

(2005) 02 KL CK 0041
In the High Court Of Kerala
Case No : A.S. No. 489 of 1990 (B)

Palliyat Mariyomma and Others

APPELLANT

Vs

Palliyat Kidave and Others

RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

Lakshadweep, Minicoy, Amindweep Survey and Boundaries Regulation, 1959 —
Section 7(2)

Citation : AIR 2005 Ker 170 : (2005) 1 ILR (Ker) 533

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : Prabha R. Menon, for the Appellant; S.V. Balakrishna Iyer, P.B. Krishnan, M.C. Sen, A. Parvathi Menon and K. Jayakumar, for the Respondent

Judgement

V. Ramkumar, J.—The plaintiffs in O. S. 1 /84 on the file of the Sub Court, Lakshadweep are the appellants in this appeal. The said suit filed on 23-1-1984 and arising from Androth Island of Lakshadweep and was one for a declaration that Ext.B1 gift deed dated 3-8-1983 executed by Khadeesumma in respect of the plaint schedule properties which are tarwad properties (Velliazhcha) in favour of her children, defendants 1 to 6 is not binding on the plaintiffs or the Palliyath tarwad or the plaint schedule properties comprising of 6 items of immovable properties. The plaintiffs also prayed for a perpetual injunction restraining the defendants from further alienating the plaint schedule properties or changing their character or acting against the interests of the plaintiffs or the said tarwad.

2. The case of the plaintiffs can be summarised as follows :-

The plaintiffs are residing at Palliyath House bearing No. C3/73 in Androth Island. The plaint schedule properties are the Velliazhcha or tarwad properties of the plaintiffs and the defendants. Khadeesumma the donor under Ext. B1 was the Karanavathi of the said tarwad. As per the custom prevailing in the island the Karanavathi has no right to alienate the tarwad property or convert the same into separate property (Thinkalazhcha). She had only a right of management.

While so, she executed Ext. B1 gift deed transferring the plaint schedule properties in favour of her children, namely, defendants 1 to 6. The survey settlement register shows her name as the owner in possession of the plaint schedule properties. The survey settlement is not complete. Ext. B1 gift deed is vitiated by undue influence, misrepresentation etc. since Khadeesumma who was 84 year old then was bed ridden and ailing. Hence the suit for declaration and consequential injunction.

3. Defendants 6, 8, 9, 11 and 16 remained ex parte. The 7th defendant filed a written statement supporting the plaintiffs. Even though the 3rd defendant entered appearance along with defendants 1, 2, 4 and 5 by filing a joint vakalath, he did not file a written statement. Defendants 1, 2, 4 and 5 filed a joint written statement contending inter alia as follows :-

These defendants are residing along with the plaintiffs in the Palliyath tarwad house which is plaint schedule item No. 3. The said property was obtained by Khadeesumma on partition and after her death plaint schedule item No. 3 has devolved on defendants 1 to 6 alone. Plaintiffs have no right over the said item. The 6th defendant is residing in Item 3 shown as puthiya srambikkal. Plaint schedule properties are the Thinkalazhcha properties (self acquired) of Khadeesumma. There is no such custom that Velliazhcha properties cannot be converted into Thinkalazhcha. Khadeesumma had never treated this property as tarwad property. Undue influence etc., alleged behind the execution of Ext. B1 gift deed are denied. After execution of Ext.B1 gift deed by Khadeesumma, there has been further partition evidenced by Ext. B2 partition deed dated 3-2-1984 whereby the properties have been divided between defendants 1 to 6. The plaintiffs have no right to challenge Ext.B1 gift deed. There was only one item of property belonging to Khadeesumma and defendants 1 to 6 jointly. O.S. 12/71 before the Munsiff's Court Androth was filed by the present first defendant for partition of that item and pursuant to Ext. B3 preliminary judgment dated 21-2-1972, Ext. B4 final decree has also been passed and the parties have taken delivery of the respective plots. Plot B was allotted to Khadeesumma. If the plaint schedule properties were tarward properties the same would have been included in O.S. 12/1971. The 6th defendant who was a party to the said suit did not raise such a contention. O.S. 1/73 was a suit filed by the present plaintiffs 2 to 4 through their father claiming 3/16 shares in the properties covered by O.S. 12/1971 on the ground that the partition in O.S. 12/71 refusing shares to the daughters was not acceptable to the plaintiffs. The presents plaintiffs 2 to 4 and Khadeesumma and present defendants 1 to 6 were parties to O.S. 1/73 in which also the present plaint schedule properties were not included. Hence the present claim that the plaint schedule properties are tarward properties is barred by res judicata and estoppel. The suit is therefore liable to be dismissed.

