

(1912) 09 MAD CK 0037
In the Madras High Court

Payyam Vellathumkara Mathu Amma and Others	APPELLANT
Vs	
Payvam Vellathumkara Gopalan alias Ryrn Nambiar and Others	RESPONDENT

Date of Decision : 30-09-1912

Acts Referred:

Citation : (1912) 23 MLJ 496

Judgement

1. The plaintiffs in the suit are a Nair lady and her children and the suit is for maintenance for a period of 27 months against their Karnavan and the other members of the tarwad. The plaintiffs are living with the husband of the 1st plaintiff who is also the father of the other plaintiffs. The defence is that as the plaintiffs are living away from the tarwad house, they are not entitled to maintenance. There is an allegation in the plaint that the 1st plaintiffs husband is not possessed of sufficient means to maintain her and her children in comfort. The written statement alleges that according to the practice in North Malabar a Nair lady is taken to her husband's house after the potamuri or marriage and that while she is living with her husband, she is not entitled to any maintenance from the tarwad. The District Munsif dismissed the suit on the ground that a member of a Marumakatayam tarwad is generally entitled to maintenance only while residing in the tarwad house and that the decisions which have allowed separate maintenance to a member living away from the tarwad do not cover a case like the present one. He also refers to the case of Parvathi v. Kamaran ILR 6 M. 344, where it was held that a male member of a Marumakatayam tarwad is entitled to an allowance for his consort and children living with him, that is, in computing the amount to which he is entitled for his own maintenance the fact that he has to maintain a wife and

children should be taken into account. The Munsif then refers to the fact that ""the present day husband of a Marumakatayam female expects her to live with him and that it is even considered derogatory for the husband to have to visit his wife in her house."" He continues:--""I do not deny that indications of such notions are apparent in the country, but side by side with such notions, it is to be hoped, is also growing up another, notion that the husband is responsible for the bringing up of his wife and children. A husband who considers it derogatory to visit his wife in her house ought certainly to consider it disgraceful that his wife and children when living with him in his own house should be maintained at the cost of the wife's tarwad."" The District Judge called for a finding on the question whether the plaintiffs were living with the 1st plaintiff's husband with the express consent of their Karnavan. The District Munsif submitted a finding stating that it was the practice for the members of the wife's tarwad to send her to her husband's in a formal manner. This necessarily indicates their consent. The Munsif observed that beyond this there was no other consent. The District Judge is apparently of opinion that this did not amount to express consent. We are unable to understand how persons who send their girls to her husband's house can be said not to consent in as express a manner as possible to her leaving them and living with her husband. The important question that arises for decision is whether according to the Marumakatayam law a wife living in her husband's house is entitled to maintenance from her tarwad. The Marumakatayam law of maintenance which is the same as the Aliyasan-thanam Law prevailing in South Canara was reviewed at great length recently in a judgment to which one of us was a party *Marudevi v. Pamakka* (1911) 22 M.L.J. 309 and the conclusion arrived at in that judgment was that a member of a tarwad who leaves the tarwad house for a justifiable or proper purpose would be entitled to enforce his or her right to share in the tarwad property by receiving maintenance out of it and that separate residence could not be a reason for refusing maintenance. The basis of the right to maintenance has been fully explained there. It is also indicated in that case that the desirability of living with one's husband is a good cause for a lady to live away from the tarwad house. It was argued then that custom was against it. The answer given was that the custom of all members of a tarwad living together is only a, social custom.

2. Social customs may change without affecting the legal rights of parties. All members of a tarvvad are entitled to the tarwad property and are entitled to the benefit of that property. The only way in which a junior member can receive benefit out of the tarwad property is by receiving maintenance. No decided case has been brought to our notice where it was held that a woman would not be quitting her tarwad house for a proper purpose when she does so in order to reside with her husband. As far as we are aware it is not considered improper; on the other hand, it is considered honorable that a wife should live with her husband if asked to do so. The members of the tarwad also consider it honorable both to themselves and to the lady who is asked by her husband to live with him that she should comply with his wishes. Perhaps, it should be added that an exception should be made in the case of some aristocratic families who consider their own social position so high that it would be derogatory to their ladies to quit their tarwad to live with their husbands, at any rate in a case where the husband is not of an equally high rank. The general rule, however, is as we have stated it. We cannot therefore regard that living with one's husband is a good ground for a woman governed by the Marumakathayam Law being compelled to forfeit her right to maintenance while she lives away from her tarwad house. There is no reason for supposing that the mere fact of her leaving her family homes to live with her husband must always be taken to amount to a waiver of her right to maintenance. Neither she nor her husband may be in a position to make such waiver. The District Munsif's observation that Nayers who consider it proper to take their wives to their own house should feel it disgraceful that their wife and children should be maintained at the cost of the wife's tarwad goes too far. There is no doubt that every honorable man would do his best to maintain his wife and children himself: but it is no disgrace if his means will not allow him to keep them in comfort. There is no reason why in such circumstances the wife and children should not enforce their legal right to get maintenance out of property belonging to themselves and other members of the tarvvad. It may be that on the facts of a particular case a waiver of the right to maintenance while a woman lives with her husband may be properly implied. If the husband is rich and able to provide properly for his wife and children and if no demand for maintenance is made on the tarwad for a long time the court would be justified in inferring

that there was no intention to make a demand on the tarwad for maintenance; but the question whether there was a waiver should be decided on the circumstances of each case. In the present case, as already observed the plaintiffs state that the 1st plaintiff's husband had not sufficient means to provide adequately for her and her children. This allegation was not traversed by the Defendants. It appears to us that the District Munsif did not really try the suit though some documents were admitted in evidence. We must hold that he was wrong in dismissing the suit in limine. The plaintiffs 2 to 4 are minor children of the 1st plaintiff and there can be no reasonable objection to their living with their mother and father. We decide that the plaintiffs are entitled to recover maintenance. We reverse the decrees of the courts below and remand the suit to the Court of first instance in order that the amount to which the plaintiffs are entitled to maintenance may be decided. Having regard to the fact that the law on the question has remained at any rate till recently, in a somewhat unsettled condition, both parties will bear their own costs up to date.