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PADMAVATHY AMMA  
v.  
AMMUNNI PANICKER AND ANR.

MAY 2, 1995

B

[R.M. SAHAI AND B.L. HANSARIA, JJ.]

*Hindu Law :*

*Marumakkathayam Act: Section 48.*

C

*Travancore Nair Act: Section 22.*

*Gift by brother to sister—Parties governed by Marumakkathayam Law—Held: children of donee sister are also entitled to share.*

D

P made a gift of property in favour of his sister K who was having two sons and a daughter. The parties were governed by Marumakkathayam Law. Respondent No. 1, son of K, filed a suit claiming one third share in the gifted property but the Trial Court dismissed the same. On appeal the High Court held that (i) as the gift was to a female it should be presumed, in the absence of the contrary intention, that it was to be held by the donee as tenancy-in-common; there cannot be any Tavazhi excluding the male members so notwithstanding the exclusion of male members, plaintiff-Respondent-1 was entitled to claim a share as a member of Tavazhi. As K's daughter was alive at the time of gift the High Court held that K was entitled to half of the gifted properties. Further as K was having one daughter and two sons, the plaintiff-respondent was held entitled to one-third of the half share i.e. one sixth of the whole.

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In appeal to this Court on the question whether the gift was for the benefit of K alone or to her Tavazhi,

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Dismissing the appeal, this Court

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HELD : 1. In Marumakkathayam system of law succession to property is traced through females, though the expression Marumakkathayam strictly means inheritance by sister's children. It is because of this that a man's heirs are not his sons and daughters, but his sisters and their children - the mother forming the stock of descent and inheritance

being traced through mother to daughter, daughter's daughter and so on. A Marumakkathayam family is known a Tarwad and consists of a group of persons, males and females, all tracing descent from a common ancestress. An ordinary Tarwad consists of the mother, her children, male and female, the children of such females and their descendants in the female line, how-low-soever, living under the control and direction of the Karnavan, who is the eldest male member. Thus there is no doubt that under the gift in question, even if the same be construed to have been only for the benefit of K all her three children had equal interest in the property. The High Court was, therefore, right in decreeing the suit of the plaintiff to one-sixth share of the suit property. [1059-C-D, 1061-E]

*K.K. Kochuni v. State of Madras*, [1960] 3 SCR 887, relied on.

*M.P. Kunhamina v. M.P. Kunhambi*, I.L.R. 32 Mad. 315, distinguished.

*K.M. Kutty v. N.P. Ayissa*, ILR 51 Mad. 574; *Kunnacna Umma v. Kutti Mammi Hajee*, I.L.R. 16 Mad. 201 and *A.K. Haji v. I.P. Bi*, [1958] K.L.T. 815, referred to.

*M.P. Jospen*, *The Principles of Marumakkathayam Law*, pages 1 and 2; *Mayne's Hindu Law* pages 1188 and 1189, 12th edn; *K.S. Variar, Marumakkathayam and Allied System of Law in the Kerala State*, page 91, 1st edn. (1969), referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5259 of 1995.

From the Judgment and Order dated 26.7.89 of the Kerala High Court in A.S.No. 247 of 1987.

G. Viswanath Iyar and N. Sudhakaran for the Appellant.

P.S. Poti and Ms. Nalini Poduval for the Respondents.

The Judgment of the Court was delivered by

**HANSARIA, J.** This appeal by special leave requires determination of the question as to whether the gift of the suit property by Padmanabha in favour of his sister was to the Tavazhi of the sister or was for the benefit

A of the sister alone. The parties being governed by Marumakkathayam Law, to answer the question, we shall have to refer to that law and ascertain the intention of the donor as reflected in the gift (which was brought on record in the trial court as Ext. A-1); and then decide whether the gift to Kochukuni has to anure to her benefit alone or to her Tavazhi.

B 2. Respondent No. 1 filed the suit at hand claiming one-third share in the gifted property as a son of Kochukunhi, who had another son and a daughter. The trial court dismissed the suit. On appeal, the High Court held that the plaintiff was entitled to one-sixth share and remanded the case to the trial court for fresh disposal after answering all the other issues in the suit. Feeling aggrieved, the daughter of Kochukunhi has filed this appeal.

C 3. Let the broad terms of the gift deed be first noted. The perusal of the same shows that the properties were gifted out of love and affection to the sister and her descendants in the female line. The deed further says that the property shall devolve in no other way. Then it recites that if there be need to encumber the property, the document shall be signed by the major female members. It, however, further says that after the life time of the donor and donee, all the major male members should join the document to encumber the property otherwise it would not be valid.

E 4. Relying on the aforesaid terms of the gift deed, it is contended by Shri Viswanath Iyer, Sr. Advocate, appearing for the appellant that the daughter of Kochukunhi alone had right and title in the property after the death of the donee. The High Court, however, did not accept this case of the defendant- appellant, because, according to it, the gift being to the sister, a female, has to be presumed, in the absence of the contrary intention, to be a gift to be held by the donee as tenancy-in-common. It was further opined by the High Court that notwithstanding the exclusion of male members, the plaintiff was entitled to claim a share as a member of Tavazhi, and there cannot be any Tavazhi excluding the male members.

F G As Kochukunni's daughter was alive at the time of gift, the High Court opined that Kochukunhi was entitled to half of the gifted properties; and she having one daughter and two sons, the plaintiff became entitled to one-third of the half, that is, one-sixth of the whole. It is because of this that the plaintiff's claim to one-sixth share was accepted and not one-third

H as prayed for.