4. The Court below framed 7 issues for trial. Exts. A1 to A9 were marked on the side of the plaintiffs and the first plaintiffs husband was examined as PW1. Exts. B1 to B13 were marked on the side of the defendant and the first defendant was

examined as DW1.

5. The Court below after trial, came to the following findings.

- i) The plaint schedule properties are tarward Velliaghcha properties and Exts. B1 and B2 documents are not binding on the plaintiffs
- ii) Exts. A2 to A5, A7 and A8 evidence a partition dividing the properties of the tarward into two branches viz. the Khadeesumma branch and the Paki branch.
- iii) The case of the contesting defendants developed at the stage of evidence that the plaint schedule properties are self acquired properties of Khadeesumma as per a gift from one Adiyat Ismail cannot be accepted particularly when Ext. B1 gift deed is also silent about the derivation of such a title.
- iv) The suit is, however, liable to be dismissed on the ground of res judicata and estoppel in view of Exts. B3 to B6.
- v) In the light of the above findings the plea that Ext. B1 gift deed is vitiated by undue influence and misrepresentation etc. is not considered.

Accordingly as per common judgment and decree dated 5-6-1989 the Court below dismissed the suit. It is the said decree which is assailed in this appeal by the plaintiffs. Aggrieved by the finding entered by the Court below that the plaint schedule properties are Velliaghcha properties and Exts. B1 and B2 are not binding on the plaintiffs, defendants 1 to 5 have preferred a memorandum of cross objection as well.

6. I heard Advocate Sri. Sethumadhavan, the learned counsel appearing for the appellants and Adv. Sri S. V. Balakrishna Iyer, the learned counsel appearing for defendants 1 to 4 and 5 and Adv. Sri. M. C. Sen, the learned counsel appearing for the 7th defendant.

7. Sri S. V. Balakrishna Iyer, the learned counsel appearing for the contesting defendants as well as the cross objectors made the following submissions before me in support of the dismissal of the suit and also in support of the memorandum of cross objection :-

The finding of the Court below that the suit is barred by res judicata or estoppel may not be sustainable since the property dealt with under Exts. B3 to B6 was not the present suit property. But then there is no presumption that the suit: properties are tarward properties. There is nothing to show that the suit properties were held by Khadeesumma as the karanavathy of the tarwad. On the contrary the first defendant who is the eldest son of Khadeesumma is the senior most male member. Since none of the plaint schedule properties was included in Exts. A 2 to A8 which were all complaints made before the Amin of Androth the said documents do not prove the contentions of the plaintiffs. Since O.S. 12/1971 culminating in Ext.B3 judgment and O.S. 1/1973 culminating in Ext. B6 judgment were admittedly not in respect of the plaint schedule properties, Ext. A9 deposition of the present 3rd defendant in O.S. 1/1973 is of no consequence

and does not advance the case of the plaintiffs. In the absence of any plea or proof by the plaintiffs that the plaint schedule properties were acquired by the Palliyath tarwad and Khadeesumma was the karnavathi managing the properties as tarwad properties, it must be presumed that the said properties were the self acquired (Thinkalazha) properties of Khadeesumma which she was entitled to transfer by way of gift to her children. The donees under Ext. B1 gift have, although after the institution of the suit, partitioned the properties as per Ext. B2 partition deed dated 3-2-1989. Under the said partition defendants 1 to 5 who are the brothers of the 6th defendant have been given plots convenient for their enjoyment. The 6th defendant who is their only sister has also been given a larger share. The plaintiffs are none other than the daughter and grand-daughters of the 6th defendant who has remained ex parte. Exts. B8 to B13 notices issued to Khadeesumma u/s 7(2) of the Lakshadweep, Minicoy, Amindweep Survey and Boundaries Regulation of 1959 are neither conclusive nor do they prove that the plaint schedule properties were Velliyazhcha properties held by Khadeesumma as the Karanavathi of the tarwad. The contesting defendants had pleaded in their written statement that the plaint schedule items were separate properties of Khadeesumma and that she had never kept possession of the same either as Karnavathi or as the eldest female member. If the properties were tarwad properties then the name of the senior most male member would have been shown in the survey settlement records. The evidence of the first defendant examined as DW1 would show that Khadeesuma was really a domestic servant of Adiyattupura Ismayil and he gave the suit properties to Khadeesumma. Without putting Exts. B8 to B13 to DW1, it is not permissible for the plaintiffs to contend that Exts. B1 to B6 in O. S. 1/1973 are the same as Exts. B8 to B13 in the present suit. In paragraph 14 of the decision reported in : Ponthinoda Sainabi and Others etc. Vs. Vatakkiloda Aboobackerkoya and Others etc., in a similar case from the Lakshadweep this Court had held that in the case of a personal gift constituting Thinkalazhcha property of one Attabi the succession should be not according to the Marumakkathayam Law but according to the Muslim Personal Law. Here Khadeesumma was given the properties as a personal gift by Adiyatupura Ismayil and so she was entitled to deal with the same as Thinkalazhcha properties. It has been held by a Full Bench of this Court in the decision reported in Parukutty Amma Parvathi Amma and Others Vs. Sankara Kurup Rama Kurup and Others, that it is for the plaintiffs to prove that the properties are partible and the said burden is not affected by the frame of the suit.

