
(1956) 02 KL CK 0007

In the High Court Of Kerala

Case No : Second Appeals No"s. 446 to 449 of 1951

Oman Pandala Ambu Pandala

APPELLANT

Vs

Kesavaru Sambhuvaru and Others

RESPONDENT

Date of Decision : 25-02-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145, 2(1), 26(1), 3

Citation : (1956) 02 KL CK 0007

Hon'ble Judges : K.T. Koshi, C.J;G. Kumara Pillai, J

Bench : Division Bench

Advocate : K.P. Abraham and P.K. Varghese, for the Appellant; K.N. Narayanan Nair, for the Respondent

Judgement

Kumara Pillai, J.—In these four cases a arises for decision, namely, domiciled in Travancore are Travancore Kshatriya Act VII of 1108 or by pure Marumakkathayam Law. The Appellant in all of them is one Omal Pandala Ambu Pandala. According to Sub-section (3) of S. 1 of the Travancore Kshatriya Act VII of 1108 the said Act applies to all Malayala Kshatriyas, excluding the members of the Royal Family of Travancore, and to such Kshatriyas not so domiciled, and non-Kshatriyas, whether so domiciled or not, as have, or shall have, marital relations with Kshatriyas domiciled in Travancore; and according to Section 26(1)(b) of the said Act when a Malayala Brahmin who has no caste wife and children dies leaving behind him a Kshatriya widow or widows and children his self-acquired and separate properties have to be taken equally by the Kshatriya widow or widows and children and his Illom. The Appellant claims that Pandalas are sub-caste or section of Malayala Kshatriyas and are governed by the Travancore Kshatriya Act. His case is that he is the lawful son of one Kesavaru Vasudevaru, hereinafter referred to as Vasudevaru, a Malayala Brahmin, who had no caste wife, and that on the death of the said Vasudevaru his (Vasudevaru"s) brothers executed on behalf of their Illom an udampady, Ext. VIII, in favour of the Appellant and his mother giving to them some of his self-acquired and separate properties in lieu of the share they were entitled to get as his son and widow.

One of these Second Appeals S.A. No. 446 of 1951, arises out of a suit order section No. 164 of 1112 of the Chengannoor Munsiff's Court, brought by a junior member of Vasudevaru's Illom for setting aside the udampady, Ext. VIII. That suit was decreed by the trial Court, and the trial Court's decree was also confirmed by the lower appellate Court. Second Appeal No. 448 of 1951 arises out of a suit, order S. No. 35 of 1117 also of the Chengannoor Munsiff's Court, brought by the Appellant for declaration of title to and recovery of possession of one of the properties comprised in Ext. VIII. The said suit was resisted by the Plaintiff in order section. No. 164 of 1112 and was dismissed by both the Courts below. The Appellant and his mother had also obtained under Ext. VIII the rights in respect of a hypothecation bond taken by Vasudevaru. In the proceedings instituted by the hypothecator for discharging the said hypothecation bond by payments in instalments under the Debt Relief Act, D.R.P. No. 946 of 1116 of the Chengannoor Munsiff's Court, one of the junior members of Vasudevaru's Illom claimed that the amount was due to his family, and the Appellant claimed that the amount was due to him and his mother. The decisions of the Courts below in this matter also went against the Appellant and his mother, and section A. No. 447 of 1951 is the Second Appeal filed against those decisions. After Vasudevaru's death both the Appellant and the father of the Plaintiff in order section No. 164 of 1112 applied to get themselves impleaded as Vasudevaru's legal representatives in a suit filed by him, namely, order section No. 1617 of 1110 of the Chengannoor Munsiff's Court, In that suit the Appellant's application was allowed and the application of the father of the Plaintiff in O.S. No. " 164 of 1112 was" dismissed. Thereupon the father of the Plaintiff in O.S. No, 164 of 1112 filed a suit, O.S. No. 112 of 1113 of the Ohengannoor Munsiff's Court, for setting aside the order in O.S. No. 1617 of 1110 impleading the appellant as additional Plaintiff therein. Original Suit No, 112 of 1113 was decided by both the Courts below against the Appellant and S. A. No. 499 of 1951 is filed against the concurrent decrees in that suit.

2. There is a recent decision of a Division Bench of this Court to which one of us, M.S. Menon, J., was a party, Narayanan Pandala v. Sankunni Pandala, 1955 Ker LT 248 (A) to the effect that Pandalas are Malayala Kshatriyas and are governed by the Travancore Kshatriya Act. In that case no person interested in making out that Pandalas are not governed by the Kshatriya Act and are governed by pure Marumakkathayam Law had entered appearance in this Court, and the case was governed on behalf of the Respondents by counsel appearing as amicus curiae at the Court's request. Therefore, when these second appeals came up for hearing before another member of this Bench sitting as a Single Judge counsel for both sides requested that in view of the importance of this question of law and the fact that the Respondents had not entered appearance in 1955 Ker LT 248 (A), these cases might be referred for decision by a Pull Bench, and they have accordingly been referred to the Pull Bench.

S.A. No. 446 of 1951.

3. Vasudevaru was a junior member of his Illom, and at the time of his death in Dhanu, 1111 there were some properties standing in his name. On 11-2-1112 two elder brothers of Vasudevaru, Krishnan Namputhiri and Narayanan Namputhiri, who were all senior-most members of his Illom executed Ext. VIII in favour of the Appellant's mother and the Appellant stating that they were the wife and son of Vasudevaru and giving to them two items of properties in lieu of the share which they were entitled to get under the Travancore Kshatriya Act in his self-acquired and separate properties. The first item in Ext. VIII was a paddy land in respect of which there was a mortgage in Vasudevaru's name. This mortgage right as well as the equity of redemption, which was purchased subsequent to the mortgage by Narayanan Namputhiri in execution of a decree were given to the Appellant and his mother by Ext. VIII. The other item obtained by them under Ext. VIII was a hypothecation bond taken by Vasudevaru. Shortly after the execution of Ext. VIII a junior member of Vasudevaru's Illom, who was the grandson of a predeceased brother of Vasudevaru, brought O.S. No. 164 of 1112 to setting aside Ext. VIII. A schedule property in O.S. No. 164 of 1112 is the property over which Vasudevaru had the mortgage right, and B schedule property there in is the hypothecation bond assigned to the Appellant and his mother. Besides Krishnan Nambuthiri and Narayanan Nambuthiri, Vasudevaru had another elder brother, Sambavaru, who had died long before the date of Ext. VIII. This Sambavaru had a son, Kesavaru, and the Plaintiff iii O.S. No. 164 of 1112 is the son of the said Kesavaru. Defendants 1 and 2 in O.S. No. 164 of 1112 are the Appellant and his mother, Defendants 3 and 4 Krishnan Nambuthiri and Narayanan Nambuthiri, and Defendant 9 Kesavaru, the father of the Plaintiff.

Defendant 5 is a person in whose favour the Appellant and his mother had executed a lease deed for A schedule property in that suit after taking Ext. The Plaintiff's case was that Vasu devaru was the manager of his Illom although he was only a junior member, that the acquisitions in his name were made with Illom funds and belonged to the Illom and were not his self-acquired and separate properties, that even if they were his self-acquired and separate properties they devolved wholly on his Illom after his death for two reasons, firstly because the Appellant's mother and the Appellant were not Vasudevaru's wife and son, and secondly because even if they were his wife and son they were not entitled to get any share in his self-acquired and separate properties as they were not Kshatriyas and were governed by pure arumakkathayam Law and not by the Travancore Kshatriya Act, and that Ext. VIII was there fore not supported by consideration and necessity binding on the Illom and was invalid and liable to be set aside.

