

(1918) 03 MAD CK 0003

In the Madras High Court

Case No : Second Appeal No. 1177 of 1916 (F.B.)

Chindan Nambiar

APPELLANT

Vs

Kunhi Raman Nambiar and Twenty-Nine Ors.

RESPONDENT

Date of Decision : 04-03-1918

Acts Referred:

Citation : (1918) 03 MAD CK 0003

Hon'ble Judges : Spencer, J; Sir John Wallis, J; Sadasiva Ayyar, J

Bench : Full Bench

Advocate : C.V. Anantakrishna Ayyar, for the Appellant; T.R. Ramachandra Ayyar and A. Sivarama Menon, for the Respondent

Judgement

Sadasiva Ayyar, J.—This is a suit to remove a karnavan. The Courts below directed his removal. Mr. Ananthakrishna Ayyar for the

Appellant contested the findings regarding the charges framed against the karnavan. There is evidence to support the findings and we are not

prepared to differ from the Courts below on these points. The next contention was that even if the charges are proved, they are not serious enough

to entail the removal of the karnavan. One of them which relates to the assignment of a satisfied decree to the sixteenth Defendant, the son of the

karnavan, to enable the said Defendant to bring tarwad properties to sale is a very serious one. Both the Courts below have found that the

conduct, of the karnavan in this respect was fraudulent. Other charges also have been proved against him. They are all detailed in the judgments of

the Courts below. We think that taking them all together, there is enough justification for the decree passed in the case.

2. Mr. Anantakrishna Ayyar relied on Cheria Pangi Achan v. Unnalachan (1917) M.W.N. 185 and contended that the suit was not maintainable,

as the first Defendant was not the de jure karnavan, but was appointed to his position by a family karar. The facts necessary to understand this

contention are these:

The third Defendant (who has since died) was the senior in age and was the de jure karnavan. He was removed by a karar. Then the second

Defendant, who is also now dead and who was next in age, was in management. During this period, the members of the tarwad were dissatisfied

with the way the affairs were being conducted. Therefore there was a family Council and Exhibit B, dated the 17th May 1892, came into

existence. All the members of the tarwad were parties to that document. By its terms, the second Defendant was removed from the general

management and the first Defendant who was admittedly the senior anandiravan was constituted the karnavan. The second Defendant was allowed

to manage a family temple and to utilize the surplus income for his maintenance.

3. The result of the karar was that the second Defendant, the karnavan, was substantially removed from his office and his duties were entrusted to

the first Defendant. As both the Defendants were parties to this karar, it was argued that the second Defendant must be deemed to have

renounced his rights by his assenting to it. The decision in *Kenath Puthen Vittil Tavazhi v. Narayanan* ILR (1905) Mad. 182 on which Mr.

Ramachandra Ayyar relied seems to enunciate the following propositions : (a) The renunciation by a karnavan is binding on the tarwad and is

irrevocable by him, (b) this renunciation may be by a unilateral act or by being a party to the contract by which his rights are superseded, and (c)

by such renunciation, the next in age becomes the karnavan de jure. Applying these conclusions to the present case, it may be said that the first

Defendant who was the senior in age after the second Defendant became the de jure karnavan by virtue of the renunciation implied by the karar. It

is true that some powers which ought ordinarily to have been exercised by the karnavan were entrusted to the second Defendant. This may be

taken to have entailed some restrictions on the full powers of the first Defendant. In other respects his rights as karnavan were recognized and

confirmed by the karar. If this is the correct view of Exhibit B, we think that a suit will lie to remove the first Defendant. This conclusion is, in our

opinion, not inconsistent with the decision in *Cheria Pangi Achan v. Unnalachan*

(1917) M.W.N. 185. But Mr. Anantakrishna Ayyar argued that

this decision is authority for the larger proposition that whenever a karnavan is designated by a karar, he is not liable to be removed by a suit. We

express no opinion on the question whether, even though the karar karnavan is not the senior in age, a suit may not lie at the instance of some of

the parties to the karar to remove him. But we think that when a de jure karnavan is recognized by the karar, he does not acquire a higher status

than that which he originally possessed. However the question raised is a very important one, affecting as it does the rights of management in

numerous families in Malabar. We have, therefore, resolved to refer the following questions for the decision of the Full Bench:

(a) Where a de jure karnavan is a party to a family karar by which his general rights as karnavan, subject to some minor exceptions, are taken

away, can he be said to have renounced his rights as karnavan?

(b) When under the above circumstances, the next in age to the karnavan is recognized as the karnavan by the karar, whether a suit will not lie to

remove him from the karnavanship?

4. It is clear to my mind that the karar, Exhibit B, dated in 1892, deprived the second Defendant of his karnavastanam though with his consent and

vested the office in the first Defendant. The fact that the tarwad (including the new karnavan) gave the management of a temple and its income to

the removed karnavan did not affect the other results of the karar, namely, the putting an end to the tenure of the second Defendant's office as

karnavan and the appointment of the first Defendant to the said office. The supersession of second Defendant's rights by the family karar cannot,

of course, be affected by any subsequent unilateral act or expression of intention on his part.

5. The first Defendant became not only the de facto karnavan but also the de jure karnavan under the karar and he can therefore be removed by

suit for gross misconduct.

6. As soon as a karnavan ceases to be such by death or removal, the next in order of seniority becomes the karnavan, and any family karar binding

on the person who has ceased to be the karnavan ceases to have any effect on the new karnavan ""except perhaps where he has himself agreed in

that karar to be bound by those restrictions whenever he succeeded to the

stanom."" There is no scope for the framing of a scheme of management by a Court under those circumstances. This was all that I intended to express in *Cheria Pangi Achan v. Unnalachan* (1917) M.W.N. 185.

7. A family karar to which all the adult members of a tarwad are parties and by which a person is deprived of his status as karnavan is not the same thing in the eye of the law as an unilateral act of relinquishment of his office by the karnavan though the result on his status as karnavan may be the same.

8. I think that the question (a) referred to us does not arise for decision on the above view of the legal nature and effect of the family karar (Exhibit

B) and I would answer as regards question (b) that a snit will lie to remove the karnavan recognized as such by a family karar.