## APPELLATE CIVIL.

*Before Mr. Justice Beasley and Mr. Justice Anantakrishna Ayyar.*

1927, August 25.

PATTATHIL SANKUNNI MANNADIAR (DEFENDANT IN BOTH SUITS), APPELLANT,

*v.*

PATTATHIL KRISHNA MANNADIAR (PLAINTIFF IN DO.), RESPONDENT.*

*Malabar Law—Karnavan—Decree removing karnavan and appointing next senior anandravan and a remoter anandravan as co-managers—Death of appointed karnavan—Right of co-manager appointed by decree to be karnavan as against the then seniormost anandravan—Effect of the decree on the right of the latter to be karnavan in his turn—Effect of restrictions imposed by decree*—Prima facie *binding only on the then karnavan*—De jure *right of senior anandravan, on removal of a karnavan by decree—Decree, construction of.*

In a suit for removal of the karnavan and the senior anandravan, a decree was passed removing them, and appointing the first plaintiff therein, who was the next senior anandravan, and the third plaintiff who was junior to the second plaintiff therein, as co-managers of the tarwad. On the death of the first plaintiff, the third plaintiff, who was appointed co-manager under the decree, sued for a declaration that, by virtue of the decree in the prior suit, he was entitled to be the manager as against the defendant who was the second plaintiff in the prior suit, even though the latter was senior to him in age.

*Held*, that the right of the defendant in the present suit to be the karnavan in his turn was neither renounced by him by reason of his allowing his junior to be a co-manager with the deceased karnavan, nor negatived by necessary implication by the decree in the former suit; that, on the late karnavan's death, the defendant became the *de jure* karnavan, and he, and not

* Second Appeals Nos. 1780 and 1781 of 1925.

the plaintiff, was solely entitled to be the karnavan and the manager of the tarwad properties.

When a karnavan is removed by a decree, the next senior in age becomes the *de jure* karnavan and steps into the position *ipso facto*, without any appointment by the Court.

Where restrictions are imposed by a decree of Court on a *de jure* karnavan at its date, such restrictions would *prima facie* cease to have operation by the death of that karnavan, unless there is something specific in, or necessarily implied by, the decree to the contrary, as in the case of restrictions imposed on karnavans by karars by consent of parties.

SECOND APPEALS against the decrees of the Court of the Additional Subordinate Judge of Calicut in Appeal Suit No. 5 of 1925 and Appeal Suit No. 6 of 1925, respectively, preferred against the decrees of the Court of the Additional District Munsif of Palghat in Original Suit Nos. 283 and 284 of 1924.

The material facts appear from the judgment.

*T. R. Ramachandra Ayyar* with *A. Sivarama Menon* and *Eachara Menon* for appellant.

*K. P. M. Menon* and *P. Govinda Menon* for respondent.

The JUDGMENT of the Court was delivered by



ANANTAKRISHNA AYYAR, J.—The question that arises for decision in these cases is which of the two—plaintiff or the defendant—is entitled to the management of the tarwad known as Kothukotte in Kannadi amsom and desom and as Pattathil in Mathoor amsom and desom of the Palghat taluk. The Court of first instance decided the question in favour of the defendant whereas the lower appellate Court has decided the point in favour of the plaintiff. The defendant accordingly has preferred these Second Appeals. To appreciate properly the point in dispute, it is necessary to mention that in 1904 the karnavan of the tarwad was Perakunni Mannadiar and the next senior anandravan was Gopala Mannadiar. Original Suit No. 11 of 1904 was instituted by 18 junior

