

(1921) 03 MAD CK 0013
In the Madras High Court

Muthoora Palliath Purakkot Paru alias Pathumma and Others	APPELLANT
Vs	
Muthoora Palliath Purakkot Raman Nambiar and Others	RESPONDENT

Date of Decision : 29-03-1921

Acts Referred:

Citation : AIR 1921 Mad 224 : (1921) ILR (Mad) 891

Hon'ble Judges : John Wallis, C.J.; Spencer, J.; Kumaraswami Sastri, J

Bench : Full Bench

Judgement

John Wallis, C.J.—If it were not for the authorities the question would appear to be free from difficulty. There is no doubt that under Hindu

Law a member of a Marumakkattayam tarwad on his conversion to Mahammadanism would forfeit all interest in the tarwad property. Act XXI of

1850, however, provides that any law or usages which inflicts on any person forfeiture of rights or property by reason of his renouncing his religion

or being deprived of caste shall cease to be enforced as law. The effect of this Statute would appear to be that a convert's interest in the tarwad is

unaffected by his conversion. As has been pointed out in Matungini Gupta v. Ram Rutton Roy (1892) I.L.R., 19 Calc., 289 (F.B.) , 291 by

Wilson, J., the effect is not to enlarge the convert's interest in any property or to get rid of any condition or restriction to which it was originally

subject. It would therefore appear to be a sufficient answer to the reference to say that conversion to Christianity cannot give a member of a

tarwad a right to a partition of tarwad property which is impartible under the Marumakkattayam Law. It has, however, been held in Kunhichekkan

v. Lydia Arucanden (1912) M.W.N., 286 that the conversion of two sisters to Christianity dissolved the co-parcenary till then existing between

them and their brother as a tarwad, and had the effect of converting them into tenants-in-common of the tarwad property without rights of

survivorship, and, if this be so, it may be said that a right to partition is an ordinary incident of tenancy-in-common. The proposition that conversion

has the effect of depriving the convert of his right of survivorship which may often be a most valuable right, as when the joint family consists of an

old father and two brothers, one of whom becomes a convert, appears to be opposed to the express provisions of the Statute that conversion is

not to involve any forfeiture of property or rights. It has however, been accepted as good law not only in *Kunhichekkan v. Lydia Arucanden*

(1912) M.W.N., 286 but also in *Kulada Prasad Pandey v. Haripada Chatterjee* I.L.R., (1913) Calc., 407 in which three sons, two of whom had

been converted to Christianity, sought to question an alienation made by the deceased father to defendants Nos. 1 to 4 as opposed to Hindu Law.

It was held that the conversion of plaintiffs Nos. 1 and 2 though it did not deprive them of their interest in the joint family property, had the effect of

severing them in status, putting an end to rights of survivorship, and to the father's power to bind their share by alienation of the family property for

purposes neither illegal nor immoral. With this last question we are not now concerned. The judgment in both cases proceed on the authority of the

Privy Council in *Abraham v. Abraham* (1863) 9 M.I.A., 195. Now that was not a case governed by Act XXI of 18 50 or the earlier Bengal

Regulation VII of 1832, as the family had been converted to Christianity long before they were passed, and the property in suit had all been

acquired after conversion, and it seems to me, with great respect, that in the observations at page 237, on which reliance is placed as to conversion

severing the convert from the family and putting an end to the co-parcenership, Lord Kingsdown was merely stating the undoubted effect under

Hindu Law of conversion to another religion and was not considering the effect of Act XXI of 1850 on cases governed by it. Indeed, he expressly

says so at page 239, and points out that Act XXI had no application to the case:

Such then being the state of the case so far as the Hindu Law is concerned, we must next consider whether there is any other Law which

determines the rights over the property of a Hindu becoming a convert to Christianity. The *Lex Loci* Act clearly does not apply, the parties having

ceased to be Hindu in religion.

