
(1931) 08 MAD CK 0008
In the Madras High Court

V.K. Kunju Kombi Achan and Another	APPELLANT
Vs	
Ammu alias Parvathi Neithiar	RESPONDENT

Date of Decision : 19-08-1931

Acts Referred:

Citation : AIR 1932 Mad 31 : (1931) 34 LW 548 : (1931) 61 MLJ 549

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—The appellant (1st defendant) in Second Appeal No. 521 of 1930 is the karnavan of a Malabar tarwad. I have to dispose

of two applications by junior members of the tarwad to be impleaded in the second appeal as supplemental 2nd and 3rd appellants. A prayer is

added that the present appellant, the karnavan, should be removed or converted into a respondent. That prayer is, however, superfluous, because

the karnavan himself has applied to withdraw his second appeal. The question is whether the two applications to add the junior members as parties

should be granted in view of this latter circumstance. It is no doubt true that, when an appellant desires to withdraw his appeal or a plaintiff his suit,

the opposing party cannot resist such an application; nor would the Court be justified in disallowing it. This has been held in *Ram Churn Bysack v.*

Ripsimah Harmi (1867) 10 W.R. 373 and *Mahant Biharidasji v. Parshotamdas* ILR (1908) 32 B. 345. The former case is also authority for the

position that the Court upon such an application being made is immediately deprived of authority to entertain the claim and it can thenceforth only

deal with the question of costs. It appears to me that such a view is only compatible with the position that the Court has to pass no order recording

the fact of withdrawal and the disposal of the suit by that means, and I am not clear that until it passes such an order it is deprived of jurisdiction

over the suit for all purposes. It may, however, be conceded that in all ordinary circumstances the party prosecuting an action may at any time

withdraw it. The question, however, is whether in a representative suit other parties interested in the subject-matter of it may obtain leave to carry it

on by being impleaded notwithstanding the withdrawal by the original appellant. It has been held in *Vasudevan v. Sankaran* ILR (1897) 20 M. 129

: 7 M.L.J. 102 that a suit filed by a karnavan as such is a representative suit and there is no question that the adjudication in that suit is binding upon

the members of the tarwad. It is not of course in all cases that the prayer of an anandravan either to be added as a party in a suit brought by the

karnavan or to be substituted should be granted. The Court must have some grounds to suppose that the karnavan is not acting bona fide in the

interests of the tarwad. The present applications are supported by affidavits and the allegation is made in them that there is even now pending a suit

filed by the members of the tarwad to remove the present appellant from the tarwad management, and that out of spite owing to the filing of that

suit, and with the intention of causing loss to the tarwad the karnavan has decided to withdraw the second appeal. No counter-affidavit has been

filed in denial of these allegations, and it appears to me that this ground, if true, is a sufficient reason for allowing the anandravans to carry on the

litigation. The application to withdraw seems to have been filed at some date anterior to the dates on which these applications were filed, but, as I

have said, I must regard the matter as still pending and the present appellant still a party until orders are passed on his application to withdraw. In

somewhat similar circumstances in *Sirajuddin Sahib v. Satari Sahib* (1919) 12 L.W. 25 *Sadasiva Aiyar and Odgers, JJ.*, allowed the transposition

of a defendant into a plaintiff. That was a suit filed by a person calling himself a trustee and during its currency he put in a petition to withdraw it.

The question arose whether in view of that application it was open to the Court to transpose a defendant as a plaintiff and much the same

arguments were employed as here. *Odgers, J.*, remarks with reference to the contention that the Court loses jurisdiction as soon as the application

is filed:

It seems clear that although, the plaintiff may be entitled to withdraw his suit when he likes, he can only do so by petition on whom the Court must pass orders with notice to the other parties on the question of costs.

2. I conclude accordingly that for the purpose of passing orders on these petitions the second appeal should still be taken to be pending and that

being so, I consider that it is clearly in the interests of the tarwad that the appellant should not be allowed to withdraw until the two applicants have

been added as supplemental appellants". It seems reasonable, however, that their action should not involve the tarwad in any expense which might

have been avoided by the withdrawal of the second appeal. They have themselves undertaken personally to meet any costs which may be incurred

and I make the order substituting their names for that of the present appellant on condition that they jointly and severally give security for any costs

that may be awarded against them in second appeal in the sum of Rs. 150 to the satisfaction of the District Munsif of Palghat within one month

from the date of the receipt of this order.