IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

AS.No. 166 of 2002 (D)

(OS.NO. 21/1994 OF SUB COURT, MAVELIKKARA DATED 07-11-2001)

APPELLANT/1ST DEFENDANT:

TRAVANCORE DEVASWOM BOARD,
NANTHANCODE,THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY,
NANTHANCODE, THIRUVANANTHAPURAM.

BY SRI.P.G.PARAMESWARA PANICKER,SENIOR ADVOCATE
ADVS. SRI.R.SUDHEER
SRI.P.GOPAL
SRI.ANCHAL C.VIJAYAN SC FOR TDB
SRI.D.SREEKUMAR, SC, TDB

RESPONDENT(S)/PLAINTIFFS & DEFENDANTS 2 TO 14 ,16 TO 22, 25 TO 30 :

1. VASUDEVAN BHATTATHIRI NARAYANAN BHATTATHIRI,
MALAYALA BRAHMIN, RESIDING IN VADAKKEMOODAMPADY ILLOM,
RAMAPURAM MURI, KEERIKAD P.O.

2. VISHNU BHATTATHIRI USHA V.BHATTATHIRI,
MALAYALA BRAHMIN, RESIDING IN MOODAMPADY ILLOM,
PLAPPUZHA, HARIPAD P.O.

3. VISHNU BHATITHIRI VASUDEVAN BHATTATHIRI,
MALAYALA BRAHMIN, RESIDING AT VADAKKE
MOODAMPADI ILLOM, RAMAPURAM, KEERIKAD P.O.

4. VASUDEVAN BHATTATHIRI
LEELA ANTHARJANAM OF DO. DO.

5. VASUDEVAN BHATTATHIRI VISHNU BHATTATHIRI OF DO. DO.

6. VASUDEVAN BHATTATHIRI VASUDEVAN BHATTATHIRI OF DO. DO.

7. VISHNU BHATTATHIRI SREEKUMARAN BHATTATHIRI,
MALAYALA BRAHMIN, RESIDING AT VISHNU BHAVAN,
THOTTAKKADU P.O., KALLAMBALAM, ATTINGAL.

8. SREEKUMARAN BHATTATHIRI RAMADEVI
ANTHARJANAM OF DO. DO.

<u>A.S.NO.166/2002</u>

9. SREEKUMARAN BHATTATHIRI VISHNU
BHATTATHIRI, OF DO. DO.

10. VISHNU BHATTATHIRI VISHNU BHATTATHIRI,
MALAYALA BRAHMIN, RESIDING AT MOODAMPADI ILLOM,
PLAPPUZHA, HARIPPAD.

11. VISHNU BHATTATHIRI LEELA DEVI ANTHARJANAM, OF DO. DO.

12. VISHNU BHATTATHIRI UMESH V. BHATTATHIRI OF DO. DO.

13. VISHNU BHATTATHIRI NANDAKUMAR BHATTATHIRI,
MALAYALA BRAHMIN, RESIDING AT VADAKKEMOODAMPADY ILLOM,
RAMAPURAM, KEERIKKAD P.O.

14. NANDAKUMAR BHATTATHIRI INDIRA DEVI BHATTATHIRI, OF DO. DO.

15. NANDAKUMAR BHATTATHIRI MANOJKUMAR, OF DO. DO.

16. PURUSHOTHAMAN BHATTATHIRI RAMADEVI
ANTHARJANAM OF DO. DO.

17. PURUSHOTHAMAN BHATTATHIRI MEERA P.R.,
MALAYALA BRAHMIN, OF DO. DO.

18. PURUSHOTHAMAN BHATTATHIRI, MINU P.R.,
OF DO. DO. (MINOR) (REPRESENTED BY MOTHER 16TH
DEFENDANT AS GUARDIAN).

19. VISHNU BHATTATHIRI MADHUSOODANAN
BHATTATHIRI, RESIDING AT DO. DO.

20. VISHNU BHATTATHIRI USHA ANTHARJANAM,
OF DO. DO.

21. MADHUSOODANAN BHATTATHIRI VINU BHATTATHIRI,
RESIDING AT DO. DO. (MINOR)
(EREPRESENTED BY FATHER 19TH RESPONDENT AS GUARDIAN)

22. MADHUSOODANAN BHATTATHIRI MANU
BHATTATHIRI, (MINOR) (REPRESENTED BY FATHER
19TH RESPONDDENT AS GUARDIAN).

23. RADHADEVI ANTHARAJANAM, W/O.DAMODHARAN
BHATTATHIRI JAYANARAYANAN BHATTATHIRI, RESIDING AT
USHUS, THEKKEVILA P.O., QUILON-16

24. JAYA DAMODHARAN BHATTATHIRI,
RESIDING AT DO. DO.

25. JAYA PRASANTH BHATTATHIRI,OF DO.DO.

26. JAYA PRATHEEP BHATTATHIRI, OF DO. DO.

A.S.NO.166/2002

27. DAMODHARAN BHATTATHIRI DAMODHARAN BHATTATHIRI, MALAYALA BRAHMIN, RESIDING AT KOTTARATHIL MADOM, RAMAPURAM, KEERIKKAD P.O.

