

---

**(1946) 03 MAD CK 0045**

**In the Madras High Court**

**Case No : Appeals No's. 440 and 441 of 1944**

Thatha Amma alias Rugmini Amma and Others

APPELLANT

Vs

Thankappa alias Madhava Mannadiar and Fifteen Ors.

RESPONDENT

---

**Date of Decision : 14-03-1946**

**Acts Referred:**

**Citation : (1946) 03 MAD CK 0045**

**Hon'ble Judges : Yahya Ali, J; Somayya, J**

**Bench : Division Bench**

**Advocate : T.V. Muthukrishna Ayyar, for D.A. Krishna Variar and Ravi Varma, for the Appellant; B. Sitarama Rao and K.P. Raman Menon, for the Respondent**

**Final Decision : Dismissed**

---

## **Judgement**

Somayya, J.—Plaintiffs appeal against the decree of the Subordinate Judge of Palghat in Original Suit No. 29 of 1941. Though the suit is one for maintenance, the questions that were tried in the Court below and which are to be decided here relate to the title of the contesting Defendants to various properties which are claimed by them as their exclusive and separate properties. The quantum of maintenance depends on what the family properties are and for that purpose it had become necessary to decide whether the properties claimed by each Defendant or each set of Defendants are really his or their separate properties. The first Plaintiff is the sister of the first Defendant and the other Plaintiffs are her children. The Plaintiffs and Defendants 1 to 16 are members of a tavazhi of which the first Defendant is the karnavan. First Plaintiff, Defendants 1 to 6 and Defendants 8, 9 and 10 are the children of the seventh Defendant, their mother. The seventh Defendant and her children and grandchildren by the daughters are members of the tavazhi. As the eldest male member, the first Defendant, is the karnavan of the tavazhi.

2. There are thirteen items which are claimed in the plaint as being the family properties. The usufructuary right in item 1 and the third item are admitted by the Defendants to belong to the family and the Appellants have been given

maintenance from the income of these properties. The first Respondent has purchased the jenm right in the first item and claims that right to be his exclusive property. The present suit being only one for maintenance, the lower Court left open the question whether jenm right of item 1 belongs to the family or whether it is the exclusive property of the first Defendant, as the income of the property belongs to the family until redemption of the usufructuary mortgage. We think that this is a proper course to take. Items 2, 4 and 11 comprise the right to the usufruct from certain trees on some lands and the income therefrom is negligible.

3. The fight centred round items 5 and 6 which are claimed by the first Defendant, item 7 claimed by the third Defendant, items 8 and 13 claimed by Defendants 1 and 2 as their joint property, items 9 and 10 claimed by the second Defendant, and item 12 claimed by the seventh Defendant, the mother. These properties were found by the lower Court to belong to the several claimants. The Plaintiffs appeal and the question is whether the lower Court's finding that the properties are the separate properties of the several Defendants is correct.

4. The seventh Defendant had married one Kandar Mannadiar who was a member of a very rich tarwad. During the last years of his life he was also the karnavan of his tarwad. The seventh Defendant and her children do not belong to his tarwad being members of a different tarwad. The attempt of every karnavan ordinarily is to save as much as he can from the properties of his tarwad for the benefit of his wife and children who have no claim on his tarwad. It is said that Kandar Mannadiar made a gift of some properties to the first Defendant and found the money for the purchase of several other items in dispute. It is urged that under Marumakkattayam law which governs the parties, if a husband or a father makes a gift to his wife and children or to his wife alone or to one or more of his children or when he makes a purchase in the name of one or others above mentioned, the presumption is that the property is held as the joint property of the tavazhi of the wife and his children by that wife, and that the presumption is to be rebutted by the person setting up an absolute right to the property by proof that the husband or father intended that he, she or they should take the property as his, her or their exclusive absolute property. It is also said that purchases made by a karnavan or by the junior members of a Malabar tavazhi or tarwad should be presumed to be tarwad properties until the contrary is established. The chief question involved in this appeal is whether this view of the law is correct and, if so, how far the presumption in favour of the property being the tavazhi property is rebutted by the various claimants.

5. We shall first take up the question whether there is a presumption under the Marumakkattayam law that the property given by a husband to his wife and children or to his wife alone or to one or more of his children is a gift to the entire tavazhi. With this is connected the question whether a property acquired by the husband in the name of the wife or child is to be presumed to be on behalf of the tavazhi to which the wife or child belonged. This question has been

the subject of several decisions. It has been, to some extent set at rest by the Legislature. Section 48 of the Madras Marumakkattayam Act (XXII of 1933) enacts:

Where a person bequeaths or makes a gift of any property to, or purchases any property in the name of, his wife alone or his wife and one or more of his children by such wife together, such property shall, unless a contrary intention appears from the will or deed of gift or purchase or from the conduct of the parties, be taken as tavazhi property by the wife, her sons and daughters by such person and the lineal descendants of such daughters in the female line.

6. This Act is not retrospective and applies only to transactions after 1st August 1933 when the Act came into force. Section 48 applies only to cases of gifts to or purchases in the name of (i) the wife alone or (ii) the wife and one or more of his children by such wife together. So, if there is a gift to or a purchase in the name of one or more of the children alone, or in favour of all his children but not in favour of the wife also, the rule enacted in Section 48 does not apply. From the provisions of this section, one would be led to infer that, in other cases not covered by the two cases mentioned in the section, the presumption would be that the property belongs to the person in whose name it is acquired. But it is said on behalf of the Appellants that, as regards transactions which are not covered by Section 48, we have to scrutinize the law as it stood before the Act and see what the law then was. It is urged that, as there is no positive enactment that in cases other than those mentioned in Section 48, the presumption is in favour of the person in whose name the properties gifted are acquired, the previous law on the subject has not been altered. As regards the transactions which took place prior to 1933 when the Act came into force, we have to see what the law then was.

