APPELLATE CIVIL.

Before Sir C. V. Kumaraswami Sastri, Kt., Offg. Chief Justice, and Mr. Justice Curgenven.

THE FIRM OF PANNAJI DEVICHAND
(DEFENDANTS), APPELLANTS,

v.

THE FIRM OF SENAJI KAPURCHAND, AND OTHERS
(PLAINTIFFS), RESPONDENTS.*

1926, August 11.

Indian Companies Act (VII of 1913), sec. 4, cls. 1 and 2—General Clauses Act (X of 1897), sec. 3, cl. 39—Partnership—Four unregistered firms forming a partnership—Total number of members of all the firms exceeding twenty—Partnership, not registered under the Companies Act, whether illegal—Business, meaning of, under sec. 4 (2)—"Persons" under sec. 4 (2) whether denotes only individuals or includes unregistered body of persons—Definition of "persons" under General Clauses Act, whether applicable to sec. 4 (2) of the Indian Companies Act—Suit for dissolution of illegal partnership and for accounts, whether maintainable.

Where four unregistered firms entered into a partnership to purchase certain goods, to sell them at different times and divide the profits and it appeared that the total number of members of all the firms together came to twenty-two, but the partnership was not registered under the Indian Companies Act: on a suit instituted by three of the firms against the fourth for dissolution of partnership and taking of partnership accounts,

Held, that the transaction was a business within section 4, clause 2 of the Indian Companies Act, and not a single venture falling outside the section;

that for purposes of registration required by section 4, clause 2 of the Act, each of the unregistered firms cannot be regarded as a single legal entity; that "persons" under section 4, clause 2, denotes individuals and does not include bodies of individuals; consequently the suit partnership, being composed of more than twenty persons, was an illegal partnership for want of registration

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under the Act; *Akola Gin Combination* v. *Northcote Ginning Factory* (1915) 26 I. C., 613, followed;

and that, where a plaintiff comes to Court on allegations which on the face of them show that the contract of partnership on which he sues is illegal, he is not entitled to any relief and his suit should be dismissed.

APPEAL against the decree of K. S. RAMASWAMI SASTRI, Subordinate Judge of Bellary, in Original Suit No. 56 of 1920.

The material facts appear from the judgment.

A. Krishnaswami Ayyar and *T. S. Narasimhachar* for appellants.

Advocate-General (*T. R. Venkatarama Sastri*) for respondent.

KUMARASWAMI SASTRI, Offg. C.J.

The JUDGMENT of the Court was delivered by KUMARASWAMI SASTRI, Offg. C. J.—This is an appeal against the decree of the Subordinate Judge in a suit for dissolution of partnership and the taking of partnership accounts. The plaint states that the partnership was formed between four firms which were unregistered. They were four unregistered firms which according to the plaint entered into one partnership in respect of certain bales of yarn. It is alleged that business was carried on and profits accrued and the prayer is that an account be taken of the profits due to the plaintiffs and given to them.

When the appeal was taken up it was found that the total number of persons constituting the four firms which entered into this partnership to deal as a combined concern with these goods consisted of 22 persons and the question arose as to how far on the plaint such a partnership would be legal having regard to section 4 (2) of the Companies Act which states that

"No company, association, or partnership, consisting of more than twenty persons, shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or

by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act, or of Letters Patent."

Clause 1 of section 4 deals with an association carried on for the purpose of banking and clause 2 refers to other business carried on. There can be little doubt on reading the plaint that the various persons mentioned in it who amount to more than 22 in number entered into the contract for the purchase of 2,000 bales with certain definite shares, that business did go on and that profits accrued as to which an account and division is sought. On the face of the plaint we find that 22 persons have combined to carry on the business mentioned in the plaint and to share in the profits. The first and main contention of the learned Advocate-General is that there was no business within the meaning of section 4 so as to make the association illegal and, secondly, that even though four private firms joined together to carry on business, and even though each of those firms might consist of a number of persons, we should not for the purposes of section 4 take into account the total number of persons but only the number of firms which joined together to carry on the venture.

As regards the first contention that there is no business carried on within the meaning of section 4 reference has been made to *Smith* v. *Anderson*(1) and *Kirkwood* v. *Gadd*(2). In order to determine whether what is carried on is a business or not one has to see what are the allegations in the plaint as to what the parties did. No doubt a single venture where a single article or a number of articles on a single contract are purchased and sold may not amount to a business. But on the allegations in the plaint although a number of bales were purchased at one time, sales were to go on, profits were

(1) (1880) 15 Ch D., 247. (2) [1910] A.C., 422 at 431.

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to be realized and those profits were to be divided. Reading the plaint as a whole it seems to us that this is not a single venture which would take it out of the definition of section 4.

The next point taken is that we must for purposes of section 4 treat each of the partnerships, although they were not registered, as a single legal entity. Reliance is placed on section 3, clause 39, of the General Clauses Act which runs as follows :—

> "'Person' shall include any company or association or body of individuals, whether incorporated or not."

But section 3 of the General Clauses Act begins by saying that the definition shall apply unless there is anything repugnant in the subject or context of the Act. We think that under section 4 of the Companies Act what we have to see is whether, where an association or partnership is formed for purposes of carrying on a business, each of the members will be liable individually upon contracts made and whether each would have rights accruing to him upon such contracts. The mere fact that the persons forming this association or partnership choose to put themselves into groups each of which goes by a certain partnership name would not affect the question as it would otherwise be possible for more than 20 persons to carry on business in contravention of the Act simply by saying that each of them is a member of a certain partnership which in turn is unregistered. In the present case there is nothing in the plaint or in the agreement which is referred to in the plaint to show that the four persons who signed the contract as representing the four firms did it for their own individual benefit, the firms being only a kind of sub-partners with them in the venture. The plaint negatives any such contention as it gives the names of all the persons of each of the firms as persons who are entitled to the benefit of the contracts and subject to the

obligations thereof. We have been referred to a decision in *Akola Gin Combination* v. *Northcote Ginning Factory*(1) where it was held that the word "person" in section 4 of Act VI of 1882 denotes individuals and does not include bodies of individuals which definition would be repugnant to the subject and context of the section. We agree with this decision and the reasons which led the learned Judge to hold that to say that persons forming unregistered companies should be taken as units for the purpose of section 4 of the Companies Act would be to defeat the intention of the Act and to allow a number of persons to enter into bodies for the purpose of defeating section 4. With reference to the decision in *Mewa Ram* v. *Ram Gopal*(2), it is sufficient to say that that was a case of a Hindu joint family where the manager acted. In the present case there is no question of a Hindu joint family entering into a partnership. It has been held in *Ganyayya* v. *Venkataramiah*(3) that in the case of Hindu joint families each member is not a partner but is only in the position of a sub-partner. Where a plaintiff comes to Court on allegations which on the face of them show that the contract of partnership on which he sues is illegal, the only course for Courts to pursue is to say that he is not entitled to any relief on the allegations made as the Courts cannot adjudicate in respect of contracts which the law declares to be illegal.

We are of opinion that having regard to the plaint the partnership which is sought to be dissolved is illegal having regard to section 4 of the Indian Companies Act. The suit fails and the plaintiff will not be entitled to any decree. We therefore reverse the decision of the Subordinate Judge, allow the appeal and dismiss plaintiff's suit with costs throughout.

K.R.

(1) (1915) 26 I.C., 613. (2) (1926) I.L.R., 48 All., 395.
(3) (1918) I.L.R., 41 Mad., 454.