

## APPELLATE CIVIL.

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

KRISHNA (PLAINTIFF), APPELLANT,  
and

RAMAN AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Civil Courts Act, s. 12—Court Fees Act, sch. II, art. 17, s. vi—Suit to remove  
a karnavan—Valuation for jurisdiction.*

Although, for the purposes of the Court Fees Act, a suit to remove the karnavan of a Malabar tarwad is incapable of valuation and subject to the fee prescribed by s. vi, art. 17, of sch. II of that Act, yet, for the purposes of determining jurisdiction under s. 12 of the Civil Courts Act, the right of management, which is the subject-matter of the suit, must be valued. If the value is estimated *bond fide* by the plaintiff, the court should adopt it.

APPEAL against the order of P. P. de'Rozario, Subordinate Judge at Palghat, rejecting a plaint in suit No. 5 of 1887.

*Anantan Nayar* for appellant.

*Sankara Menon* for respondents.

The facts are set out in the judgment of the Court (Collins, C.J., and Parker, J.).

JUDGMENT.—The plaintiff, on 11th January 1886, presented a plaint in the Court of the District Munsif of Angadipurom, in which he stated that he was the karnavan of the tarwad, and his suit was brought to cancel and set aside a razinama entered into by his predecessor in the office of karnavan, by which he, the then karnavan, agreed that defendant No. 1 should manage the tarwad property jointly with himself. The razi was dated 3rd September 1867, and the then karnavan has since died. The plaint bore a stamp value of Rs. 10 under the Court Fees Act and declared that the valuation of the plaint for purposes of the suit was Rs. 1,564-3-2.

On the 22nd March 1886, the District Munsif returned the plaint for presentation in another court, holding that the value of the suit, for purposes of jurisdiction, was the aggregate value of the tarwad properties. He found that the plaintiff had not included

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\* Appeal against Order No. 90 of 1887.

the value of a temple belonging to the tarwad, which value (Rs. 3,000) added to the Rs. 2,010 shown in the plaint to be the value of other tarwad properties, brought the value of the suit beyond the jurisdiction of the District Munsif.

The plaintiff then presented his plaint in the Subordinate Judge's Court, but the Subordinate Judge held that the suit was cognizable by a District Munsif and returned the plaint on the 11th August 1876, observing that, as the family property need not be valued in a suit to remove the karnavan or sole manager—*Govindan Nambiar v. Krishnan Nambiar*(1) *a fortiori*—it need not be valued in a suit to remove a joint manager and to cancel a razi which provided for joint management.

The plaintiff then appealed to the High Court in appeal against order No. 131 of 1886, when the order of the Subordinate Judge was set aside, the Court observing that “the Subordinate Judge must determine what is the value of the subject-matter of the suit for purposes of jurisdiction. It does not follow that, because the court-fees payable on the plaint amount only to Rs. 10, the suit is within the jurisdiction of the District Munsif.”

The Subordinate Judge has now again refused to entertain the plaint and has returned it for presentation in the District Munsif's Court on the ground that the High Court has held in *N. C. Kunhi Raman v. N. C. Puttalathu Kimhuni Nambiar*(2) that, for the purposes of jurisdiction, a suit to remove a karnavan is not a suit for the recovery of tarwad property and to be valued as such, but a suit which asks for a relief which is incapable of valuation. The Subordinate Judge goes on to say that, as the suit is incapable of valuation, it cannot be said to be beyond the pecuniary limits of a District Munsif's jurisdiction. Against this order, the plaintiff has now again appealed, the District Munsif having in the meantime again refused to entertain the plaint.

The Subordinate Judge has, in our opinion, failed to give effect to s. 14 of the Civil Courts Act and is mistaken in considering that the valuation of the relief claimed is necessarily the same as the valuation of the subject-matter of the suit for purposes of jurisdiction. In *Govindan Nambiar v. Krishnan Nambiar*(1), the sole question referred for decision was under what provision of the Court Fees Act, a suit for the removal of the karnavan should be

(1) I.L.R., 4 Mad., 146.

(2) I.L.R., 4 Mad., 314.

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valued for the purposes of stamp duty. It is true that the learned counsel pointed out that the courts below seem to have made no distinction between valuation for the purposes of jurisdiction and valuation for the purpose of ascertaining the court fee leviable; but the High Court restricted the decision to the sole question which was referred under s. 617 of the Code of Civil Procedure.

In that case, it was, however, observed that it would be clearly erroneous to value such a claim as if it were a claim for the recovery of possession of land, for the possession of the property is throughout in the tarwad and is not affected by a change in the person who fills the office of manager. This suggests that the court regarded the right to manage and not the ownership in the land and the consequent right to possession as the subject-matter of the suit. Again, in *N. C. Kunhi Raman v. N. C. Puttalathu Kimhunni Nambiar* (1), it was held that a suit to remove a karnavan is not a suit to recover tarwad property and to be valued as such, but is a suit which asks for a relief that is incapable of valuation, and that the value put on it by the parties was the one to be adopted.

These decisions proceed on the view that possession is always in the tarwad and that the subject-matter of the suit is not the land but an interest in it, namely, the right of management which is not capable of valuation. But it does not follow that a District Munsif has jurisdiction over every suit for the removal of a karnavan though the tarwad property to be managed is very considerable in value. The right of management must, from the nature of things, rise in value in proportion to the value of the property to be managed. It is not, therefore, unreasonable to take into consideration the value of the property and to see that the value put by the parties on the right of management for the purpose of jurisdiction is *bonâ fide*, and, if *bonâ fide*, to adopt it as the value of the subject-matter for purposes of jurisdiction. The Subordinate Judge was wrong in holding that, because the subject-matter is incapable of precise valuation, the District Munsif had necessarily jurisdiction over the suit.

We set aside the order of the Subordinate Judge and direct him to entertain the plaint. Costs of these proceedings will be costs in the cause.

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(1) I.L.R., 4 Mad., 314.