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members of the tarwad against Perakunni Mannadiar as the first defendant and Gopala Mannadiar as the second defendant for the removal of the karnavan Perakunni Mannadiar and also for the removal of the senior anandravan Gopala Mannadiar on the ground that both of them were unfit to manage the tarwad affairs. The plaint proceeded to state that the first plaintiff therein (Ravunni Mannadiar) would be the person who would be entitled to management if defendants 1 and 2 were removed by Court and there was a prayer that the first plaintiff, Ravunni Mannadiar, should be appointed as manager. The plaint proceeded further to state that if for any reason the Court should feel inclined to associate any other member of the tarwad with the first plaintiff in management, then the first plaintiff, Ravunni Mannadiar, should be appointed manager in conjunction with the third plaintiff. It must be mentioned that there was a second plaintiff in that case, Sankunni Mannadiar, who was senior to the third plaintiff, Krishna Mannadiar, but nothing was alleged in the proceedings in Suit No. 11 of 1904 about the second plaintiff, Sankunni Mannadiar. Issues were then framed about the removal of the first defendant and also about the removal of the second defendant in that suit. The seventh issue then framed ran as follows:—

"Whether the plaintiffs 1 and 3 are unfit to be appointed managers."

The result of that litigation was that the first defendant Perakunni Mannadiar was removed from management, and the second defendant Gopala Mannadiar having died during the pendency of the suit, no question arose about his removal. Having found that there was no reason for not granting the prayer in the plaint regarding the management of the tarwad affairs by the first plaintiff, in conjunction with the third

plaintiff, the Court passed a decree to the following effect:—

"(1) That the first defendant be removed from management of the tarwad of the plaintiffs and defendants, (2) that the first and third plaintiffs be appointed to the management."

Now the first and third plaintiffs in that suit continued to manage the properties of the tarwad till the 30th October 1923 when the first plaintiff in the prior suit Ravunni Mannadiar, died. The third plaintiff in that suit, Krishna Mannadiar, has instituted Original Suit Nos. 283 and 284 of 1923, out of which the present Second Appeals have arisen, for a declaration that he is, in the circumstances that now exist, entitled to manage the affairs of the tarwad and for collection of rent due by the defendant to the tarwad. The defendant, to the present suit, Sankunni Mannadiar (who was the second plaintiff in Suit No. 11 of 1904) contends that as the admitted seniormost male member of the tarwad at present (excluding of course Perakunna Mannadiar, the karnavan, who was removed by virtue of the decree in the prior suit), he is in law entitled as the present *de jure* karnavan to manage the tarwad affairs. The main contention of the plaintiff in the present suit—Krishna Mannadiar—is that, under the terms of the decree in Suit No. 11 of 1904, he and Ravunni Mannadiar were appointed co-managers and that on the death of Ravunni Mannadiar he is entitled to the sole management. He further contends that Sankunni Mannadiar should be taken to have been removed from management since his claims were not recognized and since his junior—the present plaintiff—was appointed as manager. As already remarked the Court of first instance upheld the defendant's contention while the learned Sub-Judge has upheld the contention of the plaintiff.

Now before considering the effect of the decree in Suit No. 11 of 1904 it is better to state that the right to

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the management of the tarwad affairs in the case of a Marumakkathayam tarwad devolves on the seniormost male member according to Marumakkathayam Law. When a karnavan is removed, it is now admitted, and there are decisions expressly supporting the position, that there is no necessity for the Court to appoint the next in point of age as manager. When a karnavan is removed, the next senior in age becomes the *de jure* manager and karnavan and steps into the position *ipso facto* without any sort of appointment by the Court. *Nemanna kudre* v. *Achmu Hengsu*(1), per KRISHNAN, J.; *Chindan Nambiar* v. *Kunhi Raman Nambiar*(2). No doubt in some decrees passed by Courts, one finds occasionally statements to the effect that the previous karnavan is removed and the next senior is appointed as karnavan and manager. But as already remarked it is unnecessary to appoint the next senior to enable him to exercise the rights of the karnavan which he is, under Marumakkathayam Law, entitled to exercise the moment the previous karnavan is removed. Attention has been drawn to this point because a major portion of the arguments of the learned counsel who appeared for the plaintiff-respondent in these cases was directed towards laying emphasis on the fact that the decree in Suit No. 11 of 1904 states that plaintiffs 1 and 3 in that suit were "*appointed to the management.*" If no appointment really be necessary in law to enable the next in seniority to become a manager, the question arises as to what exactly is the construction to be placed on the terms of the decree that was passed in Suit No. 11 of 1904. It has been held that it is legitimate to refer to the pleadings in a case in order to construe the decree that has been passed in the suit, more especially when the

(1) (1920) I.L.R., 43 Mad., 319 at 323.
(2) (1918) I.L.R., 41 Mad., 577 at 581.

wordings of the decree are not very clear. Now referring to the plaint in Suit No. 11 of 1904 it is stated there

"After the removal of defendants 1 and 2 plaintiffs are willing to have the first plaintiff alone appointed as manager of tarwad or the first plaintiff in conjunction with the third plaintiff therein."

