
(1927) 03 MAD CK 0044
In the Madras High Court

Narayannan Nair and Others

APPELLANT

Vs

Paru Amma and Another

RESPONDENT

Date of Decision : 08-03-1927

Acts Referred:

Citation : 110 Ind. Cas. 593 : (1928) 27 LW 827 : (1928) 54 MLJ 600

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—Plaintiffs 1 to 5 and 7 to 24 are the appellants in this second appeal. They instituted the suit for the recovery of

certain property now admitted to be in possession of the 1st defendant. The question whether the plaintiffs would be entitled to recover the

property or not is it is now practically clear, dependant on whether one Krishnakutty Nair who was the person from or through whom the 1st

defendant ultimately claims was at the time of the transactions the Karnavan of the plaintiffs' tarwad. The whole controversy in this case both in the

court of first instance and in the first appellate court ranged round the question whether or not this Krishnakutty Nair was the karnavan, it

apparently being conceded that, if he was the karnavan and the presumption was available to the plaintiffs that the property dealt with by the

karnavan was the tarwad property, there was no sufficient evidence on the record to show that it was separate property. No doubt the lower

appellate court has recorded a finding, one of fact, that Krishnakutty Nair, at any rate, at the time when the transactions took place, which were

the origin of the title of the 1st defendant, was only an Anandravan of the tarwad and not its karnavan. If in arriving at that finding of fact the lower

appellate court had adverted at any rate to the more important documentary evidence in the case, there could be no doubt whatever that this Court in this second appeal would have no right whatever to interfere. The learned Counsel for the appellants has drawn my attention to the fact, and it is really conceded on the other side, that the learned subordinate Judge in the court below has not ever adverted to Ex. GGG which is a judgment of the District Court of Calicut. At that time Mr. R. S. Benson was the District judge. The judgment is of the year 1892, and to the suit from which the appeal arose in which the said judgment was delivered, all the members of the plaintiffs' tarwad were parties. The present 1st defendant was also a party to the said suit. In the course of the said judgment the learned judge has in many places referred to this Krishnakutty Nair as the karnavan of the tarwad almost from the year 1851. This is a very important piece of evidence because that judgment was pronounced about 35 years ago, at a time, we may presume, when there was no question really with regard to who was the karnavan of the tarwad at the relevant period. Ex. B in this case had also been marked as Ex. XX in the suit to which that appeal related. In the absence of any reference whatsoever or advertence to this Exhibit GGG in the judgment of the lower appellate court, it seems to me that I cannot possibly regard the conclusion arrived at, albeit on a question of fact, as satisfactory. The learned Counsel for the respondents argued that there was such a preponderance of evidence on the record in favour of the view taken by the lower appellate court that the mere fact of an omission to refer to Ex. GGG need not be regarded as sufficient to dislodge the judgment of the Subordinate Judge. But it is not possible for me here and now to say whether if the evidence afforded by Ex. GGG had been taken into consideration what weight would have been given to it or how it might have weighed in the balance, having regard to the other evidence in the case. The whole of the other evidence is not before me now. If it were an ordinary piece of evidence, whether oral or documentary, I should certainly have refused to regard the mere omission to refer or to advert to it as sufficient to vitiate the judgment of the lower appellate court. But I cannot shut my eyes at the same time to the fact that the judgment pronounced with regard to the very tarwad in 1892 by the District Court of Calicut must generally speaking be regarded as of great importance and if, as I must suppose, the conclusion arrived at by the

lower appellate court had been arrived at without any advertence whatever to such an important document, it seems to me that the judgment must be regarded as vitiated by such a serious omission. I do not for a moment say, or wish to be understood to have said, that the other evidence in the case should be disregarded or even neglected in view of Ex. GGG. That should have been taken into consideration along with the other evidence in the case and due importance given to it. As this has not been done, I think the proper thing to do is to set aside the judgment of the lower appellate court and remand the case to that court for disposal taking into consideration all the evidence in the case inclusive of Ex. GGG.

2. It must also be recorded in this connection that the question of jurisdiction raised by Mr. Menon on behalf of the appellants has been given up by him. It will not therefore be open to the appellants to argue the question of jurisdiction any longer. The judgment and decree of the lower appellate court are set aside and the case is remanded to the lower appellate court for fresh disposal.

3. Costs of this second appeal will be reserved and be disposed of by the lower appellate court at the time of the final disposal of the appeal.