

(1924) 04 MAD CK 0013
In the Madras High Court

Thithi Kutti

APPELLANT

Vs

Nellaya Varnath Manager under a Karar, Raghavan Unni Elaya
Variar and Others

RESPONDENT

Date of Decision : 04-04-1924

Acts Referred:

Citation : AIR 1925 Mad 225

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The 1st defendant is the appellant. The plaintiff, a member of a Malabar tarwad, sues to recover possession of the suit

properties allotted to the deceased, Krishna Wariar under Exhibits B and C. The defendant is in possession of these properties under the

mortgages executed by the deceased Krishna Wariar. The lower Courts have decreed possession to the plaintiff holding that the mortgages are not

binding on the tarwad. The learned vakil for the appellant has advanced various arguments in this Second Appeal. His first argument is that the

arrangement under which those properties were allotted to Krishna Wariar amounted to a partition of the tarwad properties that accordingly

Krishna Wariar got these properties absolutely for himself and through him his client, The mortgagees have now got valid rights to these properties.

On a construction of Exhibits B and C, it cannot be held that Krishna Wariar had effected a partition of the properties from the tarwad.

2. It is next argued that the present plaintiff was not entitled to institute this suit on the ground that Krishna Wariar who had left the tarwad under

the maintenance arrangements was not a party to Exhibit D. It is admitted that Exhibit D gives him the right to institute the suit. Krishna Wariar must

be considered to have dissociated himself from the tarwad under B and C and therefore, the fact that he was not a party to D, cannot affect the arrangement for the administration of the tarwad embodied in it and in pursuance" of which the present plaintiff gets the right to institute this suit. In my opinion, the plaintiff is entitled to institute this suit under Exhibit D.

3. The next argument which has been advanced on behalf of the appellant is, that his client has perfected a title by adverse possession of mortgagee's interest in the suit properties. It is argued that under the maintenance arrangements in pursuance of which Krishna Wariar got these properties, he is not allowed to encumber them, and that since he encumbered them in violation of the terms, the defendants have perfected for themselves a legal title by adverse possession. The decision of this question depends on the construction of B and C as regards the interest that was conferred upon Krishna Wariar under their provisions. As may be seen from paragraph 1 and paragraph 2 of Exhibit B, the intention of the parties to the document was to give Krishna Wariar a life-interest in these properties. It is specifically stated that he will continue to enjoy those properties set apart from him throughout his life-time. The statement that he is not to create any encumbrance in my view only amounts to this, viz.; that the tarwad after the death of Krishna Wariar will not be liable for these encumbrances. So long as Krishna Wariar is alive the tarwad is not entitled to immediate possession of the suit properties. The decision in *Madhava v. Narayan* (1885) 9 Mad. 244 does not, therefore, apply to the facts of this case. It is not the case of the appellant that after the death of Krishna Wariar his client had been in adverse possession for over 12 years. I may also state that it is nowhere mentioned that the tarwad was aware of these encumbrances created by Krishna Wariar in favour of the defendant. Under these circumstances, I think that the plea of limitation should also be overruled. The Second Appeal is dismissed with costs of the 1st defendant.