chamber Summons being taken out, Mukherjea, J., heard the matter and rejected the petition for amendment. He was of the opinion that the original plaint was no plaint in law and therefore was a mere nullity of a process. The proper course, when there is such a mistake, is not to amend, disregarding the conditions of O. I, r. 10 of the Civil Procedure Code,

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but to seek the Court's permission to withdraw the suit with liberty to file a fresh suit under O. XXIII, r. 1 of the Civil Procedure Code on the ground of formal defect and which should be done before limitation. In his opinion, it was not a case of misnomer or a misdescription. It was not a case of a non-existent firm or a non-existent person or of a wrong description but of a legal bar; and when a plaint is filed showing that the plantiff was not a legally recognised person at all such a plaint must be regarded as a nullity. He was also dissatisfied with the explanation given for filing the petition for amendment some six years after the institution of the suit.

In appeal, the Division Bench of the High Court came to the conclusion on a consideration of various decisions of the High Courts in India and the courts in England that "the description of a plaintiff by a firm name in a case where the Code of Civil Procedure does not permit a suit to be brought in the firm name should properly be considered a case of description of the individual partners of the business and as such a misdescription which in law can be corrected and should not be considered to amount to a description of a non-existent person". It also rejected the contention on behalf of the defendant that the Power of Attorney in favour of Dunderdale was insufficient. The contention had been that this Power of Attorney did not authorize Dunderdale to act on behalf of the the firm far less the individual members of the firm. The Division Bench accordingly allowed the amendment prayed for and permitted the names of the individual partners of the firm Manilal & Sons to be substituted as plantiffs in the place of Manilal & Sons. The individual partners were permitted either to sign the plaint themselves or through their constituted attorneys. The Division Bench allowed this amendment on the condition that all the costs of the appellant before us incurred upto the date of the judgment must be paid to it.

The Division Bench also allowed the appeal against the decree of P. B. Mukherjea, J., dismissing the suit, which it set aside. Appeal No. 179 of 1960 is by

special leave against the aforesaid order of the Division Bench.

It was urged on behalf of the appellants that (1) the plaint as filed was a nullity. The suit, therefore, was incompetent. To bring on the record the partners of the firm amounted to addition of new parties and if on the date these partners are added as parties and the period of limitation had elapsed then the entire suit would be time barred; (2) even if it be held that the plaint is not a nullity, neither the provisions of O. I, r. 10 nor those of O. VI, r. 17 have any application to the case; (3) having regard to the provisions of s. 45 of the Indian Contract Act a suit by only one partner or one promisee is bad to start with. There being within the period of limitation no suit by all the partners, any amendment, if allowed, would convert the old suit into a new suit and the new suit would be barred by limitation if the amedment was allowed on a date which was beyond the period of limitation prescribed for such a suit; (4) if the amendment was allowed it would be a case of adding or substituting new plaintiffs and as regards them it would be deemed to have been instituted when they were made parties. Reference to s. 22(1), Indian Limitation Act, was made in this connection. In the present case, so far as the new plaintiffs were concerned, the suit was barred by time at the date when they were sought to be made parties; (5) the circmstances of the case indicated that there was no suit in the eyes of the law, nor was the plaint verified or signed as required by law. Consequently, there was no proceeding before the court in which any amendment could be sought and (6) even if it was held that the plaint was not a nullity the plaint had been signed and verified on behalf of the firm Manilal & Sons by Dunderdale on a Power of Attorney executed by one of the partners only. It was therefore not manifest that all the partners intended to sue. Furthermore, the Power of Attorney executed in favour of Dunderdale by one of the partners could not be regarded as authorizing him to to act on behalf of the firm of Manilal & Sons.

Very great reliance was placed on the decision of

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Blackwell, J., in the case of *Vyankatesh Oil Mill Co.* v. *N. V. Velamahomed* (1) where the learned Judge held that the suit was brought by an entity which had no legal existence in the eyes of Indian law and there being no mode of procedure whereby such an entity was permitted to sue in India, the suit, as framed, was not maintainable at all. It followed therefore that the amendment asked for could not be treated as an amendment following upon a mere misdescription but must be treated as an application for the substitution of the individual persons who composed the entity which the law did not recognize. This view of Mr. Justice Blackwell was not accepted by Beaumont, C. J., in the case of *Amulakchand Mewaram* v. *Babulal Kanalal Taliwala* (2) where he expressed himself as follows:

"I must confess that I have some difficulty in following both the reasons and the conclusions of the learned Judge in that case. It was a case of a suit brought in the name of a firm carrying on business outside British India, and therefore not justified by the terms of O. 30, Civil P. C. and the learned Judge expressed the view that the plaintiff firm was a non-existent entity. But the order which he subsequently made giving leave to amend seems inconsistent with that finding."

