APPELLATE JURISDICTION. (a)

Special Appeals Nos 359 and 401 of 1870.

APPUNI, the present VELIA KAIMÁL of EKANATHA, styled AYAMPALLI RÁMAN KUMÁRAN.	*Special Appellant in No. 359.*
AYANEPALLI EKANATHA THAVAI VARIKARNAVAN SHANGUNI.	*Special Respondent in No. 359, and Special Appellant in No 401.*
VELLUTHADATHA SHÁMU and 3 others.	*Special Respondents in No. 401.*

Suits by a branch Karnavan of a Malabar tarwád to recover certain lands belonging to his branch tarwád, which had been mortgaged by a former branch Karnavan. Plea, that the plaintiff had no right to sue without the authority of the senior member of the family, the Velia Kaimál. Upon an issue sent (in Special Appeal) by the High Court, it was found by the Civil Judge that there was no binding and peculiar custom in the family depriving the senior member of all management of the property and vesting it in the branch Karnavans. Upon the final hearing it was contended that the contrary had been so irrevocably fixed by judicial decision as to prevent the matter from being open to question, and that this finding was bad in law, as being opposed to binding decrees of competant Courts.

Held, By HOLLOWAY, J.—(1.) That there was nothing compelling the Court to decide, contrary to the plain rules of law, that this delegation was irrevocable ; that, perhaps, it was not so even by the delegator, and still less was it so by his successors. (2.) That the fact of the setting apart of stánam property, if it was set apart, can make no difference, and as little can the circumstance of the income reserved. (3.) That there was nothing to prevent the Court from deciding that the Civil Judge was right in saying that this was an ordinary Malabar tarwád. (4.) That the renunciation before the Sadr Court was not even irrevocable as against him who made it, and certainly could not have the effect of depriving the senior member for all future time, of the rights which the law of the country conferred upon him with the correlative duties upon his becoming senior.

By SCOTLAND, C. J.—That the Court was not constrained to hold that the irrevocability of the arrangement effected in 966 by the former head of the family, as to the apportionment of the family property between two Taverai's and the management of each Taverai's allotment by its senior member, was a matter conclusively adjudicated in the course of the litigation of which there was proof in the records. That such arrangement operated only as a personal renunciation and delegation of the rights of management possessed by the then head of the tarwád ; and that assuming it to have been irrevocable by him, it was not binding on the 3rd defendant, admittedly the head of the family by right of seniority.

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THESE were Special Appeals against the decision of F.C. Carr, the Civil Judge of Calicut, in Regular Appeal No. 209 of 1869, modifying the decree of the Court of the Principal Sadr Amin of Calicut in Original Suit No. 15 of 1863.

The plaintiff in this case was the branch karnavan of the Ekanatha tarwád, and he sought to recover possession of

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certain properties belonging to his branch tarwád, and which were assigned on kanam by a former branch karnavan to the 1st and 4th defendants.

The defendants, acknowledging the plaintiff to be the branch karnavan, and 1st and 4th defendants acknowledging that they held the lands on kánam dated 1036 and 1037, from the 3rd defendant, denied the plaintiff's right to sue; urging that, without authority from the senior member of the family, the branch karnavan had no real right over the property of the tarwád.

The Principal Sadr Amin, in his judgment, discussed at considerable length the subject of the position of the senior head of the family with reference to the property of the whole family, and declared that the right of managing the affairs of the whole tarwád was vested in the senior member or Kaimál; and, consequently, decreed that the plaintiff could not recover the mortgaged property.

Against this decree the plaintiff appealed, again urging his right over the Taverai property in his capacity of branch karnavan, and stating that in declaring the Kaimál's power to extend over the whole family property, the Principal Sadr Amin had adjudicated upon a matter which was not in the plaint.

The Civil Judge in his judgment said :—

"The principal points at issue are, whether in mortgaging the property the 3rd defendant was acting on his own authority as branch karnavan, or whether he was acting under authority specially delegated to him by the Kaimál of that time.

Secondly—whether the plaintiff in succeeding to the position of branch karnavan, is entitled *proprio motu*, and without any co-operation of the Kaimál, to take action for the recovery of these lands.

Except as it may incidentally affect these two questions, I cannot allow that the position of the Kaimál, and his right of control over the property of the several branches, are questions in this case, and I am of opinion that the Principal Sadr Amin has erred in making that the prominent issue in this

case, rather than the narrower questions to which the plaint limits the Court. In other words, the Court has to look only to the custom of this family in giving independent power to the branch karnavans, and not to consider primarily the social status of its head.

