Privy Council Appeal No. 3 *of* 1933.

Mundancheri Koman *alias* Mundancheri Mutha Nair - - *Appellant*

v.

Thachangat Puthan Vittil Achuthan Nair and others - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY, 1934.

Present at the Hearing:

LORD TOMLIN.
LORD MACMILLAN.
SIR JOHN WALLIS.

[*Delivered by* SIR JOHN WALLIS.]

In this case the three plaintiffs who describe themselves as Hindu Nairs residing within half a mile of the seven plaint temples and as habitual worshippers at the said temples, instituted seven suits, which have been tried together, under section 92, Civil Procedure Code, with the consent of the Advocate-General of Madras, against the first defendant, who is described in the plaint as a Hindu Nair residing in Peringod amsam and desam of the Palghat Taluq, but is admittedly the karnavan or managing member of a Malabar tarwad or joint family. The plaint alleged that the defendant's predecessors, who were originally sanudayis or committee members of the aforesaid temples, had been, in such capacity, in management of the affairs of the devasom; that they had been for some time improperly styling themselves the uralans of the aforesaid devasom; and that recently the defendant and the members of his family had further begun to claim that the devasom and its endowments belonged to the family, thereby repudiating the public character of the trust. After alleging various acts of mismanagement, they prayed for the removal of the defendant and the appointment of a new trustee, an order vesting the devasom properties in such trustee, accounts

and inquiries as to the alleged misappropriation by the defendant and his predecessor, and the settling of a scheme of management.

The defendant, in his written statement, alleged that the plaint temples were founded, owned and maintained by the defendant's ancestors. Seeing that the worship of God is a holy and meritorious act, the defendant and his ancestors had allowed those who came to the temples to worship there, not as a matter of right, but by the sufferance of the defendant's tarwad. By an understanding between the members of the tarwad, the income of certain tarwad properties was utilised for the maintenance of the devasom, but there were no lands or properties forming the endowments of the devasom. The plaintiffs were not interested in the devasom within the meaning of section 92, Civil Procedure Code, but were men of straw set up by a Nambudri or Malabar Brahmin (the twelfth witness for the plaintiffs), who was financing the suit to prevent his eviction from tarwad lands in his occupation under a melkanam, or new demise which had been granted, as appeared from the evidence, to a junior member of the defendant's tarwad. The statement in the plaint that the defendant's ancestors had been sanudayis (that is to say, members of a temple committee), was false. The temples had never been public and the defendant's predecessors were never trustees, and could not be charged with repudiating the trust.

The second issue " Whether the properties are public religious trusts," was tried first, and the Subordinate Judge finding that they were not, dismissed the suit. On appeal to the Madras High Court, Phillips and Odgers, JJ., in separate but concurring judgments, answered the issue in the affirmative, reversed the decree of the Subordinate Judge and remanded the suit for disposal on the other issues.

In the greater part of the Madras Presidency, where private temples are practically unknown, the presumption is that temples and their endowments form public charitable trusts. This was laid down by Seshagiri Ayyar J. on an elaborate consideration of the whole subject in *Subramania Ayar* v. *Lakshmana Goundan*, 54 I.C. 177, which was affirmed by the Board in *Lakshmana Goundan* v. *Subramania Ayar*, 29 C.W.N. 112. In that case, which related to a temple in the Salem District founded by a religious devotee in 1814, Seshagiri Ayyar J. specially excepted temples in the Malabar District from the scope of this ruling, and in the later case of a Nair temple in Malabar, *Kelu Achan* v. *Sivarama Pattar Karikar*, 115I. C, 636. it was held by the High Court that there was no such presumption in Malabar. The learned Judges observed that it was very natural that the large family corporations or tarwads in Malabar should have established private temples for their own use, and that this had often happened, as stated in most treatises on Malabar law and polity. Consequently they held that in Malabar there was no presumption one way or

the other, and that the issue must be determined upon the evidence in the particular case. In this and the earlier case of *Subramania Ayyar* v. *Vencatchala Vadhyar*, 1916, 37 I.C., 688, as, also, in other recent cases, of which reports are not available to their Lordships, it has been held by the High Court on the evidence in the case that the temples and their endowments were public trusts. The prevailing impression in Malabar would seem to have been that these Nair temples were private, and this may have, to some extent, influenced the lower courts, who so held both in this and in the two other cases already cited.

In all these cases the Karnavan appears to have made no distinction between tarwad and temple properties, and, whilst maintaining the temples, to have used the temple income for tarwad purposes, and treated all these properties alike as belonging to the tarwad. This state of things may, however, be explained by the fact that the Karnavan of the tarwad for the time being was in exclusive control of both sets of properties, and is of little weight as against direct evidence of temple ownership.

