

(1940) 09 MAD CK 0054
In the Madras High Court

Puthur Veettill Krishnan Chettiar

APPELLANT

Vs

Aramalu Amma and Others

RESPONDENT

Date of Decision : 17-09-1940

Acts Referred:

Citation : (1941) 54 LW 379 : (1941) 2 MLJ 472

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—On the 11th October, 1928, the fourth respondent mortgaged certain property to the appellant and she purported to do so as the karnavastri of a tarwad. There was at the time a karnavan, who is the fifth respondent and the son of the fourth respondent. He was employed as a pointsman on the railway and by, reason of his employment he was absent from the family house for the greater part of the year. The appellant filed in the Court of the District Munsif of Tirur the suit out of which this appeal arises for the purposes of enforcing the mortgage. Two defences were raised, namely, (i) no consideration had passed and (it) the mortgage had not been created in order to provide funds to meet a family necessity. The District Munsif found for the appellant on both these issues. An appeal was filed to the District Court of South Malabar by the first, second and third respondents, who are the junior members of the family. The District Judge was not satisfied that certain questions of fact had been fully investigated by the District Munsif and he remanded the case for findings on two questions. The first was whether the mortgaged property belonged to the tarwad or was the private property of the fourth respondent, and the second was whether the fourth respondent was entitled to alienate the property on behalf of the family as she was a woman. On remand the case was further investigated by the successor of the District Munsif who had tried the case in the first instance. The successor held that the property did not belong to the tarwad, but to the fourth respondent. He also held that the fourth respondent in any event had the right of alienation as the de facto karnavastri.

2. When the matter came before the District Judge again he overruled the finding of the District Munsif that the property belonged to the fourth respondent. He considered that the evidence proved that it was tarwad property. He concurred, however, in the findings of the District Munsif that consideration had passed and that the alienation had been occasioned by family necessity and he confirmed the decree in part on the ground that there had been a prior mortgage in which the karnavan had joined. The District Judge was of the opinion that the fourth respondent was not entitled to act on behalf of the family and that in consequence the mortgage of the 11th October, 1928, was not binding on the tarwad, but inasmuch as there had been a previous mortgage in which the karnavan had joined he allowed a decree for the amount of the earlier mortgage. This had the effect of reducing the decree in favour of the appellant by Rs. 102 and corresponding interest. The only question which this Court is called upon to decide is whether the District Judge was right in holding that the fourth respondent was not entitled to bind the family.

3. The appellant has not printed the evidence and the Court can only look to the judgment under appeal for the purpose of ascertaining the facts. The District Judge held that the only acts of management which the fourth respondent could claim as having been performed by her were these : (i) She lived in the family house, (ii) she had plucked fruits from the trees on the paramba and (iii) she had paid the revenue or the purappad due to the jenmi. He was, however, of the opinion that attending to these matters when the karnavan was employed elsewhere did not amount to management and did not indicate abdication by the karnavan so as to give any right of alienation to the fourth respondent. In due course of his judgment the District Judge said:

In thousands of families in Malabar it would now be happening that the karnavan is living elsewhere following some occupation or profession and that the three acts mentioned above are being performed as a matter of course by the members of the family living on the tarwad paramba. It cannot be stated that thereby a junior member of the family acquires a right to alienate the property.

4. With these remarks we are in agreement. There is no evidence in this case that the karnavan ever renounced his position. According to the karnavan's own evidence his mother paid the revenue out of moneys remitted to her by him for the purpose. This may not be true, but as the evidence has not been printed it is rather difficult for the Court to decide whether it is true or false. Be it either way, the mere fact that the fourth respondent did perform minor acts of management during the absence of her son would not constitute her the karnavastri of the tarwad. Before the Court would be justified in holding that she had become the karnavastri and was entitled to alienate property on behalf of the tarwad it must be shown by positive evidence that the karnavan had renounced or that this was the only legitimate conclusion open to the Court. While there is a karnavan capable of acting and he has not renounced, either directly or by implication, he alone can bind the family. In this case the document might have been sent to

him for signature as was done in the case of the first mortgage, but his mother decided to act without him. We consider that she was not justified in so doing.

5. For these reasons the appeal will be dismissed with costs.