8. I am afraid that I cannot agree with the above submission made on behalf of the contesting defendants. The plaint schedule properties which form the subject matter of Ext. B1 gift deed which has been impugned in the suit comprise of six items of immovable properties described as follows :-

Name Sy. No. Area 1. Kunnath Palli Vathil Oul 357/16 80 sq. metres 2. Kaallyakalathottam 360/3 380 sq. metres 3. Chithankunnu 525/18 80 sq. metres 4. Palliath Surambi property 465/4 1940 sq. metres 5. Shaikinte Palli Parambil

property 467/2 110 sq. metres 6. Chodath Vathil Kadu 569/13 40 sq. metres

----- 9. In order to appreciate the rival contentions it may be necessary to comprehend the genealogy of the parties. Khadeesuma of Palliyath tarwad who died in December 1983 after executing Ext. B1 gift deed dated 3-8-1983 was the senior most female member and Karnavathi of Palliyath tarwad. She was the daughter of one Alikutty. She had 5 sons and one daughter who are respectively defendants 1 to 5 and 6. The first plaintiff and defendants 7 to 9, 11 and 16 are children of the 6th defendant who is the only daughter of Khadeesumma. Plaintiffs 2 to 8 are the children of the first plaintiff. 10th defendant is the son of the 8th defendant and defendants 12 to 15 are the children of the 11th defendant. One Ahmmed examined as PW 1 is the husband of the first plaintiff. 10. I may at the outset observe that the dismissal of the suit by the Court below on the ground that the suit claim is barred by res judicata and estoppel in view of Exts. B3 to B6 is clearly unsustainable. Ext. B3 is the judgment dated 21-12-1972 in O. S. 12/1971 which was in respect of a property by name (Karantioda Vathil) comprised in Sy. No. 465/3 of Androth Village. The present first defendant was the plaintiff in that suit. The present defendants 2 to 6 were the defendants in the said suit which was one for partition of the aforesaid property on the premise that it was a co-ownership property. The present 6th defendant who was the 4th defendant in O. S. 12/1971 contended that it was tarwad property but she remained ex parte and there was no issue also to the effect whether the property was tarwad property or not. The preliminary decree passed in that suit was also on the basis that it was co-ownership property. There is no dispute that O. S. 12/1971 did not take in any of the present suit: properties. It was dissatisfied with the allotment made under Ext. B4 final decree in O. S. 12/1971 that the present plaintiffs 2 to 4 who were then minors filed O. S. 1/73 through their father, the present PW. 1. Ext. B7 is the plaint in O. S. 1/73. Ext. B6 is the judgment and Ext. B5 is the decree. The present 3rd defendant who was the 5th defendant in O. S. 1/73 contended that the suit was bad for partial partition since there were other tarwad properties to be included in the suit. In support of the said contention Ext. B8 to B12 survey settlement records in the present suit, showing that the name of Khadeesumma had been registered in respect of the present plaint schedule properties were relied on as Exts. B1 to B5 to contend that Palliyath tarwad had these properties as well to be included in the suit O. S. 1/73 and that the said suit was bad for partial partition. In Ext. B6 judgment the Court held that the plaint schedule property therein had already been partitioned in O. S. 12/1971 and the plaintiffs and defendants 8 to 13 had no right to get independent shares over the same. Under issue number 4 which was as to whether the suit was bad for partial partition, the Court held that since it was shown as well as admitted that there were other properties belonging to Palliyath tarwad and not included in the suit, the suit was bad for partial partition. The suit was accordingly dismissed on 14-8-1973. Exts. B8 to B10 and B12 in the present proceedings were Ext. B1, B5, B3, and B4, respectively in Ext. B6 judgment. It is idle for the contesting defendants to contend that the said documents cannot be

