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of the Specific Relief Act, to grant the plaintiff the other relief claimed, viz., declaration of his right to the trees.

I would, therefore, allow the appeal, reverse the decree passed in favour of the plaintiff and dismiss the suit, each party being made to pay his cost throughout.

DAVIES, J.—I entirely concur.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

1896. December 16.

PANCHENA MANCHU NAYAR AND OTHERS (DEFENDANTS NOS. 2 TO 6), PETITIONERS,

v.

GADINHARE KUMARANCHATH PADMANABHAN NAYAR (PLAINTIFF), RESPONDENT.*

Companies Act—Act VI of 1882, s. 4—Unregistered association for gain—Illegal contract.

The prize winners in a lottery in which more than twenty persons took tickets covenanted with the promoters of the lottery to continue their subscriptions in respect of the successful ticket for two more years in accordance with the arrangement under which the lottery was established. The money not having been paid the promoters brought a suit on the covenant:

Held, that there was no association of twenty persons for the purpose of gain or at all, and consequently, that the plaintiffs were not precluded from suing for want of registration under Companies Act, section 4.

PETITIONS under Small Cause Courts Act, section 25, praying the High Court to revise the proceedings of E. K. Krishnan, Subordinate Judge of South Malabar, in Small Cause Suit No. 1072 of 1895.

The Subordinate Judge described the suit as "a suit to recover "Rs. 119-3-6, principal and interest due on a kuri scheme in which "defendant No. 1, and her deceased son, Sankaran Nayar, held "three-fourths of a ticket." The defence was based on Companies Act, 1882, section 4, and it was pleaded that the suit was not maintainable because the claim arose out of a numerous association for

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* Civil Revision Petition No. 196 of 1896.

gain which had not been registered. The so-called kuri scheme was embodied in the document (exhibit I), which was translated as follows:—

"Programme of lottery drawn up on 15th Edavam 1064 (27th "May 1889). We, Puliakkot Devaki Amma's sons, Kunhi- "krishnan Nayar and younger brother Panku Nayar of Peruvemba "Amsom and Desam in Palghaut taluk, do hereby start a kuri "(lottery) with the following terms:—The lottery shall be to the "total value of Rs. 325, and shall consist of thirteen tickets each "worth Rs. 25. The tickets shall be drawn twice a year, *i.e.*, on "15th Edavam and 15th Vrischigam. The amount for the first "drawing, *i.e.*, the proprietor's lot, shall be collected and taken by "proprietors on 15th Edavam current. The lottery shall come "to a close on 15th Vrischigam 1070. All the members that "have come in for lots, shall be prepared to pay the amount due "by them at 12 o'clock noon on the day of each drawing at the "proprietor's house. The amount so brought in shall be received "by the proprietors, and a receipt written in the hand of Panku "Nayar, executant No. 1, and signed by Kunhikrishnan Nayar, "executant No. 2, shall be granted to each member who pays "money. If any member fails to pay the amount due by him on "the date of drawing, he shall pay a penalty of 8 annas a day for "those days, for which the sum remains unpaid. In the receipt "granted for the first time the amounts paid at subsequent draw- "ings shall be credited as having been received for respective "drawings. The tickets shall be drawn before 4 P.M. on the day "fixed therefor. From the amount due to the winner of the prize "at a drawing, Rs. 25 shall be taken off, and the remainder alone "paid to the winner. This sum of Rs. 25 shall be distributed in "equal shares among the non-winners of prizes towards the interest "on the amount paid by them. This system of reserving and dis- "tributing Rs. 25 shall continue till the last drawing but one. "The winners of prizes shall give the proprietors such amount of "security as may be required by proprietors for the money which "has yet to be paid by them. If the winners fail to pay at subse- "quent drawings the amount by them in time, they shall, without "any consideration of the term, pay the whole amount remaining "unpaid by them with interest at 2 per cent. per mensem. If, "before winning the prize, any member remits money regularly at "some drawings but fails to pay at some others, the proprietors

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"shall either by themselves or by admitting some others, conduct "the lottery, and pay the whole amount to the winner at the time "of drawing, and to the defaulter only the amount he has already "paid, and that too without interest and after the termination of "the lottery. If, after obtaining security from the winners, the "proprietors fail to pay them the amount due, they shall pay it "with interest at the rate mentioned above. The proprietors "shall insert to this programme an account of the money collected "by them from the date of first drawing, *i.e.*, proprietor's lot to "the last one, and shall also insert in a schedule subjoined hereto, "the names of members who have come in for lots, with number "and amount of tickets purchased by them. Giving their assent "to these stipulations, all the members have subscribed to, and "signed in, this."

