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**(1946) 08 MAD CK 0016**  
**In the Madras High Court**

K.M. Narayanan Nambudiripad and Others APPELLANT  
Vs  
Varnasi alias Maravancheri Vadakketath Manakkal Sankaran RESPONDENT  
Nambudiripad and Others

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**Date of Decision :** 27-08-1946

**Acts Referred:**

**Citation :** AIR 1947 Mad 76 : (1947) ILR (Mad) 236 : (1946) 59 LW 668 :  
(1946) 2 MLJ 393

**Hon'ble Judges :** Sidney Wadsworth, O.C.J.

**Bench :** Division Bench

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**Judgement**

Sidney Wadsworth, Officiating C.J.

1. The question referred to the Full Bench is whether, with reference to the decisions in Marayanan Mambudiri v. Sundara Aiyar (1935) 43

L.W.584 and Marayanan Mambudiri v. The Chalapuram Bank, Ltd. Appeal No. 103 of 1936 it is within the power of the karnavan of Nambudiri

illom to impose on the illom liability for debts incurred in running a kuri or chit, in the absence of any family custom. Before dealing with this

reference we wish to make it clear at the outset that we are not concerned with the question whether for necessity a karnavan can borrow from a

chit fund, nor are we concerned with a case in which it can be shown that the running of chits is an established institution in a particular family

justified by the custom of that family.

2. The facts so far as they are necessary in the present case are that the first and second defendants and their elder brother Narayanan

Nambudiripad who is now dead and who was at that time the karnavan of the illom or mana, started a kuri in 1917. This kuri was one of a very

usual type. There were to be 20 subscribers besides the stakeholders. Each subscriber was to pay a subscription of Rs. 600 yearly for 20 years.

The stakeholders were to receive the whole of the money for the first year and in subsequent years, after deducting Rs. 600 which was to be

distributed by way of interest, the balance was to be put up to auction and the subscriber who bid the biggest discount was to get the money, the

discount being distributed amongst the subscribers. The stakeholders made themselves liable for any loss which might ensue and they bound their

property also. They were charged with the duty of collecting the subscriptions, holding the auctions and looking after the security which was to be

taken from those who had drawn prizes in the successive auctions, so as to guarantee that their future subscriptions would be forthcoming. The kuri

continued to run until its maturity at which date there was one subscriber, the plaintiff in the suit out of which A.S. No. 127 arises, who had not

drawn a prize and was therefore entitled to the full amount of his subscriptions, which was not paid, and another subscriber, the plaintiff in the suit

out of which A.S. No. 341 arises, who had not been paid the full amount due to him under the rules.

3. For the purposes of the present reference we are assuming that the first and second defendants and their elder brother started this kuri as a

transaction of their family, though it must be observed that this is not conceded by the other members of the family. Now the general rule laid down

by the Privy Council in *Sanyasi Charan Mandal v. Krishnadhan Banerji* (1922) 43 M.L.J. 41 : L.R. 49 IndAp 108 : ILR 49 Cal. 560 (P.C.) and

*Benares Bank, Ltd. v. Hari Narain* (1932) 63 M.L.J. 92 : L.R. 59 IndAp 300 : L.L.R. 54 All. 564 (P.C.) is that the manager of a joint Hindu

family cannot impose on the joint family and particularly on the minor members thereof, liability for debts incurred in connection with a new trade or

business. This rule, of course, does not apply to the opening of new branches of the family firm by trading families and it has been held not to apply

to the starting of a reconstituted business on the dissolution of an old family partnership. But we are not concerned here with those special cases.

Here we have a family which is not a trading family and not, so far as we know, a family ancestrally employed in the running of kuris or chits. Is

there anything special or peculiar about the position of a Nambudiri karnavan which gives him powers such as are denied to the manager of an

ordinary Hindu family by the decisions of the Privy Council which we have just quoted ? Is there anything peculiar about the running of a kuri or

chit which would take such an activity out of the category of a new and speculative business ?

