

The year must be reckoned according to the mode of reckoning adopted in the accounts, if that mode adopts other than the ordinary year.

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If these issues are found in the affirmative, it will be necessary to take an account of the dealings and decree the balance due. The costs of this appeal should be provided for in that decree.

*Suit remanded.*

APPELLATE JURISDICTION (a)

*Special Appeal No. 573 of 1869.*

N. A. CHERUKOMES *alias* } *Special Appellant.*  
GOVINDEN NAIR ..... }

V. ISMALA and 2 others... *Special Respondents.*

It is not law that every right may be renounced. The general rule is power of renunciation, but there are two marked classes of exceptions:—There can be no renunciation of rights and consequent destruction of relative duties prescribed by an absolute law; nor of rights interest in man as man. A man may renounce a complete right, but not one resulting from a natural condition.

*Seemle*, a karnavan cannot part, by contract, so as to be unable to resume them, with the privileges and duties which attached to his position as karnavan.

THIS was a Special Appeal against the decision of J. W. Reid, the Officiating Civil Judge of Calicut, in Regular Appeal No. 50 of 1869, confirming the decree of the Court of the District Munsif of Shernád, in Original Suit No. 136 of 1867.

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The suit was brought by plaintiff, under alleged authority given by the acknowledgment original karnavan of the tárwad, to set aside the sale of certain lands, yielding annually Rupees 249, effected in execution of a judgment in No. 985 of 1861 on the file of the Munsif of Shernád. Plaintiff produced certain documents, purporting to have been executed by 1st defendant in favor of Keln Nair, the karnavan by seniority of plaintiff's family, and plaintiffs, as trustees of a pagoda, the family property, making over the lands, sale of which in execution of Original Suit No. 985 of 1861 was sought by this suit to be set aside.

The 1st defendant did not plead.

(c) Present: Holloway, Ag. C. J. and Innes, J.

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The 2nd and 3rd defendants declared these documents to be forgeries, and stated that the lands in question were subject to incumbrances really granted by 1st defendant and legally sold. That 3rd defendant purchased them at the auction and since transferred them to 1st defendant's younger brother, a party not included in this suit, who now holds them.

The District Munsif dismissed the suit.

The plaintiff appealed.

Before the Civil Judge it was contended for the defendants that the plaintiff was simply Keln Nair's again in virtue of a certain agreement (exhibit D) filed in the suit, and that being so, that Keln Nair had revoked the authority so given by him.

The following is a translation of exhibit D :—

"I, N. Keln Nair execute this karar to my Anandavan Cheru Komen *alias* Govinden.

1. This karar I execute to you with my full consent for the safe preservation of the properties of our Ayagil tárwad and for the better management of our affairs in future.

2. You are required to manage all affairs relating to the said tárwad in the same manner as you did before, and further you are hereby authorized and appointed to exercise all managements solely.

3. Our karnavan Rarappan Nair had entrusted to my management [*certain lands specified*] but through my ill-management of the same Ráman Nair, who succeeded to the karnavanship on the death of Rarappan Nair, relieved me from the said management and took possession of the properties and allotting lands merely sufficient for the maintenance of me and others put me in possession of the same and under the arrangement that they should discharge all debts I had till then contracted, and that neither Ráman Nair nor the tárwad property nor the rest of the members of the family should be held answerable for any future debts, I ex-

ected to the said Ráman Nair a karar on the 26th Edavom 1034.

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4. Although I have by the death of the said Ráman Nair become the karnavan of the tárwad, and although you have managed all affairs since the death of the said Ráman Nair in the same manner as you did with his consent during his life-time, yet since my co-operation in certain acts such as demising lands, conducting suits, causes hindrance in the conduct of such business and thus inflicts damage on the tárwad, I hereby authorize you with my full consent with a view to the prevention of such damage in future, to exercise solely by yourself all managements relating to the said tárwad.