28. DAMODHARAN BHATTATHIRI HARIKUMAR BHATTATHIRI, OF DO. DO.

*ADDL.R29 TO R31 IMPLEADED

*ADDL.R29: SREE BHUVANESWARI HINDAVA SAMITHI, RAMAPURAM SOUTH,REG.NO.65/95 KEERICKKAD VILLAGE, SRO, KEERIKKAD, ALAPPUZHA DISTRICT, REPRESENTED BY ITS PRESIDENT, GOVINDAN UNNITHAN BHASKARAN PILLAI, S/O.R.G.UNNITHAN, AGED 47 YEARS, KUZHIKKATTU THEKKETHIL, RAMAPURAM MURI, KEERIKKAD VILLAGE, ALAPPUZHA DISTRICT.

*ADDL.R30: SREE BHUVANESWARI HINDAYA SAMITHI, RAMAPURAM NORTH, REG.NO.65/95 OF S.R.O. KEERICKAD VILLAGE, REPRESENTED BY ITS PRESIDENT MADHAVAN GOPALAKRISHNAN, PANACHAMOOTTIL HOUSE, KEERIKKAD VILLAGE, RAMAPURAM, ALAPPUZHA DISTRICT.

*ADDL.R31: SREEBHUVANESWARI HINDAVA SAMITHI RAMAPURAM, STANATHINAKATHA KARA, REG.NO.65/95 OF S.R.O., KEERICKKAD, REPRESENTED BY ITS PRESIDENT SANKARAN KRISHNANKUTTY, THAZHASSERIL PUTHENPURAYIL,RAMAPURAM KEERIKKAD VILLAGE, ALAPPUZHA DISTRICT.

*ADDL.R29 TO R31 ARE IMPLEADED AS PER ORDER DATED 24/8/09 IN IA.NO.2485/2009.

R1 & R2 BY SRI.T.KRISHNAN UNNI,SENIOR ADVOCATE
ADVS. SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SMT.MEENA.A.
SMT.SANJANA R.NAIR
SRI.JAYKAR.K.S.
SRI.RAHUL VARMA
SRI.V.S.ROBIN
R10 TO R12 BY ADV. SRI.C.M.MOHAMMED IQUABAL
R23,R25 & R26 BY ADVS. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
R27 & R28 BY ADV. SRI.P.SREEKUMAR
ADDL.R29 TO R31 BY ADV. SRI.B.RENJITHKUMAR
BY ADV. SRI.K.S.MANU (KOLLAM)

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 26-02-2015, THE COURT ON 05-03-2015 DELIVERED THE FOLLOWING:

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P.B.SURESH KUMAR, J.

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A.S. No.166 of 2002

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Dated 5th March, 2015.

J U D G M E N T

The Travancore Devaswom Board (hereinafter referred to as `the Board' for short) has come up in this appeal challenging the decision of the court of the Subordinate Judge, Mavelikara in O.S. No.21 of 1994. The Board is the first defendant and respondents 1 and 2 are the plaintiffs in the suit.

2. The suit property is a temple and the movables therein. The plaintiffs and defendants 2 to 30 are the surviving members of a Namboothiri Illom known as Vadakke Moodampadi Illom, hereinafter referred to as 'the Illom' for short. According to the plaintiffs, the suit temple, which is known as Bharanikkavu Devaswom as also Ramapuram Devaswom, was left in common as a trust property by the members of the Illom and the same was being managed by the Illom as per the terms of Ext.A1 partition deed. It is also their case that the terms of Ext.A1 partition deed pertaining to the management of the suit temple were later modified as per

Ext.A2 decree in O.S No.108 of 1115 ME of the District Court, Alapuzha. According to the plaintiffs, while so, during February, 1976, three members of the Illom had surrendered possession and management of the suit temple to the Board by an unregistered document. It is the case of the plaintiffs that the suit temple being one owned by the Illom, it could not have been transferred at all without the concurrence of all adult members of the Illom and the document executed by the aforesaid persons in favour of the Board is void *ab initio* and not binding on the Illom. The plaintiffs have therefore, sought a declaration that the suit temple belong to the trust of which they are also beneficiaries and the surrender of the suit temple to the Board is void *ab initio* and not binding on them. They have also sought a decree for recovery of possession of the suit temple from the Board on behalf of the trust with mesne profits and costs.

