purchased by him *till the sale was confirmed*, the limitation period must be counted from the date of confirmation of the sale, and not from the date of the sale itself. This is, however, opposed to the express provisions of article 138—*Kishori Mohun Roy Chowdhry* v. *Chunder Nath Pal*(1), *Seru Mohun Bania* v. *Bhagoban Din Pandey*(2).

It is not denied that the judgment-debtors were in possession at the date of the sale at which plaintiff's vendor, the first defendant, purchased the property. The first defendant has allowed the suit to proceed *ex parte* so far as he is concerned. The other defendants who have opposed the suit are the parties in possession of the property. If this suit had been brought against them by first defendant, it would clearly have been barred under article 138, and it is similarly barred under that article when brought by plaintiff as assignee of the first defendant. This second appeal fails therefore and must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Best.

GOVINDA (PLAINTIFF), APPELLANT,

v.

KRISHNAN (DEFENDANT), RESPONDENT.*

1892. Feb. 11, 15.

Malabar Law—Nambudri—Karnavan, decree against—Sale in execution.

A junior member of a Nambudri illom, of which he was held out as the manager and *de facto* karnavan, contracted a debt for the purposes of the illom. The creditor sued him on the debt, but did not implead him as karnavan, and, having obtained a personal decree, attached and brought to sale in execution property belonging to the illom. A son of the judgment-debtor now sued to set aside the sale:

Held, that the sale should be set aside.

SECOND APPEAL against the decree of J. P. Fiddian, Acting District Judge of North Malabar, in appeal suit No. 66 of 1890, reversing the decree of V. Ramen Menon, District Munsif of Kavai, in original suit No. 380 of 1888.

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(1) I.L.R., 14 Cal., 644. (2) I.L.R., 9 Cal., 602.

* Second Appeals Nos. 474 and 656 of 1891.

GOVINDA v. KRISHNAN.

Suit by a member of a Nambudri illom to set aside the sale of certain property belonging to the plaintiff's illom in execution of a decree obtained against the plaintiff's father in original suit No. 363 of 1875 on the file of the Court of the District Munsif of Kavai. This was a personal decree, and the judgment-debtor was not described as karnavan.

The District Munsif passed a decree as prayed. This decree was reversed on appeal by the District Judge, who held that it was proved that the debt in question in the former suit had been "contracted for illom necessity." The further findings of the District Judge on the facts of the case appear from the following extracts from his judgment :—

"Plaintiff does not seek in this suit to escape his personal "liability, but to set aside the sale of illom properties in execution "of the decree in original suit No. 363 of 1875 on the ground "that the debt was not contracted for illom necessity.

"It is not denied that at the time the debt was contracted "plaintiff's father was a junior in the illom, but the evidence "shows clearly that the member senior to him spent his time in "Travancore, and that plaintiff's father managed the illom affairs; "but the Munsif found that the decree under which the property "was sold was a personal one, and that there was no authority for "holding that the debts of the manager if a junior were binding "on the tarwad, and that this decree debt was therefore not valid "against the tarwad.

"I have no doubt, therefore, that plaintiff's father was held out "to the world as the manager and *de facto* karnavan of the tar- "wad, and I must hold that it is for plaintiff to prove that the "debt was not one contracted for the tarwad, especially as he "seeks to set aside a Court sale."

Plaintiff preferred this second appeal.

Sankara Menon for appellant.

Sankaran Nayar and *Ryru Nambiar* for respondent.

JUDGMENT.—It has been held by the Full Bench in *Ittiachan* v. *Velappan*(1) that when the karnavan of a Malabar tarwad has not been impleaded as such in a suit, and there is nothing on the face of the proceedings to show that it was intended to implead him in his representative character, tarwad property cannot

(1) I.L.R., 8 Mad., 484.

be attached and sold in execution of the decree, *even though it is proved that the decree was obtained for a debt binding on the tarwad.* Compare also *Sankaran* v. *Parvathi*(1).

The Judge has found that the law applicable to plaintiff's family is that to which Nambudri Brahmans in the Malabar district are subject, *i.e.*, Hindu law modified by special custom. Compare *Vishnu* v. *Krishnan*(2) and *Vasudevan* v. *The Secretary of State for India*(3). As was found in *Nilakandan* v. *Madhavan*(4), "the customs of the Nambudris in the management and assignment of property do not differ from the customs of the Nayars. Impartibility is the rule, and the eldest member is the manager. . . . . The only difference between a Nambudri illom and a Nayar tarwad is that in the former the offspring of the marriage and the married woman become members of the husband's illom, while the children of a Nayar woman become members of her own tarwad." As was also noticed in that same finding, *Vasudeva* v. *Narayana*(5),—one of the earliest cases in which it was held that a decree obtained against the karnavan is not binding on members of the family who were not parties to the suit in which that decree was obtained or had not notice of the suit under section 30 of the Code of Civil Procedure,—was a suit between Nambudris.

The decision in *Nilakandan* v. *Madhavan*(4) is that the principle of Hindu law, which imposes a duty on a son to pay his father's debt contracted for purposes neither illegal nor immoral, is not applicable to Nambudris. As the property is joint and impartible and belongs to the whole family, and the father has in it no definite share that could be made available for his individual debt or which devolves, on his death, to his son to the exclusion of the other joint members of the family, there is no room for the application of the rule of the pious duty of the son to pay the father's debts. The decrees of the Lower Appellate Court in both these suits must, therefore, be set aside and those of the Court of First Instance restored, and the respondent must pay the appellant's costs in each case, both in the Lower Appellate Court and in this Court.

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(1) I.L.R., 12 Mad., 434.
(2) I.L.R., 7 Mad., 3.
(3) I.L.R., 11 Mad., 157.
(4) I.L.R., 10 Mad., 9.
(5) I.L.R., 6 Mad., 121.