
(1910) 03 MAD CK 0005
In the Madras High Court

Ayya Pattar's son Narayana Pattar

APPELLANT

Vs

Easwara Mangalath Madath Thethi Brahmani Amma and
Others

RESPONDENT

Date of Decision : 30-03-1910

Acts Referred:

Citation : 6 Ind. Cas. 724

Hon'ble Judges : Ralph Benson, J; Krishnaswami Aiyar, J

Bench : Division Bench

Judgement

1. The suit is on a hypothecation bond executed by the 1st defendant's deceased son Narayanan Nambi. Narayanan Nambi had a brother who

has not been heard of. He did not join in the execution. The obligor and his brother are the followers of Makkathayam. The Subordinate Judge on

appeal, holding that in a family governed by Makkathayam the property belongs to the tarwad consisting of the male members and all the females

born in and married into, the family and that the loan in his case was not contracted for a purpose binding on the tarwad, has dismissed the suit as

against the tarwad property. The 1st defendant pleaded that the property was stridhanam. There is no distinct finding on this plea by either Court.

It does not appear" whether Raman Nambi is alive or dead. The question may arise whether in the absence of his consent the mortgage is binding,

assuming that the property was not the stridhanam but belonged to the tarwad. We have to call for findings on these two questions. But a larger

question of general importance has been argued by Mr. Sundara Iyer. He contends that the Subordinate Judge is wrong in holding that the 1st

defendant had a joint interest in the property with his son Narayana Nambi in case the property belonged to the tarwad. In tarwads governed by

the rule of Makkathayam, he says, women have no community of interest but that on the death of the last male member the property descends by

inheritance under the ordinary Hindu Law to the widow or daughter of such last male-holder. Nambisans or Pushpakans as they are often called

where they follow "Makkathayam" are governed by the same rules of law as Nambudris. The decisions of this Court in Second Appeal Nos. 765

and 766 of 1892 and in Second Appeal No. 1821 of 1897 are relied on in support of the view that in tarwads governed by the rule of

Makkathayam, women have no joint estate with the male members but are only entitled to maintenance. In the first of these cases it was held that a

sarvaswadhanam marriage brought about by the widow of the last male-holder could not be questioned by the widow of another female member

who had predeceased. In the latter case it was held that a mortgage by the last maleholder could not be questioned by the female members who

were only entitled to maintenance. The Kerala-vakaskramom a modern work, which has been referred to as containing a reliable account of

Malabar usages, has the following in paragraph 201: If while the sons and unmarried daughters born to Pushpakan's wife are alive that Pushpakan

dies, the right to the property belongs to the sons alone, etc. It would appear to follow from the foregoing references that Makkathayam tarwad in

Malabar consists of the male members only and that women married into the family and women born in the family but remaining unmarried have no

community of property with the male members but are only entitled to maintenance during the life-time of the male members and after the death of

the last survivor to inherit to his estate. This would be rightly so on the analogy of the modern Hindu Law. But it has been repudiated in a decision

of the Travancore High Court in Easwaran Devaki Anterjanam v. Easwaran Devaki Anterjanam 12 TL R. 46, distinguishing an earlier decision of

the same Court in Subramanian Paramaswaran Potti v. Idikkala Mathen 6 TL Rep. 143. The Full Bench of that Court observes. It is well known

that in the management and enjoyment of property the customs of the Nambudri do not differ from the customs of the Malayalee Sudra and again

as the property of a Nambudri Mom is impartible and is intended to be enjoyed by the members of the Mom both male and female from

generation to generation, the only way of preserving the property from needless waste, is by empowering all the members interested to see that the

property is not wasted or alienated by the manager for the time being. The local custom allows such right to the widows of the Mom, who have as

much right and interest in the Mom property as the junior members of the Mom though their rights are not ordinarily exercised except in default of

competent male members. The view above laid down is strongly supported by a learned Malabar lawyer in 12 M.L.J. (Leader--Topics of

Malabar Law p. 1-3). Having regard to the importance of the question we think it desirable that evidence should be taken as regards the custom in

Malabar on the question of women's rights in Makkathayam tanvads. We must, in the first place, ask the Subordinate Judge to give his findings on

the two following questions:

(1) Whether the property was the 1st defendant's stridhanam and (2) whether Raman Nambi was alive he the date of the suit and if not whether he

survived Narayanan Nambi. The Subordinate Judge is at liberty to take fresh evidence on the second question. If his findings are in the negative on

both the points, the Subordinate Judge is directed to receive evidence on the question whether women who are married into or born in

Makkathaya Tarwads of Nambudris and Nambisans, have community of interest in the tarwad properties. In addition to the evidence the parties

may adduce, the Subordinate Judge will examine as Court witnesses respectable and competent persons who may be in a position to speak to the

custom whether residing in Malabar or in the Native States of Travancore and Cochin; judgments of the Civil Courts in Malabar, if available,

should also be placed upon the record as evidence of the custom. He will return his findings along with the evidence that may be taken as to the

custom within three months after the re-opening of the Subordinate Court. Ten days will be also wed for filing memorandum of objections to the

findings.