The lease deed for A schedule property executed by the Appellant and his mother in favour of Defendant 5 on the strength of Ext. VIII was also sought to be set aside. It was stated in the plaint that even after the execution of Ext. VIII and the lease deed in favour of Defendant 5, A schedule property continued to be in the possession of the Plaintiff's Illom and was being cultivated by Defendants 7 and 8 who were the lessees of the Illom, and an injunction was also prayed for to

restrain the Appellant and his mother and Defendant 5 from taking possession of that property.

4. The Appellant, as Defendant 1, contested the suit. He denied" the allegation that the acquisitions in Vasudevaru's name were made with Illom funds and belonged to the Illom and contended that the said acquisitions were Vasudevaru's self-acquired and separate properties, that his mother and he were the lawful wife and son of Vasudevaru, that being Candelas they were Malayala Kshatriyas and were governed by the Travancore Kshatriya Act and were entitled to a share in the self-acquired and separate properties of Vasudevaru as per the provisions of that Act, that Ext. VIII was a valid partition of the share which they were entitled to get in his self-acquired and separate properties, and that it was therefore valid and binding upon the Plaintiff's Illom and was not liable to be set aside.

It was also contended by him that the equity of redemption of A schedule property was acquired by Narayanan Namputhiri with his separate funds, that it was therefore his self-acquisition, and that in any event Ext. VIII was not liable to be set aside so far as the right to the said equity of redemption obtained by the Appellant and his mother under it was concerned.

5. The trial court found that the mortgage right in respect of A schedule property and the hypothecation bond comprised in Ext. A were the self-acquired and separate properties of Vasudevaru and that the equity of redemption was the self acquisition of Narayanan Namputhiri. But it upheld the Plaintiff's case that the Appellant's mother and the Appellant were not the wife and son of Vasudevaru and that they were not governed by the Kshatriya Act, and decreed the suit in terms of the plaint without advertng to the contention that Ext. VIII was not liable to be set aside so far as the gift of the equity of redemption to the Appellant's mother and the Appellant was concerned.

In the appeal which the Appellant filed against the trial court's decree the lower appellate court held that Vasudevaru had legally married the Appellant's mother and his marriage with her was subsisting till the year 1079, that the Appellant was born during the subsistence of this marriage, and that he was therefore Vasudevaru lawful son Nevertheless, it confirmed the trial court's decree holding that Pandalas are governed by pure Marumakkathayam Law and not by the Travancore Kshatriya Act and that on Vasudevaru's death his Self-acquired and separate properties devolved on his Illom and the Appellant and his mother were not entitled to get any share in those properties.

The question of the validity of the gift of the equity of redemption made under Ext. VIII was considered by the lower appellate court also.

6. The grounds taken by the Appellant in this second appeal are that he and his mother are the lawful son and wife of Vasudevaru, that Pandalas are Malayala Kshatriyas and are governed by the Travancore Kshatriya Act and therefore the Appellant and his mother are entitled to a share in Vasudevaru's self-acquired

and separate properties, that Ext. VIII is a valid partition of the share of the Appellant and his mother in the self-acquired and separate properties of Vasudevaru and is binding upon the Plaintiff's Illom, and that in any event the gift of the equity of redemption made under Ext. VIII is valid and Ext. VIII cannot be set aside so far as the right to the equity of redemption is concerned in as much as that right originally belonged to Narayanan Narnputhiri alone and he was competent to dispose of it as he chose.

The Plaintiff also has filed a memorandum of objections in this Court against the finding of the lower appellate Court that Vasudevaru had married the Appellant's mother and that the Appellant is his lawful son by her.

7. It may be said at once that in any event the Appellant's contention that Ext. VIII is not liable to be set aside in so far as the equity of redemption of A schedule property is concerned has to succeed. The trial court has clearly found that the mortgage right over A schedule property was the self-acquired and separate property of Narayanan Narnputhiri.

No party has challenged the correctness of this finding either in the lower appellate court or in this Court. Since the equity of redemption belonged to Narayanan Narnputhiri and was his self-acquired and separate property he was competent to dispose of it as he chose and no member of the Plaintiff's Illom can question the gift of it made by him under Ext. VIII either on the ground that the gift was not supported by consideration and necessity binding on the Illom or on the ground that the consent of the other adult members of the Illom was necessary for it.

8. That Vasudevaru had originally married the Appellant's mother and that the Appellant is the offspring of that marriage are also matters which admit of no doubt. Ext. ITI is a copy of the judgment in a suit of 1079, order section No. 02 of 1079 of the Haripad Munsiff's Court, brought by the Appellant's maternal uncle on a hypothecation bond. Defendant 4 in that suit was Vasudevaru and Defendants 2, 3, and 5 therein were Defendants 3 and 4 (Krishnan Namputhiri and Narayanan Narnputhiri) and Defendant 9 in this suit.

All male members of the Plaintiff's Illom who were adults in 1079 were parties to that suit. It was expressly admitted in that suit that the Appellant's mother was married to Vasudevaru, and that admission is referred to in the last paragraph of Ext. III. Plaintiff in order section No. 164 of 1112 has deposed that the Appellant's mother was never Vasudevaru's wife and that the Appellant also is not Vasudevaru's son, and Defendant 1 therein (the Appellant) has deposed that Vasudevaru had married his mother, that he was born of that marriage in the year 1074, and that his mother was Vasudevaru's wife till he died in Dhanu 1112.

The lower appellate court seems to think that the Appellant's statement that his mother was Vasudevaru's wife till his death in 1112 is a mistake and that the Appellant had stated as Dw. I that his mother was Vasudevaru's wife only till 1079. This is a clear misreading of Dw. 1's evidence. There is no statement in

Dw. I's deposition to the effect that his mother was Vasudevaru's wife only till 1079.

On the other hand his statement is definite and clear that she was Vasudevaru's wife till his death on 12-5-1112. Although order section No. 164 of 1112 was filed in the year 1112, the Appellant was examined as Dw. 1 only in 1120. According to him, two or three years after Vasudevaru's death his mother was married a second time by one Narayanan Pandalai. He has not stated anywhere that his mother's marriage with Vasudevaru had terminated or that she was re-married by Narayanan Pandalai during Vasudevaru's life time.

A stray statement in Ext. III to the effect that the marriage of the Appellant's mother with Vasudevaru continued till the beginning of 1079 has also been relied upon by the lower appellate court for the finding that she was his wife till 1079. order section No. 82 of 1079 was filed at the beginning of 1079 and all that was , meant by the sentence in Ext. III relied upon by the lower Appellate court is that on the date of that suit the marriage was subsisting.

The question whether the marriage was subsisting till Vasudevaru's death or whether it terminated at any time during his lifetime was not in issue and did not arise for consideration in that suit. If the marriage had terminated before Vasudevaru's death and the Appellant was not his son it is not at all likely that Vasudevaru's elder brothers, Defendants 3 and 4, would have executed Ext. VIII admitting that the Appellant's mother and the Appellant were the wife and son of Vasudevaru and parting with valuable property in their favour.

there is absolutely no suggestion that Defendants 3 and 4 were interested in the Appellant's mother and the Appellant in any other manner. For finding that the Appellant's mother and the Appellant are not Vasudevaru's wife and son the trial court has relied upon lists. AA, AB, AC, AF and A.J. Ext. AA is a deposition given by the Appellant's maternal uncle in a criminal case in the year 107G. He had stated therein that his sister was not married to Vasudevaru. There is nothing in Ext. AA to show whether the sister referred to in. it was the Plaintiff's mother or some other sister. In this connection it is significant, as pointed out by the lower appellate court, that the Plaintiff has not cared to examine the deponent of Ext. AA although he was alive during the trial of the suit in the first court and the pendency of the appeal in the lower appellate court.

