
(1964) 11 KL CK 0018
In the High Court Of Kerala
Case No : A.S. No. 443 of 1961

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APPELLANT

Vs

Bharathan and Others

RESPONDENT

Date of Decision : 30-11-1964

Acts Referred:

Limitation Act, 1908 — Article 176

Citation : (1965) KLJ 49

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : K.N. Narayanan Nair G. Raghava Panicker, for the Appellant; T.S. Krishnamoorthy Iyer for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Madhavan Nair, J.—The suit properties belonged to Thevan, who died on 1-5-1095, governed by the Misradaya system of inheritance. The 1st defendant is his widow, defendants 2 to 6 his children and defendants 7 to 10 his grandchildren through late daughters. Admittedly, the tavazhi of defendants 1 to 10 succeeded to 11/20 shares, and the plaintiffs' tarwad to 9/20 shares in his properties. After Thevan's death, his brother, Govindan had been in possession of the properties till 4-9-1109 when he executed Ext. VII, gifting them to defendants 1 to 10. Govindan died on 12-7-1120. This suit was instituted on 20-10-1121 by the 1st plaintiff the karnavan and plaintiffs 2 and 3 the senior-most male members of other two tavazhis of the tarwad, for partition of 9/20 shares to them, ignoring Ext. VII as not binding on them. The 1st plaintiff died on August 2, 1952. An application to implead the next karnavan as the 15th defendant in the suit was made by the 3rd plaintiff on October 28, 1954, only. On August 4, 1959, the Subordinate Judge held the suit abated in regard to the interests of the 1st plaintiff's tavazhi, and directed the 3rd plaintiff to file an amended plaint. Though the amended plaint also claimed 9/20 shares, the plaintiff's counsel has written on the back of the amended plaint that the suit

need be proceeded with only in regard to the interests of the 3rd plaintiff's tavazhi. The suit has now been decreed for division of 31/100 shares for the 3rd plaintiff's tavazhi. This appeal is by the 15th defendant, the present karnavan of the tarwad, claiming the entire 9/20 shares for the tarwad. The only question in the circumstances is whether the court below was right in holding that, by the non-substitution of the next karnavan within 90 days of the death of the 1st plaintiff, the suit as concerns the tarwad had abated. Counsel for the appellant relied on Ganeshmull Surana Vs. Nagraj Surana, where Banerjee J. held that a suit on behalf of a Hindu joint family does not abate by the death of the Karta who instituted the suit as representing the family and that an application for substitution of the next Karta is governed by the 3 year's rule under Article 176 of the Limitation Act, 1908. That decision has been overruled in Kedarnath Kanoria and Others Vs. Khaitan Sons and Co., by a Bench, Das Gupta J. and Bachawat J., who held that, when the Karta who brought a suit on behalf of a joint family died, application to substitute or implead the next Karta had to be made within 90 days lest the suit would abate. The same was the view taken by Sinha C.J. and Mudholkar J. in AIR 1952 390 (Nagpur) . We respectfully agree with the latter precedents. A tarwad can sue only in open of three ways: Firstly, through its accredited representative and mouthpiece, the karnavan; secondly, through all the members who constitute the tarwad; or thirdly, through a member of the tarwad with the reluctant or indifferent karnavan in the array of the defendants. This suit, as originally laid, came under the first category, the junction of plaintiffs 2 and 3 with the karnavan, the 1st plaintiff, being of little consequence in this respect. When the 1st plaintiff died, the tarwad lost its presence in the suit, as the succeeding karnavan was not in the array of parties. No application for bringing him on record was made for two years and more after the death of the 1st plaintiff. The Court below was therefore right in finding that the suit did abate as regards the tarwad. Whether, in the circumstances, the 3rd plaintiff was entitled to continue the suit on behalf of his tavazhi for part of the relief claimed, is not in issue before us and we express no opinion thereon. The decree directing division of 31/100 shares to the tavazhi of the 3rd plaintiff is not impugned here. This appeal is only to enforce the rights of the tarwad as claimed in the original plaint, which, as said above, cannot be after the suit has abated.

2. The appeal has no force, and is hereby dismissed.