

APPELLATE CIVIL—FULL BENCH.

*Before Sir Arnold White, Chief Justice, Mr. Justice Subrahmaniam
Ayyar and Mr. Justice Benson.*

NEELAMEGA SASTRI (PETITIONER)—FIRST DEFENDANT,
APPELLANT,

v.

APPIAH SASTRI (RESPONDENT—PLAINTIFF), RESPONDENT.*

1906
February 2,
5, 22.
July 16.

*Indian Companies Act VI of 1902, s. 4.—What is 'association' within the meaning
of—Legal relation creating joint or mutual rights necessary—Chitfund.*

"To constitute an 'association' within the meaning of section 4 of the Indian Companies Act, 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.

Panchena Manchu Nayar v. Gadinhare Kumaranchath Padmanabhan Nayar,
(I L.R., 20 Mad., 69 at p. 73), referred to and approved.

Where more than twenty persons enter into an agreement by which a chitfund is created and it is clear from the agreement that the only proprietors of the fund are the two organisers and the other persons have entered into no contract with each other, the parties to such agreement do not form an association of which registration is necessary under section 4 of the Indian Companies Act.

SUIT for money by one of the subscribers to a chitfund against one of the two managers of the fund and the representatives of the other deceased manager.

The terms of the agreement (exhibit B) by which the chitfund was created are set out in the order of reference.

The first defendant contended that the parties to exhibit B, i.e., the two managers and the subscribers constituted an 'association' within the meaning of section 4 of the Companies Act and as such association consisted of more than twenty persons and was not registered, the suit was not maintainable.

The District Judge passed a decree in favour of the plaintiff. A civil revision petition by the first defendant against the decree was dismissed by Boddam, J.

The first defendant preferred this appeal under section 15 of the Letters Patent.

* Appeal No. 71 of 1905, under section 15 of the Letters Patent, presented against the order of Mr. Justice Boddam in Civil Revision Petition No. 624 of 1904

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The case came in the first instance before (Moore and Sankaran Nair, JJ.) who made the following

ORDER OF REFERENCE TO A FULL BENCH:—MOORE, J.—In *Ramasami Bhagavathar v. Nagendrayyan*(1) which was from the Madura district, it was found that persons more than twenty in number paid each a certain sum monthly to a stakeholder. The sum total of the subscriptions was then paid over as a loan free of interest to one of the subscribers chosen by casting lots, and he was thereupon required to execute a bond with a surety obliging him to continue his monthly subscriptions to the end of the period for which the arrangement was agreed to hold good, that period being as many months as there were subscribers. The bonds in question were executed in favour of the stakeholder and the subscribers. A suit was brought on one of such bonds to recover the amount payable for subscription on account of the period subsequent to its execution. The High Court held that the obligees carried on a business which had for its object the acquisition of gain, within the meaning of the Indian Companies Act, 1882, section 4, and accordingly, as it was unregistered, constituted an illegal association and that the suit was not maintainable.

In *Panchena Manchu Nayar v. Gadinhare Kumaranshath Padmanabhan Nayar*(2) from the Malabar district, it appeared that 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 years more, 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. The High Court distinguishes this case from that in *Ramasami Bhagavathar v. Nagendrayyan*(1) as follows:—“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 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

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

(2) I.L.R., 20 Mad., 68.

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, in the language of James, L. J., in *Smith v. Anderson* (1) 'from the first entire strangers who have entered into no contract whatever with each other.'

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

If a reference is made to these decisions, it will be found that that in *Ramasami Bhagavathar v. Nagendrayyan*(2) is based on *In re Padstow Total Loss and Collision Assurance Association* (3), while that in *Panchena Manchu Nayar v. Gadinhare Kumaranahath Padmanabhan Nayar*(4) follows *Smith v. Anderson*(1). And it is also worth pointing out that Brett, L. J., who was one of the learned Judges who took part in the decision in *Smith v. Anderson*(1) at the close of his decision in the case in *In re Padstow Total Loss and Collision Assurance Association*(3) states that, the inclination of opinion which he had expressed with regard to the mutual assurance companies in the case of *Smith v. Anderson*(1) could not, in his opinion, be maintained.

In the opening passage in the judgment in *Panchena Manchu Nayar v. Gadinhare Kumaranahath Padmanabhan Nayar*(4) it is remarked that "from the instances which have come before this Court since *Ramasami Bhagavathar v. Nagendrayyan*(2) was decided, it would seem that a notion is coming to be entertained that every

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

(3) L.R., 20 Ch.D., 137.

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

(4) I.L.R., 20 Mad., 68.