That the sister referred to in Ext. AA could not have been the Appellant's mother is clear from the admission made in order section No. 82 of 1079 and referred to in Ex. III, Ext. AF is a succession certificate issued by the Tahsildar of Thiruvella on 8-2-1119 stating, that the members of Vasudevaru's Illom were the persons entitled to draw certain amounts deposited by him in the Mavelikkara Anchal Savings Bank.

The Gazette notification inviting objections to the application for this certificate was published in 1115, long subsequent to the execution of Ext. VIII. After taking Ext. VIII the Appellant and his mother had no further claim on the self-

acquired and separate properties of Vasudevaru and so they did not oppose the application for the succession certificate by the members of the Illume and the certificate was naturally issued to the applicants.

The failure of the Appellant and his mother to oppose the application for the succession certificate and the grant of Ext. AF is not fatal to their present case. In fact, after the execution and acceptance of Ext. VIII the Appellant and his mother had no right to oppose the application for the succession certificate Exts. AB and AC are petitions filed in order section. No. 1617 of 1110 in connection with the application for imploding the legal representatives of the deceased Vasudevaru who was the Plaintiff in that suit.

These petitions show that the members of the Plaintiff's Illom had contended in that case that the Appellant's mother and the Appellant were not Vasudevaru's wife and son and that the Appellant had admitted that Vasudevaru had another wife also. The fact that after Vasudevaru's death the members of the Plaintiff's Islam had denied that the Appellant's mother was not Vasudevaru's wife is not a conclusive circumstance against the Appellant's case.

Their denial in order section No. 1617 of 1110 was contrary to the admission in order section No. 82 of 1079. The Appellant's admission that Vasudevaru had another wife does not also negative his case, for it was open to a "Malayala Brahmin to have more than one Kshatriya wife if they were married by him before the passing of the Malayala Kshatriya Act of. 1108. Ext. AF is a deposition by Narayanan Pandala who, according to the Appellant has married his mother after Vasudevaru's death.

In that deposition Narayanan Pandala has referred to the Appellant as his son, and considerable stress has been laid on this circumstance by the trial court as well as by the learned Counsel for the Respondents in this Court. According to the Appellant, as his mother has been remarried by Narayanan Pandala he is Narayanan Pandala's step-son, and it is because he is Narayanan Pandala's step-son, that Narayanan Pandala has referred to him in Ext. AJ as his son.

There is considerable force in this contention especially since there is no corresponding word in common use in Malayalam for the English word "step-son". It is also significant that the Plaintiff has not cared to call Narayanan Pandala as a witness in this case although he is still alive. In these circumstances the inference drawn by the trial court on the strength of Exts. AA, AB, AC, AP and AJ is wholly wrong, and the evidence which the Appellant has given as Dw. 1 appears to be probable and true.

The finding of the lower appellate court that the Appellant is Vasudevaru's son is therefore confirmed, but its finding that Vasudevaru's marriage with the Appellant's mother continued only till the beginning of 1079 is set aside, and the Appellant's case that Vasudevaru had legally married his mother and their marriage as subsisting till the time of Vasudevaru's death in 1112 and that he is Vasudevaru's lawful son, born of that marriage, is upheld.

9. The next and most important question to be decided is whether Pandalas are Malayala Kshatriyas and are governed by the Travancore Kshatriya Act, VII of 1108. Since it is admitted that the Appellant and his mother are Pandalas and are domiciled in Travancore, if Pandalas are governed by the Travancore Kshatriya Act, VII of 1108, referred to hereinafter as the Kshatriya Act or the Act, they would be entitled to get a share in the self-acquired and separate properties of Vasudevaru.

If Pandalas are not Malayala Kshatriyas and are governed by pure Marunaakkathayam Law, the Appellant and his mother would not be entitled to get any share in Vasudevaru's self-acquired and separate properties. In that case, on Vasudevaru's death his self-acquired and separate properties would devolve on his Illom, and Ext. VIII would be wholly invalid.

When these second appeals first came up for hearing before a Single Judge it was thought that there was not sufficient evidence in the case to arrive at a satisfactory decision on this question, and so a remand was ordered allowing the parties to adduce additional evidence in the trial court and calling for fresh findings from both the courts below.

After the remand the trial court found that Pandalas were not commonly known and recognised as Malayala Kshatriyas at the time of the enactment of Kshatriya Act and are not therefore governed by that Act, and the lower appellate court found that Pandalas are Samanta Kshatriyas but not Malayala Kshatriyas and they are not therefore governed by the said Act.

Both sides have taken objections to these findings also, the Appellant contending that Pandalas are Malayala Kshatriyas and the Plaintiff Respondent urging that they are not Samanta Kshatriyas as found by the lower appellate court.

Section 2 of the Kshatriya Act gives the definition of the terms used in that Act. Clause (1) of Section 2 reads:

"Kshatriya" includes the members of all communities commonly known or recognised as Malayala Kshatriyas.

Section 1, Clause (3) provides that the Act

shall apply to all Malayala Kshatriyas (excluding the members of the Royal Family of Travancore) domiciled in Travancore, and to such Kshatriyas not so domiciled, and non-Kshatriyas, whether so domiciled or not, as have, or shall have, marital relations with Kshatriyas domiciled in Travancore, and also to all Malayala Kshatriyas, wherever domiciled, in respect of their properties in Travancore.

From Section 3 onwards the term "Malayala Kshatriya" does not occur, and in all the sections subsequent to section. 2 the term "Kshatriya" has been used to denote "Malayala Kshatriya". The question whether Pandalas were originally Kshatriyas or not in the strict sense of that term as understood in the Hindu

caste system is one of considerable difficulty, and there is sharp difference of opinion between eminent authorities.

In view of provisions in Kshatriya Act referred to above it is not however necessary to go into that question in this case, and for deciding whether Pandalas are governed by the Kshatriya Act or not, all that is necessary is to find out whether they were commonly known or recognised as Malayala Kshatriyas at the time of the enactment, of the Act.

11. The Kshatriya Act was passed on the 31st December 1932. In Part I of the Travancore Census Report of 1901 (Census of India, 1901, Vol. XXVI) Pandalas have been treated as one of the sub-divisions of the community known as Samantas, and Samantas have been dealt with under the general caption "Malayala Kshatriyas". The Report says at page 290:

There is an old Sanskrit verse which describes eight classes of Kshatriyas as occupying Kerala from very early times, namely (1) Bhupala or Maha Raja, such as those of Travancore and Cochin, (2) Ragaka or Rajas such as those of Mavelikara or Kotungallur; (3) Kosi or Koiltampuran, (4) Puravan or Thampan, (5) Sripurogama or Tirumulpat, (6) Bhandari or Pantarattil, (7) Audvahika or Tirumulpat and (8) Chcta or Sam-anta.

