the arguments urged in the present case with respect to section 15 of the Trusts Act and with regard to the trustees' liability for interest do not appear to have been addressed to the learned Judge.

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The result is that the Second Appeal must be dismissed with costs.

SUNDARA AYYAR AND SADASIVA AYYAR, JJ.

APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Abdur Rahim.

C. NAKU AMMA AND THREE OTHERS (DEFENDANTS NOS. 2 TO 5), APPELLANTS,

v.

C. RAGHAVA MENON AND OTHERS (PLAINTIFFS AND DEFENDANTS), RESPONDENTS.*

1912. October 23 and 24.

Malabar Law—Right to maintenance—Members of a tavazhi—Maintenance out of tavazhi property—Suit against managing member of tavazhi—Tarwad property, insufficient for maintenance—Gift by husband to wife—Mention of children—Interest taken by wife, whether absolute—Right of tavazhi—Construction of deed of gift.

A member of a tavazhi has a right to sue the managing member of the tavazhi for his maintenance if maintenance is refused by such managing member, where the karnavan of the tarwad is unable to maintain the member out of tarwad property. It is immaterial whether the member of the tavazhi seeking maintenance, has private means sufficient to provide for him an adequate maintenance without necessity of recourse to the tavazhi property.

Putravakasam property is held by the members of the tavazhi to which it belongs with the ordinary incidents of tarwad property.

Per ABDUR RAHIM, J.—Even apart from the fact whether there is sufficient property of the tarwad to which a member of a tavazhi can look for maintenance, he has a right to demand an allowance in the nature of maintenance from the tavazhi property itself.

Maintenance is not a mere subsistence allowance. It should be based on the value of the tarwad property, the position of the members and not confined to what is just sufficient to satisfy the needs of the members.

A member of a tavazhi is entitled to an allowance for maintenance both from the tavazhi and tarwad properties.

Where a deed of gift in favour of a woman is clearly expressed to be to her and her children, there is no warrant for construing it as conferring on the donee an absolute title to the property given where the donee is the wife of the donor and a member of a Marumakkattayam tarwad. It makes no difference that the karnavan of the tarwad joined in the gift.

* Appeals Nos. 129 and 255 of 1909 and Appeal No. 5 of 1910.

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In estimating the amount of the income of the tavazhi property out of which maintenance is payable, the interest payable upon debts binding on the tavazhi should be deducted but not interest on debts contracted after the period for which maintenance is claimed.

APPEALS against the decrees of K. IMBICCHUNNI NAIR, the Subordinate Judge of Palghat, in Original Suits No. 149 of 1908 and No. 45 of 1907, respectively.

These appeals arise out of two connected suits. One of the suits was filed by the junior members of a tavazhi against its managing member for maintenance out of certain tavazhi property. The other suit was filed by the eldest female member of the tavazhi for a declaration that certain properties were her absolute properties belonging to her under deeds of gift and were not liable for the maintenance of the defendants in her suit who were the plaintiffs in the other connected suit. The properties claimed by the female member (Naku Amma) were granted to her on a kanom-demise, the consideration for which was paid by her husband, and the document was executed by her husband and his karnavan who were the sole members of their tarwad at the time and the document mentioned that the kanom grant was to Naku Amma and her children. Within a month and a half after the document referred to above, the same persons executed another document in favour of Naku Amma alone of certain properties now in dispute. The lower Court held that the properties dealt with in both the documents were not the absolute properties of Naku Amma. The donee appealed to the High Court. The further facts appear from the judgment of the High Court.

C. V. Ananthakrishna Ayyar for the appellants.

The Honourable Mr. *J. L. Rosario*, the Officiating Advocate-General, for the respondents Nos. 5, 6, 9, 10 and 12.

T. R. Ramachandra Ayyar and *T. R. Krishnaswami Ayyar* for respondent No. 8.

Others not represented.

