
(1912) 08 MAD CK 0045
In the Madras High Court

V.T. Kunchi Amma and Another

APPELLANT

Vs

V.T. Ammu Amma and Another

RESPONDENT

Date of Decision : 09-08-1912

Acts Referred:

Citation : (1913) 24 MLJ 559

Judgement

1. This is a suit by a lady belonging to a Marumakatayam Nair tarwad in Malabar for arrears of maintenance and the question debated between

the parties is whether the circumstances under which she left the house and lived away in a separate house during the period for which she claims

maintenance are such as to make it proper that the Court should allow her separate maintenance. In her plaint she alleged that the defendants were

putting her to trouble without giving her any maintenance at all after she returned from a pilgrimage. The reason alleged for this conduct on the part

of the defendants is that she refused to ratify a family karar which had been entered into between the other members of the tarward during her

absence on pilgrimage. In her evidence she stated that when she refused to ratify the karar ""the defendants became angry and told me that I would

not be given meals and beat me."" This evidence was contradicted on the side of the defendants. Neither the District Munsif nor the Subordinate

Judge finds either positive ill-treatment by beating or refusal to maintain the plaintiff in the tarwad house. It would appear that she was on unfriendly

terms with the defendants before she left the house on her pilgrimage and after her return she refused to give her assent to the karar that had been

executed in her absence. Her husband had instituted a suit for money against the 2nd defendant which failed. From these facts the lower Courts

came to the conclusion that it must have become uncomfortable for the plaintiff to continue to reside with the other members of the tarwad. The

Subordinate judge puts it thus. "The probability therefore is that on account of that suit and also on account of the plaintiff's inclination to side

always with her husband the defendants made her stay in the tarwad house uncomfortable and that she had therefore to go away. The expression

"uncomfortable" is certainly a vague one. The facts spoken to by the plaintiff namely the beating and the refusal to maintain took place according to

her in 1902, but according to the finding of both Courts she lived in the tarwad house till 1905, so that according to the view accepted by the

lower Courts she continued to live there for a considerably long time after the ill-treatment to which she speaks. There is no allegation or evidence

of any further improper conduct on the part of the defendants. According to the plaintiff's evidence she has been living in a house rented by her at

her own expense. It is not her case that she left the tarwad in order to live with her husband. It would be a very inconvenient rule to lay down that a

junior member may leave the tarwad house and claim separate maintenance simply because he or she does not feel quite comfortable there. There

may no doubt be such discord between the member and the other members of the family as to make it proper that separate maintenance should be

awarded. At the same time it would conduce to the peace of tarwads not to encourage suits for separate maintenance on the mere ground that

there is not such complete harmony in the house as to ensure the happiness of the claimant. We have no doubt that the Court will in such case be

able to decide whether the discomfort is so serious as to justify the award of separate maintenance and whether the plaintiff himself (or herself) was

not so greatly responsible for the discomfort complained of as to be disentitled to claim separate maintenance. We cannot shut our eyes to the fact

that if the plaintiff felt any small annoyance in the family house it was to a large extent due to the conduct of her husband whom she probably

seconded. She herself admits that she allowed herself to be controlled by him so far as to leave the house on pilgrimage without taking leave of the

members of the tarwad. On the whole we have come to the conclusion that the plaintiff has not established her right to separate maintenance in this

case. The suit was instituted three years after she left the house according to the finding of the Courts and about 6 years according to her own

case. We reverse the decrees of the Courts below and dismiss the suit but, in the circumstances, without costs in any of the Courts. The memorandum of objections is also dismissed.