
(1919) 11 MAD CK 0026
In the Madras High Court

Ottaprakal Thazath Soopi

APPELLANT

Vs

Charichai Pallikal Marriyamma and Another

RESPONDENT

Date of Decision : 05-11-1919

Acts Referred:

Citation : 55 Ind. Cas. 760 : (1920) 11 LW 200

Hon'ble Judges : Spencer, J; Bakewell, J

Bench : Division Bench

Judgement

1. This is a suit for redemption brought by junior members of what is termed a Strisothu Tarwad, the manager of which is a woman called a Karnavathi and the members of which are governed by Maramakatayam Law. The suit has been decreed and the first question before us is whether the plaintiffs had a right to maintain it. As laid down in Vasudevan v. Sankaran 20 M.P 129 : 7 M.L.J. 102 and numerous other decisions, a Karnavan is at once the manager and the mouthpiece of the Tarwad, or in the words of Mr. Justice Holloway, "a Malabar family speaks through its head, the Karnavan, and in Courts of Justice, except in antagonism to that head, can speak in no other way."

2. So, although we might be prepared to hold that junior members of such a family were, generally speaking, persons having an interest in Tarwad property within the meaning of Section 91, Transfer of Property Act, when the individual right of suit from the point of view of the personal law of the parties is in question, we are fully in agreement with the statement of law laid down in Second Appeal No. 959 of 1917, where it was declared by Phillips and Kumarasawmi Sastri, JJ., that only under very special circumstances could the Anandravans of a Tarwad maintain a suit for redemption of a Kanom granted by their Karnavan, as such a suit would amount to an act of interference in the Karnavan's management of Tarwad affairs.

3. In the present case the plaintiffs alleged in their plaint that the 1st defendant was acting in collusion with the 16th defendant, the Kanomdar, and was ready to do any act prejudicial to the Tarwad, and again, that if the possession of the

properties was not recovered at once, the Jenmam title of the Tarwad would in course of time be prejudiced. In her written statement the 1st defendant denied all the imputations made against her in the plaint.

4. The onus then clearly lay on the plaintiffs to establish under the 1st issue that such very special circumstances existed as would justify a suit being brought by them without the concurrence of the Karnavathi. They adduced no oral evidence at all, and there is nothing on the record to show that the 1st defendant had so misbehaved as to make it imperative to take the conduct of the affairs of the Tarwad in such matters as the institution of suits, etc., out of her hands. The District Munsif assumed that the 1st defendant was colluding with the 16th defendant, but apparently his only ground for drawing this inference was that she asked to have the suit dismissed. There may be many reasons why the continuance of the Kanom might be beneficial to the Tarwad. The terms as to the payment of Purapad may be favourable. The Tarwad may not have enough money readily available for defraying the large amount due for improvements. The Courts below have not gone into these matters and decided that any "very special circumstances" existed for redeeming the Kanom as soon as it became redeemable. In the absence of such proof the plaintiffs cannot maintain this suit. It is unnecessary to deal with the other grounds of appeal. The appeal is allowed and the suit is dismissed without prejudice to the Tarwad's right of redemption in a properly instituted suit. The appellant will get his costs throughout from the respondents Nos. 1 to 4. The other respondents will bear their own costs throughout.