APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Madhavan Nair.

KIJANAR SHESHAPPA SHETTY (DEFENDANT), APPELLANT

1925 November 2.

v.

KIJANAR DEVARAJA SHETTY (PLAINTIFF), RESPONDENT.*

Aliyasantana Law of South Kanara—Junior member of an Aliyasantana family—Right to recover marriage expenses from the ejman of the family and out of the family property—Maintenance—Similarity to Malabar Law—Marumakkathayam tarwad—Power of karnavan—Right of junior member to maintenance, based on co-proprietorship in family property—Maintenance, what it includes—Menchilavu, meaning of.

A junior member of an Aliyasantana family is entitled to claim his marriage expenses from the ejman of his family.

The marriage expenses of a junior member of an Aliyasantana family form a part of his right to maintenance.

The Aliyasantana system is similar in its incidents to the Marumakkathayam law of Malabar. Under both the systems, the junior members are co-owners with the manager (ejman or karnavan) in the family property, and their right to maintenance is based on their ownership in the family property.

The term "maintenance," though, in its limited sense, it means allowance for bare necessaries of life, in its more comprehensive sense, includes what is usually called in Malayalam "Menchilavu" which is treated as part of maintenance, and under the latter head reasonable and legitimate expenses of the junior members such as expenses of their medical treatment, of defence in criminal cases, etc., have been allowed by the Courts out of the family property; similarly, marriage expenses of the junior members form part of their right to maintenance.

Parvati v. *Kamaran*, (1883) I.L.R., 6 Mad., 341; and *Govindan Nair* v. *Kunjan Nair*, (1919) I.L.R., 42 Mad., 686, followed. Case law reviewed.

* Second Appeal No. 787 of 1923.

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SECOND APPEAL against the decree of V. S. NARAYANA AYYAR, the District Judge of South Kanara, in A.S. No. 27 of 1922 preferred against the decree of D. S. RAJA RAO, the District Munsif of Puttur, in O.S. No. 679 of 1920.

This is a Second Appeal in a suit instituted by a junior member of an Aliyasantana family to recover the expenses incurred by him, for his marriage from the ejman of his family personally and out of the immovable properties of the family specified in the schedule to the plaint. The defendant pleaded that he was not the ejman, that the plaint property was not family property, that the marriage was not arranged or performed with his consent, and that the ejman of an Aliyasantana family was not bound to contribute to the marriage expenses of a junior member of the family. It was found that the ejman withheld his consent for the marriage perversely and on no justifiable grounds. The District Munsif gave a decree in favour of the plaintiff directing the defendant to pay a portion of the amount claimed in the plaint, personally and as manager of the family on the responsibility of the immovable properties of the family specified in the plaint. The District Court on Appeal confirmed the decree. The ejman (defendant) preferred this Second Appeal.

B. Sitarama Rao for appellant.

K. Y. Adiga for respondent.

JUDGMENT.

We are invited in this Second Appeal to set aside a decree by which the Court of appeal below in concurrence with the Court of first instance gave the plaintiff a sum of Rs. 181-9-3 on account of expenses incurred by him for performing his marriage. The plaintiff is a junior

member of a family of which the "ejman" is the defendant. The parties are Jains of South Kanara governed by the Aliyasantana Law. In reply to the plaintiff's claim, the defendant pleaded that he was not the ejman, that the plaint property was not family property, that the marriage was not arranged or performed with his consent and that, in any event, the ejman of an Aliyasantana family was not bound in law to contribute for the marriage expenses of a junior member. The lower Courts overruled all these pleas. As regards the want of consent alleged by the ejman, it is conceded for the appellant that the lower Courts should be deemed to have found that the ejman withheld his consent for the marriage perversely and on no justifiable grounds. In these circumstances, Mr. Sitarama Rao argues that the lower Court's decree is contrary to law, because (1) the law does not recognize the union between a man and woman following the Aliyasantana Law as a valid and binding marriage and (2) this item of expense should not on any account be included within the rule making maintenance a proper charge on the revenues of the family. The important question for our decision is whether the plaintiff, a junior member of an Aliyasantana family, is entitled to claim his marriage expenses from the ejman of the family.

