
(1927) 08 MAD CK 0037
In the Madras High Court

Pattathil Sankunni Mannadiar		APPELLANT
	Vs	
Pattathil Krishna Mannadiar		RESPONDENT

Date of Decision : 25-08-1927

Acts Referred:

Citation : (1928) ILR (Mad) 320 : (1928) 27 LW 93 : (1928) 54 MLJ 682

Hon'ble Judges : Ananthakrishna Aiyar, J

Bench : Division Bench

Judgement

Ananthakrishna Aiyar, J.—The question that arises for decision in these cases is which of the two, plaintiff or the defendant, is entitled to the

management of the Tarwad known as Kothukkotte in Kannadi Amsom and Desom, and as Pattathil in Mathoor Amsom and Desom of the Palghat

Taluk. The court of first instance decided the question in favour of the defendant, whereas the lower appellate court has decided the point in favour

of the plaintiff. The defendant accordingly has preferred these second appeals. To appreciate properly the point in dispute, it is necessary to

mention that in 1904 the Karnavan of the Tarwad was Parakunni Mannadiar and the next senior Anandravan was Gopala Mannadiar. Original Suit

No. 11 of 1904 was instituted by 18 junior members of the Tarwad against Parakunni Mannadiar as the 1st defendant and Gopala Mannadiar as

the 2nd defendant for the removal of Karnavan Parakunni Mannadiar, and also for the removal of the senior Anandravan Gopala Mannadiar on

the ground that both of them were unfit to manage the Tarwad affairs. The plaintiff proceeded to state that the 1st plaintiff therein (Ravunni

Mannadiar) would be the person who would be entitled to management if the defendants 1 and 2 were removed by the court, and there was a

prayer that the 1st plaintiff Revunni Mannadiar should be appointed as manager. The plaint proceeded further to state that if for any reason the

court should feel inclined to associate any other member of the tarwad with the 1st plaintiff in management, then the 1st plaintiff Ravunni Mannadiar

should be appointed manager in conjunction with the third plaintiff. It must be mentioned that there was a second plaintiff in that case Sankunni

Mannadiar who was senior to the third plaintiff Krishna Mannadiar but nothing was alleged in the proceedings in Suit No. 11 of 1994 about the

2nd plaintiff Sankunni Mannadiar. Issues were then framed about the removal of the 1st defendant and also about the removal of the second

defendant in that suit. The seventh issue then framed ran as follows:

Whether the plaintiffs 1 and 3 are unfit to be appointed managers?

2. The result of that litigation was that the first defendant Parakunni Mannadiar was removed from management, and the second defendant Gopala

Mannadiar having died during the pendency of the suit, no question arose about his removal. Having found that there was no reason for not

granting the prayer in the plaint regarding the management of the tarwad affairs by the first plaintiff in conjunction with the 3rd plaintiff, the court

passed a decree to the following effect:

(1) That the 1st defendant be removed from management of the tarwad of the plaintiff and defendants. (2) That the 1st and 3rd plaintiffs be

appointed to the management.

3. Now the 1st and 3rd plaintiffs in that suit continued to manage the properties of the tarwad till the 30th October, 1923; when the 1st plaintiff in

the prior suit Ravunni Mannadiar died. The 3rd plaintiff in that suit Krishna Mannadiar has instituted O.S. Nos. 283 and 284 of 1923, out of which

the present second appeals have arisen for a declaration that he is, in the circumstances that now exist, entitled to manage the affairs of the tarwad

and for collection of rent due by the defendant to the tarwad. The defendant to the present suit Sankunni Mannadiar (who was the 2nd plaintiff in

Suit No. 11 of 1904) contends that as the admitted seniormost male member of the tarwad at present (excluding of course Parakunni Mannadiar,

the karnavan who was removed by virtue of the decree in the prior suit), he is in law entitled as the present do jure karnavan to manage the tarwad

affairs. The main contention of the plaintiff in the present suits, Krishna

Mannadiar, is that under the terms of the decree in Suit No. 11 of 1904 he and Ravunni Mannadiar were appointed co-managers and that on the death of Ravunni Mannadiar he is entitled to the sole management. He

further contends that Sankunni Mannadiar should be taken to have been removed from management since his claims were not recognised and since

his junior, the present plaintiff, was appointed as manager. As already remarked, the court of first instance upheld the defendant's contention, while

the learned Subordinate Judge has upheld the contention of the plaintiff.

