

APPELLATE CIVIL.

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

CHEKKUTTI AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

PAKKI (DEFENDANT), RESPONDENT.*

1888.
Nov. 23.
1889.
Feb. 18.

Malabar law—Karnavan, insufficient maintenance of junior members by—Suit by junior members living in a tarwad house apart from the karnavan.

Suit by twelve junior members of a Malabar tarwad against the karnavan for arrears of maintenance. The plaintiffs lived in a tarwad house apart from the karnavan, who did not allege that this arrangement was contrary to his wishes, but pleaded that he provided for them adequately :

Held, that the plaintiffs were entitled to a decree for a reasonable amount by way of maintenance, in computing which allowance should be made for the income of the tarwad property in their possession. *Nallakandiyil Parvadi v. Chathu Nambiar* (I.L.R., 4 Mad., 169) followed.

SECOND APPEAL against the decree of A. F. Cox, Acting District Judge of North Malabar, in appeal suit No. 421 of 1885, reversing the decree of V. Gopula Menon, District Munsif of Tellicherry, in original suit No. 163 of 1885.

Suit by twelve junior members of a Malabar tarwad, of which defendant No. 1 was karnavan, to recover Rs. 165 as arrears of maintenance due to them from defendant No. 1. Defendant No. 1 pleaded that sufficient provision had been made for the maintenance of the plaintiffs.

The District Munsif found that the plaintiffs were in possession of only one tarwad paramba, and that the income of that paramba was only Rs. 15 *per annum*, and he passed a decree for Rs. 120, assessing the sum due for maintenance as Rs. 10 for each of the plaintiffs. This decree was reversed on appeal by W. Austin, the District Judge of North Malabar.

The plaintiffs preferred second appeal No. 1267 of 1886 against the decree of the District Judge. The High Court on second appeal remanded the case for a fresh decision "after finding whether

* Second Appeal No. 451 of 1888.

CHEKKUTTI
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the circumstances are such as to make the decision in *Kunham-matha v. Kunhi Kutti Ali*(1) applicable."

The then District Judge on the re-hearing of the appeal held that the decision referred to was applicable to the circumstances of the present case and passed a decree dismissing the plaintiff's suit with cost throughout.

The plaintiffs preferred this second appeal against the last-mentioned decree.

Mr. *Wedderburn* and Mr. *K. Brown* for appellants.

Sankara Menon for respondent.

The further facts of the case and the arguments adduced on this second appeal appear sufficiently for the purpose of this report from the following order made by the High Court (Collins, C.J., and Muttusami Ayyar, J.) on 23rd November 1888.

ORDER:—It is not denied that the plaintiffs live in a tarwad house and apart from the karnavan, nor does he allege in his written statement that they live apart from him without his permission or contrary to his wish. On the contrary, the karnavan's defence is that he supplies them with an adequate provision: and it is not denied as found by the District Munsif that the only income they derive from the portion of the tarwad property in their possession is Rs. 15 per annum. That sum is manifestly inadequate for the support of the plaintiffs. The decision in *Kunhammatha v. Kunhi Kutti Ali*(1) as already remarked by this Court has no application to the present case. That was a case in which the plaintiffs lived in the tarwad house with the karnavan and the others. The case falls within the principle laid down in *Nallakandiyil Parvadi v. Chathu Nambiar*(2); the fact that the maintenance claimed was computed at Rs. 10 per head does not in our opinion disentitle them to a decree for such an amount of maintenance as would be reasonable in the position in which they are placed. We shall therefore ask the Judge to return a finding on the following issue:—

"What is a reasonable provision for the support of the plaintiffs, regard being had to the amount of the total tarwad income and to the circumstances in which the plaintiffs are placed?"

In accordance with this order the District Judge returned a finding to the effect that under "the circumstances Rs. 95 is a

(1) I.L.R., 7 Mad., 233.

(2) I.L.R., 4 Mad., 169.

sufficient provision for the plaintiffs' maintenance in addition to the yield of the paramba." On 18th February 1889 the High Court, accepting this finding, decreed that the defendant No. 1 "as karnavan do pay to the appellants Rs. 95 with proportionate costs throughout."

CHEKKUTTI
v.
PARKY.

APPELLATE CIVIL.

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

KANARAN (DEFENDANT), APPELLANT,

v.

KUNJAN AND OTHERS (PLAINTIFFS), RESPONDENTS.*

1888.
Nov. 27.
1889.
Feb. 21.

Malabar Law—Karnavan, blindness a disqualification for the office of.

Suit to remove the defendant from the office of karnavan of a Malabar tarwad. The defendant had become blind after occupying the office of karnavan for some years:

Held, that the defendant was not a fit person to be the karnavan of a tarwad and should be removed from his office.

APPEAL against the decree of K. Kunjan Menon, Subordinate Judge of North Malabar, in appeal suit No. 604 of 1886, reversing the decree of A. Annasami Ayyar, District Munsif of Pynad, in original suit No. 471 of 1885.

Suit for the removal of the defendant from the post of karnavan of a Malabar tarwad.

The plaint set forth "that plaintiff and defendant are members of one tarwad, of which first defendant is the karnavan and first plaintiff his successor; that defendant became karnavan in 1044 after the death of Raroo Nair; that defendant became blind some twenty years ago; that first plaintiff has been managing the affairs of the tarwad since 1040;.... that defendant instituted original suits Nos. 106 and 107 of 1884 against tarwad tenants for recovery of certain properties and obtained decrees; that this act is detrimental to the interest of the tarwad; that defendant is not fit to hold the office of karnavan; that he lives in his wife's house; that he does not manage the tarwad affairs; that the said decrees were obtained to benefit his wife and children; that in the said