Supreme Court of India
Achuthan Nair vs Chinnamu Amma And Others on 13 August, 1965
Equivalent citations: 1966 AIR 411, 1966 SCR (1) 454
Author: K Subbarao
Bench: Subbarao, K.

PETITIONER:
ACHUTHAN NAIR

Vs.

RESPONDENT:
CHINNAMU AMMA AND OTHERS

DATE OF JUDGMENT:
13/08/1965

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
MUDHOLKAR, J.R.
BACHAWAT, R.S.

CITATION:
1966 AIR 411 1966 SCR (1) 454

ACT:
Marumakkathayam Law Property whether belongs to manager individually or to tarwad or tavazhi-Presumption.

HEADNOTE:
A suit was filed by the some members of a malabar tavazhi against its manager and others for maintenance and other reliefs. The appellant was the 4th defendant in the suit while his mother was the 1st defendant. The said tavazhi owned a number of properties. In the plaint it was alleged that a certain property called the chalakkode property was the property of the lavazhi and therefore the plaintiffs were entitled to maintenance from its income also. According to the plaintiffs the 1st defendant was the karnavati or manager of the tavazhi property and the 4th defendant was the de facto manager. The defendants denied that the said chalakkode property belonged to the tavazhi but alleged that it was purchased from and out of the private funds of defendants 1 and 4. The trial court accepted the defendants case and gave a decree to the plaintiffs without taking into consideration the income from the chalakkode property. The High Court, however, taking into account the relevant presumptions under Marumakkathayam

law by which the parties were governed held that the said property belonged to the tavazhi and order the trial court to fix the rate of maintenance after taking into account the income from it. The 4th defendant, after obtaining a certificate from the High Court preferred an appeal to +his Court. The plaintiffs, the first defendant, and other defendants were impleaded as respondents in the appeal.

On behalf of the appellant it was urged : (1) The 1st and 4th defendants were not managers of the tavazhi properties; (2) Even if they were, there was no presumption under the Malabar Law that the properties acquired in their names were tavazhi proper-ties; (3) Even if there was such a presumption the appellant had proved by relevant evidence that the chalakkode property was the self-acquired property of the 1st defendant and himself.

HELD : (i) 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. A tavazhi is a branch of a tarwad. The management of a tarwad or tavazhi ordinarily tests in the eldest male member of the tarwad or tavazhi. But there are instances where the eldest female member is the manager. The male manager is called the karnavan and the female one Karnavati. He or she standing a fiduciary relationship with the members of the tarwad or tavazhi as t case may be. [457 E-H]

(ii) Under Hindu law when it is proved or admitted that a family possessed sufficient nucleus with the aid of which a member might have made an acquisition of property, there arises a presumption that it is joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. But the said principle has not been accepted or applied to acquisition of properties in the name of a junior member of a tarwad

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(amandravan). It has been held that there is no presumption either way, and that the question has to be decided on the facts of each case. [458 C-E]

Further, the settled law is that if a property is acquired in the name of the karnavan there is a strong presumption that it is tarwad property and that the presumption must hold good unless it is rebutted by acceptable evidence. [458 E-F]

Govinda v. Nani, (1913) 36 Mad. 304, Dharnu Shetty v. Dejamma, A.I.R. 1918 Mad. 1367, Soopiadath Ahmad v. Mammad Kunhi, A.I.R. 1926 Mad. 643, Thata Amma v. Thankappa, A.I.R. 1947 Mad. 137 and Chathu Nanibiar v. Sekharan Nambiar, A.I.R. 1925 Mad. 430, approved.

(iii) On the evidence it was clear that the 1st defendant was the karnavati of the tavazhi and her son the 4th defendant an advocate, had been managing the properties on her behalf. If that was so, so far as the 1st defendant

was concerned there was a strong presumption that the said property was acquired from and out of the funds of the tavazhi; and so far as the 4th defendant was concerned, in the circumstances of the case, the position was the same; though in law he was not the manager, 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 the properties. Being in management of the properties he stood in a fiduciary relationship with the members of the tavazhi. Irrespective of any presumption the said circumstances had to be taken into account in coming to the conclusion whether the property was tavazhi or not. [459 A-D]

(iv) In regard to the Chalakkode property, so far as the 1st defendant was concerned he strong presumption against her exclusive: title had not been rebutted at all; as regards the 4th defendant the facts shifted the burden of proving title to the property to him and he had failed to discharge the same. [459 F-G; 460 A]

The High Court was therefore right in coming to the conclusion that the property in question was tavzhi property.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 273 of 1963. Appeal by special leave from the judgment and decree dated July 15, 1955 of Madras High Court in Appeal Suit No. 142 of 1951.