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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." A consideration of the numerous cases which have, within the last few years, come up for disposal in this Court, shows that the effect of the two decisions in *Ramasami Bhagavathar v. Nagendrayyan* (1) and *Panchena Manchu Nayar v. Gadinhare Kumaranchath Padmanabhan Nayar*(2) has been to cause considerable doubt to be entertained in the mofussil, in dealing with the question as to whether any specific chitfund, kuri or lottery which comes before the Courts is an association which, if unregistered, is illegal or not. For example, in *Narayanasami v. Jambu Aiyar*(3), the following case came before the Court: A kuri was started and an agreement was entered into between the nine defendants and the other subscribers to the kuri. The instrument that was drawn up, while giving the defendants the right to conduct or manage the affairs of the kuri, reserved to the body of the subscribers, who were more than twenty in number, the right in various ways to control the defendants, and otherwise showed that the defendants were merely the agents of the subscribers. Under these circumstances, the question was raised whether the members of the kuri constituted an illegal association, as not having been registered, or whether the defendants were alone the proprietors of the fund as in the case in *Panchena Manchu Nayar v. Gadinhare Kumaranchath Padmanabhan Nayar*(2). The Court held that "the whole body of the subscribers had joined in an agreement to start a chitfund and were all equally interested in it and retained power in themselves to control the acts of their appointed office-holders;" and the Court consequently decided that the case differed totally from that in *Panchena Manchu Nayar v. Gadinhare Kumaranchath Padmanabhan Nayar*(2) and that the association required registration.

I may also refer to a suit regarding a chitfund which recently came before me in revision [*Madasami Asari v. Pechi Asari*(4)]. I sent down an issue to the Subordinate Judge as to whether the suit was maintainable, and he returned a finding in the negative on the ground that the chitfund was an association consisting of more than twenty persons having for its object the acquisition of

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

(2) I.L.R., 20 Mad., 68.

(3) 11 M.L.J., 130.

(4) C.R.P. No. 91 of 1905 (unreported)

gain and that, consequently, as it had not been registered, it was an illegal association. I accepted the finding and dismissed the suit.

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In the present case, which has come before this Court in revision, the following is an abstract of the agreement (exhibit B) entered into between the parties :—

“ Chit jointly entered into by Subramania Sastrigal and Neelamega Sastrigal and the undermentioned members who are fourteen in number :

The sum that amounts at each instalment for the total chits at the rate of Rs. 250 per chit lasting for $6\frac{1}{2}$ years and one day from the first Sunday in October 1899, twice in every year, is Rs. 3,500. The afore-said two persons shall conduct the chitfund as agents for this, and the said agents shall take as consideration therefor for the benefit of their own families the amount of the first chit without putting it to auction sale, the first agent taking one-third of it and the second agent taking two-thirds. From the other members the agents shall collect for all the remaining chits the amount of their family benefits. If there are arrears in collecting these amounts the outstanding amounts should be paid by the agents themselves. Further, the agents should add to the amount collected their share of the chit and in the presence of the members, should deduct from the amount of the second chit for interest at each of the 13 instalments, the total amount of Rs. 210 at Rs. 60 a thousand, and hold out the chit for sale from the balance amount of Rs. 3,290. The sale of the chits should be concluded in favour of the members that may bid for the lowest amount. The balance of the amount excluding the sum for which the bidding has been made and the amount withheld for interest should be added together and the total amount should from time to time be distributed among all the members of the chit (agents and others) from the second chit to the last chit. The amount for which the chit was bid at the auction sale should be received by the bidders, upon their executing to the agents a hypothecation deed and on the charge of unencumbered properties as security for the chit amount to be subsequently paid. If the agents make default to pay the amount to the purchaser at the auction sale, the purchaser must collect the amount with interest from the properties mentioned in the schedule attached to this document, which have been given as security. If the

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purchasers at the auction sale do not receive the amount for which the chit was purchased after executing a hypothecation deed, the agents are to take the money paid by such persons up till then to make good the amount by which the sale was underbid. If there be any further balance the agent shall collect it from those persons. If the members make default in paying the money at the appointed time, the agent who paid the money for the defaulting members must take the respective share of the defaulting members in the auction 'kasarvatti' profit and should further collect the money with interest at 2 per cent. per mensem. If at any sale the members do not bid, the chit should be immediately drawn and the total amount of interest Rs. 210 at Rs. 60 per Rs. 1,000 should be withheld from the prize money and the prize winners should receive the balance from the agents after executing a proper hypothecation bond, and the amount of interest withheld should be divided by the agents among all the members, agents and others, according to the share of each in the chit. If any of the members that have not bid make default in paying the money, they should be allowed time for payment up to a month before the second instalment. If they fail to pay within the month, they should be excluded from the chit, if the agents wish to do so. If other persons are available to be substituted, the agent should take them as substitutes. The substituted persons should, at the time that they obtain the chit, pay without interest the money that has been paid by the excluded persons. All proceedings, such as the collection of the chit amounts, are to be conducted by the two agents jointly. The agents are to have power to grant remission of the auction 'kasarvatti' profit, enhanced interest, etc. To effect the above conditions this kararnamah is entered into by the members and agents."

