APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Krishnaswami Ayyar.

1909. December 20.

YAKKANATH EACHARAUNNI VALIA KAIMAL (FIRST DEFENDANT AND LEGAL REPRESENTATIVES OF THE FIRST DEFENDANT), APPELLANTS,

v.

MANAKKAT VASUNNI ELAYA KAIMAL AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 2 TO 5), RESPONDENTS.*

Civil Procedure Code, Act V of 1908, s. 99—Misjoinder includes non-joinder—What parties necessary in suit against karnavan of tarwad to enforce contract of previous karnavan—When act of karnavan impeachable.

In a suit to enforce against the karnavan of a tarwad in his capacity as such karnavan a contract made by a previous karnavan on behalf of the tarwad, it is not necessary to add the other members of the tarwad as parties.

'Misjoinder' in section 99 of the Civil Procedure Code of 1908 includes 'non-joinder.'

A contract made by the karnavan of a tarwad, if prudent and fair at the time it was made, is binding on his successor in office.

SECOND APPEAL against the decree of J. H. Munro, District Judge of South Malabar, in Appeal Suit No. 26 of 1907, presented against the decree of S. Ragunathiya, Subordinate Judge of South Malabar, at Palghat, in Original Suit No. 36 of 1905.

The plaintiff and defendants were members of an undivided tarwad of which the first defendant was karnavan. The plaintiff was karnavan of a branch entitled to be maintained by the tarwad. A suit against the predecessor of the first defendant for maintenance by the predecessor of the plaintiff was compromised by the former agreeing on behalf of the tarwad to pay the latter, as representing the branch, a certain amount for maintenance. This suit was brought to recover arrears for six years. The defendants contended, *inter alia*, that all the members of the tarwad should be made parties, and that the arrangement was not binding on the tarwad, and that the arrangement had been revoked.

The District Munsif held that the arrangement was not binding on the tarwad and that it had been revoked, and he accordingly dismissed the suit. On appeal this judgment was reversed and a decree was passed in plaintiff's favour.

* Second Appeal No. 1277 of 1907.

First defendant appealed.

M. Kunjunni Nair for appellant.

T. R. Krishnaswami Ayyar for *T. R. Ramachandra Ayyar* for third and fourth respondents.

JUDGMENT (SIR CHARLES ARNOLD WHITE, C.J.).—The main defence in this suit was that exhibit B, which is an arrangement which was entered into by the first defendant's predecessor in office as karnavan of the tarwad and the plaintiff's predecessor-in-interest, has been revoked. The District Judge finds that it has not been revoked. This is a question of fact which is binding on us in second appeal.

Then, on behalf of the appellant, it was argued that exhibit B is not binding on him as the successor in office of the man by whom the agreement was entered into. I feel some doubt as to whether we should allow this point to be raised before us at all, because the judgment of the learned District Judge, as I read it, strongly suggests that the point was never taken before him.

The agreement purports, as I read it, to have been entered into by the first defendant's predecessor-in-office on behalf of the tarwad and I see no reason for holding that it is not binding on his successor in office, the first defendant.

The further point which was argued before us was the question of parties and it was contended that the suit ought to have been dismissed on the ground of non-joinder. Now the plaintiff in the present suit is the manager of the tavezhi, the first defendant is the manager of the tarwad, and certain members of the plaintiff's tavezhi have been made supplemental defendants. The point as to alleged *non-joinder* is this: that all the members of the first defendant's tarwad should have been made defendants to the suit. On behalf of the appellant we were referred to a decision *Mammali* v. *Pakki*(1). That was a suit for increase of maintenance against the karnavan of the tarwad and it was there held by this Court that all the members of the tarwad were necessary parties to that suit. I think that case is clearly distinguishable from the case before us. In *Mammali* v. *Pakki*(1) the suit was for an increase of the rate of maintenance and it was not based upon any agreement entered into by the karnavan. The present suit is on an agreement to pay maintenance

(1) (1884) I.L.R., 7 Mad., 428.