The Aliyasantana system is very similar in its incidents to the Marumakkathayam Law (see *Subbu Hegadi* v. *Tongu* (1) and *Muthu Amma* v. *Gopalan* (2). A karnavan in Malabar is the senior male member of a group of persons, all of them tracing their descent in the female line from a common female ancestor owning joint property under the absolute control and management of the karnavan. This group forms a Marumakkathayam

(1) (1869) 4 M.H.C.R., 196. (2) (1913) I.L.R., 36 Mad., 593.

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tarwad (see *Kenath Puthen Vittil Tavazhi* v. *Narayanan*(1). The powers and rights of the karnavan, who corresponds to the ejman of the Aliyasantana family, have been laid down in various decisions of this Court. Large and absolute though his powers be over the administration of the tarwad property and its funds, the regulation of the tarwad's internal economy, and the protection, control and supervision of the junior members, it should never be forgotten that the tarwad property in his possession is not exclusively his own, but he owns it along with the other members only as a co-proprietor. As observed in *Narayani* v. *Govinda*(2), "although as a senior member he enjoys special consideration, he has no higher claim in the enjoyment of the income than any other member of the family." The right of ownership is of overwhelming importance to the junior members, as it clothes them with very valuable rights which they can enforce against the karnavan. The status of a member of a Malabar tarwad carries with it four distinct rights, viz., (1) a right to be maintained by the karnavan, (2) a right to see that the tarwad property is not alienated otherwise than in accordance with law, (3) a right to become the tarwad karnavan, when he becomes the senior male member, and (4) a right to a share if a partition were made and the tarwad broken up by common consent. (*Moidin Kutti* v. *Krishnan*(3) *Ibrayan Kunhi* v. *Komamutti Koya*(4) and *Muthu Amma* v. *Gopalan*(5). To these might be added another right, viz., a right to bar an adoption, *Chandu* v. *Subba* (6).

Of these rights obviously the most substantial one is the right to "maintenance" as such a right is the mode in which the right of ownership in the tarwad property

(1) (1905) I.L.R., 28 Mad., 182 at 188.
(2) (1884) I.L.R., 7 Mad., 352.
(3) (1887) I.L.R., 10 Mad., 322.
(4) (1892) I.L.R., 15 Mad., 501.
(5) (1913) I.L.R., 36 Mad., 593.
(6) (1890) I.L.R., 13 Mad., 209.

is most effectively enforced by the junior members. The value of such a right in the case of persons living under a system of law which does not sanction compulsory partition, nor recognizes son's claims against the father, cannot be over-estimated. The nature of this right has been thus described by SESHAGIRI AYYAR and BAKEWELL, JJ., in *Ammani Amma* v. *Padmanaba Menon* (1):

"The allowance claimed by an anandravan of a Malabar tarwad or by a junior member of a joint Hindu family is not as a dependent 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 maintenance is an index of proprietorship . . . . in the property of the tarwad and consequently that right cannot be denied unless circumstances show that the tarwad is not in a position to give a separate allowance."

[*See Achutan Nair* v. *Kunjunni Nair*(2), *Maradevi* v. *Pammakka*(3), *Kunhikrishna Menon Karnavan* v. *Kunhikavamma*(4) and *Govindan Nair* v. *Kunju Nair*(5).]

The term "maintenance," as has been pointed out, is often loosely applied. In its limited sense, as understood in Malabar, it means the expenses required for food, raiment and oil; in its more comprehensive sense, it includes what is usually called in Malayalam "Menchilavu," which is treated as a part of maintenance. [See *Govindan Nair* v. *Kunju Nair*(5).] According to SUNDARA AYYAR, J., the word "Menchilavu" is used to designate a part of what is required for the support of a person and is distinguished from what is strictly necessary for food and raiment. Legally it may be taken to mean part of what would be included in the terms "maintenance" and "necessaries." SADASIVA AYYAR, J., states that "the

(1) (1918) I.L.R., 41 Mad., 1075. (2) (1903) 13 M.L.J., 499.
(3) (1913) I.L.R., 36 Mad., 203. (4) (1918) 35 M.L.J., 565.
(5) (1919) I.L.R., 42 Mad., 686.

