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**(1962) 06 KL CK 0005**  
**In the High Court Of Kerala**  
**Case No : S.A. No. 348 of 1958**

Pennutty Amma and Others

APPELLANT

Vs

Govindan Nair and Others

RESPONDENT

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**Date of Decision :** 01-06-1962

**Acts Referred:**

Evidence Act, 1872 — Section 33  
Transfer of Property Act, 1882 — Section 6(a)

**Citation :** (1962) KLJ 1163

**Hon'ble Judges :** M. Madhavan Nair, J

**Bench :** Single Bench

**Advocate :** V.P. Gopalan Nambiar, for the Appellant; K. Kuttikrishna Menon for Respondent 1 and T.L. Viswanatha Iyer for Respondents 8 to 10, for the Respondent

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## Judgement

M. Madhavan Nair, J.—This second appeal is by defendants 4, 5, 7, 9 and 12 in a suit for partition. Mathu Amma was the mother; and Imbichi Kurup, Kutta Kurup and defendants 4 and 12 are her children. Plaintiffs 1 to 4 are the children through the first wife and defendants 2 and 3 through the 1st defendant of Imbichi Kurup, 14th defendant is the widow and defendants 15 to 18 the children of Kutta Kurup. Defendants 5 to 11 are the children of the 4th defendant, and 13th defendant the daughter of the 12th defendant. Defendant 19 is a brother of the 14th defendant.

The two properties involved in the suit are claimed by the plaintiff as the separate properties of Imbichi Kurup having devolved under the Madras Marumakkathayam Act, XXII of 1933, on Mathu Amma and the plaintiffs and defendants 1 to 3 as his heirs. Mathu Amma having died subsequently, her share has devolved on defendants 4 to 18, also under the aforesaid Act.

2. The appellants-defendants contended the properties to belong to the thavazhi of Imbichi Kurup without any separate rights in him to devolve on his personal heirs.

The Munsif upheld the defence and dismissed the suit; but, the Subordinate Judge, on appeal, reversed the same. Hence this second appeal.

3. Suit item No. 1 is only a leasehold interest in a property admittedly belonging to the family of Mathu Amma's husband. It is not known when and in whose favour the demise was. Ext. B12 dated 4-11-1952 only indicates that the leasehold arose before its date. Ext. A1 dated 24-12-1918, which is a Karar in the family of the landlord, mentioned the property as being then in the possession of Imbichi Kurup. The case of the appellants is that, Imbichi Kurup having been the eldest male member in his tavazhi, the presumption of Marumakkathayam Law that the acquisitions of a karnavan enure to the tavazhi applies to this property, there being no evidence that the acquisition was made out of any separate funds of Imbichi Kurup. Counsel for the plaintiffs on the other hand relied on a family settlement in the tarwad of Imbichi Kurup had in 1898, evidenced by Ext. A4, by which the management of the tarwad was vested in the senior females of two tavazhies, to contend that thereafter no male member ever had been in management of a tavazhi or the tarwad and therefore the aforesaid presumption of Marumakkathayam Law was not attracted in this case. At the time of Ext. A4 Imbichi Kurup was only a minor, and on the principle in Section 6(a) of the Transfer of Property Act I would have held the relinquishment of future karnavasthanam, with the right of management consequent thereon, by a member yet to attain that status may not be legal, but for the fact that the pleadings and the proof in this case are that the males in the tavazhi had never been in management at any time subsequent to Ext. A4. The written statement of the appellants refers to the 4th defendant and before her Mathu Amma having been the karnavastree of the tavazhi, and to the males not having to join in deeds concerning tarwad properties. P.W. 2 who is the seniormost male member in the tarwad has spoken to the fact of his being the seniormost male, but having no right of management--obviously in accordance with the terms of Ext. A4. Kutta Kurup the next senior male after Imbichi Kurup, had been examined in a prior litigation concerning some properties belonging to Imbichi Kurup but was not available for examination in this case. His deposition above mentioned has been proved in this case as Ext. B 13, u/s 33 of the Evidence Act. He had deposed :

Tarwad management is vested in females under an old karar. Patta is in the name of women. I do not know if Imbichi Kurup has executed any deed leasing or demising tarwad lands. There are now two tavazhies and eldest ladies of the two branches execute all tarwad documents.

