adverse possession of "B," must have all the qualities of adequacy, continuity and exclusiveness which should qualify such adverse possession. But the onus of establishing these things is upon the adverse possessor. Accordingly when the holder of title proves, as in their Lordships' view he does with some fulness prove in the present case, that he too has been exercising during the currency of his title various acts of possession, then the quality of these acts, even although they might have failed to constitute adverse possession as against another, may be abundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is demanded from any person challenging by possession the title which he holds.

Their Lordships will humbly advise His Majesty that the Appeal be allowed, the decree of the High Court set aside with costs, and the decree of the Subordinate Court restored. The respondent will pay the costs of the Appeal.

Solicitors for appellant: *Chapmans-Walker and Shephard.*

Solicitor for respondent: *Douglas Grant.*

A.M.T.

APPELLATE CIVIL—FULL BENCH

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Spencer and Mr. Justice Kumaraswami Sastri.

1921, March 29.

MUTHOORA PALLIATH PURAKKOT PARU *alias* PATHUMMA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

MUTHOORA PALLIATH PURAKKOT RAMAN NAMBIAR AND OTHERS (DEFENDANTS NOS. 1 TO 9 AND 11 TO 17), RESPONDENTS.*

Malabar Law—Conversion of a member of Marumakkattayam tarwad to Muhammadanism—Right of convert to partition of tarwad property—Removal of Caste Disabilities Act (XXI of 1850), effect of.

A member of a Marumakkattayam tarwad does not, by reason of his conversion to Muhammadanism, acquire right to a partition of the tarwad property: Observation of WILSON, J., in *Matungini Gupta* v. *Ram Rutton Roy* (1892) I.L.R., 19 Calc., 289 (F.B.) at 291, followed. *Kunhichekkan* v. *Lydia Arucanden* (1912) M.W.N., 286 and *Abraham* v. *Abraham*, (1863) 9 M.I.A., 195, explained.

* Second Appeal No. 256 of 1920.

PATHUMMA v. RAMAN NAMBIAR

SECOND APPEAL against the decree of V. S. NARAYANA AYYAR, Temporary Subordinate Judge of Tellicherry, in Appeal No. 490 of 1918, preferred against the decree of L. R. ANANTANARAYANA AYYAR, Principal District Munsif of Tellicherry, in Original Suit No. 425 of 1916.

A few members of a Marumakkattayam tarwad who became converts to Muhammadanism filed this suit for partition and delivery to them of their share of the tarwad property. Upholding the plea of the other members of the tarwad, that the plaintiffs had no right to a partition, both the Lower Courts dismissed the suit. Thereupon the plaintiffs preferred a Second Appeal.

The Second Appeal came on for hearing before SADASIVA AYYAR and COUTTS TROTTER, JJ., who made the following

ORDER OF REFERENCE TO A FULL BENCH.

The questions of law involved in this case are of great importance. We are aware that a case involving similar questions was considered and decided by a Bench of this Court: *Kunhichekkan* v. *Lydia Arucauden*(1). The effects of that decision seem to have been considered as so far reaching and almost revolutionary that the lower Courts have, notwithstanding that decision, dismissed the suit of the plaintiffs (Mussalman converts) claiming partition of Marumakkattayam property. Both sides agree that the case is one fit to be decided by a Full Bench so that the matter might be settled authoritatively as far as possible. Under rule 2 of the rules of the High Court, Appellate Side, we refer to a Full Bench the "matter" (that is, this whole case) as its "determination involves a question of law" of much importance.

ON THIS REFERENCE

C. Madhavan Nayar for appellants.—After conversion a person is an outcaste and ceases to be a member of the tarwad; conversion creates a disruption of the tarwad. Hence the convert can claim partition: *Abraham* v. *Abraham*. Act XXI of

(1) (1912) M.W.N., 286.

1850 preserves to him his right to property. Hence he can demand partition. A convert to Muhammadanism cannot live in the tarwad house which is necessary for his claiming maintenance. The karnavan has various ceremonies to perform, social and religious. A Muhammadan karnavan cannot perform them and cannot act as the trustee of a Hindu temple in cases where a tarwad has the management of a temple. Reliance was placed on *Kunhichekkan* v. *Lydia Arucandan*(1). PATHUMMA v. RAMAN NAMBIAR.

