(1964) 08 KL CK 0001

In the High Court Of Kerala

Case No : A.S. No. 244 of 1961

Unnikrishna Menon APPELLANT

Vs

Sankara Menon and Others RESPONDENT

Date of Decision : 20-08-1964

Acts Referred:
Limitation Act, 1963 — Article 120

Citation : (1964) KLJ 959

Hon'ble Judges : T.K. Joseph, J;T.C. Raghavan, J

Bench : Division Bench

Advocate : N. Sundara Iyer, V.R. Venkitakrishnan and K. Narayanan, for the Appellant; V.P. Gopalan Nambiar, K.P. Madhava Menon, for the Respondent

Final Decision : Dismissed

Judgement

Joseph, J.—Two questions arise for decision in this case: (i) whether the karnavan of a marumakkathayam tarwad can be compelled to render accounts for the income of the tarwad and (ii) the period for which he can be held liable, under the Indian Limitation Act. The plaintiff, a junior member of a marumakkathayam tarwad, sued for partition of tarwad properties and one of the items sought to be partitioned was a sum of Rs. 30,000/- alleged to have been misappropriated by the first defendant, the karnavan, from the income of the tarwad. The first defendant denied liability to account for such income. The court below held that the first defendant would be held liable in respect of the specific items disclosed by the accounts to have been misappropriated by him within a period of three years prior to the institution of the suit. The point raised in this appeal by the plaintiff is that the court below erred in limiting the period to three years and (hat the same should have been six years under Art, 120 of the Limitation Act, The first defendant by a memorandum of cross objections attacks this part of the decree and contends that he cannot be made liable to render accounts of the income of tarwad properties.

2. The main question for decision is the one raised in the memorandum of cross

objections. It is useful in this connection to refer to the relevant averment in the plaint, which is contained in paragraph 7. It is stated:

The first defendant has been the karnavan and manager from the time he attained majority. He has been misappropriating the income of the tarwad ever since that time and the amounts misappropriated by 11th April 1956 exceeds Rs. 30,000/-. This sum is shown as item 38 in Schedule C of the plaint. This has to be treated as an asset of tarwad and divided, (translation).

3. The case put forward is not that any specific item of tarwad property was wasted or misappropriated by the first defendant but that the surplus income of the tarwad was being appropriated by him for his own use. One of the most important rights of the karnavan is the right to be in possession of the tarwad property to the exclusion of all other members of the tarwad. As he head of the family, he manages the tarwad affairs, meets its expenditure and maintains the members of the family. He is not legally liable to render accounts to the junior members though in a suit for his removal from management, he may be called upon to prove how he spent the tarwad income. This does not mean that a decree can be passed against him for unaccounted items of income. It has been held from very early times that a karnavan is not a trustee or an agent of the tarwad. Holloway J., said in I.L.R.I Mad. 153:

In such a state of property and family relations as that of Malabar there must be constant conflict of interest with duty. This however throws upon the Courts in case of such conflict the duty of checking acts referable to interest of that character, but it by no means justifies the treatments of the karnavan as a mere trustee, officer of a corporation or other person to whom he has been likened.

In ILR 2 Mad. 328 Kerman and Forbes, JJ., held:

"...the suggested analogy between a trustee and a karnavan is not correct in as much as a mere trustee has no personal interest in the estate whereas the karnavan has such interest."

In Mayne''s Hindu Law it has been pointed out that the property is vested in the Karnavan not as agent or principal partner but almost as an absolute ruler. Not being a trustee or agent, the question of accounting does not arise, except as pointed out earlier, as a defence in a suit for his removal. If a karnavan appropriates the income for himself without properly maintaining the other members of the family, the junior members are not without any remedy as they can sue for his removal, and in such a case the question whether the income has been properly applied becomes relevant for deciding whether he should be so removed. In such a suit, a defence that he can spend the income as he pleases is ineffectual. This was the position recognised by courts in the areas where the marumakkathayam system prevailed, from very early times, and the subsequent statutory enactments have not effected any change in the law.

4. Our attention was drawn to the decision in Kozhikkot Puthia Kovilagath

Manavedan alias Anujan Rajah, Avl., and Others Vs. Kozhikkot Puthia Kovilagath Viayathen Sreedevi alias Valia Thamburatti, Avl., and Others, . After reviewing the earlier decisions of the Madras High Court, Jackson J., has summarised the position as follows:

The karnavan is the manager of the family estate. He may administer that estate for the benefit of the family according to his own discretion. He is not bound to render any account or to pay to the tarwad any surplus he may have in his hands. Kenath Puthen Vittil Thavazhi v. Narayanan, which of course does not mean that he may devote the surplus to other than tarwad purposes, but only that he need not distribute it among the individual members, if in his discretion he prefers to accumulate or invest it for the benefit of the family as a whole. If it be proved against him that he has abused this discretion and fraudulently misappropriated the family estate, he must account for that transaction. If it be proved generally that he is a bad manager, he will be liable to removal, unless he gives a good account of his management. But he cannot be compelled actually to render accounts, by a threat of removal, or for any other reason.

5. If an asset of the tarwad is fraudulently alienated by the Karnavan, it is open for the junior members to question the same. Thus if a Karnavan conserves the surplus income for some time and acquires some property for the tarwad, he is not free to alienate it, merely because it was acquired with the income which he was not bound to account for. In such a case it ceases to retain the nature of income and is a capital asset in respect of which he has certain duties. Such is not the case her. All that the plaintiff wants is that the first defendant should render accounts for the period of his management so that amounts received by him as income of the property which has not been accounted for may be recovered from him. No specific act of fraud or misfeasance in respect of tarwad property is alleged by the plaintiff. Such a prayer is against the fundamental principles of marumakkathayam law.

6. It follows that the decree for accounting for the income of three years prior to the institution of the suit cannot be sustained. In view of this conclusion the question of limitation does not arise. In the result, we set aside the decree for accounting for the period of three years prior to the institution of the suit. The appeal fails, and is dismissed. The memorandum of cross-objections is allowed. In the circumstances we direct the parties to bear their respective costs.

