PETITIONER:
KUNJU KESAVAN

Vs.

RESPONDENT:
M. M. PHILIP I. C. S. AND ORS.

DATE OF JUDGMENT:
08/05/1963

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
SARKAR, A.K.
SHAH, J.C.

CITATION:
1964 AIR 164 1964 SCR (3) 634
CITATOR INFO :
R 1968 SC1165 (27)
D 1971 SC2171 (7)
D 1978 SC1362 (25)
F 1989 SC1530 (18)

ACT:
Travancore Ezhava Act-Makkathayam property-Nature and incidents-Partibility-The meaning of the expression 'contrary intention' in s. 32 of the Act-The rights of issues' when there is exemption under s. 33 of the Act-Question of exemption not raised in written statement -No issue framed-But evidence led-Not objected by plaintiffs-Whether vitiate the trial-Valuation of the suit below twenty thousand-Certificate granted by the High Court under Art. 133 of the Constitution valid-Constitution of India, Art. 133-Travancore Ezhava Act, 1100 (Act, III of 1100), ss. 2, 18,19,32,33.

HEADNOTE:
The property in the suit originally belonged to one Bhagavathi Parameswaram who created an otti in favour of one Krishnan Marthandam for 3500 fanams (about Rs. 500/-). Subsequently the latter created a chittoti, Bhagavathi Parameswaram some years later (in 1163 M.E.) made a gift of the property to his wife Bhagavathi Valli. Bhagavathi Valli died in 1105 M.E. She bad an only son Sivaraman who was married to Parvathi Meenakshi and had a son named Vasudevan. Sivaraman left Travancore in 1096 M.E. Both sides are agreed that he died thereafter. But there is no aggreement as to the date of his death. &ad Vasudevan claiming
635
to be the heirs jointly sold the jenmom rights in 1123 M.E. to the present appellant. The appellant brought a suit for the redemption of the otti and recovery of possession of the property from the defendant (present respondent No. 1).
The defendant denied that Bhagawathi Valli ever got the jenmom right. He claimed to have obtained both the jenmom right as well as other rights. According to him on Bhagavathi Valli's death her sister B. Narayani and Narayani's daughter Gouri were heirs through whom he traced his title. He further contended that even if Meenakshi and

Vasudevan got any jenmom right they lost it by the auction sale in O.S. No. 36 of 1100 M. E. For these reasons it was contended that the plaintiff had no title to sue. It is admitted by both parties that the case is governed by the Travancore Ezhava Act, 1100.

The trial court and the first appellate court decreed the suit but the High Court reversed the decision of the courts below holding that the plaintiff had not obtained a valid title to the equity of redemption by the sale deed in his favour and was not entitled to redeem the property. The plaintiff thereupon appealed to this Court on a certificate granted by the High Court.

A preliminary objection was raised by the respondent about the competency of the certificate granted by the High Court. It was contended that since the suit was valued at 3500 fanams (Rs. 500/-) this valuation governed the suit for the purpose of the certificate and this value being below the prescribed minimum under Art. 133 of the Constitution the certificate was not competent. It was alternatively contended that if the valuation was more than Rs. 10,000 the trial court had no jurisdiction to try the suit.

It was contended on behalf of the appellant that the ordinary rule of law was that property was impartable and that s., 32 of the Act made a departure and imposed partibility on the Makkothayam property and the expression 'contrary intention' contemplated in s. 32 was an intention contrary to partibility and such an intention could not be spelled out from Ex. III the gift deed. It was contended that if the property was shared by Bhagavathi Valli with Sivaraman and Vasudevan, then Vasudevan would have the right to redeem the Otti as a person interested and so would the appellant, a transferee from him. Alternatively if the property became that of Bhagavathi Valli alone then Vasudevan would be entitled to succeed to the property left by Bhagavathi Valli by virtue of ss. 18

636

and 19 of the Act provided Bhagavathi Valli was not exempted from the operation of the Act under s. 33. It was further contended that since the question of exemption was not pleaded by the defendant (respondent) in his written statement and since no issue was framed the High Court ought not to have considered the notification put in by the respondent in his evidence purporting to prove that Bhagavathi Valli was exempted. Finally it was urged that the notification does not in fact prove that she was so exempted since her identity is not established by the notification.

