the usufructuary mortgage were not all applied to charity; but merely that they were treated as the purse from which the expenses of the charity were met.

This being so, the accounts and the evidence of the clerk really conclude the matter, and their Lordships must hold that there was no dedication of the Chengondapalli mortgage by any act *inter vivos*, and that the view of the Subordinate Judge was right; and their Lordships will humbly advise His Majesty that the appeal should be allowed, and the judgment of the Subordinate Judge restored with the costs here and below.

Solicitors for appellant: *Douglas Grant* and *Dold*.

A.M.T.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Jackson.

KOZHIKKOT PUTHIA KOVILAGATH MANAVADAN *alias* ANUJAN RAJA AVARGAL AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

VIAYATHEN SREDEVI *alias* VALIA THAMBURATTI AVARGAL AND OTHERS (DEFENDANTS), RESPONDENTS.*

1926. November 9.

Malabar Law—Tarwad—Karnavan—Suit by junior members for removal of karnavan—Liability to account—Fraud and misappropriation alleged against karnavan—Karnavan ceasing to be such by succession to a higher sphere—Maintainability of suit—Suit, whether can be continued as to accounts—Karnavan, whether and when personally liable—Liability of agent of karnavan.

Where certain junior members of a Malabar tarwad sued for the removal of the karnavati, on allegations of fraud,

* Appeal Suit No. 128 of 1926.

MANAVADAN v. SREDEVI.

misappropriation of family funds in general and devoting the funds to her particular branch, and prayed that she should render a general account of her management and pay personally whatever sums be found due to the family, but in the course of the suit the karnavati ceased to be such because under the family law of succession she moved to a higher sphere,

Held, (1) that, as the removal of the karnavati was otherwise an accomplished fact, the suit for general account, not being necessary and incidental to her removal, was not in law sustainable and should be dismissed;

(2) that, in a properly framed suit, on proof of specific fraudulent alienations or misappropriation by the karnavan, the junior members, suing on behalf of the tarwad, are entitled to recover personally from the karnavan the amount of which their tarwad has been defrauded;

(3) that, in so far as a person acted as agent of the karnavati, a suit which would not lie against the principal would not lie against the agent; and that, in so far as he acted as a mere trespasser, there could be no calling upon him for general accounts; but in a properly framed suit it would be open to the karnavan to sue such person as liable personally for any proved act of misfeasance or misappropriation by him.

APPEAL against the decree of U. GOVINDAN NAYAR, Additional Subordinate Judge of Calicut, in Original Suit No. 16 of 1925 (O.S. No. 50 of 1924, Sub-Court, Calicut).

The three plaintiffs, who are some of the junior members of the Puthia Kovilagam consisting of four tavazhies, sued for the removal of the first defendant, who was the Valia Thamburatti or the eldest female member of the four tavazhies and as such occupied the position of head of the kovilagam and manager of the kovilagam properties. She was in management from 22nd September 1915. The suit, besides praying for her removal from management of kovilagam properties, also prayed that she and the second defendant, who was her son and was actually managing the estate on her behalf, should be called upon to render accounts of her

management from 22nd September 1915, the date on which the first defendant became the Valia Thamburatti. The plaint alleged various acts of malfeasance and misfeasance in the course of her management, and acts of fraud and misappropriation of kovilagam funds. The plaint also prayed that the first and second defendants should pay personally and out of the properties of their tavazhi whatever sum is found due to the kovilagam on the rendering of accounts by the defendants. During the pendency of the suit, the first defendant attained the stanom of another kovilagam, called Ambadi Kovilagam, and thereby ceased to be the Valia Thamburatti of the Puthia Kovilagam, and thus ceased to be the karnavati of the suit kovilagam. The defendants contended that the entire suit thereby abated and should be dismissed. The plaintiffs contended that the suit did not abate with regard to the prayers as to rendering accounts by the first and second defendants and their liability to pay money found due to the kovilagam on taking account, and that the suit should be tried with regard to those reliefs. The Subordinate Judge held that the entire suit abated and dismissed the suit. The plaintiffs preferred this appeal.