Dealing with Sarnantas it continues: -

While treating of communities having territorial sovereignty in Malabar, a few words about the Sarnantas may not be out of place. The Sarnantas are not caste which may be said to be indigenous to Travancore. They are most of them natives of British Malabar who immigrated into this country on the invasion of Tippu Sultan. Dr. Buchanan in his "Journey through Mysore, Malabar and Canara" mentions numerous instances in which Kerat Rama Raja, as he calls the then sovereign of Travancore, afforded an asylum to all who fled from the persecution of the Moslem.

The Sarnantas though of various sub-divisions, do not materially differ in their manners and customs and may, therefore, be taken together for ethnographic purposes. The chief sub-divisions are (1) Atiyotis, (2) T Jnyatiris, (3) Pantalas, (4) Gratis, (5) Vallotis and (6) Netungatis. The castes that have been the longest settled are the T Jnyatiris and Pantalas the chief centre; of the former being Vaikam and Ettumanur, and the latter Mavelikara. The Vallotis and Netungatis are found only in one Taluk, namely, Alangad of Eratis there are none in Travancore.

"The word Pantala comes from Bhandarattil meaning "in or belonging to the Royal Treasury They appear to have been once the ruling chiefs of small territories. Their women are known as Kovilammamar, i.e., the ladies of Palaces or Ranis."

"The origin of the Samantaka caste is not known. The GatinInnaya which speaks of the 64 castes in Malabar does not mention this community. But in the subsequent division that Sankara-charya made of the castes of Malabar, eight

castes were added and one of these was the Samantakas. Tradition traces them to the prudent Kshatriyas who cast off the holy thread to escape detection and slaughter by Parasurama.

They are believed to have then fled to uninhabited forests till they forgot the Sandhyavandan prayers and became in certain respects no better than Sudras. Thus came they to be called, it is -said, Amantrakas, Samantrakas, Sarnantas or having no Mantra at all. Relying to this, M. Stuart says "Neither philology nor anything else supports this fable."

From the word Samantra, Samanta can, no doubt, be conveniently derived but if they could not repeat Mantras they should have been called Amantras and not Samantras. In the Kerala Mahatmya we read that the Perumals appointed Sarnantas to rule over portions of their kingdom. Taking the Sanskrit word Samanta, we may understand it to mean a petty chief or ruler, it is supposed that the Perumals who came to Malabar contracted matrimonial alliances with high class Nayar women and that the issue of such unions were given chiefships over varying extents of territories.

Changes in their manners and customs were, it is said, made subsequently, by way of approximation to the Kshatriyas proper. Though the sacred thread and the Gayatri hymn were never taken up, less vital changes, as for instance, that of wearing the ornaments of the Kshatriya women or of consorting only with Namputiri husbands were adopted. Those two lived in Ernat formed themselves by connections and alliances into one large caste and called themselves Eratis.

Those two lived in Valluvanat became Vallotis. The unification could not assume a more cosmopolitan character as the several families rose to importance at different times, and in all probability from different sections of the Nayars.

Manners and Customs": The caste-government of the Sarnantas rests with the Namputiri Vaidikas and their priesthood is undertaken by the Namputiris. Killing animals at chase, though not prohibited, is generally avoided by the Sarnantas. Women wear the three special ornaments of the Kshatriyas, viz., the Oherutali, the Entram, and the Kubhal. They follow the Marumakkathayam law of inheritance. Tattooing is unknown and the sect-mark is the Vibhuti.

The houses of those Sarnantas who are or were till recently rulers of territories are known as Kottarams or palaces, while those of the commonality are merely called Mathams, a name given to the houses of Brahmins not indigenous to Malabar. The occupations which they pursue are chiefly personal attendance on the male and female members of Royal families. Others are landlords and a few have taken to the learned professions." (pp. 290-292)

The Travancore Census Report of 1931 also (Census of India, 1931, Vol. XXVIII) treats Sarnantas as a section of Malayala Kshatriyas and says:

Samanthas are considered to be another class of Kshatriyas having a lower status than even the Thirumulapads. They wear no sacred thread.

In the same paragraph it is further said:

Among the younger generation of Malayala Kshatriyas there is a move to bring about fusion of their sub-castes. The census figures show that they are succeeding in their attempt. A very large number of them have simply returned themselves as Malayala Kshatriyas without mentioning the sub-division to which they belong. At a recent conference of Malayala Kshatriyas held in North Malabar, the Kerala Samantha Maha. Sabha which was working for the advancement of Samanthas was converted into Kerala Kshatriya Samajam for the purpose of uniting the different sub-castes and working for the common good of the whole community.

The Malayala Kshatriyas are all marumakkathayis. Their social customs and manners are like those of the Nayars, except that they have most of the mantra samskaras, They have, however, no Vedic study, no yoga nor other rite prescribed for Kshatriyas in Vedas.

In Nagam Aiya's Travancore State Manual published in 1906 also Pandalas are treated as a sub-division of the Samanta caste and Sarnantas as a section of Malayala Kshatriyas. At page 344, Volume II of the State Manual, Mr. Nagam Aiya says:

As the word itself signifies, the Samanthas were once petty chieftains ruling over varying extents of territory. The Samanthas claim to be descended from those Kshatriyas who cast off the holy thread to escape detection and slaughter by Parasurama. To quote Mr. Stuart, "The Samanthas assert that they are the descendants of Kshatriyas who fled from the wrath of Parasurama, and divesting themselves of the sacred thread, lived in jungles without repeating their daily "mantrams", whence their name of Samanta, or those without "mantrams". Neither philology nor anything else supports this fable."

It is supposed that they are the descendants of the children of the Perumals and their Kshatriya followers with high class Nayar women. They do not wear the sacred thread nor perform the Vedic rites.

All that has been said about Samanthas and Pandalas in the Census Report of 1901 is to be found in the State Manual of 1906 also. In addition it is said at page 345, Volume II of the State Manual of 1906:

The Samantas closely resemble the Nayars in their manners and customs, though they are generally believed to hold a higher position in the social scale. They abstain from animal food and liquor. The women wear the three special ornaments of the Kshatriyas, viz., the "Cherutali", the "Yantram" and the "Kuzhal.

In K.P. Padmanabha Menon's "History of Kerala" also Samantas are treated as the last of the eight classes of Malayala Kshatriyas. (See page 138. Vol. III, 1953 Edition). At page 349 of the same book it is said:

Samandra": These belong to the Anulomaja or mixed class, who are frequently considered to belong to the Nayar class. The "Jatininiaya" docs not mention this community. It is said that Para surama, the organizer of Malabar, did not aim at anything like completeness in his division of castes, but that Sankavacharyar, who made modifications, subsequently established a distinct class known as Samantan, a lower section of pure Kshatriyas.

As to their origin, tradition traces them to those prudent Kshatriyas who fled into the forests, giving up their sacred thread to escape the fury of Parasurama, the Brahmin warrior. In those uninhabited regions they seem to have forgotten their Sandhyavandanam prayers, and came to be reduced to the position of Sudras. Thus they came to be called "Samantrakas Samantas", i.e., those having no Mantra at all.

But as Mr. Stuart rightly observes, "neither philology nor anything else supports this fable". If they are without Mantras, they ought to be Amantrakas and not Samantrakas. Another account regarding their origin is that the Perumals, who came to rule over Malabar consorted with high class Nayar women and their issue were given Chief ships over varying extent of territory. These were called Samantas.

"There are various sub-divisions and designations among them. (1) Atiyoti, (2) Unnatiri, (3) Pantala, (4) Krati, (5) Valloti, (6) Netumgatl (7) Unnittiri, (3) Tirumulpad and (9) Kartavu.

