

**(1925) 11 MAD CK 0010**  
**In the Madras High Court**

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| Payath Ramdupurayil Sara Umma and Others          | APPELLANT  |
| Vs                                                |            |
| Kidangu Kettiya Ramdupurayil Kunhammad and Others | RESPONDENT |

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**Date of Decision :** 25-11-1925

**Acts Referred:**

**Citation :** AIR 1926 Mad 810 : (1926) 23 LW 584

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**Judgement**

1. The suit out of which this Letters Patent appeal arises was instituted by one of the junior members of a Malabar tarwad against their karnavan for maintenance. The 1st defendant, the karnavan died in the course of the suit and Defendants 2 to 5, the respondents before us, have been added as his legal representatives. The suit was to recover a money allowance from the 1st defendant personally and as karnavan of the tarwad. In defence it was pleaded that Ex. 1 was a bar to the plaintiffs' claim. Ex. I is a karar dated 1886 between the then karnavan of the tarwad, Kunhi Thoppar, and the members mentioned in it according to which properties were allotted to various tavazhies for maintenance. The present plaintiffs are the descendants of one Ummathal, No. 4 in Ex. I. It is admitted that they were not born at the time of the karar and the records do not show that their mother was a party to it. The tarwad at that time consisted of 69 members of whom 38 were adults and the rest minors. No one represented the minors in the karar. At present the tarwad consists of about 364 members living in 10 or 12 different houses. The District Munsif and the Subordinate Judge, holding that the karar was only a temporary arrangement intended to have effect only during Kunhi Thoppar's lifetime, gave a decree in favour of the plaintiffs at the rate of Rs. 5 per mensem per adult and Rs. 3 per mensem per minor. This decree was set aside by

Phillips, J. The learned Judge held that the karar, Ex. I, was intended to enure for the benefit not only of the members then in existence but also

persons born subsequently, that the plaintiffs had been obtaining the benefit of the karar until shortly before the suit and that if the plaintiffs wanted

enhanced maintenance they must bring a suit in proper form impleading all the necessary parties. Inasmuch as that was not done, he dismissed the

plaintiffs' suit.

2. We cannot agree with the learned Judge's view. (The judgment then construed Ex. I and came to the conclusion that it was to enure only for the

lifetime of the then karnavan. Then it proceeded.) It may, however, be open to the tarwad as a whole by its conduct subsequent to Kunhi

Thoppar's death to adopt the karar as binding on its members. Even so, mere maintenance arrangements are usually subject to modification if

there is an appreciable or material change in the circumstances of the family : see *Kelu Achan v. Lakshmi Nethyar Ammal* [1913] M.W.N. 379.

Apparently the learned Judge seems to be of the view that the express stipulation in paragraph 5 is not of much importance as the karar seems to

have continued in force after Kunhi Thoppars' death in the case of some of the tavazhies. That question was not raised in the Courts below and we

do not express any opinion on it, though we may say in passing that some documents with reference to it were brought to our notice from the list of

plaintiff's exhibits found in the District Munsif's judgment. The real question would be whether the plaintiffs or their tavazhi along with the other

branches can be understood to have tacitly adopted the karar as binding on them having regard to the general administration of the affairs of the

tarwad and the tavazhies subsequent to the death of Kunhi Thopper and have thereby lost their rights to claim maintenance. This question also was

never raised in the lower Courts and has not been considered. Ex. VIII referred to by the learned Judge admittedly does not refer to the plaintiff's

tavazhi. In this connexion the learned Judge states that

it appears from the District Munsif's finding on Issue II that the plaintiffs have been obtaining the benefit, at any rate, until shortly before suit.

3. We find, and it is conceded, that there is no such finding by the learned District Munsif, what he finds being only this viz.:

Even if the persons who are in actual enjoyment of the properties give anything

gratuitously to plaintiffs, they will not be deprived of their right to get maintenance from the tarwad.

4. The point is not even referred to in the judgment of the lower appellate Court. From these considerations the conclusion is inevitable that Ex. I

does not bar the plaintiff's right to claim maintenance from the tarwad.

5. This being so, Mr. Menon argues that the appellants are entitled straightway to get a decree for maintenance and the decree of the Subordinate

Judge confirming the decree of the District Munsif should be restored. In our opinion this consequence does not necessarily follow from our

conclusion. In the way we look at the case, the plaintiffs have to surmount certain obstacles before they can ask for a decree. Barring the personal

relief, the relief claimed is against the tarwad property. This admittedly is in the hands of the various tavazhies managed by the tavazhi karnavans. In

the absence of the persons as parties obviously no decree can be given against the property in their hands. The decree directed against the

properties in the hands of the karnavan alone as has been given by the lower Courts is unjustifiable in view of the fact that he has not the entire

tarwad property in his possession. Further, as pointed out by Mr. Viswanatha Aiyar on behalf of the karnavans representing the tarwad, in order

to give effect to the plaintiffs' right to maintenance it may be necessary to substitute a new arrangement in the place of the existing one. The law is

well settled that a karnavan cannot set aside an existing maintenance arrangement unless he makes some other suitable arrangement. The plaintiff's

right to maintenance may be given effect to possibly without altering the present arrangements or by some slight adjust merit. These and other

necessary relevant questions can be considered and decided only in a suit in which the entire tarwad is properly represented. Such is not the

framework of the plaintiffs' suit, but we think this is a proper case in which they may be given a chance to proceed with the suit after making the

necessary persons parties to it. The learned Judge, Phillips, J., apparently did not allow them this indulgence because in his view the Suit which the

plaintiffs could bring was one for increased maintenance, while this one instituted by them was for maintenance only. As we have held that Ex. I

does not bar the plaintiffs' suit for maintenance we think they are entitled to proceed with the suit.

6. We, therefore, set aside the decree of the learned Judge and remand the entire case to the District Munsif for fresh disposal according to law in

the light of our observations. All the new defendants will be entitled to file written statements, if they desire to do so and the plaintiffs may amend

the plaint, if necessary, to meet the new contentions which may be urged by the defendants.

7. If the plaintiffs had framed the suit in proper form, there would have been probably no need for this remand. The defect was pointed out to them

by the defendant in the 1st Court though the omission does not seem to have been referred to in the Court of appeal. In these circumstances we

have decided that each party should bear its own costs up to date.