

ACHUTHAN NAIR

v.

CHINNAMU AMMA AND OTHERS

August 13, 1965

[K. SUBBA RAO, J. R. MUDHOLKAR AND R. S. BACHAWAT, JJ.]

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

A suit was filed by the some members of a malabar *tavazhi* against its manager and others for maintenance and other reliefs. The appellants were 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 *tavazhi* 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 this Court. The plaintiffs, the first defendant, and other defendants were impleaded as respondents in the appeal.

On behalf of the appellants 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* properties; (3) Even if there was such a presumption the appellants 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 rests 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 stands in a fiduciary relationship with the members of the *tarwad* or *tavazhi* as the 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*

- A (*anandravan*). 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]

- B *Govinda v. Nani*, (1913) 36 Mad. 304, *Dharnu Shetty v. Dejamina*, 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 Nambiar 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 the 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]

- E The High Court was therefore right in coming to the conclusion that the property in question was *tavazhi* property.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 273 of 1963.

- F 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. Thiagarajan*, for the appellant.

A. V. Viswanatha Sastri and *V. A. Seyid Muhammad*, for respondents Nos. 1 to 24.

- G 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.

- H Plaintiffs in O.S. No. 108 of 1948 in the Court of the Subordinate Judge, Palghat, and the defendants in the said suit are members of a Malabar *tavazhi* : originally it was a branch of a

tarvad, but separated itself from the said *tarvad* 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 1 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 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-appel-

- A 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 the
- B 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
- C 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
- D 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
- E 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
- F 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
- G 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
- H 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*;⁽⁶⁾ 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. The learned Subordinate Judge, therefore, was not in a better position than the High Court in the matter of appreciating the oral evi-

(1) [1913] 36 Mad. 304.

(2) A.I.R. 1918 Mad. 1367.

(3) A.I.R. 1926 Mad. 643.

(4) A.I.R. 1947 Mad. 137.

(5) A. I. R. 1925 Mad. 430.

A 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.

B 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 *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 his 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 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 A
failed to prove that he had any personal income from and out
of which he could have paid Rs. 14,000 odd towards the pur-
chase 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 B
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.