He further held:

"But I do not see how O. 30 can affect the question of fact, whether a suit brought in the name of a firm in a case not within O. 30 is in fact a case of misdescription of existing persons, or a case of a suit brought by a non-existent entity."

In the case of *Hajee Sattar Hajee Peer Mahomad* v. *Khusiram Benarsilal* (3), the Calcutta High Court did not accept the view expressed by Blackwell, J. It referred to the following observation of Farwell, L. J., in *Sadler* v. *Whiteman* (4):—

"In English law a firm as such has no legal existence; partners carry on business both as principals and as agents for each other within the scope of the

(1) A.I.R. 1928 Bom. 191.
(2) A.I.R. 1933 Bom. 304, 305.
(3) I.L.R. [1952] 1 Cal. 153.
(4) [1910] 1 K.B. 868, 889.

partnership business; the firm name is a mere expression, not a legal entity, although for convenience under Order XLVIII-A it may be used for the sake of suing and being sued."

In the case of *Mura Mohideen* v. *V. O. A. Mohomed*(1) the Madras High Court dissented from the opinion expressed by Blackwell, J. and the learned Judges stated:

"We are unable to agree with Blackwell, J. in his view that a foreign firm not being a legal entity which could as such file a suit under the Civil P. C., by itself determines the question whether the impleading of the members of that firm is the addition of a new party. The view of Blackwell, J. appears to have been concurred in by two decisions reported in—'*Neogi Ghose and Co.* v. *Nehal Singh*', AIR 1931 Cal. 770 (F) and—'*L. N. Chettiar Firm* v. *M.P.R.M. Firm*', AIR 1935 Rang. 240 (G), but we are unable to agree with the soundness of the reasoning in these decisions either of which do not furnish any further reasons in support of the view of Blackwell, J."

The Madras High Court then concluded as follows:—

"If however imperfectly and incorrectly a party is designated in a plaint the correction of the error is not the addition or substitution of a party but merely clarifies and makes apparent what was previously shrouded in obscurity by reason of the error or mistake. The question in such a case is one of intention of the party and if the Court is able to discover the person or persons intended to sue or to be sued a mere misdescription of such a party can always be corrected provided the mistake was bona fide vide O.I, R. 10, C.P.C. Such an amendment does not involve the addition of a party so as to attract S. 22(1), Limitation Act. Suits by or on behalf of dead persons stand in a different category. The principle that a misdescription could be corrected by amendment could not obviously be applied to such a case but this is far from saying that merely because the law does not recognise the firm as being a legal entity, the firm

(1) A.I.R. 1955 Mad. 294, 297, 299.

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name could not indicate or designate the individuals composing the firm."

"To sum up, the situation is analogous to a case where an individual who has an alias or an abbreviated name by which he is sometimes called initially describes himself in that name but subsequently applies to have it rectified so as to describe in the manner in which he is most generally known. There cannot be any doubt that by the correction in the name, a new plaintiff is not added so as to attract s. 22(1), Limitation Act. A trade name either of a person or a group of individuals carrying on business in partnership is in true an alias for the person or the group."