MILLER, J. MILLER, J.—These appeals relate to the property known as Kulachamatu. The first question is whether this property belongs to Naku Amma alone or to her tavazhi; and I have no doubt that the Subordinate Judge's conclusion on this question is the right one. Exhibits XXXIV and XIV make it clear that the gift was to her and her children and I find no warrant for construing a gift so expressed as conferring on the donee an

absolute title to the property given, where, as here, the donee is the wife of the donor and a member of a marumakkattayam tarwad. And it seems to me to make no difference that the karnavan of the tavazhi joined in the gifts. The next question with which I propose to deal is whether or not the plaintiffs in Original Suit No. 45 of 1907 can maintain the suit for maintenance against Naku Amma. The contention is that they are bound to sue the karnavan of their tarwad now whatever be the rights of members of a tavazhi in the tavazhi property. I think there can be no doubt that one of them is to look to the income of the property for maintenance if they are in need of it.

In the present case I proceed on the footing that the karnavan of the tarwad is unable to maintain the members; he has said so, and Mr. Ananthakrishna Ayyar did not contend that he is not telling the truth on that point. The members of the tavazhi, therefore, have to look to the tavazhi property or to their private property for their maintenance. It has not been shown—I do not say that it would have made any difference if it had been shown—but it has not been shown that any of the tavazhi members now seeking maintenance has private means sufficient to provide for him an adequate maintenance without the necessity of recourse to the tavazhi property. Therefore the members have to look to their tavazhi property and, I have no doubt, have a right, if maintenance is denied to them by managing member, to sue that member for it; I can see no ground on which that right can be denied to them where the circumstances are those of this case. There is no direct authority on this question but we are bound by authority to hold that *putravakasam* property is held by the members of tavazhi to which it belongs, with the ordinary incidents of tarwad property and no reason has been suggested why in the circumstances of the present case the right to sue for maintenance out of the income, which is the right of a member of a tarwad when maintenance is denied to him, should not be given to the members of the tavazhi. It is not suggested that maintenance has not been refused by Naku Amma. The suit is therefore good.

The property being tavazhi property, the next question is as to the amount of the income. It is contended by the Appellant that it should be reduced by the amount of the interest on a

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debt of Rs. 1,500, which it is claimed, should be held to be a debt binding on the tavazhi. Another sum of Rs. 1,500 which was dealt with in the Court below is also said by Mr. Ananthakrishna Ayyar to be a debt binding on the tavazhi; but it was contracted after the period for which maintenance has been claimed in this suit, and he does not contend that the interest payable on that should be deducted from the income out of which maintenance is payable for the period to which these appeals relate.

[His Lordship then dealt with the evidence in the cases and disposed of the Appeals Nos. 129 and 255 of 1909 and then proceeded as follows :]

Appeal No. 5 of 1910 relates to another item of property which is known as Komban Patta. The only question in this appeal is whether that property is the absolute property of Naku Amma or belongs to the tavazhi. Exhibit XVIII is the document which evidences its transfer to Naku Amma and by that document the transfer is to her alone. That document is a month and a half after the document Exhibit XXXIV to which I have referred in dealing with the other two appeals; and an argument is based on the difference in the form of these two instruments. By the latter, Exhibit XXXIV, the gift of the property there dealt with was to Naku Amma and her children. By Exhibit XVIII it is to Naku Amma alone. We are asked to hold that this difference proves that the gift under Exhibit XVIII was a gift of absolute property to Naku Amma. If these two documents had been executed on the same date and drawn up by the same conveyance no doubt that would be strong evidence in favour of the contention. The greater the distance between the dates of the documents the less will be the weight which attaches to such difference. It appears that there was a month and a half between them and I think it can be legitimately suggested that an inference might be drawn in favour of Naku Amma from the difference; but at the same time it has to be remembered that ordinarily in a document conferring an absolute estate we expect to find some words to the effect that the property should be "enjoyed by you and your sons and grandsons for ever and ever" or some similar words. Here there is nothing. It is only that the gift is to the wife; apart from any other consideration, if I had Exhibit XVIII and nothing more before me, I should be

inclined to hold that it was intended by the donor as a *putravakasam* gift, a gift for the benefit of Naku Amma and her children in the absence of words to show that he intended to give an absolute estate.