relied on by the plaintiffs without putting the same to DW1. They are notices informing Palliath Katheesumma that the properties mentioned therein have been registered in her name. There is no dispute that Exts. B9, B12, B10, B8, B13, and B11 in the present suit relate to the present plaintiff schedule items 1 to 6 respectively. Exts. B8 to B13 were marked during the chief examination of DW. 1 who deposed that in Androth Island if the properties dealt with under such notices were Thinkalazhcha properties, it will be so indicated. He had to, however, concede at page 40 of his deposition that Exts. B8 to B13 do not specify that the properties are the Thinkalazhcha properties of Kadeesumma. Ext. B6 judgment shows that Exts. B8 to B12 in the present suit were Exts. B1, B5, B3, and B4 respectively in O.S. 1/1973. In fact, it was relying on the very same documents which show that the present suit properties stood registered in the name of Palliath Khadeesumma that it was contended in O.S. 1/1973 that the Palliyath tarwad has other tarwad properties also to be included in O.S. 1 /1973. Now there is a clean somersault made to contend for the position that merely because Khadeesumma's name figures in Exts. B8 to B13 pertaining to the present plaintiff schedule properties, it does not follow that the plaintiff schedule properties are tarwad properties.

11. The present suit is not for partition but only to set aside Ext. B1 gift deed executed by Khadeesumma as if the properties gifted thereunder were her separate properties. There is no dispute that the parties, though Musalmans, generally follow the pristine matrilineal form of inheritance called the Marumakkathayam law as was held in the leading case Buhari Koya v. Kasmikoya Haji reported in ILR 1979 (1) Ker 730 which has been approved as the locus classicus and followed by this Court in several subsequent decisions. (Vide the judgments in A. S. 169/2000, A. S. 425/ 74, S. A. 96/86, A. S. 510/90 and A. S. 324/ 1991). The Island law is a curious mixture of the Marumakkathayam Law of Malabar and the ordinary Muhammadan Law. In the case of ancestral or Velliazhcha property, they follow the Marumakkathayam Law under which it is not permissible for the Karanavan or any other co-sharer to transfer by way of gift or otherwise his or her undivided share over the joint family properties. In the case of their separate or Thinkalazhcha properties, it is the Muhammedan Law of inheritance that is generally followed. Paragraph 8 of Buhari Koya's case adverted to above indicates that having regard to the fact that the people of the islands are mostly illiterate and pleadings are made and cases are conducted by Mukthiars who are unqualified legal practitioners, some amount of latitude is to be given by courts while construing the pleadings in cases arising from the Lakshadweep Islands. The present suit which arose in the year 1984 also is one such type.

12. The unique characteristics of the Marumakkathayam Law of inheritance system have been succinctly depicted by the Apex Court in Achuthan Nair Vs. Chinnamu Amma and Others, as follows :-

"The said law governs a large section of people inhabiting the West Coast of

South India. "Marumakkathayam" literally means descent through sisters' children. There is a fundamental difference between Hindu law and Marumakkathayam law in that, the former is founded on agnatic relationship while the latter is based on matriarchate. The relevant principles of Marumakkathayam law are well settled and, therefore, no citation is called for. A brief survey will suffice.

