

(1964) 10 KL CK 0020
In the High Court Of Kerala
Case No : A.S. No. 476 of 1962

Parvathi Pillai

APPELLANT

Vs

Purushothama Pai

RESPONDENT

Date of Decision : 23-10-1964

Acts Referred:

Transfer of Property Act, 1882 — Section 27, 31

Citation : (1965) KLJ 140

Hon'ble Judges : T. K. Joseph, J; T. C. Raghavan, J

Bench : Division Bench

Advocate : M. P. Thomas and M. P. Vargese and P. V. Cherian, for the Appellant;

Final Decision : Dismissed

Judgement

Joseph, J.—The order which has given rise to this appeal was one dismissing objections of the appellants-defendants 2 and 4 to execution of a decree for recovery of money charged on property belonging to a Purushothama tarwad. The second defendant is a member of the tarwad and the fourth defendant is a stranger who was impleaded as a subsequent encumbrancer of the property. The two objections which were pressed at the hearing were:

(1) that the second defendant became insane during the pendency of the suit and that the decree obtained without appointing a guardian for her is void, and

(2) that a male member of the tarwad who attained majority during the pendency of the suit and thus became the karnavan was not impleaded in the suit and that the decree is therefore void.

2. These objections were overruled and execution was allowed to proceed against property of the tarwad. Defendants 2 and 4 have preferred this appeal.

3. As regards the first point we may observe that no evidence was adduced by the defendants even though the objections were posted for evidence on three occasions. Thus, even assuming that this is a point which may be taken in

execution, there is no evidence to substantiate it. A minor or lunatic who is not represented by a guardian at the trial of the suit cannot be deemed to be a party to the suit in the proper sense of the term, and it is therefore open for him to file a fresh suit to set aside the decree. A fresh suit is the proper remedy in such circumstances. This point must therefore be held against the appellant. The second point is that a male member had attained majority during the pendency of the suit and that the female members who alone were the adult members of the tarwad on the date of suit could not thereafter continue to represent the tarwad. Relying mainly on the decisions of the Travancore High Court in *Parameswaran Pillai v Gopala Pillai* (31 T.L.J. 575) and *Elizabeth Thomas v Parvathi Lakshmi* (1945 T. L. R. 921), the learned Judge held that the objection could not be raised in execution. What happened in this case is that there was no adult male member in the tarwad on the date of suit and defendants 1 and 2, the senior most female members were impleaded to represent the tarwad. It is not disputed that they were competent to represent the tarwad on the date of suit. Here, the objection is not that the Court lacked inherent jurisdiction to try the suit. In the two cases referred to above, it was held that a party to the suit cannot object in execution on the ground that the decree is not in conformity with the provisions of Section 31 of the Travancore Nair Act or the corresponding provision in Section 27 of the Travancore Ezhava Act. Counsel for the appellant relied on the decision in *Kamakshi Amma v Gangadharan Pillai* (1953 K. L. T. 706) in support of the position that a decree obtained against a tarwad in contravention of section 31 of Travancore Nair Act is void. It has to be stated that the above decision was given in a separate suit for a declaration that the decree was not binding on the tarwad, and not in execution of the impugned decree. This is no authority for the question which arises in this case. There is a decision of Govinda Pillai J., in *Rajappan Pillai v Bhoothalingam Pillai* (1954 K. L. T. 755) holding that under similar circumstances, the male member who attains majority during the pendency of the suit and thus becomes the karnavan must be impleaded in the suit. It has to be observed that this question did not arise on an objection by the judgment-debtor in the suit in which the decree was passed, but in a subsequent suit. This cannot also be treated as an authority for the position contended for by the appellants. The decision in *Madhava Panicker v Ouseph* (1960 K. L. T. 519) is also not an authority for the position that the judgment-debtor can raise this objection in execution of the decree. In that case also the question whether the decree was valid arose in a subsequent suit. The question for decision in the cases relied on by Govinda Pillai J., was different and cannot be treated as authority for the position that when a karnavathy ceases to be such during the pendency of a suit on account of a male junior member attaining majority, the plaintiff is bound to implead the latter. Even a part from this we are hesitant to follow the decision in *Rajappan Filial v Bhoothalingam Pillai* (1954 K. L. T. 755). However, it is not necessary to decide in this case whether *Rajappan Pillai v Bhoothalingam Pillai* was correctly decided, as the short question we are called upon to decide is whether a party to the decree can raise this objection in execution of the decree. We are of opinion that he cannot and that Elizabeth

Thomas v Parvathi Lekshmi (1945 T. L. R. 921) lays down the correct law. This point also therefore fails.

In the result, the appeal fails and is dismissed. No costs.