

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

SUBRAMANYAN AND OTHERS (DEFENDANTS), APPELLANTS,

and

GOPALA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

1886.
October 18.
1887.
April 14.

Malabar law—Karnavan—decree against,—Female not incapable of managing the affairs of a tarwad—Res judicata.

The senior female member of a Malabar tarwad, who managed its affairs, instituted a suit on behalf of the tarwad and in the capacity of karnavan :

Held, (1) that a female is not precluded from managing the affairs of her tarwad when there is no male member in her family capable of performing the duties of a karnavan ; and

(2) that the junior members of the tarwad were, in the absence of fraud shown, constructively parties to the suit, and were accordingly bound by the decree passed in it.

APPEAL against the decree of V. P. deRozario, Subordinate Judge of South Malabar, in appeal No. 149 of 1885, affirming the decree of N. Sarvóthama Ráu, District Múnsif of Palghat, in original suit No. 1038 of 1883.

This was a suit brought by the plaintiffs, who together with their mother, defendant No. 9 constitute a Malabar tarwad, to redeem a certain piece of land. The land in question was alleged to have been demised in 1838 by the then karnavan of the plaintiff's tarwad on kanam to one Annamalai, who assigned his interest to a devasom belonging to defendants Nos. 1 to 4 but under the management of defendant No. 5. Defendants Nos. 1 to 4, and defendants Nos. 6 and 7 who were tenants of the land in question, did not appear. Defendant No. 8 claimed the jenm right in the land. Defendant No. 9 had brought original suit No. 210 of 1881, against defendant No. 8, to redeem the alleged demise of 1838 made by her tarwad ; but it was dismissed, it being found that the jenm right was in defendant No. 8 and not in the tarwad of defendant No. 9. Defendant No. 8 and

* Second Appeal No. 940 of 1885.

SUBBRAMANYAN defendant No. 5 (who claimed through him) accordingly now
 GOPALA. pleaded that the matter was *res judicata*. The plaintiffs in reply
 alleged that defendant No. 9, being a female, was not legally
 competent to represent or sue on behalf of the tarwad, and that
 they were not affected by the decree in the former suit. Both the
 lower Courts decreed for the plaintiffs. Defendants Nos. 5 and 8
 appealed, defendant No. 9 being joined as respondent No. 4.

This second appeal coming on for hearing on the 18th October
 1886, the Court made an order directing the Subordinate Judge to
 try the following issues, viz.—

- (1) Whether the respondents' tarwad was sufficiently repre-
 sented in the former suit by respondent No. 4.
- (2) Whether the decree in that suit against respondent No. 4
 was passed against her as representing the tarwad and
 is binding as against the other respondents.

The Subordinate Judge returned the following finding, and
 decided both issues in the affirmative :—

“Fourth respondent (ninth defendant) Emuri Amma is the
 senior lady in her tarwad. First plaintiff is her grandson and
 second and third plaintiffs are her daughters. At the date of
 the former suit (No. 210 of 1881) brought by ninth defendant,
 first plaintiff, the only male member in the family, was a minor.
 Ninth defendant, therefore, was quite competent to sue on behalf
 of the tarwad. The proceedings show that she sued not on
 her own behalf but on account of the tarwad. The land was
 described in the plaint as tarwad land, and she sued to recover as
 the representative of her deceased karnavan. The final decree in
 favour of fifth and eighth defendants passed in that suit is therefore
 binding on the plaintiffs. It is not pretended that the decree was
 obtained by fraud or collusion. The record shows clearly that the
 former suit was prosecuted by ninth defendant with due diligence
 on behalf of her tarwad. Exhibits S and T and X and Y now
 produced by plaintiffs show that ninth defendant joined her late
 karnavan in demising tarwad lands and in suing for their recovery.
 These exhibits tend to show that ninth defendant took part in the
 management in the lifetime of her karnavan and was not unquali-
 fied to manage on the death of the karnavan. Exhibit VIII shows
 that, after the death of her karnavan, she solely demised tarwad
 property. In Exhibits V and W, two simple bonds executed by
 ninth defendant in 1051 and 1053, plaintiffs also appear as

executants; but they were admittedly minors at the time, and it cannot be contended that they joined in the bonds, because they were joint managers with ninth defendant and not because the obligees required their junction.

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“I find both the issues in favour of the appellants.”

Bhāshyam Ayyangār for appellants.

Mr. *Wedderburn* and *Sankara Nāyar* for respondents.

The arguments adduced in this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (*Muttusāmi Ayyar* and *Brandt, JJ.*).

JUDGMENT.—It is found by the Subordinate Judge that respondent No. 4 sufficiently represented her tarwad in the former suit, and that she instituted and conducted it in her capacity as karnavan and on behalf of her tarwad. Assuming that these findings can be accepted, there can be no doubt that appellants must succeed and the suit must fail. But it is urged that, as a female, the respondent No. 4 was not lawfully entitled to the karnavanship of her family when she had a minor son. We are unable to assent to this contention. We are aware of no usage of Malabar which precludes a female from managing the affairs of her tarwad when there is no male member in her family capable of performing the duties of a karnavan.

It is next contended, with reference to the decision in *Sri Devi v. Kelu Eradi*, (1) that it is open to the respondents to challenge the decision passed against their karnavan in original suit No. 210 of 1881. It must be observed that in that case, the plaintiffs in the second suit were some of the junior members of a Malabar tarwad, whilst the previous suit was instituted not by the karnavan but by a stranger claiming from the karnavan and the senior anandravan a portion of the tarwad property. Our decision therein was in accordance with the ruling of the Full Bench of this Court reported in *Ittiachan v. Velappan*; (2) but in the case before us, the former suit was instituted by the representative of the estate and on behalf of the tarwad: and, unless fraud is shown, we must take it that respondents Nos. 1 to 3 were constructively parties to that suit.

We reverse the decrees of the Courts below and direct that the suit be dismissed with costs throughout.

(1) I.L.R., 10 Mad., 79.

(2) I.L.R., 8 Mad., 484.