7. This takes us to the consideration of the question as to what exactly is the presumption to be applied apart from the Marumakkattayam Act. In a very early decision in *Narayanan v. Kannan* ILR (1884) Mad. 315 a father made a gift of some of his properties in favour of his two sons and his daughter and the terms of the gift deed were that the properties were to be enjoyed by the donees and the descendants of his daughter in the female line for ever. One of the donees contracted debts and his share was sought to be attached by a creditor of his. The question was whether the donee, the judgment-debtor, had an attachable interest. The contention was that he had no power to alienate the property as the gift was to the tavazhi of the donees and that therefore the attachment was illegal. The District Munsif upheld this contention and set aside the attachment. On appeal that decision was reversed on the ground that the donees took an absolute interest as tenants-in-common. There was a further appeal to the High Court. *Muttusami Ayyar, and Bandt JJ.* decided that the wording of the gift deed passed an absolute estate to the grantees as tenants-in-common and that the further restriction that the land should be enjoyed by the donees and the descendants of the daughter in the female line for ever was repugnant to the

absolute estate granted by the document, that therefore the donees had an absolute interest in the property and that the creditor could attach the interest of his judgment-debtor. This decision was doubted in later cases on the ground that it is opposed to the principle laid down by the Judicial Committee in *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick* (1857) 6 M.I.A. 526 and (1874) L.R. 2 I.A. 7 (Privy Council) , that in construing a document executed by a Hindu, due weight should be given to the notions and ideas of an ordinary Hindu donor and to the ordinary method of enjoying property. As the ordinary mode of holding property in the West Coast was what may be called the tarwad or tavazhi right, i.e., property to be held by a female and her children and the descendants in the female line, a donor in Malabar should be presumed to intend that the donee should enjoy the property as tavazhi property and that the decision in *Narayanan v. Kannan* ILR (1884) Mad. 315 should be reconsidered, as it did not take note of this presumption. The question was referred to a Full Bench by Best and Subramania Ayyar JJ. in *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.). The appeal was heard by a Bench of four Judges of whom Muttusami Ayyar J. was one. The judgment is a very brief one and the case itself related to a gift to one of the wives of the donor and her children. The Full Bench said this:

The question referred to us is whether Ayisumma and her children took the properties with the incidents of property held by a tarwad. In the case before us, the donor expressed no intention as to how the properties should be held by the donees and, in the absence of such expression, the presumption is that he intended that they should take them as properties acquired by their branch or as the exclusive properties of their own branch, with the usual incidents of tarwad property in accordance with the Marumakkattayam usage which governed the donees. This view is in accordance with the principle laid down by the Privy Council in *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick* (1857) 6 M.I.A. 526 and (1874) L.R. 2 I.A. 7 (Privy Council) . The decision in *Narayanan v. Kannan* ILR (1884) Mad. 315 was not followed in *Moidin v. Ambu* Second Appeal Nos. 647 and 648 of 1890 (unreported) and it appears to us to be in conflict with the rule of construction indicated by the Privy Council.

8. The proposition laid down is that the Court should take into consideration the ordinary notions and wishes of the persons in Malabar in the position of the donor and also the ordinary incidents of property in that district. In (1874) L.R. 2 I.A. 7 (Privy Council) , the gift was made by a Hindu in favour of a female. There was no indication in the documents whether the grantee was to take an absolute estate or only a life estate. The Judicial Committee ruled that, having regard to the ordinary notions of a Hindu testator, the presumption is that he would not ordinarily intend a female grantee to take an absolute estate and that he would like to preserve the property in the family. Unless there were words expressly granting an absolute estate, the presumption should be that the female grantee takes only a life estate. This rule of construction laid down by *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.) was applied to a case of gift to a

person governed by Marumakkattayam law in *Koroth Amman Kutti v. Perungottil Appu Nambiar* ILR (1906) Mad. 322. In *Pattathruvath Pathumma v. Mannamkunniyil Abdulla Haji* ILR (1907) Mad. 228, a Moplah made a gift of some land to his wife Ayissa who belonged to a tarwad governed by the Marumakkattayam law and the question was to whom the land descended on Ayissa's death. In that case, the gift was expressed to be only in the name of the wife but there was a finding by the lower appellate Court that the gift was intended both for the wife and for her children. Treating the gift as one in favour of the wife as well as her children White C.J. and Wallis J. held that the case was governed by the Full Bench decision in *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.) and that it was taken by Ayissa and her children with the incidents of tarward property.

In *Naku Amma v. Raghava Menon* ILR (1912) Mad. 79, Miller and Abdur Rahim JJ. had to consider a case where again the deed of gift was clearly expressed to be to the wife and her children. Miller J. said this:

Exhibits XXXIV and XIV make it clear that the gift was to her and her children and I find no warrant for construing a gift so expressed as conferring on the donee an absolute title to the property given, where, as here, the donee is the wife of the donor and a member of the Marumakkattayam tarwad.

9. The question then came up before another Full Bench in *Chakkra Kannan v. Kunhi Pokker* ILR (1913) Mad. 317 (F.B.). The reference to the Full Bench was made by Sankaran Nair and Tyabji JJ. Mr. Sankaran Nair (as he then was) had appeared in the case before the earlier Full Bench, *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.), and the learned Judge pointed out in his order of reference that the decision in *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.) should be confined to a case where the donees formed a separate tavazhi with karnavan of its own and that it was wrongly extended to other cases as well.

10. In connection with gifts in favour of wife and children, is it necessary that the donees should at the time of the gift be living separately from the main tavazhi with a karnavan of its own? Should the donees give up their interest in the main tarward and form, so to say, an independent tarwad? These and some other conundrums were raised after the decision in *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.). As Mr. P.R. Sundara Aiyar in his work on *Malabar and Aliyasanthana Law* points out at page 168:

In *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.), the Full Bench however overruled the case, *Narayanan v. Kannan* ILR (1884) Mad. 315. It laid down that, when there is a gift by a father in favour of his wife and children, there is a presumption that the property is intended to be for the benefit of the branch to be held with the incidents of tarwad property. This decision was by some felt to be unsatisfactory and various attempts; were made to get round it. One suggestion was that it applied only to cases where the branch relinquishes

its interest in the tarwad property and thereby becomes a "tarwad by itself"; Kenath Puthen Vittil Tavazhi v. Narayanan ILR (1904) Mad. 182 (F.B.) and Ummanga v. Appadorai Patter ILR (1910) Mad. 387. This was qualified later on into one that the tavazhi must have been living separately. The reason given was that joint tenancy outside joint family was unknown and the only joint holding (apart from the tenancy-in-common) known to the law was holding by the tarwad. The genesis of this fallacy has already been traced. It was also argued that the tarwad karnavan was the person bound to maintain the members and was the lawful guardian of the minor members and what, in those circumstances, was to be the position of the tavazhi karnavan? Had he simply to draw the income and accumulate it or was he entitled like the tarwad karnavan (as was said of him in some cases) to have uncontrolled power of disposition over the income?

