

was adopted in 1854 in accordance with the custom of the caste, and before the Indian Penal Code came into operation, she had acquired the status of an adopted daughter. We are therefore of opinion that the adoption is valid as being in accordance with the custom of the caste which is recognized as a section of Hindus by Hindu law, and as contravening no rule of public law in force at the time. We set aside the decree of the Subordinate Judge and restore that of the District Munsif. Under all circumstances we direct that each party do bear her or their own costs in this and in the lower appellate Court.

MUTTUKANNU  
v.  
PARAMASAMI.

---

### APPELLATE CIVIL.

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

CHAPPAN NAYAR (DEFENDANT No. 3), APPELLANT,

v.

ASSEN KUTTI (PLAINTIFF), RESPONDENT.\*

1889.  
Jan. 11.  
Feb. 8.

---

*Malabar law—Powers of karnavan—Delegation of powers of karnavan to his son, ultra vires.*

The karnavan of a Malabar tarwad having been sentenced to a term of imprisonment delegated to his son all his powers as karnavan pending the expiry of his sentence :

*Held*, that the delegation was *ultra vires* and void.

SECOND APPEAL against the decree of A. F. Cox, Acting District Judge of North Malabar, in appeal suit No. 139 of 1887, modifying the decree of A. Annasami Ayyar, District Munsif of Pynad, in original suit No. 205 of 1886.

Suit to eject defendants Nos. 2 and 3 from certain land. Defendant No. 1, who was karnavan of the tarwad, of which defendants Nos. 2 and 3 were members, having been sentenced to three years' imprisonment, executed a document in favor of his son, defendant No. 4, delegating to him all his powers as karnavan. Defendant No. 4 purporting to act under this document (exhibit B, of which the terms are given in the judgment of the High Court) demised the land in question to the plaintiff

---

\* Second Appeal No. 845 of 1888.

CHAPPAN  
NAYAR  
v.  
ASSEN KUTTI.

on an improving lease. Before the expiry of the lease defendants Nos. 2 and 3 ousted the plaintiff who now brought this action for possession and to recover the value of the crop harvested by them. Defendants Nos. 1, 2 and 4 were *ex parte*.

The District Munsif held that the delegation of the karnavan's powers to his son was invalid and accordingly dismissed the plaintiff's suit. On appeal however the District Judge passed a decree for possession as prayed in the plaint, but disallowed the claim for the value of the crop.

Defendant No. 3 preferred this second appeal.

*Sankara Menon* for appellant.

*Sankaran Nayar* for respondent.

The arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Muttusami Ayyar, J.).

JUDGMENT.—Defendants Nos. 2 and 3 are anandravans, and defendant No. 1 is the karnavan of a tarwad in North Malabar. In January 1883 the latter was convicted of forgery and sentenced to three years' rigorous imprisonment. On 13th March 1884 he executed exhibit B in favor of his son, defendant No. 4, authorizing him to manage the affairs of his tarwad until the expiration of the sentence. In January 1885 No. 4 defendant executed an improving lease, exhibit A, in the plaintiff's favor regarding the lands mentioned in the plaint. The plaintiff alleged that he entered into possession under exhibit A, that defendants Nos. 2 and 3 dispossessed him and carried away the crop which he had raised. He prayed that possession should be restored and Rs. 140 awarded as the value of his crop. Both the Courts below found that he had not taken possession under exhibit A, nor raised any crop and they dismissed the suit so far as it related to compensation claimed for the loss of crop.

Adverting to exhibit B, the District Munsif observed that defendant No. 1 renounced thereby all his rights and obligations as karnavan in favor of his son without the consent of the other members of his own tarwad and held that it was invalid, and that exhibit A was therefore not binding on the tarwad; but on appeal the District Judge considered that exhibits A and B were valid on four grounds, viz. : (1) that it was not alleged that the execution of exhibit B was detrimental to the tarwad; (2) that the relations between the karnavan and his anandravans were

so strained that the selection by the karnavan of his own son for management of the tarwad during his imprisonment was not unnatural; (3) that it was likely that the son's management would proceed more closely on the lines which his father would have followed; and (4) that since his release in 1886 defendant No. 1 ratified exhibit A.

CHAPPAN  
NAYAR  
v.  
ASSEN KUTTI.

The contention in second appeal is that it was not competent to the karnavan to execute exhibit B, and that there was no valid ratification of the transaction evidenced by exhibit A. As regards ratification, respondent's pleader concedes that he can refer to no evidence in its support, nor could it have any legal effect if exhibit B were void *ab initio*.

