APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Bakewell.

AMMANI AMMA AND FIVE OTHERS (PLAINTIFFS), APPELLANTS,

1918, April 26 and 27.

v.

PADMANABHA MENON AND FIFTEEN OTHERS (DEFENDANTS), RESPONDENTS.*

Malabar Law—Right of a member of a tarwad to separate maintenance—Female member marrying under Malabar Marriage Act (IV of 1896)—Act whether bar to her claim for maintenance from tarwad.

The right of every member of a Malabar tarwad to be maintained out of the tarwad property is based on his or her right as a co-proprietor in the same and a female member of the tarwad is not deprived of such right by reason of her marriage under the provisions of the Malabar Marriage Act (IV of 1896).

SECOND APPEAL against the decree of A. NARAYANAN NAMBIYAR, Subordinate Judge of Palghat at Calicut, in Appeal No. 849 of 1914, against the decree of K. A. KANNAN, District Munsif of Palghat, in Original Suit No. 344 of 1913.

The first plaintiff and her children who were members of a Malabar tarwad, brought this suit against the other members of the tarwad for arrears of maintenance. The defendants pleaded *inter alia* that the plaintiffs had no right to a separate maintenance and that, as, during the period for which maintenance was claimed, the first plaintiff's husband who married her under the Malabar Marriage Act (IV of 1896) was maintaining the plaintiffs, they were not entitled to claim maintenance from the tarwad for the same period. Upholding this plea, both the lower Courts dismissed the suit. The plaintiffs preferred this second appeal.

The arguments appear from the judgment.

J. L. Rozario for appellants.

C. V. Anantakrishna Ayyar for respondents.

The Court delivered the following JUDGMENT :—

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—The suit is by a female member of a tarwad and her children for maintenance against the tarwad; the defence is that, as the first plaintiff's marriage has been

* Second Appeal No. 2065 of 1915.

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registered under Act IV of 1896, she and her children should entirely look to the husband of the first plaintiff for maintenance and not to the tarwad. The question is said to be one of first impression; the learned vakils on both sides have advanced to us very full arguments on the question. In our opinion, the view of the lower Appellate Court is wrong.

At the outset, it might be mentioned that the expression 'maintenance' is loosely applied to this class of cases. The allowance claimed by an anandravan of a Malabar tarwad or by a junior member of a joint Hindu family is not as a dependant upon the owner of the property but as one who in his own right is entitled to participate in the income. The common law in both cases having vested the management in the senior member, the claim for separate allowance is an index of proprietorship and not founded upon moral or quasi-legal obligations or inability to maintain himself or herself. The authorities to which Mr. Rozario drew our attention have established this position with practical unanimity. In *P. Teyan Nair* v. *P. Raghavan Nair*(1) it was held that the possession of separate property should not be taken into account in considering whether a member of the tarwad was entitled to separate allowance. This decision proceeded on the theory that each member had a right to a share in this income. *Thayu* v. *Shungunni*(2) has to some extent qualified the above decision by pointing out that where the tarwad has not sufficient income to maintain all the members decently, the fact that one of them has other means of livelihood will be a factor that can be taken into account. Here again the right to claim the allowance even where there are other means seems to have been accepted. In *Achutan Nair* v. *Kunjunni Nair*(3) it was distinctly stated that the right to an allowance should be based on the right of co-ownership of property. *Maradevi* v. *Pammakka*(4) accepts this principle as well founded. In *Naku Amma* v. *Raghava Menon*(5) it was held that a member of a tavazhi was entitled to sue the tavazhi for an allowance even though he was being maintained by the main tarwad. This is another illustration of the principle of co-ownership. This latter

(1) (1882) I.L.R., 4 Mad., 171.
(2) (1882) I.L.R., 5 Mad., 71.
(3) (1903) 13 M.L.J., 499.
(4) (1913) I.L.R., 36 Mad., 203.
(5) (1915) I.L.R., 38 Mad., 79.

decision was affirmed by the Full Bench in *Chakkra Kannan* v. *Kunhi Pokker*(1). Thus it is clear that the right of a member of a tarwad for an allowance is an incident of co-proprietorship in the property of the tarwad and that consequently that right cannot be denied unless circumstances show that the tarwad is not in a position to give a separate allowance.

In this appeal the question whether the plaintiffs were justified in living away from the tarwad house, whether there are circumstances which would justify the allotment of an allowance when they do not choose to live with the other members and whether the claim for arrears is sustainable have not been gone into. Those questions will have to be dealt with by the lower Appellate Court.

Mr. Anantakrishna Ayyar mainly relied upon sections 17 and 18 of Act IV of 1896. The learned vakil argued that the term 'maintenance' suggested that it is subsistence allowance and that if that subsistence is given by another who is bound by law to provide it, the tarwad is absolved from liability. This argument ignores the weight of the consideration we have set out, namely, that the claim by a tarwad member is of the character of proprietary right to a share in the income. It is true, as pointed out by the learned vakil, that clause (2) of section 17 only leaves unaffected the customary right, if any, against the tarwad but the right secured by clause (1) is a personal right, a right given by the statute against persons who comply with certain formalities. Such a right cannot take away the right of property.

Section 18 was relied on as showing that the father or the husband is alone entitled to maintain the children or the wife. That section introduces an exception to the general rule that the natural guardian of an anandravan is the karnavan. The legislature has recognized that the welfare of the minor wife or the minor children would be safer in the hands of those who are more nearly connected by blood than the karnavan. It has at the same time imposed a limitation upon the husband or the father by enacting it as a condition precedent to guardianship that they should manifest their interest in the welfare of the minor by making some sacrifice. This section only provides

(1) (1916) I.L.R., 39 Mad., 317.

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for guardianship of person and leaves guardianship of property untouched.

We do not think these provisions were intended to deprive a member of a tarwad of his or her rights in the tarwad.

For these reasons we must reverse the decree of the lower Appellate Court and remand the appeal for disposal on the merits.

Costs will abide the result.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

1918, Feb. 20, 23 July 15 and 30.

VITTA TAYARAMMA (PLAINTIFF), APPELLANT,

v.

CHATAKONDU SIVAYYA AND TWO OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu Law—Conversion of a Hindu widow to Muhammadanism and marriage with a Muhammadan—Section 2 of Hindu Widows' Re-marriage Act (XV of 1856)—Forfeiture of Hindu husband's estate.

Held, by the Full Bench (SESHAGIRI AYYAR, J., dissenting) that a Hindu widow, who becomes a Muhammadan, forfeits under the Hindu Law, by her re-marriage, her interest in her Hindu husband's estate. *Murugai* v. *Viramakali* (1877) I.L.R., 1 Mad., 226, followed.

Moniram Kolita v. *Keri Kolitani* (1880) I.L.R., 5 Calc. 776 (P.C.), distinguished; *Chowdappa* v. *Narasamma* (1917) 23, M.L.T., 81, overruled.

Held further, by WALLIS, C. J. (OLDFIELD, J., and SESHAGIRI AYYAR, J., *contra*)—She forfeits also under section f Act XV of 1856, which only embodied the existing law on the subject.

Per SESHAGIRI AYYAR, J.—Neither by Hindu Law nor by section 2 of Act XV of 1856, which *is only an enabling Act*, does she forfeit her interest.

SECOND APPEAL against the decree of J. W. HUGHES, the District Judge of Cuddapah, in Appeal No. 196 of 1914, preferred against the decree of S. NILAKANTAM PANTULU, the District Munsif of Proddatur, in Original Suit No. 574 of 1913.

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* Second Appeal No. 484 of 1917 (F.B.).