

1863.  
March 4. 187 provides that "the judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion;" and though it goes on to say "and the Court shall have full power to award and apportion costs in any manner it may deem proper," it must necessarily be read as only applicable when judgment is given.  
*Application refused.*

APPELLATE JURISDICTION. (a)  
*Special Appeal No. 25 of 1862.*

KONDI MENON.....*Appellant.*  
SĀNGINREAGATTA AHAMMADA..... *Respondent.*

According to Malabar law a sale of family property is valid when made with the assent, express or implied, of all the members of the tarawád, and when the deed of sale is signed by the káranavan and the senior anandravan if sui juris.

Such signature is prema facie evidence of the assent of the family, and the burden of proving their dissent rests on those who allege it.

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THIS was a special appeal against the decree of H. D. Cook, Civil Judge of Calicut, in Appeal Suit No. 219 of 1861, affirming the decree of the District Munsif of Kacheri in Original Suit No. 195 of 1858.

The suit was instituted for the possession of a paramba with arrears of porapád; and the question was whether a sale by the káranavan and the eldest anandravan for the benefit of the tarawád was valid, the appellant, a junior member of the tarawád, not having joined in the deed whereby the sale was effected. The Civil Judge found that the sale had been made to pay debts which a former karanavan had incurred for the benefit of the family, and that the instrument of sale had been executed by the káranavan and the senior anandravan.

*Mayne*, for the appellant, the fourth defendant, contended that it was necessary to the validity of the sale that all the anandravans should execute the instrument of sale, or at all events that the chief anandravans should give their assent in writing. He cited *Strange's Manual of Hindu*

(a) Present: Frere and Holloway, J.J.

*Law* § 379. "The káranavan can alienate all moveable property, ancestral or self-acquired, at his discretion. But as ~~so~~ immovable property, whether self-acquired or ancestral, he must have *the written assent* of the chief anandravan. (Decree of late Pro. Court Western Division in Appeal No. 27 of 1839, of late Zillah Court of Malabar in S. A. No. 29 of 1840, of S. U. in Appeal No. 5 of 1845)."

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*Miller* for the respondent, the plaintiff.

FRERE, J. :—It is not necessary that all the anandravans should execute.

HOLLOWAY, J. :—We must give Mr. Mayne the credit of having said, and said well, all that could reasonably be urged on behalf of his client. But the Civil Judge has found him out of Court. All that is necessary is that the sale should be made with the assent, express or implied, of all the members of the tarawád, and that the káranavan and the senior anandravan (if *sui juris*) should join in the deed of sale. Such assent will be implied where, as in the present case, the sale is found to have been for the benefit of the family. Here the District Munsif and the Civil Judge have also found that the káranavan and the senior anandravan executed the deed. Such execution is *prima facie* evidence of the assent of the whole family. The onus of proving their dissent rests on those who deny their assent. No such evidence has been offered, and the appeal must therefore be dismissed with costs.

*Appeal dismissed.*