
(1970) 10 KL CK 0028
In the High Court Of Kerala
Case No : A.S. No. 295 of 1965

Govinda Warriar Sreedhara Warriar

APPELLANT

Vs

Rudra Warriar Balakrishna Warriar

RESPONDENT

Date of Decision : 20-10-1970

Acts Referred:

Citation : (1971) KLJ 126

Hon'ble Judges : T.C. Raghavan, J;E.K. Moidu, J

Bench : Division Bench

Advocate : P.C. Chacko, for the Appellant; P. Kochukrishna Pillai and N. Rajagopala Pillai, for the Respondent

Judgement

T.C. Raghavan, J.—In this appeal arising out of a suit for partition of a varyiam following the marumakkathayam system of inheritance, defendants 2, 4 and 7 are the appellants and the plaintiffs the contesting respondents. The matter came to this Court once; and the major question relating to the interpretation of Ex. P2 was set at rest. This Court held that Ex. P2 was a maintenance arrangement and not a partition outright, and directed the lower court to consider the question whether the 26 items in schedule C to the plaint were tarwad properties available for partition. This question the lower court has considered; and in this appeal, we need consider only whether the decision of the lower court on this question is correct. The varyiam had seven members, the first plaintiff a son, the first defendant another son, the karanavan, the fourth defendant a daughter and defendants 2, 3, 5, and 6 the children and grandchildren of the fourth defendant. The seventh defendant is a stranger to the tarwad, the husband of the fourth defendant; and plaintiffs 2 to 4 are the wife and children of the first plaintiff. There was an arrangement in the tarwad under Ex. P2 of 1125, under which the first plaintiff was allotted some properties for maintenance and the other group consisting of defendants 1 to 6 were allotted other properties. The main contest on the last occasion was whether Ex. P2 was a maintenance arrangement or a partition outright; and it was this question that

was set at rest by this Court.

2. Now, in considering the question whether the properties in schedule C are tarwad properties or not, the lower court has divided the items in this schedule into two groups, properties acquired prior to Ex. P2, and two, properties acquired after Ex. P2. Still, the lower court has not accepted the contention of the defendants that all the items purchased, by them after Ex. P2 were their separate properties (not tarwad properties) since the wherewithal for the purchase came from the savings they effected from the income of the properties allotted to them for maintenance. Consequently, the lower court has considered the properties item by item--whether each of them was purchased with tarwad funds or not--and has held that items 2, 3, 4, 7 and 12 to 26 were tarwad properties and should be partitioned among all the members of the tarwad. Regarding the other items (items 1, 5, 6 and 8 to 11), the lower court has held that they were the separate properties of defendants 1 to 6 and were not available for partition. In the appeal the finding of the lower court that items 2, 3, 4, 7 and 12 to 26 were tarwad properties is being questioned; and in the memorandum of cross-objections, the finding that items 1 and 8 to 11 were private acquisitions of defendants 1 to 6 is also being challenged. There is no dispute regarding items 5 and 6.

3. Of the items disputed in the appeal, items 4 and 12 and the equity of redemption in items 13 to 26 were purchased after Ex. P2; and in our opinion, these should stand on a different footing from the others, viz., items 2, 3 and 7 the otti (mortgage) right in items 13 to 26. The Subordinate Judge appears to have proceeded on the basis that, since Ex. P2 was only a maintenance arrangement and not a partition, the acquisitions made with the savings from the income of the properties allotted for maintenance would be tarwad properties. In other words, he appears to think that, in spite of the allotment of some properties to defendants 1 to 6, the income therefrom would still be tarwad property, so that, if they invested the savings in purchasing other properties those properties would also be tarwad properties.