3. The Board contested the suit, contending *inter alia*, that the management of the suit temple was assumed by the Board on a request made by four senior members of the Illom in accordance with the provisions in the Travancore

Cochin Hindu Religious Institutions Act, 1950, hereinafter referred to as `the Act', for short. The averment in the plaint that the suit temple is a trust owned by the Illom was denied in the written statement filed by the Board. On the other hand, it was contended in the written statement that the Illom had only Uraima right over the temple.

4. The trial court, on an elaborate consideration of the materials on record, found that the suit temple is a private trust of which the plaintiffs are also beneficiaries and that the assumption of the management of the suit temple by the Board is invalid and not binding on the trust. The court also found that the plaintiffs are entitled to get recovery of the suit temple on behalf of the trust and the Illom on the strength of their title. On the basis of the said findings, the suit was decreed as prayed for. Hence, this appeal by the Board.

5. In this appeal, the Board filed an interlocutory application as I.A.No.1980 of 2013 seeking leave to amend the written statement. It is stated in the affidavit filed in support of the said application that details regarding the history of the temple, the rituals and ceremonies performed in the temple,

the role of the general public in the administration of the temple etc., which were relevant in the context of deciding the issues arose for consideration in the suit, were omitted to be stated in the written statement filed by the Board and therefore, the written statement needs to be amended, in the circumstances, to incorporate the said facts. The Board has also filed I.A.No.177 of 2014 seeking orders to admit in evidence the certified copies of the relevant extracts of the settlement registers pertaining to the properties of the Illom which are dealt with in Ext.A1 partition deed.

6. Heard Senior Counsel Sri.P.G.Parameshwara Panicker for the appellant and Senior Counsel Sri.T.Krishnanunni and Sri.George Varghese Perumpallikuttiyil for the respondents.

7. The learned Senior Counsel for the appellant contended that the suit temple is a public temple and the finding to the contrary rendered by the court below is incorrect and unsustainable. It was pointed out by him that private religious endowments are founded by private individuals/families in the properties owned by them for the

spiritual benefit of the individuals concerned or the members of the family, as the case may be. As such, according to him, the nature of the temple can be ascertained by verifying the revenue records pertaining to the properties of the endowment. The learned Senior Counsel has then drawn my attention to the descriptions of the properties in Ext.A1 partition deed and also to the entries relating to some of the said properties in the extracts of the settlement registers concerned, which are produced as additional documents in the appeal and contended that the properties held by the temple and the Illom are distinct and separate and it cannot, therefore, be contended that the temple belongs to the Illom. The learned Senior Counsel has also contended that the assumption of the management of the temple by the Board is strictly in accordance with Section 37(a) of the Act. The learned Senior Counsel has further contended that since the suit temple is a public temple, even if it is found that the assumption of the management of the temple by the Board is not in accordance with the provisions of the Act, the plaintiffs are not entitled to the decree sought for by them in the suit.

8. The learned Senior Counsel for the plaintiffs, relying on the recitals in Exts.A1 and A2, contended that the suit temple is a private temple owned by the Illom. He has brought to my notice Ext.B2, the extract of the relevant page on the settlement register pertaining to the property of the temple, and contended that the person named as "Pattadhar" in the settlement register is a member of the Illom. He has also brought to my notice Ext.A3 judgment of the civil court in which it was held that the properties of the Devaswom belong to the Illom. According to him, the contention that the suit temple is a public temple is not a contention raised before the court below. He has also pointed out that the said contention does not arise for consideration in this appeal. He has also, relying on the decision of the Apex Court in **Bishwanath v. Thakur Radha Ballabhli** (AIR 1967 SC 1044) that even if it is established that suit temple is a public temple, the plaintiffs are entitled to recover the temple from the Board. The learned counsel for respondent Nos.23, 25 and 26 also, relying on the decision of the Apex Court in **Vemareddi Ramaraghava Reddy v. Konduru Seshu Reddy** (AIR 1967 SC 436)

contended that the plaintiffs are entitled to file a suit for declaration that the alienation of the suit temple and its properties by the persons in administration is invalid.