2. Act XXI of 1850 had been described in the argument at page 218 as the Lex Loci in case of apostasy, and was clearly the Act referred to by

Lord Kingsdown. In a later case, *Khunni Lal v. Gobind Krishna Narain* (1911) I.L.R., 33 All., 356 (P.C.), the Judicial Committee had to consider

a case governed by Section 9, Bengal Regulation VII of 1832, the principle of which, they held, was extended to the rest of India by Act XXI of

1850. In that case, there was a joint family consisting of one Ratan Singh and his son Daulat Singh. Ratan Singh became a Muhammadan in 1845,

and subsequently Daulat Singh predeceased him. After the deaths of both their widows, a compromise was entered into by which Ratan Singh's

daughter's daughter agreed to share the properties left by him with Daulat Singh's daughters. After the deaths of Daulat Singh's daughters, the

sons of one of them set up that the compromise was not binding on them and contended that on the conversion of Ratan Singh the whole of the

joint family properties became vested in his son Daulat Singh. This contention their Lordships rejected, observing, at page 366, that:

The effect of the legislations of 1832 and 1850 was that on Ratan Singh's abandonment of Hinduism, Daulat Singh did not acquire any enforceable

right to his father's share in the joint family property which he could either assert himself or transmit to his heirs for enforcement in a British Court

of Justice.

3. The daughters of Daulat Singh had obtained an 8 1/2 annas share of joint family property in the compromise which was being attacked, and

their Lordships had not to consider whether under the Bengal Regulation Daulat's share did not pass by survivorship on his death to his father

Ratan Singh in spite of the latter's conversion to Muhammadanism. Mr. Anantakrishna Ayyar, on the other hand, has relied on the observations of

their Lordships as to the original imperfection of Daulat Singh's title when the case came before them on an earlier occasion in *Karim-ud-din v.*

Gobind Krishna Narain I.L.R., (1909) All., 497 (P.C.) as showing that their Lordships were then of opinion that on Daulat's death his interest

passed by survivorship to his father Ratan Singh to the exclusion of his own daughters. These observations may, however, have been made with

reference to the case then set up, that the properties in suit were all the self-

acquired properties of Ratan Singh. On the whole, I have come to the conclusion that there is nothing in any of the decisions to prevent us from giving effect to what appears to me to be the plain bearing of Act XXI of 1850, and I must therefore hold that the plaintiffs are not entitled to a partition of the tarwad property by reason of their not being Hindus and that the Appeal fails and must be dismissed with costs. The question of the plaintiff's right to succeed to the office of karnavan is not before us, and I express no opinion about it as it may involve other considerations. The Second Appeal fails and is dismissed with costs of defendants Nos. 1 to 7 and 11 to 16.

Spencer, J.

4. I agree with my Lord that the plaintiffs are not entitled to a partition of the tarwad property by reason of their becoming converts from Hinduism to Islam. It is clear from the preamble to the Removal of Caste Disabilities Act (Act XXI of 1850) that the effect of that Act was to preserve existing rights but not to confer any new rights such as a right of partition of property which did not exist before in the family to which the convert belonged. Impartibility being one of the incidents of a Marumakkattayam family, a right to partition could not be acquired in consequence of a change of religion.

5. In the District Munsif's and Subordinate Judge's Courts the plaintiffs appear to have based their title to partition on the ruling in Kunhichekkan

v. Lydia Arucanden 1912 M.W.N., 286. It was therein observed that the conversion to Christianity of two daughters, Lydia and Salome,

belonging to a Marumakkattayam family in Malabar, ""operating on the joint family dissolved the coparcenary which existed under the

Marumakkattayam Law,"" and the converts ""remained as co-owners and became tenants-in-common of their joint property.

6. That case might have been decided upon the short points, that after Chandan died all the family being Christians were governed in matters of

succession by the Indian Succession Act, that plaintiff having an interest in the property of her deceased husband Nathaniel had a right u/s 91 of the

Transfer of Property Act to institute a suit for redemption, and that in a suit for redemption all persons interested should be joined as parties.

