
(1958) 10 KL CK 0029
In the High Court Of Kerala
Case No : S.A. No. 48 of 1955 (M)

Kunhukutty Amma and Others

APPELLANT

Vs

Ravunni Menon and Others

RESPONDENT

Date of Decision : 28-10-1958

Acts Referred:

Hindu Religious Endowments Act — Section 76

Citation : (1959) KLJ 158

Hon'ble Judges : T.K. Joseph, J;G. Kumara Pillai, J

Bench : Division Bench

Advocate : N. Sundara Iyer, for the Appellant; P.K. Krishnankutty Menon for 1st Respondent, for the Respondent

Final Decision : Allowed

Judgement

G. Kumara Pillai, J.—This second appeal arises out of a suit brought by the manager of the Mavundasserri Devaswom appointed by the Hindu Religious Endowments Board, Madras, for recovery of possession of three items of properties belonging to the said Devaswom. According to the plaint allegations, two tarwads known as Mele Mundakkot and Keezhe Mundakkot are the hereditary trustees of the Devaswom. Defendant 1 is the present karnavan of Mele Mundakkot tarwad. On account of the mismanagement by the trustees the Hindu Religious Endowments Board framed a scheme, Ext. A4, on 12-9-1935, for the management of the Devaswom affairs, and the plaintiff has been appointed as manager under the said scheme by Ext. A1 order dated 18-5-1943. On 7-10-1930 the then karnavans of the two trustee tarwards, in their capacity as ooralans of the Devaswom, executed a kanom deed, Ext. A10, in favour of defendant 1 for the plaint schedule properties, and defendant 1's tarwad which is one of the trustee tarwads is in possession of the properties, pretending to be under the said kanom. This kanom deed and a subsequent purakkadam Ext. A11, executed on 23-3-1943, are not binding on the Devaswom as they were executed by the trustees for defrauding the Devaswom and contrary to the

orders issued by the Hindu Religious Endowments Board u/s 76 of the Hindu Religious Endowments Act prohibiting the trustees from making alienations except with the Board's consent and are also not supported by consideration and necessity binding on the Devaswom. Ext. A10 purports to be the renewal of a prior kanom executed in 1022 M.E., but really there was no such kanom, and so, the document is invalid and not supported by any consideration. On these allegations the plaintiff brought the suit for recovery of possession of the plaint properties with past and future mesne profits.

2. Defendant 1 and some other members of his tarwad, i. e., defendants 2 to 5, contested the suit. They contended that their tarwad, Mele Mundakkot tarwad, was holding the properties on kanom from the Devaswom even before Ext. A10, that Exts. A10 and All were perfectly valid and binding on the Devaswom, and that plaintiff was not therefore entitled to recover possession of the properties. The suit was also resisted on the ground that, in any event it was barred by limitation. Defendants 1 to 5 had also other contentions but in view of the conclusions we have arrived at on the contentions mentioned above it is not necessary to refer to the other contentions here.

3. The trial court found that Ext. A10 and All were not valid and binding on the Devaswom and that there was no prior kanom of 1022 M.E. as mentioned in Ext. A10. Nevertheless, it held that Mele Mundakkot tarwad was holding the properties under certain prior kanoms, long prior to Ext. A10, and that defendant 1 and other members of the tarwad were not trespassers and were not liable to be evicted from the properties. Consequently it dismissed the suit with costs. Against the trial court's decree the plaintiff filed an appeal which was disposed of by the Subordinate Judge of Ottapalam on 6-12-1948. The Subordinate Judge confirmed the decree of the trial court and dismissed the plaintiff's appeal asking him to pay the costs of the defendants. Against the Subordinate Judge's appellate decree the plaintiff filed a second appeal in the Madras High Court, and the Madras High Court set aside the Subordinate Judge's judgment and decree remanded the case to the lower appellate court for rehearing and fresh disposal of the appeal filed against the trial court's decree. After the remand the appeal was heard by the Subordinate Judge of South Malabar and he allowed the appeal on 29-9-1954 decreeing the suit practically in term of the plaint. Against the appellate decree of the Subordinate Judge of South Malabar the members of defendant 1's tarwad have filed this second appeal.

4. Although the defendants have not been able to prove the specific prior kanom, i.e., the kanom of 1022 M.E. mentioned in Ext. A10, the finding of the trial court was that even long prior to Ext. A10 Mele Mundakkot tarwad was holding the properties on kanom from the Devaswom. The lower appellate court also has observed in paragraph 13 of its judgment.

