
(1916) 10 MAD CK 0015
In the Madras High Court

Valia Konikkal Edathil Cheria Pangi Achan	APPELLANT
Vs	
Valia Konikkal Edathil Unnalachan and Others	RESPONDENT

Date of Decision : 30-10-1916

Acts Referred:

Trusts Act, 1882 — Section 34

Citation : (1917) 32 MLJ 323

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—These three connected appeals have arisen out of a suit brought by 4 junior members of a sub-tarwad or tavazhi. (The other plaintiffs 5 to 16 are minors whose next friend is the first plaintiff and they have been added merely to swell the numerical figure of the plaintiffs on the record). The plaint concludes for the following main reliefs :- (a) for a declaration that on account of the actual mis-management of the defendants 1 and 2 and of their acts in contravention of the provisions of the family karars (Exhibit B dated 30th June 1894), the defendants 1 and 2 are unfit to be tavazhi managers; for removal of the defendants 1 and 2 from management and for the appointment of the 1st plaintiff as manager; (b) for directions to the defendants 1 and 2 to render accounts from the date of Exhibit B (1894); to pay to the plaintiffs 1 and 2 the moneys of the tavazhi in the hands of the defendants 1 and 2 and for a return of all the documents relating to the tavazhi and (c) for directing the defendants 1 and 2, in case both or either of them are not removed from the management by the Court, to pay to the plaintiffs 1 and 2 the sum found due on settling the accounts in order that the said funds may be properly invested on behalf of the tavazhi as provided in the karar. (There

are other minor appurtenant reliefs claimed in the plaint but it is unnecessary to set them out in detail).

2. The lower Court by its decision removed the 1st and 2nd defendants from management (they having been respectively the karnavan de jure and the senior anandravan in the tavazhi), the Court then passed over the next two anandravans in order of seniority, namely, the 1st plaintiff and the 5th defendant, (the 2nd plaintiff being now dead) and it finally appointed the 6th defendant as manager of the tavazhi and invested him with all the powers given to both the 1st and 2nd defendants under the karar (Exhibit B). It also gave some further consequential directions to the defendants 1 and 2 besides the directions as to the costs of the suit.

3. Of the three appeals before us, the most important, namely, Appeal No. 208 of 1914" is by the 1st defendant contesting the validity of his removal. Appeal No. 126 of 1914 is by the 2nd defendant to contest his removal from the office of joint managership given to him by the karar and to secure the karnavanship for himself if the 1st defendant's removal be upheld. Appeal No. 200 of 1914 is in substance an appeal by the 1st plaintiff in his own individual interest (though he has added the minor plaintiffs 5 to 16 as his co-appellants for the same reason for which he added them as co-plaintiffs in the lower Court). In this appeal, the 1st plaintiff contests his supersession by the lower Court in favour of the 6th defendant and also the order as to costs so far as it affects the plaintiffs. Again in the course of the argument of the appeals before us, the 5th defendant who is one of the respondents in all the three appeals argued against his supersession by the 6th defendant.

4. I shall first take up the 1st defendant's Appeal No. 208 of 1914. The learned Subordinate Judge clearly fell into an error in supposing that the 1st defendant was merely a manager under the Karar, Exhibit B, and has never had any higher rights. The lower Court's judgment in paragraph 10 states ""On its date"" that is the date of the Karar (30th June 1894,) ""neither the 1st defendant nor the 2nd defendant was the Karnavan but one Valia Pangi Achan was the Karnavan."" This is admittedly erroneous as Valia Pangi Achan, the former Karnavan, had been removed by a decree of Court some time before date of Exhibit B. (See the recital in Exhibit B itself). The 1st defendant, the next in age, became at once the de jure

Karnavan and was such Karnavan on the date of Exhibit B. Paragraph 4 of the karar states that the 1st defendant was then ""conducting the affairs of the tavazhi rightly. ""Paragraph 1 of Exhibit B again shows that the 1st defendant" s management was the management of a dejure Knvnavan and that the karar merely imposed restrictions on some of the powers as Karnavan, and did not, for the first time, give any powers which he did not possess before. The removal of a dejure Karnavan on the ground that he acted against the provisions of a family karar restricting his powers, can be justified only if the violation by him of the karar terms was of so gross a character that it constituted serious misconduct on his part. The mere fact that he did not conform to some of the terms of the karar through carelessness, would not be a sufficient ground for the removal of a de jure karnavan or ejaman. The Court must be satisfied that the interests of the tarwad have been and would (in the future) be seriously jeopardised by his past acts and his probable future conduct and that his removal is therefore required in the interests of the tarwad. The learned Subordinate Judge seems to have thought (see paragraph 10 of his Judgment) that the provisions of the karar should be strictly construed against the 1st defendant and that the 1st defendant would render himself liable for removal ""for any the least and slightest violation of the terms of the Karar imposing duties on him."" He thinks (as pointed out before) that the office of manager was one conferred on him solely ""by trust or contract"" and was not ""the offspring of his natural condition"" as the senior Anandravan on the removal of the former Karnavan. The judgment of Benson and Bashyam Aiyangar, JJ. in Appeal Suit No. 61 of 1901 is to the effect that the natural ejaman of an Alyasanfcanam family ought not to be removed from his position simply because he carelessly violated some of the terms of a family karar.