4. It was held in *Vasudevan v. Secretary of State for India* ILR (1887) Mad. 157 and *Kolathathil Illatt Vishnu Nambudri, Karnavan of his Tarwad*

*Vs. Meloothedathil Chulayakkari Akkamma*, that Nambudiri families are governed by Hindu law except to the extent to which it can be shown that

they have by custom assimilated the peculiarities of their neighbours who follow the Marumakkattayam system. The chief peculiarity established in

the case of Nambudiri illoms which might affect the consideration of this question is that the family was until the Nambudri Act XXI of 1933

impartible. In other respects the power of the karnavan to impose liabilities on the family seems to have been substantially the same in the

Nambudiri families as it is in ordinary Hindu families. It is a little difficult to see how the impartibility of the family would by itself add to the

karnavan's power of imposing liability upon the family property. No doubt impartibility makes it more difficult to enforce a personal liability against

the karnavan for his acts, but the difficulty experienced by the creditor will not of itself increase the borrowing power of the debtor. Apart from the

question of kuris it does not appear to us to have been recognised in any of the cases to which our attention has been drawn that the karnavan of a

Nambudiri illom has any greater power of imposing liability upon the family property than the manager of an ordinary Hindu joint family.

5. There are however two decisions in which it seems to have been recognised that the karnavan of a Nambudiri family may legitimately bind the

family properties with liability in connection with the running of a kuri or chit. *Ramesam, J., dealing with an East Coast family* held in *K.S. Natesa*

*Aiyar Vs. Sahasranama Aiyar and Others*, that the running of a chit fund was a speculative business and that a joint Hindu family could not be

bound by liabilities incurred by the manager for such purposes. In *Narayanan Nambudiri v. Sundara Aiyar* (1935) 43 L.W. 584 Cornish and

*Stodart, JJ.*, had to deal with the case of a karnavan of a Nambudiri illom who started a kuri with the object of paying off the debts of the illom.

The question was raised whether, if the illom; was benefitted by drawing: money, from the kuri, the family property would be liable for the amount

of the subscriptions paid by the subscribers who had not drawn prizes when the kuri came to grief before its maturity. The learned Judges quote

the decision of Ramesam, J., in *K.S. Natesa Aiyar Vs. Sahasranama Aiyar and Others*, but appear to be under the misapprehension that that was

not a case of a manager conducting a chit as the stakeholder, but was merely a case of a manager mortgaging the family property for the purpose

of subscribing to a chit fund. The learned Judges then go on to say that there is nothing illegal or immoral about a kuri--which it seems to us, with all

respect, to be irrelevant for the purpose of finding out whether as a speculative venture it can bind the family; and they dismiss the decision of the

Privy Council in *Sanyasi Charan Mandal v. Krishnadhan Banerji* ILR (1887) Mad. 157 as having no application to the facts of the case ""because

no new business was started when this kuri was organised."" We do not know whether in fact the family in question was one, which as a matter of

family custom had been organising kuris from time immemorial or whether the learned Judges merely intended to say that though the venture was

new it was not a business. However that may be, the conclusion of the learned Judges is that the plaintiffs are entitled to recover the money

because the illom has had the benefit of it.

6. We find it somewhat difficult to appreciate the ground on which the application of the rule laid down by the Privy Council in *Sanyasi Charan*

*Mandal v. Krishnadhan Banerji* (1922) 43 M.L.J. 41 : L.R. 49 IndAp 108 : ILR 49 Cal. 560 (P.C.) was excluded. If authority is needed for the

proposition that the running of a kuri is a money-lending business it can be found in the decision in *Ramasami Bhagavathar Vs. Muni Nagendra Iyer*

and Others, . Leaving aside the aspect in which each of the subscribers may be said to be a borrower from the common fund, and concentrating

our attention on the position of the stakeholder as organiser and guarantor of the whole concern and the person who hopes in the long run to make

the greatest profit out of it, it is difficult to see how the venture can from this standpoint be anything other than a profit-earning business.

7. The other decision upon which reliance has been placed as authorising a Nambudiri karnavan to start new kuri ventures at the risk of the family

is an unreported case, *Narayanan Nambudiri v. The Chalapuram Bank, Ltd.*, Appeal No. 108 of 1936 decided by Madhavan Nair and Stodart,

JJ. The learned Judges were dealing with a kuri not very different in its terms from that with which we are now concerned. They find that the

karvavan of a Nambudiri illom is competent to invest surplus revenue of the illom in proper investments and to borrow money for family purposes.

