[288] APPELLATE CIVIL.

The 28th March, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KINDERSLEY.

Kutti Mannadiyar.....(Defendant), Appellant

versus

Payanu Muthan.....(Plaintiff), Respondent.*

Malabar law—Debt contracted by Carnavan—Presumption—Burden of proof.

There is no presumption of law that every debt contracted by the Karnavan of a Malabar tarwad is for the usage of the tarwad and chargeable on the tarwad estate.

The creditor must show in the first instance, if it is disputed, that the obligor had authority from the tarwad as their agent and manager to contract debts, and that he assumed to act in the particular instance as such agent and manager. The creditor having established these facts, it lies on the tarwad to show that the obligor was not acting within the scope of his authority in the particular instance.

THE facts and arguments in this case sufficiently appear in the Judgment of the Court (INNES and KINDERSLEY, JJ.).

A. Ramachandrayyar, for the Appellant.

R. Balaji Rau for the Respondent.

Judgment:—This suit was brought to recover the sum of Rupees 370, with interest, alleged to be due by the defendant's tarwad in respect of a debt incurred by a former Karnavan named *Krishna Mannadiyar*.

The defendant appears to have pleaded that he was not responsible for the debt; that, if incurred at all, it was the personal debt of *Krishna Mannadiyar*, which did not bind the tarwad; and that it had been agreed that no document should bind the tarwad property unless it should be in the handwriting of the defendant and signed by *Krishna Mannadiyar*.

The District Munsif decreed for the plaintiff with costs, finding that the plaintiff had no notice of the agreement in question. That decision was affirmed by the District Judge, who took the same view.

On second appeal to this Court it was again contended that the debt was the personal debt of the late *Krishna Mannadiyar*, not incurred for purposes which would render it binding on the [289]tarwad. The issue was then referred to the District Judge, whether the loan secured by the promissory note in question was advanced under circumstances which would render the debt binding on the property of the defendant's family. The parties were at liberty to produce further evidence, but did not do so.

Upon the evidence already recorded, the Judge concluded that the loan was made under circumstances which would render it binding on the tarwad. But, in coming to this conclusion, the learned Judge held that "every debt contracted by the Karnavan is presumed to be for the uses of the family and chargeable on the family estate until the contrary be shown.' And the objection has been taken that the Judge had thrown the burthen of proof on the wrong party.

* Second Appeal No. 332 of 1880 against the decree of H. Wigram, District Judge of South Malabar, confirming the decree of O. Chundu Menon, District Munsif of Palghat, dated 12th January 1880.

We are not prepared to adopt the learned Judge's opinion as to the presumption in question in the very broad terms in which it has been laid down. Whatever may be the powers of a Karnavan in the management of the property of the tarwad, it is clear that the Karnavan cannot, without the consent of the members of his tarwad, bind them to pay his private debt. In many cases, the surrounding circumstances, in the absence of direct evidence, may tend to show the purposes for which the debt was contracted. But, in the absence of all evidence, we are not aware of any presumption of law that a debt contracted by a Karnavan was contracted on behalf of his tarwad. In such a case, it is for the creditor to show, if it is disputed, that the obligor had authority from the family as their agent or manager to contract debts, and that he assumed to act, in the particular instance, as such agent or manager. When this is shown it lies on the family to show that, in the particular instance, the obligor was not acting within the scope of his authority. We think that it was for the plaintiff in this case to show that the debt was binding on the tarwad.

In the present case, however, we have the evidence of the plaintiff and of two of his witnesses to the effect that the loan was contracted for the purpose of rebuilding a temple, and one of those witnesses says that the temple belonged to the tarwad. On the other hand, there is nothing to show that the debt was the private debt of *Krishna Mannadiyar*. We must, therefore, affirm the decision of the District Judge and dismiss this second appeal with costs.

NOTES.

[In *Kombi Achem* v. *Lakshmi Amma*, 5 Mad. 201, this question of burden of proof as to the necessity of loan made to a karnavam was fully gone into, and it was held that though the Karnavan can pledge the family credit, it would be too much to hold that the family property is liable to be dissipiated by enforcement of decrees against the Karnavan for any simple debt of whatever character contracted by him. The presumption depends on the circumstances of each case.]

[290] PRIVY COUNCIL.

The 24th, 25th, 29th and 30th March, and 14th May 1881.

PRESENT:

SIR B. PEACOCK, SIR M. E. SMITH, SIR R. P. COLLIER, SIR R. COUCH AND SIR A. HOBHOUSE.

Muttu Vaduganadha Tevar and others.....Defendants

and

Dora Singha Tevar.....Plaintiff.

[On Appeal from the High Court at Madras.]

Mitakshara Law of Succession to estate inherited by a daughter—Impartible Zamindari—Regulation XXV of 1802.

The Mitakshara rule that property inherited by a female from a male is taken by her for only a restricted estate and devolves, on her death, in the line, if any exists, of such male, is applicable in the Carnatic.

Chotaylall v. *Chunnoo Lall* (L. R. 6 I. A. 15) referred to.

A zamindari, originally impartible, having become the property of the Government, and having been granted by it to a Zamindar, who, having been appointed by Proclamation in 1801, and having been put into possession, received a sanad in 1803; *held*, that the Zamindari retained the quality of impartibility. Also, that this quality had not been transmuted into partibility, either by the passing of the Regulation XXV of 1802, or by that law coupled with the issue of the sanad containing certain of its terms.