

(1917) 04 MAD CK 0012
In the Madras High Court

Manikkath Ammini Ammal and Others	APPELLANT
Vs	
Manikkath Padmanabha Menon and Others	RESPONDENT

Date of Decision : 27-04-1917

Acts Referred:

Citation : (1918) 35 MLJ 509

Judgement

1. The suit is by a female member of a tarwad and her children for maintenance against the tarwad ; the defence is that as the 1st plaintiff's

marriage has been registered under Act IV of 1896, she and her children should entirely look to the husband of the 1st plaintiff for maintenance

and not to the tarwad. The question is said to be one of first impression; the learned vakils on both sides have addressed to us very full arguments

on the question. In our opinion, the view of the Lower Appellate Court is wrong.

2. At the outset it might be mentioned that the expression maintenance is loosely applied to this class of cases. The allowance claimed by an

anandravan of a Malabar tarwad or by a junior member of a joint Hindu family is not as a dependent upon the owner of the property, but as one

who in his own right is entitled to participate in the income The common law in both cases having vested the management in the senior member, the

claim for separate allowance is an indicia of proprietorship and not founded upon moral or quasi-legal obligations or on inability to maintain himself

or herself. The authorities to which Mr. Rosario drew our attention have established this position with practical unanimity. In P. Teyan Nair v.

Ragavan Nair ILR (1881) Mad. 171 it was held that the possession of separate property should not be taken into account in considering whether

a member of the tarwad was entitled to separate allowance. This decision

proceeded on the theory that each member has a right to a share in this income. *Thayu v. Shungunni* ILR (1881) Mad. 71 has to some extent qualified the above decision by pointing out that where the tarwad has not sufficient income to maintain all the members decently, the fact that one of them has other means of livelihood would be a factor that can be taken into account. Here again the right to claim the allowance even where there are other means seems to have been accepted. In *Achutan Nair v. Kunjunni Nair* (1903) 18 M.L.J. 499 it was distinctly stated that the right to an allowance should be based on the right of co-ownership of property. *Maradevi v. Pammakka* ILR (1911) Mad. 203 accepts this principle as well founded. In *Naku Amma v. Raghava Menon* ILR (1912) Mad 79 it was held that a member of a tavazhi was entitled to sua the thavazhi for an allowance even though he was being maintained by the main tarwad. This is another illustration of the principle of co-ownership. This latter decision was affirmed by the Full Bench in *Chakkara Kannan v. Kunhi Pokker* ILR (1915) Mad 317. Thus it is clear that the right of a member of a tarwad for an allowance is an incident of co-proprietorship in the property of the tarwad and that consequently that right could not be denied unless circumstances show that the tarwad is not in a position to give a separate allowance.

3. In this appeal the question whether the plaintiffs were justified in living away from the tarwad house, whether there are circumstances which would justify the allotment of an allowance when they do not choose to live with the other members and whether the claim for arrears is sustainable have not been gone into. Those questions will have to be dealt with by the Lower Appellate Court.

4. Mr. Ananthakrishna Aiyar mainly relied upon Sections 17 and 18 of Act IV of 1896. The learned vakil argued that the term maintenance suggested that it is a subsistence allowance and that if that subsistence is given by another who is bound by law to provide it, the tarwad is absolved from liability. This argument ignores the weight of the consideration we have set out, namely, that the claim by a tarwad member is of the character of proprietary right to a share in the income. It is true as pointed out by the learned vakil that Clause (2) of Section 17 only leaves unaffected the customary right if any, against the tarwad but the right secured

by Clause (1) is a personal right, a right given by the statute against persons who comply with certain formalities. Such a right cannot take away the right of property.

5. Section 18 was relied on as showing that the father or the husband is alone entitled to maintain the children of the wife. That section introduces an exception to the general rule that the natural guardian of an anandravan is the karnavan.

6. The legislature has recognised that the welfare of the minor wife or the minor children would be safer in the hands of those who are more nearly connected by blood than the karnavan. It has at the same time imposed a limitation upon the husband or the father by enacting it as a condition precedent to guardianship that they should manifest their interest in the welfare of the minor by making some sacrifice. This section only provides for personal guardianship and leaves property guardianship untouched.

7. We do not think these provisions were intended to deprive a member of a tarwad of his or her rights in the tarwad.

8. For these reasons we must reverse the decree of the Lower Appellate Court and remand the appeal for disposal on the merits.

9. Costs will abide the result.