If this family be considered an ordinary one, following in all points the general custom of their caste, then it is clear that the plaintiff has not authority to sue for the recovery of family lands without the consent of the senior member of his family ; but if, on the other hand, it be shown that the custom of this family has been to leave the management of each branch in the hands of the respective heads of those branches, the plaintiff will clearly be authorized to sue for the restoration of his branch family lands and to obtain a decree.

After a careful perusal of the records of this case, and the numerous exhibits that have been filed, I find myself unable to concur in the opinion of the Principal Sadr Amin.

From the year 966 this family has been divided into two branches or Taverais, each of them being managed by an anandraven of the family who is called branch karnavan; the senior member is called the Kaimál or Velia Kaimál, and the senior of the branch karnavans, who is the next in succession to the office and dignity of Kaimál, is occasionally called the Ellaya Kaimál. The object, no doubt, of the arrangement than entered into was, that as the family and its property had grown too large to be looked after by one karnavan, as is the case with most of the Marumakkattáyam families, it should be looked after by the two next senior members, the senior member withdrawing into a position of dignified retirement.

[The Judge then proceeded to comment on the evidence adduced in the case and continued—]

"From all the former history of this family it is manifest that it is one which, though following the regular rule of Marumakkattáyam, is so far peculiar that there has been a regular division into Taverais, which division has existed since 966, viz. 78 years.

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From the records which are before the Court it is clear that, almost invariably, the branch karnavans have managed the property of their branch ; though no doubt occasionally, and probably in all cases of permanent alienation and in matters of special importance, the consent and co-action of the Kaimál would be desirable, if not absolutely necessary. During the time that the 3rd defendant himself was branch karnavan, he consistently managed the affairs of that branch, and he endeavours to make that fact tally with his present contention by asserting that in all his acts, when he was branch karnavan, he was acting solely as agent for the then Kaimál and under a special karar given to him..............

Everything goes to support this inference, which is also *prima facie* the most intelligible and reasonable one, that the manager of the branch property was really a manager; while the very assumption by the head of this family of a separate title, and the dropping by him of the usual designation of karnavan or manager, would further imply that the branches were managed directly by their own, so called, managers.

For these reasons I consider that the plaintiff in his capacity of branch karnavan has a right to bring this suit ; and I, accordingly, reverse the decree of the Lower Court and decree for the restitution of the lands to the plaintiff, upon his paying the amount due to the 1st and 4th defendants for the improvements, &c. made upon them, which will be settled at the time of the execution of this decree. That portion of the judgment which cancels the perpetual kánam right granted (as alleged by the plaintiff) in 1036 by the 3rd defendant, is affirmed, because a perpetual alienation of family property without sufficient cause shown, and without the consent of other members, is an unwarranted act on the part of the manager of a family.

The portion of the decree which declares the right of managing the affairs of the whole Ekanatha tawárd to be vested in the Kaimál, is cancelled, as being as adjudication upon a matter foreign to the point at issue."

The 3rd defendant, the Velia Kaimál, appealed in *Special Appeal* No. 359.

The plaintiff appealed in *Special Appeal No.* 401.

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At the first hearing of the appeals the High Court referred the following issue to the Civil Judge.—"Whether there was a binding and peculiar custom in the family, depriving the senior member of all management of the property and vesting it in the branch karnavans." The Civil Judge found that there was no such custom.

Upon this return the appeals came on again for hearing together with the following—

Special Appeal Nos. 358 *and* 372 *of* 1870.

THIPEN'S son CHELEN and another } *Special Appellants in No.* 358, *and Special Respondents in No.* 372.

AYANEPALLI EKANATHA THAVAI KARNAVAN SHANGUNI............ } *Special Respondent in No.* 358, *and Special Appellant in No.* 372.

These were Special Appeals against the decision of G. R. Sharpe, the Civil Judge of Calicut, in Regular Appeal No. 320 of 1869 ; modifying the decree of the Court of the Principal Sadr Amin of Calicut in Original Suit No. 16 of 1863.

Special Appeal No. 449 *of* 1869.

EKANATHA SHANGUNI......*Special Appellant.*

AYAMPALLI EKANATHA APPUNI. } *Special Respondent.*

This was a Special Appeal against the decision of I. V. K. Ramen Náir, the Principal Sadr Amin of Calicut, in Regular Appeal No. 66 of 1869, confirming the decree of the Court of the District Munsif of Pattambi in Original Suit No. 64 of 1860.

Civil Miscellaneous Special Appeal No. 56 *of* 1870.

SHANGUNI......... ....*Appellant.*

APPUNI........................... ....*Respondent.*

This was an appeal against the order of C. R. Pelly, the Civil Judge of Calicut, dated 12th November 1869, confirming the order of the Court of the District Munsif of Pálghát, passed on Miscellaneous Petition No. 1242 of 1869.