APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Sadasiva Ayyar.

1913. September 19 and 25.

KUNHU KUTTI AMMAH (PLAINTIFF), APPELLANT,

v.

MALLAPRATU *alias* N. M. KESAVAN NAMBUDRI, KARNAVAN AND MANAGER OF THE ILLOM, AND EIGHT OTHERS (DEFENDANTS NOS. 5 TO 13), RESPONDENTS.*

Malabar Law—Nambudri Illom—No liability for sons to pay their father's debts.

A Nambudri 'Illom' differs in many respects from an ordinary joint Hindu family on account of the impartibility of its property and its close resemblance to a Nair tarward. The rule of Hindu Law which imposes the duty on a son to pay his father's personal debts, neither illegal nor immoral, is not applicable to Nambudris; and the mere fact that there are no other members in the 'Illom' besides the sons and grandsons of the Nambudri debtor, cannot affect the principle.

Nilakandan v. *Madhavan* (1887) I.L.R., 10 Mad., 9 and *Govinda* v. *Krishnan* (1892) I.L.R., 15 Mad., 333, followed.

Kunhichekkan v. *Lydia Arucanden* (1912) M.W.N. 386, considered.

Muttayan v. *Zemindar of Sivagiri* (1883) I.L.R., 6 Mad., 1 (P.C.), distinguished.

SECOND APPEAL against the decree of A. EDGINGTON, the Acting District Judge of South Malabar, in Appeal No. 927 of 1910 preferred against the decree of T. V. ANANTAN NAIR, the Subordinate Judge of South Malabar at Palghat, in Original Suit No. 36 of 1909.

The plaintiff in the case lent on a promissory note Rs. 4,000 to one Kesavan Nambudri deceased, who was the head and Manager of a Nambudri Illom which, at the time of the suit, consisted of his sons, grandsons, his widows and the widow of one of his sons. Both the lower Courts finding that the debt was borrowed by Kesavan Nambudri for his own personal use dismissed the suit as against the members of the Illom but gave a decree only against the separate assets of the Kesavan Nambudri in the hands of a third party. The Appellate Court also held that the members of the Illom, though they were mainly sons and grandsons by sons of the said Kesavan Nambudri, were not as such,

* Second Appeal No. 681 of 1912.

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bound to pay his personal debts. Plaintiff preferred this Second Appeal.

T. R. Ramachandra Ayyar for the appellant.

C. Madhavan Nair for J. L. Rosario for respondents Nos. 1 to 6.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—As we understand the judgments of the two Lower Courts their concurrent finding on the facts is that no portion of the debt of Rs. 4,000 which Kesavan Nambudri, the father of the fifth defendant, incurred, was used for the benefit of Kesavan Nambudri's illom, and that that money used and intended by Kesavan Nambudri to be used, for the personal expenses of himself and his deceased son. This personal debt of Kesavan Nambudri, though it is not proved to be an illegal or immoral debt, cannot be binding on his illom, which now consists of defendants Nos. 5 to 13, unless the ordinary Hindu Law which makes sons liable for their father's personal debts be applied, the defendants Nos. 5 to 7, 11 and 12 being the sons of Kesavan Nambudri while the thirteenth defendant is Kesavan Nambudri's grandson by his deceased son (defendants Nos. 8 to 10 are widows of the illom).

The Lower Appellate Court held that the obligation of the sons in an ordinary Mitakshara Hindu family to pay their father's personal debts (not illegal or immoral) does not attach to the sons of a Nambudri father. The ground of the decision is that a joint family consisting of father and his sons in an ordinary Hindu family differs in many respect from a Nambudri illom, though the latter might consist only of a father and his sons. The learned District Judge relied upon the decisions in *Nilakandan* v. *Madhavan*(1), *Govinda* v. *Kishnan*(2). It has been contended before us that the obligation of the sons to pay their father's personal debts attaches also to the sons of a Nambudri father, and that the illom property is assets of the father in the hands of his Nambudri sons so as to be liable for the father's debts. In a very learned editorial article found in pages 171 to 184, twelfth volume of the Madras Law Journal, there are no doubt certain observations supporting the appellant's contention. The opinion of BRANDT and PARKER, JJ., in *Nilakandan* v. *Madhavan*(1), viz., that the rule of Hindu Law according to which the son is bound to pay the debts of the father is not

(1) (1887) I.L.R., 10 Mad., 9. (2) (1892) I.L.R., 15 Mad., 333.

