
(1912) 09 MAD CK 0009
In the Madras High Court

Payyam Vellathumkara Muthu Amma and Others APPELLANT
Vs

Payyam Vellathumkara Gopalan alias Ryrn Nambiyar and Others RESPONDENT

Date of Decision : 30-09-1912

Acts Referred:

Citation : 16 Ind. Cas. 895(1)

Hon'ble Judges : Sundara Aiyar, J; Sadasiva Aiyar, J

Bench : Division Bench

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 first 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 plaintiff's 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 her tarwad. The District Munsif dismissed the suit on the ground that a member of a Marumakathayarn 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 tarwad do not cover a case like the present one. He also refers to the case of Varikara Vadaka Vittil Valia Parvathi v. Varikara Vadaka Vittil Valia Kamarun 6 M.P 341 where it was held that a male member of a Marwnakathyam

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 Marumakathayam 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 first 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 house 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 girl 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 Marumakathayarn law, a wife living with her husband in her husband's house is entitled to maintenance from her tarwad. The Marumakathayarn law of maintenance, which is the same as the Aliyasantanam law prevailing in South Canara, was reviewed at great length recently in a judgment to which one of us was a party *Maravadi v. Pamakkar* 22 M.L.J. 309 : 11 M.L.T. 112 : (1912) 1 M.W.N. 109 : 14 Ind. Cas. 383 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 that 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 there 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. Some social customs may change

without affecting the legal rights of parties. All members of a tarwad 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 the 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 honourable that a wife

should live with her husband if asked to do so. The members of the tarwad also consider it honourable both to themselves and to the lady who is

asked by the 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 tarwads 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 the tarwad house. There is no reason for supposing that the mere fact of

leaving her family home 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 Munsifs observation that Nairs, who consider it proper to take their wives to their

own houses, should feel it disgraceful that their wives and children should be maintained at the cost of the wife's tarwad goes too far. There is no

doubt that every honourable 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 their tarwad. 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 plaintiff Nos. 2 to & 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, for 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.