

(1944) 02 MAD CK 0007
In the Madras High Court

K.V.V.P. Veettill Vellachi

APPELLANT

Vs

Gopalan

RESPONDENT

Date of Decision : 09-02-1944

Acts Referred:

Citation : AIR 1944 Mad 407 : (1944) 57 LW 322

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—Members of a tarwad entered into a rather unusual partition agreement under which the tarwad property was divided into four

lots. The one with which we are concerned fell to the share of a mother, plaintiff 1, and her son, the defendant. Plaintiff 1 had three daughters and a

son; but the daughters separated themselves from their mother and entered into the other groups. After the partition, plaintiff 1 transferred her

interest in the property that fell to the share of herself and the defendant, to plaintiff 2, one of her divided daughters. The question for decision in the

Courts below was whether it was permissible for the mother and the son to hold the property jointly. If so, then it was presumed that they could

not divide the property and that the defendant was entitled to oppose the transfer of his mother's share to plaintiff 2. This appeal has been filed by

the plaintiffs. Much of the argument of the learned Counsel for the appellants is based on (Kypreth) Moithiyan Kutti Vs. (Natukandy) Puthiapurayil

Mammali and Others, followed in P.V. Srinivasa Rao Pantulu Garu Vs. Yeruva Chinnapa Reddi, in which it was held that if property was given to

certain members of a tavazhi, they could not hold it as a tavazhi. In (Kypreth) Moithiyan Kutti Vs. (Natukandy) Puthiapurayil Mammali and

Others, , a man gave property to his wife and her children by him and directed that the property should be held by them as a tavazhi. In fact, they did not constitute a tavazhi; for the wife had children by another husband. The learned Judges held that there was no unit of a mother and certain of her children known to law; and that any property conveyed to them would therefore be held by them as tenants-in-common and not jointly. It is rather a different matter where certain members of a tavazhi divide themselves off from the tavazhi. By dividing themselves off, some children cannot compel their mother to divide herself from those children who prefer to remain joint with her. This is so under Hindu law and I do not see why it should not be so in a Marumakattayam family. The question of fact whether plaintiff 1 and the defendant intended to remain joint or separate was never clearly before the Courts; and I would prefer not to express any opinion on that question here.

2. Assuming however that plaintiff 1 and the defendant remained joint after the disruption of the tavazhi, I can see no reason why plaintiff 1 should not now divide herself from her son. Plaintiff 1 and the defendant did not, in fact, constitute a tavazhi. If they did, it might be argued that the tavazhi could not be divided. As;however plaintiff 1 and the defendant allowed the tavazhi to become disrupted, I cannot see how one of them can compel the other to remain joint; and no reason has been suggested. Now that plaintiff 1 has changed her mind, she is entitled to divide herself from the defendant and take her half share of the property; and that can be done in this suit for partition.

3. It is argued that even though there be no reason why plaintiff 1 should not take her half share of the property, yet plaintiff 2 should not be given a decree; because the gift deed was invalid when it was executed. The proper procedure-it is said - would be to pass a partition decree in this suit only in favour of plaintiff 1. If the gift is made afresh, plaintiff 2 could then bring another suit. I can see no reason for the adoption of such a cumbrous procedure. If plaintiff 1 is now divided from the defendant and is desirous that her half share should be given to plaintiff 2, I can see no obstacle to the granting of a decree in favour of plaintiff 2. The appeal is allowed, the decree of the lower appellate Court set aside, and the decree of the District Munsif restored. All parties will bear their own costs in this Court and in the lower appellate Court.