Held that for the certificate to be competent the appeal must satisfy two tests of valuation. The amount or value of the subject matter of the suit in the court of first instance and the amount or value of the subject matter in dispute on appeal to this Court must both be above the mark. There are however cases in which the decree or final order directly or indirectly involves some claims or question to or respecting property above the mark. Such cases are also appealable. The word indirectly' in such cases coven the real value of the claims which is required to be determined quite apart from the valuation given in the plaint if the property was not required to be valued for the purposes of the suit on the market value. In the present case the High Court found the value to be Rs. 42,000/- and Rs. 80,000/- at the material times. The plaintiff was not required to value his plaint on the real or market value of the property but on the price for redemption. He had asked for possession of the property after redemption and the property as the High

Court has found is well above the mark in value. The certificate is competent. The suit as valued was properly laid in the court of first instance and in any case such an objection cannot be raised for the first time in this Court. The working of s. 32 does not justify the contention that by reason of the expression 'contrary intention' only impartibility could be imposed. What the law did was to define the rights on partition of makkathayam property and laid down that on partition the shares should be equal unless a contrary Intention was expressed. The gift deed Ex. III in the present case shows that the properties given to the donees are to be taken by each -exclusively.

Reading ss. 18 and 19 it follows that whether Sivaraman survived Valli or died before her Vasudevan would succeed as an issue within the expression 'how-low-so-ever' of the Explanation to s. 19 at least to a fractional interest in the property.

637

But this can only be if Bhagavathi Valli was not exempted from the operation of Part IV of the Act.

The parties went to trial, fully understanding the central fact whether the succession as laid down in the Ezhava Act applied to Bhagavathi Valli or not. The absence of an issue, therefore, did not lead to a material sufficient to vitiate the decision. The plea was hardly needed in view of the fact that the plaintiff stated in his replication that the "suit property was obtained as makkathayam property, by Bhagavathi Valli under the Ezhava Act". The subject of exemption from Part TV of the Ezhava Act, was properly raised in the trial Court and was rightly considered by the High Court.

The High Court was right in holding that the identity of Bhagavathi Valli had been established and that Bhagavathi Valli was exempted from the operation of the Ezhava Act (Part IV).

The present appellant. is not entitled to redeem the otti having never enjoyed the jenmom rights.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1 of 1962.

Appeal from the judgment and decree dated September 10, 1957, of the Kerala High Court in Second Appeal No. 42 of 1954 (I.T.)

T. S. Venkataraman and V. A. Seyid Muhammad, for the appellant.

A. V. Viswanatha Sastri, G. B. Pai, Shakuntala Sharm and K. P. Gupta for respondent No. 1.

1963. May 8. The judgment of the Court was delivered by

HIDAYATULLAH J.-This is an appeal on a certificate by the High Court of Kerala against its judgment and decree dated September 10, 1957. The suit out of which this appeal arises, was filed by the appellant Kunju Kesavan to redeem an Otti created by one Bhagavathi Parameswaran in favour of

638

one Krishnan Marthandan on 5.5.1091 M.E., for 3500 fanams. Subsequently, Krishnan Marthandan created some chittoti. Bhagavathi Parameshwaran made a gift of the property to his wife Bhagavathi Vailiyamma on 9.3.1103 M.E., by Exh. III. Bhagavathi Valli died on 4.11.1105 M.E. She had an only son Parameswaran Sivaraman who was married to Parvathi Meenakshi and had a son named Vasudevan. Sivaraman, according to the plaintiff, left Travancore in 1096 M.E., and both sides have taken it for granted that he died thereafter. Meenakshi and

Vasudevan, claiming to be the heirs, jointly sold the jenmom rights on 12.4.1123 M.E., to the appellant Kunju Kesavan, and he brought the present suit for redemption of the otti, offering to pay 3500 fanams in equivalent money and for improvements, if any, as determined by the court. The suit was valued at 3500 fanams (about Rs. 500/-) which was the amount of the otti, and the claim was for redemption of the otti and possession of the fields from the defendants who were in possession. The suit was resisted by the first defendant (respondent No. 1). Defendants 2 and 3 (respondents 2 and 3) filed a written statement, but do not appear to have taken much interest thereafter.

