

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Parker.

SUBRAMANYAN (DEFENDANT No. 1), APPELLANT,

and

KALI AND OTHERS (PLAINTIFFS AND DEFENDANT No. 2), RESPONDENTS.*

1887.
January 27.
July 12.

Malabar Law—Suit against karnavan and senior female member of a tarwad—Evidence of intention to sue defendants as representatives of the tarwad.

The karnavan and senior female member of a Malabar tarwad executed a hypothecation bond, on which a suit was brought against them asking for the sale of the tarwad property. The defendants had represented the tarwad in other suits, but were not in this case expressly sued in representative capacity. The plaintiff obtained a decree :

Held, that the decree was binding on the tarwad.

SECOND appeal against the decree of H. M. Winterbotham, Acting District Judge of South Malabar, in Appeal Suit No. 977 of 1885, modifying the decree of P. Govinda Menon, District Munsif of Chowghat in Original Suit No. 336 of 1885.

The plaintiffs, who are members of a Malabar tarwad, sued to set aside the sale of certain land in execution of a mortgage decree obtained in Original Suit No. 460 of 1881 by defendant No. 1 against defendants Nos. 2 and 3, being respectively karnavan and the senior female member of the plaintiff's tarwad. It was admitted that the land sold was the property of the plaintiff's tarwad. But it was denied by the plaintiffs that the decree in question had been obtained against the proper representatives of the tarwad as such, so as to bind the junior members.

Defendant No. 2 did not appear.

The District Munsif dismissed the suit, but his decree was, so far as concerned the property involved in this second appeal, reversed by the District Judge on the ground that the decree in question had not been passed against the defendant as representing the tarwad.

Defendant No. 1 preferred this second appeal.

Sankaran Nayar for appellant cited *Kannachi v. Nárdayana* (I.L.R., 8 Mad., 491), and relied on evidence, showing that

* Second Appeal No. 499 of 1886.

SUBRAMANYAN defendants Nos. 2 and 3, who had executed the mortgage sued on.
v. KALI. in Original Suit No. 460 of 1881, had generally represented the
tarwad in suits.

Gopala Náyar for respondents argued that the mortgage-decree was not passed against the judgment-debtors in any representative capacity.

The Court (Muttusámi Ayyar and Parker, JJ.) made the following

ORDER :—“ It appears from the decree in Original Suit No. 460 of 1881 that the plaint prayed for the sale of tarwad property. This is evidence of an intention on the part of the appellant to sue the defendants in that case as representatives of the tarwad. In *Kannachi v. Náráyana*(1) there was only a decree for rent against two members of the tarwad. Nor did it appear from the proceedings in that suit that the plaintiffs sought to obtain more than a personal decree. Though defendants Nos. 2 and 3 in the case before us joined in the execution of the hypothecation bond on which Original Suit No. 460 of 1881 was brought, it does not necessarily imply that they were not intended to be sued in their representative capacity. It is true that the decree is not in terms against the representatives of the tarwad, but the proceedings show that the appellant intended to hold the tarwad responsible for the debt through its karnavan and the senior female.

“ We shall therefore ask the Judge to return a finding on the second issue, viz., whether the decree debt in Original Suit No. 460 of 1881 was contracted for purposes binding on the tarwad.”

The issue having been found in the affirmative, the Court on rehearing this second appeal set aside the decree of the District Judge so far as it reversed that of District Múnsif which was accordingly restored.

(1) I.L.R., 8 Mad., 491.