C. V. Anantakrishna Ayyar and *P. S. Narayanaswami Ayyar* for appellants.—The suit was for removal of the karnavati of Puthia Kovilagam, called the Valia Thamburatti and to make her account for her mismanagement. Defendants 2 and 3 also took part in the mismanagement and plaintiffs claim that they should also be made to account. After the suit was filed first defendant ceased to be karnavati, as she attained a higher stanom. So there was no necessity to remove her and the plaintiffs are entitled to ask for accounts. The junior members are entitled to bring this suit—see *Anantan* v. *Sankaran*(1), *Sankaran* v. *Sreedharan*(2) and *Karunakara*

(1) (1891) I.L.R., 14 Mad., 101. (2) (1924) 48 M.L.J., 691.

MANAVADAN v. SREDEVI.

Menon v. *Kuttikrishna Menon*(1). The lower Court has not considered the allegations of fraud; junior members have a proprietary right in the property, *Kunnath Packi* v. *Kunnuth Muhammad*(2) and Sundara Ayyar's Malabar Law, page 152. The karnavan's power is only to manage and not to misappropriate, *Raman Menon* v. *Raman Menon*(3). The karnavan cannot deal as he likes with the surplus of the tarwad property, see *Thinmakka* v. *Akku*(4). If a manager spends away the surplus, he is bound to indemnify, *Raya* v. *Gopal Mallan*(5). The karnavan is in the same position as a Hindu manager, *Venkanna* v. *Narasimham*(6) and *Tod* v. *P. P. Kunhamod Hajee*(7). Their position is fiduciary. In this case therefore the late karnavati, the first defendant, is bound to account.

T. R. Ramachandra Ayyar and *K. P. Ramakrishna Ayyar* for respondents.—No suit lies against a karnavan for accounts only. See *Kennath Puthen Vittil Thavazhi* v. *Narayanan*(8), Sundara Ayyar's Malabar Law, page 53, and Mayne's Hindu Law, page 380. In the present case the suit was one mainly for removal of the karnavati and all the other reliefs are incidental. There are no specific allegations of fraud to make the karnavati account. If there are specific allegations of fraud, it is open to them to bring a fresh suit regarding these allegations. The karnavan's powers are greater than those of the manager, *Tod* v. *P. P. Kunhamod Hajee*(7), *Kennath Puthen Vittil Tavazhi* v. *Narayanan*(8). He has also got absolute right over the income, *Govindan Nair* v. *Narayanan Nair*(9). The late karnavati has left all the assets in the hands of the present karnavati. So it is the latter that should be made liable. The late karnavati cannot be made liable; for, the only remedy against her is removal. In this case the removal has been effected and therefore plaintiff's suit is not maintainable.

JACKSON, J.

The JUDGMENT of the Court was delivered by JACKSON, J.—Appeal from decree in O.S. No. 16 of 1925, Subordinate Judge, Calicut.

---

(1) (1917) 5 L.W., 511; 38 I.C., 666.
(2) (1925) 49 M.L.J., 513.
(3) (1901) I.L.R., 24 Mad., 73 (P.C.).
(4) (1911) I.L.R., 34 Mad., 481.
(5) (1911) 11 I.C., 666.
(6) (1921) I.L.R., 44 Mad., 984.
(7) (1878) I.L.R., 3 Mad., 169.
(8) (1905) I.L.R., 28 Mad., 182 (F.B.).
(9) (1912) 23 M.L.J., 706.

The parties to this suit are members of the family of the Zamorin of Calicut, but for the purposes of this appeal it is unnecessary to detail the complicated rules of succession prevailing in that family. In essence the suit is simple, and the learned vakils on either side have proceeded (and, in our opinion, rightly proceeded) on the assumption that it is a suit for the removal of the karnavan of an ordinary Malabar tarwad, coupled with the prayer that he be ordered to furnish a general account for the period of his office. In this family, the karnavan happens to be a woman, the first defendant. The second defendant is her son, alleged to have acted as her manager and to have imposed his will upon her to the detriment of the tarwad in general. Defendants 3 and 4 are the remaining members of the particular branch, descended by way of the motherhood of the first defendant (the tavazhi in Malayali phraseology). It is alleged in the plaint that by various acts of malfeasance (set forth at great length therein, paragraphs 12-A to DD) first and second defendants in collusion have misappropriated funds belonging to the family in general, and have devoted them to the first defendant's particular branch. The plaintiffs are three junior members of the family, and they have brought all the other members into the suit by impleading them as defendants.

