

**Krishnakumar and Another Vs. CochIn Devaswom, CochIn Devaswom Board Office and Others**

**Krishnakumar and Another Vs. CochIn Devaswom, CochIn Devaswom Board Office and Others**

**SooperKanoon Citation :** [sooperkanoon.com/947462](http://sooperkanoon.com/947462)

**Court :** Kerala

**Decided On :** Mar-13-2012

**Judge :** Thomas P. Joseph

**Appeal No. :** RSA. NO. 1352 of 2004

**Appellant :** Krishnakumar and Another

**Respondent :** CochIn Devaswom, CochIn Devaswom Board Office and Others

**Judgement :**

Thomas P. Joseph, J.

1. The following substantial questions of law are framed for a decision.

“(i) Is the finding of the lower appellate court that there was no Karaima right for the family of appellants in accordance with the law?

(ii) Has the lower appellate court construed the pleadings in accordance with the law?

(iii) Did the first appellate court act in accordance with law in the matter of appreciating the evidence?

(iv) What is the effect of the Kerala Hindu Joint Family System (Abolition Act) 1976 (for short, "the Act") on the claim of parties to the suit?

(v) What are the power of the Cochin Devaswom Board in relation to the rights of the parties?

(vi) Has the 4th respondent any hereditary right to be in office in preference to the appellants."

2. Shorn off frills and embroideries, the dispute concerns right to perform 'Malakazhakam' (preparation of garlands for the deity) in the Peruvanam Sree Mahadeva Temple (for short, "the Temple") which is under the governance of the 1st respondent, the Cochin Devaswom Board (for short, "the Board"). According to the appellants/plaintiffs the right to perform Malakazhakam is vested with the Thekkepisharath Family, of which they are the senior most members. Appellants and 4th respondent are Pisharadies by caste and followed the Marumakkathayam law of succession. It is alleged that remuneration for performance of Malakazhakam was being received from the Board by the then Karanavan of the joint family. While so, Ext.A1, partition deed No.1758 of 1103 ME was executed in the family as per which the right to perform Malakazhakam in the Temple was directed to be performed by the then existing four Thavazhies by rotation for a period of six months each. Name of the senior most male member was shown in the Board records as the person entitled to perform Malakazhakam. On his shifting to Kadampur, in Palakkad District, the name was changed to the name of the late Rama Pisharady, father of the 4th respondent. Two of the four thavazhies represented by respondents 5 to 10 abandoned their right to perform Malakazhakam by waiver. Thereafter the said rite was being performed by the two thavazhies of appellants and the late, Rama Pisharady. After Rama Pisharady who was performing the rite, the next turn was for the appellants. While so, the Board appointed 4th respondent as the person to perform Malakazhakam. Hence the suit for a declaration of right of the appellants to perform Malakazhakam, a mandatory injunction directing the Board to permit 1st appellant to do so and for other reliefs. The Board and its officials (respondents 1 to 3) contended that the right originally vested with the Thekkepisharath Family but after the advent of Act

30 1976, that right has ceased to exist with the said Family as joint family has ceased to exist. Rama Pisharady was performing the rite and after him, the 4th respondent, his son is entitled to be appointed to perform Malakazhakam. The 4th respondent also raised similar contentions.

3. Trial court, relying on the decisions of this Court and the meaning of the expression "Karaima" held that appellants are entitled to the declaration and injunction prayed for and accordingly granted a decree. The 4th respondent challenged that judgment and decree in A.S. No.272 of 2003. Learned Additional District Judge came to the conclusion that though 1st appellant as P.W.1 has referred to various rights and claims and that parties were following Marumakkathayam law of succession, there is no sufficient plea to that effect in the plaint. First appellate court concluded that though according to P.W1, the 5th respondent and later, Rama Pisharady were authorised by the members of the family to receive remuneration on behalf of all who are entitled to perform Malakazhakam, no evidence in that line was let in by the appellants. First appellate court reversed judgment and decree of the trial court and dismissed the suit. That judgment and decree are under challenge in this Second Appeal on the substantial questions of law framed above.

4. Appellants have filed I.A. Nos.104 and 614 of 2012 to receive additional evidence under Rule 27 of Order XLI of the Code of Civil Procedure (for short, "the Code"). Certain documents are also produced. Learned Senior Advocate for the appellants contended that findings of the first appellate court are erroneous. It is contended that, that the right to perform Malakazhakam which is a Karaima right was vested with the Thekkepisharath Family is admitted by respondents 1 to 3 also in their written statement, their only contention being that by Act 30 of 1976 joint family has ceased to exist and hence the family ceased to have that right. It is contended that the said stand of respondents 1 to 3 is not correct. Reliance is placed on the decision in Sreedharan Nair v. State of Kerala (2002 [3] KLT 307) to contend that though the joint family system is abolished by Act 30 of 1976 and it is converted into tenants-in-common, joint family in all other respects remained unaffected. It is also contended by the learned Senior Advocate that Malakazhakam is a Karaima right which is vested with Thekkepisharath Family