5. Now the plaintiffs brought against the 1st defendant several charges lettered as follows :- Charges A to C (3 in number); 10 charges under letter D; and seven charges lettered E, F, G, H, I, K and L; that is, a total of about 20 charges. The learned Subordinate Judge found all but six charges not proved. Mr. Anantakrishna Aiyar for the respondent tried (as he was entitled to do) to support the lower Court's Judgment, not only on the six charges but also on two or three of the fourteen charges rejected by the lower Court. It is sufficient to state that I agree with the lower Court in its

conclusion that all the other fourteen charges are either not proved or are absolutely flimsy. As regards the six charges upheld by the lower Court, they are charges D, DS, D9, I, K and L. D and L might be taken together as they relate to the same matter. The Subordinate Judges finding under this head is that, though the 1st defendant's accounts were on the whole kept truly, his omission to recover the annual surplus income as regards the properties in the management of the 2nd defendant (according to the stipulations in the karar, Exhibit B) has rendered the 1st defendant liable to removal. Seeing that the omission to recover the surplus income from the 2nd defendant (who says that he was prohibited by the plaintiffs 1 and 2 themselves from handing over the surplus to the 1st defendant) has not caused any material injury to the tarwad and that the 2nd defendant has invested the larger portion of the surplus amounts (in his hand) in proper securities, I am not inclined to hold that this charge is sufficiently serious to justify the removal of the 1st defendant who seems to have kept very proper accounts.

6. Coming next to charge D8, it is a trivial and futile charge. The charge is that the 1st defendant ought not to have spent moneys on the tending of the tavazhi cattle and on the performance of Sraddhas (though they are admitted to be necessary tavazhi expenses), because the 2nd defendant was the person bound under the karar to have spent those moneys. The 1st defendant's duty as Karnavan included the performance of the usual religious Sraddhas for the deceased tavazhi members. He was also bound to supply the defects in the 2nd defendant's management and to look after all the tarwad necessities even though it might have been the primary duty of the 2nd defendant under the karar to look after some of them.

As regards charges D9 and I, which go together, there is no evidence worth the name that the wooden materials for house construction found in

the 1st defendant's wife's compound were fashioned out of the timbers cut from the tavazhi karakat kalom compound. The remaining charge K

is a joint charge against the defendants 1 and 2 that they did not continue the subscription to a kuri fund and that thus the tavazhi lost the benefit

which a regular subscriber to a kuri fund is expected to obtain and also sustained some loss of interest on the amount actually subscribed, the kuri

being only bound to return that amount Without interest at the end of the term of the kuri. Though the 1st defendant might not have been quite

straightforward when he repudiated all responsibility for the kuri transaction (see Exhibit 20 and Exhibit T.), his explanation that it was the 2nd

defendant who was primarily responsible for the regular payment of subscriptions to the kuri is not an unreasonable one. As the learned

Subordinate Judge says ""the discontinuance of the payment of subscriptions must be due to the quarrels between the two defendants."" , The loss of

interest on Rs. 300 (the amount of the paid-up subscriptions) seems to have been comparatively insignificant and no other loss to the tavazhi is

proved. The defendants 1 and 2 were not bound to have joined the kuri at all and I cannot hold that the negligence proved against the 1st

defendant under this minor charge is sufficient to support his removal.

