
(1912) 10 MAD CK 0021
In the Madras High Court

Panikkarchatt Ukkajithanthavita Puthia Purajil Abdulla and
Others

APPELLANT

Vs

Panikkarath Ukkayithamtavita Puthia Purajil Mirthur

RESPONDENT

Date of Decision : 11-10-1912

Acts Referred:

Citation : 17 Ind. Cas. 429 : (1912) 23 MLJ 537

Hon'ble Judges : Sankaran Nair, J

Bench : Division Bench

Judgement

Sankaran Nair, J.—One Aramullan who was the Karnavan of his tarwad died on the 18th July 1912. He is alleged to have died in the house

of his wife and children.

2. On the 27th July, Moideen who became the Karnavan of the tarwad on the death of Aramullan applied to the District Judge under Act XIX of

1841 for the appointment of a commissioner to take an inventory of the properties which were in the possession of the late Aramullan and for the

delivery of the same to him.

3. On the same day without any inquiry the Judge appointed a Commissioner to take an inventory.

4. A Commissioner was accordingly appointed; upon this Abdulla with two others objected to the order. The Judge confirmed the first order. The

first ground of objection was that there is no question of succession at all and therefore the Act does not apply. With reference to this objection the

judge holds that it has not been finally settled that the tarwad takes by survivorship from a deceased Karnavan. I do not think there ever was any

doubt on this point. The present Karnavan, the petitioner Moideen does not

admit that the properties were the separate or self-acquired properties of the deceased Karnavan. His case as I understand it, is that they were tarwad properties in the possession of the deceased. He does not set up the right of the tarwad to take them by succession. The interest of the deceased therefore lapsed by survivorship to the tarwad.

5. Assuming however that is not the petitioner's, Mohideen's, case, it was the separate property of the deceased. I think it must now be taken to be finally settled by the Full Bench decision that Mr. Justice Holloway correctly laid down the law when he decided that self-acquisitions lapse to the tarwad and they do not descend to his own heirs who would take if he was not a member of any tarwad. I am therefore of opinion that the Act does not apply.

6. It is also contended that the Judge was wrong in issuing any order without holding any inquiry. It has now been settled by a series of decisions that the Judge must be satisfied that there are strong reasons for believing that the party in possession has no lawful title before issuing any notice.

Abdul Rahitnan v. Kutti Ahmed ILR (1886) M. 68. Papamma v. The Collector of Godaver ILR (1889) M. 341 Krishna Satni Panikonder v.

Muthukrishna Panikondar ILR (1901) M. 364. This is not denied by Mr. Anantakrishna Aiyar but he contends that under the proviso to Section 4

the Judge may even without any inquiry direct an inventory to be taken and he is not precluded from doing so by the decisions above cited.

7. I cannot accept this contention. Section (3) is imperative that the judge "shall in the first place inquire," whether there are strong reasons for

believing that the party in possession has no title. Then Section 4 prescribes the issue of a notice after the judge is satisfied of the existence of

such strong ground of belief." The proviso that is relied upon by Mr. Anantakrishna Aiyar is a proviso to this section and not to Section 3 which

requires the judge to commence the inquiry therein referred to at once. In the course of that inquiry if it is necessary for citing the party complained

against the judge may direct the inventory to be taken though he may not have concluded the inquiry. In this case the order was not issued in the

course of the inquiry which the judge should have commenced on receiving the petition.

8. It is also contended that the deceased Anumallan left the property to the

petitioners before this Court and that the judge was therefore wrong in passing his second order confirming the first order. The judge as I understand him disagrees with the opinion of the learned judges in Papamma v.

The Collector of Godaveri ILR (1889) M. 346, that he is bound to give effect to any lawful directions that may have been given by the deceased.

He is of opinion that those directions must be legal and as apparently he acts on the assumption that the properties belong to the tarwad and cannot

be disposed of by will he holds the directions are not legal. The Act presupposes case of succession and if there are directions as to the disposal of

the property the judge should give effect to them in this summary proceeding without considering their validity. Mr. Anantakrishna Aiyar however

urges on the strength of the case above cited that this is a matter to be gone into at the final inquiry and not at this stage. But the section seems to

imply that when the person complained against offers to prove that there are directions given by the deceased he should inquire into such allegation

before any further order. I do not however rest my order on this ground.

9. I reverse the orders of the Lower Courts and dismiss the applications with costs throughout.