It then follows that even before Imbichi Kurup attained majority the right of management in this tarwad was vested in the senior females of the tavazhi and Imbichi Kurup had never been in management of the tavazhi as such.

4. Counsel for the appellants pointed out that Imbichi Kurup was in possession of suit item No. 2 which admittedly belonged to the tavazhi. The 1st plaintiff as P.W. 1 has admitted that fact, and therefore Imbichi Kurup is said to have been in

possession of tarwad funds so as to attract the general presumption of Marumakkathayam law to his acquisition of suit item No. 1.

5. The document of acquisition of suit item No. 1 is not before court. Ext. B12, a renewal taken by the 4th defendant on the eve of this litigation, gives little indication as to the prior history of the property. It is not known when and how suit item No. 1 came in the possession of Imbichi Kurup. Ext. A5 shows that he came by possession of suit item No. 2 only in the year 1082 M.E. (1906 A.D.). There is no knowing whether the acquisition of suit item No. 1 was before he was put in possession of suit item No. 2 or after. In these circumstances there is no material to disagree with the finding of the Subordinate Judge that suit item No. 1 belonged to Imbichi Kurup as his separate property.

6. As regards suit item No. 2, the Subordinate Judge has found the property to belong to the tarwad but the improvements belonged to Imbichi Kurup as his separate property and therefore partible among the parties in this suit. All that the Subordinate Judge has observed in this connection is :

The learned Munsif finds that Exhibit A5 is a book which has been written up by Imbichi Kurup I also have to agree with him but he says that the entries in pages 1 and 2 to the effect that the property had been entrusted to Imbichi Kurup and that he had been authorised to effect improvements and that the lease has been caused in 1082 Kanni (1906 September-October) is believable. But he says that the entries are obviously made several years afterwards. It may be correct because the next entry seen made is of 1099 Kanni. But according to me that does not give rise to any cause that due weight cannot be given to that entry. Then, I think the Munsif has gone wrong regarding the value of improvements payable. It is true and absolutely believable that as a tenant Imbichi Kurup is to get value of improvements on redemption.

Counsel for the respondents-plaintiffs contended that this finding as to title to "improvement-rights in suit item No. 2" being on a question of fact should not be interfered with by this Court and cited AIR 1959 S.C. 57, AIR 1959 S.C. 1204 and Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another, in support. But there must be a "finding" before it can be held conclusive. A finding must necessarily be based on a legal reasoning. Vague observations and inference drawn from documents, overlooking the material recitals thereof, cannot be extolled as judicial findings and then attributed finality which they never deserved. In Monohar Das Mohanta Vs. Charu Chandra Pal and Others, , a Bench of five learned Judges of our Supreme Court has held:

The District Judge differed from this finding and observed:

.....there are some unmistakable names of tanks, etc., by which some of the lands of these documents at least can be connected with the suit lands.....these documents relating to these holdings cannot therefore be discarded as unconnected with the suit lands.

These observations are vague, and do not lead anywhere, and cannot be taken as a finding on the question.

7. The Judicial Committee has also taken the view that if a material piece of evidence does not appear from the judgment of the first appellate court to have been appreciated by it, the relative question of fact will be open in second appeal before the High Court. See AIR 1941 55 (Privy Council) .

