

Achuthan Nair

Vs

Chinnamu Amma and Others

Civil Appeal No. 273 of 1963

(K. Subba Rao, R. S. Bachawat, J. R. Mudholkar JJ)

13.08.1965

JUDGMENT

SUBBA RAO, J. –

This appeal by certificate raises the question whether a certain property, described as Chalakkode property, is the property of the Tavazhi of which the appellant and his mother are members or the separate property of the appellant.

Plaintiffs in O. S. No. 108 of 1948 in the Court of the Sub-ordinate Judge, Palghat, and the defendants in the said suit are members of a Malabar tavazhi: Originally it was a branch of a tarwad, but separated itself from the said tarwad on July 13, 1934 under a decree in a partition suit. The said tavazhi owns a number of properties. The plaintiff filed the suit against the tavazhi represented by its manager and others, for arrears of maintenance due to them and for other, for area's of maintenance due to them and for other reliefs. In the plaint it was alleged that the said Chalakkode Nilam property was the property of the tavazhi and, therefore, they were entitled to maintenance from the income of the said property also. The defendants in their written statement denied that the said property was the property of the tavazhi, but alleged that it was purchased from and 4, One of the issues raised was whether the property referred to in paragraph 5 of the plaint was tavazhi property from which maintenance coul

The only question in the appeal is whether the said property is the property of the tavazhi or is the self acquired property of the first respondent and her son, the present appellant.

Mr. N. C. Chatterjee, learned counsel learned counsel for the appellant, contends that the first and the fourth defendants are not the managers of the tavazhi properties; even if they are, there is no presumption under the Malabar Law that the properties acquired in their names are tavazhi properties; and that even if there is such a presumption, the appellant has proved by relevant evidence that the Chalakkode property is the self acquired property of himself and the 1st defendant.

Mr. A. Viswanatha Sastri, learned counsel for the respondents, argues that the 1st defendant is the Karnavati of the tavazhi that she was managing the tavazhi properties during the crucial period with the active help of her son, the 4th defendant appellant, that there is presumption under the Marumakkathayam law that a property acquired in the name of a manager of a tavazhi is the property of the tavazhi, and that the said presumption has not been rebutted by any acceptable evidence. Further, he contends that the same presumption should be invoked in the case of the 4th defendant appellant, who was in de facto management of the said property during the crucial period and that he had kept back all the relevant accounts and failed to rebut the said presumption.

To appreciate the scope of the said presumption it is necessary to notice briefly the relevant legal incidents of tarwad under the Marumakkathayam law. The said law governs a large section of people inhabiting the West coast of South India. Marumakkathayam literally means descent through sisters children. There is a fundamental difference between Hindu law and Marumakkathayam law in that, the former is founded on agnatic relationship while the latter is based on matriarchate. The relevant principles of Marumakkathayam law are well settled and, therefore, no citation is called for. A brief survey will suffice.

A family governed by Marumakkathayam law is known as a tarwad: It consists of a mother and her children, whether male or female, and all their descendants, whether male or female, in the female line. But the descendants, whether male or female, of her sons or the sons of the said descendants in the female line do not belong to the tarwad-they belong to the tarwad of their mothers. A tavazhi is a branch of a tarwad. It is comprised of a group of descendants in the female line of a female common ancestor who is a member of the tarwad. It is one of the units of the tarwad. It may own separate property as distinct from tarwad property. The management of a tarwad or tavazhi tavazhi, as the case may be. But there are instances where the eldest female member of a tarwad or a tavazhi is the manager thereof. He or she stands in a fiduciary relationship with the members thereof. In such a system of law there is an inherent conflict between law and social values, between legal incidents and natural affection, and betwe

[His lordship then discussed the oral and documentary evidence and proceeded].

We may at this stage mention that the fact that the learned Subordinate Judge accepted the oral evidence adduced on behalf of the defendant has no particular significance in this case, for the learned Subordinate Judge did not examine the witnesses in court, but the oral evidence adduced in the earlier maintenance suit was marked by consent as evidence in the present case. The learned subordinate Judge, therefore, was not in a better position than the High Court in the matter of appreciating the oral evidence as he could not have observed their demeanour. We, therefore, agree with the High Court, on a consideration, of the documentary and oral evidence, that the 1st defendant is the Karnavati of the Tavazhi and her son, the 4th defendant, who is an advocate, has been managing the properties on her behalf.

If that be so, so far as the 1st defendant is concerned, there is a strong presumption that the said property was acquired from and out of the funds of the tavazhi and, so far as the 4th dependent is concerned, in the circumstances of the present case the position is the same though in law he was not the manager, we find he was in de facto management of the tavazhi properties and, therefore, in possession of the tavazhi properties, its income and the accounts relating to those properties. Being in management of the properties, he stood in a fiduciary relationship with the other members of the tavazhi. Irrespective of any presumption, the said circumstances must be taken into consideration in coming to the conclusion whether the said property is tavazhi property or not.

[After tracing the title of the Chalakkode property His lordship concluded]

To sum up: the tavazhi has properties yielding appreciable income from and out of which the Chalakkode property could have been purchased. The 1st defendant was the Karnavati of the Tavazhi and the 4th defendant was managing the tavazhi properties on behalf of his mother, the 1st defendant. The assignment of the decree in execution whereof the said property was purchased was taken in favour of both defendants 1 and 4 the de jure and the de facto managers, respectively. The sale certificates for the same was issued in the names of both of them. The ticket for the kuri was

admittedly taken in the name of the 1st defendant and it is admitted by the 4th defendant that this accounts would not disclose that he paid the subscriptions to the kuri. So far as the 1st defendant is concerned, the strong presumption against her exclusive title has not been rebutted by any evidence at all as regards the 4th defendant, the following facts establish that the said property was tavazhi property [i] the tavazhi has properties y

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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