
(1921) 04 MAD CK 0027
In the Madras High Court

Mukkil Maruthur Sankara Menon and Others	APPELLANT
Vs	
Mukkil Maruthur Gopala Menon and Others	RESPONDENT

Date of Decision : 01-04-1921

Acts Referred:

Citation : 65 Ind. Cas. 805

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—The defendants Nos. 1 to 4 and 6 to 14 are the appellants before as. The 5th defendant died after the suit. Twenty

more defendants were impleaded in the suit but they have not preferred any appeal. The appellants are thirteen of the members of a Tarwad which

had four Tavazhies, One Eachara Menon was the Karnavan of the whole Tarwad till his death in January 1908, The plaintiff succeeded by

Marummakkahayam law to the Karnavastanam at Eachara Menon's death. A Karar had been executed during Eachara Menon's lifetime on the

2nd September 1916 to which the said prior Karnavan and almost all the adult members of the Tarwad were parties. Only three persons was not

parties to it, that is, those who are mentioned as Nos. 7, 16 and 20 in that Karar No. 7, afterwards confirmed the Karar by a separate deed and

No. 20 in the Karar (who is the 25th defendant in the present suit) had given up the world before the date of the Karar and might be ignored. The

appellant's contention is that the plaintiff who was No. 16 in the Karar refused to sign it because at the last moment he wanted three further

provisions to be inserted in the Karar in his favour and the other members of the Tarwad refused their consent. This is probably true. The fact,

however, remains that he refused to be a party to the Karar as executed finally.

2. It was contended that the plaintiff had first agreed to all the terms of the Karar about a week before it was executed and then illegally refused to

sign it at last. I think the evidence clearly establishes that it was intended that the mere understandings arrived at during the negotiations of the

Karar should not have the force of a final agreement, and that the finality and binding nature of the agreement depended on agreement, the

agreement being reduced to writing and signed by the persons intended to be bound thereby. The provision inserted in the Karar after the plaintiff

refused to sign it, namely, that the plaintiff should be deprived of the benefits of maintenance given to him by the Karar till he executed a

confirmation document also supports the above conclusion. The plaintiff's dishonesty in pretending ignorance of the negotiations before the

execution of the Karar is irrelevant to the consideration of the question of the legally binding nature of the Karar on him.

3. The plaintiff's suit preys for the following reliefs:

(1) a declaration that the Karar is not binding on the plaintiff;

(2) that the properties described in schedule A in the possession of the 1st defendant's Tavazhi should be surrendered to him;

(3) that certain moveable properties shown in schedule B be delivered to the plaintiff or their value be awarded to him on the personal liability of

defendants NOS. 1 to 6 and on the Tavazhi of all the defendants to the extent of their Tavazhi, properties, and

(4) that the income of the properties in schedule A at the rate of 2000 Paras of paddy per year from 1094 (1918-19) be also awarded to the

plaintiff (besides the other usual reliefs).

4. Defendants Nos. 1 to 14 alone contested the suit. On their pleas, several issues were framed of which it is necessary to set out only issues

NOS. 1, 5, 7, 8, and 10, and they areas follows:

(1) Whether the plaint-mentioned Karar is a bona fide family arrangement, and whether the plaintiff withheld his signature wrongfully, or whether it

was executed in the circumstances alleged in the plaint? Whether it is valid and binding upon the plaintiff?

(5) Whether the plaint Karar is entitled to be upheld as a maintenance arrangement for the defendants and whether the plaintiff is not entitled to

recover the properties allotted for maintenance as contended by 1st defendant?

(7) Whether the rent of 1093 was partially discharged by payment to Eachara Menon as contended by 1st defendant?

(8) Is the plaintiff entitled to recover any and what rent for the plaint properties? Is the 1st defendant liable to be treated as a tenant? Is the letting

alleged in the plaint true and are the properties held under it?

(10) Whether the plaintiff is entitled to personal relief against defendants Nos. 2 to 14 and relief against the Tavazhi properties?