7. Thus out of the nominally 6 but really 4 charges sustained by the lower Court against the 1st defendant, two have not been proved in my opinion

and the other two are insufficient to justify his removal. As I have said more than once, the lower Court erroneously thought that it was bound to

dismiss the 1st defendant if he failed in the slightest degree to act up to the terms of the karar. I would therefore allow the appeal, especially as the

1st defendant "agreed through his counsel to give reasonable undertakings as to his future conduct. In Appeal Suit No. 20 of 1910 decided by

Miller, J. and myself, the facts in some respects were similar to the facts of the present case. The 1st defendant in that case also was the karnavan

of his tarwad and his powers had been restricted by a family karar. One of the numerous charges against the 1st defendant in that case was

(curiously enough) that he neglected to continue to subscribe to a kuri. Miller, J. says about the end of his judgment in that case allowing the appeal

of the 1st defendant (who was removed by the lower Court's decree) :- ""All that is shewn is that the 1st defendant has not been a very careful

manager, but, as he has agreed through his counsel, we can put him upon terms which should be enough to secure an improvement, and there is

nothing to support that the plaintiff is likely to be a better manager. Therefore I would allow the appeal and dismiss the suit allowing the 1st

defendant to be in office on conditions to which his counsel agreed ""etc. In this case I have understood Mr. Madhavan Nair (1st defendant's

counsel) to have given an undertaking for his client that the 1st defendant would take steps, say within 6 months, to recover the amounts due to the

tavazhi by the 2nd defendant and to invest the same on proper securities as mentioned in the Karar (Exhibit B) within a reasonable time after its

recovery and see that the investments already made by the 2nd defendant in his own name, though on behalf of the tavazhi, are transferred by

proper documents to the joint names of the four persons mentioned in the Karar, namely, the defendants 1 to 4.

8. I do not think that Courts have got the power without the consent of the de jure Karnavan to impose conditions on him and to pass a conditional

decree that "if the Karnavan sets right the mischief committed by him by following certain directions, the suit for his removal would be dismissed,

but that otherwise, he would be removed." It is fallacious in my opinion, to attempt such decrees on the analogy of suits for the dismissal of trustees

of temples or for the removal of guardians of minors. The tarwad, in these days is not even a natural family and has become almost an "artificial

family" and the same indulgences, as are shown by the legislature and the Courts in the case of trusts properly so called cannot be extended to it.

As I said before, 1st defendant through his counsel has very properly given his consent and undertaking to look after the tavazhi affairs in future

more diligently. I would, in the result, allow the 1st defendant's appeal and dismiss the suit as against him. Costs of the plaintiffs and of the 1st

defendant in this appeal and in the lower Court to come out of the Estate.

Appeal No. 126 of 1914.

9. This is the appeal of the 2nd defendant. At the very commencement of the hearing of these appeals a doubt suggested itself to our minds as to

whether in respect of a person who obtained his authority to manage some of the affairs of his tarwad solely on the strength of a family karar, a suit

could be sustained for his removal by the Court from that position. A tarwad is not a public religious or charitable trust nor a company under the

Indian Company's Act nor can such a karar manager be treated as an officer of a company. A tarwad or tavazhi cannot be called even a private

trust managed by a private trustee or private trustees. Suits for the removal of a de jure karnavan have been permitted for a long time past (see I

Sudder decisions 118, No. 28 of 1814 decided about 100 years ago) evidently on the ground that there exists no other remedy available to the

other tarwad members who cannot sue for partition of the tarwad property. But

family karars entered into by a majority of the members of the tarwad with the consent of the de jure karnavan seem to have been upheld as binding on the whole tarwad. See *Kanna Pisharodi v. Kombi Achen* ILR (1885) M. 381. Exhibit B in this case is a family karar of that kind. (I find that the removed karnavan Valia Pangi Achan was not a party to this karar and yet its validity is not disputed). It was suggested during the course of the argument that a family karar unless assented to by every one of the adult members is wholly invalid or, is at least not binding on the dissentient members. It may not be binding on a dissentient member so far as it seeks to restrict his right to succeed to the full powers of a karnavan in the natural course of events or if it interferes with his right to reasonable provision for maintenance but I do not see why, when the karnavan de jure is a party to the scheme of management assented to by a majority, it should not be binding on every member of the tarwad in all other respects. I think it follows that the adult members of the tarwad have it in their power with the consent of the de jure karnavan to vary the terms of the karar by a majority vote taken in a family council. They have, of course, also got the well established right by suit to have the karnavan de jure (whether his powers are or are not restricted by a family karar) removed from his position in the interest of the tarwad if he is guilty of gross misconduct, The whole of a family karar in my opinion falls to the ground on the death of the de jure karnavan who consented to be bound by it (or his removal by decree of Court) as the next de jure karnavan is not bound by the restrictions imposed by the karar on his predecessor except perhaps where he himself has agreed in that karar to be bound by those restrictions whenever he succeeded to the stanom. In Ramachandra Aiyar's book on Malabar Law, page 111 it is said quoting Second Appeal 765 of 1882 and Second Appeal 664 of 1882 that ""unless the karnavan consents to surrender his ordinary functions, the Court ought not to impose conditions upon him as regards acts of future management."" The lower Court seems to have thought that a tarwad was like a temple and the Court has practically settled a scheme for the management of the plaint tavazhi removing the defendants 1 and 2 from their positions (which it considered analogous to the positions of trustees of a temple) and has appointed the 6th defendant as manager as the fittest man for the office.