\* \* \* \*

Another and more substantial objection was that in the case of Marumakkattayam people the possibility of the wife taking another husband and having children by him must always be present to the mind of the donor and the intention of benefiting these latter cannot be expected of him.

Some of these difficulties were pointed out by Sankaran Nair J. in his order of reference in the Full Bench case of Chakkra Kannan v. Kunhi Pokker ILR (1913) Mad. 317 (F.B.). Several questions were referred to the Full Bench and they are set out on page 327. The question with which we are concerned is the first question which runs thus:

When properties are given by a person to his wife and children or children alone following the Marumakkattayam law, do the donees constitute by themselves a tarwad or tavazhi and, if they do so, is the right of management of the properties forming the subject of the gift vested in the senior male member thereof?

Wallis C.J. after referring to the earlier decisions on the point and after pointing out that the Full Bench decision in Kunhacha Umma v. Kutti Mammi Hajee ILR (1892) Mad. 201 (F.B.) was followed in a number of cases gave the answer to the first question in these terms:

The presumption is that the donees take the property with the incidents of tarwad property including those mentioned.

In his discussion, the learned Judge dealt only with the case of a gift by a person to his wife and her children. In such a case, he said there was a presumption that they were intended to take the properties as the exclusive properties of the branch or the tavazhi of the mother and children with the incidents of tarwad property. He says this:

In the absence of express provision, the presumption is that the property is to be enjoyed by the mother and her issue in the way in which property is customarily held and enjoyed among followers of the Marumakkattayam law. The decision,

Kunhacha Umma v. Kutti Mammi Hajee ILR (1892) Mad. 201 (F.B.), proceeded on the authority of two decisions of their Lordships of the Judicial Committee which laid down that the law governing the parties is one of the circumstances to be taken into consideration in ascertaining the intention of the donor. As pointed out in the judgment of one of the Judges who made the reference to the Full Bench, the presumption was arrived at in consideration of what were known to be the notions and wishes of persons in the position of the donor and also of the ordinary incidents of property in the district. This view was accepted by the Full Bench of four Judges two of whom Muttusami Ayyar and Wilkinson JJ. were well acquainted with Malabar, and that it was well founded is suggested by the fact that the decision has not only been accepted but has been given a considerable extension in the neighbouring State of Travancore, as pointed out during the argument by my learned brother speaking from his experience as Chief Justice of that State.

The learned Chief Justice did not deal with the gift to the children alone, though it was included in the first question that was referred to the Full Bench. Sadasiva Ayyar J. also dealt with the question of a gift in favour of wife and children. Srinivasa Ayyangar J. also dealt with that one question, and his answer is:

My answer to the first question is that it is not the giving of properties by a person to his wife and children that constitutes them a tarwad or tavazhi but that if properties are given to a wife and children following the Marumakkattayam law, they as a tavazhi hold those properties with the incidents of tarwad property, and the right of management of the properties is vested in the senior male member of that tavazhi.

The discussion of all the learned Judges shows this: If the donees are all the members of a tavazhi, then it may be presumed that the donor intended that the donees should take the property with the incidents attaching to tarwad property and that they were not entitled to hold it as tenants-in-common. Srinivasa Ayyangar J. refers to this aspect of the case and he begins his judgment thus:

In India it is not uncommon for groups of persons though not incorporated to hold properties as if they were corporate entities. Castes and sub-castes hold property as such, so also village communities. But the more common and familiar instances of such groups in Southern India are the joint Hindu family governed by the Mitakshara law, the Nambudiri Illom governed by the Makkattayam law, the Nayar tarwad governed by the Marumakkattayam law and the Aliyasanthana family of South Kanara. \* \* \* The incidents of such group holding are now well settled. \* \* \* The tavazhis or the subordinate groups constituting the tarwad are, I think, capable of holding properties as corporate units with the incidents of tarwad property, at the same time retaining their joint interest in the properties of the main tarwad, just as branches and sub-branches in a Mitakshara joint Hindu family are capable of holding properties with the incidents of joint Hindu family property. I am also of opinion that some only of the members of a tavazhi cannot form a corporate unit capable of holding

property as such.

11. So far, there is no decision that, if a property is given by a father to a wife alone or to one or more children, the property is to be held as tarwad property. The only point settled by the various decisions is that the property would be held as tarwad property if the gift is in favour of the wife and children. In the case of members of a joint family, if a gift is made to all the members who at the time of the gift constituted a joint family, the Courts have ruled that the presumption is that they take the property as members of a joint family with mutual rights of survivorship and not that they take as tenants-in-common. But if the donees did not constitute the entire joint family and were only some of the members, this presumption does not arise. Even in the case where the wife alone was mentioned in the gift deed as in *Naku Amma v. Raghava Menon* ILR (1912) Mad. 79, the Court found as a fact that, though her name alone was mentioned, it was really a gift in favour of the wife and children. In that case there were two gift deeds; one was expressed to be to the wife and children and the other document was in favour of the wife alone. Dealing with the gift deed which was expressed to be in favour of the wife, the learned Judges were inclined to think that in the absence of expressions like "to be enjoyed by you and by your sons and grandsons for ever and ever" or some similar words it was intended by the donor as a putravakasam gift, i.e., a gift for the wife and her children. Then they referred to the evidence of subsequent conduct and found that even the property which was gifted to the wife alone was treated and enjoyed by the wife and children.