5. The second portion of the 1st issue, namely, whether the Karar is valid and binding upon the plaintiff was decided against the defendants by the

lower Court. That finding was attacked by Mr. Madhavan Nair, Counsel for the appellants, on the grounds (a) that a bona fide Karar was binding

on the succeeding Karnavan even if it interfered with his personal birth right to succeed in the natural course of events to the power of the

Karnavan and even if he had not consented to the Karar, and (6) that the Karar did not so interfere with his birth-right. I think this second

contention is clearly untenable, having regard to the provisions found in paragraphs 14, 20, 24 of the Karar, Exhibit G. I think Exhibit G, read

especially in the light of the note attached to it at the end, was clearly intended to reduce the plaintiff (mentioned as number 16 in the Karar) to the

status of a mere maintenance holder entitled, no doubt, to maintenance at a higher rate than an ordinary member of the Tarwad but deprived even

of the benefit of the provision inserted in it for distribution of the surplus income after the previous Karnavan's death per capita among the

members of 4 Tavazhies. I shall reserve the consideration of the first legal contention to the end.

6. Then as regards the 5th issue, this was decided against the plaintiff, in so far as the Karar makes provision for the maintenance of the Tavazhies,

and there has been no appeal by the plaintiff in respect of that matter.

7. Coming to the 7th issue, the Karar fixes 2,000 Paras of paddy as the income of the lands left in possession of the defendants Nos. 1 to 14 It

directs them to take 720 Paras of paddy thereout for the maintenance of their Tavazhi, to take another 411 Paras out of the remaining 1,283 Paras

towards the interest on the loan which had been made by their Tavazhies to the Tarwad, and to pay the remaining 836 Paras into the hands of the

prior Karnavan. The written statement of the 1st defendant contains a schedule of 13 items which mentions that in December 1917 the 1st defendant gave 500 Paras out of the 836 Paras due for that year into the hands of the prior Karnavan (item No. 1) and that the 1st defendant farther spent for the Tarwad during the prior Karnavan's illness and after his death money and grain which when all converted into grain was the equivalent of 925 Paras and 4 Edangalies (items Nos. 2 to 13). Though the 7th issue is not specific, it might be taken that it was intended to cover the question of the true and binding nature of these alleged payments entered in the schedule to the written abatement. The lower Court has dealt with this question in paragraphs 11 and 12 of its judgment. Of the 13 items in the schedule, it deals specifically only with the 1st item which relates to the 500 Paras alleged to have been given in December 1917 and for which the 1st defendant produced the receipt, Exhibit VIII. The lower Court disbelieved the genuineness of Exhibit VIII and also found the payment of 500 Paras not proved by sufficient evidence as the evidence consisted only of the statement as witness of the 1st defendant. It was not denied that for the previous year the 1st defendant paid up 836 Paras as provided for in the Karar to the prior Karnavan. Five hundred out of the 816 Paras (the said 500 Paras being about six-tenth of the amount) had to be paid in the month of September-October to the previous Karnavan according to the Karar. Exhibit 8 recites that the 500 Paras was so paid to him partly before the date of Exhibit VIII and partly on that date. I think that the truth of such a payment is highly probable and, believing the 1st defendants evidence on this point, I would allow the appellants' credit for the payment of 500 Paras. The other items mentioned in the written statement are either not supported by any evidence worth the name or are not pressed except item No. 2 which is a sum of Rs. 20 for which Exhibit XII is produced. But it does not appear that that Rs. 20 was paid for purposes of the whole Tarwad as distinguished from the purposes of the 1st defendant's Tavazhi. I agree with the lower Court as regards these items.