4. We have no doubt that, regarding these items, there cannot be any dispute that they were private acquisitions of defendants 1 to 6. Admittedly, the said defendants had no other properties except the properties allotted to them under Ex. P2. And all the acquisitions they made after Ex. P2 must have been with the income saved by them from the properties allotted to them for maintenance. At this stage, a decision of a learned Single Judge of this Court has been brought to our notice taking the view that, in spite of allotment of an item of tarwad property to a tavazhi for its maintenance, the property continues to be tarwad property in the possession of members of the tarwad qua members, that its yield is income of the tarwad, that, in the hands of the maintenance allottees, it is still tarwad fund, that, until it is spent out, it remains so, and that, when it is allowed to accumulate in their hands and subsequently converted into landed property, such property is tarwad property. The decision is *Narayana Pillai v. Balakrishna*

Pillai (1967 KLT 1142). The learned Judge has considered two earlier decisions, both of the Travancore Cochin High Court, and has dissented from one of them relying on the other, which was a Full Bench decision. The ruling dissented from is Aiyappan Pillai v. Bhagavathi Pillai (A.I.R. 1952 T.C. 471). In that case a Division Bench observed:

In this tarwad, the various thavazhis and sub-thavazhis composing it were separately in enjoyment of specific properties for their own Benefit. Each of the component parte was functioning separately. The income derived by the component thavazhis or sub-thavazhis from the tarwad properties in their possession would be their own. Any saving made therefrom or any extra profit arising thereout would be their own as they are not accountable to the tarwad.

5. And, in making this observation, the learned Judges followed the Full Bench decision of the Madras High Court in Subramanian Chetti v. Arunachallam Chetty (I.L.R. 28 Mad. 1). The Madras decision was under the Mithakshara Hindu law; and the Full Bench was considering the question whether the acquisitions made by a Hindu widow by the savings effected by her from amounts received by her for her maintenance were her absolute properties. The Full Bench observed;

It is impossible to see how, consistently with the present state of the law, which in truth completely dissociates the income from the corpus in such cases, the presumption referred to could be supported. Now that it has definitely been established that the widow is entitled to use her entire net income at her pleasure or give away the whole or any part thereof as she chooses inter vivos or by testament, and that, with reference to the exercise of such right, is immaterial whether the income is formed into a fund or kept invested in this or that form how could it be supposed that prima facie it merges in the estate merely because she has not actually disposed of it.

X X X

Nor could it be supposed that, as a matter of abstract reasoning, there is any necessary connection between the limited nature of the estate which a widow takes in her husband's property and the interest accruing to her in the income derived by her as such limited owner. In the absence of any clear provision of Hindu law, defining the character of her interest in the income, it must, on general grounds, be held that what becomes vested in her in her own right and what she can dispose of at pleasure is her own property, not limited but absolute, exclusive and separate in every sense and devolving as such.

Where, however, what is given is current income not for mere use and return but for actual consumption, it would be almost absurd to talk of an intention that there should be any reverter, it being now thoroughly well established that what may not have been consumed may be disposed of by the female as she likes. In such circumstances, whether as a matter of common sense or of legal principle, but one view is possible, viz., that money so received is the absolute property of the woman descendible as such to her own heirs.

6. The legal position is stated by Sundara Aiyar in his Malabar and Aliyasantana Law at page 180 thus:

A member of the family making improvements on the family property, or raising crops on the family property, cannot of course claim them. They will be regarded as accretions to the family property; it would be otherwise if the lands were held on lease from the family. Acquisitions out of maintenance allowances or out of the income of the family allotted for that purpose should be similarly treated as self-acquisitions. The case may vary if it is only an improvement of the family property in his possession for maintenance, for then the simple case would be complicated by the principle of merger.

7. To these we might add the ruling of the Travancore High Court in Lekshmi Kunjipennu v. Velayuthan Govindan (8 T.L.J. 43). A Division Bench observed:

Stranger lessees, cultivating other people's lands, are always allowed a margin of profit large or small according to circumstances. Why should junior members of tarwads willing to take on lease, or cultivate on other terms, the properties of their tarwad, be denied the concession? Reason does not sanction the making of any distinction, unless it be one in favour of the latter. For one thing, the granting of permission to junior members to be in possession of, and cultivate, properties belonging to the tarwad will be providing work for them and a chance for their probably idle hands being diverted from their proverbial occupation. The contrary view, urged for our acceptance, will, as tending to discourage industry and thrift, lead to undesirable consequences, subversive of the best interests of the tarwad, and we are not aware that it has been or deserves to be countenanced by the policy of the Marumakkathayam Law.