12. The next decision is that of *Coutts Trotter and Kumaraswami Sastri JJ. in Kuyyattil Kundan Kutty v. Vayalpath Parkum* (1915) 32 I.C. 107. There the property was given to four sisters and, though the deed was in the form of a sale, it was found to be really a gift. The question was whether the donees took as tenants-in-common, each having an absolute right in a quarter or whether they took it with the incidents of tarwad property. The donees were the sole members of a tarwad or tavazhi and the gift was in favour of all the members of that tarwad. *Coutts Trotter J.* and *Kumaraswami Sastri J.* differed. *Coutts Trotter J.* held that the gift was to the four ladies absolutely without the incidents of tarwad property. He based his judgment on the ground that the express right of alienation which was conferred upon the donees was in direct conflict with the idea of the property being held with the incidents of tarwad tenure the chief of which is that the property is inalienable. *Kumaraswami Sastri J.* took the opposite view and after formulating the question for decision as.

whether the donees under Exhibit A took the property as tavazhi property with all the incidents attached to tarwad property or whether each of them took an absolute and specified fourth share.

13. first considered the terms of the document and held, differing from *Coutts Trotter J.*, that the document did not in terms confer on the donees a power of alienation and that it did not clearly indicate that the donor did not intend the

donees to take it as putra-vakasam property. Then he referred to the presumption that ought to be drawn in cases where there was no such clear indication in the document. He pointed out that, after the decision of the Full Bench in Cakkra Kannan v. Kunhi Pokker ILR (1913) Mad. 317 (F.B.), it was unnecessary to go into the earlier decisions and in the course of the judgment he said this:

It has been argued by Mr. Sundaram that the principle enunciated by the Full Bench in Kunhacha Umma v. Kutti Mammi Hajee ILR (1892) Mad. 201 (F.B.) and Chakkra Kannan v. Kunhi Pokker ILR (1913) Mad. 317 (F.B.) does not apply to cases where (i) the donor is not the father and (ii) where the deed of gift is not expressly to the donee and his or her children. I find it difficult to see why such distinction should be drawn. The decision in Kunhacha Umma v. Kutti Mammi Hajee ILR (1892) Mad. 201 (F.B.) proceeded on the general principle enunciated by the Privy Council in Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick (1857) 6 M.I.A. 526 and (1874) L.R. 2 I.A. 7 (Privy Council) and if the ordinary notions and wishes of the donor may not improperly be taken into consideration in construing the nature of the estate intended to be conferred, there is no reason why the same test should not be applied to the gift by an uncle as to a gift by a father. The ratio decidendi of the decisions seems to be that a Hindu ordinarily intends to confer on the donee such an estate as the donee would take under the personal law governing him. The degree of propinquity is, therefore, immaterial and affords no test. The case may be different where a donor not following Marumakkattayam law gives properties to those who do, but it is unnecessary to express any opinion in this appeal. It is sufficient for the purpose of this case to state that where a Marumakkattayam donor gives properties to the children of the same mother or to a member of a tavazhi without any express indication that an absolute alienable estate was granted, the presumption is that the donor intended to confer only an estate with all the incidents of tarwad property.

As regards the distinction sought to be drawn where the gift is to a person and his children and where no reference to the children is made though it is no doubt true that in several of the cases that have come up for decision to the High Court the gift was to a person and his children or "santanams", the decisions do not turn on the presence or absence of reference to issue in the deed but on general considerations of the nature of the estate which a Marumakkattayam donor intended to confer.

14. This is the only decision in which we find that even if the grant is expressed to be in favour of the wife alone or in favour of children alone that the gift is to be treated as tarwad property. We are unable to find any support for the view expressed by Kumaraswami Sastri J. in this case in any of the earlier decisions to which our attention has been drawn.

15. We shall now proceed to deal with the cases which are relied upon for the Respondent. In Narasamma Hegadthi Vs. Billa Kesu Pujari and Others, Benson

and Sundara Aiyar JJ. held that the ruling in *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.) is not applicable where a gift purports to be only to the wife and not to the children also. No doubt in that case the terms of the gift deed were that the donee, the wife, was to enjoy the property from generation to generation, but the ratio decidendi of the decision was that the decision in *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.) applies to a case where the gift was to a woman and her children.

16. In *Duja Bhandari v. Venku Bhandari* (1915) 31 I.C. 854 a husband granted a permanent lease of his property to his wife. The deed contained no words conveying the estate to the children and the wife executed a deed of gift in respect of the major portion of these properties in favour of her two daughters, one of whom sold some of the properties to a third party and this was questioned by the daughter's children on the ground that what was granted by the permanent lease was a putravakasam right and that therefore the grantee had no right to transfer it to two of her daughters and that the daughters did not get a saleable interest under the transfer from the mother. Ayling and Seshagiri Ayyar JJ. held that there was no presumption that the gift was with the incidents of tarwad property. The learned Judges said this:

The argument of the learned vakil for the Appellant is that the gift to Kochu by her husband is as putravakasam property and that the second Defendant has no right to alienate it. Reliance was placed on *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.) and on the recent Full Bench decision in *Chakkra Kannan v. Kunhi Pokker* ILR (1913) Mad. 317 (F.B.). It is conceded that when Exhibit I was executed the Defendants Nos. 1 and 2 (daughters) were in existence, yet the gift is not made by the father to his wife and children although the words used are makkalapanya. There are no words conveying the estate to the children. In Exhibit II, Kochu deals with the properties as her self-acquisition. It is clear to our mind that the donor, under these circumstances, intended to give an absolute estate to his wife. In *Narasamma Hegadthi Vs. Billa Kesu Pujari and Others*, a similar gift was construed as conferring an absolute right on the donee.

In *Kaliani Amma v. Karthiyani Amma* (1926) 52 M.L.J. 17 Devadoss J. had to deal with a case where some property was acquired in the name of the wife. The headnote runs thus:

Where a man gives some property to or buys some property in the name of his wife there is no presumption that he intends that she should not have absolute interest in the property but that she should hold it for the benefit of herself and her children.

The kanam right was acquired by the first Defendant with the funds supplied by her husband. There was nothing in the deed itself to show that she was a person other than an ordinary assignee of a mortgagee's right.

Held, that the mere fact that her husband found the money for the assignment

or transfer of the mortgagee's right was not by itself sufficient to throw the onus on the first Defendant to show that the property was her absolute property and did not belong to the tarwad.

17. The learned Judge dealt with the earlier decisions at length and pointed out that, where the gift was in favour of the mother and children, there was a presumption that it was a tavazhi gift. It would be seen that in the case before Devadoss J. there was no expression that the wife was to take the property absolutely.