8. Coming to the 8th issue and the 10th issue, the plaintiff did not ask for a personal relief against defendants Nos. 7 to 14 and the lower Court's decree will, therefore, be modified by confining the award of personal relief against defendants Nos. 1, 2, 3, 4 and 6, the 5th defendant (as I said

before) having died. The lower Court has given a decree for 1280 Paras of paddy for 1093 without deducting 414 Paras which the defendants are

entitled to deduct therefrom on account of interest on the loan due to the Tavazhi and the 500 Paras of paddy which was found above to have

been paid out to the prior Karnavan, One hundred and eighty-eight Paras will, therefore, be substituted for 1,132 Paras in the decree of the lower

Court as the provision for deducting 444 Paras for interest is a reasonable provision which the succeeding Karnavan is bound to respect. So as

regards M.E. 1094 and subsequent years, the 1,280 Paras mentioned in paragraph 12 of the judgment and in the decree will be reduced to 836.

9. As regards the liability of the defendants Tavazhi properties, the Karnavans who were in possession on account of the Tavazhi are liable as such

Karnavans to account to the Tarwad for surplus income. Hence, the Tavazhi also was properly made liable to the extent of the said Tavazhi

properties. Of course, this will not affect the separate properties of the individual members of the Tavazhi as distinguished from the separate

properties of the Tavazhi as a whole.

10. I have reserved the first contention of Mr. Madhavan Nair to the end. That contention is that a bona fide family Karar, even if it affects the

birth-right of the succeeding Karnavan is binding on him, notwithstanding that he had refused to give his consent thereto. I think the matter is

concluded by the decision in Chindan Nambiar v. Kunhi Raman Nambiar 45 Ind. Cas. 26 The opinion which I had pronounced in Cheria Pangi

Achan v. Unnalachan 88 Ind. Cas. 513 on this question was repeated by me in Chindan Nambiar v. Kunhi Raman Nambiar 45 Ind. Cas. 26 :

(1918) M.Y.N. 283 , and was approved by my Lord the Chief Justice and by Spencer, J., who with himself formed the Full Bench which dealt

with the case in Chindan Nambiar v. Kunhi Raman Nambiar 45 Ind. Cas. 26 , The above two cases have laid down that a family Karar, when not

assented to by an individual member of the Tarwad and though assented to by a majority, is powerless to interfere with his personal birth right to

succeed to all the powers of a Karnavan in due course of succession. It follows, therefore, that the appellant's contention fails on this point.

11. Most of the rules of law governing the rights of the Karnavan and junior members of a Marumakkathayam Tarwad have undoubtedly become

state and antiquated. The Marumakkathayees belonging to both the upper and lower sections of the middle class do feel the irksomeness of most of these rules very strongly and, though I do not belong to that community, I feel with the community, if I may be allowed respectfully to say so, as strongly as if I belonged to that community, partly for the reason that I have the privilege of counting numerous individuals in that community among my very dear friends. But I have found that any attempts made (such attempts having began long before I became a Judge of this Court) to develop that law on liberal lines through creating judicial precedents have almost invariably ended in failure (except in the single instance of the right to get maintenance when not living in the Tarwad house) and I believe that Sir Sankaran Nair was of the same pessimistic opinion. As, in the non-legal world, there are to be found among Judges and lawyers also, persons of varying temperaments, some endowed with liberal tendencies of mind, and some with conservative tendencies and a very few may have what may be called radical tendencies. But as a rule, conservatism is the general tendency of judicial and legal minds--such conservatism is probably a failing (if it is a failing at all) on virtue's side in countries where the Legislature is reasonably active in enacting reforming legislation from time to time. The Travancore and Cochin States are moving and have moved in this matter of changing the rules of the antiquated Malabar Law so as to bring them into reasonable conformity With the altered conditions and exigencies of the times. Now that the Legislatures in British India have been strengthened by the Reforms, it is naturally expected that they would prove more active in bringing forward measures for liberalising the laws and the institutions governing those who are new subject to the Marumakkathayam Law. I have considered it not inappropriate to make the above paragraph a part of this judgment as Mr. Madhavan Nair argued with much feeling (not at all unnatural under the circumstances) that the rule of law laid down in the Full Bench case above cited (which rule was not a new rule at all but was based on a long line of precedents) had the effect of perpetuating the antiquated notion that the birth-right of a member of the Tarward was more sacred than the welfare of the majority of the Tarwad members. The same criticism might be applied to the several antiquated rules of succession now prevailing under the Mitakshara Law but the appropriate remedy is a resort to the Legislature.