(7) A family governed by Marumakkathayam law is known as a tarwad; it consists of a mother and her children, whether male or female, and all their descendants, whether male or female, in the female line. But the descendants, whether male or female, or her sons or the sons of the said descendants in the female line do not belong to the tarwad - they belong to the tarwads of their mothers. A tavazhi is a branch of a tarwad. It is comprised of a group of descendants in the female line of a female common ancestor who is a member of the tarwad. It is one of the units of the tarwad. It may own separate properties distinct from tarwad property. The management of a tarwad or tavazhi ordinarily vests in the eldest male member of the tarwad or tavazhi, as the case may be. But there are instances where the eldest female member of a tarwad or a tavazhi is the manager thereof. The male manager is called the karnavan and the female one, Karnavati. A karnavati or karnavan is a representative of the tarwad or tavazhi and is the protector of the members thereof. He or she stands in a fiduciary relationship with the members thereof. In such a system of law there is an inherent conflict between law and social values, between legal incidents and natural affection and between duty and interest. As the consort or the children of a male member, whether a karnavan or not, have no place in the tarwad, they have no right to the property of the tarwad. Whatever might have been the attitude of the members of a tarwad in the distant past, in modern times it has given rise to a feeling of unnaturalness and the consequent tendency on the part of the male members of a tarwad to divert the family properties by adopting devious methods to their wives and children. Courts have recognized the difference between a joint Hindu family under the Hindu law and a tarwad under the Marumakkathayam law in the context of acquisition of properties and have adopted different principles for ascertaining whether a property acquired in the name of a member of a family is a joint family property or the self-acquired property of the said member."

13. The unenviable position of the Karnavan of a Marumakkathayam tarwad was nicely put by Mr. Holloway as follows in his judgment in A. S. No. 120 of 1862 on the file of the District Court, Tellicherry :-

"A Malabar family speaks through its head, and in Courts of Justice, except in antagonism to that head, can speak in no other way".

(See page 98 of the 3rd edition (1905) of Malabar Law and Custom by Lewis Moore). Thus, except in cases where the Karanavan himself is sued for his imprudent acts detrimental to the interests of the tarwad, a Marumakkathayi tarwad could speak only through the Karanavan who was the official mouthpiece

and titular head of the joint family.

14. Under the Hindu Law, when a property stands in the name of a member of the joint, family, it is incumbent upon those asserting that it is joint family property to establish the same. When it is proved or admitted that a family is possessed of sufficient nucleus with the aid of which a member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member concerned to establish that the property was acquired by him without the aid of such nucleus. But this well settled principle is not applied in the case of acquisition of properties in the name of a junior member (Anantharavan) of a tarwad under the Marumakkathayam law. There is no presumption either way and the question has to be decided on the facts of each case (see Achuthan Nair Vs. Chinnamu Amma and Others, . But where the property is acquired in the name of the Karanavan. there is, however, a strong presumption that it is tarwad property and the presumption holds good unless and until it is rebutted by acceptable evidence (See para 14 of Achuthan Nair Vs. Chinnamu Amma and Others, . Similarly where a person was the Karanavan of a tarwad and he had separate funds of his own as well as tarwad funds available, and a transaction was put through with funds which could have been drawn from either source, then in the absence of definite evidence, the law steps in with a presumption that it. is tarwad property and the party to the transaction is presumed to have acted for the benefit of the tarwad whose interests he was under a duty to protect rather than acting for his own benefit (vide Narayani Amma Kalliyani Amma and Another Vs. Naravani Amma Lekshmi Amma, and Vannarath Parvathi Amma and Others Vs. Vannarath Lakshmi Amma and Others, . Even though the property obtained by a Marumakkathayee female towards her share under an outright partition in the tarwad or tavazhi will be her absolute property, the property gets impressed with tarwad or tavazhi character the moment she gives birth to a child destroying the absolute right she has over the property (See Saraswathi Amma and Others Vs. Radhamma and Others, ; Mary Cheriyan and Another Vs. Bhargavi Pillai Bhasura Devi and Another, .

15. It has been specifically pleaded in the plaint that the suit properties are tarwad properties and Khadeesumma was the seniormost family member acting as the Karanavathi. At page 9 of his deposition DW1 has admitted that Khadeesumma had no brothers or sisters. If so, she was the senior most female member of her tavazhi. Ext. A2 to A4, and A6 to A8 are all petitions before the Amin of Androth Island who was invested with adjudicatory powers in respect of civil disputes. These documents show that there was a. division as Palliath Paki branch and Palliath Katheesumma branch and inter-branch disputes of trespass and some sort of resolution of those disputes. II. is interesting to note that these islands had the last vestige of a somewhat jury system in the adjudication of civil disputes. PW.1 has also deposed about the custom of the seniormost family members being the Karanavathi in respect of ancestral properties and the name of the Karanavan or Karanavathi alone being shown in the survey settlement records (see PW. 1 - pages 6, 25, 26 and 37). Apart from the statement on oath

