

(1916) ILR (Mad) 918 : (1916) ILR (Mad) 916

Madras High Court

Case No: None

Krishnan Kidavu
(Meppat Parkum
Anandravan) and
Eleven Ors.

APPELLANT

Vs

Raman alias
Puthalathunnaval
Shyled Kotakkat
Panikkar and Others

RESPONDENT

Date of Decision: Aug. 10, 1915

Citation: (1916) ILR (Mad) 918 : (1916) ILR (Mad) 916

Hon'ble Judges: Seshagiri Ayyar, J; Napier, J

Bench: Division Bench

Judgement

Seshagiri Ayyar, J.

The facts of this case are not in dispute. Defendants Nos. 1 to 17 are members of a Malabar tarwad. The first defendant is the karnavan. The eighteenth defendant was the karnavan before him. This tarwad along with four others possesses three atanams. Succession to the stanams is by seniority. The eighteenth defendant became a atani, He was then succeeded in the karnavanship by the first defendant. It was found that ha was not capable of managing the tarwad affairs. Thereupon, he (the first defendant), the eighteenth defendant, the previous karnavan and the senior female member entered into a karar (Exhibit I) on the 12th May 1884. It is said there were other members. They were not parties to the karar.

2. Mr. Anantakrishna Ayyar says that they were all minors. The effect of the karar is to vest the management in the eighteenth defendant, although he was no longer a member of the tarwad. At the time of the karar, the defendant's tarwad had obtained an otti deed of the properties in suit from the predecessor in title of the plaintiff. This was in 1817 (Exhibit B) and the money was payable twelve years after, It is not disputed that the time

for the redemption of this otti had not expired when Exhibit I was entered into. In March 1890 after the eighteenth defendant had been given the rights of management, the first defendant obtained a renewal of Exhibit B. It is exhibit A in this case. The plaintiff brings this suit for redemption. The plea of the defendants is that at the time of Exhibit A the first defendant had no right to obtain the renewal on behalf of the tarwad, and that consequently it did not affect the rights of the tarwad, and as plaintiff's right to redeem would be barred but for Exhibit A, the defendant's tarwad had acquired a title by prescription to the property. The Subordinate Judge held that Exhibit I did not deprive the first defendant of his right to obtain a renewal and decreed the plaintiff's claim. Hence this second appeal. The question is not free from difficulty; but after giving my very careful consideration to it, I have come to the conclusion that the lower Appellate Court is right.

3. Before dealing with the construction of Exhibit I, I may dispose of some of the contentions raised by Mr. Rosario for the respondents in support of the decree of the Subordinate Judge. The learned vakil contended that as the karar was entered into only by two of the members of the family with a person who ceased to belong to it by virtue of his having attained to one of the stanams, it had not the sanctity which attaches to family karars in Malabar. I am not satisfied that this position is correct. In *Ratinbarkara Cullabhan Chassan Rajah v. Kamabarma* (1916) 28 M.L.J. 669 I had to examine the relationships to the tarwad of a person who had succeeded to a stanam. It is clear that if in his new sphere the stani acquires property and does not dispose of it, his tarwad will be entitled to it. The converse position is at least arguable. If the tarwad becomes extinct, the quondam member who had become a stani may lay claim to the property. It cannot, therefore, be said that the attainment to a stanam severs the relationship altogether. The person thus ceasing to be a member is not in the position of a stranger. As at present advised I am unable to agree with Mr. Rosario that the karar loses vitality because the eighteenth defendant was one of the parties to it. His further contention was that as by the karar, the management was vested in a person who was not a member of the tarwad at the time, the document is of no effect whatever. Reliance was placed upon the decision in *Chappan Nayar v. Asert Kutti* ILR (1889) Mad. 219 for this argument. In that case, the learned Judges held that an arrangement by which the right of management was delegated to the son of the karnavan was invalid. I am very unwilling to express dissent from a judgment to which Muttuswami Ayyar, J., was a party. His long experience on the Bench and his special knowledge of Malabar Law and Customs invest his pronouncements with great authority. It is with considerable diffidence, therefore, that I venture to express my doubts regarding the correctness of the dictum in *Chappan Nayar v. Asert Kutti* I.L.R 12 (1889) Mad. 219. The karnavan has two capacities--a temporal and a spiritual one. In the former he is the manager of the family properties, maintains the junior members, represents the tarwad in transactions with strangers, etc. In his latter capacity he presides at the ceremonies and performs all the religious duties which are incumbent on him. A stranger cannot supplant him in this latter office: but I fail to see why his duties as manager could not be delegated to a stranger. If a receiver is appointed pending a suit for the removal of a karnavan, this officer will have all the rights of a

