

(1911) 03 MAD CK 0031
In the Madras High Court

P.T. Govinda Panikker and Others

APPELLANT

Vs

T.P.V. Nani alias Narayani Nangiar and Others

RESPONDENT

Date of Decision : 15-03-1911

Acts Referred:

Citation : (1913) ILR (Mad) 304

Hon'ble Judges : Sundara Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. Three points have been argued for the appellants in this second appeal. The first point is that the lower Court has wrongly presumed that properties acquired in the name of a junior member of a tarwad belong to him and not to his tarwad. It has no doubt been stated in several cases by this Court that the presumption is just the other way. See *Vira Rayen v. The Valia Rani, Calicut I.L.R., (1881) Mad., 141, Second Appeal No. 1153 of 1888 and Second Appeal No. 1549 of 1902*. We do not however, understand these cases as laying down that there is any presumption of law either way. The presumption is one of fact, see Mayne's "Hindu Law", paragraphs 289 to 291, and whether a presumption in favour of the property being tarwad property should be drawn or not in any particular case would depend on various circumstances such as the relationship of the member in whose name the title stands to the karnavan at the time of the acquisition of the property in question, the possession of private means by the junior member, the existence of any family funds at the time of the acquisition which disappeared after the acquisition, and any other facts that may throw light on the source of the money used for the acquisition. In this case the lower Court has found on a consideration of the evidence on record that the property in question belonged to the deceased Sankunni. On this view it is unnecessary to consider the second question argued by Mr. Rozario whether the finding against his clients that their title to particular items of property is *res judicata* is correct or not. The third point urged is that with respect to the title of Sankunni to the properties bequeathed by him to the defendants it is *res judicata* in their favour in consequence of the decision in Original Suit No. 6 of 1894, on the file of the

Subordinate Court, Calicut. The appellate judgment, however, decided the case without adjudicating on that question, and the matter cannot therefore be regarded as res judicata. This Second Appeal must be dismissed with costs.