

(1943) 04 MAD CK 0037
In the Madras High Court

K. Kuttan Unni

APPELLANT

Vs

K. Kochunni

RESPONDENT

Date of Decision : 09-04-1943

Acts Referred:

Citation : AIR 1944 Mad 378 : (1944) ILR (Mad) 515 : (1944) 57 LW 224

Judgement

1. The parties to this appeal are members of a Malabar tarwad. The appellants, who are the junior members, sued the respondent, who is the senior member, in the Court of the Subordinate Judge of Ottapalam for a declaration that the properties in his possession belong to the tarwad and that he is merely in charge of them as the karnavan of the family. The properties are extensive and produce a large annual income. The respondent pleaded that they, belong to stanoms of which he is the stani and therefore the appellants were not entitled to the declaration asked for, although he admitted that they were entitled to be maintained out of the properties in his possession. The Subordinate Judge found for the respondent, and accordingly dismissed the suit. The appeal is from this decision. The relationship between the parties is shown by the following geneological tree:

PARVATHI NETHIYAR (died 1904) Madras 37 |
 ----- | | | | | Son
 Narayani Appukuttanunni Kochunni Meenakshi Kottanunni (died 1894) Nethyar
 Moopil Nair Moopil Nair Nethiyar Elaya Nair (plfi. 5) (d. 1925) (deft. 1) (plff. 6)
 (plff. 1) | | ----- | | | | | Kunhikuttanunni
 Appunni Nair Rajanunni Nair Sathyabalanunni | Nair (plfi. 2) (plff. 10) (plff. 3)
 Nair (d. plff. 4) | | ----- | | | Kochunni Nair Parvati
 alias Vijayam Appukuttanunni (plff. 11) Nethiar, plff. 7 (minor) plff. 8 |
 Sathanathanunni (minor) plff. 9

2. A tarwad is an undivided family governed by the Marumakattayam law, the customary law of Malabar. Its outstanding feature is that for the purpose of inheritance descent is traced through the female line. The property of the family

is managed by the karnavan, who is ordinarily the eldest male member. Before the passing of the Marumakattayam Act, 1932, a member of a tarwad could not insist on a partition. A partition could only take place if all the adult members agreed. Before the passing of the Act the rights of members junior to the karnavan were merely these : (1) to succeed to the management; (2) to be maintained by the karnavan; (3) to object to improper administration of the property of the tarwad and to see that the property was duly conserved for the use of the tarwad; (4) to bar an adoption; and (5) to get each a share should a partition take place. This summary is taken from the treatise of the late Mr. P. R. Sundara Ayyar on "Malabar and Aliyasanthana Law." Mr. Sundara Ayyar was a Judge of this Court from 1911 to 1913 and his work is recognised as being authoritative. The Madras Marumakattayam Act, 1932, has made important changes in the customary law, but it is not necessary to enter upon a detailed survey. It will be sufficient for the purposes of this case to refer to Sections 32, 38, 43 and 44. Section 32 requires the karnavan to keep true and correct accounts of the income and expenditure of the tarwad and provides that the accounts shall be made available once a year for inspection by the major anandravans (members of a tarwad other than the karnavan). Section 38 makes provision for partition of tarwad property, subject to limitations which do not call for mention here. Section 43 permits two-thirds of the adult members of the tarwad to apply to the Collector for the registration of the tarwad as impartible and authorises the Collector, if satisfied that the petition is in order to register the tarwad as impartible. Section 44 allows two-thirds of the adult members of a tarwad registered as impartible to apply for the cancellation of the registration. The appellants applied for the registration of the tarwad u/s 43 and their action was resented by the respondent.