Absolutely nothing was stated against the second plaintiff in that suit who is the defendant in the present suits. When we examine the proceedings in the prior suit, we think that it is clear that the questions before the Court then were (1) consideration of the removal of defendants 1 and 2 in that suit and (2) consideration of the question whether the first plaintiff, Ravunni Mannadiar, should be allowed to manage the affairs *solely* as he would be entitled to it under the Malabar Law, unless the Court thought it proper to impose any restrictions on his power of management, or whether any other person should be associated with the first plaintiff in the tarwad management. The defendants having been removed (the first defendant by Court, the second defendant by his death during the course of the suit), the question that was subsequently decided by the Court was that the interests of the tarwad required that the *de jure* karnavan, the first plaintiff, Ravunni Mannadiar, should be restricted in his powers of management by having the third plaintiff associated with him in the management. Absolutely no question of removing the first plaintiff having arisen in that suit, there could not be any question of removing the second plaintiff therein. The question of associating another member with first plaintiff in his management was only with a view to restrict first plaintiff's rights, not to prejudice the next member's rights, much less to deprive once for all the next junior of his rights as karnavan when his turn should come. It is therefore impossible to uphold the contention of the learned

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counsel for the respondent that the question of the second plaintiff's right to be the karnavan was decided against him in that suit by necessary implication. Karnavanship is a much valued right among members of a Marumakkathayam tarwad and, as already remarked, the seniormost male member is entitled to be the *de jure* karnavan with rights of management. The only means by which such rights of karnavanship could be lost to the seniormost member are (1) by removal by decree of Court, (2) renunciation by act of party, (3) by death. The learned counsel for the respondent at one stage of his argument contended that in this case it must be taken that the second defendant *renounced* his rights of karnavanship since he allowed his junior to be co-manager with the first plaintiff; at another stage he urged that on a proper construction of the decree in Suit No. 11 of 1904 it must be taken that the Court has *adjudicated* by necessary implication against his rights of karnavanship. We are unable to accept either of these contentions. In the absence of specific allegations against the second plaintiff and in the absence of any issue relating to him, it is rather difficult to hold that the Court adjudicated upon his rights in any way. On the other hand, the natural thing that is likely to have happened and which we find to be what really happened in Suit No. 11 of 1904, was that the first plaintiff, who was to be the *de jure* karnavan after the first and second defendants were removed, instead of insisting on his rights to be the *sole* manager, *agreed* to have his rights of management curtailed to some extent by associating the third plaintiff with him in the management. The effect of this was that the first plaintiff's rights as karnavan were restricted, not that the next karnavan's rights were in any way affected, much less adjudicated against. On the death of the first plaintiff,

these restrictions *ipso facto* ceased to have any operation, and the next karnavan is in no way affected by them. This is the view that has been taken by the District Munsif in these cases and we are of opinion that he is right. The learned Subordinate Judge at one portion of his judgment states that the decree should be construed according to its literal terms. If he means to lay down that one is not entitled to look into the pleadings to find out what was really meant by the decree we should point out that he was wrong. It was not disputed before us that a decree—especially if it is ambiguous—should be construed in the light of the judgment that led to it. It is a matter of frequent occurrence in Malabar that members of a tarwad agree by means of *karars* to have the rights of the existing karnavan restricted in certain particulars, either by compelling him to associate some other junior member with him in the management of the tarwad properties or by putting other restrictions on his power. It has been uniformly held in this Court that the effect of such *karars* is only to limit the powers of the particular karnavan concerned, and that persons who were only junior members at the time would not be bound by such restrictions when they become, in their turn, karnavans of the tarwad, *unless* by themselves being parties to the karar they have expressed themselves to be bound by such provisions even when they become karnavans. We need refer only to the two cases that were referred to in argument, viz., *Cheria Pangi Achan* v. *Unnalachan*(1) and *Narayanan Moosad* v. *Narayanan Moosad*(2). As remarked by SADASIVA AYYAR, J.,