The position therefore comes this: that Exhibits B1 to B9 will only go to show that Mele Mundakkot tarwad was dealing with the plaint properties for more than 50 years before the date of Exhibit A10 as if the tarwad had a kanom right in

these items, though, at the same time, the tarwad had no consistent case about the nature and origin of this kanom right.

The actual finding of the lower appellate court in paragraph 16 of its judgment is:

My finding on this point is that even before the date of Exhibit A10 the tarwad of defendants 1 to 9 was in possession of the plaint properties for more than 50 years but the tarwad has failed to prove that there was any kanom right granted by the Devaswom in its favour.

It is, therefore, clear that Mele Mundakkot tarwad had been asserting for more than 50 years that it is holding the plaint properties on kanom and was dealing with the properties on that footing.

5. The case of the members of Mele Mundakkot tarwad, as seen from Ext. B9 judgment, is that plaint items 1 and 3 were demised on kanom even before 1800 by the Devaswom and that they were in possession of those items under that kanom. Exts. B7 to B9 are the records of a suit brought against Mele Mundakkot tarwad in 1877 by a person who claimed to be one of the ooralans of the temple. The tarwad contested that suit on two grounds, one that the plaintiff was not an ooralan and the other was that it was in possession of the properties under the earlier kanom mentioned above. As the suit was dismissed on the ground that the plaintiff therein was not one of the ooralans there was no finding in it as to whether the kanom alleged by the Mele Mundakkot tarwad in respect of items 1 and 3 was true or not. But these records would serve to show that even so early as 1877 the tarwad was claiming to be in possession of those items under a very ancient kanom granted even before 1800. Ext. B1 would show that plaint item 2 was being held on kanom in 1856 by a stranger, a Mahommedan, from the plaint Devaswom. To Ext. B1 the karanavans of both Mele Mundakkot and Keezhe Mundakkot i.e., the tarwads which, according to the plaintiff in the present suit, are the trustees, were parties. A junior member of the Mele Mundakkot tarwad obtained an assignment of the kanom evidenced by Ext. B1 in 1862, and Ext. B2 is that assignment. Subsequently, in 1903 the plaint properties were demised on a sub-kanom by Mele Mundakkot tarwad to another stranger by Ext. B3. Ext. B4 is an assignment which the sub-kanomdar executed to another person in 1905, and Ext. B5 is the assignment which the assignee under Ext. B4 executed in favour of the Mele Mundakkot tarwad surrendering his rights under Exts. B3 and B4. From these documents it is clear that at least in respect of plaint schedule item 2 there was a kanom validly granted by the Devaswom in 1031 and that Mele Mundakkot tarwad had obtained an assignment of that kanom long prior to Ext. A10 and the members of that tarwad and other persons were dealing with that property on the footing that the tarwad had the kanom right in it.

6. From Exts. B7 to B9 and B3 to B5 (Exts. B3 to B5 include both plaint schedule item 2 and plaint schedule items 1 and 3) it is clear that Mele Mundakkot tarwad was in possession of plaint schedule items 1 and 3 at least from 1877 asserting that it was in possession under a kanom granted by the Devaswom even before

1800 and that the members of that tarwad and other persons were dealing with those properties on that footing. As has been stated already, to Ext. B1 both ooralans, i.e., the karanavans of both Mele Mundakkot and Keezhe Mundakkot tarwads, were parties. The attempt on the part of a pretended trustee in 1877 to set at nought the alleged kanom under which Mele Mundakkot tarwad was claiming to be in possession of the properties failed. The successive karnavans of the Keezhe Mundakkot tarwad could not have been in ignorance of the fact that Mele Mundakkot tarwad was claiming to be in possession of items 1 and 3 also under a kanom granted by the Devaswom. If there was no kanom it was not likely that from 1877 till the date of this suit no attempt would have been made by the karnavans of that tarwad to recover possession of plaint items 1 and 3 from Mele Mundakkot tarwad for and on behalf of the Devaswom. The evidence in the case shows that there was no love lost between these two tarwads and that they were involved in long and protracted litigations against each other. In the light of that evidence the conduct of the karanavans of Keezhe Mundakkot tarwad in not taking any step to defeat the claim which the Mele Mundakkot tarwad was making on the basis of the alleged kanom in respect of plaint items 1 and 3 and also the fact that the karnavan of Keezhe Mundakkot tarwad also had joined in the execution of Ext. A10 in 1930 are strong circumstances proving that the Devaswom must have granted a kanom in respect of plaint schedule items 1 and 3 also at some very ancient time and that Mele Mundakkot tarwad was holding those items under that kanom. No doubt, the Mele Mundakkot tarwad has not been able to prove the particular kanom mentioned in Ext. A10 and in their written statement. Having regard to the very ancient nature of the transaction and the absence of registration in those days no significance can be attached to the inability of defendants 1 to 5 to prove the particular kanom. Keeping apart the questions whether Mele Mundakkot tarwad was a trustee of the Devaswom, whether as such it could take a kanom from the Devaswom, and whether such kanom would be valid or not, there can be no doubt on the questions whether the Devaswom had granted kanoms in respect of plaint items 1 to 3 and whether Mele Mundakkot tarwad was holding the properties under those kanoms. We are satisfied on the evidence in the case, and we hold that the Devaswom had granted kanoms both in respect of plaint schedule items 1 and 3 and plaint schedule item 2 even before 1877 and that at least from 1877 the Mele Mundakkot tarwad was holding the properties under those kanoms.

