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that devolved on her but in respect of the whole 16 annas which passed to her and her sister as a single inheritance on the death of their father."

No doubt in the case before the Calcutta High Court the acquirer was a stranger but the principle of that decision seems applicable to the present case.

On the whole I have come to the conclusion, though not without some hesitation, that the true rule is that enunciated by Sir LAWRENCE JENKINS in *Sachindra Kishore Dey* v. *Rajani Kant Chukerbutty*(1). That view is in accordance with the English authorities to which I have referred. I must therefore hold that plaintiff lost her right of survivorship by the operation of section 28 of the Limitation Act and that this suit so far as a portion of item 2 is concerned should be dismissed.

Appeal No. 266 of 1918 is allowed with costs.

Appeal No. 247 of 1918 is dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Oldfield.

1920, August 10.

THAYYIL MAMMAD AND FIVE OTHERS (PLAINTIFFS), APPELLANTS,

v.

PURAYIL MAMMAD AND EIGHT OTHERS (DEFENDANTS), RESPONDENTS.*

Malabar Law—Karnavan of tavazhi making a gift—Gift not questioned even by the last surviving member of the tavazhi—No right of attaladakkam heirs to question gift.

An attaladakkam heir succeeds only to such of the properties of a tavazhi as have not been disposed of by its last members. He cannot therefore question an alienation made by the karnavan of the tavazhi, when the other members had not by any unequivocal act called it into question during their life-time.

SECOND APPEAL against the decree of H. D. C. RILEY, District Judge of North Malabar, in Appeal No. 299 of 1915, against the decree of P. SANKUNNI MENON, District Munsif of Taliparamba, in Original Suit No. 82 of 1913.

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(1) (1915) 27 I.C., 250.

* Second Appeal No. 1373 of 1918.

One Ali Kunhi was the karnavan of a tavazhi, in 1907, and the only other member of the tavazhi at that time was one Pukkoya. In November 1907 Ali Kunhi made a gift of some of the tavazhi properties to his children and died in 1909. Pukkoya died in 1911, without questioning the gift. The plaintiffs as the attaladakkam heirs of the extinct tavazhi filed this suit in October 1913 for a declaration that the gift was invalid and not binding on them. The defendants, the donees, pleaded *inter alia* that the plaintiffs' only right as attaladakkam heirs was to succeed to such properties as have been left undisposed of by the tavazhi and that they have no right to question the alienations made by the tavazhi or by its last survivor. Both the Lower Courts upheld the defendants' plea and dismissed the suit. The plaintiffs preferred this Second Appeal.

C. V. Anantakrishna Ayyar for the appellants.

K. P. M. Menon for the respondents.

ABDUR RAHIM, J.—In this appeal the question of law is as to the right of attaladakkam heirs to dispute certain alienations made by the karnavan of a tavazhi who owned the property in dispute when the other surviving member of the tavazhi living at the time did not revoke it by any unequivocal act of his during the life-time of the karnavan or after his death. There is no express authority on the point, but it seems to me all the same that it does not admit of any substantial doubt. In this case there were two members of the tavazhi to which this property belonged and the karnavan for the time being made gifts of some of the properties to his children. The other member of the tavazhi at the time was one Pukkoya. He did not during the life-time of the karnavan take any steps to question these gifts except as regards one item of property, which is not in dispute and with respect to which before his death he had instituted a suit and obtained a decree declaring that the alienation of that item of the family property was invalid. But he dit not take any steps to get the rest of the property from the donees.

It was contended by Mr. Anantakrishna Ayyar, the appellants' learned Vakil, that the attaladakkam heirs, that is, the tarwad which would succeed to the property on the death of the

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last surviving member of the tavazhi, were entitled to recover the property from the alienees. The plaintiffs are called attaladakkam heirs, although it appears that their right to succeed to the property on the death of its last surviving member is provided for by a karar which was executed when the tarwad became divided into several tavazhis. I don't think it makes any difference whether the right of the plaintiffs is based on the karar or on the general law which gives to the tarwad the right of succession to the property of a tavazhi which has become extinct. The main argument of Mr. Anantakrishna Ayyar is that the alienation by a karnavan of a Malabar tarwad or tavazhi without such necessity as is recognized by the law is *ab initio* void and the alienee is in the position of a trespasser. The right of the remaining members of the tarwad to the property according to this contention is not in any way affected by the alienation and they can recover the property without seeking to set aside the alienation. His argument is founded on the decisions on the question of limitation whether it is necessary for a junior member of a tarwad or of a reversioner under the ordinary Hindu Law to have a deed of alienation executed by the karnavan or a limited owner like a Hindu widow cancelled and set aside within the period of limitation provided by article 91. There used to be a conflict of decisions on this subject but it has been ultimately ruled by the Privy Council in *Bijoy Gopal Mukerji* v. *Krishna Mahishi Debi*(1) that it is unnecessary to have the alienation cancelled and set aside in such cases. Their Lordships say that by instituting a suit for possession a reversionary heir sufficiently elects to avoid the transaction and it is not necessary for him to have the deed set aside by any act previous to the institution of the suit. And we have also been referred to several decisions of this Court in which similar language is used in respect of alienations by the karnavan of a Malabar tarwad: *Chappan* v. *Raru*(2) and *Sankara* v. *Kelu*(3). But these decisions on the question of limitation do not really conclude a point of this nature. The main basis of the argument is that if a case falls under article 144 of the Limitation Act, then we must take it that the person in possession is a mere trespasser