They find as a fact that the chit in question was started and conducted on behalf of the illom and that the money raised thereby and drawn by the

stakeholders was utilised for the benefit of the illom. They then proceed to consider whether this constituted a prudent method of borrowing,

recognising that it was not open to a karnavan to pledge the credit of the family in a rash and speculative manner. They go on to consider the whole

business as a mere method of borrowing; not regarding it in any sense of the word as a business involving risk. They point out how the

stakeholders, although they have to refund to those subscribers who had not got prizes the aggregate amount of their past subscriptions, have such

ample opportunities for safeguarding themselves by taking security that the transaction is really free from risk or danger and therefore one which

constitutes a prudent method of borrowing on the part of the karnavan of the family. Nowhere in this judgment is there any reference to the

decisions of the Privy Council on the power of a manager to start a new business at the risk of the family and the cases which we have already

quoted are not cited.

8. We do not propose to deal with the power of a karnavan of a Nambudiri illom to raise money for family purposes by borrowing as a subscriber

from a chit fund. It does however seem to us that the obligation incurred by a family manager who in order to raise money not only becomes a

subscriber to such a fund but undertakes the responsibility for seeing it through to a successful conclusion, is one which cannot be made a family

liability unless such an activity is clearly within the powers. of the manager. We are dealing in the present case with a venture which had to run for

as long as twenty years and involved the collection of very considerable sums of money. Such a venture must necessarily be affected financially by

fluctuations of prices and fluctuations in the value of money, to say nothing of fluctuations; in the solvency of the subscribers. It seems to us that

Ramesam, J., was right in his conclusion in K.S. Natesa Aiyar Vs. Sahasranama Aiyar and Others, that such an undertaking is from its very nature

and from the long period over which the business, extends a risky business. Although it may be said that the karnavan gets better terms if he wishes

to borrow for the family by being not merely a subscriber to the fund but also responsible for administering it, the very reason why he gets such

good terms is surely not so much the labour attached to the administration but the risk which he runs of being involved in litigation and losses, due

to the default of other subscribers or to fluctuations in the value of money and prices which will affect the economics of the scheme. We may add

that Abdur Rahman and Somayya, JJ., in an unreported decision, Kuthannu Kizhakkathare Bhagavati by Executive Officer Arikath Ravunni Nair

v. Kalyani Appeal No. 148 of 1940 dealing with the powers of a trustee in Malabar to bind devaswom property with liabilities arising out of the

running of a kuri, held that such a transaction was of a speculative nature which could not properly bind the trust. We consider that it is not, in the

absence of a special custom, within the power of the manager of a Nambudiri illom to bind the properties of the family with liabilities arising out of

the running of a kuri.

9. Our answer to the reference therefore is that we are of the opinion that the decisions in Narayanan Nambudiri v. Sundara Aiyar (1935)43 L.W.

584 and Narayanan Nambudiri v. The Chalapuram Bank, Ltd. Appeal No. 108 of 1936 are erroneous to the extent that they purport to hold that

it is within the power of the karnavan of a Nambudiri illom to impose on the illom liabilities arising out of the running of a kuri or chit, in the absence

of any family custom. The costs of the reference will be costs in the appeals.

10. These appeals coming on for hearing after the Opinion of the Full Bench, The Court (Wadsworth, O.C.J., and Rajamannar, J.) delivered the

following

11. Judgment, 28th August, 1946 : The Officiating Chief Justice.--in both these appeals the main question is whether a Nambudiri mana or illom

can be held liable for the debts due by its karnavan and its two senior anan-dravans as a result of the mismanagement of a kuri or chit started by

them originally for the purpose of meeting the obligations of the mana itself. On this question the decision of the Full Bench is to the effect that it is

not within the powers of the karnavan of a Nambudiri illom to impose on the illom liability for the debts incurred in running a kuri pr chit in the

absence of any family custom. The Full Bench has distinguished between the liability which the family may have as a subscriber to the chit and the liability of the stakeholders to the subscribers by reason of their default in running the chit. It follows from the decision of the Full Bench that the claim of the plaintiffs in both the suits out of which these appeals arise must fail in so far as it seeks to make the mana liable for the amounts due from the stakeholders as such to the subscribers under the rules governing the conduct of the kuri.