5. Shri Viswanath Iyer has contended that under Marumakkathayam Law it is the daughter alone who was entitled to whole of the property of Kochukunhi. Shri Poti appearing for the first respondent, however, submits that where a gift is to a relation like wife, she holds the same on behalf of her children also, if there be any. To put it differently, the presumption would be that the donee takes on behalf of the Tavazhi, of which the son is undoubtedly a member.

6. Being concerned with parties governed by Marumakkathayam Law, we may first state that in this system of law succession to property is traced through females, though the expression Marumakkathayam strictly means inheritance by sister's children. It is because of this that a man's heirs are not his sons and daughters, but his sisters and their children—the mother forming the stock of descent and inheritance being traced through mother to daughter, daughter's daughter and so on. It may then be stated that a Marumakkathayam family is known as a Tarawad and consists of a group of persons, males and females, all tracing descent from a common ancestress. An ordinary Tarawad consists of the mother, her children, male and female, the children of such females and their descendants in the female line, how-low-soever, living under the control and direction of the Karnavan, who is the eldest male member. (See pages 1 and 2 of M.P. Jospen's book 'The Principles of Marumakkathayam Law'.)

7. The Tarawad is thus an atypical matriachal family, with all its incidents, which are well settled, as would appear from what was stated by a Constitution Bench of this Court in *K.K. Kochuni v. State of Madras*, [1960] 3 SCR 887. Subba Rao, J., as he then was, speaking for the majority dealt with this aspect at pages 928 and 929 of the judgment. After pointing out that Marumakkathayam family consists of all the descendants of the female line of one common ancestor (sic ancestress) and is called a Tarawad, it was stated that the incidents of the Tarawad are so well-settled that it is not necessary to consider the case law, but it would be enough if some relevant passages from the book 'Malabar and Aliyasantana Law' by Sundara Aiyar are cited; and it was so done. It is not necessary to quote the passages. Suffice to say that according to learned author, the joint family in a Marumakkathayam Tarawad consists of a mother and her male and female children, and the children of those female children, and so on. The rights of the junior male members have thereafter been enumerated by stating ultimately that everyone is a proprietor and has equal rights.

A 8. The gift at hand being to female, let it be seen as to how such a  
 gift has been treated by the concerned High Courts of the country. In *M.P.*  
*Kunhamina v. M.P. Kunhambi*, ILR 32 Madras 315, the Court was called  
 upon to construct a gift which was by a husband to his wife and three  
 daughters, excluding the male members. The gift, however, was between  
 B the daughters and it was held, on construction of the document, that  
 descendants of one daughter were not excluded from inheriting the gifted  
 property because of the death of their ancestor before her sisters. In the  
 present case, we are not concerned with such a situation; nonetheless, the  
 decision is relevant as it states that there cannot be total dis-inheritance of  
 some of the donees. In *K.M. Kutty v. N.P. Ayissa*, ILR 51 Madras 574, the  
 C gift was by a husband to his wife and children. The wife, however, had some  
 children by former husband. The Bench opined that in such a situation the  
 donee did not take the property as Tarawad property. What is important  
 for our purpose is that this decision refers to *Kunnacha Umma v. Kutti*  
*Mammi Hajee*, ILR 16 Madras 241, which was founded on some principles  
 D laid down by the Privy Council, one of which is to the effect that when a  
 Marumakkathayam man's property is given to his wife and children,  
 without any expression of intention how they were to enjoy it, they must be  
 held to have taken it with incidents of property held by a Tarawad. As to  
 what is meant by a Tarawad was explained in *A.K. Haji v. I.P. Bi*, [1958]  
 KLT 815, stating that Tarawad means in law a Marumakkathayam family  
 E holding property as a joint-family with all the incidents of a joint-family  
 under Marumakkathayam Law.

9. It would also be useful to see as to how this aspect has been  
 explained in standard treatise. It has been stated as below in Mayne's  
 F Hindu Law at pages 1188 and 1189 of 12th Edition:

"In the matter of gifts, the question has often arisen whether a gift  
 is made to tavazhi as such or whether the donees take as tenants-  
 in-common. The ordinary presumption is that when properties are  
 given by way of gift to a woman and her children or her children  
 G alone following the Marumakkathayam or Allayasantana Law, the  
 property is taken by the donees with the incidents of tarwad  
 property. Only some of the members of a tavazhi cannot hold the  
 property with the incidents of tarwad property; hence when a gift  
 is made to them, they will take it as tenants-in-common unless  
 H there are circumstances to justify the inference that they took it

on behalf of the entire tavazhi. when property is given to the mother alone, when there are children, the presumption that she takes it on behalf of the tavazhi is rebutted." A

The author has then referred to section 48 of the Marumakkathayam Act which applied to transactions after 1st August, 1933; which laid down that when a person gives property to his wife alone, such property shall, unless a contrary intention appears, be taken as Tavazhi property by the wife. Under section 22 of the Travancore Nair Act of 1100 M.Y. (Malayalami Year), to which reference has been made by the High Court, a gift has to be held by the donees as tenancy in common. B

10. In K.S. Variar's 'Marumakkathayam and Allied Systems of Law in the Kerala State', it has been stated at page 91 of the 1st edition (1969) that the presumption in the Travancore State is that a gift in favour of mother alone is for the tavazhi. Similar view has been expressed by M.P. Joseph in his above-mentioned book at page 295 of the revised edition (1926) by stating that even though a gift is made in the sole name of the mother, all the children take the properties as Makkathayam. C D

11. All the above do not leave any doubt in our mind that under the gift in question, even if the same be construed to have been only for the benefit of Kochukunhi, all her three children had equal interest in the property. The High Court was, therefore, right in decreeing the suit of the plaintiff to one-sixth share of the suit property. E

12. The appeal is, therefore, dismissed. No order as to costs.

T.N.A.

Appeal dismissed.