

Karunkara Menon Vs. Kutti Krishna Menon (Died) by His Legal Representatives Govinda Monon and ors.

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Court : Chennai

Decided On : Dec-05-1916

Reported in : 38Ind.Cas.666

Judge : Oldfield and ;Phillips, JJ.

Appellant : Karunkara Menon

Respondent : Kutti Krishna Menon (Died) by His Legal Representatives Govinda Monon and ors.

Judgement :

Phillips, J.

1. Plaintiff is an anandravan, 1st defendant the karnavan and the 2nd defendant the senior anandravan of a tarwad, whose members entered into a karar in 1901. Under this karar, the powers Of the karnavan were considerably restricted, and a portion of the tarwad properties was placed under the management and control of the 2nd defendant with a view to discharging certain debts due by the tarwad. The suit is now brought on behalf of the tarwad in' order to compel 2nd defendant to render an account of his management to the plaintiff on behalf of ,the tarwad. The District Judge has given a decree on the ground that 2nd defendant is an agent of all the members of the family under the karar and any member may call on him as

an agent to account. We do not think that this view of 2nd defendant's position can be supported. An agent can only be employed to do acts on behalf of his principal, and in this case when the karar was executed the karnavan alone had the right to manage the tarwad property. Under the karar, the karnavan delegated his authority to 2nd defendant in respect of certain property, but this delegation of powers was not a delegation by the other members, who had themselves no right to manage the property. The fact that they were parties to the karar conferred on them no rights to management, and the delegation by 1st defendant to 2nd defendant would have been valid without their consent. The effect of the execution of the karar by other members is merely to show their assent to such delegation and to render the delegation irrevocable until set aside by the consent of all. In no sense, then, can it be said that the members of the tarwad delegated any authority to 2nd defendant and consequently the proposition that 2nd defendant is their agent does not necessarily follow. Unless, therefore, plaintiff can show that he is otherwise entitled to call for an account his suit must fail.

2. It is contended by Mr. Men on for plaintiff that because 1st defendant had colluded with 2nd defendant and thereby disabled himself from suing for an account, plaintiff is entitled to sue on behalf of the tarwad. There is, however, no finding of collusion, the finding of the lower Courts being merely that 2nd defendant had not rendered proper accounts to 1st defendant. Nor does it appear that 1st defendant in any way disabled himself from bringing a suit, except that in his written statement he has admitted receipt of accounts from 2nd defendant. When a karnavnn's authority is restricted by a family karar, that restriction must be interpreted strictly in terms of the 'karar, and he must be deemed to retain all the powers not expressly taken away. I may refer to *Krishnan Kidavu v. Raman* 38 Ind. Cas. 638 as a somewhat extreme instance of this proposition. In the present case, 1st defendant's power of control over 2nd defendant has not been taken away, and under paragraph 5 of the karar itself we find that 2nd defendant has to hand over at once to 1st defendant all receipts obtained by him for the discharge of debts, and under paragraph 8, 1st defendant is subject to certain specified restrictions to hold and manage all the properties except those entrusted to 2nd defendant. There is no express provision in the karar that 2nd defendant should render accounts to anybody and consequently it is only 1st defendant in the

exercise of his general powers as kamavan, who could call on him for an account.

3. If plaintiff could show that defendants Nos. 1 and 2 were colluding to defraud the tarwad, it might be open to him to file a suit for the removal of 1st defendant from karnavasthanam and to ask for appropriate relief on behalf of the tarwad, including the rendering of an account, but in this suit no relief is sought against 1st defendant.

4. In *Cheria Pangi Achan v. Unnalachan* 38 Ind. Cas. 513 Sadasiva Aiyar, J., laid down the proposition that 'unless the kamavan is himself disabled from suing...to obtain relief regarding tarwad property, an anandravan cannot be allowed to sue on behalf of the tarwad for the relief claimable by the tarwad in respect of the tarwad property;' It is unnecessary in this case to decide whether the proposition in this very broad form could always be sustained, but we can certainly accept the principle as regards the present case and hold that plaintiff cannot sue 2nd defendant for an account on behalf of the tarwad, for we see no ground upon which his right to sue can be based.

5. This case might also be disposed of on another ground. This Court has always held that an anandravan cannot ordinarily sue a kamavan for an account of his management [vide *Kenath Puthen Vittil Tavazhi v. Narayanan* 28 M.K 182 and *Vasudevan v. Sankaran* 20 M.S 129, and it is difficult to see how-such a suit would lie against the agent of a katnavan when it would not lie against his principal. The second appeal is, therefore, allowed and the suit dismissed with costs throughout.

Oldfield, J.

6. I agree and have nothing to add.

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