Before the introduction of O. XXX in the Code of Civil Procedure apparently suits were instituted, particularly in the Mofussil courts, in the name of a firm or were instituted against a firm in the firm name and no objection was generally taken. Presumably this practice was largely based on the assumption that the suit concerned was either by all the partners of the firm or against all the partners of the firm. If, however, an objection were to be taken that a suit in the name of a firm was not maintainable because it had no legal entity, the courts would have to decide whether the suit had been instituted by non-existent persons. If so, the suit was not maintainable. In the case of *Kasturchand Bahiravdas* v. *Sagarmal Shriram* (1), which was before the introduction of O. XXX in the Code, the suit had been brought in the name of the firm Kondanmal Sagarmal by its manager Sagarmal Shriram. The defendants objected that one Malamchand was also a partner in the firm and should be made a party. He was accordingly added as a plaintiff on the 27th of January, 1888. The defendant then contended that the suit was barred under s. 22, Limitation Act. It was held by the Bombay High Court that it was a case of misdescription and not of non-joinder for the action was brought in the name of the firm by its manager. The introduction of O. XXX into the Code

(1) (1892) I.L.R. 17 Bom. 413.

prevents such an objection being taken because it permits two or more persons carrying on business of the firm to sue or be sued in the name of the firm but the firm must be carrying on business in India. The introduction of this provision in the Code was an enabling one which permitted partners constituting a firm to sue or be sued in the name of the firm. This enabling provision, however, accorded no such facility or privilege to partners constituting a firm doing business outside India. The existence of the provisions of O. XXX in the Code does not mean that a plaint filed in the name of a firm doing business outside India is not a suit in fact by the partners of that firm individually.

Section 4 of the Indian Partnership Act, 1932, hereinafter referred to as the Act, states that:

"" Partnership " is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually " partners " and collectively " a firm " and the name under which their business is carried on is called the " firm name "."

It is clear from this provision of the Act that the word " firm " or the " firm name " is merely a compendious description of all the partners collectively. It follows, therefore, that where a suit is filed in the name of a firm it is still a suit by all the partners of the firm unless it is proved that all the partners had not authorized the suit. A firm may not be a legal entity in the sense of a corporation or a company incorporated under the Indian Companies Act but it is still an existing concern where business is done by a number of persons in partnership. When a suit is filed in the name of a firm it is in reality a suit by all the partners of the firm. If O. XXX had not been introduced into the Code and a suit had been filed in the name of a firm it would not be a case of a suit filed by a non-existent person. It would still be a suit by the partners of a firm, the defect being that they were described as a firm. In order to clarify matters a court would permit an amendment by striking out the name

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of the firm and replacing it with the name of the persons forming the partnership. It would be a case of misdescription. Even if the provisions of O. I, r. 10 and O. VI, r. 17 did not strictly apply the amendment could be permitted under s. 153 of the Civil Procedure Code because it was not a case of either adding parties or substituting parties. The High Court referred to a number of decisions to which no particular reference need be made but they do support the view taken by the High Court that in the present case the plaintiff described in the plaint as the firm of Manilal & Sons was a mere misdescription capable of amendment and not a case where a plaint had been filed by a non-existent person and therefore a nullity.

We now refer to certain provisions of O. XXX, C.P.C. Order XXX, r. 1, C.P.C. states:

"(1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons".

This rule enables any party to a suit filed in the name of a firm doing business in India to apply to the court for a statement of the names and addresses of the persons who were at the time of the accruing of the cause of action partners in the firm to be furnished and verified in such manner as the court may direct. Order XXX, r. 2 states:

"(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall,

on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm".

This makes it obligatory, in the case of a suit instituted by the partners in the name of the firm, on demand in writing by or on behalf of any defendant, to declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted. If the plaintiffs fail to comply with the demand made under sub-r. (1) of this rule, all the proceedings in the suit may be stayed on such terms as the court may direct. Under sub-r. (3) if the names of the partners are declared in the manner referred to in sub-r. (1) the suit shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named in the plaint, provided that all the proceedings shall nevertheless be continued in the name of the firm. Rule 1 of O. XXX is a general provision. Rule 2, however, is confined to a suit instituted by partners in the name of the firm. It is clear from this rule that although the suit is filed in the name of the firm a disclosure has to be made, on demand in writing by or on behalf of any defendant, of names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted. The provisions of r. 2 would indicate that although the suit is filed in the name of a firm, it is nonetheless a suit by all the partners of the firm because if disclosure of the names of the partners is