One difficulty in the case is that these Nair temples are of great and unknown antiquity. In one of the cases already cited, it was found on the evidence of a temple inscription that it was in existence in 1464 A.D. For generations before the conquest of Malabar by Hyder and Tippu, in the third quarter of the eighteenth century, which was followed by the British annexation in 1792, the Nairs were a ruling class holding their lands on military service and furnishing the fighting forces of the ruling Rajas among whom Malabar was then divided. Abundant contemporary evidence from European sources is set out in Mr. Logan's *Manual of the Malabar District*. When therefore the karnavan of a once powerful tarwad is found in management of seven temples in the neighbourhood of the tarwad house, the inference would appear to be that the temples were founded and endowed by the defendant's predecessors. The fact on which reliance is placed in the judgments of the High Court, that the lands now standing in the name of the tarwad bear an assessment of R. 85 as compared with an assessment of over Rs. 2,500 on the lands standing in the names of the temples, is no indication of the former state of things. These old tarwads, as observed by Mr Logan, have long been in a state of disintegration, owing no doubt to divisions by mutual consent and alienations by the karnavans, not infrequently in the interests of their own children who belong to the mother's tarwad.

The judgment of Benson and Sundara Iyer, JJ, in appeal 180 of 1908, in which another branch of the family claimed a share in the proceeds of the sale of an elephant by this tarwad, throws some light on the history of the family. It was found that the family of the plaintiffs in that suit must have become separated from this branch for more than a hundred years before the date of the suit, and that they had then remained in possession of tarwad properties which had since been divided among three branches of their family.

Acting apparently on the view that at the separation the defendant's tarwad also got their fair share of tarwad properties, the Court expressly refrained from expressing any opinion " as to the rights of the parties with respect to properties vested in the temples of the family (which are the subject of the present suit), as they might not stand on the same footing as real tarwad properties." The karnavan of the defendant's tarwad holds the title of Mundacheri Muthu Nair, and there are two other titles in the family, one of which was claimed by the plaintiffs in that suit. The learned judges said it was not clear whether these were " merely honorific titles or real stanoms in the legal sense with specific properties attached," or set apart for the holders of the titles, such as are found in formerly ruling families in Malabar. However this may be, there appears to be no reason for thinking that this family was not in a position in former times to found and endow these temples in the immediate neighbourhood of the tarwad house.

Nor is the fact that a family deity is worshipped in the tarwad house in any way inconsistent with the foundation and endowment by the tarwad of temples in honour of the greater gods of the Hindu Pantheon, either from purely religious motives or with a view of averting the calamities of which people in Malabar are said to have lived in constant dread, never even in more recent times taking any important step without first consulting their astrologers.

There is also another matter to which, in their Lordships' opinion, too much importance has been attached in the judgments of the High Court. In 1865 the Inam Commissioner confirmed, under the Inam Rules as having been in existence for fifty years, a total remission of the assessment of Rs. 3,4 as. 10 pice on 1·52 acres of land, for the expenses attending the usual ceremonies in No. 6 temple so long as they were efficiently kept up. The existence of this inam, which was stated in some old accounts to have been granted by Tippu, shows at most that it was represented to the Maharatha officials, who were sent down to introduce the Indian system of assessment for land revenue, that this was a public temple, but on the other hand it might be argued with equal or greater force that the other six temples were regarded as private as they were fully assessed and received no remission such as they would have received in other parts of India if they had been regarded as public temples.

In their Lordships' opinion, the decision in this case really depends on the inferences to be derived from the evidence as to the way in which the temple endowments have been dealt with and the evidence as to the public user of the temples. As regards the first question, their Lordships' agree with the conclusion arrived at by the learned Judges of the High Court that the documentary evidence shows conclusively that the properties standing in the names of the devasom belonged to the temples and that the position of the defendant's karnavan was that of uralan or trustee.

The earliest evidence is to be found in the records of the Paimash, or revenue survey, at the beginning of last century, showing how the lands in Malabar were held. In this survey the private properties of the tarwad are recorded as their jemm or property and the temple properties as the jemm or property of the particular temple. Further in the extract, Ex. A, lands recorded as the jemm property of the devasom are shown as held under it by defendant's tarwad on the customary kanam tenure. Until the comparatively recent times, the Mutha Nair or karnavan of the defendant's tarwad invariably described himself as uralan of the temple properties, and was so recorded in the settlement at the beginning of the present century. Thus, in 1846, the defendant's predecessor sued as uralan of three of these temples to recover certain properties in the possession of tenants. The decree, Ex. E, which in those days was also the judgment, shows that the properties were described in the plaint as belonging in jemm to the temples. Apparently, at the instance of the defendants, the Zamorin of Calicut and the Raja of Wallavanad were inpleaded as supplemental defendants, and the latter filed a written statement alleging that the temples and properties belonged exclusively to him and that he had appointed the plaintiff as manager. In his reply, the plaintiff pleaded that none but himself had uraima rights over these temples and devasoms, and that the Rajah had no rights in respect of the properties belonging to the devasom. The Court finding that the plaintiff and his predecessors had been in management for three generations, made a decree in his favour, leaving the Raja to assert his rights in another suit. It is stated by the Subordinate Judge that he filed two suits which were unsuccessful, but the decrees have not been included in the present record. When later this Raja attached certain properties in execution of a decree against a junior member of the tarwad, the defendant's predecessor and the other members of the tarwad sued in 1853 to set aside the attachment, alleging that the attached properties belonged some of them to the temples, and some to their tarwad. The plaintiffs were directed to prove that the plaint items belonged in jemm to the temples and to the tarwad in ancestral jemm right, which in their Lordships' opinion clearly meant that the plaintiffs were to prove that, as alleged in the plaint, some of the attached properties belonged to the temples and some to the tarward itself. For the appellant reliance has been placed on the recital in the decree in that suit that it had been proved that the attached properties belonged in jemm "*to the devasoms belonging to the plaintiff's tarwad* and to the plaintiff's tarwad itself." How this first statement came to be inserted in the decree it is now impossible to say, but in their Lordships' opinion it was quite irrelevant to the suit, and they agree with the High Court that it is not entitled to any weight.