7. Learned counsel for the respondent-plaintiff contended before us that as Mele Mundakkot tarwad was one of the two trustee tarwads it was not competent for it to take any kanom directly from the Devaswom and that assignments taken by it of kanoms granted by the Devaswom to other persons must be deemed to be surrenders or releases taken for and on behalf of the Devaswom. According to the learned counsel, the trusteeship is vested in the entire tarwad and not merely in the karnavan, and so, all the disabilities attaching to a trustee would attach also to the tarwad as such. In support of his contention that the trusteeship was in the entire tarwad and not merely in the karnavan thereof he

relied upon Ext. A13, which is a copy of an agreement executed in 1924 by the karnavans of Mele Mundakkot and Keezhe Mundakkot tarwads regarding the Devaswom, and Ext. A4, the scheme for administration prepared by the Hindu Religious Endowments Board. In paragraph 2 of Ext. A13 it is said that the ooraimaship in the Devaswom belongs to Mele Mundakkot tarwad and Keezhe Mundakkot tarwad. In paragraph 2 of Ext. A4 it is provided:

The trusteeship of Mavundasseri temple, Marayamangalam, Walluvanad taluk, Malabar District, shall vest in the tarwads of the hereditary trustees and any other trustees as the Board may hereunder appoint.

On the strength of these two provisions it was contended that the ooraimaship vests in the two tarwads and not merely in the karnavans thereof and that therefore any alienation or assignments which the tarwad as a whole takes as regards Devaswom properties will be subject to the same infirmities as alienations and assignments of trust properties taken by a trustee.

8. It is admitted by both sides that the temple in question is not a private institution but a public place of worship for the Hindus and a public trust. It is only in the case of private institutions that the ooralan is the owner of the Devaswom and the ooraimaship, ownership thereof. Regarding the status of ooralans and the position of the tarwads to which they belong as regards the rights and liabilities of ooraimaship, Sundara Iyer, in his book on Malabar and Aliyasanthana Law, 1922 edition, says at pages 273 and 274:

Where the temple is a private institution, the uralan may be practically an owner. In the case of some public temples he is not even the manager or dharmakarta which is the ordinary signification of the term, but only a subordinate manager acting under another who is the real Dharmakartha.

In the case of many temples in Malabar there are more uralars than one belonging to different Families. In such cases the uraima is sometimes spoken of as vested in the tarwads to which the uralans belong. This is however an inaccurate and misleading statement for the uraima cannot be said to be vested in the whole tarwad. All the members of the tarwad are not managers, and have no present right to interfere in the affairs of the temple. If this were not so, where there are several tarwads having the uraima a single tarwad having a large number of members might be able to swamp all the other tarwads having only a few members, and to practically monopolise the management. There is no doubt that in determining the majority where it is necessary to do so, each Tarwad counts only for one, whatever the number of members constituting it. It would, moreover, lead to endless confusion, if every individual member of each of the tarwads is recognised as possessing a present right of management. They merely possess the right to succeed to the managership when each becomes the manager of the tarwad. This is the view taken in *M. Kelu v Paidel* ILR (1886) Mad. 473) and in *Vellavialyetchanan Nambudiri v Sivarama Patter* (1890) 1 M.L.J. 890) and is assumed to be the correct view by the Privy Council in the

case of *Rajah Varma v Ravi Varma* (1876) ILR 1 Mad. 285 (P.C.) It is thus well put in S.A. 1133 of 1894:-- "The karnavan of the tarwad qua uralan exercises his uralima right not on behalf of the family but as a personal right and on his own responsibility. The other members of the family may be possible future heirs to the trusteeship but have no concurrent right in the oraima.....The anandravans have no right of interfering with the management nor are they under any liabilities for breaches of trust which might be committed by their karnavans as uralans. If the temple was a private one the cases would have been different for then they are in the position of co-owners and can sue.

