PETITIONER:
SHIVAGOUDA RAVJI PATIL AND OTHERS

Vs.

RESPONDENT:
CHANDRAKANT NEELKANTH SEDALGE AND OTHERS

DATE OF JUDGMENT:
08/05/1964

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1965 AIR 212 1964 SCR (8) 233

ACT:
Indian Partnership Act-A minor admitted to the benefits of a partnership-Partnership dissolved-Thereafter the minor attains majority He did not exercise his option not to become a partner-He cannot he adjudicated insolvent for the acts of insolvency of other partners Indian Partnership Act, 1932 (IX of 1932), s. 30(5).
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HEADNOTE:
The respondent No. 1 while he was a minor was admitted to the benefits of a partnership constituted of respondents 2 and 3. The partnership owed a certain amount to the appellants. The partnership was dissolved and subsequently respondent No. 1 became a major but he did not exercise the option not to become a partner under s. 30(5) of the Indian Partnership Act, 1932. Respondents 2 and 3 committed acts of insolvency and the appellants filed an application for adjudicating the three respondents as insolvents. The first respondent resisted the application without success but on second appeal the High Court held that he was not a partner of the firm and hence he could not be adjudicated an insolvent for the debts of the firm. The present appeal was filed on a certificate granted by the High Court.
The appellant contended before this Court that the 1st respondent had become a partner of the firm by reason of the fact that he had not elected to become a partner under a. 30(5) of the Partnership Act and therefore he was liable to be adjudicated an insolvent.
Held:(i) A person under the age of majority cannot become a partner by contract and he cannot be one of that group of persons called a firm. It therefore follows that if during minority of the 1st respondent the partners of the firm committed an act of insolvency, the minor could not have been adjudicated insolvent on the basis of the said act of insolvency for the simple reason that he was not a partner of the firm.
Sanyasi Charan Mandal v. Krishnadhan Banerji, (1922) I.L.R. 49 Cal. 560, relied on.
(ii)It is implicit in the terms of sub-s. (5) of s. 30 of the Partnership Act that the partnership is in existence,.

A minor, after attaining majority, cannot elect to become a partner of a firm which ceased to exist. The entire scheme of s. 30 of the Partnership Act posits the existence of a firm and negatives any theory of its application to a stage when the firms ceased to exist.
(iii)Since the 1st respondent became a major after the partnersship was dissolved s. 30 of the Partnership Act does not apply to him. He is not a partner of the firm and therefore he cannot be adjudicated insolvent for the acts of insolvency committed by respondents 2 and 3, the partners of the firm.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 244 of 1964.
Appeal from the judgment and order dated September 21, 1962 of the Mysore High Court in Civil Revision Petition No. 929 of 1958.
G. S. Pathak and R. Gopalakrishnan, for the appellants.
S. G. Patwardhan, V. Kumar and Naunit Lal, for the respondent No. 1.
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May, 8, 1964. The Judgment of the Court was delivered by
SUBBA RAO, J.This appeal by certificate raies the question whether a minor who was admitted to the benefits of a partnership can be adjudicated insolvent on the basis of debt or debts of the firm after the partnership was dissolved, on the ground that he attained majority subsequent to the said dissolution, but did not exercise his option to become a partner or cease to be one of the said firm.
The facts are not in dispute and may be briefly stated. Mallappa Mahalingappa Sadalge and Appasaheb Mahalingappa Sadalge, respondents 2 and 3 in the appeal, were carrying on the business of commission agents and manufacturing and selling partnership under the names of two firms "M. B. Sadalge" and "C. N. Sadalge". The partnership deed between them was executed on October 25, 1946. At that time Chandrakant Nilakanth Sadalge, respondent 1 herein, was a minor and he was admitted to the benefits of the partnership. The partnership had dealings with the appellants and it had become indebted to them to the extent of Rs. 1,72,484. The partnership was dissolved on April 18, 1951. The first respondent became a major subsequently and he did not exercise the option not to become a partner of the firm under s. 30(5) of the Indian Partnership Act. When the appellants demanded their dues, the respondents 2 and 3 informed them that they were unable to pay their dues and that they had suspended payment of the debts. On August 2, 1954, the appellants filed an application in the Court of the Civil Judge, Senior Division, Belgam, for adjudicating the three respondents as insolvents on the basis of the said debts. The 1st respondent opposed the application. The learned Civil Judge found that respondents 2 and 3 committed acts of insolvency and that the 1st respondent had also become partner as he did not exercise his option under s. 30(5) of the Partnership Act and, therefore, he was also liable to be adjudicated along with them. The first respondent preferred an appeal to the District Judge, but the appeal was dismissed. On second appeal, the High Court held that the 1st respondent was not a partner of the
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firm and, therefore, he could not be adjudicated insolvent for the debts of the firm. The creditors have preferred the present appeal against the said decision of the High Court.