12. In the result, subject to the modifications in the decree necessitated by the opinions already expressed in respect of the amounts due for arrears

of income and claimable as future income, I would dismiss the appeal with proportionate costs.

Napier, J.

13. I agree generally on the question of consent and the other issues, but I only wish to say a word on the question of law raised by the appellants

as to the extent to which effect can be given to a Karar like this against a succeeding Karnavan who was not a party to it. It is unnecessary for me

to say more than that I have no means of knowledge of the conditions of life in Malabar and, therefore, I will not express any opinion of mine as to

the necessity or otherwise of alteration in that law. I can only take the law as I find it, and I find it stated by my learned brother in a decision

reported as Cheria Pangi Achan v. Unnalachan 88 Ind. Cas. 513 . Some of the words need in that decision have been quoted and relied on by the

Subordinate Judge but the definite statement of the law is found in a passage a little higher up than the one quoted by the Subordinate Judge. My

learned brother, speaking about a family Karar and the extent to which it would be binding on dissentient members, says as follow?: ""it may not be

binding on a dissentient member so far as it seeks to restrict his right to succeed to the full powers of a Karnavan in the natural course of events or

if it interferes with his right to reasonable provision for maintenance."" Now, it is contended by Mr. Madhavan Nair that where a Karar is upheld in

so far as it makes arrangements of a certainly somewhat permanent character for the maintenance of the various Tavazhies, it does thereby restrict

the right of a succeeding Karnavan to succeed to his full powers if such provisions for maintenance are upheld and, that, therefore, this proposition

is stated too widely, The answer to that seems to be this, that there is nothing in the fact that the provision for maintenance, however elaborate or

however much it affects the division of property, is made in a Karar; its real origin arises in the power of a Karnavan to make suitable provision for

the maintenance of the members of the family which provision must naturally be continued, at all events, until circumstances require its alternation.

This so-called limitation of the rights and powers of the succeeding Karnavan rests on the necessity for upholding arrangements which would

otherwise have to be upset on the death of every Karnavan. It is analogous to the accepted rule of law that leases granted, under certain conditions, by a Karnavan enure after his death and are binding on the succeeding Karnavan and I, therefore, think that it is no limitation of the proposition that a Karar is not binding on a dissentient member in so far as it restricts his right to succeed to the full powers of a Karnavan, to say that the arrangements made for maintenance must be upheld. Then, Mr. Madhavan Nair has endeavoured to satisfy us that this Karar is only an arrangement for maintenance. We have examined its various provisions with great minuteness and I agree with the Subordinate Judge that it goes far beyond that, One of the objects of this Karar was undoubtedly to cost the present plaintiff from his right to succeed to the status of Karnavan. That was attempted to be done by giving him, as senior Anindravan, a large maintenance and promising him to arrange for a still larger maintenance when he became Karnavan. Other terms distinctly provide that all the general management of the Tarwad after the death of the existing Karnavan was to be vested in NOS. 2 and 18 who were the heads of their respective Tavazhies. There can be no doubt that this is a limitation of the right of the 1st defendant to succeed to the full powers of a Karnavan and I have no doubt that the other members of the Tarwad who were at variance with the plaintiff believed that by giving him this increased maintenance during the lifetime of the then existing Karnavan they would get him eventually to agree to the Karar. Unfortunately for them, the then Karnavan died soon afterwards with the result that the plaintiff has now brought this suit to recover all his full rights. In my opinion he is entitled to succeed on this point of law and, therefore, this appeal must be dismissed except to the extent which has been allowed in the judgment of my learned brother.