In T.K. Velu Pillol's Travancore State Manual published in 1940 also Samantas are treated as a section of Malayali Kshatriyas and Pandalas as a sub-division of Samantas (see Vol. 1, p. 850).

12. After the remand both sides have adduced oral evidence in support of their respective contentions.

Before discussing that evidence reference has to be made to the statements by two very eminent members of the Pandalai community itself who are now no more. The late Dr. K. Krishnan Pandalai, who was a Judge of the former High Court of Travancore and of the High Court of Madras and who had written a book entitled "Marumakkathayam Law of Inheritance and Succession as the thesis for his Doctorate, had filed two affidavits in a suit describing himself as a Malayala Kshatriya.

Both these affidavits are referred to in 1955 Ker LT 248 (A)", mentioned in paragraph 2 above. It is extremely difficult to brush aside, these affidavits as prompted by a sense of vanity or an aspiration to be recognised as a member of a higher caste. As against them the Plaintiff-Respondent relies upon the written statement, Ext. AK, filed by D. Krishnan Pandalai's brother, the late Mr. K. Sankaran Pandalai in the suit which had given rise to the decision of this Court reported in 1955 Ker LT 248 (A). Mr. K. Sankaran Pandalai also was a Judge of the former High Court of Travancore,

The suit in which Ext. AK was filed was fought against Mr. Sankaran Pandalai and other members of his tarwad by a person claiming to be a member of the same tarwad for partition on the basis that they were governed by the Kshatriya Act. In Ext. AK, Mr. Sankaran Pandalai described himself as a Samanta and put the Plaintiff to proof of the allegation that they were governed by the Kshatriya Act. Ext. AK does not militate against the Appellants case or the weight of Dr. Krishnan Pandalai's affidavits.

The official publications and works referred to in the preceding paragraph would show that Pandalas are Samantas, that there was a dispute as to whether Samantas were originally Kshatriyas or not, and that from 1901 at least they were being generally recognised as a section of Malayala Kshatriyas all that Ext. AK shows is that while Mr. Sankaran Pandalai readily admitted that Pandalas were Samantas he was not prepared either to admit or deny that Samantas or Pandalas were Malayala Kshatriyas.

Had he denied that Samantas are Malayala Kshatriyas his written statement would have formed a very serious obstacle in the way of accepting Dr. Krishnan Pandala's affidavit. Ext. AK only shows that Mr. Sankaran Pandalai did not consider it safe in his interests in that suit to make a definite admission one way or the other and thought it prudent, probably in view of the dispute about the origin of his community, to obtain a decision of the court on the question of the law applicable to them.

The final decision of this Court in that suit was that Pandalas are Malayala Kshatriyas and are governed by the provisions of the Kshatriya Act. It is noteworthy that no member of Mr. Sankaran Pandalai's tarwad appeared before the High Court in that case to contend for the position that Pandalas are not Malayala Kshatriyas and are not governed by the Kshatriya Act.

13. Including himself the Plaintiff has examined four witnesses. Of these four, one, namely Pw. 1 the Plaintiff, was examined before the remand and the others, Pws. 2 to 4, were examined after the remand. The Appellant (Defendant 1) has examined six witnesses. Dw. 1 is Defendant 1 himself. He was examined before the remand, and Dws. 2 to 6 were examined after the remand. Pw. 1 and Dw. 1 have sworn to their respective cases.

Pws. 2 to 4, who are admittedly Malayala Kshatriyas, depose that Pandalas are not Malayala Kshatriyas and that they have never been known or recognised as such. Pw. 2 is an advocate. In his chief examination he stated that the Kshatriya community had five or eight sub-divisions, and when he was asked to enumerate them he gave the sub-divisions as (1) Thampan, (2) Thirumulpad, (3) Koviithampuram, (4) Kolaswaroopuram Raja, (5) Panthalam Raja, (6) Poonjar Raja, (7) JK-:

Thekkumkoor Raja and (8) Vadakkumkoor Raja.

Mavelikkara, Ennakkaud and Aranmula families, he said, were included in

Kolaswaroopuran, and he also stated very definitely that no one who was not included in the above divisions and sub-castes was ever known or recognised as Kshatriyas: (His Lordship quoted portion from his evidence in Malayalam and proceeded).

The sub-divisions given by Pw. 2 are not the sub-divisions given in the Census Reports, the State sub-divisions given in the Census Reports, the State Manuals, and "History of Kerala", and it is obvious that some of the sub-divisions mentioned by him, namely, Kolaswaroopam Raja, Panthalam Raja, Poonjar Raja, Thekkumkoor Raja and Vadakkumkoor Raja, are not sub-divisions or sub-castes but merely individual families.

The reasons given by him for saying that Pandalas are not Malayala Kshatriyas are: (1) no family of the Pandalai caste has ever become a member of the Keraleeya Kshatriya Mahasabha, (2) they have no mantrams, (3) they have no upanayanam and do not wear sacred thread, and (4) the appellation "Varma" with which the names of male members of the Malayala Kshatriya community usually end is not to be found in the names of Pandala males.

Pw. 3 reasons for saying that Pandalas are not Kshatriyas are (1) Pandalas do not use the appellation "Varma", (?) they are not allowed to inter-dine with Kshatriyas, and (3) there are differences between some of the customary ceremonies of Pandalas and of Malayala Kshatriyas. Pw. 4 says that he was for sometime the President of the Keraleeya Kshatriya Mahasabha. His reasons for saying that Pandalas are not Malayala Kshatriyas are:

(1) while there is intermarriage and inter-dining between Malayala Kshatriyas, no Pandalai has ever been allowed to marry a Kshatriya female or dine with Kshatriyas, (2) non-use of the appellation "Varma" by Pandalas, (3) Pandalas have no mantram and do not wear sacred thread, and (4) Pandalas have no Nambudiri priests.

While enumerating the sub-divisions among Malayala Kshatriyas, Pws. 2 to 4 have strangely enough omitted to refer to Samantas who are mentioned as the last of the eight classes of Malayala Kshatriyas in the Census Reports, and "History of Kerala" already referred to. In the Census Report, State Manuals and the "History of Kerala", Pandalas are referred to as the third of the six classes of Samantas.

Pandalas appear therefore, to be a low subdivision even among the lowest class of Malayala Kshatriyas, and from the Census Reports and T. K. Velu Pillai's State Manual, their community also appears to be one of very small numerical strength, confined to two or three localities in Travancore. In these circumstances no great weight can be attached to the fact that no member of the Pandala community has till now sought to apply for membership of the Keraleeya Kshatriya Mahasabha in Travancore which appears to be an organisation of the higher classes or more aristocratic sections of Malayala Kshatriyas.

It is noteworthy that the counterpart of the Keraleeya Kshatriya Mahasabha in North Malabar has Sprung from an organisation of the Samantas of whom Pandalas undoubtedly form a sub-division, (see extracts from 1931 Census Report in Paragraph It above). Although Pw. 2 has not referred to Samantas as one among the live or eight classes into which, according to him, the Malayala Kshatriyas are divided, he has admitted that the Vadakkumkoor and Thekkumkoor Rajas are Malayala Kshatriyas; and Fw. 3 has admitted in his cross-examination that the families of Vadakkumkoor, Thekkumkoor and Alangad Rajas are Samantas.

Thus, from the evidence of Pws. 2 and 3 it is clear that they recognise the more aristocratic families among Samantas as Malayala Kshatriyas and that their objection is only to the recognition of the lower classes and less aristocratic families. The objection that they have no mantram and upanayanam and that they do not wear the sacred thread is one which must apply to all Samantas and not to Pandalas alone.