B. Pocker followed and referred to *Khunni Lal* v. *Gobind Krishna Narain*(2). A Hindu co-parcenary is severed by the conversion of one member, so far as that one is concerned: *Kulada Prasad Pandey* v. *Haripada Chatterjee*(3).

C. V. Anantakrishna Ayyar for respondents.—In *Abraham* v. *Abraham*(4) this question did not arise. All the members there were Christians. Even the observation on page 237 that conversion severs the joint status of a *joint Hindu family* cannot apply to Marumakkattayam law as there is no right to partition. Moreover, that case dealt with property acquired subsequent to conversion. *Kunhichekkan* v. *Lydia Arucandan*(1), related to a case where all were Christians at the time and therefore the Indian Succession Act was applied. Act XXI of 1850 does not enlarge the rights or take away previous restrictions: *Kery Kolitany* v. *Moneeram Kolita*(5), *Matungini Gupta* v. *Ram Rutton Roy* (6). *Vitta Tayaramma* v. *Chatakondu Sivayya*(7).

WALLIS, C.J.—If it were not for the authorities the question would appear to be free from difficulty. There is no doubt that under Hindu Law a member of a Marumakkattayam tarwad on his conversion to Mahammadanism would forfeit all interest in the tarwad property. Act XXI of 1850, however, provides that any law or usage which inflicts on any person forfeiture of rights or property by reason of his renouncing his religion or being deprived of caste shall cease to be enforced as law. The effect of this Statute would appear to be that a WALLIS, C.J.

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(1) (1912) M.W.N., 286.
(2) (1911) I.L.R., 33 All., 356 (P.C.).
(3) (1913) I.L.R., 40 Calc., 407.
(4) (1863) 9 M.I.A., 195.
(5) (1873) 13 B.L.R., 1 (F.B.), 26
(6) (1892) I.L.R., 19 Calc., 289 (F.B.), 2 1, 295.
(7) (1918) I.L.R., 41 Mad., 1078 (F.B.), 1091.

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WALLIS, C.J.

convert's interest in the tarwad is unaffected by his conversion. As has been pointed out in *Matungini Gupta* v. *Ram Rutton Roy*(1) by WILSON, J., the effect is not to enlarge the convert's interest in any property or to get rid of any condition or restriction to which it was originally subject. It would therefore appear to be a sufficient answer to the reference to say that conversion to Christianity cannot give a member of a tarwad a right to a partition of tarwad property which is impartible under the Marumakkattayam Law. It has, however, been held in *Kunhichekkan* v. *Lydia Arucanden*(2) that the conversion of two sisters to Christianity dissolved the co-parcenary till then existing between them and their brother as a tarwad, and had the effect of converting them into tenants-in-common of the tarwad property without rights of survivorship, and, if this be so, it may be said that a right to partition is an ordinary incident of tenancy-in-common. The proposition that conversion has the effect of depriving the convert of his right of survivorship which may often be a most valuable right, as when the joint family consists of an old father and two brothers, one of whom becomes a convert, appears to be opposed to the express provisions of the Statute that conversion is not to involve any forfeiture of property or rights. It has however, been accepted as good law not only in *Kunhichekkan* v. *Lydia Arucanden*(2) but also in *Kulada Prasad Pandey* v. *Haripada Chatterjee*(3) in which three sons, two of whom had been converted to Christianity, sought to question an alienation made by the deceased father to defendants Nos. 1 to 4 as opposed to Hindu Law. It was held that the conversion of plaintiffs Nos. 1 and 2 though it did not deprive them of their interest in the joint family property, had the effect of severing them in status, putting an end to rights of survivorship, and to the father's power to bind their share by alienation of the family property for purposes neither illegal nor immoral. With this last question we are not now concerned. The judgment in both cases proceed on the authority of the Privy Council in *Abraham* v. *Abraham*(4). Now that was not a case governed by Act XXI of 1850 or the earlier Bengal

(1) (1892) I.L.R., 19 Calc., 289 (F.B.), 291. (2) (1912) M.W.N., 286.
(3) (1913) I.L.R., 40 Calc., 407. (4) (1868) 9 M.I.A., 195.