by PW.1, DW. 1 also has admitted that for tarwad properties there will be no document of acquisition (See DW. 1 pages 18 and 19) and that document of acquisition will only be there for self acquisitions. The present 3rd defendant also has admitted this position of customary law in Ext. A9 deposition made by him in O.S. 1/73. There is also intrinsic evidence to fortify the above position. Ext.. A6 is the document by which Khadeesumma's husband gifted an item of property name (Bathilathottam) to her to be enjoyed as tarwad property. This document recites his anterior title over the property. This is not one of the present suit properties. But this property is referred to by the present 3rd defendant in Ext. A9 deposition. Ext. B2 partition deed which was made soon after the institution of the suit also does not recite the derivation of title. It was only at the stage of evidence that DW1 without any plea in the written statement came out with a surprise that Katheesumma was a maid servant of one Adiyattupura Ismail and that the suit properties were given to her by the said Ismail. If the suit properties were the self acquisitions of Katheesumma, then consistent with the custom prevailing in the islands, Ext. B1 gift deed executed by her would have recited the derivation of her title. But the document is conspicuously silent about the anterior title of the executant.

16. The cause of action for the present suit is the execution by Khadeesumma of Ext. B1 gift deed by which the plaint schedule properties which are ancestral Velliazhcha properties were dealt with as though they were the self-acquired (Thinkalazhcha) properties of Khadeesumma. Where both sides have adduced evidence, the burden of proof loses its importance and the case has to be decided on the strength of the evidence adduced on either side (see Smt. Prem Lata Vs. Arhant Kumar, . The plaintiffs have definitely pleaded in their plaint about the existence of the custom that the Karnavathi or a member of the tarwad has no right to alienate the tarwad properties as if it is her own. PW. 1 has also given evidence in support of the same. In fact, this Court in Neelathupura Shaikoya, Neelathupura Kadeejommabi, Neelathupura Mullabi and Neelathupura Ayshabi (correct name Ayishammabi) Vs. Monthrappallipadiopura Attakoya (Died), Monthrapally Koya, Monthrapally Ayshabi, Monthrapalli Padipoura Cheriya Koya, Pentamveliopura Pathummabi, Dr. Kollikkat Sayed Koya and K.M. Kunhibi, has already given judicial recognition of the custom in Androth and Kalpeni Islands of Lakshadweep that neither the thavazhi nor a member of the thavazhi or tarward has any right of alienation of the tarwad properties. The existence of such a custom has been judicially recognised in the Kavarathi Island of Lakshadweep as well in the decision reported in 2002 (1) KLT 908 - Mohammed v. Arif. While it may be necessary for a party setting up a custom for the first time to prove the same in conformity with the requirements of continuity, antiquity and notoriety, in a case where such custom has been judicially recognised, the same can be followed without the necessity of independent proof in subsequent cases where such custom arises for determination (See Sri Raja Rao Venkata Mahipati Gangadara Rama Rao Bahadur v. Raja of Pittapur AIR 1918 PC 81, Vallyamma v. Velu 1983 K LJ 186 and Indian

Molasses Co. (Private) Ltd. Vs. Commissioner of Income Tax, West Bengal, . Thus, when this Court has accepted the existence of such a custom in the decisions noted earlier, the same can be readily accepted and applied to the case on hand even without insisting on any independent proof. If so, by executing Ext. B1 gift deed in respect of tarwad properties, Katheesumma was sacrilegiously violating the established custom of the land rendering herself liable for her action.

17. The result of the foregoing discussion is that the plaint schedule properties are the tarwad (Velliazhcha) properties of the Palliyath tarwad and neither Khadeesumma nor any member of the tarwad was entitled to deal with any of those properties as their self acquired (Thinkalazhcha) properties. The suit properties belonged to the Khadeesumma branch of the tarwad in contra distinction with the Paki branch. The findings entered by the Court below on these aspects are fully justified. However, the dismissal of the suit on the ground of res judicata and estoppel founded on Exts. B3 to B6 cannot be sustained for the reasons already stated. Accordingly, the judgment and decree passed by the Court below so far as they have disallowed the prayer for declaration and injunction on the ground that the said reliefs are barred by res judicata and estoppel are set aside. In the light of the discussion hereinabove contained, there is no merit in the memorandum of cross-objection.

In the result, the memorandum of cross-objection is dismissed and this appeal is allowed to the limited extent indicated above. The parties shall bear their respective costs in this appeal.