18. Mr. Muthukrishna Ayyar for the Appellant sought to distinguish Narasamma Hegadthi Vs. Billa Kesu Pujari and Others, on the ground that in that case the learned Judges found words in the document showing that the wife was to take the property absolutely and that therefore the decision turned on the wording of the document. In the case before Devadoss J. there was no gift to the wife but there was a purchase in the wife's name with the funds supplied by the husband and obviously there could not be an expression either way indicating whether the husband intended that the wife should get it absolutely or otherwise. That necessitated a decision on the question of the proper presumption to be drawn in a case where a gift was to the wife alone without any words as to the intention either way. Devadoss J. said this:

In Pattathruvath Pathumma v. Mannam Kunniyil Abdulla Haji ILR (1907) Mad. 228 there was a finding by the District Judge which was concurred in by the learned Judges who decided that case that though the property was purchased in the name of the mother it was intended for her children as well. In Nahu Amma v. Raghava Menon ILR (1912) Mad. 79 on the evidence it was found that the gift was for the benefit of the mother and her children. \* \* \* In Kuyyattil Kundan Kutty v. Vayalpath Parkum (1915) 32 I.C. 107 Kumaraswami Sastri J. observed at page 109:

It may now be taken as settled law that where a person following the Marumakkattayam law gives properties to his wife and children or to his children alone also following the same law, the presumption is that he intended the donees to take the properties with all the incidents of tarwad property. This page is relied upon for the position that when property is acquired by the father in the name of the mother alone there is a presumption that the father intended that the property should be for the benefit of the mother and children. These cases do not support the contention of Mr. Ramachandra Ayyar. Each case has to be considered in the light of the circumstances attendant upon the transaction. Where the gift is made to the mother and children, there is no question as to the intention of the donor; where the gift is to the children, there also, there cannot be much doubt. But where a man gives some property to or buys some property in the name of his wife there is no presumption that he intends that she should not have absolute interest in the property but that she should hold it for the benefit of herself and her children. \* \* \* The mere fact that her husband found the money for the assignment or transfer of the mortgagee's right is not by itself

sufficient to throw the onus upon the first Defendant to show that the property is her absolute property and does not belong to the tarwad. \* \* \* I do not think that there is any authority to support the position taken up by Mr. Ramachandra Ayyar that where a person makes a gift to, or buys property in the name of his wife, when there are children by the wife, there is a presumption that the property given to her or acquired in her name should be for the benefit of herself and her children.

19. It was recognised by Mr. Muthukrishna Aiyar that the decision of Devadoss J. is very much against him and he therefore argued that the decision was that of a single judge and ought not to be followed in view of the other decisions on the point. Then we found that the decision was taken up on Letters A Patent Appeal and that it was confirmed by Reilly and Anantakrishna Ayyar JJ. in Letters Patent Appeal No. 376 of 1926. The learned Judges said this:

We cannot differ from the learned Judges decision in this case unless we are prepared to say--as we are invited for the Appellants to say--that, whenever a gift of immovable property is made to a marumakkattayi woman, or immovable property is bought in her name by her husband and no explicit words are used to show that she is to have an absolute title to the property, a presumption must be raised that the property is to be that of the tavazhi consisting of her and her children. We are not prepared to say that there is necessarily such a presumption, and no decision goes so far. Kuyyattil Kundan Ruttu v. Vayalpath Parkum (1915) 32 I.C. 107, on which Mr. Unnikanda Menon relies, is not a similar case to this, as there the gift was to all the children of a particular woman.

20. The decision of Kumaraswami Sastri J. is explained as being one in a case of a gift to all the children of a particular woman. All the children of a particular woman would, in case she is dead, be all the members of a tavazhi and if the gift was to all the members of the tavazhi, then there might be a presumption that it is to be held as tavazhi property. That was how the decision of Kumaraswami Sastri J. is understood by Reilly and Ananthakrishna Ayyar JJ. We think that this is the correct view to take. These are all the decisions that have been brought to our notice and we cannot say on these decisions that, where a property is gifted to the wife alone or to some of the children alone, there is the presumption I that the donee takes it with the incidents of tarwad property. The presumption will arise only if the gift was in favour of the wife and children or in favour of all the children who by themselves form a tavazhi.

21. Taking the case of the acquisition by the wife (the seventh Defendant), the property or kanam right was acquired in her name and we shall take it that the funds were supplied by the husband. Exhibit D-11 is the document under which item 12 was acquired in the name of the wife. That is an assignment of a kanam right by a third party. The case of this acquisition is covered directly by the decision in Kaliani Amma v. Karthiyani Amma (1926) 52 M.L.J. 17 confirmed on appeal in Letters Patent Appeal No. 376 of 1926 where also it was the case of a kanam right acquired by the wife with the funds supplied by the husband. As

stated by Devadoss J. in that case:

There is nothing in the deed itself to show that she was a person other than an ordinary assignee of a mortgagee's right. The mere fact that her husband found the money for the assignment or transfer of the mortgagee's right is not by itself sufficient to throw the onus upon the first Defendant! to show that the property is her absolute property and does not belong to the tarwad. It is for persons who want to make out something different from what appears from the documents to show that the intention of the first Defendant husband was to benefit not only the first Defendant but her children as well.

22. Then as regards the acquisitions in the name of one or more children, i.e., first, second, third or first and second together, if all that can be said is that the funds were supplied by the father, seeing that not one of them is an acquisition in the names of all the children who constituted the tarwad, the conclusion must be that there is no presumption that it is an acquisition on behalf of the tarwad.