12. The appellants have, however, endeavoured to establish their case against the defendants, other than the stakeholders, by emphasising the character of the original borrowing by the mana of the first year's subscriptions to this kuri amounting to Rs. 12,000. It has been found--and the correctness of the finding has not been seriously canvassed before us--that this kuri was in fact started to finance certain necessary expenditure and to discharge certain binding debts of the mana; and we may take it that the sum of Rs. 12,000 which the stakeholders were authorised to draw, representing the first year's subscriptions to the kuri, must be regarded as a borrowing for purposes binding on the mana. Under the rules of the kuri the stakeholders should have paid back year by year an amount similar to that due from each of the subscribers. This was an amount of Rs. 600, less a rateable Share in Rs. 600 which was treated as interest, less a rateable share in the sum available by reason of the prize-winner--to use a convenient, if not accurate, term--taking the year's prize in auction at a discount. No doubt, since the stakeholders got the whole of the subscriptions at the first instalment, the deductions by way of interest and share in the discount which they were to get in future years cannot properly be regarded as interest on their subscriptions, but must in truth be in the nature of remuneration for the running of the kuri. It follows, then, that, notionally at any rate, the stakeholders as borrowers were under an obligation to pay back Rs. 600 each year in discharge of a borrowing of Rs. 12,000 in the first year and they were entitled to credit to these repayments certain profits which they could claim as remuneration for their work.

13. The case now put forward on behalf of the plaintiffs is not one which was advanced in the plaint. The plaint simply sought to make the mana

liable on the ground that the stakeholder was in fact the whole family. That claim fails by reason of the decision of the Full Bench. It is now sought

to make the mana liable on the ground that it has borrowed Rs. 12,000 from the common fund; it has not been shown that this sum has been

repaid in the manner contemplated by the rules; and it can be shown that the payments made to the various subscribers by the stakeholders have in

fact been made largely, if not entirely, out of the payments of other subscribers and do not include the regular annual payments which should have

been made by the stakeholders themselves out of their mana funds. Therefore it is suggested that the unpaid subscribers should be entitled to

proceed directly against the mana funds to recover the sums which should have been paid to them as subscribers, because their money has been

used to discharge liabilities which should have been met out of the mana funds.

14. We find ourselves unable to give effect to this contention in the present proceedings. The true nature of the transaction seems to be this : All the

subscribers paid certain amounts annually to the stakeholders. The stakeholders in each year advanced the major portion of the available money to

one subscriber who was to repay the advance in the manner contemplated under the rules of the kuri. There was never any direct advance by the

general body of the subscribers to any particular borrower. Even at the first instalment although it may be said that Rs. 600 the amount of each

subscriber's payment, did in fact go to the defendants' mana which may be regarded for this purpose as itself being a specially favoured subscriber

there was no advance directly from the general body of subscribers to the defendants' mana. The payment was by the general body of subscribers

to the stakeholders who in their individual capacity must be deemed to have advanced the money to the mana. It therefore follows that any claim

based on the failure to repay to the stakeholders the money advanced to the mana must in the first instance be made by the stakeholders

themselves. No doubt this involves a claim by the stakeholders in their capacity as such, against themselves in their capacity as the persons

controlling the mana. But in the present suit which is brought only against the stakeholders as such and the mana as being itself liable qua

stakeholder, it seems to us impossible to give a decree against the mana, not qua stakeholder, but qua debtor to the fund administered by the

stakeholders.

15. This, of course, does not mean that the subscribers are left without a remedy.. They have got a decree against the surviving stakeholders and the assets of the deceased karnavan. It will be open to them in future proceedings in execution of that decree to claim anything which may be recoverable by the stakeholders from the mana by reason of the indebtedness of the mana to the fund; subject of course to any pleas which may be available to the mana by way of limitation or otherwise.

16. A further contention which applies only to such of the defendants as are the sons and the grandsons of the three individuals who originally organised the kuri is based on the claim that they are liable to pay the debts of their father's and grandfather's, as the case may be, under the pious obligation theory. Now it was laid down in Kunhikutti Ammal v. Mallaprattu ILR (1913) Mad. 527 that a Nambudiri illom differs in many respects from an ordinary joint Hindu family on account of the impartibility of its property and its close resemblance to a Nair tarwad, and that the rule of Hindu law which imposes a duty on a son to pay his father's personal debts, which are neither illegal nor immoral, was not applicable to Nambudiris. Since that decision was passed, Madras Act XXI of 1933, has considerably altered the law relating to the Nambudiri community.

