
(1926) 11 MAD CK 0017
In the Madras High Court

Kozhikkot Puthia Kovilagath Manavedan alias Anujan Rajah, APPELLANT
Avl., and Others

Vs

Kozhikkot Puthia Kovilagath Viayathen Sreedevi alias Valia RESPONDENT
Thamburatti, Avl., and Others

Date of Decision : 09-11-1926

Acts Referred:

Citation : AIR 1927 Mad 422 : (1927) ILR (Mad) 431 : (1927) 25 LW 284 :
(1927) 52 MLJ 277

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Appeal from decree in O.S. No. 16 of 1925, Subordinate Judge, Calicut. The parties to this suit are members of the family of

the Zamorin of Calicut, but for the purposes of this appeal it is unnecessary to detail the complicated rules of succession prevailing in that family. In

essence the suit is simple, and the learned vakils on either side have proceeded (and, in our opinion, rightly proceeded) on the assumption that it is a

suit for the removal of the Karnavan of an ordinary Malabar tarwad, coupled with the prayer that he be ordered to furnish general accounts for the

period of his office. In this family, the Karnavan happens to be a woman, the 1st defendant. The 2nd defendant is her son, alleged to have acted as

her manager and to have imposed his will upon her to the detriment of the rerwad in general. Defendants 3 and 4 are the remaining members of the

particular branch descended by way of the motherhood of the first defendant (the tavazhi in Malayali phraseology). It is alleged in the plaint That

by various acts of malfeasance (set forth at great length therein, para. 12-A to D.D) 1st and 2nd defendants in collusion have misappropriated

funds belonging to the family in general, and have devoted them to the 1st defendant's particular branch. The plaintiffs are three junior members of the family, and they have brought all the other members into the suit by impleading them as defendants.

2. In the course of the suit, the 1st defendant ceased to be karnavan because by the family rule of succession she moved to a higher sphere.

Therefore there was no longer any question of removing her (Prayer A in the plaint), and it only remained to consider how far prayers B and C

were sustainable directing defendants 1 and 2 to render all accounts of receipts and expenses of the family from 22nd September, 1915, and to

pay whatever sums might be found due to the family in general from the personal property of defendants 1 and 2 and out of the tavazhi property of

defendants 1 to 4.

3. The learned Subordinate Judge has held on the authority of *Kenath Puthen Vittil Tavazhi v. Narayanan* 14 MLJ 415 (FB) that the karnavan is

not liable to pay to the tarwad any surplus income; and on the authority of *Karunakara Menon v. Kutti Krishna Menon* (1916) 38 IC 666 that an

anandravan cannot ordinarily sue a karnavan to render accounts of his management. The right of such junior members is confined to suing for

maintenance, to suing for cancellation of any transaction entered into by the karnavan to the detriment of the family, and to suing for his removal.

As incidental to the relief of removal from management and only in that way, it is competent to anandravans to call upon the karnavan to render

accounts. But that is allowed not with a view that the anandravans may recover from the karnavan the amount found due, such a remedy being

directly opposed to the inherent status of the karnavan, and is unheard of, but simply in order that the extent to the loss suffered by the tarwad at

the hands of the karnavan may be ascertained with a view to his removal. But when there is no question of his removal there is clearly no liability on

him to render accounts. To hold otherwise would be to reduce the karnavan to the position of a trustee which he certainly is not.

4. The Sub-Judge has further found that according to the plaint the 2nd defendant stood only in the position of an agent of the 1st defendant, and

was accountable to 1st defendant alone. Accordingly he dismissed the suit.

5. It has been contended on behalf of appellants that the karnavan of a Malabar

tarwad cannot use its funds for purposes other than tarwad

purposes, and assuming that the other members of the tarwad can prove misappropriation, the karnavan is bound to render an account. If general

misappropriation is proved the karnavan must render a general account. In any case those who have benefited by such misappropriation, such as

defendants 2, 3 and 4 would be bound to account, and any special acts of mismanagement by 2nd defendant would give a cause of action in this

suit.

6. The first ground in appellants' argument is clearly sustainable. The learned Subordinate Judge may be correctly stating the traditional law of his

community, but at this date judicial rulings negate the extreme position that karnavan cannot be held accountable for alienations made by him in

fraud of his tarwad.

7. Large as the powers of the karnavan appear to be, those powers are essentially powers of management. *Raman Menon v. Raman Menon* ILR

(1900) M 73. The karnavan has not any larger right of ownership than any junior member, *P.K. Govindan Nair and Others Vs. P. Narayanan Nair*

and Others, . The members other than the karnavan have the right to prevent the karnavan from wasting or improperly alienating the family

property, *P.K. Govindan Nair and Others Vs. P. Narayanan Nair and Others*, . The karnavan has no higher claim in the enjoyment of the income

than any other member of the family. He has a right to expend as he pleases for the common benefit of all, *Narayani v. Gobinda* (1884) ILR 7 M

352. His office is fiduciary, *Tod v. P.P. Kunhamod Hajee* ILR (1881) M 169 .

8. In these circumstances it would seem proper that the karnavan should make good from his personal estate any of his defalcations from the family

property, but there happens to be no case directly in point. However, the observations of Wallis, C.J., in *Venkanna v. Narasimham* ILR (1921) M

984 seem to apply although there the defalcation was by a widow with a limited life-estate.