3. The word "stanom" according to Sundara Ayyar means the status and attendant property of senior rajas. In Moore's "Malabar Law and Custom" it is defined as a station, rank or dignity, and the definition in Wilson's "Glossary of India" is to the same effect. A stani is the holder of a stanom. The ancient rulers of the Malabar coast possessed stanoms and it may be taken that the lands which they held as rulers were regarded as being stanom in character. Rulers granted stanoms to their subsidiary chieftains and public officers. The grant of a stanom to a subsidiary ruler or public officer was usually accompanied by a grant of land for the maintenance of the dignity. In Mr. Sundara Ayyar's work a chapter is devoted to this subject and it is there pointed out that in addition to the families of princes and chieftains there were other families possessing stanoms without any particular dignity attaching to them. In ancient days when a family became opulent and influential the members of the tarwad sometimes agreed to set aside for the karnavan certain property in order that he might keep up his social position and influence and this property descended to the next head of the family. What was permissible in ancient days is not, however, permissible in these days. In *Velia karmal v. Velluthadatha Shamu* (1973) 6 M.H.C.R. 401 this Court held that a tarwad cannot now create a stanom. It is an accepted rule that

where there are properties attached to a stanom the stani has the right to utilise the income for his own purposes, and the members of the tarwad are not entitled to claim maintenance out of such income. In the present case, the respondent says that he is bound to maintain the members of the tarwad out of the income from what he claims to be stanom properties, but Mr. T. R. Venkatarama Sastriar, who appears for him, has not referred to any other case where the members of a tarwad have the right to claim to be maintained out of stanom properties. We consider that the respondent has made this assertion in an attempt to avoid the conclusions to be drawn from the judgments in two cases decided in 1818 to which reference will be made presently. It is also common ground that properties acquired by a stani out of the income of the stanom properties become on his death the properties of the kovilagam in which he was born, unless he has disposed of them or has shown an intention to attach them to the stanom. A kovilagam is a family residence of a ruler wherein junior members of a branch of the family live under the management of the eldest resident female of that particular branch : see Moore's "Malabar Law and Custom," Edn. 3, p. 355. In the family of which the parties are members there is only one kovilagam.

4. In 1792 Tippu ceded Malabar to the East India Company and ever since it has been under the rule of the Government of India. On the cession, the ruling powers of the rajahs and the chieftains were taken away from them. They were not deprived of the possession of their landed properties, but they were compelled to pay land revenue in respect of them and consequently became mere holders of land held under ryotwari tenure. Upto 1806 the deposed rulers were allowed to collect the land revenue and retain for themselves one-fifth of the net income, but in that year the East India Company itself undertook the collection and thereafter the Government granted to the deposed rulers annual allowances (malikhana) for the maintenance of themselves and their families. The malikhana was liable to forfeiture on proof of disloyalty or mis-conduct. In his "Collection of Treaties, Engagements and Sanads" Vol. X, p. 178, Aitchison points out that malikhana holders are in no sense zamindars. Zamindars are found on the east coast of South India, not on the west coast, and this is to be borne in mind. The only ruler with whom the East India Company entered into an agreement in writing in respect of the payment of malikhana was the Zamorin (the Rajah of Calicut). This agreement is set out in full at pp. 247 to 250 of Vol. X of Aitchison's "Collection of Treaties, Engagements and Sanads", and is also reproduced on Logan's "Collection of Treaties and other papers of Importance," Edn. 2, pp. 372 to 376. It is not disputed that malikhana allowances were granted to all the deposed rulers on the same basis. While a rajah or chieftain and his successors might continue to regard lands formerly held by him as a ruler as still being stanom lands he and they were, so far as the Government was concerned, merely holders of such lands under ryotwari tenure.