The real point for consideration is whether effect can be given to exhibit B. There can be no doubt, and it is not denied for the respondent, that karnavanship as recognized in Malabar is a birth-right inherent in one's status as the senior male member of a tarwad. It is therefore a personal right and as such it cannot be assigned to a stranger either permanently or for a time. If it can be delegated at all, it is capable of delegation only to a member of the tarwad, the principle being that the *de facto* manager thereby assists the karnavan during his pleasure, and is entitled to do so by reason of his connection with the tarwad and his interest in its property. We are referred to no decided cases in support of the proposition that karnavanship is an alienable interest or is capable of being delegated to a stranger to the tarwad. If such were the case a Mopla might become the karnavan of a Nair tarwad, and the anomaly would be apparent when it is remembered that the karnavan has to preside at the tarwad ceremonies as its representative, in addition to managing tarwad property. The decision in this case must in our judgment depend on the construction of exhibit B. If it is an assignment of the right of karnavanship, it is void, though for a term only, on the ground that the delegate is not a member of the tarwad; if on the other hand, it is a power of attorney limited to management of specific property as an agent subject to the general control of the karnavan, it may be valid on the ground that the karnavanship is *not* the interest assigned or delegated. Exhibit B is in these terms:

" Muktiarnama executed on the 1st Meenam 1059, corresponding to 13th March 1884, by Perumatathil Tattatath Ambu

CHAPPAN  
NAYAR  
v.  
ASSEN KUTTI.

Nair of Pallikkara Amshom and Desom of Kurumbranad Taluk, now in the Cannanore Central Jail, to Puthiyadath Kunhi Kelappan of Melati Amshom and Ayanikkad Desom :—

“ Though I have authorized you by the Muktiarnama last executed by me to you on the 20th Tulam 1050 to manage in my name all the affairs of my tarwad and also to have them managed, yet some obstacles having been met in the way of managing the affairs inasmuch as certain conditions were not clearly stated therein, I hereby give over and above those given by the former Muktiarnama, the following authorities :— (1) to grant to the tenants proper renewals of deeds in respect of my tarwad lands that are already in their possession and have the deeds in my name, and obtain Marupattam from them ; (2) to let, in favor of new tenants on simple lease, all the lands now recovered by suit as well as those yet to be recovered by suit, and also the lands held by the tarwad along with those that you are now holding under the first Muktiarnama executed by me ; (3) to obtain all the amounts, formerly decreed by the Court in my favor as well as the amounts due to me on account of documents, or on account of decrees that may be passed by the Court in my favor and, lastly, all the amounts due to me on any other account, and to issue receipts therefore in my name ; (4) to present, on my behalf, all the petitions in respect of all matters whether Revenue, or Magisterial or Civil, and to answer, on my behalf, all the petitions and suits presented against me. I hereby vest in you full powers to manage all the affairs relating to my tarwad. I hereby admit that your demising the property and granting receipts shall have the same force, and shall be done with the same freedom, as if I myself had done it.

“ Executed in the presence of Palakkat Kelappan Nair of Pallikkara Amshom and Deshom, and (2) Ittiprath Chantu Nair, and in the handwriting of Pokkiyarath Kanna Kurup of Pallikunnam Desom, Puzhati Amshom.”

Though it is styled a Muktiarnama it authorizes the stranger to manage in the karnavan's name “ all the affairs of his tarwad ” and also to have them managed. The karnavan declares in it “ I hereby vest in you full powers to manage all the affairs

relating to my tarwad." It does not purport to limit the agency to special matters or to the management of property only, but it purports to put the delegate in the karnavan's place in regard to all the affairs of the tarwad. The apparent intention was to impose upon the tarwad the management and the authority of the karnavan's son, and no effect can be given to it without contravening the special usage of the district. The decision of the Judge cannot be supported, and the transaction evidenced by exhibit B was in excess of the karnavan's authority as such and in violation of the right of his tarwad. We set aside the decree of the District Judge and restore that of the District Munsif. The respondent will pay the appellant's costs both in this Court and in the Lower Appellate Court.

CHAPPAN  
NAYAR  
v.  
ASSEN KUTTI.

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.*

GANAPATI AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

CHATHU (DEFENDANT No. 3), RESPONDENT.\*

1889.  
Jan. 14, 21.

*Civil Procedure Code, s. 13—Res judicata—Competent Court—Pecuniary valuation of suit—Court Fees Act (Act VII of 1870,) s. 12, sch. II, art. 17 iii—Suit for a declaratory decree.*

A suit for two declarations filed in a Subordinate Court was valued by the plaintiffs at a sum in excess of the pecuniary jurisdiction of a District Munsif. It was pleaded that the matter in dispute was *res judicata* by reason of decrees passed in District Munsifs' Courts. No objection was taken in the Subordinate Court to the valuation of the suit:

*Held*, that the plea of *res judicata* failed.

*Per* Muttusami Ayyar, J.—For the purposes of jurisdiction the value of a suit for a mere declaratory decree must be taken to be what it would be if the suit were one of possession of the property regarding which the plaintiff seeks to have his title declared.

SECOND APPEAL against the decrees of A. F. Cox, Acting District Judge of North Malabar, in appeal suits Nos. 260 and 285 of 1887, reversing the decree of K. Kunjan Menon, Subordinate Judge of North Malabar, in original suit No. 36 of 1886.

\* Second Appeal No. 883 of 1888.