8. The contents of Ext. A5, which is the most important piece of evidence in regard to the rights of Imbichi Kurup in suit item No. 2, have not been adverted to by the Subordinate Judge and that in my opinion, clinches the issue and leaves the question open for second appeal. Counsel for the appellants points out that Ext. A5, which has been accepted as genuine by both the courts below as a record kept by Imbichi Kurup in his own handwriting, shows that on 1-2-1082 M.E. (September 1906) the two senior ladies in the tarwad had put him in possession of suit item No. 2 on condition that he should pay the jenmi's dues thereon and spend the profits of the property for the maintenance of Mathu Amma's tavazhi and that if the property be taken from him he would be paid the value of the improvements thereon. The Subordinate Judge has stopped with an observation that due weight should be given to the entry therein, but in adverting to the contents of that entry he had overlooked the material portion thereof. The entry is clearly to the effect that Imbichi Kurup was to utilise all the income from the property for the maintenance of his tavazhi. The possession of suit item No. 2 entrusted by the tarwad to Imbichi Kurup on such a condition can only be possession on behalf of the tavazhi or as its representative. In fact it is conceded in this case that Imbichi Kurup had no demise of the land in his individual capacity. If possession was on behalf of the tavazhi, it necessarily follows that the accessory provision to compensate for improvements effected on the land must also be in favour of the tavazhi only. It is pertinent to note in this connection that the instrument of possession was not by the senior female of his tavazhi but by the senior females of both the tavazhis in the tarwad on whom the right of management was vested as per the Family Karar, Ext. A4. The agreement was therefore between the tarwad on one side and Imbichi Kurup as representative of his tavazhi on the other. As the agreement recited in Ext. A5 shows that the possession of suit item No. 2 was conferred on Imbichi Kurup for purposes of the tavazhi and therefore on behalf of the tavazhi the right to compensation for improvements mentioned therein was only the right of the tavazhi and not of the individual. Further, "a right to get compensation for improvements effected on land" has never so far been considered a substantial right by itself. It has always been understood only as accessory to some other right in the property, such as a tenancy, a mortgage or at least possession in bona fide belief of a right in the land. The 1st plaintiff, as P.W. 1, has candidly admitted that Imbichi Kurup had no right in the land. In Ext. A5, Imbichi Kurup had recorded that his possession was for and on behalf of the tavazhi. He was not to have any portion of the income thereof for himself but to spend all the income of the property for his tavazhi. It then follows that the right to

compensation for improvements which can only be an accessory right attached to the possession can enure only to the tavazhi and not to the individual. If Imbichi Kurup had no right or possession of his own in the land, he could not have the accessory right alone in regard to the land. Accessory rights cannot be held to adhere to a vacuum. It is an impossibility in law. The plaintiff advanced a plea of oral sub-lease in favour of Imbichi Kurup under the tavazhi, but could not give reliable evidence to support the same. Reliance was made on a recital in Ext. A3 dated 23-6-1923, which is a renewal of the kanom in favour of the tarwad taken in the name of Imbichi Kurup and the two senior females of the two tavazhies, referring to Imbichi Kurup being in possession of the property and improving the same. As the property has been allotted by the tarwad to the tavazhi of Imbichi Kurup under the Family Karar, Ext. A4 the reference to possession of Imbichi Kurup is easily understood and that is what he himself has recorded in Ext. A5. It cannot, in the context, indicate a possession by Imbichi Kurup in his personal capacity nor indicate a sub-demise in his favour. Ext. A4 is clear of the allotment of suit item No. 2 to Kanthakkali tavazhi which is admittedly the tavazhi of Mathu Amma and Imbichi Kurup. Barring Exts. A3 and A5, no document is referred to by counsel as indicative of a demise of the land in favour of Imbichi Kurup; and in my view those two documents do not indicate any such demise. As I have construed Ext. A5 to indicate only an allotment by the tarwad in the name of Imbichi Kurup for and on behalf of his tavazhi, it has to be held that the oral lease under the tavazhi set up by the plaintiffs has not been made out in the case; and with it must fall their claim to "improvement rights" on the same.

In the result, the decree of the court below is confirmed in respect of suit item No. 1, but discharged in respect of suit item No. 2. As the parties have failed and succeeded in part there will be no order as to costs in this second appeal.