

(1926) 04 MAD CK 0034
In the Madras High Court

(Peetikappurath) Raman Menon and Others	APPELLANT
Vs	
(Puthiyatath Peetikappurath) Madhavan Menon and Others	RESPONDENT

Date of Decision : 28-04-1926

Acts Referred:

Citation : AIR 1927 Mad 244

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—In this case the plaintiffs sue for the redemption of the suit property which was held by the 1st defendant on a kanom, dated 14th February 1908. The 2nd defendant is the karnavan of the plaintiffs' tarwad. The plaintiffs claim under a Will executed by Krishna Menon in 1911 of which the Letters of Administration is filed as Ex. E. The question is whether Krishna Menon was competent to dispose of the property by a Will. The District Munsif found:

for 30 years the property was enjoyed by a junior member of the tarwad in his own right; any right that the tarwad had has been lost. hold that the property had become Krishna Menon's private property and that under his Will plaintiffs are entitled to the same.

2. This paragraph implies that Krishna Menon enjoyed it in his own right adversely to the tarwad and this made it his self-acquisition by prescription.

3. On appeal by the 2nd defendant, the karnavan, the District Judge says that he cannot agree with the District Munsif's statement of the law, that the presumption when a junior member takes possession of property is that he is doing so in his own right. Then he says:

Although the plaintiffs' contention that the property is the self-acquisition of Krishna Menon and was bequeathed to them by Will fails

yet "the plaintiffs can succeed if the property be found to be the property of the tavazhi." The District Judge goes on to observe that the

presumption in the case of a Malabar family is not necessarily in favour of the tarwad, it may well be in favour of the tavazhi and should be so in the present case.

4. It is not clear to me what exactly the District Judge meant to find. Under the ruling in *Govindan Nair v. Sankaran Nair* [1909] 32 Mad. 351 it is settled law that on the death of a male member of a tavazhi his property goes not to the tavazhi but to the tarwad. It may be, the law was not well-known in 1882 but whether well-known or not we must take it that the law was as was decided in *Govindan Nair v. Sankaran Nair* [1909] 32 Mad. 351 so that when in 1882 Theyan Menon, who held this property died, the property, according to the law, devolved on the tarwad, but if any person enjoyed the property adversely to the tarwad either for himself or on behalf of the tavazhi it may be said that by such adverse possession the right of the tarwad is lost. The District Judge makes no reference to any adverse possession or an indication of an intention to prescribe on the part of Krishna Menon, against any lawful owner and he only says that under the circumstances the property must be regarded as tavazhi property.

5. As I have already pointed out this cannot be, because the law says it was tarwad property and this will cease to be so only by the adverse possession of somebody else. It seems to me that the District Judge has not addressed himself to the question from this point of view. I, therefore, call upon the District Judge to record a fresh finding as to whether Krishna Menon's possession was adverse to the tarwad and whether such adverse possession, if any, was on behalf of his tavazhi. Time for the return of the finding six weeks and seven days for objections. (After the return of the finding of the lower Court, the Court delivered the following:)

JUDGMENT

6. There is evidence to show that Krishna Menon had funds of his own. That being so, the finding is consistent with the statement of the law in *Soopiadath Ahmad v. Irimbantakath Manha Mammad Kunhi A. I. R. 1926 Mad. 648*. I accept the finding and the second appeal is dismissed with costs. Time for redemption extended to six months from to-day.