The first respondent admitted some of these facts. He, however, averred that the document executed by Bhagavathi Parameshwaran was not meant to be acted upon and Bhagavathi Valli and others never obtained any rights in the jenmom by Exh.III. He also contended that if Bhagavathi Valli got any rights, they were subject to a prior charge of the decree of the District Court, Trivandrum, in O. S. No. 36 of 1100 M.E., and that in an auction sale held on 3.4.1114 M. E., the jenmom rights were purchased by the decree-holders, who were the heirs of Krishnan Marthandan and from whom the first respondent obtained the sale deed. He claimed to have thus obtained the jenmom rights as also the otti rights.

639

The first respondent admitted that Sivaraman had left India in 1096 M.E., but denied the allegation that letters were received from him till II 00 M.E , or that till 1108 M E., some information was being received about him. He asserted that right from 1096 M.E., none heard from him or of him, and submitted that Sivaraman must have died in 1096 M.E., or was not alive on 9.3-1103 M.E., the date of the gift to Bhagavathi Valli. According to him, on Bhagavathi Valli's death, her sister Narayani and Narayani's daughter Gouri were heirs and Meenakshi and Vasudevan were not her heirs and thus they never got the jenmom rights. Alternatively, he contended that even if they did obtain any jenmom rights, they lost them by the auctionsale in O.S. No. 36 of 1100 M.E., to the auctionpurchasers. The first respondent, therefore. submitted that the transaction by sale in favour of the present appellant gave him no rights; on the other hand, as the auction-purchasers were allowed to continue in possession as full owners with the consent express or implied or the acquiescence of Vasudevan and Meenaksi, full title resulted to him.

The parties are Ezhavas, and in the absence of a special exemption under the Act, they would be governed by the' Travancore Ezhava Act, 1100 (Act III of 1100) in the matter of succession and partition. One of the contentions tried in the case relates to this exemption, it being contended that Bhagavathi Valli had applied for exemption from part IV of the Act, and was thus governed not by its terms but by the general Marumakkathayam law.,

The two courts below decreed the suit. The Temporary District Munsiff of Trivandrum held that the plaintiff was entitled to redeem the otti and valued the improvements at Rs. 1367/13/4. An appeal was filed by the present first respondent, and the other side cross-objected. The appeal and the crossobjection were dismissed. On further appeal by the

640

first defendant, the High Court reversed the decision of the two courts below, holding that the plaintiff had not obtained a valid title to the equity of redemption by the sale deed in his favour, and was not entitled to redeem the

property. The plaintiff has now appealed to this Court on a certificate by the High Court.

A preliminary objection has been raised about the competency of the certificate granted by the High Court. It is contended that the suit was valued at 3500 fanams, and this valuation governs the suit for the purpose of the certificate, and the amount or value being below the mark, the certificate was wrongly issued by the High Court and ought to be cancelled. Alternatively it is contended that if the valuation was more than Rs. 10,000, the trial court had no jurisdiction to try the suit.

The present appeal is against the judgment of the High Court which reversed the decision of the court below, and if the valuation was above the mark, the certificate was properly granted by the High Court since an appeal as of right would lie. An appeal must satisfy two tests of valuation. The amount or value of the subject-matter of the suit in the court of first instance and the amount or value of the subject-matter in dispute on appeal to this Court must both be above the mark. There are, however, cases in which the decree or final order involves directly or indirectly some claim or question to or respecting property above the mark. Such cases are also appealable. Ordinarily, the valuation in the plaint determines the valuation for the purposes of appeal. A plaintiff, who sets a lower value on a claim which he is required to value according to the real or market value, cannot be permitted to change it subsequently, because this would amount to approbation and reprobation. But in those cases in which the plaint is not required to be valued in

641

this way, a question may arise as to the proper value of the claim both in the court of first instance and on appeal to this Court. The word 'indirectly' in such cases covers the real value of the claim which is required to be determined quite apart from the valuation given in the plaint.

