

Govinda Vs. Krishnan

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Court : Chennai

Decided On : Feb-15-1892

Reported in : (1892)ILR15Mad333

Judge : Subramania Ayyar and ;Best, JJ.

Appellant : Govinda

Respondent : Krishnan

Judgement :

1. It has been held by the Full Bench in Ittiachan v. Velappan I.L.R. 8 Mad. 484 that when the karnavan of a Malabar tarwad has not been impleaded as such in a suit, and. there is nothing on the face of the proceedings to show that it was intended to implead him in his representative character, tarwad property cannot be attached and sold in execution of the decree, even though it is proved that the decree was obtained for a debt binding on the tarwad. Compare also Sankaran v. Farvathi I.L.R. 12 Mad. 434.

2. The Judge has found that; the law applicable to plaintiff's family is that to which Nambudri Brahmans in the Malabar district are subject, i.e., Hindu law modified by special custom. Compare Vishnu v. Krishnan I.L.R. 7 Mad. 3 and Vasudevan v. The Secretary of State for India I.L.R. 11 Mad. 157 As was found in Nilakandan v. Madhavan I.L.R. 10 Mad. 9 'the customs of the Nambudris in the management and assignment of property do not differ from the customs of the Nayars. Impartibility is

the rule, and the eldest member is the manager... The only difference between a Nambudri illom and a Nayar tarwad is that in the former the offspring of the marriage and the married woman become members of the husband's illom, while the children of a Nayar woman become members of her own tarwad.' As was also noticed in that same finding, *Vasudeva v. Narayana* I.L.R. 6 Mad. 121--one of the earliest cases in which it was held that a decree obtained against the karnavan is not binding on members of the family who were not parties to the suit in which that decree was obtained or had not notice of the suit under Section 30 of the Code of Civil Procedure--was a suit between Nambudris.

3. The decision in *Nilakandan v. Madhavan* I.L.R. 10 Mad. 9 is that the principle of Hindu law, which imposes a duty on a son to pay his father's debt contracted for purposes neither illegal nor immoral, is not applicable to Nambudris. As the property is joint and impartible and belongs to the whole family, and the father has in it no definite share that could be made available for his individual debt or which devolves, on his death, to his son to the exclusion of the other joint members of the family, there is no room for the application of the rule of the pious duty of the son to pay the father's debts. The decrees of the lower Appellate Court in both these suits must, therefore, be set aside and those of the Court of First Instance restored, and the respondent must pay the appellant's costs in each case, both in the lower Appellate Court and in this Court.