In the course of the suit, the first defendant ceased to be karnavan because by the family rule of succession she moved to a higher sphere. Therefore there was no longer any question of removing her (prayer A in the plaint), and it only remained to consider how far prayers B and C were sustainable: directing defendants 1 and 2 to render all accounts of receipts and expenses of the family from 22nd September 1915, and to pay whatever sums might be found due to the family in general from the personal property of defendants 1 and 2 and out of tavazhi property of defendants 1 to 4.

MANAVADAN v. SREDEVI. JACKSON, J.

The learned Subordinate Judge has held on the authority of *Kennath Puthen Vittil Tavazhi* v. *Narayanan*(1), that the karnavan is not liable to pay to the tarwad any surplus income; and on the authority of *Karunakara Menon* v. *Kutti Krishna Menon*(2), that an anandravan cannot ordinarily sue a karnavan to render accounts of his management. The right of such junior members is confined to suing for maintenance, to suing for cancellation of any transaction entered into by the karnavan to the detriment of the family, and to suing for his removal.

"As incidental to the relief for removal from management and only that way, it is competent to anandravans to call upon the karnavan to render accounts. But that is allowed not with a view that the anandravans may recover from the karnavan the amount found due, such a remedy being directly opposed to the inherent status of the karnavan, and is unheard of, but simply in order that the extent of the loss suffered by the tarwad at the hands of the karnavan may be ascertained with a view to his removal. But when there is no question of his removal there is clearly no liability on him to render accounts. To hold otherwise would be to reduce the karnavan to the position of a trustee which he certainly is not."

The Sub-Judge has further found that according to the plaint the second defendant stood only in the position of an agent of first defendant, and was accountable to first defendant alone. Accordingly he dismissed the suit.

It has been contended on behalf of appellants that the karnavan of a Malabar tarwad cannot use its funds for purposes other than tarwad purposes, and assuming that the other members of the tarwad can prove misappropriation, the karnavan is bound to render an account. If general misappropriation is proved, the karnavan must render a general account. In any case those who have been benefited by the misappropriation,

(1) (1905) I.L.R., 28 Mad., 182 (F.B.). (2) (1917) 38 I.C., 666.

such as defendants 2, 3 and 4, would be bound to account; and any special acts of mismanagement by second defendant would give a cause of action in this suit.

The first ground in appellants' argument is clearly sustainable. The learned Subordinate Judge may be correctly stating the traditional law of his community, but at this date judicial rulings negative the extreme position that a karnavan cannot be held accountable for alienations made by him in fraud of his tarwad.

Large as the powers of the karnavan appear to be, those powers are essentially powers of management, *Raman Menon* v. *Raman Menon*(1). The karnavan has not any larger right of ownership than any junior member, *Govindan Nair* v. *Narayanan Nair*(2). The members other than the karnavan have the right to prevent the karnavan from wasting or improperly alienating the family property, *Vasudevan* v. *Sankaran*(3). The karnavan has no higher claim in the enjoyment of the income than any other member of the family. He has a right to expend as he pleases for the common benefit of all, *Narayani* v. *Govinda*(4). His office is fiduciary—*Tod* v. *P. P. Kunhamod Hajee*(5).

In these circumstances it would seem proper that the karnavan should make good from his personal estate any of his defalcations from the family property; but there happens to be no case directly in point. However, the observations of WALLIS, C.J., in *Venkanna* v. *Narasimham*(6) seem to apply, although there the defalcation was by a widow with a limited life estate:

"As to the widow's own accountability for wasting the movable corpus of the estate, the authorities are meagre, because the remedy against her would rarely be effective, but on principle I see no sufficient reason for refusing to hold her

(1) (1901) I.L.R., 24 Mad., 73 at 80 (P.C.).
(2) (1912) 23 M.L.J., 706 at 709. (3) (1897) I.L.R., 20 Mad., 129 at 141.
(4) (1884) I.L.R., 7 Mad., 352. (5) (1878) I.L.R., 3 Mad., 169 at 176.
(6) (1921) I.L.R., 44 Mad., 984 at 988.

MANAVADAN v. SREDEVI. — JACKSON, J.

accountable for waste in the sense of making her replace the movable corpus which she has made away with."