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asked for by any defendant, on such disclosure, the suit shall proceed as if the partners had been named as plaintiffs in the suit, even though the proceedings shall nevertheless be continued in the name of the firm. It is clear, therefore, that the provisions of O. XXX, r. 1 and r. 2 are enabling provisions to permit several persons who are doing business as partners to sue or be sued in the name of the firm. Rule 2 would not have been in the form it is if the suit instituted in the name of the firm was not regarded as, in fact, a suit by the partners of the firm. The provisions of these rules of O. XXX, being enabling provisions, do not prevent the partners of a firm from suing or being sued in their individual names. These rules also do not prohibit the partners of a firm suing in India in their names individually although they may be doing business outside India. Indeed, this was not disputed on behalf of the appellant. Since, however, a firm is not a legal entity the privilege of suing in the name of a firm is permissible only to those persons who, as partners, are doing business in India. Such privilege is not extended to persons who are doing business as partners outside India. In their case they still have to sue in their individual names. If, however, under some misapprehension, persons doing business as partners outside India do file a plaint in the name of their firm they are misdescribing themselves, as the suit instituted is by them, they being known collectively as a firm. It seems, therefore, that a plaint filed in a court in India in the name of a firm doing business outside India is not by itself a nullity. It is a plaint by all the partners of the firm with a defective description of themselves for the purposes of the Code of Civil Procedure. In these circumstances, a civil court could permit, under the provisions of s. 153 of the Code (or possibly under O. VI, r. 17, about which we say nothing), an amendment of the plaint to enable a proper description of the plaintiffs to appear in it in order to assist the court in determining the real question or issue between the parties. Strictly speaking O. I, r. 10(1) has no application to a case of this kind because the suit has not been instituted in the name

of a wrong person, nor is it a case of there being a doubt whether it has been instituted in the name of the right plaintiff. The provisions of O. I, r. 10(2) also do not apply because it is not a case of any party having been improperly joined whose name has to be struck out or a case of adding a person or a party who ought to have been joined or whose presence before the court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The suit has been from its very inception a suit by the partners of the firm and no question of adding or substituting any person arises, the partners collectively being described as a firm with a particular name.

One of the partners Manubhai Maganbhai Amin was the Manager of the firm Manilal & Sons. He had executed a Power of Attorney in favour of four persons including one Dunderdale. By this Power he authorized any one of these persons to sue for recovery of moneys due to the firm from the firm Purushottam Umedbhai & Co., the appellant. It also empowered these persons to appear and to represent the firm in any court, in any jurisdiction—civil, criminal, insolvency, original, appellate or otherwise—and before any official in any suit or proceeding or matter and to make, sign, verify, present and file any plaint. Dunderdale had signed and verified the plaint in the present case. We have no doubt, on a perusal of the Power of Attorney, that it authorized Dunderdale to file the plaint on behalf of the firm Manilal & Sons and also to verify it. It was suggested that this was a Power of Attorney by Manubhai Maganbhai Amin for himself and not for the firm of Manilal & Sons. As we understand the Power of Attorney that is not so. No doubt the Power of Attorney is not signed by all the partners of Manilal & Sons but only by Manubhai Maganbhai Amin. In our opinion, it was not necessary that the Power should have been signed by all the partners of the firm because Manubhai Maganbhai Amin was the manager of the firm. Under s. 18 of the Act a partner is an agent of the firm for the purposes of the business of the firm. Manubhai

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Maganbhai Amin was therefore the agent of the firm as well as its manager. It is to be noticed that under s. 19(2) of the Act instances are stated where, in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do matters mentioned in cls. (a) to (h). It is significant that in these clauses there is no prohibition to a partner executing a Power of Attorney in favour of an individual authorizing him to institute a suit on behalf of the firm. In these circumstances, it cannot be said that at the time the plaint was filed it was defective because the Power of Attorney in favour of Dunderdale was not a Power of Attorney on behalf of the firm and its partners. As the High Court has pointed out, there is on the record now Powers of Attorney on behalf of all the partners of the firm.

It seems to us that the Division Bench of the High Court took a correct view in holding that the plaint was not a nullity. It was a case of a suit instituted by all the partners of a firm who were misdescribed as Manilal & Sons, a firm carrying on business at No. 11A Malacca Street, Singapore and accordingly the learned Judges rightly allowed the plaint to be amended on terms and conditions stated in their order.

It follows therefore that the High Court was also right in setting aside the decree of P. B. Mukherjea, J., dismissing the suit.

These appeals accordingly fail and must be dismissed but, in the circumstances, without costs.

Appeals dismissed.