

(1941) 02 MAD CK 0042
In the Madras High Court

Kottiath Vezhayil Devaki and Others

APPELLANT

Vs

Aryakandi Kunhi Kannan and Others

RESPONDENT

Date of Decision : 13-02-1941

Acts Referred:

Limitation Act, 1963 — Section 7

Citation : AIR 1941 Mad 678 : (1941) 53 LW 724

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—The only question which the Court is called upon to decide in this case is one of limitation. In 1913 a Malabar tarwad

consisted of one Kannan, respondent 2 (Kannan's niece) and respondent 1 (the son of another niece). On 14th January of that year Kannan

executed a deed of gift of certain immovable properties in favour of his own children who, of course, were members of another tarwad. According

to the deed, the properties were the private properties of Kannan, but in addition to signing the document in his personal capacity he signed it as

the karnavan of the tarwad and the guardian of respondent 1, who was then a minor. It is now beyond dispute that the properties belonged to the

tarwad and that the gift constituted a fraud on the tarwad. Kannan died in 1919 and from that date respondent 2 has admittedly been the lawful

karnavan of the tarwad. It would appear that respondent 2 managed the properties of the tarwad long before Kannan died, but for the purposes of

this appeal it must be taken that at the time the deed of gift was executed Kannan himself was acting as the karnavan. Respondent 1 attained his

majority on 28th October 1927 and within three years of that date; to be exact on 14th October 1930, he filed the suit out of which this appeal

arises for a decree setting aside the deed of gift and directing the alienees to give him possession of the properties. The suit was tried by the District

Munsif of Cannanore, who rejected the plea advanced by the alienee defendants that the suit was time barred. On appeal to the Subordinate Judge

of Tellicherry this decision was reversed and the suit was dismissed on the ground that it was out of time. Eespondent 1 then appealed to this Court

and Stodart J. who heard it disagreed with the Subordinate Judge on the question of limitation. The learned Judge however gave a certificate which

has permitted of the filing of this appeal under ol. 15, Letters Patent.

2. The question which has to be decided is iwhether Section 7, Limitation Act, saves the suit. The appellants say that it does not, because when

she became the karnavan respondent 2 was in a position to give" a discharge on behalf of the tarwad and that being so time ran also against

respondent 1. We consider that this contention is well founded, but before giving our reasons we will refer to two cases which have been quoted to

us in the course of the arguments. The first of these cases is Moidin Kutti v. Beevi Kutti Ummah (1895) 19 Mad. 38. There the senior members of

a Malabar tarwad in pursuance of a bona fide compromise of certain claims transferred to the claimants some land belonging to the tarwad.

Thirteen years later, a suit was filed by junior members of the tarwad, of whom several were minors, for recovery of possession of the land. Other

junior members had attained majority more than three years before the suit, but had not impugned the validity of the conveyance. Their right was

common with that of the plaintiffs. As there were major members of the tarwad who were in a position to bring a suit, but had taken no action

within the prescribed period of limitation, it was held that the plaintiffs" suit was time barred. The second case is 1914 M w N 689. This was a suit

brought by the members of a tarwad for a declaration that a document executed by the karnavan acknowledging the right of defendant 2"s tarwad

to a half share in an office was fraudulent and that the agreement, was not binding on the plaintiffs" tarwad. The suit was brought more than ten

years after the date of the document. Certain of the plaintiffs were minors and it was on this ground it was claimed that the suit was in time. This

claim was rejected because the karnavan and the adult members of the family represented the tarwad. Sadasiva Aiyar J. was inclined to the view

that a karnavan whose contract was sought to be impeached was a person who was able to give a discharge within the meaning of Section 7,

Limitation Act, but Napier J. did not share, in this opinion.

3. In the case before us respondent 2 was certainly in a position to bring a suit as the karnavan to set aside the transaction. It has been said on

behalf of respondent 1 that the fact that she signed the deed of gift debarred her from bringing a suit. Without going into the question whether the

opinion expressed by Sadasiva Iyer J. in *Parameswaram Nambudripad v. sankaran Namabudripad* AIR 1915 Mad. 723 is well founded we do

not accept the respondent 1's contention that respondent 2 was debarred from suing. Respondent 2 signed the deed in her individual capacity, not

as the karnavan, and what is more, the Subordinate Judge has found that she was the victim of a fraud and not a party to the fraud. There can be

no doubt that respondent 2 joined in the deed because of Kannan's influence with her. It may be that while he was alive she remained under his

influence and therefore was not a free agent, but Kannan's influence was removed by his death. In these circumstances it is not necessary to

decide whether limitation commenced to run from the time of the execution of the deed, because it must have started to run in 1919 when on the

death of Kannan respondent 2 admittedly became the de jure and the de facto karnavan. Limitation having commenced to run against the tarwad it

ran against the plaintiff, and the sands had run out before the suit was filed. For these reasons we allow the appeal with costs throughout in favour

of the appellants.