

there. There may no doubt be such discord between the member and the other members of the family as to make it proper that separate maintenance should be awarded. At the same time it would not conduce to the peace of tarwads to encourage suits for separate maintenance on the mere ground that there is not such complete harmony in the house as to ensure the happiness of the claimant. We have no doubt that the court will in each case be able to decide whether the discomfort is so serious as to justify the award of separate maintenance and whether the plaintiff himself (or herself) was not so greatly responsible for the discomfort complained of as to be disentitled to claim separate maintenance. We cannot shut our eyes to the fact that if the plaintiff felt any small annoyance in the family house it was to a large extent due to the conduct of her husband whom she probably seconded. She herself admits that she allowed herself to be controlled by him so far as to leave the house on pilgrimage without taking leave of the members of the tarwad. On the whole we have come to the conclusion that the plaintiff has not established her right to separate maintenance in this case. The suit was instituted three years after she left the house according to the finding of the Courts and about six years according to her own case. We reverse the decrees of the Courts below and dismiss the suit but, in the circumstances, without costs in any of the courts. The memorandum of objections is also dismissed.

\*KUNCHI  
v  
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AYYAR  
AND  
SADASIVA  
AYYAR, J.J.

## APPELLATE CIVIL

*Before Mr. Justice Sundara Ayyar and Mr. Justice  
Sadasiva Ayyar.*

P. V. MUTHU AMMA AND THREE OTHERS (PLAINTIFFS) APPELLANTS,

v.

P. V. GOPALAN AND TWENTY-TWO OTHERS (DEFENDANTS), RESPONDENTS.\*

*Malabar Law—Marumakkathayam law of maintenance—Wife living in her husband's house.—Leaving tarwad house—Right to maintenance from her tarwad.*

According to Marumakkathayam law, a wife living with her husband in her husband's house is entitled to maintenance from her tarwad, in the absence of any waiver to claim the same, as leaving the tarwad house to live with her husband is a justifiable or proper purpose.

1912.  
Sept. 30.

MUTHU AMMA  
v.  
GOPALAN. *Parvathi v. Kamaran* (1912) 22 M. L.J., 309, followed.  
*Parvathi v. Kamaran* (1888) I.L.R., 6 Mad., 341, referred to.  
*Obiter*.—The Marumakkathayam law of maintenance is the same as the  
Aiyasanthana law prevailing in South Canara.

SECOND APPEAL against the decree of M. J. MURPHY, the District Judge of North Malabar in Appeal No. 173 of 1910, preferred against the decree of P. S. SESA AYYAR, the District Munsif of Cannanore, in Original Suit No. 450 of 1909.

The facts of this case are stated in the judgment.

The Honourable Mr. T. Richmond for the appellant.

The Honourable Mr. J. L. Rosario, the Acting Advocate-General for the first respondent.

SENDARA  
AYYAR AND  
SADASIVA  
AYYAR, JJ.

JUDGMENT.—The plaintiffs in the suit are a Nair lady and her children and the suit is for maintenance for a period of 27 months against their *karnavan* and the other members of the tarwad. The plaintiffs are living with the husband of the first plaintiff who is also the father of the other plaintiffs. The defence is that as plaintiffs are living away from the tarwad house they are not entitled to maintenance. There is allegation in the plaint that the first plaintiff's husband is not possessed of sufficient means to maintain her and her children in comfort. The written statement alleges that according to the practice in North Malabar a Nair lady is taken to her husband's house after the *potamuri* or marriage and that, while she is living with her husband, she is not entitled to any maintenance from her tarwad. The District Munsif dismissed the suit on the ground that a member of a Marumakkathayam tarwad is generally entitled to maintenance only while residing in the tarwad house and that the decisions which have allowed separate maintenance to a member living away from the tarwad do not cover a case like the present one. He also refers to *Parvathi v. Kamaran*(1) where it was held that a male member of a Marumakkathayam tarwad is entitled to an allowance for his consort and children living with him, that is, in computing the amount to which he is entitled for his own maintenance the fact that he has to maintain a wife and children should be taken into account. The Munsif then refers to the fact that "the present day husband of a Marumakkathayam female expects her to live with him and that it is even considered derogatory for the husband to have to visit his wife in her house,"

