

## MYSORE HIGH COURT

Pattada Uthayya

Vs

Pattada Somayya

Civil Revn. Petn. No. 176 of 1954

(Padmanabiah, J.)

08.09.1955

### JUDGMENT

(Padmanabiah, J.)

1. This is a revision petition preferred by the petitioner-defendant against the finding of the learned Munsiff of Virajpet, Coorg, on Issue No.1 in Original Suit No.140 of 1952, holding that the matters involved in the suit could be agitated by way of a suit.

2. The facts that have given rise to this petition are briefly as follows: The plaintiffs and defendant are members of the same family known as 'Pattada' family at Betoli village in Coorg. A few years prior to the institution of the suit, the members of this family, 73 in number, started for the benefit of the family some funds known as 'Grain Fund, Death Fund, Palettimakki Fund, Education Fund and Miscellaneous Fund' and these were being managed by the members of this family. For some reason or other, the plaintiffs did not desire to continue as members of the said funds as at present constituted and managed. Thereupon they notified their said intention to the defendant and asked him to go through the accounts and cause payment of their share in the said funds. The defendant did not comply with their request and consequently the plaintiffs filed the present suit in the Court below for the dissolution of the funds and for accounts and also for a declaration of their shares in the said funds and payment thereof. They estimated the total value of the funds at ₹ 4500/- and their share at ₹ 700/-.

3. The defendant inter alia contended that the constitution and working of the various funds alleged in the plaint were not correct, that the suit as not maintainable and that the Court had no jurisdiction to decide matters involved in the suit. In the memo of particulars filed by the defendant on 16-2-1953 in answer to the information sought by the plaintiffs the defendant has pleaded that the association of plaintiffs and defendant falls within the definition of an unregistered company under the Indian Companies Act, that all the relative provisions of the said Act were attracted and that the plaintiff's remedy was only by means of an application to the concerned Court for its being wound up. On these pleadings, two preliminary issues were framed by the learned Munsiff. The first issue is whether the matters in issue in this suit could be agitated by way of a suit or only by way of an application for winding up before the District Court or the

High Court. The second issue is whether the suit is within the pecuniary jurisdiction of that Court. The learned Munsiff held on the first issue that the suit was maintainable in that Court and that no application for winding up was necessary and on the second issue he held that the suit was within the pecuniary jurisdiction of that Court. The present revision petition is filed against the finding of the learned Munsiff on the former part of the first issue holding that the matters involved in the suit could be agitated in that Court. It is unnecessary for the purpose of disposing of this petition to go into the question whether the finding of the learned Munsiff that the plaintiffs could also file an application for winding up at their option is correct or not.

4. The main point that arises for consideration is whether the Court below was competent to deal with the matters involved in the suit or, in other words, whether the suit was maintainable. It appears to me that the finding of the learned Munsiff cannot be sustained. The learned Munsiff has observed in para. 1 of his judgment, relying on the words "any unregistered company may be wound up", appearing in Section 271(1) of the Indian Companies Act, that it is left to the option of the aggrieved party to seek his remedy either by way of a suit or a petition for winding up. The interpretation placed by the learned Munsiff on the words referred to above does not appear to be correct. Section 271 deals with winding up of unregistered companies. There is nothing in that section or in the words "any unregistered company may be wound up", relied on by the learned Munsiff, to indicate that such matters could also be agitated in a civil Court. Therefore I am of opinion that the words "any unregistered company may be wound up", appearing in Section 271, Indian Companies Act, do not give rise to any inference that the aggrieved party can also institute a suit.

