

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Muttusami Ayyar.

SANKARAN (DEFENDANT No. 1), APPELLANT,

v.

PARVATHI AND OTHERS (PLAINTIFF AND DEFENDANTS,
Nos. 2 TO 22), RESPONDENTS.*

Malabar Law—Decree against karnavan—Representative of tarwad—Limitation Act, 1877, s. 14, exp. 1, sch. II, art. 11.

The karnavan and an anandravan of a Malabar tarwad were authorized by a karar to manage the affairs of the tarwad. A decree was obtained against them, and land belonging to the tarwad was attached and sold in execution. The plaint did not describe the defendants otherwise than by their individual names; but the plaintiff's claim was, *inter alia*, in respect of the breach of a contract by the defendants to put him into possession of certain land which was expressed to be "the jemm of the defendants' tarwad." It was found in the present suit that the amount decreed in the prior suit constituted a debt due by the tarwad:

Held, the decree and the execution sale did not bind the tarwad—*Daulat Ram v. Mehr Chand*(1) distinguished.

This suit was brought on 8th August 1884 to declare that the sale in execution was not binding on the tarwad. The present plaintiffs being members of the tarwad intervened in execution of the decree, but their claim was dismissed on 5th September 1882. On the 27th September 1882 they filed a suit in the Court of the District Munsif, praying for the relief now sought. The District Munsif dismissed the suit on the ground that he had no jurisdiction. On appeal the District Judge made an order directing him to dispose of it, which he accordingly did; and he passed a decree against which an appeal was pending on 17th August 1883. But on the last-mentioned date the High Court set aside the order of the District Judge and directed him to ascertain the market-value of the land and make a fresh order, and the enquiry, directed by the High Court, did not terminate until 30th October 1883 when another order was made by the District Judge by which the original decision of the District Munsif was confirmed:

Held, that the prior suit terminated only on the 30th October 1883, and that the present suit was not barred, under Limitation Act, 1877, sch. II, art. 11.

APPEAL against the decree of V. P. deRozario, Subordinate Judge of South Malabar, in original suit No. 37 of 1884.

Suit by members of a Malabar tarwad for a declaration that the sale of certain tarwad property in execution of a decree passed in original suit No. 4 of 1881, on the file of the Subordinate Court at Calicut, against defendants Nos. 2 and 3 does not bind the

* Appeal No. 144 of 1887.

(1) I.L.R., 15 Cal., 70.

tarwad. The then defendant No. 1 was acting as karnavan, and the then defendant No. 2 was an anandravan of the plaintiff's tarwad.

SANKARAN
v.
PARVATHI

Defendant No. 1 was the assignee of the decree referred to above. He raised *inter alia* a plea of limitation which the Subordinate Judge dealt with as follows:—

“ First defendant contends that defendants Nos. 4 to 13 are barred from suing to set aside the sale of the plaint properties under article 11 of schedule II of the Limitation Act, and that as the present plaintiffs could only enforce this claim in conjunction with these defendants and the latter's claim is barred, plaintiff's claim is also barred—*Ramsebuk v. Ramlall Koondoo*(1), *Kalidas Kevaldas v. Nathu Bhagvan*(2). But in this suit the plaintiffs do not sue to set aside the sale. They merely ask for a declaration that the sale is invalid. The claim falls under article 120 and is not barred.”

The Subordinate Judge held that the debt sued on in original suit No. 4 of 1881 was contracted by the defendants for proper tarwad purposes, but passed a decree for the plaintiffs on the ground that they were not bound by the decree passed in that suit against defendants Nos. 2 and 3.

Defendant No. 1 preferred this appeal.

Sankaran Nayar for appellant.

Bhashiyam Ayyangar, Sankara Menon and Sundara Ayyar for respondents.

The further facts of this case appear sufficiently for the purpose of this report from the judgment of the Court (Kernan and Muttusami Ayyar, JJ.).

JUDGMENT.—The first question for decision is whether the decree in original suit No. 4 of 1881 made by the Subordinate Judge of Calicut binds the tarwad of the plaintiffs in this suit and of the other members of the tarwad who are defendants. The defendants in that suit were the karnavan of the tarwad and an anandravan, who were by karar executed by the family authorized to manage their affairs and to raise money on security of the properties of the tarwad or otherwise. It is found in this suit that the amount decreed in suit No. 4 of 1881 is a debt due by the tarwad.

