

(1923) 12 MAD CK 0041
In the Madras High Court

Kanna Panikkar and Others

APPELLANT

Vs

Nanchan and Others

RESPONDENT

Date of Decision : 05-12-1923

Acts Referred:

Citation : (1924) 19 LW 395 : (1924) 46 MLJ 340

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—It has been held in Chandu v. Kambi (1885) ILR 9 M 308 , Unni v. Kunchiamba ILR(1890) M 26 and followed in Chappan v. Paru ILR (1912) M 420 that the members of a tarwad need not sue to set aside an alienation by the Karnavan but can sue to recover possession on the strength of title. In the latter case one ground for the decision was that the alienation though not binding on the tarwad might be binding on the karnavan. In this view Article 91 of the Indian Limitation Act would not be applicable to the present case, but it is argued that in as much as the karnavathi purported to execute the document not only as karnavathi, but also as guardian of the minor plaintiffs, consequently the minors are parties to the document, and as such are bound to set it aside before recovering the property. But can it be said that minors are parties in that sense? It has been held in the case of Hindu Mitakshara families that sons when minors are represented in a document through their guardian they need not set it aside. [Kovvuri Thirupathi Raju v. Kovvuri Venkataraju (1917) 40 IC 418 and Genes ha Iyer v. Amirthaswami Odayar(1918) MWN 892]. The principle that underlies the construction put forward by Mr. T.R. Ramachandra Iyer is that parties are bound by their own acts until they are set aside or cancelled, but minors cannot act and therefore the mere addition of their names in the document cannot make the document their act which must be set aside. In this connection we may refer to Chingacham Vitol Sankaran Nair v. Chingacham Vitol Gopala Menon ILR (1905) M 18. Article 44 does not apply here as the alienation does not purport to be one by a guardian alone, but also by a karnavathi, who under certain circumstances has authority to alienate apart altogether from her guardianship of minors. As

neither article 91 nor Article 44 is applicable, Article 144 must be applied and the suit is within time. The suit will therefore be remanded to the lower Court for disposal, after allowing plaintiffs time to amend the plaint and pay additional Court fee if necessary. Costs will abide the result. The Court fee in appeal will be refunded.