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UNIVERSITY OF MALTA
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INSTITUTE OF ADVANCED
LEGAL STUDIES
No. 10 of 1955

In the Privy Council.

45953

ON APPEAL

FROM THE COURT OF APPEAL, MALTA.

BETWEEN

MARIA CASSAR and SALVATORE CASSAR . . . *Appellants*

AND

CARMELA CAMILLERI and CARMELA BORG
and GIORGIO BORG *Respondents.*

CASE FOR RESPONDENT NO. 1

1. This is an appeal from the judgment of the Court of Appeal of Malta dated the 12th January 1953 which reversed the judgment of the First Hall of the Civil Court of Malta of the 30th July 1952. RECORD
pp. 133-148
pp. 86-93

2. The present action was initiated by the Appellant, Maria Cassar, with the concurrence and consent of her husband, as required by the relevant provisions of the Maltese Civil Code, by a Writ of Summons issued against Respondent No. 1, Carmela Camilleri, on the 25th June 1951 in the Civil Court of Malta (First Hall) claiming that she was entitled to one-half of the ticket No. 108222 which had won the first prize of £13,000 in the June 1951 draw of the Malta National Lottery, on the alleged ground that the said ticket was held by her jointly with Respondent No. 1. p. 1

3. By a decree given on the 3rd October 1951, Respondent No. 2, Carmela Borg, was joined as a party to the action with the concurrence and consent of her husband. p. 8

4. In her Statement of Defence, Respondent No. 1 contended that she had agreed with Respondent No. 2 that they should stake, as on two previous occasions, a ticket under the nom-de-plume "Suor Concettina"—(or "Soru Kungettina" in Maltese), in the forthcoming draw of the National Lottery. The choice of this nom-de-plume was explained by the fact that a sister of Respondent No. 2 was a nun in a convent in Valetta where Suor Concettina had spent p. 5
11. 9-21

RECORD

her life and where, "renowned for her saintly piety," she died on May 25th 1950. Moreover, when as in previous years, Respondent No. 1 bought this ticket in partnership with Respondent No. 2, she gave to the latter the receipt issued in respect of that ticket.

p. 5
11. 33-39

5. Respondent No. 1 further contended that in addition to the ticket bearing the said nom-de-plume of "Suor Concettina," she had bought, as she had informed the Appellant at the time, a second ticket in partnership with the Appellant to which she gave the nom-de-plume "Ejja halli nghamlu hbieb" (Let us make friends).

Exhibits
p. 161
p. 167

6. It is common ground in this case that the two tickets bought by Respondent No. 1 were numbered 115086 and 115087. The counterfoil of ticket No. 115086 was inscribed as follows:—"Carmena Camilleri, 49 St. Catherine St., Qurmi, Malta, Soru Kungetina," whilst that of ticket No. 115087 was inscribed "Carmena Borg, 49 St. Catherine Street, Qurmi, Malta, "Ejja halli nghamlu hbieb." Both tickets, however, reached the Lottery Office after the closing date fixed by the regulations for the Easter draw and they were accordingly replaced by two other tickets bearing Nos. 108222 and 108223 for the June draw—the former replacing ticket No. 115086 and the latter ticket No. 115087.

p. 55
p. 35
pp. 86-93

7. It appears that a mistake was incurred as regards ticket No. 108223 (replacing ticket No. 115087), as it bore the name of "Carmena Borg" instead of that of "Carmena Camilleri," but as both Respondents argued in the Courts below, this mistake did not affect in any way the winning ticket because (1) it was ticket No. 108222 and not ticket No. 108223 which won the first prize in the Lottery draw and (2) because the winning ticket bore the nom-de-plume "Soru Kungetina" and not the nom-de-plume "Ejja halli nghamlu hbieb." As proved by the evidence produced in the Courts below, the population of the village "Kurmi" or "Qurmi" included several illiterate persons. Furthermore, many persons, both literate and illiterate, were known customarily by their nicknames and not by their surnames. Thus the Appellant was known in that village by the nickname "Ta'l Ghazin," Respondent No. 1 by "Ta Zebblek" and Respondent No. 2 by "Ta Sikkina." As Respondent No. 1 is illiterate, the two counterfoils were filled in by a certain Mr. Francis Agius who happened to be in the shop conducted by Giuseppa Saliba, the seller of the two tickets to Respondent No. 1.