5. The head of the family of which the parties are members was a ruling chieftain in 1792, although his State, Kavalappara, situate in what is now known as the Walavanad Taluk, was a small one. An idea of its size in relation to other States

in Malabar is to be gathered from the map to be found at p. 44 of "the Malabar Gazeteer." Mr. Sundara Ayyar does not include the Kavalappara rajah in his list of ruling princes given at p. 52 of his work, because that list was confined to the principal members of that class, but there can be no doubt that the head of the Kavalappara family was a ruling chieftain in 1792, because in 1806 the East India Company granted to the family a malikhana of Rs. 4567-10-3. While the origin of the State is not really known it may be taken that at one time the chieftain of Kavalappara was subordinate to the Rajah of Palghat because the latter bestowed upon him the following stanoms in the Palghat taluk : (1) Kanhumal Pada Nayar with the stanom name of Ittunni Kumaran Raman, (2) Pannithiruthi Kymal with the stanom name of Ittunni Kumaran Raman, (3) Chundil Muthar with the stanom name of Kotha Kumaran Raman, (4) Kattusseri Kymal with the stanom name of Kauthillath Ittunni Kumaran Raman, (5) Pazhambalakode Muthar with the stanom name of Kumaran Raman alias Pazhambalakode Muthar. He also possessed two stanoms in Cochin territory. The stanom name of Kavalappara chieftain so far as his own State was concerned was "Karakkat Kumaran Raman." The plaintiffs allege that these stanoms never had lands attached to them, but the documents exhibited anterior in date to 1792 provide strong indication to the contrary and we accept the defendant's case that originally the stanoms granted by the Palghat and Cochin rulers were endowed with lands and that the head of the family held the lands of the Kavalappara State itself entirely in his own right. Whether the State lands and the lands which formed the endowments of these stanoms were treated as tarwad properties after the ruling powers were taken away and the malikhana granted instead is another matter. This is the main question which the Court is called upon to decide in this appeal. The Subordinate Judge's reasons for holding that the properties in suit are stanom properties are broadly these: (1) At the time of the cession of Malabar the Kavalappara Nayar was an independent chieftain; (2) the presumption in the case of rulers is in favour of the impartible nature of their possessions; (3) other Malabar rulers possessed stanom properties; (4) the description of the head of the family in documents relating to property is consistent with a stanom character, (5) some of the ceremonies performed by the quondam rulers are still performed; and (6) the maintenance of the members of the family out of properties held by the head of the family is not inconsistent with his position as a stani successor of the ruling chieftain of 1792.

6. What were the habits and customs of the rulers in Malabar prior to 1792 is not of great importance when considering what is the position 150 years later. Ceremonies and customs may continue, but whether property rights remain the same is a very different matter. The only safe guide in deciding whether rights in property are the same as those held a century and a half ago is to ascertain what has been the course of events since. We propose to examine the course of events since 1792, but before doing so it may be pointed out that the respondent's claim that the whole of the properties in his possession belong to stanoms is obviously fallacious. In fact, Mr. Venkatarama Sastriar has conceded

this. Some of the lands now in his possession were in the dim past set apart for the maintenance of the Amma Nethiyar (the senior lady of the family) and the junior members of the Kovilagam. Exhibit 12 is a receipt given by the village Munsif to the agent of the senior lady of the family for revenue paid by her. The document is torn and it does not disclose the year, but it is not disputed that it was given in the first quarter of the last century. Exhibit 13 is a patta granted to the Amma Nethiyar by the East India Company and the date appears as 27th April 1842. Then there is Ex. 15, a patta granted to the Kavalappara Muppil Nayar by the Government on 2nd January 1869. The word "Muppil" means "senior" and the designation "Kavalappara Muppil Nayar" is not a stanom title. This grant is just as consistent with it being a grant to the head of the family as the karnavan of the tarwad as being a grant to him as a stani; if anything the indication is more in favour of it being a grant to him as the karnavan. The plaintiffs have not filed a list of the properties which they say the respondent holds as the karnavan. As we have indicated, it is their case that all the properties held by him are held as the karnavan. Before the trial commenced the respondent urged that the plaintiffs should specify the properties which they alleged belonged to the tarwad. It was held that it was not necessary for them to do so. Their case was that everything held by the respondent belonged to the tarwad. It is not without significance that the respondent has himself not attempted to identify any of the properties in his possession with the stanoms of the family.

