
(1950) 11 MAD CK 0013
In the Madras High Court
Case No : Appeal No. 294 of 1947

Saraswathi Raithi and Others

APPELLANT

Vs

Duggamma Shedthi and Others

RESPONDENT

Date of Decision : 22-11-1950

Acts Referred:

Citation : AIR 1952 Mad 500 : (1951) 64 LW 397 : (1951) 1 MLJ 581

Hon'ble Judges : Viswanatha Sastri, J

Bench : Single Bench

Advocate : K.Y. Adiga, S. Ramayya Nayak and K.P. Adiga, for the Appellant; A. Narayana Pai, K. Srinivasa Rao and K.S. Shetty, for the Respondent

Judgement

Viswanatha Sastri, J.—The plffs, here appellants, claim maintenance at a rate higher than that decreed to them by the trial court. The parties are members of an Alayasanthana family of which deft. 1 is the ejamanthJ. Plffs. 2 to 7 are the children of plff. 1 & plff. 1 & defts. 2 to 8 are the daughters & sons of deft. 1. There were 28 members of the branch of deft. 1 on the date of suit, & the properties out of which maintenance is now claimed by the plffs. were allotted to the branch of deft. 1 under an award, Ex. D. 39, dated 12-2-1932 Though the suit was laid for the recovery of Rs. 10,000 as arrears of maintenance for the period from 1-5-1934 till 25-10-1945, the court below granted a decree only for Rs. 2668-8-0, for the period from July 1941 to 25-10-1945. On appeal an additional sum of Rs. 2881-4-0 is claimed as maintenance for this period, the claim for the earlier years having been given up. Mr. Adiga for the appellants contends that the court below has grossly under-estimated the available income of the family & has not applied the correct legal principles in determining the rate at which maintenance should be paid to the different plffs.

2. The following is common ground : The family house is at Kotadadi & the income of the family consists of rents, both cash & kind, received from its landed properties. The deft. 1's husband, Subbayya Shettl of Marakada, was himself an affluent member of his family with considerable income of his own, which he spent on himself & his children. He died in February 1844. He purchased a town-house in Mangalore for the occupation of himself & his family. In 1934 deft. 1 set up an establishment at Mangalore referred to in the evidence & in this judgment as the Mangalore bidar, intended mainly for the education of the children of her prolific family. Supplies of rice, straw, firewood, coconuts, vegetables, jaggery & fuel were sent from Kotadadi to Mangalore whenever necessary, & a mess was run at the Mangalore bidar. Day to day cash expenses incurred in the purchase of groceries & the like were also met, sometimes out of the family funds & sometimes from contributions made by or on behalf of the members of the family. The youngsters of the family who were receiving education at Mangalore were housed & fed at the Mangalore bidar, & their parents, whenever they happened to go to Mangalore, stayed with them. There was a residential family house & an establishment maintained at Kotadadi for the members of the family. Accounts of the receipts & disbursements of the family were kept by or on behalf of deft. 1 but these accounts are not now available, the sons of deft. 1 charging one another with the responsibility for their non-production. The deft. 1 being an old lady depended on one or other of her sons for the management of the properties, is not wholly to blame for the non-production of the accounts. There is, however, available a rough account of receipts & expenses maintained by deft. 8 for the period beginning from January 1944. On 22-10-1941 the plffs. through their advocate, gave notice to deft. 1 claiming arrears as well as future maintenance separately for themselves. Plff. 1's husband, Ranianna Rai, has been in Govt. service, & plff. 1 & some of their children were staying with him wherever he happened to be employed & also in the Mangalore bidar for various periods of time. During the period from July 1941 till April 1944 there was a working arrangement under which the members of the family who lived at the Mangalore bidar agreed to share the expenses, though some of them paid & the others did not pay regularly. Plaintiff 1's husband paid the charges incurred for the upkeep of his wife & children whenever they or any of them stayed in the

Managalore bidar during this period. This arrangement, however, ceased to be in force after April 1944.

3. All the plffs. lived in the Mangalore bidar from July to December 1942. From January 1943 till the end of March 1944 plffs. 2 & 3, & from

April 1944 till April 1945 plffs. 2 to 6 lived in the Mangalore bidar. None of the plffs. lived there after April 1945. The bulk of the family income

consists of the rice rents received from tenants. Since the price of rice varies from time to time its conversion value also varies, & the maintenance

awardable to the members of the family after deduction of the common family expenses, would also vary from year to year. The learned Judge has

granted a decree at varying rates for the different periods for which maintenance was awarded.

4. Mr. Adiga for the appellants contends that in arriving at the net income of the family from which maintenance was payable to the plffs. the

learned Judge erred in deducting the expenses of the Mangalore bidar & that the only legitimate deductions that could be made were the expenses

of the family & its establishment at the family house at Kotadadi. He argues that not Only the children of female members of the family but also the

wives & children of the male members were fed at the Mangalore bidar when they happened to go there, & that the expenses incurred on this

account should not be deducted in arriving at the net income of the family available for distribution to the plffs. He further maintains that the learned

Judge erred in treating all members of the ""family alike, including majors & minors, & those who contributed to the Mangalore bidar & those who

did not, & in giving the plffs. only a "pro rata" maintenance by dividing the net income of the family by the number of the members for the time

being. No objection was taken to the other deductions like Viniyagas, Ejamanthi's expenses, building repairs etc, allowed by the court below from

the gross receipts before arriving at the net income of the family available for distribution as maintenance to the members of the family, but

objection was taken to the computation of the total income of the family made by the learned Judge.