Regulation VII of 1832, as the family had been converted to Christianity long before they were passed, and the property in suit had all been acquired after conversion, and it seems to me, with great respect, that in the observations at page 237, on which reliance is placed as to conversion severing the convert from the family and putting an end to the co-parcenership, Lord KINGSDOWN was merely stating the undoubted effect under Hindu Law of conversion to another religion and was not considering the effect of Act XXI of 1850 on cases governed by it. Indeed, he expressly says so at page 239, and points out that Act XXI had no application to the case :

"Such then being the state of the case so far as the Hindu Law is concerned, we must next consider whether there is any other Law which determines the rights over the property of a Hindu becoming a convert to Christianity. The *Lex Loci* Act clearly does not apply, the parties having ceased to be Hindu in religion."

Act XXI of 1850 had been described in the argument at page 218 as the *Lex Loci* in case of apostacy, and was clearly the Act referred to by Lord KINGSDOWN. In a later case, *Khunni Lal* v. *Gobind Krishna Narain*(1), the Judicial Committee had to consider a case governed by section 9, Bengal Regulation VII of 1832, the principle of which, they held, was extended to the rest of India by Act XXI of 1850. In that case, there was a joint family consisting of one Ratan Singh and his son Daulat Singh. Ratan Singh became a Muhammadan in 1845, and subsequently Daulat Singh predeceased him. After the deaths of both their widows, a compromise was entered into by which Ratan Singh's daughter's daughter agreed to share the properties left by him with Daulat Singh's daughters. After the deaths of Daulat Singh's daughters, the sons of one of them set up that the compromise was not binding on them and contended that on the conversion of Ratan Singh the whole of the joint family properties became vested in his son Daulat Singh. This contention their Lordships rejected, observing, at page 366, that

"The effect of the legislations of 1832 and 1850 was that on Ratan Singh's abandonment of Hinduism, Daulat Singh did not acquire any enforceable right to his father's share in the joint

(1 (1911) I.L.R., 33 All., 356 (P.C.).

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family property which he could either assert himself or transmit to his heirs for enforcement in a British Court of Justice."

WALLIS, C.J.

The daughters of Daulat Singh had obtained an 8½ annas share of joint family property in the compromise which was being attacked, and their Lordships had not to consider whether under the Bengal Regulation Daulat's share did not pass by survivorship on his death to his father Ratan Singh in spite of the latter's conversion to Muhammadanism. Mr. Anantakrishna Ayyar, on the other hand, has relied on the observations of their Lordships as to the original imperfection of Daulat Singh's title when the case came before them on an earlier occasion in *Karim-ud-din* v. *Gobind Krishna Narain*(1) as showing that their Lordships were then of opinion that on Daulat's death his interest passed by survivorship to his father Ratan Singh to the exclusion of his own daughters. These observations may, however, have been made with reference to the case then set up, that the properties in suit were all the self-acquired properties of Ratan Singh. On the whole, I have come to the conclusion that there is nothing in any of the decisions to prevent us from giving effect to what appears to me to be the plain bearing of Act XXI of 1850, and I must therefore hold that the plaintiffs are not entitled to a partition of the tarwad property by reason of their not being Hindus and that the Appeal fails and must be dismissed with costs. The question of the plaintiff's right to succeed to the office of karnavan is not before us, and I express no opinion about it as it may involve other considerations. The Second Appeal fails and is dismissed with costs of defendants Nos. 1 to 7 and 11 to 16.

SPENCER, J.

SPENCER, J.—I agree with my Lord that the plaintiffs are not entitled to a partition of the tarwad property by reason of their becoming converts from Hinduism to Islam. It is clear from the preamble to the Removal of Caste Disabilities Act (Act XXI of 1850) that the effect of that Act was to preserve existing rights but not to confer any new rights such as a right of partition of property which did not exist before in the family to which the convert belonged. Impartibility being one of the incidents

(1) (1909) I.L.R., 31 All., 497 (P.C.), 504.

of a Marumakkattayam family, a right to partition could not be acquired in consequence of a change of religion.

In the District Munsif's and Subordinate Judge's Courts the plaintiffs appear to have based their title to partition on the ruling in *Kunhichekkan* v. *Lydia Arucanden*(1). It was therein observed that the conversion to Christianity of two daughters, Lydia and Salome, belonging to a Marumakkattayam family in Malabar, "operating on the joint family dissolved the co-parcenary which existed under the Marumakkattayam Law," and the converts "remained as co-owners and became tenants-in-common of their joint property."