In *Raya* v. *Gopal Mallan*(1), a bench of this Court ruled that if the manager of a joint Hindu family were proved guilty of negligence or misconduct he would be held personally liable for any loss caused to the family thereby; and in *Govindan Nair* v. *Narayanan Nair*(2), the substantive right of the karnavan in the tarwad property is held to be of exactly the same character as that of the managing member of a Mitakshara family. Therefore on proof of fraudulent alienation of misappropriation by the karnavan the junior members of a tarwad, suing on its behalf, will be entitled to recover from the karnavan personally the amount of which their tarwad has been defrauded.

It is obvious that in a suit of this character if the junior members have succeeded in establishing a case that calls for rebutter, the karnavan, thus put upon his defence, must render some account of the impugned transaction, else he will fail in the suit. Such a case is contemplated in *Varanakot Narayanan Namburi* v. *Varanakot Narayanan Namburi*(3), where it is observed:

"He is not accountable to any member of the tarwad in respect of the income of it, nor can a suit be maintained for an account of the tarwad property in the absence of fraud on his part."

And again in *Karunakara Menon* v. *Kutti Krishna Menon*(4).

"If plaintiff could show that the karnavan and senior anandravan were colluding to defraud the tarwad, it might be open to him to file a suit for the removal of the karnavan and to ask for appropriate relief on behalf of the tarwad, including the rendering of an account."

This presumably means that if any specific fraud is proved against the karnavan in regard to some specific

(1) (1911) 11 I.C., 666.
(2) (1912) 23 M.L.J., 706 at 709.
(3) (1880) I.L.R., 2 Mad., 328.
(4) (1917) 5 L.W., 511.

item of property he must account for his dealing with that item, and if a general case of mismanagement is made out against the karnavan, he may be liable to removal, unless he can render a satisfactory general account of his management. It does not mean, as now contended on behalf of appellants, that whenever junior members sue to remove their karnavan, they can, by virtue of asking for that relief, always demand, as of right, that the karnavan shall render general accounts. If this were so, the well-known principle recognized in this very ruling in *Karunakara Menon* v. *Kutti Krishna Menon*(1), that an anandravan cannot sue a karnavan for an account of his management would become a dead letter. For then any anandravan could sue his karnavan for a rendering of accounts by merely tacking on a subsidiary prayer for the karnavan's removal from office.

The matter may be summed up as follows :—The karnavan is the manager of the family estate. He may administer that estate for the benefit of the family according to his own discretion. He is not bound to render any account or to pay to the tarwad any surplus he may have in his hands, *Kenath Puthen Vittil Tavazhi* v. *Narayanan*(2), which of course does not mean that he may devote the surplus to other than tarwad purposes, but only that he need not distribute it among the individual members, if in his discretion he prefers to accumulate or invest it for the benefit of the family as a whole. If it be proved against him that he has abused this discretion and fraudulently misappropriated the family estate, he must account for that transaction. If it be proved generally that he is a bad manager, he will be liable to removal, unless he gives a good account of his management. But he cannot be compelled actually

(1) (1917) 5 L.W., 511. (2) (1905) I.L.R., 28 Mad., 182 at 195.

MANAVADAN v. SREDEVI.

JACKSON, J.

to render accounts by a threat of removal or for any other reason.

Therefore, when they pray for a decree directing defendant 1 to render all accounts of receipts and expenses from 22nd September 1915 plaintiffs have no cause of action. They are entitled to sue for a decree removing first defendant from management, and to contend, if first defendant gives no account by way of rebutter of their proved allegations, that such a decree should be granted and first defendant should be removed. But if, as in this case, the removal is already an accomplished fact, such a contention would be idle. And plaintiffs might have brought their suit in a different form praying that each proved defalcation might be set aside and first defendant held liable in damages. In its present form and in the present circumstances, the suit discloses no cause of action as against first defendant, and was rightly dismissed.

In so far as second defendant acted as the agent of first defendant a suit, which would not lie against his principal, would not lie against him. And in so far as second defendant acted as a mere trespasser there could be no question of calling upon him for general accounts. In a properly framed suit it would be open to the karnavan as representing the tarwad to sue the second defendant as liable for any proved act of malfeasance or misappropriation. In the same way defendants 3 and 4 or their tavazhi might be held liable in a suit for setting aside specific transactions, but not in a suit for general accounts, a matter in which they have no responsibility.

For the above reasons, we consider that the suit was rightly dismissed, and the appeal also must be dismissed with costs.

K.R.