The fact that Samantas as a class have NO mantram and upanayanam and do not wear sacred thread is specifically mentioned in the Census Report of 1901, Nagata Aiyar's State Manual and the "History of Kerala" already referred to. It would appear from T. K. Velu Pillai's State Manual that even some families of Rajas do not wear the sacred thread (see Vol I, p. 850).

As the lack of mantrams, upanayanams and k, sacred threads have not stood in the way of Vadakkumkoor, Thekkumkoor and Alangad Rajas being recognised and accepted as Malayala Kshatriyas, it cannot form, an insurmountable difficulty so far as Pandalas alone are concerned. According to a widely accepted tradition, the ancestors of Samantas had originally mantram and were wearing the sacred thread but circumstance forced them to cast off the sacred thread and made them forget the mantram, and after that Samantas have not revived the practice.

Reference has already been made to the fact that, according to the official publications Samantas are the last of the eight classes of Malayala, Kshatriyas. Probably it is the lack of mantrams, upanayanams and sacred threads that has caused the Samantas to be ranked as the last class or sub-division in spite of the fact that some of the Samanta families were ruling chiefs.

Whatever that be, from the admission of Pws. 2 and 3 themselves regarding the Thekkumkoor and Vadakkumkoor families it is clear that the want of mantrams, upanayanams and sacred threads has not prevented the more aristocratic among the Samanta families from being commonly recognised and accepted as Malayala Kshatriyas. Equally illusory is the ground that Pandalas are not permitted to marry Kshatriya females and inter-dine with other Kshatriyas.

Pw. 2 himself has stated that it is only after the enactment of the Kshatriya Act that inter marriages between the several sub-divisions of Malayala Kshatriyas have come into vogue and that before the enactment of the Act the only kind of inter-marriage among the sub-divisions was the marriage of females of Rajas or

Thampurans by, males of the Kovilthampuran class. In the Census Report of 1001 (Vol I, p. 287) it is said that the, females of the Kovilthampuran class are married by Namboodiri Brahmins and that the males marry members of the families of Rajas or take Nairwives.

The- same Report says (at pp. 289--290) that the females of the second class i.e., Rajas or Tham purans, are married by Kovilthampurans and that the females of Thampans or Thirumulpads are usually married by Namhoodiris, and sometimes by East - Coast Brahmins. These facts are referred to in the "History of Kerala" also. The fact that Pandalas were not being permitted to marry Kshatriya females before the enactment of the Kshatriya Act cannot, therefore, be a circumstance which goes to show that they are not Malayala Kshatriyas.

Prohibition of inter-dining among sub-castes was as is well known, generally prevalent until very recent times among almost all the main castes in Kerala, including even the Nairs. The allegation that the priests of Pandalas are not Namhoodiris cannot be accepted in view of the evidence of Dw. 5 and the observations in Nagam Aiya's State Manual and the "History of Kerala". Dw. 5 is a Namboodiri Vaidika. He says that he has been functioning as a priest to several Kshatriya families including Pandalas also.

After enumerating Pandalas as one of the chief divisions of Samantas, the Travancore Census Report, 1901, says (at p. 292, Vol. I) the caste government of the Samantas rests with Nambudiri Vaidikas and their priest-hood is undertaken by Nambudiris". Likewise it is said in Nagam, "Aiya's State Manual (at p. 345 of Vol I) that the Namboodiris officiate as priests of the Samantas and that "the caste government is in the hands of Namboodiri Vydikas as in the case of Kshatriyas".

According to Dws. 2 to 6, Pandalas are a section of Malaysia Kshatriyas. Dw. 4 is Dr. Kunjunni Thampan, who is admittedly a Malayala Kshatriya being; a member of the Thampan class. He says that Pandalas also are Malayala Kshatriyas being a section of Samantas who form one of the subdivisions of Malayala Kshatriyas. As one belonging to the same caste he has himself partaken in ceremonies and social functions of Pandalas, Dw. 4 is absolutely disinterested and nothing has been brought out in his cross-examination to discredit his evidence.

He has also stated that some Pandalas add the appellation "Varma" to their names. Some documents have been produced in this very case executed by Pandalas in whose names the appellation "Varma" occurs, e.g. Ext. XVIII. Dws. 2, 3 and 6 are Pandalas. All of them swear that their sub-caste is one of the subdivisions of Malayala Kshatriyas. In these circumstances no reliance can be placed upon the evidence of Pws. 1 to 4 that Pandalas are not commonly known and recognised as Malayala Kshatriyas.

It would appear from their evidence that their reluctance to admit that Pandalas are a class of Malayala Kshatriyas is mainly due to their apprehension that on account of the enactment of the Kshatriya Act intermarriages between females of

the higher sub-divisions and more aristocratic families of. Kshatriyas to which they themselves belong and males of lower sections and humble families like Pandalas might occur frequently if they concede that Pandalas are Malayala Kshatriyas and were being commonly known and recognized as such even before the enactment of the Act.

Pw. 3, who belongs to the Mavelikara Raja's family and is one of the leading members of the class or sub-castes referred to as Ragaka or Rajas (class 2) in the Census Report, has said in his cross-examination that he has no objection to Pandalas being classed even as Brahmins, but he has objections to allow them as Kshatriyas to marry female members of his family or permit social intercourse between his family and Pandalas.

He was a member of the Travancore Legislative Council and also of the Select Committee appointed by that Council for considering the Bill of the Kshatriya Act. For over nine years he was also the Chairman of the Mavelikara Municipal Council. As has been stated already Pw. 2 is an advocate and Pw. 4 was for sometime the President of the Keraleeya Kshatriya Mahasabha. Dw. 2 was also the Secretary of that organisation for sometime.

These highly educated gentlemen had no satisfactory explanation to offer for the statements in the official publications that Samantas are a class or sub-division of Malayala Kshatriyas and that Pandalas are a sub-caste of Samantas. Pw, 3 said that he had not even read the State Manuals and the Census Reports although he admitted that during the discussions in the Select Committee he had heard Samanta Kshatriyas being mentioned.

According to him, the Select Committee decided not to include Samantas under the Kshatriya Act, and it was so provided in the Act. But the "Kshatriya Act does not expressly say anything about Samantas, and the definition given in Section 2 of the Act for the term "Kshatriya" is such as to include Samantas also if they were commonly known and recognised as Malayala Kshatriyas at the time of the enactment of the Act. The Select Committee report published at page 495 of the Regulations and Proclamations of Travancore, Vol. VII, says:

As there was a sharp difference of opinion as regards defining the communities to be brought under "Kshatriyas" we have contented ourselves by defining the above expression as comprising all the members of the Malayala Kshatriya community known and recognised as such.

The definition given in S. 2 was thus deliberately adopted in order to enable members of communities about whom there were disputes in the Select Committee as to whether they were Malayala Kshatriyas or not, to claim the benefit of the Act by proving in a court of law that their communities were commonly known or recognised as Malayala Kshatriyas. In all official publications from the year 1901 onwards dealing with the subject and in standard books of history, Pandalas have been treated as a sub-division of Samantas and Samantas have been recognised as a section of Malayala Kshatriyas.

No doubt these publications and works also refer to the dispute as to the origin of Samantas, whether they were originally Kshatriyas or the off spring of marriages between Kshatriya males and Nair females, but all of them are agreed that Samantas are now recognised as a lower class, the last of the eight classes, of Malayala Kshatriyas.