That case might have been decided upon the short points, that after Chandan died all the family being Christians were governed in matters of succession by the Indian Succession Act, that plaintiff having an interest in the property of her deceased husband Nathaniel had a right under section 91 of the Transfer of Property Act to institute a suit for redemption, and that in a suit for redemption all persons interested should be joined as parties.

In a case of intestacy among converts to Christianity the children's rights of succession to the property of their converted parents are governed by the Indian Succession Act, and the rules of co-parcenery and survivorship of Hindu Law no longer apply; but if the parents were undivided co-parceners at the time of conversion or at the time of the passing of the Succession Act, each parent will retain a vested interest in the co-parcenery till he dies. That was the principle on which *Tellis* v. *Saldanha*(2) was decided, and the position of the widow and daughter of Augustine Tellis therein was similar to the position of Lydia's children in *Kunhichekkan* v. *Lydia Arucanden*(1).

But where the parties are not Christians but Muhammadans after conversion, the Indian Succession Act has no application at all, as Muhammadans are exempted under section 331 of that Act from the provisions relating to intestate or testamentary succession to property. The Second Appeal should, in my opinion, be dismissed with costs of defendants Nos. 1 to 7 and 11 to 16.

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(1) 1912 M.W.N., 286.

(2) (1887) I.L.R., 10 Mad., 69.

PATRUMMA v. RAMAN NAMBIAR.

KUMARASWAMI SASTRI, J.

KUMARASWAMI SASTRI, J.—I agree with the conclusions arrived at by my Lord and SPENCER, J., whose judgments I have had the advantage of perusing.

I am of opinion that apostacy from Hinduism does not entitle a member of a Malabar tarwad to claim partition of the tarwad property and delivery to him of his share. It is clear that a member of a tarwad has no right to claim partition, as tarwad property is indivisible and no one member, nor even all but one, can enforce a division upon any who object. As this was not disputed at the hearing it is not necessary to refer in detail to the authorities which go back to a period as early as 1814. I need only refer to the following observations by TURNER, C.J., and MUTTUSWAMI AYYAR, J., in *Tod* v. *P.P. Kunhamod Hajee*(1):

"The law governing the property of a tarwad has not reached the same stage of development as the law regulating the joint property of the Hindu family. Not only in the former case is the succession traced to females but the property is indivisible so that the members of the family may be said to have rather rights out of the property than rights to the property. . . . The family and not the individual is what we may term the social unit. . . . The individual right of the members of the tarwad is so feeble that it is not competent to any one of them to insist on a partition. The males take interests in the tarwad property which endure only for their lives and do not pass to their offspring nor are available for the satisfaction of their private debts."

If a member while a Hindu has no right to claim partition against the will of the other members of the tarwad it is difficult to see how he acquires the right by apostacy. Act XXI of 1850 (Caste Disabilities Removal Act), it is argued, gives him the right but the Act only prevents any law or usage from depriving a convert of rights or property, or rights of inheritance, which he had before conversion. I do not think that the Act can give to any party any right higher than that to which he is entitled under the law from which that right is derived. As observed by WILSON, J., in *Matungini Gupta* v. *Ram Rutton Roy*(2):

(1) (1881) I.L.R., 3 Mad., 169. (2) (1892) I.L.R., 19 Calc., 289 (F.B.), 291.

"A change of religion does not cause any forfeiture of property. . . . But neither could it enlarge it nor get rid of any condition or restriction to which it was originally subject."