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at a specified rate executed by a former karnavan and, as I have said, I see no reason for holding that the agreement is not binding on the tarwad. It purports to be entered into by the karnavan representing the tarwad. In these circumstances the present case in regard to the question of the suggested *non-joinder* is not governed by the decision in *Mammali* v. *Pakki*(1). In any way, it seems to me that under section 99 of the present Code of Civil Procedure we are not called upon to give effect to the objection in regard to parties.

It is contended that section 99 speaks only of *misjoinder* of parties or causes of action. But it has been held by this Court in *Mahabala Bhatta* v. *Kunhanna Bhatta*(2) for the purpose of construing the section to which the present section 99 corresponds that the word *misjoinder* includes *non-joinder*, I think that the second appeal must be dismissed with costs.

KRISHNASWAMI AYYAR, J.—I agree. The appellant attacks the judgment of the District Judge on the ground that exhibit B is not binding upon him because the property allotted for the maintenance of the plaintiff's branch gives at present a larger income than it was expected to yield at the time when it was allotted. It seems to me that this is not a sufficient ground for modifying an arrangement that was entered into by a karnavan. The question as regards the propriety of the arrangement made by the karnavan in 1879 is certainly open to the present karnavan to raise. But if it was a *bonâ fide* and proper and prudent arrangement to make at the time it was entered into, it seems to me that the ground on which that arrangement is now attacked is not available to the present representative of the tarwad.

As regards *non-joinder*, in the circumstances of this case, it is at best an irregularity, which does not vitiate the decision on the merits, and therefore section 99 of the present Code of Civil Procedure would seem to be sufficient to dispose of that objection. But, looking at the question on its merits, it seems to me that it is not clear that there is a *non-joinder* in this case. The contention is open to exception. The suit is brought upon an arrangement entered into by a karnavan against the successor of that karnavan. It is sought to enforce it against him in his capacity as the karnavan of the tarwad. In such a suit he

(1) (1884) I.L.R., 7 Mad., 428. (2) (1898) I.L.R., 21 Mad., 373 at p. 382.

represents all the other members of the tarwad and therefore it would seem to me to be unnecessary to make the other members parties, though if they made an application at the earliest possible stage to join on the record as parties to the suit, such an application ought to be favourably viewed. There was no such application in this case. Nor was there any application by the first defendant that the other members should be joined as parties. The mere objection, therefore, that they have not been joined seems to me to be of no validity whatever in a suit brought like the present one for the enforcement of an arrangement made by the predecessor of the present karnavan. I agree in dismissing the second appeal with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Krishnaswami Ayyar.

APPANDAI VATHIYAR AND OTHERS (NOS. 1 TO 3 LEGAL REPRESENTATIVES OF FIRST PLAINTIFF AND PLAINTIFFS NOS. 6 AND 7), APPELLANTS,

v.

BAGUBALI MUDALIYAR AND OTHERS (FIRST DEFENDANT, FOURTH LEGAL REPRESENTATIVE OF FIRST PLAINTIFF AND SECOND DEFENDANT), RESPONDENTS.*

1909. December 22 1910. January 25.

Hindu Law — Jains — Inheritance — Competition amongst heirs — Mother's sister's son preferred to maternal uncle's son — Observations on the principles regulating the order of succession among Bandhus.

Under Hindu Law a mother's sister's son is entitled to succeed to the estate of a deceased Hindu in preference to a maternal uncle's son.

SECOND APPEAL against the decree of F. Du P. Oldfield, District Judge of Tanjore, in Appeal Suit No. 500 of 1906, presented against the decree of A. N. Anantarama Ayyar, District Munsif of Tanjore, in Original Suit No. 277 of 1904.

Suit by the original plaintiff, Annasawmi Vathi, as heir to one Gunapala Vathi, who died on 16th October 1901, to recover certain properties deposited by the latter with the defendants. The defendants contended, *inter alia*, that the original plaintiff as well as

* Second Appeal No. 1060 of 1907.