The defence evidence adduced in this case also shows that both eminent and learned members as well as ordinary persons of the Pandala community have been asserting that they are Samantas and form a section of Malayala Kshatriyas and that persons admittedly belonging to the Malayala Kshatriya community as well as Namboodiri Brahmins functioning as priests both to Pandalas and other sections of Malayala Kshatriya community have been recognising Pandalas as belonging to the Malayala Kshatriya community.

It has been held in *Subrao Hambirrao v. Radha Hambirrao* AIR 1028 Bom 295 (B), that the consciousness of a community, its customs and manners, and acceptance of that consciousness by other communities form three important tests in determining the caste to which a community belongs. In this case all these tests support the Appellant's case that Pandalas form a section of Malayala Kshatriyas.

From the official publications and "History of Kerala" referred to in paragraph 11 above it can be seen that the official recognition of Samantas as a section of Malayala Kshatriyas is based not only on the claim which Samantas themselves have been putting forward from time immemorial but also on traditions about the creation of their caste by Sankaracharyar, the reputed author of the caste system in Kerala, their customs, manners, and occupation, and also a popular recognition of them as Kshatriyas in spite of the difference of opinion as regards their origin.

14. The finding of the learned District Judge after the remand that Pandalas are Samantas Kshatriyas but not Malayala Kshatriyas draws a distinction which does not really exist. The Kshatriya Act contemplates the division of Kshatriyas into two classes only, namely, Malayala Kshatriyas and non-malayala Kshatriyas, i.e., Kshatriyas whose mother-tongue is Malayalam and who are indigenous to Kerala, and Kshatriyas whose mother-tongue is not Malayalam and who have come to Travancore from outside Kerala, This distinction is referred to in the Census Report of 1931 (Part I. p. 374) which says "Kshatriyas found in Travancore are divisible into two main sections, Malayala Kshatriyas and other Kshatriyas. The Malayala Kshatriyas comprise several groups"....."The non-Malayala Kshatriyas found in Travancore are chiefly Rajputs and Kajus". In all official publications Samants are mentioned as a class of Malayala Kshatriyas, and it is also admitted that Samantas are Malaysans, i.e., people who are indigenous to Kerala and whose mother tongue is Malayalam. Therefore, if Pandalas are Samantas, they must necessarily be Malayala Kshatriya also.

15. For the reasons mentioned in paragraphs 11 to 14 above it has to be held

that Pandalas are a section of Samantas who form one of the recognized subdivisions of Malayala Kshatriyas and that at the time of the enactment of the Kshatriya Act as well as both before and after its enactment Pandalas were and are commonly recognised as Malayala Kshatriyas. It follows that Pandalas are governed by the Travancore Kshatriya Act, VII of 1108 and that Section 26(1)(b) of the said Act is applicable to Malayala Brahmins having marital relations with Pandala females.

16. In the view taken above regarding the status of the Appellant and his mother and the applicability of the Kshatriya Act, the findings of the courts below that the Appellant and his mother have no right at all in the self-acquired and separate properties of Vasudevaru have to be set aside, It was contended in this Court that since Vasudevaru and another wife also, the properties given to the Appellant and his mother under Ext. VIII would be more than what they would be entitled to get in lieu of their share.

The short answer to this contention is that the Plaintiff had no such case in the plaint or in either of the courts below. All that he contended in the courts below was that the Appellant's mother and the Appellant are not the wife and son of Vasudevaru and that even if they are his wife and son they are not Malayala Kshatriyas and are not therefore entitled to get any share in his self-acquired and separate properties.

There was no case that the allotment under Ext. VIII included more properties than the Appellant's mother and the Appellant would be entitled to get if they were found to be Vasudevara's wife and son and to be governed by the Kshatriya Act, Out of Vasudevaru's properties the Appellant and his mother have been given: under Ext. VIII only the mortgage right in respect of A schedule property and the hypothecation bond mentioned in the B schedule.

Having regard to the extent of Vasudevaru's self-acquisitions this allotment cannot be said to be excessive at all even though Vasudevaru appears to have another wife also. The division effected under Ext. VIII is extremely fair and equitable.

17. Lastly it was contended by the Respondent's counsel that Defendant 9, the Plaintiff's father, was the manager of the Plaintiffs illom at the time of the execution of Ex. VIII and that since he had not joined in its execution it is invalid and not binding on the illom. According to the Plaintiff, Defendant 9's management is under Ex. A, an udampady of 1078 but there is a later udampady in the family, Ex. I, and it would show that Defendant I had the power to look after only certain specific matters and that even in respect of these matters he was acting under the directions of Narayanan Namputhiri, Defendant 4 So far as Vasudevaru's self-acquired and separate properties are concerned Ex. VIII is in effect only a partition between his heirs, between the Plaintiff's illom on the one hand and the Appellant and his mother on the other. The karnavan of the illom as well as the next senior member have executed the

document on behalf of the illom and we have already found that the partition was just and a fair one. From Ex. VIII and the evidence of the Plaintiff himself and the petitions for imploding Vasudevaru's legal representatives in the several proceedings pending at the time of his death it can be seen that there were disputes between the illom on the one hand and the Appellant and his mother on the other as regards the right of succession to Vasudevaru's properties.

Ex. VIII was executed in these circumstances as a compromise or deed of settlement giving, a quietus to the disputes between Vasudevaru's illom and his wife and son and effecting a partition of his self-acquired and separate properties. As it is a fair and equitable partition and effects a compromise of all out-standing disputes between Vasudevaru's illom on the one hand and his wife and son on the other Ex. VIII has to be taken as a valid settlement deed and held to be binding on the Plaintiff's illom.

18. The result is that the Plaintiff's suit must fall and should be dismissed S. A. No. 446 of 1951 is accordingly allowed, the decrees of the courts below in O.S. No. 164 of 1112 and) A.S. No. 407 of 1121 are set aside, and O.S. No. 164 of 1112 is dismissed with costs. The Appellant (Defendant 1) will get his costs in all the courts from the Plaintiff-Respondent. The memorandum of objections filed by the Plaintiff-Respondent is dismissed without costs.

S. A. No. 448 of 1951.

19. This second appeal arises out of the suit O.S. No. 35 of 1117 brought by the Appellant for declaration of his title to and recovery of possession of a schedule property in O.S. No. 164 of 1112 on the strength of Ex. VIII. Defendants 1, 2, 3 and 6 in O.S. No. 35 of 1117 are the Plaintiff and Defendants 2, 3 and 5 in O.S. No. 164 of 1112. The Appellant's mother, who is Defendant 2 in O.S. No. 164 of 1112,"is Defendant 11 in O.S. No. 35 of 1117.

The case of Appellant as the Plaintiff in O.S. No. 35 of 1117 was that he and his mother, Defendant 11,obtained the suit property under Ext. VIII as part of the share due to them in the self-acquired and separate properties of Vasudevaru, that after taking Ext. VIII they leased the property to Defendant 6, that Defendant, 1 and other members of Vasudevaru's Illom then disputed their right to the property and managed to get possession of it on behalf of their illom by causing a person in whose favour they executed another lease to start proceedings against Defendant 6 u/s 145 of the Code of Criminal Procedure and getting him to file a compromise petition in the said proceedings, and that Defendant 1 and his illom were accordingly in wrongful possession of the property and the Plaintiff was entitled to recover possession of it from them with mesne profits at the rate of 140 paras of paddy per year.