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literal meaning (of the term "Menchilavu") seems to be excess expenditure." We take it that it means what is usually allowed beyond what is strictly required for food and clothing alone. Under the expression, therefore, come the sums which are required for keeping up a respectable appearance consistent with the position and dignity of the family to which a person belongs, sums required for a reasonable amount of travelling to holy places in the case of a member of an aristocratic family, etc., for slight conveniences and comforts, which though they might be called luxuries when indulged in by a low class individual, would come under the head of "necessaries" in the case of persons belonging to families which cannot be classed with the lower sections of the community. [See *Valia Konikkal Edom Kelu* v. *Lakshmi Nettyar Ammal*(1).] In *Ravanni Achan* v. *Thankunni*(2) PHILLIPS, J., described "Menchilavu" as "a luxurious form of maintenance as distinguished from bare maintenance" and stated that "the claim to both must be treated as based on the same footing." COUTTS TROTTER, J., as he then was, and KUMARASWAMI SASTRI, J., observed that "Menchilavu" which has been translated as "maintenance" is said to be indistinguishable from maintenance of the members of a Hindu family. (S.A. Nos. 2556 and 2557 of 1912.) The loose application of the word, as pointed out above, is due to the fact that the English word "maintenance" is not, strictly speaking, a correct equivalent of the Malayalam word "chilavu" of which it is generally understood to be a translation. The term means "expenses" and is comprehensive in its significance. The right to maintenance is the right to claim one's "expenses" which obviously must be of various kinds.

(1) (1913) M.W.N., 379. (2) (1919) I.L.R., 42 Mad., 789.

By the enforcement of this right which, as already mentioned, is given to a member of a Malabar tarwad or an Aliyasanthana family by reason of the proprietary interest possessed by the member in the family property, the junior members have been able to secure legal recognition of their claims not only for the cost of the "bare necessaries of life," but also for the expenses legitimately incurred for "medical treatment" [*Kelu Achan* v. *Unala Achan*(1)], and also for arrears of "Menchilavu" (for instance, expenses "for clothes, oil, soup, tea, coffee and confectionery") *Kavanni Achan* v. *Thankunni*(2), see also *Valia Konikkal Edom Kelu* v. *Lakshmi Nettyar Ammal*(3), assuming that there are adequate funds at the disposal of the family. The decision in *Krishnan* v. *Govinda Menon*(4), recognizing the obligation of the karnavan to educate the junior member, declared that it was not incumbent on him as part of his duties to

> "give the junior members education through the medium of the English language or on western lines."

Such a claim if made now would for its decision, as suggested in the judgment itself, depend upon the question whether such education "has not become essential." In *Neelakanta Thuruvambu* v. *Anantha-narayana Aiyar*(5), it was held that, having regard to the circumstances of the family which was a well-to-do one,

> "a contract by a karnavan engaging a tutor for the purpose of teaching the English language on reasonable terms as to remuneration for the members of the family is binding upon the succeeding karnavans and that the debt thus due is payable out of the assets of the family."

If all these claims can be recognized as legal, whether they come under the strict designation of "maintenance" or not, the claim for the allowance being

(1) (1912) 17 I.C., 704. (2) (1919) I.L.R., 42 Mad. 789.
(3) (1913) M.W.N., 379. (4) (1898) 8 M.L.J., 294.
(5) (1909) 19 M.L.J., 590.

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based on the junior members' co-proprietorship of the joint family property, we fail to see why the marriage expenses of a junior member of a tarwad or Aliyasanthana family should not also be defrayed by the karnavan or ejman, provided that the family had adequate funds, and the karnavan or ejman has no valid and proper objections to the marriage.

The junior members of an Aliyasanthana family or a Malabar tarwad are not expected to live in a perpetual state of celibacy, and it is not denied that marriage is a necessary incident in the normal life of individuals in Kanara and Malabar as in other parts of the country. It has been held in *Srinivasa Iyengar* v. *Thiruvengadathaiyengar*(1) and *Gopalam* v. *Venkataraghavulu*(2) that the marriage of a male governed by Mitakshara law is a necessary burden upon the family. We have been pressed with the argument that as under the Aliyasanthana law union of man and woman is

> "in truth, not a marriage but a state of concubinage into which the woman enters of her choice and is at liberty to change when and as often as she pleases."