7. In a case of intestacy among converts to Christianity the children's rights of

succession to the property of their converted parents are governed by the Indian Succession Act, and the rules of co-parcenary and survivorship of Hindu Law no longer apply; but if the parents were undivided co-parceners at the time of conversion or at the time of the passing of the Succession Act, each parent will retain a vested interest in the co-parcenary till he dies. That was the principle on which *Tellis v. Saldanha* I.L.R., (1887) Mad., 69 was decided, and the position of the widow and daughter of Augustine Tellis therein was similar to the position of Lydia's children in *Kunhichekkan v. Lydia Arucanden* 1912 M.W.N., 286.

8. But where the parties are not Christians but Muhammadans after conversion, the Indian Succession Act has no application at all, as

Muhammadans are exempted u/s 331 of that Act from the provisions relating to intestate or testamentary succession to property. The Second

Appeal should, in my opinion, be dismissed with costs of defendants Nos. 1 to 7 and 11 to 16.

Kumaraswami Sastri, J.

9. I agree with the conclusions arrived at by my Lord and Spencer, J., whose judgments I have had the advantage of perusing.

10. I am of opinion that apostacy from Hinduism does not entitle a member of a Malabar tarwad to claim partition of the tarwad property and

delivery to him of his share. It is clear that a member of a tarwad has no right to claim partition, as tarwad property is indivisible and no one

member, nor even all but one, can enforce a division upon any who object. As this was not disputed at the hearing it is not necessary to refer in

detail to the authorities which go back to a period as early as 1814. I need only refer to the following observations by Turner, C.J., and

Muttuswami Ayyar, J., in *Tod v. P.P. Kunhamod Hajee* I.L.R.,(1881) Mad., 169:

The law governing the property of a tarwad has not reached the same stage of development as the law regulating the joint property of the Hindu

family. Not only in the former case is the succession traced to females but the property is indivisible so that the members of the family may be said

to have rather rights out of the property than rights to the property.... The family and not the individual is what we may term the social unit.... The

individual right of the members of the tarwad is so feeble that it is not competent to any one of them to insist on a partition. The males take interests

in the tarwad property which endure only for their lives and do not pass to their offspring nor are available for the satisfaction of their private debts.

11. If a member while a Hindu has no right to claim partition against the will of the other members of the tarwad it is difficult to see how he acquires

the right by apostasy. Act XXI of 1850 (Caste Disabilities Removal Act), it is argued, gives him the right but the Act only prevents any law or

usage from depriving a convert of rights or property, or rights of inheritance, which he had before conversion. I do not think that the Act can give

to any party any right higher than that to which he is entitled under the law from which that right is derived. As observed by Wilson, J., in *Matungini*

Gupta v. Ram Rutton Roy (1892) I.L.R., 19 Cal. 289 :

A change of religion does not cause any forfeiture of property.... But neither could it enlarge it nor get rid of any condition or restriction to which it

was originally subject.

12. It is argued that conversion severs the co-parcenary and that consequently gives rise to a claim for partition and separate enjoyment. Reference

has been made to *Abraham v. Abraham* (1863) 9 M.I.A., 195 and to *Kulada Prasad Pandey v. Haripada Chatterjee* I.L.R., (1913) Cal 407.

Abraham v. Abraham (1863) 9 M.I.A., 195 was a case where the family had been Christian for more than one generation and there was no

ancestral property. The observations of their Lordships of the Privy Council relate to cases governed by the ordinary Hindu Law applicable to

Mitakshara families where partition is a right which can be exercised at the volition of any adult co-parcener. No question arose as to the effect of

Act XXI of 1850. Their Lordships observe:

Considering the case then with reference to parcenership what is the position of a member of a Hindu family who has become a convert to

Christianity. He became, as their Lordships apprehend, at once severed from the family and regarded by them as an outcaste. The tie which bound

the family together is, so far as he is concerned, not only loosened but dissolved. The obligations consequent upon and connected with the tie must,

as it seems to their Lordships, be dissolved with it. Parcenership may be put an end to by severance effected by partition; it must as their Lordships

think equally be put an end to by severance which the Hindu Law recognizes and creates. Their Lordships therefore are of opinion that upon the

conversion of a Hindu to Christianity the Hindu Law ceases to have any continuing obligatory force upon the convert. He may renounce the old

law by which he was bound as he has renounced his old religion or if he thinks fit he may abide by the old law notwithstanding he has renounced

his old religion.