4. Now before considering the effect of the decree in Suit No. 11 of 1904, it is better to state that the right to the management of the tarwad affairs

in the case of a Marumakkathayam tarwad devolves on the seniormost male member according to Marumakkathayam Law. When a karnavan is

removed, it is now admitted and there are decisions expressly supporting the position that there is no necessity for the court to appoint the text in

point of age as manager. When a karnavan is removed the next senior in" age becomes the de jure manager and karnavan and steps into the

position ipso facto without any sort of appointment by the Court. [Nemanna Kudre v. Achmu Henysu ILR (1919) M 319 per Krishnan, J. and

Pazhavathil Mavilaputhia Veetil Chindan Nambiar Vs. Kunhi Raman Nambiar and Others, .] No doubt in some decrees passed by courts one

finds occasionally statements to the effect that the previous karnavan is removed and the next senior is appointed as karnavan and manager. But as

already remarked it is unnecessary to appoint the next senior to enable him to exercise the rights of the karnavan which he is under

Marumakkathayam Law entitled to exercise the moment the previous karnavan is removed. Attention has been drawn to this point because a

major portion of the arguments of the learned Counsel who appeared for the plaintiff-respondent in these cases were directed towards laying

emphasis on the fact that the decree in Suit No. 11 of 1904 states that plaintiffs 1 and 3 in that suit were appointed to the management. If no

appointment really be necessary in law to enable the next in seniority to become the manager, the question arises as to what exactly is the

construction to be placed on the terms of the decree. that was passed in Suit No. 11 of 1904. It has been held that it is legitimate to refer to the

pleadings in a case in order to construe the decree that has been passed in the

suit, more especially when the wordings of the decree are not very-clear. Now referring to the plaint in Suit No. 11 of 1904 it is stated there

After the removal of defendants 1 and 2 plaintiffs are willing to have the 1st plaintiff alone appointed as manager of the tarwad or the 1st plaintiff in conjunction with the 3rd plaintiff therein.

Absolutely nothing was stated against the 2nd plaintiff in that suit who is the defendant in the present suit. When we examine the proceedings in the prior suits, we think it is clear that the question before the court then were (1) consideration of the removal of defendants 1 and 2 in that suit, and (2) consideration of the question whether the 1st plaintiff Ravunni Mannadiar should be allowed to manage the affairs solely as he would be entitled to it under the Malabar Law, unless the court thought it proper to impose any restrictions on his power of management, or whether any other person should be associated with the first plaintiff in the tarwad management. The defendants having been removed (the 1st defendant by court, the 2nd defendant by his death during the course of the suit) the question that was subsequently decided by court was that the interest of the tarwad required that the de jure karnavan, the first plaintiff Ravunni Mannadiar, should be restricted in his powers of management by having the 3rd plaintiff associated in his powers with him in management. Absolutely no question of removing the first plaintiff having arisen in that suit, there could not be any question of removing the 2nd plaintiff therein. The question of associating another member with the 1st plaintiff in his management was only with a view to restrict 1st plaintiff's rights, not to prejudice the next member's rights much less to deprive once for all the next junior of his rights as karnavan when his turn should come. It is therefore impossible to uphold the contention of the learned Counsel for the respondent to the question of the 2nd plaintiff's right to be the karnavan was decided against him in that suit by necessary implication. Karnavanship is a very valued right among members of a Marumakkathayam Tarwad, and as already remarked the seniormost male member is entitled to be the de jure karnavan with rights of management. The only means by which such rights of karnavanship could be lost to the senior-most members are (1) by removal by decree of court. (2) renunciation by act of party and (3) by death. The learned Counsel for the respondent at one stage of his argument

contended that in this case it must be taken that the second defendant renounced his rights of karnavanship since he allowed his junior to be cornanager with the 1st plaintiff; at another stage he urged that on a proper construction of the decree in Suit No. 11 of 1904 it must be taken that the court has adjudicated by necessary implication against his rights of karnavanship. We are unable to accept either of these contentions. In the absence of specific allegations against the 2nd plaintiff and in the absence of any issue relating to him, it is rather difficult to hold that the court adjudicated upon his rights in any way. On the other hand, the natural thing that is likely to have happened and which we find to be what really happened in Suit No. 11 of 1904 was that the 1st plaintiff, who was to be the de jure karnavan after the 1st and 2nd defendants were removed, instead of insisting on his rights to be the sole manager agreed to have his rights of management curtailed to some extent by associating the 3rd plaintiff with him in management. The effect of this was that the 1st plaintiff's rights as karnavan were restricted, not that the next karnavan's rights were in any way affected much less adjudicated against. On the death of the 1st plaintiff, these restrictions ipso facto ceased to have any operation, and the next karnavan is in no way affected by them. This is the view that has been taken by The District Munsif in these cases, and we are of opinion that he is right. The learned Subordinate Judge at one portion of his judgment states that the decree should be construed according to its literal terms. If he means to lay down that one is not entitled to look into the pleadings to find out what was really meant by the decree we should point out that he was wrong. It was not disputed before us that a decree, especially if it is ambiguous, should be construed in the light of the judgment that led to it. It is a matter of frequent occurrence in Malabar that members of a tarwad agree by means of karars to have the rights of the existing karnavan restricted in certain particulars either by compelling him to associate some other junior with him in the management of the tarwad properties, or by putting other restrictions on his power. It has been uniformly held in this Court that the effect of such karars is only to limit the powers of the particular karnavan concerned, and persons who were only junior members at the time would not be bound by such restrictions when they become in their turn karnavans of the tarwad, unless by themselves being parties to the karar they have expressed themselves to be