(1) I.L.R., 6 Cal., 815.

(2) I.L.R., 7 Bom., 217.

SANKARAN
v.
PARVATHI.

But the defendants in suit No. 4 of 1881 were not described in the plaint as karnavan or anandravan, nor is any reference made in the plaint to the karar. The plaint states that the defendants agreed to grant the plaintiffs an *ubhayapattam* demise of certain lands therein specified and which the plaint alleges "are the jemm of the defendant's tarwad" on a kanom of Rupees 3,000 advanced by plaintiffs to the defendants, and that the defendants agreed to put the plaintiffs in possession of the property to be demised and that the defendants by deed agreed to pay interest. The plaint then states that the defendants did not act up to the stipulation, and the plaintiffs claimed the principal sum and interest, and were not willing to take possession. The total claim set out in the plaint is Rupees 7,560.

The decree in suit No. 4 of 1881, dated the 4th June 1881, orders the defendants in that suit to pay the plaintiffs Rupees 5,200 and costs and further interest on Rupees 3,000 at 12 per cent.

Under that decree immovable properties of the tarwad were attached, and the plaintiffs in this suit presented to the Subordinate Court in suit No. 4 of 1881 a claim to the properties attached which, they alleged, were tarwad properties, and requested removal of the attachment. That claim was disallowed by the Court under section 281 of the Civil Procedure Code. The property attached belonged to the tarwad. No members of the tarwad were parties to the suit No. 4 of 1881 except the two defendants thereto, who were not described in the plaint or decree as karnavan or anandravan, but were merely described by their individual names. The money alleged to have been advanced by the plaintiffs is not in the plaint stated as advanced to or for the purposes of the tarwad. No relief is either sought in the plaint against the tarwad or their properties or given by the decree. But it is contended that from the statement in the plaint that the properties agreed to be demised by the defendants in suit No. 4 of 1881 "are the jemm of the defendants' tarwad," it appeared that the plaintiffs sought to affect the tarwad and their properties and that the defendants, therefore, represented in that suit the tarwad.

We are unable to agree to this contention, looking to the other allegations in the plaint and to the relief sought. The statement referred to merely describes whose the properties were which the defendants contracted to demise. The plaint states the defendants

broke that contract. The plaintiffs did not state a case against the tarwad, but stated a case of breach of contract against the defendants alone. There is nothing on the face of the plaint in suit No. 4 of 1881 to show that the defendants were sued as representatives of the tarwad or to show that the tarwad or their properties were intended to be affected by that suit, and as the decree is one against the defendants only by their individual names, we think the tarwad was not bound by the decree within the principle of the decisions of the Full Bench of this Court (see *Ittiachen v. Velappan*)(1), in reference to suits in which the question may be whether under certain circumstances, the karnavan represented the tarwad—*Daulat Ram v. Mehr Chand*(2), *Kombi v. Lakshmi*(3), *Bissessur Lal Sahoo v. Maharajah Lachmessur Singh*(4).

SANKARAN
v.
PARVATHI.

It was then contended that the effect of the decision by the Privy Council in *Daulat Ram v. Mehr Chand*(2) shows that the principle laid down in *Ittiachen v. Velappan*(1) should no longer be considered as correct, and that if the karnavan was a defendant in a suit, even though he was not sued as karnavan, and though there was nothing on the face of the plaint to show that he was sued as representative of the tarwad or that it was intended to affect the tarwad, or the property of the tarwad, still, that the tarwad would be bound by the decree. But we do not accede to this contention. What was decided in that case was that the manager of a Hindu trading family, who had authority to grant a mortgage, represented the family in a suit by the mortgagee to enforce the mortgage, and that the other members of the family, not parties to the suit, were bound by the decree subject to their right to prove that the debt was not of a nature that they should be bound thereby. That case is not in conflict with the principles decided in *Ittiachen v. Velappan*(1) relating to suits against karnavans of tarwads. We think that case does not in its facts or in effect go the length contended for.

The next question in this case is whether this suit is barred by limitation on the ground that it was not filed within 12 months from the 5th of September 1882, the date of the order disallowing the plaintiffs' claim in suit No. 4 of 1881 under Limitation Act, 1877, schedule II, article 11.