13. It seems to me that these observations do not necessarily lead to the result that when by the very nature of the property no right to partition

exists before conversion, mere severance of the co-parcenary would give a person that right. Where before conversion partition without common

consent cannot be claimed on any ground, severance effected by change of religion cannot give a right to partition. *Kulada Prasad Pandey v.*

Haripada Chatterjee I.L.R.(1913) 40 Cal. 407 was also a case of one of the members of a Mitakshara family becoming a convert. Partition was a

right to which the convert was entitled to before conversion and severance of the co-parcenary created by the conversion gave him no new right.

Where under the law governing the parties it is open to any one member to resist a partition it is difficult to see how his rights can be taken away

because another member chooses to change his religion. The application of Act XXI of 1850 would in effect enlarge the right of the convert and

cut down the right of the remaining members of the tarwad, a result which is unwarranted by the Act.

14. The only decision on the question as to the effect of conversion of a member of a tarwad is *Kunhichekkan v. Lydia Arucanden* (1912)

M.W.N., 286, where *Abdur Rahim and Sundara Ayyar, JJ.*, held that conversion of a member makes him a tenant-in-common. In that case one

Acha had a son, Chandan, and two daughters. The daughters became converts to Christianity and assumed the names of Lydia and Salome. The

parties were, before conversion, members of a Marumakkattayam tarwad and after conversion Chandan died. Lydia had a son, Nathaniel, who

mortgaged the property and on his death his widow sued to redeem the property. The mortgagee resisted the suit on the ground that Nathaniel's

widow had no right to redeem. The contention was that the property was the joint property of Acha's children, that the plaintiff, who was no

member of the tarwad, had no right to redeem and that the right vested in the surviving children of Salome and Lydia. Having regard to the fact that

after Chandan's death some years before the suit all the members of the family were Christians the only law to be applied was the Succession Act.

The case was not one of a conflict between converted members of the tarwad and the other members who remained Hindus. The observations as

to the conversion of a member making him into a tenant-in-common were obiter and, with all respect, I fail to see why the converted member of

the tarwad should be enabled to give to the tarwad property the character of partibility which it never possessed. Impartibility being the very nature

of the estate, such right as the parties may have should be worked out so as not to affect the fundamental character of the property. There is no

complete analogy between a Malabar tarwad and the Mitakshara joint family and if the observations of Turner, C.J., and Muttuswami Ayyar, J., in

Tod v. P.P. Kunhamod Hajee ILR (1881) Mad. 169 which I have already set but are borne in mind, I do not think conversion makes the convert

a tenant-in-common and even if it did, I do not think it further gives him a right to partition on the analogy of a Mitakshara family.

15. I am of opinion that all that the convert is entitled to is to continue to reside in the house and be maintained as before if the other members are

willing or to get separate residence and maintenance allotted to him if the other members refuse.

16. It is unnecessary to consider what the effect would be if the convert becomes entitled to the karnavanship. The game difficulty would arise if a

karnavan becomes a convert and refuses to ask for partition or give up office, or when a hereditary dharmakartha becomes a convert. The

question will turn on whether the office is a right which falls under Act XXI of 1850 and whether community of religion is an essential requisite to

eligibility or continuance so as to entitle the other parties to claim supercession or removal. I would dismiss the Second Appeal with costs of

defendants Nos. 1 to 7 and 11 to 16.