

with reference to the result of the finding thereon and on the eighth issue.

VENKATA-  
BAGHAYA  
v.  
RANGAMMA.

The respondent will pay the appellant the costs of this appeal.

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## APPELLATE CIVIL.

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

IBRAYAN KUNHI (PLAINTIFF), APPELLANT,

v.

KOMAMUTTI KOYA AND OTHERS, (DEFENDENTS),  
RESPONDENTS.\*

1891.  
Sept. 2.  
1892.  
April 7.

*Civil Courts Act (Madras)—Act III of 1873, s. 12—Declaration of membership of a tarwad—Valuation for the purposes of jurisdiction.*

The plaintiff, alleging that he was karnavan of the defendant's tarwad, sued in a Subordinate Court for a declaration that he was a member of it, adding no prayer for consequential relief. It appeared that the tarwad property exceeded Rs. 26,000, in value, but that the proportionate share of each member, computed as on an equal division, was less than Rs. 900. The Subordinate Judge held that the suit was within the jurisdiction of a District Munsif and rejected the plaint:

*Held*, that the order was wrong and should be set aside.

APPEAL against the order of C. Gopala Menon, Subordinate Judge of North Malabar, refusing to admit a plaint presented for a declaration that the plaintiff was a member of the defendant's tarwad, and a petition under Civil Procedure Code, s. 622, praying the High Court to revise his order.

It appeared that the tarwad possessed property worth Rs. 26,605 and that it comprised 30 members and it was alleged in the plaint that the plaintiff was the karnavan of the tarwad. The Subordinate Judge held the suit was within the pecuniary jurisdiction of a District Munsif, and, on this ground, refused to admit the plaint and returned it for presentation in a proper Court, on the view that the suit should be valued for the purposes of jurisdiction as if it were for a share of the aliquot portion of the tarwad property, which would be allotted to the plaintiff if a partition were made by common consent.

Plaintiff preferred this appeal.

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\* Appeal against Order No. 49 of 1890 and Civil Revision Petition No. 193 of 1890.

IBRAYAN  
KUNHI  
v.  
KOMAMUTTI  
KOYA.

*Sankaran Nayar* for appellant.

*Desikachariar* for respondent.

JUDGMENT.—The question, which we have to decide in these cases, is how is a suit brought by one of the members of a Malabar tarwad to obtain a declaration of his status as a member of that tarwad to be valued for purposes of jurisdiction. The tarwad concerned in this litigation consists of 30 members, including the plaintiff and the value of its property is Rs. 26,605. According to the Marumakkatayam usage, no member of a tarwad can enforce a partition of tarwad property at his pleasure, though such partition can be made with the consent of all its members. In the case before us, the Subordinate Judge held that the value of the share, which would ordinarily be allotted to the plaintiff if a partition were effected by common consent, viz., Rs. 886-13-4, was the value of the present suit and that he had no jurisdiction to entertain it, and, in support of his opinion, he relied on the decisions of the High Court in *Komappan v. Chathu*(1) and *Krishnan v. Chathu*(2). It is contended before us that tarwad property, not being partible, its aggregate value is the proper value of the suit and that the District Munsif was right in holding that he had no jurisdiction. Our attention is drawn to the case in *Ganapati v. Chathu*(3) in which it was decided that a suit brought to obtain a declaration of title to specific property should be instituted in that Court in which a suit to recover its possession ought to be filed on the ground of title. The point for consideration is what is the subject matter of the present suit, and what is its value within the meaning of section 12 of Act III of 1873. The status of a member of a Malabar tarwad carries with it four distinct rights, viz., (1) a right to be maintained in the tarwad house, (2) a right to see that tarwad property is not alienated otherwise than in accordance with law, (3) a right to become the tarwad karnavan, when he becomes the senior male member, and (4) a right to a share if a partition were made and the tarwad broken up by common consent. In the case before us the plaintiff sued as karnavan and the declaration he desires to obtain carries with it a recognition of his right to present posses-

(1) Second Appeal No. 442 of 1883 unreported.

(2) Appeals Nos. 135 of 1885 and 131 of 1886 unreported.

(3) I.L.R., 12 Mad., 223.

sion of the tarwad property. It is therefore governed by the principle laid down in *Ganapati v. Chathu*(1). The plaintiffs in the cases on which the Subordinate Judge relies sued as mere anandravans, the first defendant in each case being the karnavani.

IBRAHAN  
KUNHI  
v.  
KOMAMUTTI  
KOYA.

The order of the Subordinate Judge must be set aside and he must be directed to entertain the plaint and deal with it in accordance with law. The respondents will pay appellant's costs. No order as to costs in civil revision petition No. 193 of 1890.

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### PRIVY COUNCIL.

GAJAPATHI RADHIKA (PLAINTIFF),

and

VASUDEVA SANTA SINGARO (DEFENDANT).

P.C.\*  
1892.  
May 12, 13,  
and 31.

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[On appeal from the High Court at Madras.]

*Appellant not allowed to raise in appeal a contention inconsistent with the case relied upon in the Courts below.*

An appeal cannot be maintained upon a ground inconsistent with the case insisted on in the Courts below, notwithstanding that the new ground may be one that might have been brought forward, in the first instance, as an alternative.

In a suit between the widows of two brothers deceased, the plaintiff's title rested on this, that her and the defendant's late husbands, respectively, having been the sons of the same father, had, therefore, been sapindas to each other; so that the plaintiff as the widow of the one would be the heir of the other, expectant on the death of his widow. In this character she sued to have set aside an adoption made by the defendant. The Courts, however, found that the plaintiff's husband was an illegitimate son, and not a sapinda, and the suit was dismissed. The plaintiff, now appellant, on findings of fact that both the sons were illegitimate, urged that, though they could not inherit from their father, they yet could succeed to the estate of one another:

*Held*, that this contention was so inconsistent with the case made below that it was now inadmissible.

*Sreemutty Dossee v. Ranee Lalannonee*(2) referred to and followed.

Also, the opinion had been expressed by the Court below that, by the law prevailing in Madras, a widow is not in the line of succession to her husband's male collateral relations.

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(1) I.L.R., 12 Mad., 223.

(2) 12 M.I.A., 470.

\* Present: Lords WATSON, HOBHOUSE and MORRIS, Sir RICHARD COUCH, and Lord SHAND.