

(1934) 12 MAD CK 0038
In the Madras High Court

Kalappatti Eravamannattil Ithamma Maruvalamma's son
Krishnan and Another

APPELLANT

Vs

Thankurisai Puliyankalath Koma Maruvalamma's daughter
Wani Maruvalamma and Others

RESPONDENT

Date of Decision : 21-12-1934

Acts Referred:

Citation : AIR 1935 Mad 402 : (1935) 41 LW 353

Hon'ble Judges : Beasley, C.J

Bench : Division Bench

Judgement

Beasley, C.J.—These are appeals from an order of the Subordinate Judge of Palghat appointing a Receiver in a suit for partition of a Marumakkathayam tarwad. This suit was filed in November 1933 three months after the Madras Marumakkathayam Act (22 of 1934) which gives a right of the members of such a tarwad to claim partition, came into force. There are 222 members in this tarwad which is divided into three main sub-branches. The plaintiffs, eleven in number, belong to a sub-branch of one of the sub-branches, itself a partible unit under the Act. They sue for partition of their share. There are four schedule properties, namely, A, B, C and D. The A schedule properties were under the compromise in O.S. No. 31 of 1887 allotted to the three main sub-branches of the tarwad for the purpose of providing food, etc. These properties were leased to tenants from whom rents were got and possession of the properties was given to the respective sub-branches. The B schedule properties are properties held on Kanom tenure and the common Karnawan of the main tarwad held these properties in order to collect the rents and meet certain common expenses. The C schedule properties consist of family temples; and the D schedule properties were set apart for a chatram the upkeep of a choultry for poor Brahmins and others. The karnawan of one of the main branches consisting of Defendants 1 to 9 held these properties and managed the chatram. Up to June 1933 the previous karnawan who belonged to the main sub-branch of which the plaintiffs is a sub branch was the common karnawan but he then died and was succeeded

by defendant 1 as a common karnawan who belonged to the main sub-branch consisting of defendants 1 to 69. As before stated, the suit was filed only four to five months after this succession and at the time of the filing of the suit a temporary injunction was obtained restraining defendant 1 from granting renewals of the kanom-leases. On 5th March of this year an application to appoint a Receiver was made to the Sub-Court and after counter affidavits were filed by defendant 1 and others the application was heard on 20th March and a decision was given on 7th March appointing a legal practitioner receiver. On 20th March an adjournment had been asked for by defendant 1, but this was not granted; but having regard to the fact that all the evidence on defendant 1's side was presented to the Court, defendant 1 does not seem to me to have been prejudiced by the refusal of that application. With regard to the A schedule properties, the learned Subordinate Judge accepts the plaintiffs' contention that there was an unequal division of the property in 1887. With regard to the 2nd schedule-properties, he finds that the karnawan has not been paying the cists to Government which had been allowed to fall into arrears. As a matter of fact it is stated that these arrears only amounted to about Rs. 500, out of a total cist to Government of Rs 8,000 at the time when the order of the lower Court was made. With regard to the D schedule properties which the plaintiff claimed were not trust property as the trust at the most was a private trust and revocable, the learned Judge finds that at the most it could only be a private-trust and that in any circumstances there would be a large balance of income over and above what would be needed for the purpose of the trust. Although allegations were made against defendant 1 with regard to mismanagement, there is no finding at all that there has been any mismanagement except as regards his having kept the Government revenue in arrears. With regard to this, I am unable to see that there has been any neglect of duty by defendant 1 in this respect because it appears that, the kanom tenants were under a contract between themselves and the tarwad to pay the Government revenue and it seems that defendant 1 had great difficulty in getting them to make these payments and indeed had to request Government to take coercive action against them. It can be taken that there is no finding that defendant 1 has been guilty of waste or mismanagement although the plaintiffs attempted to make out a case that with regard to the charity it was not being maintained or properly maintained. The learned Subordinate Judge appears to have been greatly influenced by the argument that by reason of the filing of the suit for partition there has been a division in status and that therefore it is necessary that the income of the properties should be gathered and made available for division among the members of the tarwad and that for that purpose a receiver must be appointed to manage the estate; and this indeed was the main argument of Mr. Sitarama Rao, for the respondents. He contends, relying upon *In the Matter of Balusamy Ayyar* 1928 Mad 735, a Full Bench decision of this Court, Philippe, J., dissenting that by reason of a division in status in a Hindu family most of the machinery of the management of the family property, is stopped, the managing member's powers then being very limited. He seeks to apply this principle to a Malabar Marumakkathayam tarwad