In these suits the defendant's predecessors sued as uralans of the temples and they are repeatedly so described in the docu-

mentary evidence, and also in the settlement register. The case for the defendant is that uralan means owner, and in the High Court and here reliance was placed on the definition in Dr. Gundert's Malayalam Dictionary, where it is said to mean the proprietor or manager of a temple. It is surmised by Odgers J. with much probability, that the author belonged to the well-known Swiss-German Basel Mission on the West Coast. If this definition had been relied on before the Subordinate Judge and he had attached any weight to it, he would, no doubt, have referred to it in his judgment. As it is, their Lordships cannot regard it as in any way detracting from the weight of the definition in Wilson's well-known Glossary, where uralan is said to mean a guardian or manager of a temple, and uraima to be the office of uralan to which is attached the superintendence of the affairs of the temple. As pointed out by Odgers J., this is the meaning which has been attached to the word uralan wherever it has come before the High Court.

The Subordinate Judge has cited the following passages from the late Mr. Sundara Iyer's book on Malabar Law, in support of the view that uralan means owner. "If the temple is public the manager or uralan is said to be subordinate to God. He is styled God's uralan, while the uralan or manager of a private temple is said to be the proprietor of it, or to possess the uraima over it, and the God is said to be the God of the uralan." . . . "Where the temple is a private institution, the uralan may be practically an owner. In the case of some public temples, he is not even the manager or dharmakartha which is the ordinary signification of the term, but only a subordinate manager acting under another who is the real dharnakartha." The learned author, who belonged to a Brahmin family long settled in Malabar, was one of the leaders of the Madras Bar and afterwards a Judge of the High Court, and his opinions are therefore entitled to great respect, but, unfortunately, he died before the question of the ownership of these Nair temples and their endowments had been investigated in the decisions already mentioned.

In this case, their Lordships are of opinion that the use of the word "uralan" in the documents exhibited clearly imports a negation of ownership in the uralan, because as already shown, he is described as uralan of properties which are said to belong to the temples.

The Subordinate Judge has relied on the fact that in some of the documents the word udama, which admittedly means owner, is used instead of uralan, but, as pointed out in the judgments of the High Court, the use of the word udama is comparatively recent, and cannot affect the inference arising from the earlier documents.

In their Lordships' opinion, the effect of the evidence is that the properties standing in the names of the different temples

were dedicated for the support of the temples, the karnavan of the tarwad being the uralan or trustee and the fact that the income from one temple was used for the expenses of another temple, does not affect this conclusion.

From the fact that in this, as in other Nair temples, the tarwad has been making no distinction in the application of the income from tarwad and temple properties, and from the general impression that the temples and their properties belonged to the tarwads, the Subordinate Judge has inferred that there was no real dedication of the temple properties, but that for some reason tarwad properties had been put in the names of the temples. The only suggestion made by him was that this was done in Tippu's time to save them from forfeiture, in view of what he describes as Tippu's well-known real or apparent religious tolerance. This, however, is admittedly a mere surmise which their Lordships are unable to accept.

The temple properties having, in their Lordships' opinion, been dedicated for the use of the temples, the only remaining question is whether they constituted a public religious trust within the meaning of section 92 of the Civil Procedure Code. Had there been any sufficient reason for holding that these temples and their endowment were originally dedicated for the tarwad, and so were private trusts, their Lordships would have been slow to hold that the admission of the public in later times possibly owing to altered conditions, would affect the private character of the trusts. As it is, they are of opinion that the learned Judges of the High Court were justified in presuming from the evidence as to public user which is all one way that the temples and their endowments were public religious trusts. They will therefore humbly advise His Majesty that the appeals fail and should be dismissed.

After special leave to appeal had been granted, the Advocate-General of Madras obtained an order from the High Court certifying that, as the respondents were unable to raise funds to defend the appeal, he was a proper person to be brought on the record. In these circumstances the learned counsel for the respondents were instructed to appear on behalf of the Secretary of State, who will recover the costs of this appeal from the second defendant who was brought on the record as the successor of the first defendant, who died after the institution of the suit.

In the Privy Council.

MUNDANCHERI KOMAN *alias* MUNDANCHERI MUTHA NAIR

v.

THACHANGAT PUTHAN VITTIL ACHUTHAN NAIR AND OTHERS.

DELIVERED BY SIR JOHN WALLIS.

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