Amongst other provisions this statute recognises that every member of an illom whether male or female, has an equal proprietary interest in its properties and it allows the members of the family, whether male or female, to claim their share by filing a suit for partition. The Act also contains other provisions which alter the existing law as affecting the Nambudiri community. But it is important to remember that this Act does not purport to make applicable those rules of the ordinary Hindu law which did not previously apply to the Nambudiri community except to the extent to which they are specifically made applicable. Section 26 of the Act says:

Nothing contained in this Act shall be deemed to affect any law, custom or usage applicable to Nambudiri Brahmins except to the extent expressly laid down in this Act.

It has no doubt been held that the introduction of partibility gives to the creditor of a Nambudiri a right to proceed against the share of his debtor in the family property, which did not exist prior to the passing of this Act. But that

is not because of the applicability of any doctrine of Hindu law to the Nambudiri community which did not apply before, but it is an ordinary incident of the creation of a separate -estate in each of the coparceners which did not previously exist.

17. Our attention has been drawn to certain observations of the Bench which decided *Balakrishnan and Others being minors by guardian Kalu Vs.*

*Chittor Bank Proprietor R. Subramania Aiyar, by Muktiyar C.S. Anantakrishna Aiyar and Others*, a case relating to the Ezhava community which

in most respects follows the *Makkattayam*, law and not the *Marumakattayam* law. The Bench held that the sons of this community were liable for

the debts of their father not incurred for illegal or immoral purposes, on the ground that they were governed by the ordinary Hindu law except to

the extent to which it could be shown that they followed some special custom peculiar to their community. In dealing with the question before them

the learned Judges had occasion to refer to the decision in *Kunhikutti Ammal v. Mallapratu* ILR (1913) Mad. 527 which we have just cited and

they observed that that decision proceeds on the theory that the Nambudiris have followed the doctrine of corporate ownership of *illom* property,

that there is no question of anybody's share being alienated or seized in execution for the debts either of himself or of his father and that in these

circumstances the *illom* property as a whole can be made liable only for the debts binding on the *illom*. They go to say:

Once, however, it is granted that individual members of the family have separate rights to which they can claim partition of, the reasoning of the

above decision will not avail.

It is no doubt true that *Sadasiva Aiyar, J.*, in *Kunhikutti Ammal v. Mallapratu* ILR (1913) Mad. 527 does refer to the impartibility of the property

of a Nambudiri *illom* as one of the reasons for refusing to apply the pious obligation theory to a Nambudiri son. But the learned Judge refers to the

other peculiarities of the Nambudiri *illom* and in distinguishing the case of *Muttayan v. Zamindar of Sivagiri* (1882) 9 I.A. 128 : ILR 6 Mad. 1

(P.C.) on which reliance was placed as indicating that impartibility and inalienability of the property of the joint Hindu family will not prevent the

operation of the rule of Hindu law which makes the sons liable for a father's ordinary debts to the extent of their ancestral property, the learned

Judge points out that that case has no relevancy, because the non-liability of a Nambudiri son was not based upon the absence of the incidents of

partibility and alienability alone, but upon the illom and its members partaking of the nature of a Marumakattayam tarward as regards the rights of

its members in the property. It cannot, therefore, we think be held that the sole ratio decidendi of the case in Kunhikutti Ammal v. Mallapratu ILR

(1913) Mad. 527 is the impartibility which then prevailed in the properties of a Nambudiri illom.

18. We are, however, constrained to observe that the matter is really governed by Section 26 of the Nambudris Act. Clearly it was the intention of

that Act to make certain specified changes in the law and usage governing the Nambudiri community and to change nothing which was not

expressly embodied in the words of the statute. Seeing, therefore, that according to the law and usage of Nambu-diris as it stood before Madras

Act XXI of 1933 came into force, a Nambudiri son was not liable for the debts of his father under any theory of pious obligation, clearly he cannot

have become liable by any implied change of the law under that statute. It follows, therefore, that both of these appeals must be ""allowed with

costs and the decrees must be modified so as to make liable only the first and second defendants and the assets of the deceased Narayanan

Nambudiripad in the hands of the other defendants. The appellants will also be entitled to their costs in the Court below.