

(1928) 01 MAD CK 0002
In the Madras High Court

Kizhakkurpat Ramankutty Menon and Others	APPELLANT
Vs	
Beevi Umma and Others	RESPONDENT

Date of Decision : 05-01-1928

Acts Referred:

Citation : 115 Ind. Cas. 55

Hon'ble Judges : William Watkin Phillips, J; Odgers, J

Bench : Division Bench

Judgement

William Watkin Phillips, J.—In this suit for redemption, the plaintiffs who are the junior members of a tarwad sue on the strength of a karar

executed in their favour by the 7th defendant the karnavan. Their right to sue was questioned at the trial and the District Munsif found that the karar

amounted to a renunciation of the karnavastanam by the 7th defendant, but did not invest the plaintiffs with authority to bring this suit. The

Subordinate Judge in the appeal says ""I agree with the lower Court and hold that Ex. BB is a document of renunciation by the karnavan of all his

right in favour of the plaintiffs"" but, notwithstanding this finding has dismissed the plaintiffs' suit on the ground that they were not entitled to sue. The

question, therefore, that arises in second appeal is the construction of the karar, Ex. BB. It is a long document and begins by reciting the fact that

the 7th defendant, the karnavan, had on two previous occasions entrusted other persons with the management of the tarwad affairs but as such

management was unsatisfactory, he had resumed management himself. It then recites that as he is ill and wishes to get rid of the trouble of

management, he entrusts all affairs of management to the two plaintiffs who are anandravans of his tarwad. In para. 4 there is a recital that the

karnavan has surrendered his right of management for the consideration of Rs. 500 and future maintenance during his lifetime and at the end of the paragraph is a recital that the 7th defendant has no right either to invalidate the karar or to enter upon the management again. In the 5th paragraph details of the powers conferred upon the plaintiff are set out, and finally we have the following words ""you have full power... either both of you jointly or one of you singly as the representatives of myself the karnavan to present yourself and to carry out such kinds of business which in the capacity of the karnavan of the tarwad I am bound to carry out"" and the paragraph concludes: ""All such acts that are done will be binding on me, on the tarwad and on the properties."" The clear intention of the 7th defendant in executing the document is to relinquish his powers of management and to confer them upon the plaintiffs for the consideration of Rs. 500 and future maintenance. The question is whether such an arrangement is valid. The District Munsif has divided the document into two parts and says Ex BB. is partly legal and partly illegal. He holds that renunciation of the karnavastanam is legal but that the delegation of power to the plaintiffs is illegal, and instead of treating the document as one whole he accepts the legal part, namely, that of renunciation and holds that the remaining part alone is invalid. The Subordinate Judge agrees but does not purport to divide up the document the gist of which he holds to be in accordance with what I have said above It was held in Kenath Puthen Vittil Tavazh v. Narayanan 28 M. 182 : 14 M.L.J. 415 that the karnavan has the power of renunciation, and the opinion of the Full Bench is given at page 196 Page of 28 M.- [Ed.]: ""We are, therefore, of opinion that it is open to the karnavan of a tarwad to renounce his karnavanship including his right to manage the tarwad affairs."" A unilateral renunciation is undoubtedly sufficient but it must be an unconditional renunciation including the recognition of the senior anandra succession to the karnavastanam. When as here it is coupled with a delegation to certain persons who are not entitled to the karnavastanam it appears to me that it does not amount to a complete renunciation of the karnavastanam, for renunciation is subject to certain conditions. The provision of a payment of Rs. 500 and future maintenance is one of the conditions on which the karnavastanam is renounced. Another condition is that the two plaintiffs shall succeed to the karnavan's right, and the recital in para. 5 that the plaintiffs are to act ""as the

representatives of myself the karnavan", shows that the 7th defendant was not giving up all his rights but intended to retain the status of karnavan

while relinquishing his powers of management. The document cannot, therefore, be treated as an out and out renunciation for that was clearly not

the intention of the 7th defendant, it cannot, therefore, be held that after the execution of Ex. BB the senior anandravan has become karnavan.

Treating then, the document as a delegation of powers in plaintiff's favour, it must be held to be invalid In Chappan Nayar v. Assen Kutti 12 M.

219 delegation of powers during the karnavan's imprisonment was held to be void. In that case the delegate was a stranger to the tarwad but that

can make no difference in principle for the karnavan has no right to say who shall conduct the tarwad affairs in his place as that right is vested in the

senior anandravan, I must hold, therefore, that Ex. BB does not amount to an absolute renunciation and is invalid as a delegation in plaintiffs'

favour. Seventh defendant being a party to this suit, asks in his written statement to be joined as a plaintiff in case the karar is held to be invalid as

he is willing to redeem the suit properties He has also joined the plaintiffs both in the first appeal and in the appeal to this Court, He should,

therefore, now be added as a plaintiff and the trial on the other issues in the suit proceeded with. For this purpose the suit is remanded for further

disposal to the District Munsif of Walluvanad. Costs of this appeal will abide the result. Court-fee in this Court will be refunded.

Odgers, J.

2. I agree. The question is what is the proper construction of the karar Ex. BB. The provisions of the document have been set out in the judgment

of my learned brother and it is unnecessary for me to repeat them. They clearly show not only a conditional renunciation on the part of the 7th

defendant, but a renunciation in favour of the plaintiffs that is, strangers as far as the karnavastanam is concerned for they are not the nearest

anandravans. There is, in my opinion, no ground for the contention that the document should be discredited and one part held to be valid and the

other invalid. The document is one and entire and relates throughout to the same subject-matter. All parts of it must, therefore, be read together. If

that is so, the provisions exhibit the effect in law indicated above.