In the light of this statement of law, it is clear that what could have been intended and what was actually intended by the statement in clause (2) of Ext. A4 scheme that the trusteeship shall vest in the tarwads of the hereditary trustees and the statement in clause 2 of Ext. A13 that the ooraimaship belongs to Mele Mundakkot tarwad and Keezhe Mundakkot tarwad was only that the two tarwads had the right to have their karnavans as the trustees of the Devaswom and not that the trusteeship belongs to or is vested in the two tarwads -- in other words, the ooralans or trustees were to be not the tarwads as such but their karnavans, and the karnavanship of the two tarwads was the qualification to be ooralans of the Devaswom. This position is also made very clear in clause 2 of Ext. A13 agreement. After the words in that clause relied upon by the respondent's counsel, the following very significant words also occur in that clause "

" (and the eldest male members of the two tarwads from time to time would be the ooralans). Therefore, the earlier statement in clause 2 of Ext. A13 that the ooraimaship belongs to the two tarwads only meant that the right to supply ooralans for the temple belonged to the two tarwads and not that the two tarwads as such were the ooralans. In this view it is not Mele Mundakkot tarwad as such but only the karnavan of that tarwad who was a trustee of the Devaswom, and there was nothing to bar the tarwad from taking a valid alienation of the Devaswom properties from the trustees or from taking an assignment of a valid tenancy right which the Devaswom had granted. Therefore, if Ext. A10 is in other respects valid and binding on the Devaswom, it cannot be held to be invalid on the mere ground that it was taken by the tarwad. Likewise, the assignments taken by Mele Mundakkot tarwad of the earlier kanoms which we have found that the Devaswom had granted in respect of the plaint properties cannot also be held to be invalid or deemed as surrenders taken by the trustee on the ground that they have been taken by a tarwad which had ooraimaship in the Devasom.

9. Plaintiff attacked Ext. A10 mainly on three grounds. One was that it was taken by the ooralan himself. That ground must fail in view of that we have said above. The next was that there was no prior kanom in respect of the plaint properties as stated in Ext. A10 and it was not therefore supported by consideration. We have already found that there were prior kanoms in respect of all the three properties

and that at the time of the execution of Ext. A10 Mele Mundakkot tarwad was holding the properties under those kanoms. No doubt, the defendants have not been able to prove the particular kanom mentioned in Ext. A10, and that happened only because of the very ancient nature of the transaction and the absence of registration in those days. As there were prior kanoms and the Mele Mundakkot tarwad was entitled under law to claim a renewal of the kanoms and the jenmi was bound to grant the renewal we are unable to accept the contention that Ext. A10 is not supported by consideration and necessity. The third ground of attack was that the execution of Ext. A10 was contrary to the circular issued by the Hindu Religious Endowments Board u/s 76 of the Madras Hindu Religious Endowments Act. That section reads:

76 (1) No exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to any math or temple shall be valid or operative unless it is necessary or beneficial to the math or temple and is sanctioned by the Board in the case of maths and excepted temples and by the committee in the case of other temples.

(2) The-trustee of the math or temple or any person having interest may, within one year of the date" of the order of the Board or committee under sub-section (1), apply to the court for modifying or cancelling such order.

(3) The order of the Board or committee under sub-section (1) when no application is made under sub-section (2) and the order of the court when such application is made shall be final.

This section and the prohibition issued thereunder can apply only to alienations made by trustees and cannot apply to renewals of leases and kanoms which are only ordinary acts of management. At page 276 of Sundara Iyer's Book on Malabar and Aliyasanthana Law, 1922 Edition, it is said:

The renewals would not be binding unless they are bona fide and in the usual course of management. But as it is an ordinary incident of management the alienee need not scrutinise necessity.