5. By virtue of this authority you are to demise the tárwad lands, to conduct law-suits and to exercise all other managements referring to the tárwad and all necessary acts solely by yourself, also to cause the performance of all ceremonies required by the tárwad and to protect the family in future in the same manuer as you have hitherto done. If it perhaps becomes necessary to contract any debt for the use of the tárwad, or to raise further kanom in addition to the original kanom on the tárwad properties, the same shall be done with the express consent of all the other members of the family, and any debt incurred solely by you, otherwise than with their consent, shall be answered neither by the tárwad property nor by the rest of the family.

6. I hereby determine that if it become necessary to bring suits upon certain kaichits (honds) of the tárwad written in my name also such suits shall be brought solely by you ; that certain suits in which I am also included now pending should be conducted solely by you ; and that all other acts that require to be done on behalf of the tárwad should be done solely by you, and that I should continue to receive maintenance as before.

7. As I have handed over to my anandravan, Achatan, the lands before allotted to my maintenance, not only there is no tárwad property either in my possession or under my control, but that I will not interfere with any property or with the affairs of the tárwad, and if I interfere it shall not be valid.

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8. I also determine hereby that you are to pay annually.....my maintenance and in default to pay same with interest from date due, and for any sums you allow to fall into arrears you alone are to be answerable and not the tarwad property or the members of the tarwad, I accordingly sign and deliver this karar, &c."

Dated 13th Kany 1041.

The Civil Judge in his judgment said :—

"The case turns on this,—Was the agreement granted by Kelu Nair to plaintiff a power of attorney from a principal to an agent, or can it be upheld as a formal relinquishment of the karnavanship by Kelu Nair, and investiture of plaintiff with all the rights and privileges of the same, and this is a matter of Marumakkattayam law.

The second respondent's vakil in his contention quoted the judgment of the High Court in Special Ap. No. 40 of 1864, and urged that the point there ruled—"That the right of the eldest member of a Nambudiri family to manage the illom is absolute, and were a junior member has in fact managed it, then this is presumed to have been with the permission of the former, who may at any time take up the actual control," applied by analogy to this case, and in that case the Civil Judge in his decree, which was confirmed by the High Court, observed that "The 2nd defendant is now the karnavan and it is quite possible that he may have given plaintiff permission to assume an extensive authority in the illom. But he may still reserve in his hands the rights of the karnavan, although the management may be deputed or permitted to remain in the hands of another. Admitting the plaintiff to be in management, I still consider it would be a very unwise precedent to set aside the authority of the karnavan on that account alone,—so far as can be done it is the duty of the Court to uphold usage and custom. How will usage and custom apply in the case under consideration. I take it unless the karnavan has been proved utterly incompetent and be deprived of his rights by decree of Court, the Court has no authority to depose him, because an anandravan may be manager,—he may be so by permission or delegation, but as long as there is neither a decree nor any family bond set-

ting him aside, the authority of the karnavan must be upheld." The High Court confirmed the decree and observed that "the right of the eldest member of a Nambudiri family to manage the property as karnavan is absolute, and where, as here, a junior member has in fact managed it, this is presumed to have been with the elder member's permission, and he may at any time interfere and take the actual control."

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After mature consideration, I am induced to consider the analogy of the above precedent rules here, and in the absence of any decree of Court or family bond incapacitating Kelu Nair as karnavan, for the appellant's wakil, in a statement taken from him by this Court, acknowledges that the agreement on which appellant rests his power to sue was given of the karnavan Kelu Nair's own accord, with no pressure from, although with consent of the tārwad, I must hold that Kelu Nair had a right to cancel the agreement and confirm the Munsif's decree and dismiss this appeal with costs."

The plaintiff appealed to the High Court on the ground that the Civil Judge was wrong in law in holding that the plaintiff was not entitled to sue.

*Mayne*, for the special appellant, the plaintiff.

*O'Sullivan*, for the 2nd special respondent, the 2nd defendant.

The Court delivered the following judgment :—

HOLLOWAY, Acting C. J.—It is conceded for the purposes of this argument that the authority of the plaintiff to institute suits has been withdrawn by the karnavan, so that the decrees below are right unless the document D, which originally vested in the plaintiff a power not naturally belonging to him, was an irrevocable waiver of the karnavan's rights and an irrevocable transfer of them to another. Both are wanted to sustain this suit.

