

“ I therefore shall only modify the decree of the Munsif by ordering each party to bear their own costs. I do so because this is essentially a family dispute not wanting in *bona fides*, and it is certain that the plaintiff has not got her full share of materials for maintenance, and though I do not say plaintiff has a right to ask it in the way she has, it would be just and honourable on the Karnavan's part to give her help towards her maintenance in 1053.”

The plaintiff appealed to the High Court.

*Bamachandrayyar* for Appellants.

*Spring Branson* for Respondent.

The arguments in this case appear in the judgment of the Court (TURNER, C. J., KINDERSLEY, J.).

**Judgment.**—The general rule that a member of the tarwad is not entitled to maintenance if she ceases to reside in the family house, is not contravened by the recognition of a right to maintenance in a member residing in one of several houses which convenience or necessity has, as it were, affiliated to the original tarwad home as places of residence for members of the tarwad. [171] The Judge must, therefore, dispose of the appeal on the merits. The appeal is allowed and the decree of the Lower Appellate Court set aside, and the case remanded to the Lower Appellate Court for retrial. The costs of this appeal will abide and follow the result.

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[4 Mad. 171.]

APPELLATE CIVIL.

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*The 20th September, 1881.*

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE TARRANT.

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Putanvital Teyan Nair.....(First Plaintiff) Appellant

and

Putinvital Ragavan Nair.....(Defendant) Respondent.\*

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*Malabar Law—Right of misbehaving Anandravan with private property to maintenance.*

A Karnavan (manager) of a Malabar tarwad (family) is not justified in excluding an Anandravan (junior member) from participation in the income of the family property on the ground of misbehaviour or because the Anandravan has other property of his own.

THE facts and arguments in this case appear sufficiently, for the purpose of this report, in the judgment of the Court (INNES and TARRANT, JJ.).

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\* Second Appeal No. 265 of 1881 against the decree of H. Wigram, Officiating District Judge of South Malabar, confirming the decree of A. Camaran Nair, District Munsif of Temelprom, dated 10th December 1880.

*Ramachandrayyar* for Appellant.

*Bhashyam Ayyangar* for Respondent.

**Judgment** :—The defendant, the Karnavan of the tarwad, had for some time been refusing plaintiffs the maintenance usually considered the right of the Anandravans of the tarwad. The plaintiffs instituted this suit to recover arrears of maintenance for one year and three months.

The defence was that plaintiffs are misbehaving members of the family; that first and second plaintiffs are in possession of tarwad property; and that maintenance was tendered by defendant to the remaining plaintiffs and refused.

Sixth plaintiff died during the progress of the suit. The District Munsif gave a decree in favour of the second, third, fourth, fifth and seventh plaintiffs, but disallowed first plaintiff's claim [172] on the ground of his persistent opposition to the Karnavan, which involved misconduct that in the opinion of the Munsif disentitled him to be maintained by the tarwad.

On appeal by the first plaintiff, the District Judge affirmed the District Munsif's decision, considering that first plaintiff's misbehaviour had been serious, and that he was also not in need of maintenance as he was possessed of extensive property in his own right.

It is contended in second appeal that plaintiff's misbehaviour does not disentitle him to his right to be maintained from the family funds. We think his contention is well founded.

A tarwad does not differ in this respect from an ordinary Hindu family, the manager of which is not entitled to exclude the members from a right to a perception of some portion of the income of the family property. It seems apparent that, if a Karnavan could adopt this course, it might result in such an exclusive possession of the tarwad property on the part of the Karnavan and the rest of the tarwad as would, in the course of years, extinguish all right in the Anandravan in the tarwad property. The circumstance that the first plaintiff has other property is not an element in the consideration of his right to share in the enjoyment of the joint family funds. If it were, a man's own individual industry and exertions might be the means of depriving him of his rights in the joint property.

We must reverse the decrees of the Courts below in regard to first plaintiff and give him a decree for the amount prayed for with costs throughout.

#### NOTES.

See for a discussion of the rights of maintenance of the members of a Malabar tarwad and the liability of the Karnavan to them, in (1911) 14 I. C. 383=22 M. L. J., 809.

See also Notes under 5 Mad., 71, in our 'Law Reports' Reprints.