Further, under the Malabar Tenancy Act which came into force even before the Madras Hindu Religious Endowments Act, the kanomdar had the right to obtain renewals on the termination of the period for which the kanom was granted and on his demand the jenmi was bound, and could not refuse, to grant the renewal. The third ground of attack also must therefore fail. In the circumstances we hold that Ext. A10 was a perfectly valid transaction binding on the Devaswom, and that since Mele Mundakkot tarwad is now holding the plaint properties under that transaction the Devaswom and its manager have no right to recover possession of the properties from it.

10. So far as Ext. A11 is concerned, the matter stands on an entirely different footing. That is a fresh charge created on the properties and therefore the trustees had no right to execute it in contravention of the circular issued by the

Madras Hindu Religious Endowments Board. There is also no evidence in the case as regards the necessity for incurring the debt under Ext. A11. Mr. Sundara Iyer, learned counsel for the appellants, frankly conceded that he could not contend for the validity of Ext. A11 being upheld. We hold that Ext. A11 is not valid and binding on the Devaswom.

11. Nevertheless, the suit has to fail on account of our finding in respect of Ext. A10.

12. Although there is no necessity to consider the question of limitation, in view of our finding as regards Ext. A10, we may say that even if Ext. A10 is invalid the suit has to fail on the ground of limitation also. Ext. A10 was executed by both trustees of the Devaswom, and at least after its execution the Mele Mundakkot tarwad was holding the properties under that document. After its execution there have been changes in the karanavanships of the two tarwads and therefore changes also in the personnel of the trustees of the Devaswoms. There is evidence in the case that the karanavan of Mele Mundakkot tarwad who had joined in the execution of Ext. A10 as one of the two joint trustees had died long before twelve years prior to the date of suit and has been succeeded by another person in the karanavanship; and the respondent's counsel also did not dispute this fact. Since according to our finding, the trustee is the karnavan, and not the tarwad, it would follow that one of the trustees who had executed Ext. A10 has died and has been succeeded in office by another person. According to the respondent's counsel, there is no evidence in the case as to whether the karanavan of the Keezhe Mundakkot tarwad who had joined in the execution of Ext. A10 as the other trustee has died since then and has been succeeded by another person. No doubt, there was no evidence in the trial court on this question. In the lower appellate court the appellants produced a copy of the relevant Births and Deaths register to prove the death of the karanavan of Keezhe Mundakkot tarwad who had participated in the execution of Ext. A10 and made an application to admit it as fresh evidence in appeal. The lower appellate court refused it on the ground that it was a belated application. The appellants' counsel has repeated the prayer before us also for acting upon this document. It was not disputed before us that the entry in the Births and Deaths register related to the karnavan of the Keezhe Mundakkot tarwad who had participated in the execution of Ext. A10, and the respondent's main objection to the admission of the document was that the application was made at a belated stage and no explanation has been given for the omission to produce it in the trial court. The omission to produce it in the trial court was, according to the appellants' counsel, due to the mistake of the counsel appearing for the defendants in the trial court who had thought that in cases where a document was executed by more than one trustee it would be sufficient to prove the death or removal of one trustee alone to attract Article 134B of the Limitation Act. Since, in view of our finding in paragraph 11 above, the present appeal can be disposed of without pronouncement on the question of limitation; we do not desire to say anything as to whether the death of one of the executing trustees alone would be sufficient

to attract Article 134B of the Limitation Act to a case in which the document had been executed by more than one trustee. But, having regard to all the circumstances of the present case, we consider that the lower appellate court should have allowed the defendants' application for admitting the copy of the Births and Deaths register as fresh evidence in appeal. On the fresh evidence there can be no doubt of the fact that the karanavan of Keezhe Mundakkot tarwad also who had joined in the execution of Ext. A10 died long before twelve years prior to the date of suit and has been succeeded by another person. Thus, after the execution of Ext. A10 both the trustees who executed it having died and having also been succeeded by other trustees more than twelve years prior to the date of the suit, the suit is clearly barred under Article 134B of the Limitation Act. In the result, we hold that Mele Mundakkot tarwad is now in possession of the plaint properties under Ext. A10, that it is a valid document binding on the Devaswom, that Ext. A11 is invalid and not binding on the Devaswom, and that the plaintiff is not entitled to recover possession of the properties from the members of the Mele Mundakkot tarwad or persons holding under them, as Ext. A10 is valid and binding on the devaswom. The suit is dismissed in accordance with and subject to these findings. Parties are ordered to bear their respective costs in all the courts. The second appeal is allowed as above.