
(1934) 08 MAD CK 0029
In the Madras High Court

(Katapra Penkamana Illath) Narayanan Vishnu Nambudri APPELLANT
Vs
Udayamangalath Meethali Kovilagath Udayavarma Valia Rajah RESPONDENT
Avergal

Date of Decision : 21-08-1934

Acts Referred:

Citation : AIR 1934 Mad 701 : 152 Ind. Cas. 765 : (1934) 40 LW 644

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—In 1915 a decree was obtained in a Travancore Court against a defendant who is described as Puroorattati Nal Udaya Varma

Valia Rajah Avergal, Marumakkathayam family manager of Netumbrath Kovilagam. The question at issue in these connected appeals is whether

execution of that decree can proceed against the kovilagam properties of the Udaya Mangalath Meethali Kovilagam. The District Munsif of

Taliparamba to whose Court the decree was transferred for execution decided in the negative, the Subordinate Judge of Tellicherry reversed him,

and in second appeal Jackson, J., restored the District Munsif's decree in the following brief judgment:

The question is whether a decree against a Valia Rajah without the words of such and such kovilagam is a decree against the kovilagam. In Kerala

Verma v. Shangaram (1893) 16 Mad. 452, the wording is Valiya Rajah Chirakal Kovilagam. The special mention of the kovilagam is certainly

significant. In Krishnan v. Krishnan Nair (1895) 18 Mad 452n there was a finding that it was a tarwad debt, I think it is dangerous to extend these

rulings to saying that the bare mention of a man as Valiya Rajah involves the kovilagam. In common parlance such a person in his private capacity

would presumably be known as Valiya Rajah. The decree and the judgment of the District Munsif must be restored. The appeals are allowed with costs (one set) here and below.

2. Now it is very strange that in all these three Courts the decisions have proceeded on the assumption that the defendant in the Travancore suit was described simply as Valia Rajah Avergal (vide para. 2 of the District Munsif's judgment; para. 5 of the Subordinate Judge's judgment and the whole judgment of Jackson, J.) A copy of the decree was not in the printed papers before us, but at the time of the hearing a typed copy was handed up to us from which it appeared that the words ""Marumakkathayam family manager of Netumbrath Kovilagam"" were also included in the description of the defendant. That this copy is accurate is not disputed. It is clear therefore that the judgment of Jackson, J., now appealed against, was delivered under a misapprehension of the true facts of the case.

3. One apparent obstacle to the appellant's success must first be removed. How, it is argued, can a decree against the manager of one tarwad (the Netumbrath Kovilagam) be binding upon the property of another (the Udaya Mangalath Meethale Kovilagam). The answer is given in para. 7 of the Subordinate Judge's judgment, where it is found that there is only one Kovilagam with two different names, one in use in Travancore and one in British India. As this objection was never raised at all in the District Munsif's Court of Taliparamba, there can be no doubt that the Subordinate Judge's finding is right. The question, then is whether the present decree obtained against a person sued as the family manager of a Kovilagam is binding upon the Kovilagam. The law on, this point is laid down in the Full Bench decision in Vasudevan v. Sankaran (1897) 20 Mad. 129. It runs as follows:

A decree in a suit in which the Karnavan of a Nambudri Illom or a Marumakkathayam tarwad is in his representative capacity joined as a defendant and which he honestly defends is binding on the other members of the family not actually made parties.

4. The only possible difficulty here arises from the fact that neither the judgment nor the pleadings in the Travancore suit are available. But it seems clear to us that when a defendant is described as the manager of his Kovilagam we cannot but presume that he is being sued in his representative

capacity, nor does any question here arise regarding the honesty of his defence. We have been referred by the respondent's learned advocate to a ruling reported in Balakrishna Menon v. Manekkal Uma 1929 Mad. 105, where it was held that a decree ordering an Official Receiver to pay costs was binding upon the Official Receiver personally. No doubt this ruling is authority for the undisputed general proposition of law that a decree must be strictly and literally construed, but it has no bearing whatever upon the facts of the present case or upon the principles of Malabar Law. The result is that on the authority of Vasudevan v. Sankaran (1897) 20 Mad. 129 it must be held that the present decree is binding upon the respondents" Udaya Mangalath Meethale Kovilagam. These appeals are accordingly allowed with costs throughout (one set) and the order of the Subordinate Judge remanding the positions for fresh disposal is restored.