and hence that right must be confined to the members of that family. My attention is drawn to the decision in Vishnu Narayanan Namboodiri v. Travancore Devaswom Board (2001 [3] KLT 888) in support of the said contention. It is argued that Rama Pisharady, as a member of Thekkepisharath Family had the right to perform Malakazhakam but that right cannot be inherited or passed on to his son, the 4th respondent who is not a member of the said family. The post is not hereditary. Learned Senior Advocate has drawn my attention to the documents produced along with I.A. Nos.104 and 614 of 2012 to contend that with respect to certain other Kazhakams in the (same) temple, those rights are vested with certain families even as recognised by the Board. It is argued that though appellants had a specific contention that the 5th respondent and following him, Rama Pisharady (who were members of the family) were authorised by the members of the family to receive remuneration in accordance with the direction in Ext.A1, members of the thavazhies referred to in Ext.A1 were performing the right by rotation and to prove that, appellants had filed I.A. No.144 of 2003 to direct respondents 1 to 3 to produce the relevant files relating to Malakazhakam and the order appointing Rama Pisharady to perform the rite, respondent 1 to 3 have not produced the files. My attention is drawn to Ext.B3 to show that the right was vested with the family. It is pointed out by the learned Senior Advocate that what happened is that on Rama Pisharady giving a letter to respondents 1 to 3 that he is unable to continue performance of Malakazhakam and on his request, his son, 4th respondent was appointed as if it is a right conferred on Rama Pisharady alone. That, according to the learned Senior Advocate is not correct and these aspects were not taken into account by the learned Additional District Judge.

5. Learned counsel for 4th respondent contended that being the son of Rama Pisharady, 4th respondent is entitled to perform Malakazhakam. It is contended that after Act 30 of 1976 joint family has ceased to exist and hence the declaration prayed for cannot be granted. It is pointed out by the learned counsel that though 1st appellant in his evidence as P.W.1 claimed that parties are following Marumakkathayam law of succession, there is no such plea in the plaint. It is also contended that much of the evidence given by the first appellant as P.W1 do not have the backing of pleadings. In the circumstances first appellate court was justified in reversing the judgment and decree of the trial court. Learned counsel

has placed reliance on the decision of the Supreme Court in R.Balakrishna Warriar v. Santha Varassiar and Another (JT 1996 [6] SC 441) to contend that on the advent of Act 30 of 1976, joint family has ceased to exist and hence the right of the family can no more be recognised. At any rate, Rama Pisharady as a tenant-in-common was entitled to exercise that right as if a partition of the right has taken place in the family and on the death of Rama Pisharady (though, later), his right devolved on his legal heirs including the 4th respondent. Hence no declaration as prayed for could be granted. At any rate, the right of 4th respondent as a legal heir of Rama Pisharady has to be recognised and protected, it is contended.

6. I shall first refer to the impact of Act 30 of 1976. In Sreedharan Nair v. State of Kerala a learned Judge of this Court, referring to Act 30 of 1976 has held that though the preamble of Act 30 of 1976 showed the intention of legislation to abolish the joint family system among Hindus, the Act has confined to laying down that after the commencement of the Act, right by birth is not recognised in the family and that all members of an undivided Hindu family holding any coparcenary property on the day of the Act can only be holding such property as tenants-in-common as if a partition had taken place and that the joint family in all other respects remained unaffected though the right to succession was thereafter to be governed by Hindu Succession Act. Learned Judge proceeds to say that at the most, it could be held that as envisaged the 'system' was abolished, but that did not mean that the joint family as well stood abolished. Referring to the facts of that case it was held that the right to hold an erayili property which was transferable from the senior most male member to the next senior most member was unaffected and remained as such even after the enactment of Act 30 of 1976 for the reason that it was not a tharwad property, and never intended to be affected by the new Act. Therefore notwithstanding the abolition of Act 30 of 1976, though the system was abolished, joint family remained and rights of members of such joint family was converted into tenants-in- common as if a partition took place on the commencement of the Act.

7. Now the question is what exactly is the nature of the rite - Malakazhakam referred to in the plaint? and on whom it was conferred. In Ext.A1 to which that Rama Pisharady is also a party, it is stated that Malakazhakam was being

performed by the (Thekkepisharath) Family from time immemorial and that the said right was to be performed by the thavazhies referred to therein in rotation at an interval of six months.