He continues : " I do not deny that indications of such notions are apparent in the country, but side by side with such notions, it is to be hoped, is also growing up another notion that the husband is responsible for the bringing up of his wife and children. A husband who considers it derogatory to visit his wife in her house ought certainly to consider it disgraceful that his wife and children when living with him in his own house should be maintained at the cost of the wife's tarwad." The District Judge called for a finding on the question whether the plaintiffs were living with the first plaintiff's husband with the express consent of their *karnavan*. The District Munsif submitted a finding stating that it was the practice for the members of the wife's tarwad to send her to her husband's house in a formal manner. This necessarily indicates their consent. The Munsif observed that beyond this there was no other consent. The District Judge is apparently of opinion that this did not amount to express consent. We are unable to understand how persons who send their girl to her husband's house can be said not to consent in as express a manner as possible to her leaving them and living with her husband. The important question that arises for decision is whether according to the Marumakkathayam law a wife living with her husband in her husband's house is entitled to maintenance from her tarwad. The Marumakkathayam law of maintenance which is the same as the Aliyasanthana law prevailing in South Canara was reviewed at great length recently in a judgment to which one of us was a party [*Maravadi v. Panikkar*(1)], and the conclusion arrived at in that judgment was that a member of a tarwad who leaves the tarwad house for a justifiable or proper purpose would be entitled to enforce his or her right to share in the tarwad property by receiving maintenance out of it and that separate residence could not be a reason for refusing maintenance. The basis of the right to maintenance has been fully explained there. It is also indicated in that case that the desirability of living with one's husband is a good cause for a lady to live away from the tarwad house. It was argued there that custom was against it. The answer given was that the custom of all members of a tarwad living together is only a social custom. Some social customs may change without affecting the legal

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rights of parties. All members of a tarwad are entitled to the tarward property and are entitled to the benefit of that property. The only way in which a junior member can receive benefit out of the tarwad property is by receiving maintenance. No decided case has been brought to our notice where it was held that a woman would not be quitting her tarwad house for a proper purpose when she does so in order to reside with her husband. As far as we are aware it is not considered improper. On the other hand it is considered honourable that a wife should live with her husband if asked to do so. The members of the tarwad also consider it honourable both to themselves and to the lady who is asked by her husband to live with him that she should comply with his wishes. Perhaps it should be added that an exception should be made in the case of some aristocratic families who consider their own social position so high that it would be derogatory to their ladies to quit their tarwads to live with their husbands at any rate in a case where the husband is not of an equally high rank. The general rule, however, is as we have stated it. We cannot, therefore, regard that living with one's husband is a good ground for a woman governed by the Marumakkathayam law being compelled to forfeit her right to maintenance while she lives away from the tarwad house. There is no reason for supposing that the mere fact of her leaving her family home to live with her husband must always be taken to amount to a waiver of her right to maintenance. Neither she nor her husband may be in position to make such waiver. The District Munsif's observation that Nairs who consider it proper to take their wives to their own houses should feel it disgraceful that their wife and children should be maintained at the cost of the wife's tarwad goes too far. There is no doubt that every honourable man would do his best to maintain his wife and children himself, but it is no disgrace if his means will not allow him to keep them in comfort. There is no reason why in such circumstances the wife and children should not enforce their legal right to get maintenance out of property belonging to themselves and other members of their tarwad. It may be that on the facts of a particular case a waiver of the right to maintenance while a woman lives with her husband, may be properly implied. If the husband is rich and able to provide properly for his wife and children and if no demand for

maintenance is made on the tarwad for a long time the Court would be justified in inferring that there was no intention to make a demand on the tarwad for maintenance, but the question whether there was a waiver should be decided on the circumstances of each case. In the present case as already observed, the plaintiffs state that the first plaintiff's husband had not sufficient means to provide adequately for her and her children. This allegation was not traversed by the defendants. It appears to us that the District Magistrate did not really try the suit though some documents were admitted in evidence. We must hold that he was wrong in dismissing the suit *in limine*. The plaintiffs 2 to 4 are minor children of the first plaintiff and there can be no reasonable objection to their living with their mother and father. We decide that the plaintiffs are entitled to recover maintenance. We reverse the decrees of the Courts below and remand the suit to the court of first instance in order that the amount to which the plaintiffs are entitled for maintenance may be decided. Having regard to the fact that the law on the question has remained, at any rate till recently, in a somewhat unsettled condition both parties will bear their own costs up to date.

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