8. These authorities lay down that, if the tarwad members in possession of tarwad properties as tenants or on maintenance allotment derive income therefrom, such income is their absolute property and not tarwad property. And if they purchase properties with the savings from this income, the properties purchased are their private acquisitions. As long as there is no liability for the maintenance allottees to account to the tarwad for the income of the properties allotted to them for maintenance (and there cannot be any such liability to account if they can spend the entire income as they like), the savings from such income cannot be tarwad property. Reason also is in favour of this, because, if properties are allotted to two tavazhies for maintenance and one tavazhi, out of thrift, conserves a portion of the income and purchases other properties, why should the properties so purchased be considered to be tarwad properties and the acquirers be denied the benefit of their thrift? And the other tavazhi, a spendthrift, spends the entire income and does not conserve anything at all: why should that tavazhi be rewarded for its extravagance by allowing it the benefit of the saving by the other tavazhi? There cannot be any connection between the tarwad nature of the properties allotted on maintenance and their income, because it is to sever that connection and give freedom to the maintenance allottees to utilise the income as they like that the maintenance arrangement is

made.

9. Now about the decision relied upon by the learned Single Judge, the Full Bench decision in *Narayana Pillai Kunjunni Pillai v. Narayana Pillai Bhaskaran Pillai* (1954 KLT 340). The question the Full Bench was considering was whether a maintenance allottee, who made improvements to the property allotted to him for maintenance, could claim value of improvements when the property was taken away from him. In considering that question, the Full Bench said that an allottee of tarwad property for purposes of maintenance was in possession of the property allotted to him as member of the tarwad. In other words, the allottee was in possession of his own property, the income whereof he was entitled to appropriate for his maintenance; and there was no scope for any claim arising on account of the improvements made by him in that property, because, if he improved the property and had to claim value therefor, he had to make the claim against himself. It was only when the holder of a property had an interest independent of and apart from the person against whom the claim was to be made, it was possible to think of a claim for value of improvements; and hence a claim for improvements by a maintenance holder could not be sustained.

10. Of course, by an arrangement for maintenance, the maintenance holder does not cease to be a member of the tarwad, nor does the maintenance allotment (the property allotted) cease to be tarwad property. Still, the income of the property allotted on maintenance is the absolute property of the maintenance allottee and in his hands the income does not constitute tarwad property. The Full Bench decision relied upon by the learned Single Judge does not lay down that the income of the property allotted on maintenance to a member is tarwad property. The allottee is still a member of the tarwad, since there was no partition; and the property allotted to him for maintenance is still tarwad property too. Never the less, the income of the property is the absolute property of the maintenance allottee. A maintenance arrangement is for giving full freedom to the maintenance allottees to take the income of the properties allotted to them and spend it as they like. As pointed out by the learned author, Sundara Aiyar, when a maintenance allottee makes improvements to the property allotted to him, the simple case will be complicated by the principle of merger. The case before the Full Bench was such a case; and the Full Bench held that the maintenance holder was not entitled to claim compensation for the improvements effected by him. That case should not be confused with a simple case where a maintenance allottee purchases another property with the savings from the income from the property allotted to him. In the case before us, the language of Ex. P2 is telltale: the document says that the maintenance allottees have full freedom with the income (

) of the properties allotted to them.

11. In view of this fairly unmistakable position in law, we are of opinion that *Narayana Pillai v. Balakrishna Pillai* (1967 KLT 1142) was not correctly decided. And this concludes the case regarding the items of properties purchased by

defendants 1 to 6 after Ex. P2. All those items are their self-acquisitions and are not available for partition as tarwad properties. x x x x

(The discussion in the judgment regarding several items, item wise is omitted.)

x x x x

The appeal is allowed in part as indicated above. In the appeal, the appellants will get half costs, since they have succeeded only in part. And the memorandum of cross-objections is dismissed with costs.