applicable to the Nambudris is treated as *obiter dictum* in that article (see page 183). But *Govinda* v. *Krishnan* (1) decided by SUBRAMANIA AYYAR and BEST, JJ., approves of the decision in *Nilakandan* v. *Madhavan* (2) and adopts the principle enunciated therein that the rule of Hindu Law which imposes the duty on a son to pay his father's debt contracted for purposes neither illegal nor immoral is not applicable to Nambudris. The reason for such non-applicability is stated thus: "As the property is joint and impartible and belongs to the whole family and the father has got no definite share that could be made available for his individual debt or which devolves on his death to the son to the exclusion of the other joint members of the family, there is no room for the application of the pious duty of the son to pay the father's debts." The writer of the learned article in the Madras Law Journal to which I have already referred (it seems to be an open secret that the writer is now one of the learned Judges of this Court) admits that, where the Nambudri family consists both of the deceased's debtor's sons and of other members "the rule of the son's liability to pay the father's debts *would be absolutely inapplicable.*" "The sons not being entitled to partition have no saleable interest in the property and the other members not being bound to pay the debt, according to the rule in question, *the whole of the properties* is unavailable for the debt in question." The learned writer however adds "But the question might be different where the family consists only of the father and the sons and their issue." With the greatest respect I do not think that the mere fact that, besides the sons and grandsons of the debtor, there were no other members in the illom could affect the principle by reason of which the applicability of the ordinary Hindu Law rule was negatived in *Nilakandan* v. *Madhavan*(2) and *Govinda* v. *Krishnan*(1). As I understand the principle, it is that a Nambudri illom though governed by the ordinary rules of Hindu Law is also governed by the rules relating to a Marumakkattayam Nair tarwad in some respects. Those matters in which the illom and the tarwad agree are: (*a*) that the head of the illom though the father of the other members of the illom has only the same rights in the properties

(1) (1892) I.L.R., 15 Mad., 333. (2) (1887) I.L.R., 10 Mad., 9.

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of the family as the karnavan of a Nair tarward has though the other members of the tarwad might happen to be only the karnavan's nephews and grand-nephews. (*b*) Just as the personal debts of a karnavan are not binding on his nephews, the personal debts of a Nambudri father are not binding upon his Nambudri sons. (*c*) A Nambudri father cannot enforce partition among his sons just as a karnavan cannot, upon his nephews nor can a co-parcener in a Nambudri illom enforce compulsory partition by suit. (*d*) The alleged share of a Nambudri father or a Nambudri son cannot be attached and brought to sale by a creditor for the personal debt of the debtor just as the alleged share of the karnavan or of an anandravan cannot be attached and brought to sale for the debt due to a creditor by such karnavan. (*e*) The alleged share of a Nambudri father or son belonging to an illom cannot be alienated by him so as to give a right to the alienee to bring a suit for enforcement of partition among all the members of the illom any more than a member of a Malabar tarwad can alienate his alleged share so as to give such a right to the alienee.

I am prepared to follow the principle enunciated in the decisions of this Court in *Nilakandan* v. *Madhavan*(1), and *Govinda* v. *Krishnan*(2). The appellants' learned vakil argued that *Kunhichekkan* v. *Lydia Arucanden*(3), has destroyed most of the above incidents even of the Marumakkattayam law in the case of Nair families. In that case, it was held that the conversion of even one of the members of a Marumakkatayam tarwad dissolved the co-parcenary completely (with the incident of survivorship). Without offering any opinion as to the correctness of the decision in that particular case, I am not prepared to hold that all the differences which I pointed out above between an ordinary Hindu joint family on the one side and a Marumakkattayam joint family tarwad or a Nambudri illom on the other side have been obliterated by the above decision, even if by a process of logic, such a result could be deduced from some observations in that case. *Muttayan* v. *Zamindar of Sivagiri*(4), was relied upon by the appellants' vakil for the proposition that the fact that the incidents of

(1) (1887) I.L.R., 10 Mad., 9.
(2) (1892) I.L.R., 15 Mad., 333.
(3) (1912) M.W.N., 386.
(4) (1883) I.L.R., 6 Mad., 1 (P.C.),

impartibility and inalienability attach to the property of a joint Hindu family will not prevent the operation of the rule of Hindu Law which makes the sons liable for a father's personal debts to the extent of an ancestral property. But that case has no relevancy because the non-liability of a Nambudri son is not based upon the absence of the incidence of partibility and alienability alone *but upon the illom and its members partaking of the nature of a Marumakkattayam tarwad as regards the rights of its members in the property.* In the result, the Second Appeal must be dismissed with costs.

MILLER, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

K. J. V. V. VENKATAPATHI NAYANIVARU (PLAINTIFF), APPELLANT,

v.

MAHOMED SAHIB AND THREE OTHERS (DEFENDANTS), RESPONDENTS. *

1913. September 24 and 26.

Madras Civil Courts Act (III of 1873), sec. 17—Original suit tried partly by a District Munsif—Subsequent appointment as Subordinate Judge—Decree passed by successor in the Munsif's Court—Appeal from the decree—Competency of the Subordinate Judge to hear the appeal—Disqualification under the common law and statutory law, nature of—Objection when to be taken—Waiver—Mere bias or prejudice, ground of disqualification, when—Appropriate remedy.

Where a District Munsif tried an original suit in part and was promoted to be a Subordinate Judge and his successor in office as a District Munsif completed the trial of the suit and passed a decree therein, and an appeal preferred against the decree was heard and disposed of without objection, by the Subordinate Judge who had tried the original suit in part,

Held, that the disposal of the appeal by the Subordinate Judge was not legally invalid and ought not to be set aside by the Appellate Court.

Section 17 of the Madras Civil Courts Act introduces a statutory disqualification as regards District and Subordinate Judges but is confined to the case

* Second Appeal No. 802 of 1912.