N. C. Chatterjee and R. Thagarajan, for the appellant. A. V. Visvanatha Sastri and V. A. Seyid Muhammad, for respondents Nos. 1 to 24.

The Judgment of the Court was delivered by 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 plaintiffs filed the suit against the tavazhi represented by its manager and others, for arrears 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 out of the private funds of defendants 1 and her son, defendant 4. One of the issues raised was whether the property referred to in paragraph 5 of the plaint was tavazhi property from which maintenance could be claimed. The learned Subordinate Judge held that the

said property did not belong to the tavazhi but it was the personal property of defendants I and 4. In the result in giving a decree for maintenance, he did not take into consideration the income from the said property. On appeal, a Division Bench of the Madras High Court, having regard to the relevant presumptions under the Malabar law, held that the said property belonged to the tavazhi; in the result, it allowed the appeal and remanded the suit to the Court of the Subordinate Judge for fixing the rate of maintenance after taking into account the income from the said property also. The 4th defendant, after obtaining- the certificate from the High Court, has preferred the present appeal to this Court against the judgment of the said -Court. In this appeal, the plaintiffs, the first defendant and other defendants have been impleaded as respondents.

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 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 respon- dents, 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 appel-

lant, 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 them 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 neces- sary to notice briefly the relevant legal incidents of toward 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 tarwads 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 ordinarily vests

in the eldest male member of the tarwad or 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. The male manager is called the karnavan and the female one, karnavati. A karnavati or karnavan is a representative of the tarwad or tavazhi and is the protector of the members 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 between duty and interest. As the consort or the children of a male member, whether a karnavan or not, have no place in the tarwad, they have no right to the property of the tarwad. Whatever might have been the attitude of the members of a tarwad in the distant past, in modern times it has given rise to a feeling of unnaturalness and the consequent tendency on the part of the male members of a tarwad to divert the family properties by adopting devious methods to their wives and children. Courts have recognized the difference between a joint Hindu family under the Hindu law and a tarwad under the Marumakkathayam law in the context of acquisition of properties and have adopted different principles for ascertaining whether a property acquired in the name of a member of a family is a joint family property or the self-acquired property of the said member. Under Hindu law, when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. This is a well settled proposition of law. But the said principle has not been accepted or applied to acquisition of properties in the name of a junior member of a tarwad (anandravan). It was held that there was no presumption either way; and that the question had to be decided on the facts of each case : see Govinda v. Nani;(1) Dharnu Shetty v. Dejamma;(2) Soopiadath Ahmad v. Mammad Kunhi;(3) and Thatha Amma v. Thankappa.(4) But it is settled law that if a property is acquired in the name of the karnavan, there is a strong presumption that it is a tarwad property and that the presumption must hold good unless and until it is rebutted by acceptable evidence : see Chathu Nambiar v. Sekharan Nambiar;(5) Soopidath Ahmad v. Mammad Kunhi;(3) and Thatha Amma v. Thankappa.(4) [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 defendants 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. 'Me learned Subordinate Judge. therefore, was not in a better position than the High Court in the matter of appreciating the oral evid- (1) [1913] 36 Mad. 304. (2) A.T.R. 1918 Mad. 1367. (3) A.I.R. 1926 Mad. 643. (4) A.T.R. 1947 Mad. 137. (5) A. 1. R. 1925 Mad. 430.

ence 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 defendant 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 Chalakode property His Lord- ship 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 karnawati 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 I 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 1 st defendant and it is admitted by the 4th defendant that his accounts would not disclose that he paid the subscript-ions 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 yielding appreciable income from and out of which the said property could have been purchased; (ii) the 4th defendant was managing the properties of the tavazhi on behalf of the 1st defendant; (iii) he stood in a fiduciary relationship with the members on whose behalf he was managing the properties; (iv) in every relevant transaction the 1st defendant, the karnavati was made a party; and (v) the 4th defendant has suppressed both the accounts of the tavazhi and his personal accounts and has failed to prove that he had any personal income from and out of which he could have paid Rs. 14,000 odd towards the purchase of the said property. The facts certainly shift the burden of proving title to the property to the 4th defendant and he has failed to discharge the same. From the aforesaid facts we have no hesitation in agreeing with the finding of the High Court that the said property was the property of the tavazhi.

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