On behalf of Vasudevaru's illom the suit was contested by Defendant 1 (the Plaintiff in O.S. No. 164 of 1112), his contentions being that the plaint property was not Vasudevaru's self-acquisition but belongs to his illom, that the Appellant and his mother were not Vasudevaru's son and wife, that) even if they were his

son and wife they were not entitled to get any share in Vasudevaru's self acquisitions as they were Pandalas and were not governed by the Travancore Kshatriya Act, and that Ext. VIII was invalid as it purported to convey to the Appellant and his mother the plaint property and other items in lieu of their share in Vasudevaru's self-acquisitions.

The trial court dismissed the suit upholding all the contentions of Defendant 1. The lower appellate court found that the Appellant's mother was Vasudevaru's wife till the beginning of 1079 and that the Appellant was his lawful son. But as in the appeal against the decree in O.S. No. 164 of 1113 it found in the appeal against the decree in O.S. 35 of 1117 also that Pandalas are not governed by the Travancore Kshatriya Act, and consequently it confirmed the trial court's decree holding that Ext. VIII was invalid and not binding on Vasudevaru's illom since the Appellant and his mother were not entitled to get any share in Vasudevaru's self-acquisitions.

20. In view of the finding in S. A. No. 44G of 1951 and the result of that second appeal upholding the validity of Ext. VIII the decisions of, the courts below in this case also have to be set aside and the title of the Appellant and his mother to the Plaint property has to be declared and the Plaintiff has to be allowed to recover possession of it.

21. In the plaint in O.S. No. 104 of 1112 filed by him Defendant 1 had admitted that his mora continued to be in possession of the plaint property even after the execution of Ext. VIII. The Appellant's right to recover manse profits from Defendant 1 and his illom cannot, therefore, be disputed. The averment in the plaint in O.S. No. 35 of 1117 that the annual mesne profits would be 140 paras of paddy was not denied by Defendant 1 in his written statement.

On account of manse profits in respect of the three years preceding the date of suit the Appellant has claimed in the plaint 1770 fanams valuing paddy at the rate of 31 fanams per para. There was no contention that the commutation price given in the plaint was higher than the nirak rates for the relevant years. In the circumstance the Appellant's prayer in regard to past mesne profits also has to be decreed. As regards future manse profits from date of plaint, the commutation price of paddy has to be fixed according to nirak rate in each year.

22. In the result the decrees of the court below in O.S. No. 35 of 1117 and A.S. No. 400 of 1121 are set aside and O.S. No. 35 of 1117 is decreed as follows:

The plaint property is declared to belong to the. Plaintiff (Appellant) and his mother (Defendant 11) and the Plaintiff is allowed to recover possession of it on behalf of himself and his mother from Defendants 1 to 10 and he is also allowed to recover from Defendant 1 personally and the Illom of Defendants 1 to 3 past mesne profits as claimed in the plaint and future mesne profits at the rate of 140 paras of paddy from the date of plaint.

Paddy due to the Plaintiff on account of future mesne profits from the. date of

plaint will be commuted into money at the nirak rate prevalent on the last date of each year. Future mesne , profits are allowed only for three years, from this date or till recovery of possession of the property whichever is earlier, Plaintiff is also allowed to recover from Defendant 1 personally his costs.

S. A. No. 448 of 1951 is allowed as indicated above and the Appellant is also allowed to recover from Defendant 1 personally his costs in the lower appellate court and in this Court.

S. A. No. 447 of 1931.

23. This Second Appeal arises out of a petition under the Debt Relief Act filed by the person who had executed the hypothecation bond allotted to the Appellant and his mother by Ext. VIII for discharging the hypothecation debt by Payments in instalments. Counter Petitioners 1 and 2 in the D, R. P. are the Plaintiff and Defendant 3 in O.S. No. 164 of 1112, and counter-Petitioners 3 and 4 are the Appellant and his mother.

Counter-Petitioner 1, i.e., the Plaintiff in O.S. No. 164 of 1112, contended in D. R. P. that the amount under the hypothecation bond was due to his Illom and that counter-Petitioners 3 and 4 had no right to the same, his case being the same as the case put forward by him in O.S. Nos. 164 of 1112 and 35 of 1117.

Counter-Petitioner 3 contended that he and his mother, counter-Petitioner 4, had obtained the right to the hypothecation bond under Ext. VIII as part of the property given to them in lieu of their share in Vasudevaru's self-acquisitions.

The courts below decided this matter also, against the Appellant and his mother and allowed, counter-Petitioner 1 to draw on behalf of his Illom the amount deposited in court by the Petitioner. Since Ext. VIII has been found to be valid and binding on Vasudevaru's Illom the orders of the courts below in the proceedings under the Debt Relief Act have also to be set aside and the Appellant has to be allowed to draw the amount on behalf of himself and his mother.

24. S. A. No, 447 of 1951 is therefore allowed, the order passed by the first court on 25-11-1120 on D. R. P. No. 946 of 1116 and the judgment and decree of the appellate court in A.S. No. 154 of 1121 are set aside and the Appellant (counter-Petitioner 3 in D. R. P. No. 946 of 1116) is allowed to draw on behalf of himself and his mother the amount deposited in court in the said D. R. P. for discharging the hypothecation debt. As the Appellant has been. awarded his full costs in S. A. Nos. 446 and 448 of 1951 and this appeal is connected with those cases, the parties are ordered to bear their costs in this case.

S. A. No. 419 of 1951.

25. This second appeal arises out of O.S. No. 112 of 1113 brought by Defendant 9 in O.S. No. 164 of 1112 for setting aside the order Imploding the Appellant in O.S. No. 1676 of 1110 as one of the legal representatives of Vasudevaru, the deceased Plaintiff in that suit..... In this dispute the Appellant won in O.S. No.

1676 of 1110, but the order in that case was set aside by the decree in O.S. No. 112 of 1113 and the decree in O.S. No. 112 of 1113 was confirmed on appeal by the lower appellate court.

26. The reasons given by the trial court and the lower appellate court for their decisions in O, S. No. 112 of 1113 are the same as the reasons given by them in O.S. No. 164 of 1112 and O.S. No. 35 of 1117. Although the findings of the courts below in regard to the status of the Appellant and his mother and the applicability of the Kshatriya Act to them are unsustainable and have been set aside in S. A. Nos. 446 and 448 of 1951 their decisions in O.S. No. 112 of 1113 have to be confirmed for another reason.

As A and B schedule properties in O.S. No. 164 of 1112 have been given to the Appellant and his mother by Ext. VIII in full satisfaction of the share they are entitled to get in the self-acquired and separate properties of Vasudevaru, they can have no further right in his other self-acquired and separate properties. The debt for the realization of which O.S. No. 1676 of 1110 was filed by Vasudevaru is not one of the items given to the Appellant and his mother by Ext. VIII.

After taking Ext. VIII they can have no claim at all upon the subject matter of the suit in O.S. No. 1676 of 1110. The decrees of the courts below in O.S. No. 112 of 1113 and A.S. No. 430 of 1121 are therefore confirmed but the findings of the courts below in the said suit and appeal regarding the status of the Appellant and his mother and the applicability of the Kshatriya Act to them are set aside. It is declared that the Appellant's mother was Vasudevaru's lawful wife till his death and the Appellant is his lawful son and that they are governed by the Travancore Kshatriya Act. S. A. No. 449 of 1951 is dismissed subject to the above observations and declaration. Parties will bear their costs throughout in this case also.