karnavan so far as management is concerned. An agent who acts with the consent of all the members in managing the temporal affairs of a tarwad cannot be in a worse position. I am therefore not prepared to rest my decision on the authority of Chappan Nayar v. Assen Kutti ILR (1889) Mad. 219 and to hold that as the karar gave one management; to the eighteenth defendant who had ceased to be a member of the tarwad, it did not deprive the first defendant of any of his rights.

4. The main contention related to the construction to be placed on Exhibit I. In the first place, it must be noted that the document is not a renunciation of rights by the first defendant, but one which confers rights on the eighteenth defendant. Where specific powers are delegated it is against all rules of construction to sweep in other powers by general words appearing in the document, See *Rooke v. Lord Kensington* (1856) 25 L.J. Ch. 795. Moreover the powers must be ejusdem generis with those already conferred, if the general authorization is regarded as granting powers other than those already enumerated.

5. It is a well-settled rule of law that powers of attorney should be strictly construed : per Lord Macnaughten in *Bryant, Powis Bryant Limited v. La Banque du Peuple* (1893) A.C. 170. In *Harper v. Godsell* (1870) L.R. 5 Q.B. 422, Blackburn, J., points out that general words of borrowing should be restricted to matters ejusdem generis with those already stated. These are the words of the learned Judge: "The special terms of the first part of the power prevent the general words from having an unrestricted general effect, The meaning of the general words is cut down by the context in accordance with the ordinary rule of ejusdem generis." Every word of this proposition applies to the facts before us. The Court of Appeal in affirming the judgment of Farwell, J., laid down the same-proposition in *Jacobs v. Morris* (1902) 1 Ch. 816, In the present case, the first paragraph of Exhibit I says that the eighteenth defendant "should look after the management as stated below." Paragraph No. 2 expressly deals with the granting of leases to tenants and the obtaining of renewals from them. It does not refer to renewals from janmis in favour of the tarwad. The third paragraph relates to the collection of rent, to the granting of receipts and to the maintenance of the members of the family. In Paragraph No. 4, there is a provision for paying a certain sum of money to the first defendant so long as he is the karnavan. It is in this paragraph the clause occurs on which Mr. Anantakrishna Ayyar strongly relied. The words are, "that except receiving the said account towards his expenses and remaining quiet No. 2 should not interfere with the tarwad properties or with the affairs (thereof) beyond what was settled in the second paragraph." Paragraph 5 which deals with powers to conduct litigation speaks only of "getting properties surrendered, of collecting varam and pattam, etc." The right to obtain a melcharth is not covered by any of the above clauses. The very general words about the first defendant not interfering with tarwad properties should not be construed either as conferring powers on the eighteenth defendant other than those specifically mentioned or as taking away from the first defendant what he has not expressly granted to the agent. Having regard to the fact that the appointment of the eighteenth defendant was

necessitated because of the supposed incapacity of the first defendant to manage the affairs, there was no reason for conferring on him the rights to obtain a renewal from a janmi which requires no special capacity to get it. In my opinion the general clause, even on the principle that it should confer all those powers which are ejusdem generis with those specified should not be read as authorizing the first defendant to obtain a renewal from the janmi. In this view, I think the first defendant had authority to obtain the renewal, and the attempt of the other defendants to defeat the janmi's right should not be upheld; after having acquiesced in his act they have neither justice nor law on their side to support their contention. The suit to redeem is within time. The second appeal must therefore be dismissed with costs. Time for redemption is extended by three months from this date.

Napier, J.

6. I have had and still have doubts whether any powers to deal with the property were reserved to the karnavan under the karar but my doubts are not strong enough to make me dissent from the conclusion arrived at by my learned brother. I therefore agree that the appeal be dismissed with costs.