

# SUPREME COURT OF INDIA

R. Balakrishna Warriar

Vs.

Santha Varassiar

(B J Reddy and K Paripoornan JJ.)

11.10.1996

## ORDER

The plaintiff in O.S. No. 178 of 1958, Additional Munsiff Court, Ernakulam -- appellant in S.A. No. 669 of 1976 -- is the appellant in this appeal. The appellant belongs to Edappally Padinjare Warriar. His main prayer in the suit was to declare that the appellant's family is entitled to do Kazhakam services in the two temples as the family has hereditary rights in that regard. The trial court held that the plaintiff or his family had no Karaima right (hereditary right) in the temples as claimed. It is stated in the appeal memorandum that both the courts held thus:- "(i)...the plaintiff's family has been performing the Kazhakam (2) the plaintiff's family had been given Mala Virthy by the swaroopam, (3) that the plaintiff's family has been performing the Kazhakam in the two temples from time immemorial for which they had been given viruthy tenure.

But after recording all these findings concurrently the courts also held that the plaintiff's family has no hereditary right for the performance of Kazhakam and that the plaintiff could be hired and fired at the sweet will by the defendant No.1."

2. The appellant filed S.A. bio. 669 of 1976 and assailed the judgments and decrees of the courts below. The learned single Judge of the High Court, in paragraph 2 of the judgment, observed thus:-

"2. So far as the main relief of granting a declaration that the plaintiff's tarward has got the right to do kzhakam service in the two temples in question is concerned, it appears to me that that relief is now irrelevant in view of the Kerala Joint Hindu Family System (Abolition) Act 1975, Acc 30 of 1976. That Act abolishes the joint tenancy of tarward and it can no more. to be said that marumakkathayam tarward with joint tenancy as its feature exists any more. In that view no declaration can be given in favour of the tarward as sought for by the plaintiff. That is the basic relief sought for, the other reliefs are based on that relief."

(emphasis supplied)

However, the court granted a decree for recovery of Rs.100/- from the first defendant and a slight modification was thus made. The sum of Rs.100/- was paid in lieu of the notice, for the termination of the service of the appellant.

3. We heard counsel. The appellant has not sought any amendment of the plaint either in the High

Court or in this Court. The main prayer is for grant of declaration that the appellant's tarwad (family) has the right to perform Kazhakam services in the two temples. The High Court was right in holding that the Kerala Act 30 of 1976 has abolished the joint family system. The tarwad has become extinct. No declaration can be given in favour of a non- existing entity. On this aspect, We concur with the High Court and dismiss this appeal with no order as to costs. However, as to whether the Karaima right (or the hereditary right ) will devolve on the members of the erstwhile tarwad as tenants in common does not arise for consideration in the present appeal. The said issue is left open