

(1919) 02 MAD CK 0030
In the Madras High Court
Case No : Second Appeal No. 1036 of 1918

Govindan Nair

APPELLANT

Vs

Kunju Nair and Thirty three Ors.

RESPONDENT

Date of Decision : 14-02-1919

Acts Referred:

Citation : (1919) 02 MAD CK 0030

Hon'ble Judges : Seshagiri Ayyar, J;Oldfield, J

Bench : Division Bench

Advocate : C. Madhavan Nayar and K. Kutti Krishna Menon, for the Appellant;
C.V. Anantakrishna Ayyar, for first to nineteenth Respondents, for the Respondent

Final Decision : Allowed

Judgement

Oldfield, J.—I agree unreservedly with the conclusion of my learned brother in the judgment which he is about to deliver that a person claiming like the Plaintiff, the Appellant, separate maintenance must show some good cause for doing so and that a claim to menchilavu is on the same footing as a claim to maintenance.

2. The more difficult question is whether the Plaintiff's desire to live with his wife (for that is all the real justification which he can allege for his claim) is such good cause; and I have felt great doubt whether the reasoning by which corresponding claims by female members have been countenanced in *Maradevi v. Pammakka* I.L.R.(1913) Mad. 203, *Kunchi v. Ammu* I.L.R.(1913) Mad. 591 and *Muthu Amma v. Gopalan* I.L.R.(1913) Mad. 593 should be extended. For those decisions involve with all due deference a radical departure from the view taken by earlier authorities. They have, however, been acquiesced in so far as we have been shown, for over five years; they proceeded from learned Judges, whose competence in West Coast law commands respect and whose departure from or extension of recognized principle was deliberate. In these circumstances it seems to me that the principle as regards females must be treated as established; and if it is so, there is no reason against applying it for the benefit also of male members, since it has not been shown how any special considerations such as

the right of the tarwad to any services at their hands or otherwise to their presence in it, as a condition of their right to maintenance, can be sustained against them.

3. I concur in allowing the appeal reversing the decree of the District Judge and restoring that of the District Munsif. Each party will bear their own costs throughout.

Seshagiri Ayyar, J.

4. This is a suit by a male member of a Malabar tarwad for arrears of menchilavu from the tarwad. The case as it finally developed itself in the Courts below is that the Plaintiff left the tarwad house to help his wife to manage her tarwad affairs and also because he did not find it convenient to live in the tarwad house. I do not think the fact that the Plaintiff wanted to assist his wife to manage her affairs is a good ground for leaving the tarwad house, nor the allegation that the Plaintiff found it more comfortable to live in his wife's house a sufficient ground for claiming separate maintenance. The cases discussed in *Maradevi v. Pammakka* I.L.R.(1913) Mad. 203 *Kunchi v. Ammu* I.L.R.(1913) Mad. 591 and *Muthu Amma v. Gopalan* I.L.R.(1913) Mad. 593 support the above proposition. I may say at once that I do not agree with Sadasiva Ayyar, J., in *Kozhipurath Kunhikrsihna Menon Kurnavan and Others Vs. Kozhipurath Kunhikavamma and Others*, , that the burden of proving proper cause or the want of it is on the karnavan. The customary law of Malabar as enunciated in the decisions of this Court is that ordinarily every member of a tarwad house should be maintained there by the karnavan. He may go out of the house for good and proper cause. The onus of proving that his departure is for such a cause is on the member leaving the house. This was laid down" in *Kunchi v. Ammu* I.L.R.(1913) Mad. 591 to which Sadasiva Ayyar, J., was a party. *Maradevi v. Pammakka* in I.L.R (1913). Mad. 203 is also to the same effect. In *Muthu Amma v. Gopalan* I.L.R.(1913) Mad. 593, Sadasiva Ayyar, J., did not start his present theory of burden of proof. I am, therefore, unable to agree with the learned Judge that everything would be regarded as a proper cause which the karnavan cannot show to be improper.

5. Now comes the important question whether a male member of a tarwad leaving the tarwad house solely for the purpose of living with his wife is entitled to separate maintenance. Mr. Anantakrishna Ayyar did not question the correctness of the rulings which have laid down that a female member leaving the tarwad house for the purpose of living with her husband would be entitled to separate maintenance--see the three cases reported in 36 Madras series--nor did he take exception to the principle that maintenance is given to a member of a Malabar tarwad by reason of the proprietary interest possessed by a member in the tarwad property; see *Ammani Amma v. Padmanabha Mnon* I.L.R.(1918) Mad. 1075.

6. It is not denied that a male member of a tarwad has a proprietary interest in the tarwad property. Farther in the case of a female member the customary law

is that she should ordinarily reside in the tarwad house and that the husband should visit her there. That being the normal state of affairs in a tarwad the permanent residence of a husband in the wife's tarwad cannot, be regarded as an improper act on his part. The law as we have construed has made an inroad upon custom to this effect, namely, that a female member leaving the tarwad house solely for the purpose of living with her husband in his tarwad is entitled to separate maintenance. I fail to see why the same reasoning is not applicable to the converse case. I am almost inclined to regard the latter as an a fortiori case. But it is not necessary to go that length. There are expressions in the judgments of this Court which deduce the propriety of the cause from the ground that it is conducive to morality that the wife should be encouraged to live with her husband. It would serve the cause of morality no less that the husband should be encouraged to make his permanent home with his wife in her tarwad. Therefore I am of opinion that the present case is within the rule relating to the right of a female member making her home in her husband's tarwad.

7. Mr. Anantakrishna Ayyar's complaint that we shall be disrupting the tarwad, if the Plaintiff succeed, comes too late in the day; disintegration commenced long ago.

8. On one point I agree with him. Melchilavu is part of the maintenance. I do not think that there is any reason as suggested by Mr. Madhavan Nayar, for placing it on a higher footing. I agree with the reasoning in *Valia Konikkal Edam Kelu v. Zakshmi Nettyar Amma* (1913) M.W.N. 379 on the point.

9. I would, therefore, reverse the decree of the District Judge and restore that of the District Munsif and I agree with the order as to costs made by my learned brother.