8. Reference can be made to the Karaima Service proclamation, 1094 issued by His Highness, Sir Ramavarma Raja of Cochin under date the 13th Edavam 1094 (corresponding to the 27th May, 1919). There it is stated as under:

"Whereas certain services in (incorporated and unincorporated Devaswom under the management of our Government) such as Thanthram, Santhi, Kazhakam, etc., had been formerly granted to and are being enjoyed as Karaima by certain families, and whereas the holders of said Karaima services had also been granted landed property or other emoluments, as remuneration for the due performances of the services ..... We are hereby pleased to command that, wherever it is reported to Our Diwan that, owing to incompetent, negligence or other cause, any karanma service is not being properly and regularly performed or that an alienation of karanma service or of the property, or other emolument attached thereto has been effected by the Karaima holder or by any other member or members of the Karaima family, our Diwan shall give due notice of the change to the head of the family and the next senior member, and also to the alienor or defaulter if he is neither the head nor the senior member and also to such other members..... Our Diwan shall suspend, remove, determine, cancel or deal with in any other manner, the Karaima right of the family to the service."

In 'Sabdhatravali' the expression "Karaima" is defined as," (i.e., a temple service assigned for enjoyment for ever)

9. In this connection it is relevant to refer to the decision in Vishnu Narayanan Namboodiri v. Travancore Devaswom Board. There, the issue related to the appointment of 'Melsanthi' in the temple referred to therein. One Vishnu Narayanan Namboodiri was appointed as Melsanthi. In paragraph 7 a statement filed by the Travancore Devaswom Board is referred to. That statement was to the effect that after considering the contentions urged by the karanma holders and perusing the relevant documents the Travancore Devaswom Board arrived at a conclusion that it could be in the best interests of the Board to continue to

recognise the karanma right as they existed. In paragraph 8 it is stated that the Board has now taken a decision not to abolish the karanma system and continue the karanma system and thus put an end to the controversy. In paragraph 9 the Division Bench stated that the contention of the Travancore Devaswom Board can be accepted and that whenever it is reported that owing to incompetency, negligence or other cause, any karanma service is not being regularly performed or that on alienation of karanma service or of the property, Thiruppuvaram or other emolument attached thereto, has been effected by the karanma holder or by any member or members of the karanma family, the Board shall give due notice of the change to the head of the family and the next senior member, etc. In paragraph 10 the Division Bench concludes that the Bench is of the view that the Karanma services is available to the five families (involved in that case), the members of which can be nominated as Melsanthi in the temple concerned.

10. I may also refer to the decision in *Savithri Antharjanam v. Madhavi Antharjanam* (1998 [1] KLT SN 80) relating to the post of 'Keezhsanthi 'in the temple, it is held that the right to perform Keezhsanthi work is capable of being partitioned.

11. In *R. Balakrishna Warriar v. Santha Varassiar* the main prayer of the appellant in the suit was to declare that his family (and not the members of the family) is entitled to do Kazhakam services in the temples referred to therein as family has hereditary right in that regard. Trial court held that plaintiff or his family had no Karaima right (hereditary right) in the temples as claimed. Trial court held that plaintiff's family has no hereditary right for the performance of kazhakam and that the plaintiff could be hired and fired at the sweet will by defendant No.1 therein. Appellant filed a Second Appeal in the High Court assailing the judgment and decree of the trial and first appellate courts . High Court held that so far as the main relief of granting a declaration that the plaintiff's tarwad has got the right to do kazhakam service in the two temples in question is concerned, that relief has become irrelevant in view of Act 30 of 1976 since that Act abolished joint tenancy of the tarwad and it can no more be said that Marumakkathayam tharwad with joint tenancy as its feature exists any more. The decision of this Court was challenged in the Supreme Court. The Supreme Court held that the main prayer for grant of

declaration that the appellant's tharward (family) has the right to perform kazhakam services in the two temples should not be granted in view of Act 30 of 1976. In paragraph 5 the Supreme Court pointed out that as to whether the Karaima right (or hereditary right) will devolve on the members of the erstwhile tharwad as tenants-in-common does not arise for consideration in that appeal and hence that question was left open.

12. I referred to the contention of respondents 1 to 3. A reading of their contention in the written statement would indicate that they do not dispute that the right to perform Malakazhakam was vested with the family of appellants and Rama Pisharady (Thekkepisharath) but their stand is only that by Act 30 of 1976, the joint family system stands abolished and hence the family has no right. In Ext.B5, letter dated 16.12.2000 the Special Devaswom Commissioner states that the kazhakam is the right of family of Rama Pisharady. In Ext.B3, proceeding of the Board regarding the application of appellants the only reason stated is that as Act 30 of 1976 has abolished the joint family and that right of Rama Pisharady goes to his son, the 4th respondent. Exhibit B3 refers to the letter of Rama Pisharady requesting to appoint 4th respondent to perform Malakazhakam.

