
(1917) 10 MAD CK 0024
In the Madras High Court

Mankoottil Chathukutti Nair

APPELLANT

Vs

P.P.M. Komappan Nair and Others

RESPONDENT

Date of Decision : 29-10-1917

Acts Referred:

Contract Act, 1872 — Section 25

Citation : AIR 1918 Mad 61 : (1918) 35 MLJ 380

Judgement

1. The question for decision is whether a deed of mortgage executed by a Karnavan in payment of a decree debt which was barred by limitation at

the date of the mortgage is binding on the junior members of the Tarwad.

2. Mr. Kuttikrishna Menon for the appellant relied on Era-vanni Ravi Varman v. Ittappo Ravi Varman ILR (1875) M. 153 in support of the

proposition that the Karnavan of a Malabar Tarwad occupies a position analogous to that of a Hindu father under the Mitakshara Law. We do not

think that the learned Judges intended in that case to draw a distinction between the position of a father and that of a bare manager. The exact

status of a Karnavan was considered more elaborately in Achal Ram v. Kazim Husain (1905) 15 M.L.J. 197 and Kunhi-chekhan v. Lydia

Arucanden (1911) 11 M.L.T. 232 and we agree with the view taken in these two decisions that the Karnavan occupies a position more akin to

that of a manager, than to that of a Hindu father. The peculiar obligations which a Hindu son incurs in respect of the debt of his father are not those

with which a junior member of a tarwad is chargeable with reference to the Karnavan's debts.

3. It has been held in Chinnayya v. Gurunathan ILR (1882) M. 169 that the manager of a Hindu family is not entitled to revive a barred debt and

this decision has been cited with approval in *Narayana-swami v. Sami Das* I.L.R (1883) M. 293, *Kondappa v. Subba* ILR (1890) M. 189 and

Suryanarayana v. Narendra Tatra I.L.R (1896) M. 255, As regards *Kondappa v. Subba* ILR (1890) M. 189 it is enough to point out that the

widow was regarded as being under a pious duty to relieve her husband from the sin of not paying a just debt. In the case of sons, the Hindu Law

imposes an obligation to pay their father's debts not tainted with illegality or immorality. That is the reason of the rule in *Narayanaswami v. Sami*

Das I.L.R (1883) M. 293 We do not think that the view in *Dulip Singh v. Kundan Lal* ILR (1914) A. 207 to the contrary is good Law,

4. As regards the English cases, the principle enunciated by *Homer, J.* in *Midgley v. Midgley* (1893) 3 Ch. 282 is that the payment of a barred

debt will not enable the legatees to charge an executor with *devastavit*. As pointed out by *Mr. Madhavan Nair*, this is a very exceptional

proposition which should not be extended to Indian conditions. Moreover in England a debtor is not bound to plead the Statute of Limitations,

whereas under the Limitation Act, the court is bound to dismiss a claim, if it is barred by limitation. One other distinguishing feature is that an

executor is directed to pay all the just debts of a testor. There is no similar obligation on the *Karnavan*. It is open to argument however that if a

debt barred by limitation has been actually paid, the *karnavan* might not be held liable for having paid it. That would stand on the analogy of an

executor or trustee not being liable to be proceeded against for *devastavit* under similar circumstances. See in *re Rowson : Field v. White* (1885)

29 Ch. D. 358. But that is not the present case. Here the holder of the mortgage has obtained only a promise and not payment. That promise has

to be enforced against the *tarwad*; and the members are entitled to plead that the promise has not been made for necessary or lawful purposes.

That is the principle which Hindu junior members are entitled to invoke as against the manager.

5. Regarding the argument that Section 25 of the Contract Act can be utilised against the *tarwad*, the answer suggested by *Mr. Madhavan Nair*

seems reasonable. The mortgage document may be regarded as having consideration; but that is not enough to charge the *tarwad* with liability. The

consideration must be such as to bind the members either by showing that the transaction was beneficial or was justifiable.

6. We are therefore of opinion that the document sued on is not binding on the tarwad and dismiss the second appeal with costs.