In this case, the High Court found the value to be Rs. 42,000 and Rs. 80,000 at the two material times. It is obvious that the plaintiff was not required to value his plaint on the real or market value of the property but on the price for redemption. He was not, therefore, concluded by the valuation given in the plaint. He had asked for possession of the property after redemption, and that property as the High Court hag found, is well above the mark in value. The certificate was, therefore, properly granted. The attack on the jurisdiction of the court of first instance must also fail. The suit as valued was properly laid in the court of first instance, and in any case, such an objection cannot be entertained now. The preliminary objection is, therefore, rejected.

The main question in this appeal is whether Meenakshi and Vesudevan had any title to the property and whether they could transmit any title to the appellant. This depends on whether the Ezhava Act applies or the ordinary Marumakkatha-yam law. The ordinary Marumakkathayam law has a system of inheritance in which the descent is traced in the female line. It is conceded that if the Marumakkathayam law is applicable, Meenakshi and Vasudevan, who were the daughter-in-law and son's son of Bhagavathi Valli, were-not heirs to her. The Ezbava Act was passed to define and amend, among others, the law of succession and partition among the Ezhavas. In its application, it excluded Ezhavas domiciled in Travancore, who were following Makkathayam. By s. 2 of the Ezhava

642

Act, the Act could be extended to Ezhavas who followed Makkathayam. No question has been raised before us that it was not so extended and the arguments proceeded on the assumption that it was, indeed, the answering respondent claimed that Bhagavathi Valli had opted out of part IV under s. 32 of the Act, and this could only be if the Act was applicable to her. The appellant contended. as we shall show presently, that Bhagavathi Valli was governed by the Ezhava Act.

'Makkathayam' means gift by the father. In the Ezhava Act, Makkathayam property is defined to mean property obtained from the husband or father by the wife or child or both of them, by gift, inheritance or bequest. The property in suit was gifted by Bhagavathi Parmeswaran to his wife Bhagavathi Valli, and obtained the character of makkathayam property. The first question, therefore, raised by Dr. Seyid Muhammed, counsel for the appellant, is that though the gift was to Bhagavathi Valli co nomine, it operated, under the law applying to makkathayam property, to confer equal benefits upon Bhagavathi Valli and her issue howlow-so-ever. Reference in this connection is made to s. 32 of the Act which makes a special provision for the partition of makkathayam property and provides:

> "32. Makkathyam property divisible among wife and children equally. Except where a contrary intention is expressed in the instrument of gift or bequest, if any, makkathayam property acquired after the date of the passing of this Act shall be liable to be divided among the wife and each of the children in equal shares :
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> Provided that, in the partition of makkathayam property, the issue how-low-so-ever of a
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> deceased child shall be entitled to only such share as the child itself, if alive would have taken."

According to the answering respondent, the settlement deed, Exh. III, gave the suit property exclusively to Valliyamma and some other property to the grandson Vasudevan and thereby evinced an intention contrary to the operation of s. 32. Dr. Seyid Muhammed submits that the ordinary rule of law was that the property was impartable and was always shared by a female of a marumakkathyam tarwad with her thavazhee, and cited a passage from M.P. Joseph's book on the Principles of Marumakkthayam Law (1926), pp. 52,53, in support of this contention. He also refers to the observations of a Division Bench in Narayanen Narayanen v, Parwathi Nangali (1), where it was held that a gift by the rather (known as makkathayam) to his wife was ordinarily intended to benefit the wife and the children of the donor and though the property was usually registered and acquired in the name of the mother, it was always held in common by them. He contends that s. 32 made a departure and imposed partibility on the makkathayam property and the only intention that must appear must be in favour of impartibility, and such an intention cannot be spelled out of Exh. III.

Section 32 makes the makkathayam property divisible among wife and children equally. The provision is in part VII which deals with partition. It is not possible to say that by the contrary intention only impartibility could be imposed. There is nothing to show that impartibility was the rule in respect of makkathayam property. The two passages only show that ordinarily the benefit went to the

thavazhee as a whole. What the law did was to define the rights on partition of makkathayam property and laid down that on partition the shares would be equal

(1) 5. T. L. R. 116.