The first schedule to this document gave the names of twenty-seven persons therein described as members and stated that each had purchased either one ticket or a fraction of a ticket as therein specified. The whole amounted to thirteen tickets of Rs. 25 each. The other schedules were lists of the amounts received and credited for interest as the result of seven drawings of which the last was dated 15th Edavam 1067.

The first defendant and her son executed a document filed as exhibit A, which bore date 26th May 1891, and was translated as follows:—

"Deed executed jointly by Punchena Chimmu Amma's "daughter Narayani Amma, and son Sankaran Nayar of Peru-"vemba Amsom and Desam in Palghaut taluk, to Cheria Puliak-"kottu Kunhi Krishnan Nayar, and younger brother Panku "Nayar jointly, of the said amsom and desam. Whereas in the "lottery in which interest is distributed among non-winners for "the total value of Rs. 325 started by you as proprietors on 15th "Edavam 1064 (27th May 1889) with thirteen tickets in all "including the proprietor's lot, each ticket being worth Rs. 25, and "the lots having been arranged to be drawn twice a year, we have "gone in for three-fourths of a lot and having won the prize at the "fourth drawing including the proprietor's lot which took place "on 16th Vrischigam 1066 (November 1890), we do hereby "acknowledge receipt of Rs. 225 (two hundred and twenty-five "rupees) due to us exclusive of interest, in accordance with the "terms of the lottery, and agree to pay regularly at future

"drawings, in accordance with the said terms the sum of Rupees "168-12-0 (one hundred and sixty-eight rupees and twelve annas), "obtaining receipt therefor on the back of this document. Should "we fail at any drawing to remit the amount in time, we hereby "agree to pay in a lump the whole amount which may remain "unremitted by us, with interest at 2½ per cent. per mensem "from the day on which default is made by us. Written on 14th "Edavam 1066 (26th May 1891) in the hand-writing of Pekkan-"chath Sekharan Nayar of Peruvemba Amsom and Desom in "presence of the undersigned witnesses."

The Subordinate Judge overruled a plea based on the want of registration under Companies Act, 1882, section 4, and held that the sum claimed was due by the first defendant on the footing of the above arrangement, and that it was a family debt for which the other defendants were liable as members of the tarwad, and passed a decree as prayed.

Some of the defendants preferred this petition.

Narayanan Nambiar for petitioners.

Sundara Ayyar for respondent.

JUDGMENT.—From the instances which have come before this Court since *Ramasami Bhagavathar* v. *Nagendrayyan*(1) was decided, it would seem that a notion is coming to be entertained that every chit or kuri in which more than twenty persons are concerned falls within section 4 of the Indian Companies Act and, therefore, if unregistered, is illegal. It is scarcely necessary to point out that whether an undertaking which generally goes by the name of chit or kuri falls within the said section, depends, of course, not upon the mere name given to the undertaking, but on the existence of the essential characteristics required by that provision of the law. Whether these requirements are present must be ascertained in each case. In the present instance the Subordinate Judge has paid attention to this matter. He has taken evidence as to it and has come to the conclusion that the case is not governed by the above-mentioned section 4 and is distinguishable from *Ramasami Bhagavathar* v. *Nagendrayyan*(1).

The question is whether the Subordinate Judge's view is correct upon the facts established by the evidence. Now, in cases like the present, to warrant the application of the section in

(1) I.L.R., 19 Mad., 31.

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question, the first point to be made out is that there is a 'company' or 'partnership' or 'association' consisting of more than twenty persons. It cannot be pretended that there is here either a 'company' or a 'partnership.' Is there then an 'association' of more than twenty persons within the meaning of the Act? The answer to this question depends upon the signification to be attached to the word 'association' in the section. This and certain other points as to the construction of the corresponding section of the English statute, the words of which are identical with those of the section of the Indian Act, underwent elaborate consideration in *Smith* v. *Anderson*(1). There JAMES, BRETT and COTTON, L.JJ., differed from the construction put upon the section by JESSEL, M.R.

