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CHETTIYAR  
v.  
GOPALA-  
CHARI.

Section 49 of the Contract Act cannot govern this case, for here the money is payable on demand and not "without application by the promisee."

I am therefore of opinion that the Kumbakonam Court had no jurisdiction to try the present suit, and for that reason would, without deciding any other question, reverse the decrees of both the Courts below and return the plaint to be presented to the proper Court (section 57C, Civil Procedure Code).

## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice Wallis.*

PATTATHERUVATH PATHUMMA AND OTHERS  
(PLAINTIFFS), APPELLANTS,

v.

MANNAMKUNNIYIL ABDULLA HAJI AND TWO OTHERS  
(DEFENDANTS NOS. 1, 2 AND 4 AND THE LEGAL REPRESENTATIVES  
OF THE FIRST DEFENDANT), RESPONDENTS.\*

\* *Marumakkattayam Law - Gift to woman governed by such law, effect of.*

A gift of property to a woman governed by Marumakkattayam law and to her children, by their father does not of itself constitute the mother and her children, a separate tarwad, but the donees take such property with the incidents of tarwad property.

Where the gift is made by a Muhammadan husband governed by Makkattayam law to his wife, who is also governed by Marumakkattayam law, and to her children the property becomes the exclusive property of the donees with the incidents of tarwad property subject to Marumakkattayam law, and on the death of the mother it does not pass to her heirs under the Muhammadan law.

THE first plaintiff was the daughter, and the first defendant the son of one Ayissa, a Muhammadan woman governed by the Marumakkattayam law. Properties were given to Ayissa and her children by her husband. Uttotti, a Muhammadan governed by Makkattayam law. On the death of Ayissa, the first

\* Second Appeal No. 1401 of 1901, presented against the decree of M. R. Ry. A. Venkitaramana Poi, District Judge of North Malabar, in Appeal Suit No. 431 of 1903, presented against the decree of M. R. Ry. M. G. Krishna Row, District Munsif of Quilandy, in Original Suit No. 456 of 1901.

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defendant alienated some of the properties in favour of the second defendant. The first plaintiff, on behalf of herself and her minor daughters, the second and third plaintiffs, brought this suit to set aside these alienations on the ground that the properties, on the death of Ayissa, lapsed to the tarwad to which the plaintiffs and first defendant belonged, and of which the first defendant was Karnavan, and that the alienations by the first defendant were invalid. The first and second defendants pleaded *inter alia* that if the properties belonged to Ayissa, both the first plaintiff and first defendant became entitled thereto as her heirs under the Makkattayam law by which the father was governed. The District Munsif upheld the plaintiff's contention and passed a decree in favour of plaintiffs. The District Judge, on appeal, held that the properties belonged to first plaintiff and first defendant as Ayissa's heirs under the Muhammadan law and dismissed the suit.

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The plaintiffs appealed to the High Court.

*T. R. Ramachandra Ayyar* for appellants.

*Mr. T. Richmond* for second respondent.

JUDGMENT.—In this case it appears that one Uttotti, a Mopla, made a gift of land to his wife Ayissa who belonged to a tarwad governed by the Marumakkattayam law, and the question is, to whom does the land descend on Ayissa's death. The District Judge has dealt with the case as if the question were to whom it descended on the death of Uttotti. Uttotti being a Muhammadan, the presumption may be that his property would descend according to Muhammadan law, according to *Assan v. Pathumma* (1) and *Kunhimbi Umma v. Kandy Moithin* (2), the cases relied on by the District Judge. We think however that the present case is governed by the decision of the Full Bench on facts very similar to the present in *Kunhacha Umma v. Kutti Mammi Hajee* (3) which has been followed and explained in *Koroth Amman Kutti v. Perungottil Appu Nambiar* (4). In the first of these cases, property given to one Ayissamma and her children after the death of her husband Taruvai in accordance with his orally expressed wish was held to be taken by Ayissamma, who was governed by the Marumakkattayam law, and her children as their exclusive

(1) I.L.R., 22 Mad., 494.

(2) I.L.R., 27 Mad., 77.

(3) I.L.R., 16 Mad., 201.

(4) I.L.R., 29 Mad., 322.

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property with the incidents of tarwad property. In that case the donor Taruvai was a Muhammadan, and it was stated in argument at page 206 that he was governed by the Makkattayam law, but the fact that the donor was a Muhammadan was not treated as affecting the decision. In *Koroth Amman Kutti v. Perungottil Appu Nambiar* (1) it was held that in the case of a gift to a woman governed by the Marumakkattayam law and to her children by their father the donees take such property with the incidents of tarwad property, but that the gift by the father does not of itself constitute the mother and children a separate tarwad. In the present case, though the property was purchased in the name of the mother Ayissa, the District Judge holds, we think rightly, that it was intended for her children as well. If so, according to the decision of the Full Bench, the land became the exclusive property of Ayissa and her children with the incidents of tarwad property. Under these circumstances the alienations complained of by the first plaintiff are invalid and the plaintiffs have a right to a decree for redemption.

We must accordingly reverse the decree of the District Judge and give the plaintiffs a decree as prayed for with costs throughout, and six months for redemption from date of decree.

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## APPELLATE CIVIL.

*Before Mr. Justice Wallis and Mr. Justice Sankaran-Nair.*

MOIDIYAN'S SON AMBIALATH VEETIL PUNNAYIL  
KUTTU (DEFENDANT), APPELLANT,

v.

ANEDATH VALIYIL LAKSHMI AMMAL'S SON RAMAN  
NAIR AND OTHERS (PLAINTIFFS), RESPONDENTS\*

*Limitation Act, Act XV of 1877, sched. II, arts. 62, 95, 97—Suit to recover money obtained by deceitful misrepresentation does not fall within art. 62 or 97, but within art. 95—Starting point of limitation.*

*A, by fraudulently representing to B, to whom he was indebted that a sum of money was due to A from C, induced B to take an assignment of the alleged*

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(1) I.L.R., 29 Mad., 322.

\* Second Appeal No. 256 of 1905, presented against the decree of L. G. Moore, Esq., District Judge of South Malabar, in Appeal Suit No. 461 of 1904, presented against the decree of M. R. Ry. A. Srinivasa Ayyangar, District Munsif of Chingleput, in Original Suit No. 417 of 1903.