

(1924) 09 MAD CK 0035
In the Madras High Court

K.P.P. Mayankutti and Others

APPELLANT

Vs

K.P.P. Kathiri and Others

RESPONDENT

Date of Decision : 22-09-1924

Acts Referred:

Citation : AIR 1925 Mad 441 : (1925) 21 LW 224

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The first point raised in this Second Appeal is that the suit is maintainable. The Subordinate Judge held that the suit as laid

was not maintainable. The plaintiffs did not sue for maintenance for the whole tavazhi. The plaintiff's suit as laid was for maintenance only for

Certain members of the tavazhi on the ground that the tarwad had acquired some additional property after the karar, Ex. A, was entered into. It

was held in Chowaharen Keloth Makhi Keyi and Manager Vs. Pudia Maligayammal Chowakaren Keloth Mammod, , that, in order to sustain a

suit of this nature, all the members of the tavazhi should sue for maintenance.

2. The learned Judges distinctly say a suit can be brought by the members for an increased allotment of lands on the property, or for a money

allowance. Here, the suit not being on behalf of all the members of the tavazhi, the Subordinate Judge rightly held that the suit was not maintainable.

It is urged by the vakil lot the appellants that Chowaharen Keloth Makhi Keyi and Manager Vs. Pudia Maligayammal Chowakaren Keloth

Mammod, has been wrongly decided. I am unable to accept this contention. Sitting as a single Judge, the judgment of a Bench is binding on me.

Even if I am prepared to listen to that, argument, I do not think that the case

has been wrongly decided. In a Malabar tarwad, a member is entitled to be maintained out of its income but he is not entitled to a specific share of the income. The karnavan is entitled to use the income in any way he likes and no member is entitled to ask for an account, provided, of course, the karnavan does not misuse the income or refuse to maintain any member of the family. Here, under Ex. A, certain properties were allotted to the plaintiff's tavazhi and some other properties were allotted to the maintenance of some other tavazhi. So long as the karar is in force, it is not open to the plaintiffs to come forward and say that they should be given maintenance, out of some property which was not the subject of the karar.

3. Then the argument is advanced that the property which is acquired by one of the members of a tavazhi ought to enure for the benefit of both the tavazhis. Para. 12 of the karar is against such a contention. It distinctly stipulates that the property of any member should lapse to the tarwad.

Therefore, this contention is also untenable.

4. The learned Vakil for the appellants asks for leave to amend the plaint to sue on behalf of the whole tavazhi. He has not asked for an amendment till now and I do not think that, in the circumstances, I ought to allow an amendment at this stage. Various questions will arise for decision, if such an amendment is allowed. It is open to the plaintiffs to bring a suit for the proper remedy, if any, and I do not think that they are entitled to ask for leave to amend the plaint, in the circumstances of this particular case.

5. In the result, the Second Appeal fails and is dismissed with costs.