644

unless a contrary intention was expressed. The reading suggested by Dr. Seyid Muhammed cannot be accepted as the only reading. If one goes by the document, Exh. III, it is clear that there was such an intention implicit in it. The donor gave some properties to his wife, and others to his grandson. His son was then unheard of for years. He thus divided his properties between his wife and grandson and the intention is manifest that each was to take exclusively.

Dr. Seyid Muhammed next contends that the property was either shared by Bhagavathi Valli with her son and son's son as shown in the proviso to s. 32, quoted above, or it belonged to her exclusively.In either case, be contends Vasudevan would have an interest and could transmit it to the appellant. He argues that if the property was shared by Bhagavathi Valli with Sivaraman and Vasudevan, then, Vasudevan would have the right to redeem the otti as a person interested, and so would the present appellant, as a transferee from him. Alternatively, if the property became that of Bhagavathi Valli alone, then, succession to that property would be governed by ss. 18 and 19 of the Ezhava Act, read with Explanation II, which explanation governs the whole of part IV where ss. 18 and 19 figure. These sections and the explanation read :

> "18. Devolution of self-acquired or separate property of a female. On the death of an Ezhava female, the whole of her self-acquired or separate property left undisposed by her at her death shall develove on her own thavazhee. If she dies leaving her surviving no members of her thavazhee but her husband and members of her mother's thavazhee, one-half of such property shall devolve on her husband and the other half on her mother's thavazhee. In the absence of the husband the mother's thavazhee shall take the whole; and in the absence of the
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> mother's thavazhee the husband shall take the whole."
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> "19. Devolution of such property in the absence of members of her or her mothers thavazhee or husband. On the death of an Ezhava female, leaving her surviving neither members of her thavazhee nor other members of her mother's thavazhee nor husband but only the thavazhee of her grandmother or of her other more remote female ascendants, her self-acquired or separate property left undisposed of by her at her death shall devolve on such thavazhee, the nearer excluding the more remote."
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> x x x x
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> "'Explanation II. The expression 'children' in the case of an intestate male and the expression 'thavazhee' in the case of an intestate female shall, for the purpose of Part IV of this Act, include the issue of such intestate male or female how-low-so-ever."

From the explanation, it would appear that the expression 'thavazhee' in the case of an intestate female includes her

issue how-low-so-ever, and the word 'issue' indicates both males and females. Reading this expression in connection with s. 18, Dr. Seyid Muhammed contends that on the death of Bhagavathi Valli, the whole of her separate property left undisposed of by her at her death, devolved on her own thavazhee, that is to say, her issue how-lowso-ever.

In this connection, a question of great nicety was also argued before us as to whether Sivaraman could be said to have survived Bhagavathi Valli or to have died earlier. In the absence of evidence, we need not embark upon an inquiry by the light of presumptions as to when Sivaraman can be said

646

to have died. In the document executed in favour of the answering respondent, Exh. R, dated 1-7-1121 M.E., it is quite clearly stated by the predecessors-in-title of the answering respondent that Sivaraman was then dead. This constitutes an admission which has neither been withdrawn nor shown to be incorrect, and is thus binding upon the answering respondent. It follows that whether Sivaraman survived Bhagavathi Valli or died before her, Vasudevan succeeded, as an 'issue' within the expression 'how-low-so-ever' of the Explanation, at least to a fractional interest in the property. He would thus be in a position to transfer that interest to the appellant, and the appellant would be a 'person interested' for the purpose of redeeming the otti. But this can only be if 'lie provisions regarding succession under the Ezhava Act were applicable to Valli.

Though in the pleadings, there is no mention that Bhagavathi Valli, had secured an exemption from the Ezhava Act, parties appeared to have joined issue on this subject. The answering respondent filed in the Court a copy of a Gazette notification which, so it was claimed, mentioned Bhagavathi Valli's name among the persons who were granted exemption from part IV of the Ezhava Act. Section 33, under which such an exemption from the Act could be claimed, reads :

> "33. (1) On an application made within six months from the commencement of this' Act-
> (i) by an individual member of an Ezhava tarwad with reference to the provisions of part IV,
> x x x x
> the Government may, after making such enquiry as may be necessary and on being
> 647
> satisfied as to the truth of the application, exempt by a notification in the Government Gazette such individual member.. ...from the operation of the said provisions of this Act."

