

(1925) 04 MAD CK 0025
In the Madras High Court

Vayyaprath Kunnath Packi

APPELLANT

Vs

Vayyaprath Kunnath Muhammad and Others

RESPONDENT

Date of Decision : 02-04-1925

Acts Referred:

Citation : (1925) 49 MLJ 513

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—The main question for determination in this appeal is whether a junior member of a Malabar tarwad can sue on behalf of the

tarwad, even when there is a karnavan in existence, who can bring the suit. The powers of a karnavan have been considered on many occasions

and it has always been held that he is the controlling authority of the tarwad and that all the powers of management are vested in him. In fact, over

sixty years ago, it was held by Mr. Holloway, with regard to a karnavan : "" A Malabar family speaks through its head, the karnavan, and in Courts

of Justice except in antagonism to that head can speak in no other way. "" That principle has been upheld in Vasudevan v. Sankaran ILR (1897) M

129 and what is practically the same principle has been laid down later in Soopi v. Mariyoma ILR (1919) M 393. adopting a decision in S.A. No.

959 of 1917 in which it was held that "" only under very special circumstances could the anandravan of the tarwad maintain a suit for redemption of

a kanom granted by their karnavan, as such a suit would amount to an act of interference in the karnavan's management of tarwad affairs. "" In

Cheria Pangi Achan v. Unnal Achan (1916) 32 MLJ 323 it was held by Sadasiva Aiyar, J. that "" unless the karnavan himself is disabled from suing

to recover possession of or obtain other relief regarding the tarwad property 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. "" We find the same principle in Rajah of Arakal v. Churia Kunhi Rannan

(1915) 29 MLJ 633. Acting on this principle the Lower Courts have held that the appellant has no right of suit and accordingly dismissed it. There

is one authority which would appear to support the appellant and that is Anantan v. Sankaran ILR (1890) M 101. It is a very brief judgment and

does not discuss the principle at all. The material portion of the judgment runs as follows:

The karnavan is included as a defendant in the suit and as he has failed to sue till the period of 12 years has almost expired, we are of opinion that

the suit by the junior members cannot be validly objected to.

2. If this be taken as a broad proposition of law that in all circumstances the junior member will be entitled to sue when the karnavan has failed to

do so, it seems to be opposed to all the prior and subsequent decisions which deny such a right of suit to anandravan unless there are special

circumstances which justify his bringing such a suit. But if we look to the facts of that case we find that the two members of the tarwad whose

actions were impeached were defendants and all the other members of the tarwad were plaintiffs. Applying the facts to the judgment, the case

does come within the principle mentioned above that an anandravan may be permitted to sue when the karnavan had disabled himself from bringing

such a suit. In this case the karnavan had, through his agent, another member of the tarwad, made an alienation which was sought to be set aside it

would have been difficult for him to have brought the suit to set aside his own transactions and in that view this case is perfectly consistent with the

other cases that I have mentioned above and I think that the decision must be read in the light of these facts. There appears to be no other authority

opposed to the cases I have cited.

3. On the facts of the present case the appellant has nothing particular in his favour. The karnavan who made the alienation is dead. He was

succeeded by another and he is also dead, and very recently the 1st defendant has become the karnavan. In the plaint it is not alleged that plaintiff

consulted the 1st defendant or that the 1st defendant was neglecting the

interests of the tarwad. In fact, no allegation of misconduct is made against him. It is only here in second appeal that it is said for the first time that the 1st defendant was acting in collusion with the alienee. The suit was brought by the plaintiff nine months before the claim would have become barred and inasmuch as the 1st defendant had only recently assumed office, there is nothing to show that the plaintiff believed that he would not take action if approached in the matter. I think it would be very undesirable to extend the right of an anandravan to bring a suit on behalf of the tarwad for it would lead to multiplicity of litigation and there would be no finality whatever. The case cited have laid down the restrictions which should be imposed on such suits and I entirely agree. In that view the plaintiff has not disclosed any cause of action, that is to say, he is not entitled to bring such a suit and the decree of the Lower Court is right.

4. It is unnecessary to consider the other point on which the plaintiff's suit has been dismissed, namely, that of limitation. The second appeal must be dismissed with costs.