As to the widow's own accountability for wasting the moveable corpus of the estate, the authorities are meagre because the remedy against her

would rarely be effective, but on principle I see no sufficient reason for refusing to hold her accountable for waste in the sense of making her

replace the moveable corpus which she had made away with.

9. In *Raya v. Gopal Mallan* (1911) 11 IC 666, a Bench of this Court ruled that if the manager of a joint Hindu family were proved guilty of

negligence or misconduct he would be held personally liable for any loss caused to the family thereby and in *P.K. Govindan Nair and Others Vs. P.*

Narayanan Nair and Others, the substantive right of the karnavan in the tarwad property is held to be of exactly the same character as that of the

managing member of a Mitakshara family. Therefore on proof of fraudulent alienation or misappropriation by the karnavan the junior members of a

tarwad, suing on its behalf, will be entitled to recover from the karnavan personally the amount of which their tarwad has been defrauded.

10. It is obvious that in a suit of this character if the junior members have succeeded in establishing a case that calls for rebuttal, the karnavan, thus

put upon his defence, must render some account of the impugned transaction, else he will fail in the suit. Such a case is contemplated in *Varanakot*

Narayanan Namburi v. Varanakot Narayanan Namburi ILR (1880) M 328 where it is observed:

He is not accountable to any member of the tarwad in respect of the income of it nor can a suit be maintained for an account of the tarwad

property in the absence of fraud on his part.

11. And again in *Karunakara Menon v. Kutti Krishna Menon* (1916) 38 IC 666:

If plaintiff could show that the karnavan and senior anandravan were colluding to defraud the tarwad, it might be open to him to file a suit for the

removal of the karnavan and to ask for appropriate relief on behalf of the tarwad, including the rendering of an account.

12. This presumably means that if any specific fraud is proved against the karnavan in regard to some specific item of property he must account for

his dealing with that item, and if a general case of mismanagement is made out against the karnavan, he may be liable to removal, unless he can

render a satisfactory general account of his management. It does not mean, as now contended on behalf of appellants, that whenever junior

members sue to remove their karnavan, they can, by virtue of asking for that relief, always demand, as of right, that the karnavan shall render

general accounts. If this were so the well-known principle recognised in this very ruling *Karunakara Menon v. Kutti Krishna Menon* (1916) 38

IC 666 that an anandravan cannot sue karnavan for an account of his

management would become a dead letter. For then any anandravan could sue his karnavan for rendering of accounts by merely tacking on a subsidiary prayer for the karnavan's removal from office.

13. The matter may be summed up as follows: The karnavan is the manager of the family estate. He may administer that Estate for the benefit of

the family according to his own discretion. He is not bound to render any account or to pay to the tarwad any surplus he may have in his hands,

Kenath Puthen Vittil Tavazhi v. Narayanan 14 MLJ 415 (FB) which of course does not mean that he may devote the surplus to other than tarwad

purposes, but only that he need not distribute it among the individual members, if in his discretion he prefer to accumulate or invest it for the benefit

of the family as a whole. If it be proved against him that he has abused this discretion and fraudulently misappropriated the family estate, he must

account for that transaction. If it be proved generally that he is a bad manager, he will be liable to removal, unless he gives a good account of his

management. But he cannot be compelled actually to render accounts, by a threat of removal, or for any other reason.

14. Therefore, when they pray for a decree directing defendant 1 to render all accounts of receipts and expenses from 22nd September, 1915

plaintiffs have no cause of action. They are entitled to sue for a decree removing 1st defendant from management, and to contend, if 1st defendant

give no account by way of rebutter of their proved allegations, that such a decree should be granted and 1st defendant should be removed. But, if,

as in this case, the removal is already an accomplished fact such a contention would be idle. And plaintiffs might have brought their suit in a

different form praying that each proved defalcation might be set aside and 1st defendant held liable in damages. In its present form and in the

present circumstances, the suit discloses no cause of action as against 1st defendant, and was rightly dismissed.

15. In so far as 2nd defendant acted as the agent of 1st defendant a suit, which would not lie against his principal, would not lie against him. And in

so far as 2nd defendant acted as a mere trespasser there could be no question of calling upon him for general accounts. In a properly framed suit It

would be open to the karnavan as representing the tarwad to sue the 2nd defendant as liable for any proved act of malfeasance or

misappropriation. In the same way defendants 3 and 4 or their tavazhi might be held liable in a suit for setting aside specific transactions, but not in a suit for general accounts, a matter in which they have no responsibility.

16. For the above reasons, we consider that the suit was rightly dismissed, and the appeal also must be dismissed with costs (one set).