

## APPELLATE CIVIL.

*Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.*

KALLIYANI (DEFENDANT No. 5), APPELLANT,

and

NÁRÁYANA (PLAINTIFF), RESPONDENT.\*

1885.  
October 23,  
November 10.

*Malabar law—Sale of tarwad property—Powers of karnávan—Assent of members of tarwad, how far necessary.*

There is no rule of Malabar law that the assent of every member of a tarwad is necessary to render valid the alienation of tarwad property.

THIS was an appeal from the decree of K. Kunjan Menon, Subordinate Judge of North Malabar, modifying the decree of the District Múnsif of Kavai in suit 378 of 1882.

The facts necessary for the purpose of this report appear from the judgment of the Court (Muttusámi Ayyar and Hutchins, JJ.).

*The Acting Advocate-General* (Hon. Mr. *Shepherd*) and *Anantan Náyar* for appellant.

*Sankaran Náyar* for respondent.

JUDGMENT.—This appeal relates to that part of the Subordinate Judge's decree which adjudges the sale evidenced by exhibit vii to be invalid. The doctrine on which the Subordinate Judge proceeded is that no karnávan or any number of anandravans "can permanently alienate tarwad property against the will of any single member of the family." If that rule holds good, a single factious anandravan may bring about the ruin of the whole family, for cases may occur in which an outright sale of part of the property may be by far the most prudent course, and indeed absolutely essential for the preservation of the remainder. It appears to us that the rule that every member of the family must assent is by no means an unqualified one. Section 379 of *Strange's Manual* has been referred to: after quoting an authority to the effect that the written assent of the chief anandravans is necessary, the learned author mentions a judgment of the Zila Court in which it was held that the absence of concurrence of one

\* Second Appeal 512 of 1885.

living in discord with the karnavan would not vitiate the alienation. In the two cases *Kōndi Ménōn v. Srānguvreagatta Ahammada*, (1) *Kaipreta Ramen v. Makkaijil Mutoren*, (2) Mr. Justice Holloway referred, in general terms, to the rule of law as one requiring the assent of all members of the tarwad, but in both the appeal of an alleged dissentient was dismissed, and we do not find that it has ever been determined that the rule is invariable. In our opinion the factious or capricious dissent of a single anandravan ought not to be allowed to invalidate a sale made in pursuance of the decision of a family conclave, and which was either absolutely necessary, or the most reasonable and prudent arrangement for the protection of the other family property. We will, therefore, ask the Subordinate Judge to find on the evidence already recorded—

- (i) whether the sale to defendant No. 5 was necessary;
- (ii) whether the plaintiff openly opposed it;
- (iii) whether the plaintiff's opposition was reasonable or merely frivolous and factious.

KALLIVANI  
NÁRÁYANA.

## APPELLATE CIVIL.

*Before Mr. Justice Kernan and Mr. Justice Brandt.*

PALANI (PLAINTIFF), APPELLANT,

and

SELAMBARA AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

1885.  
July 21.  
1886.  
January 22.

*Registration Act, s. 48—Constructive possession in pursuance of oral agreement to sell land.*

Where a vendor in pursuance of an oral agreement to sell certain land directed the tenants of the land to pay, and the tenants agreed to pay, rent to the purchaser :

*Held*, that such possession was given to the purchaser as would satisfy the conditions of s. 48 of the Indian Registration Act and enable him to resist the claim of subsequent registered purchaser.

**APPEAL** from the decree of H. Wigram, District Judge of Coimbatore, modifying the decree of P. Náráyanasámi Ayyar, District Múnsif of Erode, in suit 100 of 1883.

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

(1) 1 M.H.C.R., 248.

(2) 1 M.H.C.R., 359.

\* Second Appeal 356 of 1884.