23. Before we leave this topic it must be noticed that the rule of construction based on *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick* (1857) 6 M.I.A. 526 and (1874) L.R. 2 I.A. 7 (Privy Council) has largely been departed from in construing gifts and wills made by Hindus. Whatever may have been the notions and ideas of Hindus in the early days of the last century, women are no longer considered to be incapable of holding properties of their own. The central idea underlying the two decisions that a testator would like to have property within the family and would not like it to go out of the family as would be the case if the woman donee or woman legatee gets an absolute estate has been gradually given up. Many inroads have been made into the joint family system as understood in the early decades of the last century. Any individual member can, by his mere declaration of intention, become divided from the rest of the family. Gains of science are now declared by statute to be the separate property of the acquirer. Women have gained prominence and are no longer dependent on "the father in youth, on the husband during coverture and on the children in old age." This topic has been considered in *Mayne's Hindu Law* (Tenth Edition) at pages 908 and 909. As pointed out by the learned author in Section 775, Section 95 of the Hindu Wills Act which governs the wills of all Hindus lays down a rule of construction as to a gift simpliciter which is uniformly applicable to all cases whether the gift is to a female or a male. Where property is bequeathed to any person, he or she is entitled to the whole interest of the testator therein unless it appears from the will that only a restricted interest was intended for him or her. Rules of construction which are intended to aid Courts of law in ascertaining the wishes of the testator have to be adapted with changing times. If therefore the rule of construction laid down in *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick* (1857) 6 M.I.A. 526 and in *Mahomed Shumsool v. Shewukram* (1874) L.R. 2 I.A. 7 is no longer applicable in cases governed by Hindu law, it is a matter for consideration whether the decision in *Kunhacha Umma v. Kutti Mammi Hajee* ILR (1892) Mad. 201 (F.B.), based as it is expressly

on the rule of construction in *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick* (1857) 6 M.I.A. 526 and (1874) L.R. 2 I.A. 7 (Privy Council) , should be adhered to. At any rate, it should, we think, be confined to a case of a gift to a wife and all her children where the wife is alive or if she is dead to all the children who form a tavazhi. Even in Malabar times have changed. Impartibility which is the fundamental characteristic of a Malabar tarwad has been put an end to by the Madras Marumakkattayam Act. Constant intercourse with the rest of India has brought about considerable changes in the ideas and notions of people on the West Coast. Conformably to the progressive ideas of that community the Legislature enacted the above Act. Wives are now given substantial rights in the husband's properties. We have no hesitation in saying that the whole question must be reviewed when the question directly arises for decision and is not covered by Section 48 of the Marumakkattayam Act. A reasonable solution is to hold that, except in cases governed by Section 48 of the Act, there is no presumption that the donees do not get absolute rights.

24. We have next to consider the argument that, as the first Defendant was the karnavan of the tavazhi, the acquisitions made by him must be presumed to be the tavazhi property, that the acquisitions in the names of the junior members during the period of his karnavanship must also be taken to have been acquired for the benefit of the tavazhi and that it lies upon the individual members who allege self-acquisition to prove the same. In *Govinda Panikker v. Nani* ILR (1911) Mad. 304 Benson and Sundaka Ayyar JJ. laid down that there is no presumption of law that properties acquired in the name of a junior member of a tarwad belong to him or to the tarwad and that any presumption to be raised is one of fact. After referring to the earlier decisions the learned Judges said this:

We do not, however, understand these eases 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. Rosario whether the finding against his clients that their title to particular items of property is *resjudicata* is correct or not.

This decision was understood by the mufassal Courts as laying down that there is a presumption in favour of a junior member that a property acquired in his name is his separate property. This view was corrected by Wallis C.J. and Burn J. in

Dharnu Shetti v. Dejjamma (1916) 5 L.W. 259 and the headnote runs thus:

In deciding the question as to whether certain properties belong to a Malabar tarwad or to an individual member thereof, the facts and circumstances of the particular case have to be looked at and the presumption as to the nature of ownership has to be raised accordingly. There is no presumption that properties standing in the name of an anandravan are tarward properties. Nor is there a presumption in favour of the property being self-acquired so as to require proof of want of private means or existence of family funds to rebut the same.

Dealing with the earlier decision in Govinda Panikker v. Nani ILR (1911) Mad. 304 the learned Judges said:

As we understand, the learned Judges in Govinda Panikkar v. Nani ILR (1911) Mad. 304 merely lay down that the right way to approach the case is to look at all the facts and circumstances of the particular case and to raise a presumption accordingly.

In Subramania Pattar Vs. Krishna Embranderi and Others, , decided by Sadasiva Ayyar and Spencer JJ., Sadasiva Ayyar J. was inclined to the view that in a Malabar tarwad the presumption should be in favour of anandravan. On page 592 the learned Judge said:

So far as the first question as to whether the finding of the lower appellate Court that the decree amount belongs to the tarward is concerned I think it has to be admitted that the lower appellate Court was wrong in its view that there was presumption in favour of the tarwad that the bond standing in the name of the junior member belongs to the tarwad. The matter has been fully considered in Govinda Panikker v. Nani ILR (1911) Mad. 304 and Dharnu Shetti v. Dejjamma (1916) 5 L.W. 259, and it has been held there is no presumption either way. If there is no presumption either way, the Plaintiffs coming into Court are to prove the facts which show that a bond in the name of a junior member is tarwad property. I am myself inclined to hold whatever may be the presumption as regards the bond in the name of a junior member of a Mitakshara family (see, as to this, Parbati Dasi v. Baikuntha Nath De (1913) 26 M.L.J. 248 though even in Mitakshara cases the presumption in my opinion in the modern days is a very feeble one) that as regards the Malabar tarwad the presumption should be against the tarwad.

In Sooppiadath Ahmad v. Manha Mammad Kunhi (1925) 23 L.W. 575 Phillips and Ramesam JJ. laid down that, while there is a presumption that a property acquired by a karnavan is the tarwad property, the same presumption does not ordinarily apply to property which stands in the name of anandravan. Dealing with the earlier decisions, the learned Judges said this on page 577:

Coming to the merits of the case, it is argued that there is a very strong presumption that property standing in the name of a member of a Malabar tarwad belonged to that tarwad.

The presumption has been laid down in Appatta Chathu Nambiar and Others Vs. Appatta Sekharan Nambiar and Others, and Mari Veetil Nair v. Mari Veetil Mulamparol Sekaran Nair ILR (1909) Mad. 250 with regard to karnavans, and undoubtedly, with regard to karnavans, the presumption is very strong, for they are in possession of the whole of the property of the tarwad and can deal with it as they like. A similar presumption is sought to be established with regard to anandravans. Ordinarily anandravan has no private property, but is only a member of the tarwad which owns properties, but when we find that there is property in the name of anandravan and it is not shown that he has been in possession of tarwad funds, the presumption in favour of the property being tarwad property is very slight, and it is open to the anandravan to show he had private money out of which he could acquire the property.

