
(1995) 01 KL CK 0035
In the High Court Of Kerala
Case No : A.S. No. 162 of 1985

Oommen Panicker and Others

APPELLANT

Vs

Muthoot Mini Chitty Fund

RESPONDENT

Date of Decision : 04-01-1995

Acts Referred:

Citation : (1995) 83 CompCas 910 : (1995) 2 RCR(Criminal) 6

Hon'ble Judges : M.M. Pareed Pillay, Acting C.J.; T.V. Ramakrishnan, J; P. Shanmugam, J

Bench : Full Bench

Advocate : P.N.K. Achan, S.A. Razzak and M.P.M. Aslam, for the Appellant; S. Parameswaran, K.N. Chandrababu and Jacob P. John, for the Respondent

Final Decision : Dismissed

Judgement

Pareed Pillay, Actg. C.J.

1. The defendants are the appellants. The plaintiff filed the suit for realisation of the amount due to the firm, Muthoot Mini Chitty Fund, from the defendants (appellants) towards defaulted subscriptions in four chitties conducted by its Bangalore branch office in the Karnataka State. Overruling the various contentions raised by the defendants, the suit was decreed for Rs. 3,93,000 with interest at 12 per cent. per annum on the principal amount of Rs. 3,10,000 from the date of suit till realisation and costs from them.

2. The plaintiff is a partnership firm registered under the Indian Partnership Act. It has its branch office at Bangalore. Chitties are conducted by its Bangalore branch office. The first defendant was a subscriber in four chitties conducted by the said branch office. Defendants Nos. 1 to 3 had jointly executed promissory notes in favour of the plaintiff-firm on September 6, 1979, for Rs. 70,000 and on April 12, 1980, for Rs. 92,500. As the defendants despite repeated demands and registered notice did not care to close the transaction, the suit was filed.

3. Defendants Nos. 1 to 3 in their joint written statement contended, inter alia,

that the entire transaction being illegal as it has violated the provisions of the Kerala Chitties Act, the plaintiff-firm is not entitled to recover any amount from them and as such the suit is liable to be dismissed.

4. The learned sub-judge rejected the contentions of the defendants and decreed the suit in favour of the plaintiff-firm.

5. The sole contention taken by the appellants (defendants) before this court is that the trial court ought to have found that the chit variolas and the, promissory notes were executed at Kozhencherry, a place within the area of operation of the Kerala Chitties Act, and as admittedly the plaint chitties were not registered under the Kerala Chitties Act, 1975, the plaintiff-firm cannot legally recover any amount from them. Admittedly the chitties on the basis of which the suit was laid against the defendants were not registered under the Kerala Chitties Act. The plaintiff's contention is that the Kerala Chitties Act cannot govern chit fund schemes started in the Karnataka State by the branch office of the plaintiff-firm at Bangalore. The plaintiff relied on several documents to show that the entire chit transaction took place in the State of Karnataka in support of its contention that the Kerala Chitties Act cannot have any application so far as the plaintiff's chitties are concerned.

6. The Kerala Chitties Act, 1975 (Act No. 23 of 1975), has been enacted to define, amend and consolidate the law relating to chitties in the State of Kerala. The preamble of the Act makes it clear that it relates to chitties in the State of Kerala. Section 1(2) states that the Act extends to the whole State of Kerala. As the transaction arose at the branch office of the plaintiff-firm at Bangalore, the Kerala Chitties Act cannot have any application. To hold that the head office of the plaintiff-firm functions within the State of Kerala and so the Kerala Chitties Act has necessarily to govern chitties started by its Bangalore office is indeed difficult. That is particularly so in view of the documentary evidence in the case.

7. The managing partner of the plaintiff-firm was examined as PW-1. He stated that the chitty thalavariolas were executed by the first defendant in favour of the plaintiff-firm by accepting the fact that the chitties were conducted at the branch office of the firm at Bangalore. In exhibits A-2, A-6, A-10 and A-14 chitty thalavariolas, it is specifically stated that the chit transaction has commenced from the Bangalore office. It is in evidence that after prizing the chitties by the first defendant and on receipt of the amount defendants Nos. 1 to 3 have jointly executed promissory notes and consent letters in favour of the branch office of the plaintiff-firm at Bangalore. Exhibits A-3, A-4, A-5, A-7, A-8, A-9, A-11, A-12, A-13, A-15, A-16 and A-17 shed sufficient light with regard to the above matter. As there is cogent evidence that the chitties were started and conducted at the branch office of the plaintiff-firm at Bangalore, the Kerala Chitties Act cannot have any application. To hold that the suit transactions are hit by the provisions of the Kerala Chitties Act would be against stark facts and realities.

8. As it is not possible to hold that the Kerala Chitties Act has any application to

juries started outside the Kerala State, contention of the defendants (appellants) that the plaintiff is not entitled to the decree is really untenable.

9. There is no merit in the appeal and hence the same is dismissed with costs.