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APPELLATE CIVIL.

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

IMBICHI KANDAN AND OTHERS (PLAINTIFFS), APPELLANTS,

*v.*

IMBICHI PENNU AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1895.  
August 19,  
21.

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*Malabar law—Makkatayam rule of inheritance—Tiyans of South Malabar.*

On the death of a Tiyan of South Malabar following the Makkatayam rule of inheritance, his mother, widow and daughter are entitled to succeed to his property (acquired by himself and his father) in preference to his father's divided brothers.

SECOND APPEAL against the decree of A. Venkataramana Pai, Subordinate Judge of South Malabar, in appeal suit No. 434 of 1893, reversing the decree of U. Achutan Nayar, District Munsif of Calicut, in original suit No. 578 of 1890.

The plaintiffs sued to establish their right to certain property left by one Changaran, deceased, as against the defendants, who were his mother, widow and daughter. Changaran was the son of Kelukutti, a deceased brother of the plaintiffs, with whom, it was found, they had no common property and had not lived as members of a joint family. The parties were Tiyans of South Malabar following the Makkatayam rule and the property in question had been acquired by Changaran and his deceased father.

The District Munsif passed a decree for the plaintiff. On appeal, the Subordinate Judge reversed this decree.

The plaintiffs preferred this second appeal.

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\* Second Appeal No. 1800 of 1894.

IMBICHI  
KANDAN  
v.  
IMBICHI  
PENNU.

*Sundara Ayyar* for appellants.

*Ryru Nambiar* for respondents.

JUDGMENT.—The District Munsif clearly found that plaintiffs were divided from the late Changaran and had no community of interest with him. This finding was not questioned in the grounds of appeal to the Lower Appellate Court, and the Subordinate Judge was, therefore, right in laying down that the question was whether, according to the law and custom followed by Makkatayam Tiyans of Calicut, the property of a deceased person goes to his father's brothers who are not joint in interest with him rather than to his mother, widow and daughter.

The decision of the Subordinate Judge is entirely in accordance with the principles laid down in *Rarichan v. Perachi*(1) and *Raman Menon v. Oathunni*(2). It has been decided that the rule of impartibility applies to Makkatayam Tiyans of Calicut, and in *Rarichan v. Perachi*(1) following the principle that self-acquired property lapses to the tarwad, it was held that the undivided brother succeeded in preference to the widow. But the case is quite different when the brothers are divided and have no community of interest as in this case. Here it is found that the only property in which plaintiffs and Kelukutti ever had a common interest is in the family burying place, which will certainly not constitute them an undivided tarwad. That being so, the mother, wife, and daughter of Changaran who certainly belong to his tarwad are preferential heirs to his uncles who did not belong to his tarwad at all and had no community of interest with him.

We think the decision of the Subordinate Judge is correct and dismiss the second appeal with costs.

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(1) I.L.R., 15 Mad., 281.

(2) I.L.R., 17 Mad., 184.