
(1908) 01 MAD CK 0015
In the Madras High Court

Kunhi Kannan

APPELLANT

Vs

Mannayatha Suppi and Others

RESPONDENT

Date of Decision : 13-01-1908

Acts Referred:

Citation : (1908) 18 MLJ 132

Judgement

1. In this suit the plaintiff sues for possession of certain land which he purchased at a Court auction in execution of the Small Cause Court decree

1489 of 1876 which had been obtained against the Karnavan of the Paloli Edan tarwad in respect of a debt binding on the members of the tarwad.

To this suit the nth defendant pleaded that subsequently to the decree and prior to the execution proceedings the Paloli Edan tarwad divided itself

into two tavezhis, the Thachormal and the Kunnumal, and that the suit land was allotted to, and became the property of, Thachormal Tavezhi to

which he belongs, and that the sale in execution of the decree is not binding on the Tachormal Tavezhi as no member of this Tavezhi was made a

party to the execution proceedings. Both the lower Courts have upheld this contention on the authority of Sankara v. Kelu ILR (1889) M. 29 and

we agree with the conclusion at which they have arrived. The members of a tarwad cannot escape liability for debts or decrees binding on the

tarwad by dividing into two tavezhis as held in S.A. No. 1323 of 1894 reported in a note to Kunhappa Nambiar v. Shridevi Kettillamma ILR

(1895) M. 451 but, as held in the latter case when the Karnavan of the original tarwad has ceased to represent them they cannot be bound by

proceedings in execution of a decree against him unless they are separately represented. According to the finding of the lower appellate Court in

this case, the members of the Thachormal Tavezhi were not represented in the execution proceedings now in question, and consequently the court

sale at which the plaintiff purchased is not binding on them and the appeal must be dismissed with costs.