

(1912) 10 MAD CK 0048
In the Madras High Court

C. Naku Amma and Others	Vs	APPELLANT
C. Raghava Menon and Others		RESPONDENT

Date of Decision : 24-10-1912

Acts Referred:

Citation : (1915) ILR (Mad) 79

Hon'ble Judges : Miller, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Miller, J.—These appeals relate to the property known as Kulachamatu. The first question is whether this property belongs to Naku Amma

alone or to her tavazhi; and I have Do doubt that the Subordinate Judge's conclusion on this question is the right one. Exhibits XXXIV and XIV

make it clear that the gift was to her and her children and I find no warrant for construing a gift so expressed as conferring on the donee an

absolute title to the property given, where, as here, the donee is the wife of the donor and a member of a marumakkattayam tarwad. And it seems

to me to make no difference that the karnavan of the tavazhi joined in the gifts. The next question with which I propose to deal is whether or not

the plaintiffs in Original Suit No. 45 of 1907 can maintain the suit for maintenance against Naku Amma. The contention is that they are bound to

sue the karnavan of their tarwad now whatever be the rights of members of a tavazhi in the tavazhi property. I think there can be no doubt that one

of them is to look to the income of the property for maintenance if they are in need of it.

2. In the present case I proceed on the footing that the karnavan of the tarwad is unable to maintain the members; ha has said so, and Mr.

Ananthakrishna Ayyar did not contend that he is not tolling the truth on that point. The members of the tavazhi, therefore, have to look to the tavazhi property or to their private property for their maintenance. It has not been shown-I do not say that it would have made any difference if it had been shown-but it has not been shown that any of the tavazhi members now seeking maintenance has private means sufficient to provide for him an adequate maintenance without the necessity of recourse to the tavazhi property. Therefore the members have to look to their tavazhi property and, I have no doubt, have a right, if maintenance is denied to them by managing member, to sue that member for it. I can see no ground on which that right can be denied to them where the circumstances are those of this case. There is no direct authority on this question but we are bound by authority to hold that putravakasam property is held by the members of tavazhi to which it belongs, with the ordinary incidents of tarwad property and no reason has been suggested why in the circumstances of the present case the right to sue for maintenance out of the income, which is the right of a member of a tarwad when maintenance is denied to him, should not be given to the members of the tavazhi. It is not suggested that maintenance has not been refused by Naku Amma. The suit is therefore good.

3. The property being tavazhi property, the next question is as to the amount of the in come. It is contended by the Appellant that it should be reduced by the amount of the interest on a debt of Rs. 1,500, which it is claimed, should be held to be a debt binding on the tavazhi, Another sum of Rs. 1,500 which was dealt with in the Court below is also said by Mr. Ananthakrishna Ayyar to be a debt binding on the tavazhi; but it was contracted after the period for which maintenance has been claimed in this suit, and he does not contend that the interest payable on that should be deducted from the income out of which maintenance is payable for the period to which these appeals relate.

4. [His Lordship then dealt with the evidence in the cases and disposed of the Appeals Nos. 129 and 255 of 1909 and then proceeded as follows:]

5. Appeal No. 5 of 1910 relates to another item of property which is known as Komban Patta. The only question in this appeal is whether that property is the absolute property of Naku Amma or belongs to the tavazhi.

Exhibit XVIII is the document which evidences its transfer to Naku

Amma and by that document the transfer is to her alone. That document is a month and a half after the document Exhibit XXXIV to which I have

referred in dealing with the other two appeals; and an argument is based on the difference in the form of these two instruments. By the latter,

Exhibit XXXIV, the gift of the property there dealt with was to Naku Amma and her children. By Exhibit XVIII it is to Naku Amma alone. We are

asked to hold that this difference proves that the gift under Exhibit XVIII was a gift of absolute property to Naku Amma. If these two documents

had been executed on the same date and drawn up by the same conveyance no doubt that would be strong evidence in favour of the contention.

The greater the distance between the dates of the documents the less will be the weight which attaches to such difference. It appears that there was

a month and a half between them and I think it can be legitimately suggested that an inference might be drawn in favour of Naku Amma from the

difference; but at the same time it has to be remembered that ordinarily in a document conferring an absolute estate we expect to find some words

to the effect that the property should be ""enjoyed by you and your sons and grandsons for ever and ever"" or some similar words. Here there is

nothing. It is only that the gift is to the wife; apart from any other consideration, if I had Exhibit XVIII and nothing more before me, I should be

inclined to hold that it was intended by the donor as a putravakasam gift, a gift for the benefit of Naku Amma and her; children in the absence of

words to show that he intended to give an absolute estate.

6. Taking it with Exhibit XXXIV alone I might be inclined to take a different view; but there is other evidence which discounts the effect of Exhibit

XXXIV. In Exhibit F we find that Naku Amma allowed one of her sons to claim a share in this as well as in other properties: and I do not think

that is satisfactorily explained on the ground that she was trying to shield her properties from his creditors, for fear that the creditors might take

advantage of there being no release of these properties and claim Naku Amma's property as that of Madhava Menon, Exhibit F I think may be

taken to counteract such inference as may be drawn from the difference between Exhibits XVIII and XXXIV. We find also that the allegation of

Naku Amma that she bought this property with her own money is contradicted by

her evidence in a former suit, Exhibit G, wherein she lumps this property together with other properties as gifts from her husband, so that the case she originally made that this property was purchased by her for Rs. 200 fails. And as a gift on the whole, I am unable to differ from the view of the Subordinate Judge that it was intended to be a putravakasam gift.