Two or three unreported cases have been cited before us in which by consent of all parties this Court passed decrees for the future management of tarwads. I do not think those cases oblige us to hold that every junior member of a tarwad could bring a suit for settling schemes for the management of his tarwad properties and for the removal by Court from the office of manager a person whose rights to so manage are founded solely on a family karar. The legislature has passed special Acts for the protection of the estates of minors and lunatics and of temples and mosques and has enacted provisions in the CPC for bringing suits with the consent of the Advocate General or the Collector to settle schemes of management for temples and mosques and has passed Acts for winding up registered and other companies. As regards private trusts also, Section 34 of the Trusts Act gives a trustee power ""to apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance"". I am not disposed to encourage the notion that suits in the nature of those mentioned in Section 14 of Act 20 of 1863 can be brought for the removal of private managers of tarwads or other private estates as if those estates were religious and charitable institutions. Even a suit u/s 14 can be brought only after obtaining the sanction of the District Court u/s 18. I would therefore hold that the suit so far as it prays for the removal of the 2nd defendant from his post of manager is totally misconceived and must be dismissed.

10. As regards the prayer for directing the 2nd defendant to submit accounts of his management and for making him conform to the terms of the

Karar, the plaintiffs junior (members) cannot, be allowed to maintain such a suit.

11. The 2nd defendant was, no doubt, bound to account to the 1st defendant under the Karar (1st defendant also representing the, tavazhi in

Courts of justice as de jure Karnavan), but a suit on behalf of the tavazhi to enforce those obligations of the 2nd defendant under the Karar can be

brought only by the de jure karnavan, the 1st defendant, and cannot be brought by the plaintiffs. Unless the karnavan himself is disabled from suing

to recover possession of or obtain other relief regarding the tar wad property (as in a case where the property was alienated by himself to a

stranger), an Anandravan cannot be allowed to sue on behalf of the tarwad for the relief claimable by the tarwad in respect of the tarwad property,

nor can he be allowed to sue for a mandatory injunction requiring the karnavan to act in a particular way for that would be to ask the Court to

substitute its discretion for his." I would therefore allow the appeal of the 2nd defendant and dismiss the plaintiff's suit wholly against him. The

parties will bear their respective costs in this appeal and the 2nd defendant will bear his own costs in the lower Court as his conduct has been

contumacious throughout towards the 1st defendant, the de jure karnavan.

12. Lastly we come to the Appeal No. 200 of 1914 filed by the 1st plaintiff and to the contentions of the 5th defendant as respondent in respect of

their supersession by the 6th, defendant. As I have held that the lower Court's removal of the 1st defendant from his position (as a karnavan with

the powers limited by the family karar) cannot be sustained, it becomes unnecessary to deal with the contentions of the 1st plaintiff and the 5th

defendant in detail. I shall only quote a few passages from a very learned contribution to the Madras Law Journal (Volume XI, page 137 with

which I agree. "In some cases the Court, while it makes a decree to remove a Karnavan, also appoints another Karnavan generally, the next senior

member, but sometimes it pronounces him to be unfit for the office and appoints some other member. Sometimes it even appoints two members. It

seems to us that this is illegal and that the Court has no power to do so. When the Court removes the karnavan, the next eldest member of the

tarwad is by right entitled to succeed. He requires no appointment by the Court and the Court has therefore no power to appoint him. The right to

the karnavanship goes by nature to each member in succession and the Court has no power to disturb the order. And any misconduct before his

succession to office in relation even to the tarwad properties is no ground to deprive him of his office. The appointment of two persons as karnavan

is equally unjustifiable.

13. I would, in the result, dismiss this appeal, the parties bearing their own respective costs, except the costs of the 6th defendant (who shall get his

costs - one set) in both Courts out of the estate.

Napier, J.

14. I entirely agree with the findings of fact arrived at by my learned brother and

the law as laid down by him with regard to the position of the 1st defendant, the de jure karnavan, and also in the view that no suit will lie to remove a Karar manager who is not the de jure Karnavan. I have had some doubt whether the plaintiff could not bring a suit against the latter on the Karar. I will not say that if a right was reserved by a Karar to any signatory to bring a, suit it could not be enforced; but I agree with my learned brother that in the absence of such a special provision the proper person to enforce the Karar against the Karar manager is the de jure Karnavan. I agree in the decrees and the orders for costs proposed by my learned brother.