Learned counsel for the appellants, Mr. Pathak, contends that the 1st respondent had become a partner of the firm by reason of the fact that he had not elected not to become a partner of the firm under s. 30(5) of the Patnership Act and, therefore, he was liable to be adjudicated insolvent along with his other partners.

The question turns upon the relevant provisions of the, Provincial Insolvency Act, 1920 (5 of 1920) and the Indian Partnership Act. Under the provisions of the Provincial Insolvency Act, a person can only be adjudicated insolvent if he is a debtor and has committed an act of insolvency as defined in the Act: see ss. 6 and 9. In the instant case respondents 2 and 3 were partners of the firm and they became indebted to the appellants and they committed an act of insolvency by declaring their inability to pay the debts .and they were, therefore, rightly adjudicated insolvents

But the question is whether the first respondent could also be adjudicated insolvent on the basis of thE said acts of insolvency committed by respondents 2 and 3. He could be, if he had become a partner of the firm. It is contended that he had become a partner of the firm, because lie did not exercise his option not to become a partner thereof under s. 30(5) of the Partnership Act. Under s. 30(1) of the Partnership Act a minor cannot become a partner of a firm but he may be admitted to the benefits of a partnership. Under sub-ss. (2) and (3) thereof he will be entitled only to have a right to such share of the properties and of the profits of the firm as may be agreed upon, but he has no personal liability for any acts of the firm, though his share is liable for the same. The legal position of a minor who is admitted to a partnership has been succinctly stated by the Privy Council in Sanyasi Charan Mandal v. Krishnadhan Banerji(1) after considering the material provisions of the Contract Act,

(1)[1922] I.L.R. 49 Cal. 560, 570.

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which at that time contained the provisions relevant to the law of partnership, thus :

> "A person under the age of majority cannot become a partner by contract..... and so according to the definition he cannot be one of that group of persons called a firm. It would seem, therefore, that the share of which s. 247 speaks is no more than a right to participate in the property of the firm after its obligations have been satisfied."

It follows that if during minority of the 1st respondent the partners of the firm committed an act of insolvency, the minor could not have been adjudicated insolvent on the basis of the said act of insolvency for the simple reason that he was not a partner of the firm. But it is said that sub-s. (5) of s. 30 of the Partnership Act made all the difference in the case. Under that sub-section the quondam minor at any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, may give public notice that he has elected to become or that he has elected not to become a partner in the firm and such notice shall determine his position as regards the firm. If he failed to give such a notice, he would become a partner in the said firm after the expiry of the said period of six months. Under sub-s. (7) thereof where such person becomes a partner, his rights and liabilities as a minor continue up

to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership and his share in the property and profits of the firm shall be the share to which he was entitled as a minor. Under the said two sub-sections, if during the continuance of the partnership a person, who was admitted at the time when he was a minor to the benefits of the partnership, did not within six months of his attaining majority elect not to become a partner, he would become a partner after the expiry of the said period and thereafter his rights and liabilities would be the same as those of the other partners as from the date he was admitted to the partnership.

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It would follow from this that the said minor would thereafter be liable to the debts of the firm and could be adjudicated insolvent for the acts of insolvency committed by the partners. But in the present case the partnership was dissolved before the first respondent became a major; from the date of the dissolution of the partnership, the firm ceased to exist, though under s. 45 of the Act, the partners continued to be liable as such to third parties for the acts done by any of them which would have been the acts of the firm if done before the dissolution until public notice was given of the dissolution. Section 45 proprio vigore applies only to partners of the firm. When the partnership itself was dissolved before the first respondent became a major, it is legally impossible to hold that he had become a partner of the dissolved firm by reason of his inaction after he became a major within the time prescribed under s. 30(5) of the Partnership Act. Section 30 of the said Act presupposes the existence of a partnership. Sub-ss. (1), (2) and (3) thereof describe the rights and liabilities of a minor admitted to the benefits of partnership in respect of acts committed by the partners; sub-s. (4) thereof imposes a disability on the minor to sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm. This sub-section also assumes the existence of a firm from which the minor seeks to sever his connection by filing a suit. It is implicit in the terms of sub-s. (5) of s. 30 of the Partnership Act that the partnership is in existence. A minor after attaining majority cannot elect to become a partner of a firm which ceased to exist. The notice issued by him also determines his position as regards the firm. Sub-s. (7) which describes the rights and liabilities of a person who exercises his option under sub-s. (5) to become a partner also indicates that he is inducted from that date as a partner of an existing firm with co-equal rights and liabilities along with other partners. The entire scheme of s. 30 of the Partnership Act posits the existence of a firm and negatives any theory of its application to a stage when the firm ceased to exist. One cannot become or remain a partner of a firm that does not exist.

It is common case that the first respondent became a major only after the firm was dissolved. Section 30 of the

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Partnership Act, therefore, does not apply to him. He is not a partner of the firm and, therefore, he cannot be adjudicated insolvent for the acts of insolvency committed by respondents 2 and 3, the partners of the firm. The order of the High Court is correct.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.