25. Sitting as single Judges, Sundaram Chetty J. in Iswaran Nambudiri v. Vishnu Nambudiri (1930) 60 M.L.J. 467 and Venkataramana Rao J. in Puthiamatathummam Peringadi Assankutti and Others Vs. Peedikayilakath Mammad and Others, held that the question is one of fact to be decided on the facts and circumstances of each case and that, if there is nothing either way, the decision should be in favour of the tarwad. Our attention has been called to a recent decision Second Appeal No. 1965 of 1944 (not yet reported) of Chandrasekhara Aiyar J. where the learned Judge was inclined to take a similar view.

26. In the neighbouring State of Travancore the law is that a property acquired by a junior is to be presumed to be his own separate acquisition and that it lies on the party setting up that it is tarwad property to prove that it was an acquisition on behalf of the tarwad--see Sundara Aiyar's Malabar Law, pages 182 and 183, where the decisions of the Travancore High Court are referred to.

27. The decisions of the Judicial Committee as to the presumption to be raised in the case of a joint Hindu family should not, we think, be applied to cases of acquisitions in the names of junior members of a Malabar tarwad. It is notorious that, in cases of Malabar tarwads, the karnavan is very anxious to save as much as he can for the benefit of his wife and children who are not members of his tarwad. Indeed the complaint is that he does not even maintain the junior members properly. This is inherent in the system of Malabar law where the karnavan's duty and interest are in conflict with each other--very much more so than in the case of a manager of a joint Hindu family whose sons are members of the coparcenary with equal rights and whose wife and daughters are entitled to maintenance from the joint family properties. We are inclined to agree with the view of Sadasiva Ayyar J. in Subramania Pattar Vs. Krishna Embranderi and Others, and that of the Travancore High Court. Judicial notice may be taken of the well-known tendency of a karnavan and so viewed the presumption that applies in the case of a joint Hindu family ought not to be applied to cases of Malabar tarwads.

It is common case that, in the present case, the first Defendant became the

karnavan only after 1932 when his father died.

We shall now take up each item and examine the evidence regarding its acquisition. Item 5 was gifted to the first Defendant under Exhibit D-23 dated 13th March 1925. The gift was by the father Kandar Mannadiar and it says this:

Whereas the landed properties described in the subjoined Schedule, consist of my own private acquisitions, the saswatham right to which I had got assigned in teer to me under the registered teer deed of 1070 M.E. (1894-95) and I have hereby decided to effect the assignment of the same to you in danam teer (assignment by gift) settling a teer value of Rs. 600 therefor, and I am satisfied as to the receipt of the said assignment consideration from you in full in the shape of my love to you as my son, I have divested myself of all the claims belonging to me in the Schedule properties and delivered the same into your possession this day, in gift. You should therefore hold the said properties in your possession in the exercise of full and free right of alienation of the same and I have no manner of further interest or right of question about it prejudicial to your doing so.

28. Item 6 is a kanam right of certain properties taken by one Section Rowthen. The first Defendant obtained a transfer of the kanam or mortgage right under Exhibit D-4 dated 25th March 1925 and the consideration was Rs. 300. As regards item 5 the gift deed Exhibit D-23 set out above was executed by Kandar Mannadiar at a time when both the first and second Defendants were majors. All the daughters had also been born and a third son was also born though he was a minor. The Respondent's learned Advocate argues that if really Kandar Mannadiar wanted to make a gift of the properties to the tavazhi of his wife and children, he would have executed it in favour of his wife and children and named them as the donees or that, at any rate, there would have been a clear indication that it was to be taken by the donee on behalf of the entire tavazhi. The only argument for the Appellants is that where a father purports to make a gift of the property to one of his children, the parties being governed by the Marumakkattayam law, there is a presumption that a gift in favour of the son or child is for the benefit of the entire tavazhi. Mr. Sitarama Rao for the Respondents urges that the circumstances under which the document was executed and the wording of the document clearly show that the gift was intended only for the benefit of the first Defendant. The consideration for the document is said to be the love which the donor bears to the donee as his son. The property is "given to you in danam i.e., gift...You should therefore hold the said properties in your possession." At that time, there were the other major son, the daughters and the minor son. We have to take all these circumstances into consideration and having regard to the surrounding circumstances and the wording of the document, we are of opinion that, even if there is a presumption in favour of the gift being one to the tavazhi, the said presumption has been effectively rebutted.

29. As regards item 6, it is an acquisition of a usufructuary mortgagee's right for

a sum of Rs. 300. It was acquired in 1925 when the first Defendant was not in fact managing the properties of the tavazhi. It is true that he was the eldest male member, but apparently as he was a young man, his father was in actual management of the properties. The first Defendant cannot therefore be said to have been in possession of the family properties or the funds of the family, in which case the Court could presume that the property was acquired by the first Defendant from out of the funds of the tavazhi. The only argument put forward in support of the Appellants' case is that the first Defendant got a sum of Rs. 300 from his father Kandar Mannadiar and that therefore there is a presumption in favour of the acquisition being a tavazhi acquisition. As we have held already, there is no presumption when a property is acquired by a father in the name of one child, while there are several children, that the acquisition is on behalf of the entire tavazhi. There are no other circumstances to show that this item is acquired for the tavazhi. On the other hand, the circumstances pointed out in dealing with item 5 apply to this case also.

30. We next go to item 7 which was acquired by the third Defendant on 14th July 1937 under Exhibit D-18. That was a purchase of jenm right, i.e., full ownership. The third Defendant's case is that he had Rs. 400 and that the rest was given by the mother, and that is spoken to by D.W. 1. The Appellants say that the mother had no property of her own and that what all she had had been given to her by the husband and that therefore this item must be taken to have been purchased with the funds supplied by the father. Assuming that the father made some gifts to the wife and the wife gave a portion of that amount to one of her sons to enable him to purchase some property in his name, we do not think that the tavazhi is entitled to the property. One other argument of the Appellants as regards this item may be noticed and that is that the first Defendant who was the manager of the tavazhi purchased this item from out of the family funds by secreting it in the name of the third Defendant and that it is a result of collusion between the two in order to cheat the Plaintiffs. We have been taken through the entire evidence and we find no basis for this suggestion that the first Defendant really found the consideration for this document. It is not at all likely that a karnavan would give a portion of the income to his brothers or other members of the family. There is no evidence on which we can say in this case that any moneys of the family were given to the third Defendant and that with the moneys so got from the first Defendant the property in question was acquired by the third Defendant.

