

APPELLATE CIVIL.

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

1893.
August 22.
September 5.

KOMAPPAN NAMBIAR AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

UKKARAN NAMBIAR AND OTHERS (DEFENDANTS NOS. 1—6),
RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1892, ss. 13, 30—'Res judicata'—
Representation.*

Although the members of a tarwad or family may, in an irregular fashion, be represented by a karnavan of the tarwad in a suit, the decree therein does not raise an absolute estoppel against members not actually brought on the record.

Ittiachan v. Vellappan(1) and *Sri Devi v. Kedu Eradi*(2) followed.

SECOND APPEAL against the decree of A. Thompson, District Judge of North Malabar, in appeal suit No. 227 of 1892, reversing the decree of S. Subramaniya Iyer, District Munsif of Payoli, in original suit No. 13 of 1892.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

The District Munsiff decreed in favour of the plaintiffs, and the District Judge reversed the decree on appeal by the defendants. The plaintiffs preferred this appeal.

Sundara Ayyur for appellants.

Narayana Rau for respondents Nos. 2 to 6.

JUDGMENT.—The present suit is brought by twelve persons alleged to belong with Chathu Nambiar, the twelfth defendant, to a branch tarwad. They claim a property held under lease by the thirteenth defendant. In 1887 the first defendant in the suit who is karnavan of the tarwad, brought a suit to recover the same property. In that suit the tenant was joined as first defendant and the other two defendants were the above-mentioned Chathu Nambiar and another member of the branch, Raman Nambiar. The main contention in that suit was that these two, Chathu and

* Second Appeal No. 1548 of 1892.

(1) I.L.R., 8 Mad., 484, 488.

(2) I.L.R., 10 Mad., 79.

Raman, belonged to a branch having no community of interest with the main tarwad. That contention was overruled and a decree was passed in favour of the then plaintiff, the karnavan. This decree, it has been held by the District Judge, is binding on the present plaintiffs, because in the former suit they were represented by Chathu and Raman, respectively, the karnavan and senior anandravan of their branch. The District Judge held that the question sought to be raised in the present suit is *res judicata*. In our opinion the judgment cannot be sustained. In the first place, the statement that the two members, Chathu and Raman, represented anybody but themselves seems to be a mere assumption. The only part of the record in the previous suit which is produced is the judgment, and from that it would be difficult to say that the then defendants were impleaded by the then plaintiff or put themselves forward in a representative character. At any rate, the mere fact that they are branch karnavan and senior anandravan is no ground for raising any inference. It must be remembered that the case for the then plaintiff was that there is no such thing as an independent branch existent and Chathu was joined as a defendant, because he happened to have taken a part in granting the demise.

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Under these circumstances we are of opinion that there really is no foundation for the statement of the Judge on which he rests his conclusion as to the applicability of section 30 of the Civil Procedure Code. In drawing that conclusion also the Judge is clearly in error. It has been more than once decided that although the members of a tarwad or family may, in an irregular fashion, be represented by a karnavan of the tarwad, the decree does not raise an absolute estoppel against members not actually brought on the record, see *Ittiachan v. Vellappan*(1), *Sri Devi v. Kedu Eradi*(2), and second appeal No. 93 of 1885.

We must, therefore, reverse the decree of the District Judge and remand the appeal for disposal. The plaintiffs are entitled to the costs of the appeal. For other costs provision will be made in the revised decree.

(1) I.L.R., 8 Mad., 484, 488.

(2) I.L.R., 10 Mad., 79.