

(1895) 09 MAD CK 0009
In the Madras High Court

Ramasami Bhagavathar

APPELLANT

Vs

Muni Nagendra Iyer and Others

RESPONDENT

Date of Decision : 17-09-1895

Acts Referred:

Companies Act, 1882 — Section 4

Citation : (1895) 5 MLJ 275

Hon'ble Judges : Shephard, J;Best, J

Bench : Full Bench

Judgement

Shephard, J.—The question is whether the association formed by the plaintiffs and the deceased Subbaiyan, not having been registered

under the Companies Act, was an illegal one. ,If they were associated together for the purpose of carrying on a business and had in view the

acquisition of gain, the action, being brought to enforce a contract made for an illegal purpose, clearly cannot be maintained. The facts are not fully

stated in the judgment, but it was admitted before us that the chit-fand, or kuri as it is called, in which the deceased Subbaiyan and the plaintiffs

took part, was managed in the following way. Periodically the subscribers pay each a certain sum to a stake-holder. The sum total of their

subscriptions is then assigned by casting of lots to one of the subscribers who is thereupon required to execute a bond with a surety obliging him to

continue his subscriptions to the end of the period for which the arrangement is agreed to hold good. The subscriber who at any one drawing

happens to take the prize enjoys the benefit of the money without paying interest--and accordingly an advantage is gained by those who gain the

prize in the early part of the period as compared with those who, having to keep up their subscriptions all the time, do not receive anything until

towards the end of the period. (See Kamakshi Achari v. Appavu Piliat (1883) I.H.C.R. 448--also Logan's Malabar District Manual and

Simcox's Primitive civilization, Vol. II, p. 332, as to analogous institutions in China).

2. It can hardly be doubted that persons associated together in this way must be said to carry on a business. It is true that they have no business

relations with persons outside their circle as in cases when a trade is carried on, there is no subsisting fund with which such business could be

carried on. But money-lending is a business, and here upon each drawing of lots there is a loan of the common fund made by ninety-nine members

of the association to the hundredth. The point taken by Mr. Bhashyam Aiyangar was that business was not carried on for the purpose of gain either

to the association or to the individual members of it. It was suggested that the real object which subscribers to a chit-fund have in view is, not the

chance of an early drawing of the lot, but the securing of a safe deposit for savings and the consequent inducement to save money. It is not

impossible that the idea of enforced economy may weigh with those who contribute to a fund, but I am unable to believe that the chance of gain by

the securing of a loan on easy terms is not also an object which contributors have in view. Mr. Bhashyam Aiyangar's argument was the same as

that used in Shaw v. Benson (1883) 11 Q.B.D. 570 The object of the society in that case was first to advance money to shareholders to enable

them to build or purchase houses, and secondly to lend money to shareholders on approved personal security. Interest was charged on the moneys

so advanced and the business was so conducted that at the end of the period for which it was intended to go on the members who had not

borrowed would pay $\frac{1}{2}$ 84 on each $\frac{1}{2}$ 100 shares whereas the member who had borrowed from the beginning would pay $\frac{1}{2}$ 119. In that case

therefore it was rather the lenders than the borrowers who acquired gain. It was argued that, the object of the society being the encouragement of

saving all members received equal advantage, and there was therefore no acquisition of gain. But it was held that at any rate for the lending

members there was a gain and therefore the society was an illegal one. In that case, as it seems to me, the contention that the encouragement of

saving was the object of the association was more entitled to weight than it is in the present case in which all the subscribers must at the outset have

had in contemplation the" borrowing of the fund.

3. The case of *Kraal v. Whympers* (1863) 1 M.H.C.R. 448 was cited on the plaintiffs" behalf. The decision, which turns on the particular

conditions of the society in question, a society established on the mutual principle for the maintenance of widows and children appears to me to

have no bearing on the present cases. The case in which the object is to make some of the members to acquire gain by their dealings with the rest

are expressly distinguished in the judgment. The present case in my opinion belongs to that class and, acting on the principle" enunciated in the

English case that the Act should be carried out without a too minute or hypercritical consideration of its terms, (*In re Padstow Total Loss and*

Collision Assurance Association), 2 I think we are bound to hold that the association was an illegal one and that therefore the decree should be

reversed and the suit dismissed. I would make no order as to costs.

Best J.

4. I concur. The object of the Association was the business of money-lending--the member to whom the loan was to be given being decided by

drawing lots. These lots were drawn once a month, when also were due the monthly subscriptions of the members--and the whole amount of the

month's subscrip--tions was paid over to the drawer of the loan for that month, on his executing a bond (with a surety) for his continuing to

subscribe during the remaining months for which the kuri was established: the whole number of months of its existence being equal to the number of

subscribers, so that each subscriber should have a month in which he must be the drawer of the loan. Those who drew the loan in the earlier

months were decidedly gainers, as they at once got the money on condition of merely repaying the portion of it in excess of their theretofore paid

subscriptions by punctual payment of future subscriptions--no interest being charged except on such subscriptions as should not be paid as they fell

due. The hope of gain by drawing an early prize is no doubt the motive which induces persons to become subscribers to these kuris--and such gain

is sufficient to bring the associations within the scope of the Companies Act, cf, *Shaw v. Benson* (1883) 11 Q.B.D 570 and in *re Padsio* ILR

(1882) C. 786 *Total Loss and Collision Assurance Association*. (1883) 11 Q.B.D. 570 *Kraal v. Whympers* ILR (1890) C 786 is distinguishable,

as pointed out in that case itself between it and a case in which the object of the business is "" to enable some of the members to acquire gain by

their dealings with the rest"", which is a not in apt description of the object of the association now in question.

5. The bond A on which the suit was brought is executed not only by 1st plaintiff as stake-hplder, but to him and the subscribers to the kuri.

6. It is therefore a contract to pay money according to the rules of an association illegal for want of registration u/s 4 of the Companies Act VI of

1882.)

7. I concur in dismissing the suit without any order as to costs.