p. 93

8. By a judgment given on the 30th July 1952, the First Hall of the Civil Court (Caruana Colombo, J.) held that the "nom-de-plume and the actual possession of the ticket did not constitute ownership within the meaning of the law relating to Government Lotteries." Section 16 (1) of Act No. XXVI of 1948 (the Government Lotteries Act, 1948) provides that "Every prize shall be paid or remitted to that person only whose name, surname and address are shown on the respective counterfoil drawn." Moreover, section 8 (1) of the Act provides that the nom-de-plume on a National Lottery ticket was not a *sine qua non*. In the learned Judge's view, the evidence produced before him "goes to show that, in connection with the draw of the National Lottery above mentioned, Defendant bought two tickets only, one in partnership with Plaintiff, and the other in partnership with Co-defendant; and that the ticket which in that draw

secured first prize was that which Defendant held in partnership with Plaintiff. RECORD
 On these grounds the Court rules, allowing the claim as advanced in the Writ of Summons, with costs, including those reserved, against Defendant, excepting those of Co-defendants, who shall bear their own costs."

9. Against this judgment both Respondents entered an appeal to the Court of Appeal on the 6th August 1952. In her petition, Respondent No. 1 contended that the provisions of the Government Lotteries Act, referred to in the Civil Court's judgment, only applied to cases where the Collector was a defendant to a lawsuit in which plaintiff claimed that payment should have been made to him notwithstanding that his name and address did not appear on the counterfoil of the winning ticket, and had therefore no application to the present case. Respondent No. 1 further contended that the evidence and the conduct of the parties clearly proved that the winning ticket No. 108222 was held in partnership between her and Respondent No. 2 and not between her and the Appellant. pp. 93-94
pp. 96-97

10. By a judgment delivered on the 12th January 1953, the Court of Appeal composed of Camilleri, President, Montanaro Gauci and Harding JJ., after reviewing the oral and documentary evidence already given, together with the further and additional evidence produced before it, held that "the foregoing circumstances satisfy the Court that the ticket bearing the nom-de-plume of "Soru Kungetina" which secured first prize in the draw of the National Lottery held on June 17th, 1951, was that which Respondent No. 1 and Respondent No. 2 held in partnership between them." The Court of Appeal accordingly reversed the judgment of the Civil Court "with costs both of the first and second instance" against the Appellant. pp. 133-148
p. 146

11. The Appellant appealed to the Court of Appeal for leave to appeal to Her Majesty's Privy Council which was finally granted to her on February 18th 1955. p. 159

12. Respondent No. 1 submits that the judgment of the Court of Appeal dated the 12th January 1953 is right and ought to be affirmed with costs for the following amongst other

REASONS

- (1) BECAUSE it is not in dispute in this action that one-moiety of the winning ticket in the Malta National Lottery of June 1951 belonged to Respondent No. 1.
- (2) BECAUSE the concurrent findings of both Courts of Malta have so established.
- (3) BECAUSE the grounds on which the Court of Appeal based itself in holding that one-moiety of the said ticket belonged to Respondent No. 1 and that the other moiety belonged to Respondent No. 2 are correct.

C. J. COLOMBOS.
 J. PACE.

In the Privy Council.

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FROM THE COURT OF APPEAL, MALTA.

MARIA CASSAR
and another

— —and —

CARMELA CAMILLERI
and others.

Case for Respondent No. 1.

DENTON HALL & BURGIN,
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Solicitors for the First Respondent.

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AND

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3. By a decree given on the 3rd October 1951, Respondent No. 2, Carmela Borg, was joined as a party to the action with the concurrence and consent of her husband.

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