5. I have been referred by learned counsel to some decisions of this Court dealing with the rights of junior members in an Aliyasanthana or

Marumakathayam family. Marumakathayam or Aliyasanthana Law as administered today by the courts, though resting on ancient usage, has

largely been moulded by judicial decisions. So far as this branch of the Law is concerned, courts have not been inelastic, unyielding or unwilling to

respond to social & economic changes & the needs of a progressive society. The old customary law did not recognise the union of man & wife as

a valid or binding marriage, but regarded it as a state of concubinage into which the woman entered of her choice & was at liberty to change when

she pleased. But today such unions are as permanent & sacred as the matrimonial ties recognised in other systems of law, & this court has held

that the reasonable expenses of the marriage of a member of a Marumakathayam or Aliyasanthana family have to be provided for by the tarwad if

it has the means to do so. It was thought at one time that a junior member of a tarwad had a right to be maintained only in the family house & had

no right to separate maintenance if he or she resided elsewhere. This resulted not only in the over-crowding of tarwad houses but also in retarding

the growth of family ties & affection between the spouses & in acting as a clog upon the enterprise & initiative of the junior members of the tarwad.

It had long ago become a recognised practice in the west coast for a woman to live with her husband & her children. Today a junior member who

leaves the tarwad house to live separately with her husband & children is entitled to separate maintenance, & a male who lives separately from the

tarwad in order to pursue his vocation or for other reasonable cause, is likewise entitled. Formerly a right to maintenance meant only a right to

sufficient food, raiment & small quantity of oil. Today the right includes a right to ""menchilavu"" or extra expenditure necessary for leading a

comfortable life consistently with the status, dignity & the means of the family, & the needs of its members under the conditions of modern life.

6. In 1898. in "Krishnan. v. Govinda Menon, 8 M.L.J. 294", this court, while recognising the obligation of a karnavan to educate the junior

members of the tarwad, declared that it was not incumbent on him to ""give the junior members education through the medium of the English

language or on western lines"" & declined to order the karnavan to pay the school fees & other expenses incurred in imparting English education to

the junior members on western lines. In 1907 this court held in "Neelakanta Thiruvambi v. Ananthanarayana Aiyar, 19 M.L.J. 590 that in the case

of a well-to-do family the imparting of education in English to the junior

members of the family was a necessary & proper purpose for which the funds of the tarwad could be spent & the properties of the tarwad could be made liable. Having regard to the high percentage of literacy in Kerala & Canara & to the very large number of people from this part of the country employed in public services both in India & outside, & also in the pursuit of other avocations, the imparting of school or collegiate education to the junior members of the family must now be held to be a legitimate purpose for which the karnavan of Ejman is entitled to spend the funds of the tarwad so long as the expenditure is reasonable & consistent with the income of the tarwad & the needs of the other members of the family. If there is no facility for imparting education in or near the tarwad bouse & there are several boys & girls that have to be educated in Schools or Colleges, there is nothing improper la the Ejman or Kamavan setting up a separate establishment In a city where educational facilities are available & providing for the residence & mess of the students who pursue their studies. Judge-made law must be stable, but yet it cannot stand still ignoring the progress of society & the march of events. I hold the maintenance of the Mangalore bidar for the education of boys & girls of the Kotadadi family was a proper & necessary purpose for which the Ejmanthi, deft. 1 was entitled to spend a reasonable portion of the Income of the family properties. Some of the plffs. themselves have taken advantage of this establishment at Mangalore & I cannot accept Mr. Adiga's contention that the expenses of the Mangalore bidar should be left out of consideration in fixing a rate of maintenance for the junior members of the family. The fact that the husbands of the ladies or the children of the male members of the tarwad came & stayed at intervals at the Mangalore bidar, does not result in the karnavan becoming liable to account in respect of the expenses incurred by him for their food & lodging. I have no reason to think that people in the west coast Insist on such a sordid accounting by their karnavan. Nor does the law compel me to order the kamavan to account for the expenses incurred by him in receiving & maintaining guests or near relations of the family.

7. With regard to the right of a Junior member of an Aliyasanthana or Marumakathayam family to maintenance, Mr. Adiga stressed the point that their right is not analogous to the right of the widow of an undivided coparcener

in a Mitakshara family, but is of the same quality as the right of the male coparcener himself. It has no doubt been held in several decisions of this court that a junior member of a tarwad Is a co-proprietor of the tarwad properties with the karnavan & other members & that the right to maintenance is the mode in which this right of ownership is effectively exercised by the junior member. At the same time, it has also been recognised that the karnavan has very large powers of administration of the tarwad properties & its funds & the junior members cannot claim that the whole of the net Income of the tarwad should be distributed among the several members or accounted for as If they were tenants-in-common, The Mitakshara rule of stirpital division does not apply. Each individual member can claim maintenance for himself & as a rule maintenance is awarded "per capita. But a Junior member is not entitled to claim an aliquot share of the net income of the tarwad properties & a karnavan is not accountable if he gives some members more than what he gives to others, so long as he gives to each what, under the circumstances, would be a reasonable allowance for his or her subsistence. Ekanat Thayu Kunji Amma v. Ekanat Sangunni, 5 Mad 71. The needs & requirements of the different members of the family may vary according to their age, health & other circumstances. The karnavan has to incur expenses in connection with payment of revenue on the lands, repairs to buildings, renewal of kanoms, births & deaths, performance of the customary charities, reception of guests & relatives, maintenance of the establishment, & similar items. A prudent karnavan might set apart a portion of the income of the tarwad in order to meet these charges year by year. It is by taking into account these several factors that the rate of maintenance awardable to each member of the family can be settled. In my opinion, the learned Judge has not misapplied any of the well settled principles of law in fixing the rate of maintenance for the plffs. (The rest of the judgment is not material for the purposes of this report.)