[See *Subbu Hegadi* v. *Tongu* (3)]. There can be no legal obligation on an ejman or a karnavan to defray the expenses of the so-called marriage. In our opinion this argument has absolutely no bearing on the decision of this question. The prevailing system of marriage is a well recognized and time-honoured social institution sanctified by the long usages of the society to which the parties belong. The fact that the Courts have refused to consider it as valid marriage in law is no reason why the family, if it can afford the means, should refuse to defray the expenses for the marriage of a junior member. In our opinion, the marriage expenses of a

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(1) (1915) I.L.R., 38 Mad., 556. (2) (1917) I.L.R., 40 Mad., 632.
(3) (1869) 4 M.H.C.R., 196.

junior member of a Malabar tarwad or Aliyasanthana family form a part of his "right to maintenance."

The cases referred to above do not by any means exhaust the variety of expenses for meeting which an anandravan can make a valid claim against the karnavan of the tarwad. It has been held in *Subbu Shettethi* v. *Krishnacharya*(1), though guardedly, that in certain circumstances a karnavan is entitled to raise money on the security of the family property for the defence of the members of the family charged with "rioting" if the money could not otherwise be procured. The exact legal basis for the liability of the tarwad property is not stated in the judgment; but the observations of MILLER and KRISHNASWAMI AYYAR, JJ., in Second Appeal No. 359 of 1906—an earlier case—that

> "there is some evidence that some money was borrowed for expenses of the defence of a member of the family who was prosecuted in a criminal case but the nature of the criminal case does not enable us to say that the defence was for a family purpose,"

would suggest that the question to be decided would be whether the expenditure is for a family purpose, though the judgment does not show the exact bearing of the nature of the criminal case on the question of family purpose. In a still earlier case, i.e., Second Appeal No. 28 of 1888, without referring to the nature of the criminal charge and its connection with the question of family purpose (the available papers do not show what the charge was), Sir ARTHUR COLLINS, C.J., and PARKER, J., held that

> "the Lower Court rightly decided that the money borrowed for the purpose of defraying the expenses incurred in a criminal charge against the karnavan and two senior anandravans was a debt incurred for the tarwad purpose and binds the tarwad. In our opinion, the cases discussed above are but

(1) (1911) 21 M.L.J., 159.

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illustrations of the rule that the junior member of a Malabar tarwad or Aliyasanthana family is entitled to claim from the karnavan or ejaman for his maintenance all his "necessary expenses,"

the justification for such a demand being his undoubted co-ownership of the tarwad property. Such expenses when defrayed by him would be expenses incurred by the karnavan for tarwad purposes and would bind the tarwad. What expenses are necessary may, in disputed cases, be safely left to the decision of the Courts. The principle is thus stated by SUNDARA AYYAR, J., in his book on Malabar Law:

> "The rule of law is that the anandravan should be allowed for his maintenance what is reasonable and proper having regard to his needs and having regard to the position, affluence and status of the family. What is reasonable and proper will depend upon the circumstances and the times and would be a pure question of fact."

There is nothing in the conclusion we have reached, contrary to the principle of the Malabar or Aliyasanthana law.

We are fortified in our conclusion that the junior member is entitled to claim his marriage expenses by the decision in *Parvathi* v. *Kamaran*(1). It was said in that case that in North Malabar the male members of a Nayar tarwad are by custom entitled to receive from the karnavan an allowance for the maintenance of their consorts and children while living in the tarwad house. In the present case the junior member does not pitch his demand so high. He claims only the expenses incurred for the performance of his marriage. It is well known that the Aliyasanthana people in South Kanara have advanced further towards the paternal family than have the Marumakkathayam people in Malabar. It is the recognized practice in South Kanara for the woman and

(1) (1883) I.L.R., 6 Mad., 341.

her minor children to live with her husband (see *Subbu Hegadi* v. *Tongu*(1): It is a common practice in North Malabar and a growing practice in South Malabar (see *Parvathi* v. *Kamaran*(2) and *Muthu Amma* v. *Gopalan*(3). As this decision is based upon the custom in North Malabar which exists in an intensified form in Kanara, it follows that a junior member under the Aliyasanthana system also would be entitled to claim such expenses. If so, his right to claim *the expenses of his marriage* should be undoubted and, as we have shown, there is nothing in the principle of Aliyasanthana law against the recognition of such a right.