bound by such provisions even when they become karnavans. We need refer only to the two cases that were referred to in the argument, namely,

Cheria Pangi Achan v. Unnalachan (1916) 32 MLJ 323 and Narayanan Moosad v. Narayanan Moosad (1927) MWN 553. As remarked by

Sadasiva Aiyar, J.:

the whole of the family karar in my opinion falls to the ground on the death of the de jure karnavan who consented to be bound by it (or by his

removal by decree of court) as the next de jure karnavan is not bound by the restrictions imposed by the karar on his predecessor, except perhaps

where he himself has agreed in that karar to be bound by those restrictions whenever he succeeded to the karnavasthanam.

See also Pazhavathil Mavilaputhia Veetil Chindan Nambiar Vs. Kunhi Raman Nambiar and Others, . The same principle would, we think, apply to

the cases where restrictions are imposed by decree of court on a person who was the de jure karnavan on the date of the decree. Such restrictions

would prima facie cease to have operation on the death of the particular karnavan concerned, unless there be something specific in, or necessarily

implied by, the decree to the contrary. Further it is a well-recognised principle of law that if the wordings of a decree be ambiguous, such

construction should be put on the same as would make the decree in accordance with law and that when a decree is silent on a point, it could be

supplemented by the law applicable to the case. Uttamram v. Kishordas ILR (1899) B 149, Amolak Ram v. Lachmi Narain ILR (1896) A 174 ,

Maharaja of Bharatpur v. Rani Kanno Dei (1900) LR 28 IA 35 : ILR 23 A 181. As Sir John Edge, C. J., and Blair, J., say in Amolak Ravi v.

Lachmi Narain ILR (1896) A 174:

In construing a decree the terms of which are ambiguous such construction must, if possible, be adopted as will make the decree in accordance

with law.

Their Lordships of the Privy Council while overruling the decision of the Allahabad High Court on some other point expressed their approval of the

above principle and specifically say as follows:

Their Lordships agree that all ambiguous documents should be construed rather to accord with law than to make them conflict with it." [Maharaja

of Bharatpur v. Rani Kanno Dei (1900) LR 28 IA 35 : 1900 ILR 23 A 181.]

Parsons, J., in *Uttamram v. Kishoredas* ILR (1899) B 1491 states that:

The decree may be supplemented by the law on a point upon which it is silent, but we cannot introduce into it a provision which would be contrary to the law and ultra vires on the part of the court pronouncing it.

5. Further as observed by the Privy Council in *Hari Baksh v. Babu Lal* ILR (1924) Lah. 92.

To understand and apply a decision of the board or of any court, it is necessary to see what were the facts of the case in which the decision was given and what was the point which had to be decided.

On a proper construction of the terms of the decree in Suit No. 11 of 1904, we are inclined to hold that the 3rd plaintiff in that suit (the present plaintiff before us) was only appointed to associate himself with the then de jure karnavan Ravunni Mannadiar the then 1st plaintiff and the 3rd

plaintiff's appointment ipso facto ceased the moment Ravunni Mannadiar died. We are strengthened in our conclusion by reference to the

judgment in Suit No. 11 of 1904, and having regard to the principle applicable to the case and the rights of the members of a Marumakkathayam

tarwad we have no hesitation in holding that the person at present entitled to the management of the tarwad in question is Sankunni Mannadiar (the

appellant in these second appeals and defendant in these suits) and not Krishna Mannadiar the plaintiff respondent. It therefore follows that the

second appeals should be allowed and the District Munsif's decision restored. In the circumstances we direct that all the costs of the parties in

both the cases, both here and in the courts below, be paid from the tarwad funds.