It is argued that conversion severs the co-parcenary and that consequently gives rise to a claim for partition and separate enjoyment. Reference has been made to *Abraham* v. *Abraham*(1) and to *Kulada Prasad Pandey* v. *Haripada Chatterjee*(2). *Abraham* v. *Abraham*(1) was a case where the family had been Christian for more than one generation and there was no ancestral property. The observations of their Lordships of the Privy Council relate to cases governed by the ordinary Hindu Law applicable to Mitakshara families where partition is a right which can be exercised at the volition of any adult co-parcener. No question arose as to the effect of Act XXI of 1850. Their Lordships observe:

"Considering the case then with reference to parcenership what is the position of a member of a Hindu family who has become a convert to Christianity. He became, as their Lordships apprehend, at once severed from the family and regarded by them as an outcaste. The tie which bound the family together is, so far as he is concerned, not only loosened but dissolved. The obligations consequent upon and connected with the tie must, as it seems to their Lordships, be dissolved with it. Parcenership may be put an end to by severance effected by partition; it must as their Lordships think equally be put an end to by severance which the Hindu Law recognizes and creates. Their Lordships therefore are of opinion that upon the conversion of a Hindu to Christianity the Hindu Law ceases to have any continuing obligatory force upon the convert. He may renounce the old law by which he was bound as he has renounced his old religion or if he thinks fit he may abide by the old law notwithstanding he has renounced his old religion."

It seems to me that these observations do not necessarily lead to the result that when by the very nature of the property no right to partition exists before conversion, mere severance of the co-parcenary would give a person that right. Where before conversion partition without common consent cannot be claimed on any ground, severance effected by change of religion cannot give a right to partition. *Kulada Prasad Pandey* v. *Haripada Chatterjee*(2) was also a case of one of the

(1) (1863) 9 M.I.A., 195, 237. (2) (1913) I.L.R., 40 Calc., 407.

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members of a Mitakshara family becoming a convert. Partition was a right to which the convert was entitled to before conversion and severance of the co-parcenary created by the conversion gave him no new right. Where under the law governing the parties it is open to any one member to resist a partition it is difficult to see how his rights can be taken away because another member chooses to change his religion. The application of Act XXI of 1850 would in effect enlarge the right of the convert and cut down the right of the remaining members of the tarwad, a result which is unwarranted by the Act.

The only decision on the question as to the effect of conversion of a member of a tarwad is *Kunhichekkan* v. *Lydia Arucanden*(1), where ABDUR RAHIM and SUNDARA AYYAR, JJ., held that conversion of a member makes him a tenant-in-common. In that case one Acha had a son, Chandan, and two daughters. The daughters became converts to Christianity and assumed the names of Lydia and Salome. The parties were, before conversion, members of a Marumakkattayam tarwad and after conversion Chandan died. Lydia had a son, Nathaniel, who mortgaged the property and on his death his widow sued to redeem the property. The mortgagee resisted the suit on the ground that Nathaniel's widow had no right to redeem. The contention was that the property was the joint property of Acha's children, that the plaintiff, who was no member of the tarwad, had no right to redeem and that the right vested in the surviving children of Salome and Lydia. Having regard to the fact that after Chandan's death some years before the suit all the members of the family were Christians the only law to be applied was the Succession Act. The case was not one of a conflict between converted members of the tarwad and the other members who remained Hindus. The observations as to the conversion of a member making him into a tenant-in-common were *obiter* and, with all respect, I fail to see why the converted member of the tarwad should be enabled to give to the tarwad property the character of partibility which it never possessed. Impartibility being the very nature of the estate, such right as the parties may have should be worked out so as not to affect the fundamental character of the property. There is no complete analogy between a

(1) (1912) M.W.N., 286.

Malabar tarwad and the Mitakshara joint family and if the observations of TURNER, C.J., and MUTTUSWAMI AYYAR, J., in *Tod* v. *P. P. Kunhamod Hajee*(1) which I have already set out are borne in mind, I do not think conversion makes the convert a tenant-in-common and even if it did, I do not think it further gives him a right to partition on the analogy of a Mitakshara family.

I am of opinion that all that the convert is entitled to is to continue to reside in the house and be maintained as before if the other members are willing or to get separate residence and maintenance allotted to him if the other members refuse.

It is unnecessary to consider what the effect would be if the convert becomes entitled to the karnavanship. The same difficulty would arise if a karnavan becomes a convert and refuses to ask for partition or give up office, or when a hereditary dharmakartha becomes a convert. The question will turn on whether the office is a right which falls under Act XXI of 1850 and whether community of religion is an essential requisite to eligibility or continuance so as to entitle the other parties to claim supercession or removal. I would dismiss the Second Appeal with costs of defendants Nos. 1 to 7 and 11 to 16.

N.R.

(1) (1881) I.L.R., 3 Mad., 169.