We are asked not to place much reliance on the decision in *Parvathi* v. *Kamaran*(2) as its authority is alleged to be somewhat shaken by the observation of the learned Judges who decided the case *Ravanni Achan* v. *Thankunni*(4). In that case PHILLIPS and NAPIER, JJ., held that an anandravan of a Malabar tarwad is not entitled to claim maintenance from his tarwad for his wife, who belongs to another tarwad, and much less is he entitled to claim for her any "menchilavu." The learned Judges think that to allow such a claim put forward by the anandravan would be to uphold the claim of the wife for maintenance from her husband's tarwad and then they refer to *Parvathi* v. *Kamaran*(2) and point out that even in that case the proposition contended for was described as inconsistent with the principles of Marumakkathayam Law. With due deference, it seems to us that the true significance of the claim advanced on the anandravan's behalf has not been correctly appreciated by the learned Judges. By asking for an allowance for the maintenance of his wife, the junior male member of a Malabar tarwad is not

(1) (1869) 4 M.H.C.R., 196. (2) (1883) I.L.R., 6 Mad., 341.
(3) (1913) I.L.R., 36 Mad., 593. (4) (1919) I.L.R., 42 Mad., 789.

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asking the Court to hold that his wife has a right to recover maintenance from his tarwad. In so doing, he is only asking the Court to give effect to his right to recover from the karnavan expenses for his own maintenance of which "bharyachilavu" (wife's expenses) as it is called in Malabar is a necessary part. As observed in *Muthu Amma* v. *Gopalan*(1), by SUNDARA AYYAR and SADASIVA AYYAR, JJ., *Parvathi* v. *Kamaran*(2) held that a male member of a Marumakkathayam tarwad is entitled to an allowance for his consort and children living with him, that is, in *computing the amount to which he is entitled for his own maintenance, the fact that he has to maintain a wife and children should be taken into account.* (The italics are ours.) The claim of a junior member of a Malabar tarwad to receive from the karnavan an allowance for the maintenance of his wife and children, though described as inconsistent with the principle of Marumakkathayam law, was still allowed in that case as the custom was found to support such a claim. In our opinion, the effect of the decision in *Parvathi* v. *Kamaran*(2), cannot be minimized by the observation

> "that the finding in the case (as regards custom) based on the evidence of two witnesses was not objected to."

This case has been referred to apparently with approval in *Maradevi* v. *Pammakka*(3) and explained as shown above in *Muthu Amma* v. *Gopalan*(1) and has always been looked upon by the community following these systems of law as enunciating a well known and correct principle of customary law. In this connection it may be interesting to note the following observations occurring in the Malabar Marriage Commission Report as regards this custom.

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(1) (1913) I.L.R., 36 Mad., 593. (2) (1883) I.L.R., 6 Mad., 341.
(3) (1913) I.L.R., 36 Mad., 203.

"But so well established is the custom that the High Court has held that the maintenance of the "wives" and children of the junior members (residing with their "husbands" in the husband's tarwad) is a charge which the karnavan of the junior members is bound to meet. The High Court allows that the ruling would seem inconsistent with the principles of Marumakkathayam law, but the answers to the interrogatories and the evidence taken by the Commission show that the *ruling is really and truly in accordance with existing usage.*" (The italics are ours.)

For the above reasons, we hold that the lower Court's decree awarding the plaintiff the expenses for his marriage is correct. It has not been argued before us that the amount is excessive. This Second Appeal is dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

PONTHINODA AHMED KOYA AND OTHERS (PETITIONERS)

v.

ILLIKKAKKAD AISAMMA AND OTHERS (RESPONDENTS).*

1925, September 21.

Laccadive Islands—British India—Cession of territory—Sovereignty—Laccadive Islands, when became part of British India—Law applicable to the Islands—Regulation I of 1912, *sec.* 3—*Scheduled Districts Act* (*XIV of* 1874)—*Laws Local Extent Act* (*XV of* 1874)—*Appeal to High Court from order of Inspecting Officer of Laccadives—Delay in presentation of appeal—Power to excuse delay—Indian Limitation Act* (*IX of* 1908), *sec.* 5, *whether applicable.*

The Laccadive Islands became part of British India only in 1909 when they were ceded by the Bibi of Cannanore to the British Government, until which time the sovereignty was vested in the Bibi.

* Civil Miscellaneous Petition No. 1832 of 1924.