It is admitted that, subsequent to the date of this kararnamah, other members were admitted and that at the time this suit was brought the total number of members exceeded twenty. The District Judge in disposing of this matter has decided the question as to whether the subscribers to this chitfund constituted an association, the registration of which was necessary, by the observation that the decision in *Panchena Manchu Nayar v. Gadinhare Kumaranchath Padmanabhan Nayar*(1) showed that

(1) I. L. R., 20 Mad., 68.

registration was not necessary, as the agreement was of the usual kind and the subscribers stood in no relation to each other, but each subscriber was personally liable to the managers and the managers to him.

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It has always appeared to me to be very difficult to differentiate the case dealt with in *Ramasami Bhagavathar v. Nagendrayyan*(1) from that treated of in *Panchena Manchu Nayar v. Gadinhare Kumaranchath Padmanabhan Nayar*(2) and it is quite clear from the cases that came up for the consideration of this Court that this difficulty is felt very largely throughout the districts in which these chitfunds, kuris or lotteries are usually started. There are, as is well known, a very large number of such chitfunds, and I am of opinion that it is very important that all doubts that may be held as to the necessity or otherwise for the registration of such associations should as far as possible be set at rest. I therefore propose to refer for the consideration of a Full Bench of this Court the following question :—

“Did the parties to the agreement (exhibit B) constitute an association of such a nature that, under section 4 of the Indian Companies Act, 1882, registration was necessary?”

SANKARAN NAIR, J.—I agree to refer the question to a Full Bench for decision.

The appeal came on for hearing in due course before the Full Bench constituted as above.

T. V. Seshagiri Ayyar for appellant.

T. Subrahmania Ayyar and B. Panchapagesa Sastri for respondent.

The Court expressed the following

OPINION.—We are of opinion that the test to be applied in cases of this class is correctly laid down in *Panchena Manchu Nayar v. Gadinhare Kumaranchath Padmanabhan Nayar*(2), viz., “to constitute an association, within the meaning of the section, the existence of the legal relation between more than twenty persons giving rise to joint rights or obligations or mutual rights and duties is absolutely necessary.”

Applying this test to the instrument in question in the present case we are of opinion that the parties to the instrument are not

(1) I.L.R., 19 Mad., 81.

(2) I.L.R., 20 Mad., 68.

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an association within the meaning of section 4 of the Indian Companies Act, 1892. The organisers of the chitfund in question are described in the instrument as agents but the terms of the instrument taken as a whole show beyond doubt that they really occupy the position of principals or proprietors.

The answer to the question referred to us must be in the negative.

The case came on for final hearing before (Benson and Wallis, JJ.) when the Court delivered the following

JUDGMENT.—The finding of the Full Bench is that the association does not require registration under the Indian Companies Act.

We dismiss the appeal with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Benson.

VEERA SOORAPPA NAYANI (PLAINTIFF), APPELLANT,

v.

1906
February 13,
14, 15, 22.

ERRAPPA NAIDU AND OTHERS (DEFENDANTS Nos. 1 AND 4 TO 14),
RESPONDENTS.*

Hindu Law—Polioems—Impartible estate in the hands of a son, assets for payment of father's debts—Sale of right, title and interest which defendant alone possesses, effect of.

Impartible estate taken by a son by heritago from his father is assets for the payment of the father's debts not contracted for immoral or illegal purposes, and may be attached and sold in execution of a decree for such debts.

Muttayan Chettiar v. Sangili Vira Pandia Chinnatambiar, (L.R., 9 I.A., 128), referred to.

Where, subsequent to the passing of Act X of 1877, in execution of a decree against the owner of an impartible estate, such estate is brought to sale and the proclamation of sale describes the property sold as 'the right, title and interest of the defendant alone' in accordance with the form in force prior to the passing of Act X of 1877, the mere use of such words, which were omitted in the Act of 1877, does not necessarily imply that the interest sold is less than the full

*Appeal No. 160 of 1902, presented against the decree of M.R. Ry. W. Gopalachariar, Subordinate Judge of Bellary and Salem, at Salem, in Original Suit No. 11 of 1897,