

(1931) 03 MAD CK 0030
In the Madras High Court

(Puthiyakatu) Kunhammayan and Others	APPELLANT
Vs	
(Eachali) Nalakath Kunhi Sow and Others	RESPONDENT

Date of Decision : 31-03-1931

Acts Referred:

Citation : AIR 1933 Mad 169 : 145 Ind. Cas. 758

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The suit out of which this second appeal arises was brought by plaintiff 1, as the assignee of plaintiffs 2 and 3 of their jenm

rights under Ex. B and of their rights under the marupat Ex. A, to recover the suit property which is a shop from the three defendants or whichever

of them who may be found by the Court to be in possession. To understand the position of the other defendants in the case we must go to the

earlier history of the Cheeramoolayil Pookkoth tarwad of which defendant 2 is now the karnavan. The suit property originally belonged to one

Kutti Acha, a member of the Cheeramoolayil Pookkoth tarwad and after her death it has become the property of the Cheeramoolayil Pookkoth

tarwad. This was not originally admitted by the present plaintiffs, but the lower Courts have now found it and the plaintiffs do not question this

finding before me now. After the death of Kutti Acha, her son Kunhikutti Ali became the karnavan of the tarwad. He died in November 1912

while on his return journey from Arabia where he had gone on a pilgrimage. So he is referred to as Hajee. Before he went on pilgrimage it would

seem he was able to induce most of the adult members of the Cheeramoolayil Pookkoth tarwad to agree to a certain karar Ex. E according to

which some arrangements were made. One of those arrangements was that Rs. 100 were to be paid by the tarwad to his three children by the

second wife-they are the present plaintiffs 2 and 3-and his deceased son named Ammad. If the Rs. 100 are not to be paid within six months after

his death, the suit property was to vest in the children as their property.

2. To this arrangement most of the adult members of the tarwad agreed. One of such agreeing members is the present defendant 2 who was then

an anandravan of the tarwad but now karnavan of the tarwad. After Kutti Ali's death, the succeeding karnavan was one Kunhi Ali. It does not

appear that he did anything to pay the Rs. 100 within six months. It looks as if he was willing that the suit property or shop should vest in the

present plaintiffs 2 and 3. His conduct also supports to some extent the propriety of the arrangement made by the Hajee. After him, one Pookkoth

Sow was the succeeding karnavan. It does not appear that Sow did anything either to question the validity of the karar or help the plaintiffs' right

under the karar. It is said Suit No. 505 of 1915 was filed to question the karar by some of the members of the tarwad, but the papers connected

with it are not filed and therefore we may ignore that suit. Another suit, 512 of 1915, also filed by some of the junior members of the tarwad,

ended in a compromise, Ex. 2, according to which the provision in favour of plaintiffs 2 and 3 was made not binding on the tarwad. But this

compromise cannot bind plaintiffs 2 and 3 because they were not parties to it and it was a collusive compromise between the members of the

tarwad. Kunhi Ali was defendant 1 in that suit. From Ex. 2 it does not appear that he was even a party to the compromise. The property itself was

held originally by one K. Ammad under a marupat executed to Kunhi Kutti Ali dated 11th July 1912, Ex. 5.

3. He afterwards assigned his lease rights to Hajee's eldest son, defendant 1, who was Hajee's son by a different wife from the mother of plaintiffs

2 and 3 and who therefore belonged to a different tarwad, namely, Eachal Nalakath. Defendant 1 afterwards executed a marupat Ex. A to

plaintiffs 2 and 3. This produces the impression that at that time certainly defendant 1 and perhaps the senior members of the Cheeramoolayil

Pookkoth tarwad were siding with the plaintiffs and were inclined to support the arrangements in the karar. Plaintiffs 2 and 3 afterwards sold their

jenm right under Ex. B and their rights under the marupat Ex. A. In the present suit both the District Munsif and the Subordinate Judge in observing

that the Hajee brought about the arrangement to benefit his children thought that Ex. E was not binding on the Cheeramoolayil Pookkoth tarwad.

But it has been held in *Cheria Pangi Achan v. Unnalachan* (1917)38IC513, that a karar to which the majority of the adult members of a tarwad or

tavazhi are parties is binding on the tavazhi in general and it is not binding on the dissentient members only to the extent of not depriving them of

their right to succeed as karnavan and of not depriving them of their right to maintenance. Apart from these two it is binding even on the dissentient

members. If there are no dissentient members but if all the adult members are present at the spot and the other members are absent and if that was

the reason why they were not parties to the karar, the position seems to become somewhat stronger.

4. In the present case beyond the reasons given by the lower Courts, viz., that the Hajee got the arrangement made in favour of his children and the

observation of the Subordinate Judge that the rights of plaintiffs 2 and 3 originally were only for Rs. 100 and that the granting of the shop was a

penal provision, they do not seem to have gone into the question of the binding nature of the karar properly. If most of the adult members were

there and agreed to do so, I do not see why the giving of the shop to plaintiffs 2 and 3 should be regarded as a penal provision and not a genuine

provision inserted for their benefit. It is said that Hajee did so much for the welfare of the tarwad that all the other members readily consented. I do

not know if these statements are correct or not. It is a matter which ought to be inquired into. Now seeing that defendant 2 is himself a party to the

karar, it may be said that the interest of the other members of the tavazhi will not be properly represented by him only though he is the karnavan. I

therefore think it proper that the case should go back for a fresh inquiry after making eight members of the particular tavazhi which is interested in

attacking the karar parties to the suit in a representative capacity. The District Munsif will inquire and determine who the eight members ought to

be. Preferably they ought to be members who are not parties to the karar but any other member of the tavazhi who wants to attack the karar may

come on record of his own accord, but the plaintiffs should not be put to the expense of issuing notices to them. After making all these persons

parties, the binding nature of the karar ought to be inquired into in the light of my observations and the decisions on the matter. The decrees of the Courts below are set aside and the suit remanded to the District Munsif for fresh disposal according to law. Court-fees paid in this Court and the lower appellate Court will be refunded to the plaintiffs. Costs up to date as well as hereafter will abide the result by which I do not mean that they should follow the result. The Courts will provide for the costs according to their discretion after the trial.