BENSON, OFFG. C.J., AND KRISHNASWAMI AYYAR, J.

DUBI BHAGAVANLU v. TADIPATRI VEERAVADHANULU.

1909. November 8, 9.

the whole suit fails. We would on this ground support the decree of the District Judge and dismiss the second appeal, but without costs.

APPELLATE CIVIL.

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

MARI VEETIL CHATHU NAIR AND OTHERS (DEFENDANTS NOS. 2 TO 14), APPELLANTS,

v.

MARI VEETIL MULAMPAROL SEKARAN NAIR AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Malabar Law—Acquisition by manager of branch tarwad who is only anandravan of the whole tarwad—Property acquired by anandravan to be deemed property of the tarwad, in the absence of evidence to show self-acquisition.

The rule of Hindu Law that if nothing appears in the case except that a member of a joint family is in possession of property, the burden of proving self-acquisition lies on such person, applies to property in the possession of an anandravan of a Malabar tarwad.

Where such anandravan is also the manager of a branch tarwad and was in possession of funds belonging to such branch, the presumption will be that such property belongs to the branch.

SECOND APPEAL against the decree of W. W. Phillips, District Judge of North Malabar, in Appeal Suit No. 209 of 1906, presented against the decree of K. Gopalan Nair, District Munsif of Quilandi, in Original Suit No. 594 of 1904.

This was a suit for a declaration of plaintiffs' right to certain money deposited in Court in payment of a kanom due under exhibit A. The kanom deed was executed to one Ukaran Nair and in 1046 the Kanaris assigned their whole interest to him under exhibit B, and plaintiffs claim the amount as being members of a separate tavazhi of which Ukaran Nair was managing member at the date of B. Defendants, the members of the main tarwad, claimed that the money was due to their tarwad, as it was lent from tarwad funds, when Ukaran Nair was managing member.

* Second Appeal No. 1034 of 1907.

Both the lower Courts found that Ukaran Nair was not managing the main tarwad but the branch alone and passed a decree in favour of the plaintiff. Defendants Nos. 2–4 appealed to High Court.

T. R. Krishnaswami Ayyar for appellants.

J. L. Rosario for respondents.

JUDGMENT.—It is found by the Courts below that the plaintiffs constituted the members of the tavazhi tarwad of Mulamparol and that they are entitled to the kanom amount in deposit. It is contended for the defendants that this finding is not correct. The decision in *Koroth Amman Kutti* v. *Perungottil Appu Nambiar*(1) is cited as opposed to the view of the lower Courts. It was there held by Moore and Sankaran Nair, JJ., "that when a female and some of, or all, her children obtain any property from their father or karnavan they are not thereby constituted into a tarwad by themselves, the senior member among them having the ordinary rights of the karnavan of a Malabar tarwad so far as the other members in his branch are concerned." This view has been adopted in *Ramachendra Ejaman* v. *Venkatesha Ejaman*(2). All that these cases can be said to decide is that the mere circumstances of such a gift without more is insufficient to create a tavazhi tarwad. But where, as in this case, there is the gift of property, enjoyment by the tavazhi for more than eighty years, and separate living by the members of the branch, we are not prepared to say that the Courts below were not justified in coming to the conclusion that the branch constituted a tavazhi tarwad. But whether this view is correct or not the question is whether property acquired by the manager of the branch who is only an anandravan of the whole tarwad when there is no evidence as to the source out of which the property was acquired is to be deemed the property of the tarwad or of the branch. It is admitted that Ukaran Nair who was the manager of the branch and an anandravan of the entire tarwad at the time acquired the kanom interest under exhibits A and B. It is a well recognized principle of Hindu law "that if nothing appears upon the case except that a member of a joint family is in possession of property and he alleges that it is his own self-acquisition he is alleging an exception to the general rule and it lies upon him to prove the exception." See 'Mayne', paragraph

(1) (1906) I.L.R., 29 Mad., 322. (2) Appeal No. 59 of 1905 (unreported).

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289. This rule is applicable to acquisitions by anandravans in Malabar families and has been so applied. In *Vira Rayen* v. *Valia Rani of Pudia Kovilagam, Calicut*(1) it was stated "it lay on the first appellant, who being a member of the kovilagam is found in possession of property, to prove a separate title to it." See *Vasudevan Nambudri* v. *Iswaren*(2) and *Ramen Menon* v. *Kandu Nair*(3), also. There is no evidence worth the name that Ukaran Nair had separate property of his own from which the kanom could have been acquired.

It remains then to consider whether the acquisition by Ukaran Nair was for the plaintiff's branch and out of its funds or for the tarwad. Self-acquisition being out of the way we think the Courts below were justified in finding that the property belonged to the branch of which Ukaran Nair was manager and whose funds he handled.

It is unnecessary to lay it down as a broad proposition of law that every acquisition by the manager of the branch even though it has not become a tavazhi tarwad is to be presumed to be the property of the branch. The fact that Ukaran Nair was only an anandravan of the tarwad and was at the time of the acquisition in possession of the funds of the branch, but none of his own, is sufficient to justify the finding of the Courts below that it was made out of the funds of the plaintiff's branch. The second appeal fails and is dismissed with costs.

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(1) (1881) I.L.R., 3 Mad., 141 at p. 145.
(2) Second Appeal No. 970 of 1883 (unreported).
(3) Second Appeal No. 1153 of 1888 (unreported).