

at certain rates. The amount of such fine would depend on the amount of the crop and it was impossible at the time of execution to say how much, if anything, would become due on this account or on account of interest, I therefore agree that those uncertain amounts ought not to be considered in calculating for the purposes of the Registration Act the amount secured by the instrument.

1878.
January 19.

NARASÁYYA
CHETTI
v.
GURUVAPPA
CHETTI.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir W. Morgan, C.J., and Mr. Justice Innes.

CHANDU AND ANOTHER (DEFENDANTS) SPECIAL APPELLANTS v.
CHATHU NAMBIAR (PLAINTIFF) SPECIAL RESPONDENT (1).

1878.
March 8.

Karnavan—Declaratory decree, suit for—Lands acquired by member of Malabar tárwád—Malabar Law.

Suit to obtain a declaration that the lands mentioned in the plaint formed the common property of the tárwád of which the plaintiff was karnavan and to have the revenue register of those lands transferred to the plaintiff's name. The plaint alleged that the lands in question were the private acquisitions of three of the deceased members of the tárwád, of whom the last, in whose name the lands were last assessed, on becoming karnavan of the tárwád, applied to the Sub-Collector to have the registry of those lands transferred to the names of his own nephews, the first and second defendants; that plaintiff protested and was referred to a Civil Suit to obtain a declaration that the registry could not be so transferred. *Held*, on Special Appeal, affirming the decree of the Lower Appellate Court, that the plaintiff was entitled to the declaration sued for, as it would enable him to go to the Collector for substantial relief in the shape of the transfer of registry to his name, but that the relief sought for could not be granted by the Court as the Revenue authority was not a party to the suit.

THE suit was brought to obtain a declaration that the lands mentioned in the plaint formed the common property of the tárwád of which the plaintiff is the present karnavan, and to have the revenue registry of those lands transferred to his name. It was alleged that the lands in question were the private acquisitions of three of the deceased members of the tárwád, Anandan,

(1) Special Appeal No. 106 of 1877 against the decree of J. W. Reid, District Judge of North Malabar, dated 25th September 1876, reversing the decree of the District Munsif of Tekicherr, dated 23rd March 1875.

1878.
March 8.

CHANDU
C.
CHATHU
NAMBIAR.

Kellapan and Ramar, of whom the last, in whose name the lands were last assessed, on becoming karnavan of the tárwád, applied to the Sub-Collector to have the registry of those lands transferred to the names of his own nephews, the first and second defendants; that the plaintiff then protested against the proposed transfer; and that, on 10th March 1874, the plaintiff was referred by the Sub-Collector to a Civil Court to obtain a declaration that the registry could not be so transferred. The karnavan Ramar having died, the plaintiff in this suit came in as the acknowledged karnavan of the tárwád.

The defendants contended that the facts alleged did not justify a suit for a declaratory decree; that the lands were the private acquisitions of deceased members of their own branch of the tárwád, and had, according to the immemorial custom which obtained among the several branches of the tárwád, become the property of the defendants' branch. They further contended that the common property of the tárwád was confined to certain lands and parambas held on an Inám tenure, and that these were all that fell to the direct management of the karnavan, that each branch had separate property of its own, and the tárwád karnavan had no right to the property of any branches other than his own.

The District Munsif dismissed the suit, holding that the family custom alleged by the defendants had been proved, and was an exception to the established rule of Malabar Law, that all the acquisitions of any member of a family undisposed of at his death form part of the family property and do not go to the nephews of the acquirers, but fall, as all other property does, to the management of the eldest surviving male.

The plaintiff appealed.

The District Judge reversed the decree of the First Court on the authority of *Appuni v. Ekanatha Shanguni* (1), and declared that the lands mentioned in the plaint were the common property of the tárwád in question. As to the declaration prayed for that plaintiff was entitled to have the registry transferred to his own name, the Judge refused to grant it, the Revenue Authority not being a party to the suit.

The defendants preferred a Special Appeal on the ground, among others, that upon the allegations stated in the plaint a suit for a declaratory decree ought not to be entertained.

Mr. *Shepherd* for the Special Appellants.

Mr. *Michell* for the Special Respondent.

The Court (Sir W. MORGAN, C. J., and INNES, J.) delivered the following

JUDGMENT:—We reserved judgment in this case because we felt doubts as to whether it was one in which a declaration could properly be granted. Plaintiff sought not merely for a declaration of title but also for relief in the shape of the transfer of registry to his name.

This the Lower Appellate Court was unable to grant, the Revenue Authority not being a party to the suit. The facts are all found in favor of plaintiff's contention. We think plaintiff should have the declaration, as it will enable him to go to the Collector for substantial relief in the shape of registration in his name. We shall dismiss the Special Appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir W. Morgan, C.J., and Mr. Justice Innes.

SUBBAIYAR (DEFENDANT) APPELLANT, v. KRISTNAIYAR AND ANOTHER (PLAINTIFFS) RESPONDENTS. (1)

Slander—Co-plaintiff—Act VIII of 1859, Section 73.

Plaintiff sued defendant for damages for slander of plaintiff's sister. The Court, regarding the suit as defective for want of parties, made plaintiff's sister a co-plaintiff under Section 73 of Act VIII of 1859. *Held* that the defect was one not to be remedied under that section; and that, as there was no right of suit in the plaintiff, the suit should have been dismissed.

THE plaintiff alleged that the defendant as plaintiff had brought a suit against the present plaintiff charging him with malversation of certain funds of an endowment in his management, and that at the hearing of that suit the present defendant used grossly indecent language (set out in the plaint) to plaintiff concerning

1878.
March 8.

CHANDU
v.
CHATHU
NAMBIAR.

1878.
April 8.

(1) Second Appeal No. 195 of 1878, against the decree of A. Annusami, Subordinate Judge of Tinnevely, dated 9th November 1877, confirming the decree of the District Munsif of Ambasamudrum, dated 29th December 1876.