(1) I.L.R., 8 Mad., 488.

(2) I.L.R., 15 Cal., 70.

(3) I.L.R., 5 Mad., 201.

(4) L.R., 6 I.A., 233.

SANKARAN
v.
PARVATHI.

The answer of the plaintiffs is that after the date of the order of the 5th of September 1882 the plaintiffs within 12 months from the date of that order filed a suit in the Munsif's Court, No. 640 of 1882, on the same cause of action as that on which this suit is founded, but that Court from defect of jurisdiction was unable to entertain such suit; and that the time the plaintiffs were prosecuting that suit in good faith and with due diligence should be excluded from the computation of 12 months, and therefore this suit is not barred.

The facts are as follows: When the attachment was laid on, the plaintiffs lodged a claim under Civil Miscellaneous Petition No. 959 of 1882, claiming the property as tarwad property. That claim was disallowed by order on the 5th September 1882. On the 27th September 1882 the plaintiffs filed original suit No. 640 of 1882 in the Munsif's Court, praying to establish the right of the tarwad to the property attached and have the attachment set aside. On the 16th December 1882 the Munsif held the suit was outside his jurisdiction and returned the plaint to be presented to the proper Court. On appeal the District Judge on the 16th February 1883 held that the Munsif had jurisdiction, and directed him to try the case. The High Court by order, dated 17th of August 1883, set aside the order of the District Judge and directed him to ascertain the market-value of the land and pass a fresh order. After the District Judge set aside the order of the Munsif, the plaint was filed in the Munsif's Court and the Munsif heard the suit and made a decree thereon. An appeal was filed in the District Court and was pending when the High Court made the order of the 17th August 1883.

If the 17th August 1883 is to be taken as the date upon which the proceedings in suit No. 640 of 1882 ended under explanation 1 to section 14 of the Limitation Act, then excluding the term from the 27th September 1882 to the 17th of August 1883, the plaintiffs should be barred. This suit was filed on the 8th of August 1884 in the Subordinate Judge's Court, a new plaint being filed. The explanation limits the time allowed to the date when the proceedings in the first suit were ended. The order of the High Court did not end the prior suit. That order referred it to the Judge to ascertain the market-value of the land and directed him to pass a fresh order.

The order of the High Court was sent from the High Court to the Judge, and the enquiry directed by High Court having been

made, the Judge, by an order, dated the 30th of October 1883, confirmed the original order of the Munsif, and the prior suit was then terminated only on the 30th of October 1883. The suit therefore is not barred by limitation.

SANKARAN
v.
PARVATHI.

We believe, however, that up to the date of the 30th of October 1883 the plaintiff did prosecute the prior suit with due diligence in good faith and that the cause of action in the first suit, and that in this suit is the same. The addition of members of the family as defendants does not affect the question of limitation. Being of opinion that defendants in suit No. 4 of 1881 were not sued in that suit as representatives of the tarwad and that the decree in this suit does not bind the tarwad, and being also of opinion that this suit is not barred by limitation, we dismiss this appeal with costs.

APPELLATE CIVIL.

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

VYTHINADAYYAN AND ANOTHER (DEFENDANTS NOS. 3 & 4),
APPELLANTS,

1889.
April 5, 13.

v.

SUBRAMANYA (PLAINTIFF), RESPONDENT.*

*Transfer of Property Act—Act IV of 1882, s. 52—Lis pendens—Partition
suit—Decree by consent.*

Pending a suit for partition of land, &c., two of the parties to the suit sold part of the land in question to a stranger who was not brought on to the record. After the execution of the sale-deed the parties to the suit entered into a compromise and a decree was passed by consent accordingly. In a suit by the purchaser for possession of the land sold to him :

Held, the purchaser was not bound by the decree passed by consent.

APPEAL under section 562 of the Code of Civil Procedure against the order and decree of K. R. Krishna Menon, Subordinate Judge of Tanjore, in appeal suit No. 744 of 1887, reversing the decree of T. A. Krishnasami Ayyar, District Munsif of Mannargudi, in original suit No. 360 of 1886, and remanding the suit to the Court of the District Munsif to be tried on the merits.

* Appeal against Order No. 142 of 1888.