

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

KELU (DEFENDANT No. 1), APPELLANT,

and

PAIDEL AND OTHERS (PLAINTIFFS), RESPONDENTS.*

1886.
March 29.
April 5.

*Malabar Law—Suit by anandravans to set aside sale in execution of decree against their
karnavan, when maintainable.*

The plaint lands being the jenm of a devasam were sold in execution of a decree obtained by defendant No. 1 against the urálar. Plaintiffs being the anandravans of the urálar sued to set aside the sale alleging that the debt was not contracted for devasam purposes and that the decree was collusive :

Held, that the decree was binding on the plaintiffs unless it had been obtained by fraud and collusion.

ORIGINAL suit 480 of 1876 was brought by defendant No. 1 against defendants Nos. 2, 4, 6 and 7. He obtained a decree in execution of which jenm properties of the devasam were attached. Defendants 3, 5 and 8, the remaining urálar, objected to the attachment. Their objection was allowed and the attachment released. Thereupon defendant No. 1 sued defendants Nos. 2-8 in O.S. 570 of 1881 for a declaration that the devasam properties were saleable in execution of the above decree, and obtained the declaration, and the properties were accordingly sold. The plaintiffs who are the anandravans of defendants Nos. 2, 3, 6, 7 and 8, respectively, brought this action, to set aside the sale.

The suit was dismissed by A. Annasámi Ayyar, District Munsif of Pynád.

The plaintiffs appealed.

K. Kunjan Menon, Subordinate Judge of North Malabar, allowed the appeal on the ground that the debt on which the decree in O.S. No. 480 of 1876 was obtained was not contracted for devasam purposes.

Defendant No. 1 appealed to the High Court.

The Acting Advocate-General (Mr. Shephard) and Náráyana Ráu for appellant.

KELU
2.
PAIDRL.

Bhāshyam Ayyangār and *Srinivāsa Rāu* for respondents.

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT :—The appellant in a suit to which all the urālars were parties obtained a decree declaring the lands of the devasam liable to his claim. In the urālars is vested the property of the devasam—*Patinharipat Krishnan Umni Nambiar v. Chekur Manakkal Nilakandan Bhattathiripad*. (1) The decree against them is binding on all future representatives of the devasam unless set aside on the ground of fraud and collusion in a suit properly framed for that purpose.

There is a considerable difference in the position of respondents as possible future urālars and as anandravans of the tarwads of which defendants 2-8 are karnavans, but we are not prepared to hold that their interest in the devasam is not sufficient to enable them to maintain the suit. The action, however, of their karnavans is binding upon them unless they can set it aside on the ground that the karnavans were in collusion with the appellant against the interests of the devasam.

The decree in O.S. 570 of 1881 was given on the merits on issues properly framed, and, if the contending defendant was absent at the final hearing, it is nowhere alleged in the present plaint that his absence was due to fraud or collusion with the appellant. There are, it is true, vague allegations of fraud made in the plaint, but no particulars of fraud are alleged, nor at the time of settlement of issues did respondents seek to have the decree set aside on any definite allegation of fraud.

The Subordinate Judge has disposed of the appeal upon a wrong issue; the point being not whether the debt was properly binding on devasam, but whether the decree, which declared that it was so binding, had been obtained by the fraud and collusion of the urālars with the appellant. On that ground alone would the respondents have been entitled to succeed.

We must set aside the decree of the Lower Appellate Court and restore that of the District Munsif. The respondents must pay appellant's cost in this and in the Lower Appellate Court.

(1) I.L.R., 4 Mad., 141.