

(1927) 11 MAD CK 0056
In the Madras High Court

Kizhakkumbrath Moidin

APPELLANT

Vs

Koyambrath Murkothkandi Pakki Musaliar and Others

RESPONDENT

Date of Decision : 18-11-1927

Acts Referred:

Citation : 108 Ind. Cas. 738

Hon'ble Judges : Wallace, J;Srinivasa Ayyangar, J

Bench : Division Bench

Judgement

1. This second appeal has been filed by the 12th defendant the kanom in whose favour made by the 1st defendant purporting to act as the karnavan of the suit tarwad was sought to be set aside. In the trial Court, this kanom was set aside as a transaction not binding on the tarwad. In the Court of Appeal the decree parsed in the trial Court was confirmed. It has been found that the kanom was for a sum of Rs. 230 and also that this sum of Rs. 230 WAS necessary for the purpose of paying off a decree binding on the tarwad for the same amount. This is found by the lower Appellate Court. It, therefore, follows that the raising of this amount for the tarwad has been found by the lower Appellate Court to be necessary. The only question then is whether the transaction of kanom made by the 1st defendant was a proper transaction. Both the lower Courts have taken the view that having regard to the term of the kanom and other possible means of raising the same amount for the tarwad the transaction could not be regarded as a prudent transaction. We have been referred to. two decisions of this Court reported as Abdullah Koya v. Mavileri Eacharan Nair 47 Ind. Cas. 945; 35 M. L.J. 405. and Kenath Puthen Veetil Koppassa Menon Kenath Achan Avergal Vs. Karumathil Kalliani Ammal and Others, It is clear from these decisions that the Court is not required to go into the question and investigate with meticulous care a transaction being prudent or otherwise if there was necessity for entering into such a transaction for the purpose of raising the necessary amount. After all the karnaven has been recognised in these two and other cases to have large powers of management, and to allow every transaction made or entered into by him to be made the subject of any such examination would virtually amount to a denial

of that power of management, We must, therefore, set aside the judgment of both the lower Courts on the ground on which the judgment of the lower Appellate Court has proceeded, namely, that it was not a prudent transaction. We however find that the lower Appellate Court has not given any decision with regard to the other matters put in issue between the parties, especially regarding the powers of the 1st defendant on a construction of the kamr, Ex. A and on the further question whether the 12th defendant as alienee had any notice of the limitations contained in the karar.

2. In the result, therefore, the appeal is allowed and the case remanded to the lower Appellate Court for disposal on the other questions raised in the case. The appellants here will pay to the respondents Nos. 6 to 10, their costs of this appeal because though as plaintiffs they were struck off even in the trial Court before decree they have been unnecessarily made respondents in the Appellate Courts. Otherwise costs of the appellant and of the respondents represented by Mr. K. P. Ramakrishna Aiyar will be provided for in the final decree to be passed by the lower Appellate Court. The Court-fee paid by the appellant in this Court will be refunded to him.