The better construction of that document seems to me to be that it is a power of attorney, probably induced by the great powers of annoyance which this plaintiff, the delegate of a former karnavan, would have possessed.

Clause 7 is the only one which could be construed as an entire abandonment of the karnavan's rights, and this is,

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a clause constantly inserted in private agreements of the members of a Malabar family, in the hope that rights, validly passed to third parties, may hereafter be defeated by the production of the agreement. It is precisely similar to the restrictions placed upon the acts of the plaintiff in the 5th clause. The whole document, however, throughout treats the matter as if the powers to be possessed by the plaintiff were such as the karnavan by the writing conveyed, and is certainly more consistent with delegation than waiver.

It becomes unnecessary, therefore, to consider whether by contract a karnavan could part, so as to be unable to resume them, with the privileges and of consequence with the duties which attach to his position as karnavan. The proposition for which Mr. Mayne broadly contended, that a man may waive any rights, is certainly not law.

The general rule is power of renunciation, but there are two marked classes of exceptions. There can be no renunciation of rights and consequent destruction of relative duties prescribed by an absolute law. (The case of the departing father declaring the tutors *aneclogisti* " ut ait " Iulianus et est vera ista sententia : nemo enim ius publicum remittere potest huius modi cautionibus nec mutare formam antiquitus constitutam." Another is the case of rights inherent in man as man, or, as some would prefer saying, the natural conditions which are the source of rights of condition. " Ius adgnationis non posse pacto repudiari non magis quam ut quis dicat nolle sum esse Iuliani sententia est." A man may renounce a concrete right but not one resulting from a natural condition. In English law the first of these exceptions has been frequently recognized (*Hunt v. Hunt*, of which I have a note but no report). It is sometimes said there, that on principle a man may renounce a right, but not one coupled with a duty.

It would therefore be doubtful, even if the words used distinctly amounted to a renunciation and transfer, whether looking at the nature and modification of a karnavan's rights, it would be possible to construe them as amounting to more than a revocable delegation. I am of opinion that the Special Appeal must be dismissed with costs.

INNES, J.—I think it is doubtful on the document whether the intention of the karnavan was not entirely to transfer his rights as karnavan. If it were not so, the document is merely a power of attorney, and the authority conveyed by it is revocable. If on the other hand the intention of the karnavan, as expressed by the document, were to transfer his rights absolutely, it would be, I apprehend, an invalid instrument. A man cannot assign obligations (*i. e.*, cannot substitute some one else as the performer of his duties) without the consent or authority of those to whom the duties are owing, and whereas, in the present case, rights are co-existent with and inseparable from obligations, so that the assignment of the one cannot be effected without the assignment of the other, there can be no valid transfer of rights without the consent and authority of those interested in the performance of the obligations.

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I concur, therefore, in dismissing this Special Appeal and with costs.

*Appeal dismissed.*

APPELLATE JURISDICTION (a)  
*Special Appeal No. 362 of 1869.*

THIAGARÁJA MUDALI.....*Special Appellant.*  
RAMANUJA CHARRY and others.....*Special Respondents.*

*Special Appeal No. 284 of 1870.*

CHINNASÁMI CHETTI..... *Special Appellant.*  
NANJAPPASARY and others.....*Special Respondents.*

*Regular Appeal No. 69 of 1870.*

JUNJLA VENKATARÁYADU.....*Appellant.*  
JUNJLA KAMAMMAH and another .....*Respondents.*

The valuation of the matters of litigation for the purpose of determining the jurisdiction of Munsifs is to be made in the mode prescribed by Sec. 11, Regulation VI of 1816 and Regulation III of 1833 and not in that prescribed in the Stamp Acts.

THE question referred from these appeals for the decision of the full Court, was whether the value of a suit for the purpose of ascertaining the jurisdiction of the District Munsif's Court should be estimated on the amount of the annual produce of the land in dispute, under Section 11, Regulation

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(a) Present Holloway, Innes and Kindersley, J.J.