

(1912) 06 CAL CK 0053**Calcutta High Court****Case No:** None

Kshetra Moni Dasi

APPELLANT

Vs

Amodini Dasi and Another

RESPONDENT

Date of Decision: June 13, 1912**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: 16 Ind. Cas. 611**Hon'ble Judges:** Beachcroft, J; Ashutosh Mookerjee, J**Bench:** Division Bench**Judgement**

1. The petitioner and respondents Nos. 1 to 6 form the members of a Brahmin tarwad. The petitioner alleges that the 1st respondent, the karnavan of the tarwad, has made several alienations which are not binding on the family and, therefore, seeks to remove the 1st respondent from the karnavanship, to set aside the alienations and for other consequential reliefs, He also states that the 1st respondent, as karnavan of his family and the 7th respondent in karnavan of the family of defendants Nos. 7 to 10, are the trustees or uralans of Kelalur temple and that the first respondent in collusion with the 7th respondent has made many alienations and seeks to set aside those alienations and to recover the properties which are in the possession of the alienees. He farther alleges that the 1st respondent, as the karnavan of his tarwad and the 11th respondent as the karnavan of defendants Nos. 11 to 17, are the uralans of Esanmangalam temple and that they in collusion have created many alienations which are not binding on the temple ; he seeks to recover those properties also on behalf of the temple. On the ground that he is a pauper, he has applied for leave to file a suit as such.

2. The Subordinate Judge finds that the petitioner is a pauper bat has refused his application to file a suit as such on the following grounds: so far as the tarwad properties are concerned, he is of opinion that the petitioner, as an anandran, has a right to bring a suit; but he thinks that as his interest in the suit is not exclusively

his own but is only one in common with the respondents Nos. 2 to 6, he should not, therefore, be allowed to prosecute his suit since he has failed to apply to them also to join him as co-plaintiffs. The Subordinate Judge states that, if they had joined him as co-plaintiffs, the suit would not have been maintainable as some of them are not paupers and are in a position to maintain the suit. With reference to the two devaswoms, he apparently comes to the conclusion that the petitioner should have consulted the respondents Nos. 7 to 10 who belong to one family and respondents Nos. 11 to 17 who belong to another family, both families being respectively entitled to the uraima right of the two devaswoms. He is of opinion that a suit brought without such previous consultation is not maintainable. If the suit, so far as the devaswoms are concerned, is not maintainable, he thinks it is doubtful whether a suit, so far as the tarwad properties are concerned, would be maintainable in his Court on account of the value of the suit being within the jurisdiction of a Munsif's Court. I am of opinion that the Subordinate Judge is wrong in his conclusions. The petitioner, as a junior member of the tarwad, is, undoubtedly, entitled to set aside the alienations of the tarwad properties and he is entitled to enforce that claim in a Court of law. He is not bound to ask the others to join him and, in this case, there is the further fact to be taken into consideration that he is the senior anandavan, who is entitled to become the karnavan in case the 1st respondent is removed from the karnavanship. In my opinion, therefore, the ground on which the Judge has proceeded with regard to the tarwad properties is clearly wrong; nor is he right in his conclusion with reference to the claim of the petitioner with reference to the temple properties. The decisions to which he refers were in suits brought by one uralan for the enforcement of a claim of the temple against persons holding property against the temple. In the present suit, the other uralans are parties and the petitioner alleges that they have been acting in collusion with his own karnavan. With that allegation in the plaint, it is not open to him to ask the others to join in his suit. The Subordinate Judge, therefore, is clearly wrong on this point also. Then the further question is raised in this Court that, so far as certain properties are concerned, the plaintiff's suit is not sustainable because he would not be entitled to recover possession of the property by himself. I am of opinion that when the 1st respondent is removed from the Karnaianship, the petitioner, without any declaration by the Court, becomes the karnavan in his stead and he would be entitled to a decree for possession if he makes out his allegations on behalf of the temple. Then, it is strongly pressed upon me that this is not a matter in which the High Court could interfere in revision. I agree with the contention that, if the Subordinate Judge has dismissed the application on the ground that there was no subsisting cause of action, then it is not open to the High Court to interfere u/s 115 of the Civil Procedure Code, even if he was wrong in his view; but I do not think the Judge has really disposed of the case on this ground. I understand his finding to be that, so far as the devaswom properties are concerned, there is no subsisting cause of action capable of enforcement in a Court of law because, as he puts it, the plaintiff has not consulted the other uralans and, if those properties are eliminated,

then he is not satisfied that a Suit will lie in his Court. This is not a proper ground which would, under the section, justify his order. If there is any cause of action disclosed in the plaint with reference to any of the properties or with reference to any relief prayed for, then, he is bound to grant leave, though with reference to other properties there may be no cause of action. That will only be a ground for the dismissal of the suit eventually so far as those properties are concerned. Again, on the ground that the elimination of those properties reduces the value of the suit, he was not entitled to dismiss the application. If the claim was advanced bona fide, then certainly the fact that a claim would lie only with reference to some of the properties, the value of which is below Rs. 2,500, will not justify the Subordinate Judge in holding that he has no jurisdiction to entertain the plaint. I think, therefore, that, in this case, the High Court has jurisdiction to interfere u/s 115, Civil Procedure Code. I accordingly reverse the order of the Subordinate Judge, grant permission to file a suit as a pauper and direct the District Court to restore the petition to its file and deal with it in accordance with law. Costs of this petition will abide the result.