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**(1923) 12 MAD CK 0003**  
**In the Madras High Court**

Kauna Panikkar and Others

APPELLANT

Vs

Nanchan and Others

RESPONDENT

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**Date of Decision :** 05-12-1923

**Acts Referred:**

**Citation :** 78 Ind. Cas. 564

**Hon'ble Judges :** Venkatasubba Rao, J; Philips, J

**Bench :** Division Bench

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### **Judgement**

1. It has been held in *Ghandu v. Kambi* 9 M. 208 : 3 Ind. Dec. 542, *Unni v. Kunchi Amma* 14 M. 26 : 5 Ind. Dec. 19, and followed in *Ghappan*

*v. Paru* 15 Ind. Cas. 587 : 87 M. 420 : 13 M.L.T. 118, that the-members of a tarwad need no 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, inasmuch as the Rarnavan purported to execute the document not only as Karnavathi, but also as guardian of the minor plaintiffs,

consequently the members 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* 40 Ind. Cas. 418 and *Ganesa Iyer v.*

*Amirihasami Odayar* 44 Ind. Cas. 605; (1918) M.W.N. 892 : 28 M.L.T. 245. The principle that underlies the construction put forward by Mr.

T.E. Ramachandra Aiyar 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 Vittil Sankaran Nair v. Chingacham Vittil Gopala Memon 80 M. 18 : 1 M.L.T. 412. 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 a part

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.