

(1919) 08 MAD CK 0017
In the Madras High Court

Chowkaran Pazha Parambath Cheria Kunhi Pocker	APPELLANT
Vs	
Chowkaran Pazha Parambath Malikaimal Valia Bappotty	RESPONDENT

Date of Decision : 02-08-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 36

Citation : (1919) 10 LW 496 : (1919) 37 MLJ 544

Judgement

1. This is a suit by a junior member of a tarwad who obtained permission to conduct the suit on behalf of all its members for possession of certain

tarwad properties, The predecessor of the present karnavan, the 1st defendant, gave a kanom in 1904 to the 2nd defendant under Ex. X.

Thereupon the tenants of the tarwad attorned to the 2nd defendant and paid him rent. It was found by both the Lower Courts that there was no

consideration for the kanom and that it is not binding on the tarwad. The only ground urged by Mr. Menon in second appeal is that the possession

of the 2nd defendant, if any, must be deemed to be possession of the tarwad and that the only remedy open to an anandravan under the

circumstances is to sue for a declaration. He also contended that this is a subterfuge to evade the law of limitation as a suit for declaration would

have been barred. Strong reliance was placed upon Padamma v. Themana Amma ILR (1894) M. 232 for this contention. There can be no doubt

that on the facts found by the lower court and accepted in second appeal by the High Court that judgment was right. It was found in that case that

the karnavathi although she executed certain deeds in favour of her daughters, did not part with possession of the alienated properties. There is no

finding that the tenants paid any rent to the transferees. In these circumstances it was held that an anandravan can secure the rights, of the tarwad

by suing for a declaration without any consequential relief as to possession. There are no doubt observations in that judgment about "unity of possession" and about the possession of the tenant being the possession of the tarwad etc. But they must be read with the facts of the case and do not support the contention that under no circumstances can a junior member of a tarwad sue for possession if the tarwad had parted with possession. The next case *Urumi Koran v. Puthiyapurayil Ahanied* (1909) 6 M.L.T. 157 is clearly distinguishable from the present case. In that case what stood between the tarwad and the 3rd defendant the alienee was a piece of paper under which no possession passed. The learned Judges must be taken to have held that this impediment in the way of the tarwad which might at any time endanger its rights might best be removed by obtaining a declaration that the document was invalid. Neither of the two decisions quoted by the learned Counsel is authority for the broad proposition that a rightful owner can never sue for possession unless he wants physical possession. The acceptance of such a contention would mean that in cases where tenants are actually in possession rival claimants cannot seek to recover possession unless all the tenants are impleaded as defendants. Rule 36 of Order 21 of the CPC to which Mr. Madhavan Nair drew our attention negatives this proposition. It has been held in *Ratnasabapalhi Pillai v. Ramsawami Aiyar* ILR (1910) Mad. 452; 20 M.L.J. 301 that a receipt of rent by a trustee is possession which can be recovered in a suit. In *Jagannathachary v. Rama Raju* ILR (1904) Mad 23 it was held that where tenants are actually on the land and the defendant collected rent from them it was a matter to which the provisions of Section 9. of the Specific Relief Act relating to possession applied. These decisions support the view taken by the Courts below that a suit like the present one is maintainable. Mr. Menon suggested that the position of an Anandravan who obtains a kanom and gets attornment is different from that of a stranger. The character in which an alienee anandravan holds possession will depend upon how far he ousts the tarwad and not upon whether he is a member of it or not. If the tarwad is ousted then the possession of the ouster whether he be a member of it or not is as injurious to the tarwad as ouster by a stranger and the member in possession must be sued, as if he was a stranger. This principle is not inconsistent with the observations in *Padamma animal v. Thenamma* ILR (1894) Mad.

232.

2. For these reasons the second appeal fails and must be dismissed with costs.