(1) (1907) I.L.R., 34 Calc., 329 (P.C.). (2) (1914) I.L.R., 37 Mad., 420.
(3) (1891) I.L.R., 14 Mad., 29.

and although he may profess to claim possession under a deed executed by a person who in proper circumstances would be entitled to convey the property yet he had no title to the property and we must treat the case as if the alienation had never been made. It is difficult to see how any such proposition can be derived from the cases to which we have been referred. It would be a very extreme proposition of law to lay down that an improper alienation by a limited owner or by a person in the position of a karnavan of a tarwad must be treated for all purposes as if it had never taken place. It is quite clear that there may be persons in adverse possession of a property to whom article 144 of the Limitation Act is applicable, but who cannot be properly treated as mere trespassers. However that may be the question before us is, are persons like the plaintiffs in the present case entitled to question and avoid the alienations made by the karnavan of a Malabar tarwad? There can be no doubt that only the remaining members of the tarwad whose property has been wrongfully alienated by the karnavan can question such an alienation. The karnavan of a tarwad under the Malabar Law is the only person who can deal with the properties of the tarwad in circumstances recognized by the law, and the other members have no rights in the property in the sense of their being entitled to a share in the property or to be able to ask for partition. Their rights consist in being maintained by the karnavan out of the income of the family property and to see that the karnavan does not injure the family property by dealing with it in an improper way. If the junior members did not choose to question the alienation made by the karnavan it is imposible to conceive on what principle their right would descend to a person like an attaladakkam heir. It cannot be disputed that the karnavan and the junior members all together might make a gift of the entire family property if they so chose and if the karnavan makes such a gift and the other members of the family affirm it the result would be the same. There is no provision of law which lays down that they must affirm it by some positive act of theirs and so far as I can see it would be sufficient if they did not by any unequivocal act call in question the alienation. In this case we have been asked by Mr. Anantakrishna Ayyar to say that it was alleged

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in the plaint that Pukkoya in fact had elected in his life-time to avoid the transaction in question but we do not think that there is any such definite allegation. All that is stated in paragraph 3 of the plaint is that "the deceased Pukkoya also had taken objection to the said demises, etc." That is not a statement that he had by any clear unambiguous act made a declaration, supposing that a mere declaration would be sufficient, that he would not be bound by the alienation made by the karnavan Ali Kunhi. In the plaint in the suit in respect of the item of property not in question in this litigation, there occurs a statement to this effect "other documents also appear to have been executed for the benefit of the wife and children and other reliefs will be sought in respect of them." There is nothing in this statement which would enable us to identify any of the properties involved in the suit and in other respects also the statement cannot be said to be at all clear or unambiguous.

A number of English authorities have been cited before us by Mr. Anantakrishna Ayyar, in order to establish that the right to avoid a transaction of this nature descends to the heirs and legal representatives. But those cases can be of no help to us. They are cases which relate to the right to recover damages or similar remedies with respect to torts, and it will be totally unsafe to draw any analogy between those cases and a case like the present arising under the peculiar institution of the Malabar Law. Even the cases relating to the rights of a reversioner to avoid transactions of this kind under the ordinary Hindu Law do not furnish an exact analogy because the position of the junior members of the tarwad is in some respects weaker than that of the reversioners under the ordinary Hindu Law. A Hindu widow has merely a limited estate and her powers of alienation and management of the property are more limited than those of a Malabar karnavan. An attaladakkam heir succeeds to the properties of a tavazhi only when there are no members of the tavazhi left and of course only to properties which were not disposed of by the last members of the tavazhi. I must hold in this case that the property in dispute was disposed of by the last members of the tavazhi and there was nothing left for the plaintiffs to succeed to. This Second Appeal (Second Appeal No. 1373 of 1918) is dismissed with costs. The other Second