

the term of twelve years fixed in his lease, but claims only compensation for improvements.

We, therefore, reverse the decree of the District Judge and restore that of the District Munsif with costs in this and in the lower Appellate Court.

MISFATT
KUNDEHAD
v.
CHATTU
NAIR.

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Bhashyam Ayyangar.

MANAKAT VELAMMA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

IBRAHIM LEBBE AND OTHERS (DEFENDANTS), RESPONDENTS.*

1908.
August 28

Malabar Law—Debt incurred by Karnavan and senior Anandran for benefit of Tarwad—Decree for money—Liability of moveable property of Tarwad to attachment under that decree.

A Tarwad consisted of plaintiffs and defendants Nos. 2 and 3. Defendants Nos. 2 and 3 were the Karnavan and senior Anandran of the Tarwad. A money decree had been obtained as against the Karnavan and senior Anandran on a debt which had been contracted by them for the benefit of the Tarwad, and, in execution of that decree, certain moveable property belonging to the Tarwad had been attached. In a suit for a declaration that the moveable property of the Tarwad was not liable to be attached and sold in execution of the decree:

Held, that the property was liable.

Ittiachan v. Velappan, (I.L.R., 8 Mad., 484) and *Govinda v. Krishnan*, (I.L.R., 15 Mad., 333), discussed.

SUIT for a declaration that certain moveable property attached in execution of a decree was not liable to be sold. The finding of both the lower Courts was that the moveable property in question belonged to the Tarwad of the plaintiffs and defendants Nos. 2 and 3. Defendants Nos. 2 and 3 were the Karnavan and senior Anandran of the Tarwad. The decree under which the property had been attached had been obtained as against the Karnavan and Anandran on a debt which they had contracted for the benefit of the family.

* Second Appeal No. 113 of 1902, presented against the decree of K. Krishna Rau, Subordinate Judge of South Malabar, in Appeal Suit No. 523 of 1901, presented against the decree of V. Rama Sastri, District Munsif of Battnad, in Original Suit No. 492 of 1900.

MANAKAY
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T.
IBRAHIM
LELBE.

The District Munsif held that the property was not liable to attachment. The Subordinate Judge reversed this decree, holding that it was so liable.

Plaintiffs preferred this second appeal.

V. Ryru Nambiar for appellants.

N. T. Shamanna for respondents.

JUDGMENT.—In execution of a money decree obtained against defendants Nos. 2 and 3 who were the Karnavan and the senior Anandravan of the Tarwad consisting of the plaintiffs and themselves certain moveable properties belonging to the Tarwad were attached and the plaintiffs objected. Their objection was disallowed and the present suit is brought by them for a declaration that the moveable properties of the Tarwad are not liable to be attached and sold in execution of the decree. The first defendant, the attaching creditor, has adduced evidence in this suit which has satisfied the lower Appellate Court that the debt was contracted for the benefit of the Tarwad and accordingly that Court dismissed the plaintiff's suit.

It is contended in this appeal that though the debt was contracted for the benefit of the Tarwad, yet the property of the Tarwad cannot be sold in execution of the decree in a suit to which they were not parties and in which the second and third defendants were not sued as representing the Tarwad and in support of this contention reliance is placed upon *Ittiachan v. Velappan*(1) and *Govinda v. Krishnan*(2). It is rightly conceded that if the Tarwad property now in question has been disposed of in satisfaction of the decree debt voluntarily by the Manager of the Tarwad (second defendant) such sale would be binding upon the plaintiffs. That being so it is difficult to see on what principle it can be contended that an involuntary sale of the same property for the discharge of the same debt will not equally bind the plaintiffs when apart from the decree it is affirmatively established as against the plaintiffs that the debt was of a binding character. We think that the authority of the cases cited is considerably shaken by the decision of the Full Bench in *Vasudevan v. Sankaran*(3). In cases governed by the ordinary Hindu Law there is a course of decisions both of this Court and of the Judicial Committee of the Privy

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

(2) I.L.R., 15 Mad., 333.

(3) I.L.R., 20 Mad., 129.

Council that in execution of a decree against a Hindu father or other managing member of a Hindu family the power of disposition (*vide* section 266, Civil Procedure Code) which he may exercise over joint family property for purposes sanctioned by law would be operative to pass to the purchaser not only his personal interest in the property sold, but also the interest of the sons or other members of the joint family in the property although they were not parties to the decree (*Nunna Setti v. Chidaraboyina*(1)). We can see no reason why the principle of these decisions is not equally applicable to Hindu families governed by the Marumakkatayam Alyasantana or Makkatayam Law in force on the West Coast, simply because the property of the joint family is impartible in the sense that there can be no compulsory partition among the members of the family.

We, therefore, affirm the decree of the lower Appellate Court and dismiss this appeal.

MANAKAT
VELAMMA
v.
IBRAHIM
LEBBI.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar.

DORASWAMI PILLAI (PLAINTIFF), PETITIONER,

v.

THUNGASAMI PILLAI AND OTHERS (DEFENDANTS),
RESPONDENTS.*

1903.
November 6.

*Civil Procedure Code—Act XIV of 1882, ss. 416, 462—Neat friend—
Interest adverse to minor.*

A suit relating to the estate or person of an infant, and for his benefit, has the effect of making him a ward of Court, and no act can be done affecting the property of the minor unless under the express or implied direction of the Court itself.

Where a suit, which was being conducted on behalf of a minor, was withdrawn without leave being asked for or given to bring another suit, the order passed on the petition for withdrawal was set aside by the High Court, on

(1) I.L.R., 26 Mad., 214 at pp. 222, 223.

* Civil Revision Petition No. 62 of 1903, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the orders of W. Gopalarthar, Subordinate Judge of Madura (East), on Civil Miscellaneous Petition Nos. 361 and 435 of 1902, respectively (Original Suit No. 60 of 1901).