9. As noticed above, the specific case of the plaintiffs is that the suit temple is a private religious endowment owned by the Illom and the assumption of the management of the temple by the Board is illegal and unsustainable. Section 37 of the Act conferring power on the Board to assume management of a Hindu Religious Endowment reads thus :

> "37. Assumption of management of Hindu Religious Endowments by Board--(1) The Board may assume the management of Hindu Religious Endowments in the following cases :-
>
> (a) On the application and the request by a majority consisting of not less than two-thirds of the trustees, or of the donors in cases where the donors have reserved to themselves the power of appointing and dismissing trustees.
> (b) On the refusal of the trustees to continue in the trusteeship or on their own admission of incapacity to continue in the trust management.
> (c) In cases where the Ruler of Travancore had the right to take part in the management by appointment of certain officers or servants according to existing usages, if the trustees have failed to carry on their duties properly and in the best interests of the institution.
> (d) In cases where the Ruler of Travancore had the right to

succeed to the right of management, in part, by reason of escheat of trustees, if the remaining trustees have failed to carry on their duties properly and in the best interests of the institution.

(e) In cases of proved mismanagement although the institutions do not fall under clause © or clause (d) of this sub-section.

Explanation -- The word "donors" includes the legal representatives of the donors.

(2) Notwithstanding anything contained in sub-section(1) the Board may, instead of assuming management, exercise such superintendence in the management over any institution to which this part applies as to best fulfil the objects of the trust, if the trustees have failed to carry on their duties properly and in the best interest of the institution.

(3) The Board may make rules for the purpose of carrying into effect the provisions contained in sub-section(2).

(4) Any person deeming himself aggrieved by an order of assumption passed on any of the grounds mentioned in clauses ©, (d) and (e) of sub-section (1) of this section may within a period of six months from the date of the publication of the order of assumption in the Kerala Government Gazette, institute in the District Court, within whose jurisdiction the subject matter is situate, a suit against the Board to set aside such order :

Provided that subject to the result of the suit, if any, the order of assumption shall be final."

Hindu Religious Endowment, as defined in Section 2(b) of the Act does not include a Hindu religious institution belonging to and under the sole management of a single family. Section 2(b) of the Act reads thus:

2(b) "Hindu Religious Endowment" means--

(i) every Hindu temple or shrine or other religious endowment dedicated to, or used as of right by, the Hindu community or any section thereof; and

(ii) every other Hindu endowment or foundation, by whatever local designation known, and property, endowments and offerings connected therewith, whether applied wholly to religious purposes or partly to religious and partly to charitable or other purposes, and every express or constructive trust by which property or money is vested in the hands of any person or persons by virtue of hereditary succession or otherwise for such purposes;

but shall not include any Hindu religious institution belonging to and under the sole management of a single family :

Provided that, where the management of a religious institution has passed into the hands of several branches by division among the members of the original family, the institution may nevertheless be considered as being in the management of a single family for the purpose of this Part."

Section 37 of the Act confers power on the Board to assume the management of only a Hindu Religious Endowment as defined under the Act. The fact that the temple was under the management of the Illom till its management was assumed by the Board is not disputed. According to the plaintiffs, the Illom was administering the affairs of the temple as its owner and according to the Board, the temple was being managed by the

Illom in exercise of their Uraima right. As such, the moot question arises for consideration is as to the nature of the temple. Since the Hindu Religious Endowment as defined under the Act does not include a Hindu religious institution belonging to and under the sole management of a family and since the fact that the temple was under the management of the Illom is not disputed, if it is found that the temple belong to the Illom, its management cannot be assumed at all by the Board. On the other hand, if it is found that the suit temple is a public temple, in so far as the suit is instituted based on title, whether the plaintiffs are entitled to the decree sought for also needs to be considered.

10. Coming to the facts of the case, PW1, the first plaintiff has deposed that he does not know anything about the origin of the temple. He also deposed that he does not know who has founded the temple. He further deposed that he cannot assert that the temple is founded by a member of the Illom. It is now settled that in a case where the origin of an endowment is lost in antiquity or shrouded in mystery, the court has to rely on circumstantial evidence regarding the user of the