The plaintiff was cross-examined about the address of Bhagavathi Valli to prove that it was the same as shown in the notification. Evidence was also led by the answering respondent to show that Bhagavathi Valli had applied for exemption and obtained it. The appellant did not lead any evidence to show the contrary.

It is contended before us that the notification or the deposition of the aforesaid witness cannot be looked into when there is no proper plea or issue about the exemption. It is contended that the plaintiff was taken by surprise when the High Court considered this point, as he did not get sufficient opportunity to rebut it, which he would have done if it had been pleaded and an issue had been framed. In our opinion, the parties understood that the only issue in the case was the application to Bhagavathi Valli of the rules of succession contained in part IV of the Ezhava Act. The

appellant was cross-examind regarding Bhagavathi Valli's address, and D.W.1, an advocate, gave evidence that Exh. II was the notification, which showed the exemption obtained by Bhagavathi Valli.

The trial judge assumed that Bhagavathi Valli had been exempted from the provisions of part IV of the Ezhava Act, but he felt that did not affect the devolution of makkathayam property according to the provisions of s. 32 of the Ezhava Act. He was, therefore, of the opinion that after Bhagavathi Valli's death, Bhagavathi Valli's sister Narayani and Narayani's daughter, Gouri, did not acquire any right in the property. In the appeal court, the learned District Judge observed that in the notification there were more

648

than one Bhagavathi Valli, and therefore, it was impossible to say whether Bhagavathi Valli, the donee under Exh. III, was at all mentioned in the notification.

We do not think that the plaintiff in the case was taken by surprise. The notification must have been filed with the written statement, because there is nothing to show that it was tendered subsequently after obtaining the orders of the court. The plaintiff was also cross-examined with respect to the address of Bhagavathi Valli, and the only witness examined on the side of the defendant deposed about the notification and was not cross-examined on this point. The plaintiff did not seek the permission of the court to lead evidence on this point. Nor did he object to the reception of this evidence. Even before the District judge, the contention was not that the evidence was wrongly received without a proper plea and issue but that the notification was not clear and there was doubt whether this Bhagavathi Valli was exempted or not. The parties went to trial fully understanding the central fact whether the succession as laid down in the Ezhava Act applied to Bhagavathi Valli or not. The absence of an issue, therefore, did not lead to a mistrial sufficient to vitiate the decision. The plea was hardly needed in view of the fact that the plaintiff made the following plea in the replication:

> "The suit property was obtained as makkathayam property, by Bhagavathi Valli, under the Ezhava Act. And as per the provisions in the said Act, the said property was obtained exclusively by Vasudevan, subsequent to the death of the said Bhagavathi Valli and Sivaraman."

and the notification was filed to controvert his allegation. In our opinion, the subject of exemption was properly raised between the parties and considered in the High Court and the courts below. The High

649

Court differed from the District Court with regard to the notification and held that Bhagavathi Valli was exempted from the operation of part IV of the Ezhava Act. We shall now consider whether the finding on this part of the case given by the District judge or that given by the High Court is correct.

Exh.II is a notification issued in 1102 M.E. It reads :

> "Whereas the undermentioned persons have applied to the Government, under Section 33 (1)(i) of the Travancore Ezhava Regulation, Act 3 of 1100 M.E, praying to exempt them from the provisions of Part IV of the said regulation, and whereas the Government have become convinced of the truth of their

application, on making enquiries.
The Government have exempted each of the following persons, from the provisions of Part IV of the Travancore Ezhava Regulation, Act 3 of 1100 M.E.
Huzur, Trivandrum. (By order)
8th January 1927 K. George
Chief Secretary to
Government."