Taking it with Exhibit XXXIV alone I might be inclined to take a different view; but there is other evidence which discounts the effect of Exhibit XXXIV. In Exhibit F we find that Naku Amma allowed one of her sons to claim a share in this as well as in other properties: and I do not think that that is satisfactorily explained on the ground that she was trying to shield her properties from his creditors, for fear that the creditors might take advantage of there being no release of these properties and claim Naku Amma's property as that of Madhava Menon. Exhibit F I think may be taken to counteract such inference as may be drawn from the difference between Exhibits XVIII and XXXIV. We find also that the allegation of Naku Amma that she bought this property with her own money is contradicted by her evidence in a former suit, Exhibit G, wherein she lumps this property together with other properties as gifts from her husband, so that the case she originally made that this property was purchased by her for Rs. 200 fails. And as a gift on the whole, I am unable to differ from the view of the Subordinate Judge that it was intended to be a *putravakasam* gift.

An argument was also pressed that the decision in Original Suit No. 177 of 1902 concludes the question between the parties. The fourth defendant there, is the person who is now the first plaintiff in Original Suit No. 45 of 1907. The plaintiffs in that case alleged that this Komban Patta was the family property and the fourth defendant in that case supported that claim in the lower Court; but in the appeal the fourth defendant did not appear but the plaintiffs admitted that Komban Patta was the separate absolute property of Naku Amma. It is suggested that the decision in that appeal or the decision of the Court of First Instance that the property was Naku Amma's separate property binds the first plaintiff in Original Suit No. 45 in the present case. The Subordinate Judge holds that it is not so and I think he is right, for in the appeal the fourth defendant made no admission and in fact did not appear and the Court which tried that suit in the first instance was not competent to try the present suit. The issue whether this land was the sole property of Naku Amma was

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not an issue on which any relief was sought. It was an issue merely incidental to the question what amount of maintenance, if any, should be decreed to plaintiffs. The District Munsif who tried that issue is not competent to try the present suit and on that ground I am of opinion that the decision in that suit does not bar the present suit

It is hardy contended that the sale and mortgage to the third defendant in Original Suit No. 45 of 1907 should be held good once it is found that the gift was a *putravakasam* gift enuring for the benefit of the tavazhi; Mr. Ramachandra Ayyar conceded that the gift of Rs. 500 out of love and affection made it impossible to press that contention. He suggested no doubt that the third defendant might have a charge on the tavazhi property, for a portion of the amount of Exhibit XVIII, but that question does not arise in this case. This appeal fails and is dismissed with costs.

ABDUR RAHIM, J.

ABDUR RAHIM, J.—I agree in the judgments delivered by my learned brother in the Appeals. I wish to add only a few words on the general question of law which has been raised by Mr. Anantakrishna Ayyar in Appeal No. 129 of 1909. The question is whether, as his contention is, a member of a tavazhi is not entitled to ask for maintenance from that karnavan of that tavazhi, at any rate so long as there is a tarwad to which such member can look for his maintenance. His argument is that a member of a tavazhi, who is also a member of a larger tarwad, is entitled to maintenance only from the tarwad property and in no case can he ask for maintenance from the tavazhi property. It seems to me that this contention is clearly unsound. Though there is no authority directly in point, there can be no question that all the members of a tavazhi have an interest in the tavazhi property. Then, if they have an interest in the property, what is the nature of the interest or what is the benefit they are entitled to derive from that interest? When I put this question to Mr. Anantakrishna Ayyar, the learned vakil, went so far as to contend and he had to go that length in order to make his contention good that a member of a tavazhi could not look for any benefit from the property, and that the income from the property must be accumulated in the hands of the karnavan. It seems to me that this is a proposition which cannot possibly be accepted. The members of a tarwad are not entitled to any share in the tavazhi