"The whole of a family karar in my opinion falls to the ground on the death of the *de jure* karnavan who consented to be bound by it (or by his removal by decree of Court) as the

(1) (1917) 32 M.L.J., 323. (2) (1927) M.W.N., 553.

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next *de jure* karnavan is not bound by the restrictions imposed by the karar on his predecessor, except perhaps where he himself has agreed in that karar to be bound by those restrictions whenever he succeeded to the karnavastanams."

See also *Chindan Nambiar* v. *Kunhiraman Nambiar*(1). The same principles would, we think, apply to cases where restrictions are imposed by a decree of Court on a person who was the *de jure* karnavan on the date of the decree. Such restrictions would *prima facie* cease to have operation on the death of the particular karnavan concerned, unless there be something specific in, or necessarily implied by, the decree to the contrary. Further it is a well-recognized principle of law that if the wording of a decree be ambiguous, such a construction should be put on the same as would make the decree be in accordance with law and that when a decree is silent on a point it may, in a proper case, be supplemented by the law applicable to the case; *Uttam Ram* v. *Kishordas*(2) *Amolak Ram* v *Lachmi Narain*(3), *Maharaja of Bhartpur* v. *Rani Kanno Dei*(4). As Sir JOHN EDGE, C.J., and BLAIR, J., say in *Amolak Ram* v. *Lachmi Narain*(3),

> "In construing a decree the terms of which are ambiguous such construction must, if possible, be adopted as will make the decree a decree in accordance with law."

Their Lordships of the Privy Council, while overruling that decision of the Allahabad High Court on some other point, expressed their approval of the above principle and specifically say as follows:—

> "Their Lordships agree that all ambiguous documents should be construed rather to accord with law than to make them conflict with it."

*Maharaja of Bhartpur* v. *Rani Kanno Dei*(4). PARSONS, J., in *Uttam Ram* v. *Kishordas*(2) states that,

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(1) (1918) I.L.R., 41 Mad., 577 at 581. (2) (1900) I.L.R., 24 Bom., 149 at 153.
(3) (1897) I.L.R., 19 All., 174 at 179.
(4) (1901) I.L.R., 23 All., 181 at 190 (P.C.).

"The decree may be supplemented by the law on the point upon which it is silent, but we cannot introduce into it a provision which would be contrary to law and *ultra vires* on the part of the Court pronouncing it."

Further as observed by the Privy Council in *Hari Bakhsh* v. *Babu Lal* (1),

"To understand and apply a decision of the Board or of any Court, it is necessary to see what were the facts of the case in which the decision was given and what was the point which had to be decided."

On a proper construction of the terms of the decree in Suit No. 11 of 1904 we are inclined to hold that the third plaintiff in that suit (the present plaintiff before us) was only appointed to associate himself with the then *de jure* karnavan, Ravunni Mannadiar, the then first plaintiff, and that the 3rd plaintiff's appointment, *ipso facto*, ceased, the moment Ravunni Mannadiar died. We are strengthened in our conclusion by reference to the judgment in Suit No. 11 of 1904; and, having regard to the principles applicable to the case and the rights of members of marumakkathayam tarwad, we have no hesitation in holding that the person at present entitled to the management of the tarwad in question is Sankunni Mannadiar (the appellant in these Second Appeals and defendant in these suits) and not Krishna Mannadiar, the plaintiff-respondent. It therefore follows that the Second Appeals should be allowed and the District Munsif's decisions restored. In the circumstances we direct that all the costs of the parties in both these cases, both here and in the Courts below, be paid from the tarwad funds.

K.R.

(1) (1924) I.L.R., 5 Lah., 92 at 102.