7. In the case of properties held by the head of a tarwad the presumption is that they are tarwad properties. Mr. Sundara Ayyar at p. 256 of his work expresses the opinion that the question whether there is a stanom in any particular case must be decided upon the evidence of usage adduced, and the onus is upon those who assert that any particular property belongs to an individual and not to the family to which the individual belongs. He goes on to say that it is not sufficient in order to create a stanom that properties are temporarily allotted to a person filling any particular position. The evidence must be sufficient to prove a long continued usage recognizing the property in question as belonging to the person filling a particular position without any interest in the members of the family to which the person holding the position belongs and without any power in them to terminate the arrangement. In this connexion he relies on the decisions of this Court in *Parrakkal Kondi v. V. Kunhi Penna* (1864) 2 M.H.C.R. 41 and *Velia karmal v. Velluthadatha Shamu* (1973) 6 M.H.C.R. 401. We are in agreement with this opinion. Further, the respondent must show that properties which have been purchased out of the income of stanom properties have remained stanom in character, but he has made no attempt to prove this.

8. With these preliminary observations we will now proceed to refer to the principal events in this family since the early part of the last century; In 1817, Valia Kava Nethiyar, the mother of the third Nayar, who was then a child of seven or eight years, instituted a suit on behalf of herself and another suit on behalf of her son claiming maintenance from the then Muppil Nayar. The defence was that

the mother was only entitled to maintenance out of the properties which were in the possession of the Amma Nethiyar and the same applied to the son until he became of age. The properties in the possession of the Amma Nethiyar had, the defendant said, been set aside for the maintenance of the ladies and the children of the tarwad. The mother had left the house where the Amma Nethiyar resided, taking her child with her, and the Muppil Nayar resented her action. The judgments in these suits have been exhibited. The Court held that the plaintiffs were entitled to be maintained out of the properties in the possession of the defendant and a decree was passed against him in each suit. In the mother's suit the defendant's own witnesses stated that if the ladies lived "separate on being compelled to do so as the result of family dissensions, the defendant, whom they described as the karnavan, should maintain them. These judgments have a very important bearing on this case. The defendant there could not be compelled to maintain the plaintiffs out of stanom properties and notwithstanding that certain properties were in the possession of the Amma Nethiyar for the purpose of the maintenance of the ladies and the children of the family, decrees for maintenance were passed against him to be satisfied out of the properties held by him. What is more, his own witnesses regarded the properties in his possession as being tarwad properties and he as being the karnavan. The statement of the defendant that he was bound to maintain out of the properties held by him the third Nayar on his reaching majority in itself amounted to an admission that the properties in his hands were not stanom properties. In the translation of the judgment in the mother's suit the defendant is referred to as the "stani," but it is admitted that this word is not to be found in the original. (After considering the evidence their Lordships proceeded.) In the judgment under appeal reference is made to "the Kavalappara Swarupam." The word "swarupam" is defined by Moore as "a dynasty" and by Logan as "dynasty, family." In Wilson's Glossary the definition is "natural form, inherent property or nature; it is sometimes used in the dialects for property in land or money, an estate." In many of the exhibits the word swarupam has been translated as "estate".. As a subsidiary meaning of the word this is no doubt legitimate, but it is not a correct translation of the word wherever used in the documents which have been exhibited. In the course of the arguments the Court asked Mr. Venkatarama Sastriar whether he could point to a single document on the record where the word swarupam could correctly be translated as "estate", and he was not able to point to one. Therefore it may be taken that so far as this case is concerned the word swarupam wherever used means "family". We draw attention to this fact lest it should be said that we have not had regard to the meaning of the word when considering the documentary evidence. It may be added that in para. 3 of his written statement the respondent refers to his family as being a swarupam. In a statement made to the Collector when he was opposing the registration of the tarwad as impartible he referred to the family as "the Kavalappara Swarupam." In the agreement entered into by the East India Company with the Zamorin in 1806 with regard to the payment of malikhana the word suruwam which is the same as swarupam is used in the same sense. (Their

Lordships then summarised the position of the parties and allowed the appeal.)