"S. No. Full name of the person. Address.
170. Bhagavathi Valli belong- Thottuvarambu
ing to the branch of Bha-Bungalow, Kat
gavathi Bhagavathi of akampalli Paku
Pinarummoottu tarwad thi, Trivandrum
Taluk.
171. Bhagavathi Narayani of -do-
Pinarummootu tarwad
172. Narayani Gouri of -do-"
Pinarummootu tarwad

650

S. No. Full name of the person Address
"183. Narayanan Lakshmanan Vanchiyoor Pa-
of Pinarummototu kuthi, Trivand-
rum."
"185. Bhagavathi Valli of -do-
Pinarummoottu
186. Bhagavathi Narayani -do-

It was contended by the answering respondent that Bhagavathi Valli at No. 170 is this Bhagavathi Valli. His witness, Mathan Kuruvila, an advocate, deposed that Bhagavathi Valli shown at No. 170 was Bhaga vathi Valliamma and Bhagavathi Narayani at No. 171 was her sister and Narayani Gouri at No. 172 was Narayani's daughter. The plaintiff admitted that he had seen Bhagavathi Narayani on several occasions, that their house was called Thottuvarambu, that Pinarummoottu Veedu was the name of the tarwad house, that Thottuvarambu Veedu is in Katakam Palli Pakuthi, and that he did not know whether Gouri was also residing in Thottuvurambu Veedu. Dr. Seyid Muhammed refers to a number of documents in which the address of Bhagavathi Valli was shown as Pinarummoottu Veedu in Vanchiyoor Pathirikari Muri. These documents were of the years 1928 to 1938. They are exhibits C, D, K,L,M, Q and R. He contends that in all these documents except one (Exh. Q), the address of Bhagavathi Valli or of her sister was shown as Pinarummoottu Veedu in Vanchiyoor Pathirikari Muri which is not the address shown in Exh.II and that Bhagavathi Valli at No, 170 was not this Bhagavatht Valli. In Exh. Q, however, Bhagavathi Narayani, deposing in an earlier suit in 1110 M.E. (1935), gave

651

her address as "Pinarummoottu Veedu in Vanchiyoor Pathirikari Muri and now in Thottuvaramba Bungalow in Katakampulli Pakuthi" and stated that she had an elder sister by name Bhagavathi Valli who was residing in the Veedu. It is, therefore, clear that the tarwad had two places of residence, one Veedu in Vanchiyoor Pathirikari Muri, and the other, a bungalow called Thottuvaramba in Katakampalli Pakuthi. One of these addresses is given in Exh.II. It would, therefore, follow that the address as given in Exh.11 does not show that this was some other Bhagavathi Valli. Indeed the points which identify the suit Bhagavathi Valli with the Bhagavathi Valli mentioned at No. 170 are numerous. The name is correctly described. It is also a fact that she belonged to the Bhagavathi Bhagavathi branch. Further, she was of Pinarummoottu tarwad. Then

follow two other names, namely, Bhagavathi Narayani and Narayani Gouri who also belonged to the same branch and tarwad and who could be none other than her sister and-her niece. Even the address is correct. It is, therefore, quite clear that the High Court was right in holding that the identity had been established. The observation of the learned District judge that there were many Bhagavathi Vallis in the list is not borne out on the record of this case, because the only other Bhagavathi valli mentioned at No.'185 may or may not be the same Bhagavathi Valli whose name is mentioned in conduction with one Narayanan Lakshmanan of Pinarummoottu, Vanchiyoor Pakuthi, Trivandrum. In the other notification, under which exemption from part VII of the Act was notified, the 'branch of Bhagavathi Bhagavathi of Pinarummoottil tarwad was again shown to be at Thottuvaramba Bungalow in Katakampalli Pakuthi in Trivandrum Taluk, while Pinarummoottil tarwad was shown as at Pathirikari Muri in Vanchiyoor Pakuthi in Trivandrum. This again proves that the tarwad had two houses which were occupied by different branches.

652

We are satisfied that the exemption under the Act has been duly proved in this case. Since Bhagavathi Valli was not subject to part IV of the Ezhava Act, it is obvious that under the pure Marumakkathayam law, Meenakshi and Vesudevan were not her heirs, but Bhagavathi Narayani and her daughter Gouri. Of these Gouri Narayani joined in executing the document 'R' in favour of the answering respondent, which was executed by the legal representatives of the original mortgagee. In our opinion, therefore, the High Court was right in holding that the present appellant was not entitled to redeem the otti, having never enjoyed the jenmom rights. The appeal, therefore, must fail and is dismissed with costs.

Appeal dismissed.