

(1936) 02 MAD CK 0028
In the Madras High Court

T.E. Narayana Tirumampu and Another	APPELLANT
Vs	
Thirumampu Valia Govinda	RESPONDENT

Date of Decision : 10-02-1936

Acts Referred:

Citation : AIR 1936 Mad 573 : 163 Ind. Cas. 190 : (1936) 43 LW 711

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The question raised in these Second Appeals is, what is the Article of the Limitation Act applicable to a suit by a

Court auction-purchaser or assignee under a private treaty of the arrears of maintenance due and payable to a junior member of a Malabar tarwad

for the recovery thereof? The arrears are claimed according to a family karar which appears to have been executed on 17th May 1907 and

provided for payment of allowances in cash and in kind to the various members of the family according to a certain scale. In S. A. 1794 of 1931

the claim is to recover the value of 1974 edangalis of paddy with interest and cash Rs. 29-12-7 which were due to one Tirumumpu, a member of

the tarward whose right was purchased in execution of a decree obtained by the plaintiff against the said Tirumumpu. In S. As. Nos. 425 and 426

of 1932 the claims are similar, based on assignment deeds assigning the arrears due to certain other members. It may be stated that the arrears in

all these suits accrued six years before suit. The lower appellate Court took the view that the claims are based on the said karar, that Article 116,

Lim. Act, would apply and that all the suits are barred by limitation.

2. It appears to me that this view is unsound and does not proceed on a correct

appreciation of the claim made in the plaints and the nature of the right to maintenance of a member of a Malabar tarwad. On a correct reading of the plaints it cannot be said that the claims are based solely on the karar; they are based on the general law applicable to the parties and the karar is relied on as evidence of the arrangement come to and for the rate of allowance and the manner and method of its payment. The right of a member of a Malabar tarwad to maintenance is a proprietary right and based on co-ownership in the property of the tarwad. The claim to recover maintenance or arrears of maintenance has been held to fall within Article 127, Lim. Act as it is virtually a claim to participate in the joint enjoyment of the tarwad property and therefore "to enforce the right to a share therein." The fact that the claim is based on the karar, is in this case, does not alter the nature of the claim. [Vide Achutan Nair and Another Vs. Kunjunni Nair and Another,]. But Article 127 cannot be availed of by an assignee as it is restricted in its scope to the members of a joint family. The claim in this case is substantially to recover a share of the profits or the income of the tarwad properties due and payable to a member for the period assigned. The article applicable would in my opinion be Article 120 and prima facie all the claims would be barred by limitation. But Mr. Govinda Menon contends that the allowance has been made a charge on the income of the tarwad property and that under Article 132, Lim. Act the claim is not barred. The contention is based on the following clause in the karar:

The karnavan should meet all the expenses mentioned in paras. 5 and 4 with the yearly income from the moveable and Immovable properties of the mana, and for such expenses, the karnavan and the income from the properties alone shall be liable.

3. Having regard to the fact that the maintenance of a member is regarded as a charge on the tarwad property, [vide Chandu v. Raman (1886) 11 Mad 378], I think that the intention of the parties as gathered from the karar is to create a charge on the income. Where an allowance of the nature in question is made payable out of the rents and profits of Immovable property, it would be money charged upon Immovable property within the meaning of Article 132, Lim. Act. In the plaint the claim to enforce the charge is made thus in para 18:

The plaintiff prays for a decree and judgment directing the defendant personally and as karnavan and manager of his mana to pay plaintiff out of the annual income of the mana properties.

4. So far therefore as the relief is sought from the income of the Immovable property, the claim would be governed by Article 132 and would not be barred [vide also Muhammad Zaki v. Chaku (1885) 7 All 120]. I therefore reverse the decree of the lower appellate Court in S. A. 1794 of 1931 and restore the decree of the District Munsif with costs here and in the Court below.

S. A. Nos. 425 and 426 of 1932.

5. These second appeals stand on a different footing. The deeds of assignment whether viewed as transfers of an interest in Immovable property or transfers of a charge, require registration. But they are unregistered and any claim based thereon is not sustainable. S.A. Nos. 425 and 426 of 1932 must therefore fail and I accordingly dismiss them.