temple to ascertain its nature. In **Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan** (AIR 1963 SC 1638), the Apex Court held that where evidence in regard to the origin of the temple is not clearly available, the answers to the questions namely, (1) Is the temple built in such an imposing manner that it may prima facie appear to be a public temple?, (2) Are the members of the public entitled to an entry in the temple?, (3) Are they entitled to take part in offering service and taking Darsan in the temple? (4) Are the members of the public entitled to take part in the festivals and ceremonies in the temple? (5) Are their offerings accepted as a matter of right? etc. would be relevant in the matter of ascertaining the nature of the temple. In **Radhakanta Deb v. Commissioner of Hindu Religious Endowments, Orissa** (AIR 1981 SC 798) the Apex Court held that in the case of private religious endowment, its properties would vest in the beneficiaries, whereas in the case of public temples, the properties would be held by the deity. In **State of W.B. v. Sri Sri Lakshmi Janardan Thakur** [(2006) 7 SCC 490], the Apex Court laid down the following tests for ascertaining the nature of the temple :-

> "15. In order to ascertain whether a trust is private, the following factors are relevant:
>
> (*1*) If the beneficiaries are ascertained individuals.
>
> (*2*) If the grant has been made in favour of an individual and not in favour of a deity.
>
> (*3*) The temple is situated within the campus of the residence of the donor.
>
> (*4*) If the revenue records or entries suggest the land being in possession of an individual and not in the deity. On the other hand an inference can be drawn that the temple along with the properties attached to it is a public trust:
>
> (*1*) If the public visit the temple as of right.
>
> (*2*) If the endowment is in the name of the deity.
>
> (*3*) The beneficiaries are the public.
>
> (*4*) If the management is made through the agency of the public or the accounts of the temple are being scrutinised by the public."

It is thus evident that if the entries in the revenue records suggest that the properties of the endowment are in the name of the deity, it can be inferred that the temple is a public temple. The properties included as items 1 to 9 and 11 in schedule I, item Nos.18 to 24 in schedule II and item Nos.1 to 10 of schedule III of Ext.A1 are described as "Brahmaswom thanathu". The properties included as items 13, 14, 18, 19, 20 and 21 in schedule I and the property described as item Nos.1, 2, 5 to 13 and 16 of schedule II of Ext.A1 are also described as "Ramapuram Devaswom Pattom". The learned Senior counsel for the appellant has brought to my notice the corresponding entires in relation to some of the properties which are described as “Ramapuram Devaswom Pattom” in Ext.A1, in the extracts of the settlement registers produced before this Court. The entry in relation to the said properties in the settlement registers is “Bharanikkavu Devaswom thanathu”. Ext.B2 is the settlement register in relation to the property where the temple exists. The category shown in Ext.B2 is “Bharanikkavu Devaswom vaka thanathu”. “Shabdathaaraavali” gives the meaning of “Brahmaswom” as "Bramanante swathu." Likewise, "Shabdathaaraavali" gives the meaning of Devaswom as “Kshethram vaka swathu”. It is thus evident that the properties of the Illom and the properties of the temple are distinct and separate. It is also evident that the Illom has even taken on lease the properties of the Devaswom, after the settlement.

11. In the absence of any evidence to show as to how the Illom obtained title to the various properties described in settlement registers as “Devaswom vaka

thanathu", the only inference that can be drawn is that the properties belong to the deity. The said inference *prima facie* indicates that the temple is a public temple. A similar view has been taken by this Court in the judgment in A.S.No.525 of 1995 in relation to another temple. Paragraphs 11 and 13 of the said judgment read thus :

> "11. In the erstwhile Travancore settlement took place more than 100 years ago. Exts.A1 and A2 are copies of the settlement registers. In these registers the plaint schedule properties are shown to be the properties of Mannadi Bhavathy. It is further shown that it is 'thanthu' property. The name of Mangalath tarwad does not find a place in the settlement registers. In the Travancore State Manual published by the Government of Kerala it is shown that 'thanathu' lands were originally government lands. 'Thanathu' lands were lands for which no pattas were issued at the last settlement and which were enjoyed by the tenants either on payment of the rent fixed at the settlement or on Kuthakapattam given by the department of government. (See Travancore State Manual, Vol.III Ch.XV, Pages 192 and 193 published by government of Kerala in 1996). In Malayalam 'thanathu' means ownership. (See Malayalam-English Dictionary published by NBS). Exts.A1 and A2 indicate that the plaint schedule properties were originally government lands, which later came in the ownership of Mannadi Bhagavathy temple.
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>
> 13. In the absence of any evidence to prove how the defendants' tarwad got title to the temple and the properties, the only inference that may be drawn from Exts.A1 and A2 revenue

records is that they belong to the deity, those entries being the best evidence available."