5. The contention urged on the side of the petitioner-defendant is that the association of the plaintiffs and defendant consists of more than twenty members, that it is not registered, that the matter in issue cannot be agitated in a civil Court and that the suit is therefore not maintainable. There appears to be considerable force in this contention. It was urged on the side of the respondents-plaintiffs that the point referred to above is a new point raised in this Court, that they have been taken by surprise and that the defendant should not be allowed to question the jurisdiction of the Court below to deal with the matters involved in this suit. I am of opinion that this contention is ill-founded. In para.6 of the statement filed on 28-1-1953 the defendant has taken a stand that the suit is not maintainable. This is further clarified in para.2 of the memo of particulars furnished by the defendant on 16-2-1953. Therein he has given reasons why the suit is not maintainable, they being that the association of the plaintiffs and defendant falls within the definition of an unregistered company as defined in the Companies Act and that all the relevant provisions of the said Act are attracted. I think that the averments made in the written statement and the memo of particulars furnished were sufficient to indicate as to what the stand of the defendant was. The former part of the first issue as framed by the Court, whether the matters in issue could be agitated by way of a suit, also goes to indicate that the plea urged by the defendant was understood in the way as urged on his side. Therefore it cannot be argued that the plaintiffs have been taken by surprise.

6. Section 4(2) of the Indian Companies Act runs thus:

"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 an Act of Parliament of the United Kingdom or some other Indian law or of Royal Charter or Letters Patent."

Section 4(3) of the Act runs as follows:

"This section (Section 4) does not apply to joint family carrying on joint family trade or business and where two or more such joint families form a partnership in computing the number of persons for the purposes of this section, minor members of such families shall be excluded."

We are not concerned with sub-section (3) of Section 4 inasmuch as it is not the case for the plaintiffs that they and the defendant form members of an undivided family or that they are carrying on a joint family trade or business. Admittedly the plaintiffs and defendant are members of a divided Hindu family. To attract the provisions of Section 4(2) of the Act, three ingredients are to be present, and they are (1) an association of more than twenty persons, (2) which carry on business and (3) that business should be for the acquisition of gain. It appears to me that all these ingredients exist in the case on hand

7. It is admitted that this is an association formed by voluntary act of parties consisting of 73 members and that it is unregistered. It was contended by the learned counsel for the plaintiffs that the association is not carrying on any business and that it has not for its object the acquisition of gain. I do not see any force or substance in this contention. The association deals with five funds. From a reading of the allegations contained in the plaint, it is seen that every member constituting this association contributes money, grains and lauds, makes profit by lending the same to the members of the family or association and others in some cases and utilizes it for the benefit of the members. The transactions carried on by this Association do not consist of a single act but a series of acts giving rise to mutual rights and liabilities. The word 'gain' means 'acquisition' and is not limited to mere pecuniary gain. The word is to be taken as referring to a company which is formed to acquire something or in which the individual members are to acquire something. In the present case, the contributions made by each member are utilized for the acquisition of further gains which are meant to be distributed among the members of the association. Therefore the transactions carried on by the association of plaintiffs and the defendant is, in my opinion, a business having for its object the acquisition of gain as contemplated under Section 4(2), Indian Companies Act. All the conditions required to be fulfilled under that sub-section have been complied with in the present case. Any association or company formed in contravention of Section 4(2), Companies Act, must be held to be illegal, and no court should entertain a suit brought in relation to such company or association. The consensus of opinion of the several High Courts in the Indian Union is in support of the reposition laid down above.

8. The first case I should like to refer is the one reported in - '*Mewa Ram v. Ramgopal*', Therein it is held that under no circumstance can a member of an illegal association sue for partition of assets or ask for accounts. Again in the decision reported in AIR 1926 Allahabad 591, it is held by a majority that Section 4 is a bar to the maintainability of such a suit. The Calcutta High Court has held in the case reported in - '*Nibaran Chandra v. Lalit Mohan*'<sup>2</sup>, that an association, the members of which exceed twenty, is an illegal one by reason of non-registration and that a suit at the instance of one of the members of such association is not maintainable. Coining to our own

High Court, there is a decision reported in - '*Abdul Waheli Saheli v. Badrudin Khan Sahib*<sup>3</sup>', in which it is laid down that a suit to recover sums of money advanced by a member of an unregistered company against another member is not maintainable inasmuch as the company was not registered. I am of opinion that the finding of the learned Munsiff that the suit was maintainable in that Court cannot be supported.

9. In the result, the finding of the learned Munsiff of the former part of the first issue is set aside and this revision petition is allowed.

Revision allowed.

<sup>1</sup> AIR 1926 All 591

<sup>3</sup>22 Mys C.C.R 17

<sup>2</sup> AIR 1939 Cal 187