31. Items 9 and 10 were acquired in the name of the second Defendant for a sum of Rs. 6,500. It is not clear when exactly the properties were purchased, but it is admitted that they were acquired after 1937 under a single transaction. The sale deed was not produced by the second Defendant and the Appellants did not produce even a registration copy. Thus the Court is left in the dark as to when exactly the property was acquired. But it is common case that it was acquired for Rs. 6,500 in the name of the second Defendant. There is unimpeachable evidence that a sum of Rs. 4,000 was deposited in the name of the second

Defendant in 1931 with a bank and that that amount was withdrawn by the depositor soon afterwards. Exhibit D-28 is an extract from the deposit ledger of the Melarkode Bank. That contains an account of the second Defendant with the bank. It shows that, on 9th April 1931, a sum of Rs. 4,000 was deposited and that it was withdrawn on 23rd July of the same year. We have also Exhibits D-20 and D-21 which show that in 1936 the second Defendant borrowed a sum of Rs. 800 from the Melarkode Bank on the security of a deposit of the second Defendant's moneys with the bank. These two documents prove that a sum of Rs. 4,000 was again deposited with that bank on 25th March 1935 and that the fixed deposit was to mature on 25th March 1937. Exhibit D-20 runs thus:

I beg to hand you herewith my deposit receipt No. 530, dated 25-3-1935, for Rs. 4,000 due on 25-3-1937 and request you to hold the same as a collateral security for the loan Rs. 800 received from you to-day. I hereby authorize you to set off at any time the whole or any portion of the said deposit towards the loan in case you deem it necessary.

32. Exhibit D-21 is the promissory note for Rs. 800. These two documents would prove that Rs. 4,000 was again deposited under fixed deposit in 1935, and that as the depositor the second Defendant was in need of Rs. 800 he borrowed that a sum under Exhibit D-21 on the security of the fixed deposit. There is also evidence that the second Defendant was lending out some money in his own name. Exhibit D-27 (b) is a promissory note in the name of the second Defendant for Rs. 100 and is dated the 28th January 1936. There is therefore proof that the second Defendant was in possession of some property of his own. We have evidence that from 1931 to 1936 he had a sum of Rs. 4,000. It is therefore very likely, as the lower Court has held, that this sum of Rs. 4,000 was utilized by the second Defendant for the acquisition of these items.

33. We next go to items 8 and 13 which are claimed by Defendants 1 and 2 as their joint acquisitions. They were both acquired under Exhibit D-6, dated 25th December 1929, and the consideration was Rs. 2,000. Exhibit D-6 is a hypothecation of the kanam right in certain properties for Rs. 2,000 and is effected by the kanamdars who are third parties. The question is whether the hypothecation right can be said to be an acquisition for the tavazhi. In this connexion, it is important to notice that at that time the father Kandar Mannadiar was actually managing the properties owned by the tavazhi. Neither the first Defendant nor the second Defendant was in possession of any of those properties and it cannot therefore be said that the first and second Defendants used the moneys of the family for this acquisition.

34. The next argument is that the father must have supplied funds for the acquisition and this leaves us with the general question whether under the Marumakkattayam law, the presumption is that property acquired by some of the children with the moneys supplied by the father is tavazhi property. The hypothecation under Exhibit D-6 was of a kanam right. The equity of redemption in the kanam was purchased by Defendants 1 and 2 under Exhibit D-7, dated

23rd April 1933, for a sum of Rs. 4,550 of which Rs. 2,846 was due under Exhibit D-6. The balance of Rs. 1,704 was paid by Defendants 1 and 2, Rs. 15 was paid to the vendors and Rs. 1,689 was paid to some of the creditors. The kanam right became vested by the combined operation of Exhibits D-6 and D-7 in Defendants 1 and 2. They got a renewal of the kanam under Exhibit D-8, dated 5th December 1940, from the jenmi K.C. Manivikrama Raja, the zamorin.

35. It is only as regards the acquisition of the equity of redemption which was acquired for Rs. 1,704 that any question can arise. By that time (28th April 1933), the father was dead and the first Defendant had entered into actual management. But we have these facts. The original hypothecatee's right must be taken to be the self-acquired property of Defendants 1 and 2. First Defendant had entered upon the management only a year before the equity right was purchased and could not have saved much in a year from the tarwad properties. First Defendant had independent means; he had items 5 and 6. Having regard to all these facts, we find that the acquisition of the equity was also the self-acquired property of Defendants 1 and 2, particularly as it is an enlargement of the prior right which was their self-acquisition.

36. Only one other point remains. It is said that in a prior suit, Original Suit No. 25 of 1927, Sub-Court, Ottapalam, the Defendants admitted that items 3, 6 and 12 were the properties of all the Defendants. That was a suit filed by the members of the Kandar Mannadiar's tarwad. Their claim was that items 3, 6 and 12 in the present suit were purchased by Kandar Mannadiar in the name of his wife or children from out of their tarwad funds and that the properties belonged to their tarwad. This was denied in a joint written statement filed by the wife and the children. There was no need to state which item belonged to which Defendant. No doubt the statement was that the properties belonged to the Defendants which means all the Defendants. But having regard to the circumstances under which the statement was made, we do not attach much value to it.

37. We next go to item 12 which is in the name of the mother, the 7th Defendant. The property is a kanam for Rs. 1,250 under Exhibit D-11 on 11th September 1920 and the only argument is that the husband acquired the kanam right in the name of the wife and that therefore the presumption is that it is a tavazhi transaction. We have already held against this contention.

38. We are not inclined to interfere with the rate of maintenance awarded by the lower Court. The result is that the appeal and the memorandum of cross-objections are both dismissed with costs.

Appeal Suit No. 441 of 1944.--Following the decision in Appeal Suit No. 440 of 1944, we dismiss this appeal and the cross-objections with costs.