when a suit is filed for partition. His argument has proceeded to the length that, in the case of a Hindu family, as soon as a partition suit is filed, *prima facie*, for the reason alone that there is then a disruption of status, Courts should appoint a receiver. He is however unable to produce any authority for this proposition except 11 I.C. 481 (2), I am unable to understand how this case supports Mr. Sitarama Rao's contention. In that case in a suit for partition it was proved that a co-owner admittedly entitled to a half share in a considerable portion of the properties in suit was being kept out of possession) by the co-owner with the result that all supplies were cut off, from his branch of the family and it was held that although no case of waste might have been established against the co-owner in possession, the case was eminently a proper one for the appointment of a receiver and that Order 40, Rule 1, Civil P.C., has substantially widened the discretion which the Court had under the old Code On page 250 in discussing the present Order 40, Rule I, it is stated that

there are cases of which partition is notably one where the limitation of the old rule would lead to an impasse and preclude justice being done. To set rid of these disabilities and to give the Court powers to do justice and consult the convenience of parties in cases where there may not be any proof of actual waste but where one of the parties is being kept out of all the property on the ground that nothing can be delivered to him until a complete partition is made seems to us the clear and obvious meaning of the law as it now stands amended.

3. Those conditions are certainly not present here. On the other hand, there is a decision of the same High Court which is reported in the same volume of the Calcutta Weekly Notes and which immediately follows the before mentioned case in which it was held that a receiver should not be appointed in supersession of a person who is in bona fide possession of the property in controversy, unless there is some substantial ground for interference. The case is *Mathurai Debya v. Shibdyal Singh Hajari* (1909) 3 IC 430. It is true that that was not a partition suit But in that case an attempt was made to supersede a person, who was in bona fide possession of the property as in this case because admittedly the first defendant is in bona fide possession and management of the suit property in question. Another case relied upon was *Suprasanna Roy v. Upendra Naran Roy* 1914 Cal 439. This case certainly does not support Mr. Sitarama Rao's contention because it was there held that the Court has in a partition suit jurisdiction to appoint a Receiver until the hearing of the suit or until further orders even though there is no exclusive occupation by any party and the Court will not hesitate to do so whenever it is just and convenient. Mr. Sitarama Rao is however unable to produce any other authorities in support of his contention. On the contrary, there is a decision in the Bombay High Court which is against him, namely *Govind Narayan v. Vallabha Rao* 1920 Bom 321. In that case it was held that the Court will not appoint a receiver in a partition suit between members of a joint family, except by consent, and especially where the family property consists of land, and thus, in order that a Receiver should be appointed of joint family property in a partition suit, special circumstances will have to be proved

before the Court will be entitled to appoint a Receiver and that when an application is made to the Court to take the property into its hands by pointing a Receiver, the plaintiff must prove that prima facie he has a very excellent chance of succeeding in establishing the case made out in his plaint and in the next he must satisfy the Court that the property in possession of the opposite party is in danger of being wanted. In my view, the opinion expressed in that case by Macleod, C.J., is correct, and I am quite unable to accept Mr. Sitarama Bow's contention that ordinarily in a partition suit a Receiver should be appointed without proof of waste or mismanagement or : apprehended fear of the same. But even assuming his contention to be correct, it is very doubtful indeed whether the Hindu law can be any analogy. It is at the most only arguable that the same consequences as these in *Ramji Ram v. Saligram* (1910) 11 IC 481, will result in the case of a suit for partition of a Malabar Marumak-kathayam tarwad, and in my view the Subordinate Judge was wrong in thinking that they did. He was also wrong in stating at that stage that the trust here was a private trust as that was a matter to be decided later on. In my view, the lower Court was wrong in appointing a receiver at that stage. The first defendant had only been a few months in management of the property and whatever may have been the acts of management by the previous karnawan, in my opinion, too short a time had elapsed in which to test the first defendant's conduct. Should he later on mismanage the property then a fresh application for the appointment of a receiver can be made. In the meantime Mr. D.A. Krishna Wariar for defendant 78, appellant 9 in C.A.M. 290 of 1934, undertakes that his client will give maintenance as per the karar (Ex. A.), and maintain accounts in respect of the income collected as per karar and submit them once in three months. Mr. P. Govinda Menon for defendants 1 to 4 undertakes that his clients will maintain and submit accounts once in three months in respect of the property in their possession. Mr. K. Kutti Krishna Menon on behalf of appellants 1 to 8 in C.M.A. No. 295 of 1934 submits that his clients should not be directed to maintain and submit accounts in respect of income of the lands in their possession for the past fifty years. I think that that submission is correct; and they will not be asked to give a similar undertaking. The result is "that the appeals are allowed and the order of the lower Court appointing a receiver is set aside. The appellants in each appeal will get their costs from the respondents.