

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice,
and Mr. Justice Krishnaswami Ayyangar.

1939,
December 11.

MADHAVI AMMA AND TWO OTHERS (APPELLANTS—
DEFENDANTS 1 TO 3), APPELLANTS,

v.

NAGAPPAN NAYAR AND THREE OTHERS (RESPONDENTS—
PLAINTIFF AND DEFENDANTS 4 TO 6), RESPONDENTS *

Madras Marumakkattayam Act (XXII of 1933), ss. 38 and 43
—Suit for partition under sec. 38 pending application under
sec. 43—Application ordered subsequent to filing of suit—
Order null and void—Suit not affected—Lis pendens not
applicable—Hindu law—Partition—Severance of joint
status from date of suit for partition.

A tavazhi is not precluded from filing a suit for partition under section 38 of the Madras Marumakkattayam Act (XXII of 1933) because there happens to be pending an application for registration of the tarwad to which it belonged, as impartible under section 43 of the Act. The ordinary rule of Hindu law that the filing of a partition suit involves the automatic severance of the joint status of the family applies and the Collector would have no power under section 43 to register a tarwad as impartible once a suit for partition has been filed. The doctrine of *lis pendens* does not apply to such a case.

Where, therefore, a suit for partition was filed by a tavazhi during the pendency of an application for registration under section 43 and the Collector ordered registration subsequent to the institution of the suit,

held: The order of the Collector was null and void and did not have the effect of defeating the suit for partition.

Kunchi Amma v. Minakshi Amma (1) applied and followed.

* Letters Patent Appeal No. 94 of 1938.
(1) (1935) I.L.R. 59 Mad. 693.

APPEAL under Clause 15 of the Letters Patent against the judgment of the High Court, dated 7th October 1938 in Appeal Against Order No. 435 of 1936, preferred to the High Court against the order of the District Court of South Malabar, dated 8th July 1936, and made in Appeal Suit No. 55 of 1935 (Original Suit No. 409 of 1933, District Munsif's Court, Alattur).

MADHAVI
v.
NAGAPPAN.

B. Sitarama Rao for appellants.

Ch. Raghava Rao and *M. Chinnappan Nayar* for first respondent.

Other respondents were not represented.

The JUDGMENT of the Court was delivered by LEACH C.J.—The parties are members of a Marumakkattayam tavazhi. On 15th August 1933 certain members of the tarwad, representing a two-thirds majority, applied to the Collector for the registration of the tarwad as impartible under section 43 of the Marumakkattayam Act (XXII of 1933). As required by the statute, notice of the application was served upon the first respondent, who on 23rd October 1933 filed a suit in the Court of the District Munsif of Alattur for partition of the tarwad under the provisions of section 38 of the Act. Notwithstanding the suit, the registration application was proceeded with and resulted in the Collector passing an order on 15th January 1934 for the registration of the tarwad as impartible. The District Munsif held that the registration of the tarwad had the effect of defeating the suit and accordingly he dismissed it. The respondent then appealed to the District Court of South Malabar. The District Judge held that the registration of the tarwad did not affect the respondent's right to bring the suit and he remanded it to the trial Court to be dealt with on the merits. The defendants then

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appealed to this Court. This appeal was heard by KING J. who concurred in the decision of the District Judge. The present appeal is from the judgment of KING J.

Section 38 of the Act states that any tavazhi represented by the majority of its major members may claim to take its share of all the properties of the tarwad over which it has power of disposal and separate from the tarwad, provided that no tavazhi shall claim to be divided from the tarwad during the lifetime of an ancestress common to the tavazhi and to any other tavazhi or tavazhis of the tarwad, except with the consent of the ancestress, if she is a member of the tarwad. There is an explanation to the section which says that for the purpose of Chapter VI (which deals with the right of partition) a male member of a tarwad or a female member without any living child or descendant in the female line, shall be deemed to be a tavazhi if he or she has no living female ascendant who is a member of the tarwad. The respondent has no living female ascendant and he himself constitutes a tavazhi. Therefore he had the right to institute the suit for the partition of the tarwad.

Sub-section 1 of section 43 allows two-thirds of the major members of a tarwad to present a petition to the Collector for the registration of the tarwad as impartible. Sub-section 4 states that if after giving notice to all the major members of the tarwad and making such enquiry as he deems fit, the Collector is satisfied that not less than two-thirds of the major members of the tarwad have signed the petition with their free consent and desire the registration of the tarwad as impartible, he shall register the tarwad as impartible. Section 43 is embodied in Chapter VII which deals exclusively with impartible tarwads.

Chapters VI and VII stand apart and there is nothing in any of the sections of these two chapters which suggests that a tavazhi is precluded from filing a suit for partition because there happens to be pending an application for registration under Chapter VII.

If the ordinary rule of Hindu law that the filing of a partition suit involves the automatic severance of the joint status applies, it is clear that there would be no power in the Collector to register a tarwad as impartible once a suit for partition has been filed. It is not contested that the ordinary rule of Hindu law does apply. In fact it was so held in *Kunchi Amma v. Minakshi Amma*(1). This being the position, the filing of the suit on 23rd October 1933 put an end to the right of the other members of the tarwad to apply for registration under section 43, and the Collector had no power to order registration. His order of 15th January 1934 must be regarded as being null and void.

Mr. Sitarama Rao has suggested that the doctrine of *lis pendens* applies and that, inasmuch as the application under section 43 was filed first, the suit was incompetent. The doctrine of *lis pendens* obviously can have no application here. There is a right to partition given in Chapter VI and there is nothing in Chapter VII which prevents that right being exercised while the tarwad remains unregistered.

We consider that the decision under appeal is correct. The appeal will be dismissed with costs in favour of the first respondent.

N.S.

(1) (1935) I.L.R. 59 Mad. 693.