13. In this connection it is relevant to refer to the documents produced along with I.A. Nos.104 and 614 of 2012. Appellants have extracted information regarding certain other kazhakams from respondents 1 to 3 under the Right to Information Act. Annexures I and I(a) are produced along with I.A. No.104 of 2012. That related to Marar kazhakam (beating of drum) in the same temple involved in this case. The answers given to the queries served on the Board would show that Marar Kazhakam conferred on a family is being continued by the members of that family even after Act 30 of 1976. Another document is produced along with I.A. No.612 of 2012, also obtained under the above said Act. There, it is stated that in the temples under the Board right of family for hereditary Karaima is still being continued.

14. Since the above documents are produced in the Second Appeal and it has relevance in deciding the issue involved I allow I.A. Nos.104 and 614 of 2012 and the documents are marked as Exhibits A7 to A9.

15. The trial court, referring to the meaning of the expression "Karaima" in the Sabdhatharavali (extracted supra) and the decisions on the point, held with reference to Ext.A1 that the right to perform Malakazhakam is vested with the Thekkepisharath Family. First appellate court took the view that there is no sufficient plea as regards parties following the Marumakkathayam law of succession. But I find from paragraph 3 of the plaint that it is specifically stated that parties including Rama Pisharady, the father of 4th respondent who belonged to the Thekkepisharath Family were following the Marumakkathayam law of succession. The direction contained in Ext.A1 supported that view. There, it is stated that the thavazhies referred therein are to perform Malakazhakam in rotation for a period of six months each.

16. Though appellants contended that 5th respondent and following him, Rama Pisharady were authorised by the other members of the Family to receive remuneration on behalf of all of them from the Board no document is produced to show that. I must notice that I.A. No.144 of 2003 is filed to direct respondents 1 to 3 to produce the file relating to the Malakazhakam and the order appointing Rama Pisharady to perform Malakazhakam. But those documents are not produced. It is also seen from the judgment of the first appellate court that these aspects of the matter were not taken into account while holding that appellants are not entitled to the declaration prayed for. Thus it is clear from the evidence that the right to perform Malakazhakam was vested with the Thekkepisharath Family. On the advent of Act 30 of 1976, the right became vested with the members of that Family and they are to enjoy that right in the manner stated in Ext.A1.

17. It is argued by learned counsel for 4th respondent that 4th respondent being the son of Rama Pisharady who has been performing Malakazhakam who even if the view of this Court is accepted should be treated as a tenant-in-common should be entitled to inherit the right of Rama Pisharady. But, I must notice that the right is confined to the members of Thekkepisharath family and it cannot be acquired by a member of another family by inheritance as per law of succession. Rama Pisharady exercised that right only as a member of that family and by virtue of the arrangement contained in Ext.A1. That right must be confined to the members of Thekkepisharath family.

18. It is also pointed out by the learned counsel for 4th respondent that the declaration prayed for in the plaint is that first appellant (alone) is entitled to perform Malakazhakam. That can only be in his capacity as a member of the Thekkepisharath family and not absolutely for him. Certainly the Board has powers and disciplinary control over the member of the family appointed by it to perform Malakazhakam in the temple. That right is recognised in Vishnu Narayanan Namboodiri v. Travancore Devaswom Board (supra) and again in Kodakkath Cheriya Krishnan Namboothiri v. Guruvaryoor Devaswom (2009 [1] KLT 506).

19. In the light of what I have stated above, the findings entered by the first appellate court cannot be sustained. Judgment and decree for the trial court are to be restored with appropriate modification.

20. Substantial questions of law framed are answered as above.

Second Appeal is allowed as follows:

(a) Judgment and decree of learned First Additional District Judge, Thrissur in A.S. No.272 of 2003 are set aside.

(b) Judgment and decree of learned Second Additional Munsiff, Thrissur in O.S. No.1373 of 2002 are modified as under:

(i) It is declared that the right to perform Malakazhakam in the Peruvanam Sree Mahadeva Temple is vested with the members of Thekkepisharath Family subject to the power and disciplinary control of the 1st respondent over the person appointed by it as held in Vishnu Narayanan Namboodiri v. Travancore Devaswom Board (2001 [3] KLT 888).

(ii) The order appointing 4th respondent to perform Malakazhakam in the Temple is set aside.

(iii) First respondent shall appoint the senior most member of Thekkepisharath Family or such other person as may be nominated by the members of that Family to perform Malakazhakam in the Temple (subject to this eligibility otherwise and for such appropriate period as the 1st respondent may decide, taking into account

Ext.A1 and the view of the said family) within a period of three months from the date notified for delivery of a copy of this judgment to respondents 1 to 3.

(iv) Until 1st respondent takes a decision as referred above, the 4th shall perform Malakazhakam in the Temple.

(v) Parties shall suffer their costs throughout.

All pending Interlocutory Applications will stand dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**