For our present purpose it is enough to quote a couple of passages from the judgments of BRETT and COTTON, L.JJ., which deal with the interpretation of the term 'association.' The former observed:—"In order to come within this clause, there must be a "joint relation of more than twenty persons for a common purpose ". . . . I confess I have some difficulty in seeing how there "could be an association for the purpose of carrying on a business "which would be neither a company nor a partnership, but I should "hesitate to say that, by the ingenuity of men of business, there "might not some day be formed a relation among twenty persons "which, without being strictly either a company or a partnership, "might yet be an association. But according to all ordinary rules "of construction, if the association mentioned in section 4 is not, "strictly speaking, a company or a partnership, it must be some-"thing of a similar kind. It must be a relation established "between twenty persons or more 'for the purpose of carrying on "business,' *i.e.*, in order that such company, association, or partner-"ship may carry on the business. The business, therefore, whatever "the word 'business' may mean is to be carried on by those "twenty persons or more." COTTON, L.J., used the following language:—"I do not think it very material to consider how far "the word 'association' differs from company or partnership, but "I think we may say that if 'association' is intended to denote "something different from a company or partnership, it must be "judged by its two companions between which it stands, and it

(1) L.R., 15 Ch. D., 247.

"must denote something where the associates are in the nature "of partners."

Clearly, therefore, to constitute an association, within the meaning of the section, the existence of a legal relation between more than twenty persons giving rise to joint rights or obligations or mutual rights and duties is absolutely necessary. Otherwise there would be a mere conglomeration of persons as COTTON, L.J., put it, but not an 'association.'

Turning now to the facts of the present case it is perfectly plain from exhibit I, which sets forth the terms on which the kuri is carried on, that no such relation exists between the various persons who have executed the document. The contracting parties are on the one hand, Kunhi Krishna Nayar and Panku Nayar, who organised the kuri, and who are called the proprietors in exhibit I, and on the other, each of the remaining ticket-holders individually. The right to collect the subscriptions due periodically by each ticket-holder rests only with the two organisers. The duty of paying the amount collected to the person entitled is cast upon them. It is to them that unlike in the case of *Ramasami Bhagavathar* v. *Nagendrayyan*,(1) the particular ticket-holder who, as the prize winner, has received the periodical collection, has to give the necessary securities for the payment of the future instalments due by him. Further, if any ticket-holder commits any default in paying his subscriptions according to the instalments, the proprietors alone are responsible to make up the deficiency caused by such default and are, consequently, at liberty to admit at their discretion persons not mentioned in exhibit I as ticket-holders in lieu of the defaulters. The only obligation each ticket-holder lies under, is to pay his subscription from time to time to the proprietors; and the only right possessed by him is to get from them his several share of the Rs. 25 deducted at the drawing of each lot out of the total collections and distributed among the ticket-holders other than those who have received prizes and also to receive from the same parties the amount of the prize when he in his turn becomes the prize winner. It is thus manifest that the only persons associated with each other in the sense of possessing joint rights or being subject to joint obligations or of having mutual rights and duties are the two proprietors, whilst the other ticket-holders are

(1) I.L.R., 19 Mad., 31.

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in the language of JAMES, L.J., "from the first entire strangers "who have entered into no contract whatever with each other."

It follows therefore that the very first condition laid down by the section relied on is wanting here.

In arriving at the above conclusion, we have not overlooked the observation made in one of the cases cited, to the effect that no hypercritical attempt should be made to withdraw from the operation of the legislative provision in question any case which reasonably falls within its purview. This is no doubt true. On the other hand, it is to be borne in mind that the enactment was intended, as stated by JAMES, L.J., "to prevent the mischief "arising from large trading undertakings being carried on by "large fluctuating bodies, so that persons dealing with them did "not know with whom they were contracting, and so might be put "to great difficulty and expense, which was a public mischief to be "repressed." When an Act framed with such intention is sought to be availed of for getting rid of obligations incurred in connection with comparatively small undertakings like the present, carried on on the responsibility of a very few known individuals and resorted to by ticket-holders from prudential motives as a means of effecting some savings from their petty incomes, it is the duty of the Courts to guard against the extension of the statute, from an undue zeal for carrying out the policy of the enactment, to cases clearly not within its meaning.

Being satisfied, as already stated, that here the very first requisite under the section has failed, it is unnecessary to consider the other question which was argued at length, viz., assuming that the ticket-holders and the proprietors do constitute together an association of the kind contemplated by the section, whether the association can be said to have been formed for the purpose of carrying on business, having for its object the acquisition of gain.

We agree, therefore, with the Subordinate Judge's conclusion and dismiss the petition with costs.