KERALA HIGH COURT

Hon’ble Justice V. R. Krishna Iyer, J.

Kalathile Valappil Pookkoth Mammad and another v. Cheeramoolayil Pookoth Aleema and others

Citation: 1970 KHC 309 : 1970 KLJ 126

JUDGMENT

1. The key note of my approach to this appeal, the facts of which will be stated presently and briefly, is that a Judge should remember, in applying the law to a given set of facts, that what is expedient for the community concerned is "*the secret root from which the law draws all the juices of life .... Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy; most generally to be sure ...... the unconscious result of instinctive preferences and inarticulate convictions, but none the less traceable to views of public policy in the last analysis*" (Helmes, The Common Law, 35-6).

2. This is a plaintiff's appeal. No brought a suit for recovery of possession with arrears of rent, of a building now in the possession of the 1st defendant. The 2nd defendant is also stated to be in possession although his exact status is not clear. Defendants 3 and 4 are two members of the thavazhi of the plaintiff who claim that there was a maintenance allotment of this item in their favour by Mayan, their direct uncle although, initially, the case put forward by defendants 3 and 4 was that the suit property belonged to Mayan exclusively and that he had allotted the property for their maintenance. The case of Mayan's exclusive ownership has been negatived and the allotment for maintenance by Mayan as thavazhi karnavan has been upheld. We have to proceed on that footing in second appeal and arguments have been addressed to me on that basis.

3. The tavazhi, of which Mayan was the karnavan on whose death the plaintiff because the karnavan, had for fewer members at the time the suit item was set apart for the maintenance of defendants 3 and 4 and their mother Ummachu, the sister of Mayan. Of course, the family multiplied in numbers and now they are 70 strong (or weak ?). It owns

only two items of properties, one of which is the suit item, a shop building yielding a rent of Rs.140/-, and the other a small item of property yielding an income of only Rs. 10/-. Thus, this family of 70 members has an annual income of Rs. 150/- of which Rs. 140/- is being appropriated by two members viz., defendants 3 and 4. This is obviously an iniquitous situation and this iniquity is very relevant to the decision of the case as I will presently indicate.

4. The plaintiff, while he was a junior member, was party to a family arrangement, Ex. B5, wherein it was provided that the senior most woman would manage the properties. Subsequently, the plaintiff became the karnavan and one point raised before me against the maintainability of the suit by the plaintiff is that although he is the senior most male member, in view of Ex. B5 he cannot be the manager and therefore cannot bring the suit for recovery of possession or arrears of rent. It is doubtful whether in the light of the definition in S.3(c) of the Madras Marumakkathayam Act, 1932 a mere arrangement among members can deprive the karnavan of the right to management of the tavazhi properties. Being a most point and being unnecessary for a decision of this case I do not want to pronounce on it finally. It is sufficient to say that Ex. B5 was signed by the plaintiff when he was a junior member and such a family arrangement as Ex. B5 cannot bind the plaintiff when he becomes karnavan, because the principle of law laid down in 32 MLJ 323 is to the effect that the Karar falls to the ground on the death of the de jure karnavan who consented to be bound by it and the next de jure karnavan is not bound by the restrictions imposed by the Karar on his predecessor except perhaps where he himself has agreed in that Karar to be bound by those restrictions even when he succeeded to the Karnavasthanam. Here, the plaintiff has not agreed to be bound by the restrictions in Ex. B5 even after becoming the karnavan and therefore he is not disabled from bringing the suit.

5. The other contention proceed before me against the decision of the DistrictJudge (Who dismiss the suit in reversal of the Trial Court's decree) is that as maintenance allotment made by the former karnavan in favour of some members of a tarwad or thavazhi can be given the go by the succeeding karnavan, provided he makes an alternative and workable offer which in this case is being made by the plaintiff. The proposition is well

settled that where the junior members of a tarwad are in possession of some lands under an arrangement entered into by the former karnavan by which they were to enjoy the same, in lieu of maintenance, the succeeding karnavan cannot set aside the arrangement except for good cause (Head note in 32 MLJ 97). The same decision has held that a suit for possession of land granted in lieu of maintenance cannot be maintained unless the succeeding karnavan, offers to make some other suitable arrangement. Thus the plaintiff as succeeding karnavan, cannot set aside a bona fide arrangement for maintenance made by his predecessor "*unless for good cause*". These four words are the key words in the judgment referred to above. I am assuming that there is a bona fide arrangement made by the predecessor of the plaintiff although that is disputed by the plaintiff. Even so, is there no good cause for upsetting the earlier arrangement in the present case? Again, it has been held in the same ruling that a suit for recovery of possession of a land granted on maintenance is unsustainable unless the successor "*offers to make some other suitable arrangement for the maintenance of the junior members who are in possession of the land*". There are observations in earlier Madras decisions that the offer of maintenance is not even a condition precedent to the maintainability of a suit of this character. That apart, a fair alternative offer has been made here.

6. At a time when there were fewer members in the family, Mayan made amaintenance allotment to defendants 3 and 4 and their mother. Since then, the thavazhi grew and multiplied and, according to the plaint allegations, there are 70 members now. Is it fair that 2 out of 70 should keep Rs. 140/- out of Rs. 150/which is admittedly the income of the thavazhi ? We must remember that a junior member's right to maintenance in a Marumakkathayam family is really an expression of coproprietor ship and every junior member has an equal right in the property with the others, including the karnavan. So much so, strictly speaking, the members are entitled, more or less to an equal share in the income. More so when the family is so penurious as to be unable to pay its members nothing more than Rs. 2/- per head per year if an equal distribution were made. In such a case I have no doubt that the fact of coproprietorship must be given reasonable effect in working out the rate of maintenance. All that MLJ 97 rules is that an earlier arrangement for maintenance should not be upset except for good cause. What nobler cause can be imagined than that

68 members should share equally the meagre income of the family instead of two taking a lion's share of it leaving the rest starving as under the existing arrangement? The sooner that arrangement is exploded the better for the peace of the family. An offer to distribute the income per capita has been made by the karnavan and repeated by Shri Achuthan Nambiar, learned counsel for the appellant; and he has even agreed that a joint decree may be passed in favour of defendants 3 and 4 and the plaintiff for the arrears of rent in the present suit. So far as the other junior members are concerned, he has agreed that the plaintiff karnavan would distribute their equal share. There is no reason to doubt this undertaking.

7. I therefore hold that there is just cause for upsetting the earlier maintenancearrangement. I further hold that a bona fide offer of an alternative arrangement has been made justifying the setting aside of the earlier maintenance arrangement. The new arrangement therefore will be that every member of the family will be entitled to an equal share in the income from the two items of property. The karnavan will entitled to collect the income but he will distribute it among the members equally (depending on the number of members for the time being) he himself not claiming any higher share.

8. So far as the suit claim at present is concerned, there will be a decree infavour of the plaintiff for 68/70 share and in favour of defendants 3 and 4 for 2/70 share of the decree amount. That is to say, they will be joint decree holders in the aforesaid proportion for the decree amount. But for periods uncovered by the present suit the *karnavan* will alone be entitled to collect the income from both the items, the junior members being entitled, in turn, to implement their right on the basis of the undertaking already recorded by me.

9. The Second Appeal is allowed subject to the above directions. The 1stdefendant will be directed to pay the costs of the plaintiff in the Trial Court. Other parties will bear their costs throughout.