7. An argument was also pressed that the decision in Original Suit No. 177 of 1902 concludes the question between the parties. The fourth defendant there, is the person who is now the first plaintiff in Original Suit No. 45 of 1907. The plaintiffs in that case alleged that this Komban Patta was the family property and the fourth defendant in that case supported that claim in the lower Court; but in the appeal the fourth defendant did not appear but the plaintiffs admitted that Komban Patta was the separate absolute property of Naku Amma. It is suggested that the decision in that appeal or the decision of the Court of First Instance that the property was Naku Amma's separate property binds the first plaintiff in Original Suit No. 45 in the present case. The Subordinate Judge holds that it is not so and I think he is right, for in the appeal the fourth defendant made no admission and in fact did not appear and the Court which tried that suit in the first instance was not competent to try the present suit. The issue whether this land was the sole property of Naku-Amma was not an issue on which any relief was sought. It was an issue merely incidental to the question what amount of maintenance, if any, should be decreed to plaintiffs. The District Munsif who tried that issue is not competent to try the present suit and on that ground I am of opinion that the decision in that suit does not bar the present suit.

8. It is hardly contended that the sale and mortgage to the third defendant in Original Suit No. 45 of 1907 should be held good once it is found that the gift was a putravakasam gift enduring for the benefit of the tavazhi; Mr. Ramachandra Ayyar conceded that the gift of Rs. 500 out of love and affection made it impossible to press that contention. He suggested no doubt that the third defendant might have a charge on the tavazhi property, for a portion of the amount of Exhibit XVIII, but that question does not arise in this case, This appeal fails and is dismissed with costs.

Abdur Rahim, J.

9. I agree in the judgments delivered by my learned brother in the Appeals. I wish to add only a few words on the general question of law which

has been raised by Mr. Anantakrishna Ayyar in Appeal No. 129 of 1909. The question is whether, as his contention is, a member of a tavazhi is

not entitled to ask for maintenance from that karnavan of that tavazhi, at any rate so long as there is a tarwad to which such member can look for

his maintenance. His argument is that a member of a tavazhi, who is also a member of a larger tarwad, is entitled to maintenance only from the

tarwad property and in no case can he ask for maintenance from the tavazhi property. It seems to me that this contention is clearly unsound.

Though there is no authority directly in point, there can be no question that all the members of a tavazhi have an interest in the tavazhi property.

Then, if they have an interest in the property, what is the nature of the interest or what is the benefit they are entitled to derive from that interest?

When I put this question to Mr. Anantakrishna Ayyar, the learned vakil, went so far as to contend and he had to go that length in order to make

his contention good that a member of a tavazhi could not look for any benefit from the property, and that the income from the property must be

accumulated in the hands of the karnavan. It seems to me that this is a proposition which cannot possibly be accepted. The members of a tarwad

are not entitled to any share in the tavazhi property, and if they have any interest in the tavazhi property at all, they must have what has been called

the right of maintenance. It has been authoritatively laid down and this is not denied that a tavazhi property is subject to the ordinary incidents

which attach to tarwad property. These incidents have not all been clearly defined; but there can be no doubt, whatever they may be, a member of

a tavazhi is entitled to an allowance in the nature of maintenance from the tavazhi property. It is argued by Mr. Anantakrishna Ayyar that no

member of a tarwad is entitled to maintenance unless he resides in the tarwad house. That is undoubtedly so then he argues further that unless the

member of a tavazhi lives in the tavazhi house, he will not be entitled to maintenance, and suggests that, if we allow the members of a tavazhi the

right of maintenance against the karnavan of their tavazhi, then in some cases it may be difficult to work out their rights. I am not prepared to say

that in some cases difficulties may not arise; but here we are not faced with any such difficulty. And further in this case the karnavan of the tarwad

is unable to make any allowance by way of maintenance to the plaintiffs. But so far as at present advised it strikes me that even apart from the fact whether there is sufficient property of the tarwad to which a member of the tavazhi can look for maintenance, he has got a right to demand an allowance in the nature of maintenance from the tavazhi property itself. It has been decided in the first place that the maintenance which a member of a tarwad can claim is not a mere subsistence allowance. The allowance is to be according to the value of the tarwad property, the position of the members and is not confined to what is just sufficient to satisfy the needs of those members. It has also been decided that the fact that a member of a tarwad is possessed of private means is not a good ground for refusing all allowance to him out of the tarwad property. I think these two facts tend to show that though the allowance which a member of a tarwad is entitled to receive from the tarwad property is generally called maintenance and is to a great extent in the discretion of the karnavan the word must be understood in a very liberal sense. Thus if a member of a tarwad is entitled to this allowance independently of whether he has private means or not and if his right is not limited to mere subsistence allowance when the income of the property admits of more, then I can see nothing inconsistent or anomalous in allowing a member of a tavazhi allowance both from the tavazhi properties and the tarwad properties. On the other hand, if we are to give effect to the contention which has been urged on behalf of the appellant, we should be reduced to this position: there may be valuable property which the tavazhi owns and at the same time for years together there may be no use for that property and the income must go on accumulating. That, I think, would be clearly against public policy and certainly is against the spirit of the Malabar Law. This is all that I have to say and I agree in all the points with the judgment delivered by my learned brother.