property, and if they have any interest in the tavazhi property at all, they must have what has been called the right of maintenance. It has been authoritatively laid down and this is not denied that a tavazhi property is subject to the ordinary incidents which attach to tarwad property. These incidents have not all been clearly defined; but there can be no doubt, whatever they may be, a member of a tavazhi is entitled to an allowance in the nature of maintenance from the tavazhi property. It is argued by Mr. Anantakrishna Ayyar that no member of a tarwad is entitled to maintenance unless he resides in the tarwad house. That is undoubtedly so; then he argues further that unless the member of a tavazhi lives in the tavazhi house, he will not be entitled to maintenance, and suggests that, if we allow the members of a tavazhi the right of maintenance against the karnavan of their tavazhi, then in some cases it may be difficult to work out their rights. I am not prepared to say that in some cases difficulties may not arise; but here we are not faced with any such difficulty. And further in this case the karnavan of the tarwad is unable to make any allowance by way of maintenance to the plaintiffs. But so far as at present advised it strikes me that even apart from the fact whether there is sufficient property of the tarwad to which a member of the tavazhi can look for maintenance, he has got a right to demand an allowance in the nature of maintenance from the tavazhi property itself. It has been decided in the first place that the maintenance which a member of a tarwad can claim is not a mere subsistence allowance. The allowance is to be according to the value of the tarwad property, the position of the members and is not confined to what is just sufficient to satisfy the needs of those members. It has also been decided that the fact that a member of a tarwad is possessed of private means is not a good ground for refusing all allowance to him out of the tarwad property. I think these two facts tend to show that though the allowance which a member of a tarwad is entitled to receive from the tarwad property is generally called maintenance and is to a great extent in the discretion of the karnavan the word must be understood in a very liberal sense. Thus if a member of a tarwad is entitled to this allowance independently of whether he has private means or not and if his right is not limited to mere subsistence allowance when the income of the

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property admits of more, then I can see nothing inconsistent or anomalous in allowing a member of a tavazhi allowance both from the tavazhi properties and the tarwad properties. On the other hand, if we are to give effect to the contention which has been urged on behalf of the appellant, we should be reduced to this position: there may be valuable property which the tavazhi owns and at the same time for years together there may be no use for that property and the income must go on accumulating. That, I think, would be clearly against public policy and certainly is against the spirit of the Malabar Law. This is all that I have to say and I agree in all the points with the judgment delivered by my learned brother.

APPELLATE CIVIL.

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

1912 October 21 and November 13.

RANDUPARAYIL KUNHI SOU (KARNAVAN AND MANAGER OF HIS TARWAD—PLAINTIFF), APPELLANT,

v.

ABLUKANDIYIL PARKUM MULLOLI CHATHU (FOURTH DEFENDANT), RESPONDENT.*

Lessor and lessee—Assignment by lessee—Assignee's right to apportionment, as against lessor—Transfer of Property Act (IV of 1882), ss. 36 and 108—Apportionment in English Law—under Statute Law in England—under the English Common Law—Rent—Interest accrues de die in diem—English Statute Law, principle of, to be followed in India—No Statute Law in India—Apportionment as between lessor and lessee's assignee.

An assignee from a lessee is entitled to claim as against the lessor apportionment of rent accruing due after the date of assignment to him up to the time of a transfer (if any) of his interest as assignee to a third person.

There is privity of estate between the lessor and the assignee, and the latter is bound to perform the covenants of the lease after the assignment. Possession is not the ground of the assignee's liability but the privity of estate which is created by the assignment itself.

It is settled law that the privity of estate between the lessor and the lessee's assignee is terminated by an assignment by the assignee of his interest to a third person.

On principle there seems to be no reason why an assignee should not be entitled to apportionment as between himself and the lessor, and why rent

* Second Appeal No. 1581 of 1911.