12. The impugned judgment indicates that the court below has arrived at the finding that the suit temple is a private trust property of the plaintiffs, solely based on the recitals in Ext.A1 partition deed and Ext.A2 decree. A partition deed will not create a right in favour of a party over a property referred to therein. Only a pre existing right can be the subject matter of a partition deed. Likewise, Ext.A2 is only a decree in a suit among the members of the family, concerning the administration of the temple. The question whether the temple is a private or public cannot be decided from these documents. The court below has also placed reliance on Ext.B2 extract of the settlement register pertaining to the temple property to hold that the temple is a private one, for, the name of the "Pattadhar" shown in the document is a member of the Illom. In so far as the Uraima right of the Illom over the temple is conceded, merely for the reason that the name of the Ooralan is mentioned as "Pattadhar" in Ext.B2, it cannot be inferred that the property belong to the Illom, especially when the category

of the property is shown in the document as “Bharanikkavu Devaswom Vaka Thanathu”. The court below has also placed much reliance on the tax receipts issued in respect of the properties of the temple in the name of Vishu Bhattathiri. I have referred to the settlement register in relation to the said property. In the settlement register, the property is shown as the property owned by the Devaswom. The subsequent payment of tax in the name of a member of the Illom may not alter the character of the temple. That apart, Ext.A8 is the tax receipt in respect of the temple property of the year 1969. In Ext.A8, the ownership of the property is shown as “Ramapuram Devaswom Vaka”. Another material relied on by the court below to hold that the suit temple is a private temple is Ext.A3 judgment. Ext.A3 is the judgment in a suit filed by a few members of the Illom on behalf of the Illom for cancellation of an order passed by the District Collector, Alappuzha, based on an application filed by the second defendant in that suit agreeing to surrender a few properties of the temple in favour of the State on receipt of compensation payable in yearly instalments. That order was passed as if the temple is a public temple. Under the Jenmi Karam Payment (Abolition) Act, 1960, compensation for religious institutions of a public nature will have to be given in instalments in the nature of annuities and in other cases lump sum payments will have to be made. The complaint of the plaintiffs in the said suit was that the disputed properties do not belong to any religious institution of a public nature and that they belong to the Devaswom which is owned by the Illom of the plaintiffs and that therefore, the Illom is entitled to a lump sum compensation for the properties. It is seen that it was held in that judgment that the properties which were subject matter of the suit were not owned by the Devaswom of a public nature and consequently, the suit was decreed. A perusal of Ext.A3 judgment would indicate that the said judgment was rendered solely based on Ext.A2 decree in the suit filed by the members of the family concerning the administration of the temple. I have already held that Ext.A2 decree may not be of any relevance in the context of deciding the issue whether the suit temple is a public temple or not. Further, Ext.A3 judgment was rendered in a suit between the Illom and the State.

13. As noticed above, though the moot question arose for consideration in the suit was as to the nature of the temple, the court below has not framed a proper issue for adjudication of the said question. True, the said issue was implied in issue Nos.1 and 12 framed by the court below for trial, but the evidence let in by the parties do not indicate that they have understood the said issues in the right perspective. Though the parties to the suit were not sure as to the origin of the temple, evidence is not seen let in to prove the appearance of the temple, the participation of the public in the affairs of the temple including its management, the participation of the public in the various rituals and ceremonies carried on in the temple, the entries in the revenue records pertaining to the properties of the temple etc. As noticed above, even the Board has come up with appropriate pleadings only before this Court in this appeal. The materials on record are therefore, not sufficient to take a final decision on the issue as to the nature of the temple. As pointed out earlier, if it is found that the temple is a public temple, whether the plaintiffs are entitled to the decree sought for in the suit is also an issue which should

have been framed for trial. In so far as the materials on record are not sufficient to decide the issue as to the nature of the temple and in so far as all the relevant issues were not framed for trial by the court below, I am of the view that the judgment and decree impugned in this appeal are to be set aside and the suit has to be remitted to the trial court for fresh disposal.

14. The contention of the learned Senior Counsel for the plaintiffs that the Board had not contended before the court below that the suit temple is a public temple cannot be accepted. Though it is not stated in the written statement that the suit temple is a public temple, the averment in the plaint that the suit temple is a private temple is denied by the Board in the written statement filed by them. It is also stated in the written statement that the Illom is administering the temple in exercise of their Uraima right.

15. As far as the contention that the suit as framed is maintainable even if it is found that the suit temple is a public temple, I am of the view that since the matter is being remitted to the trial court to consider the nature of the temple, it is for

the trial court to consider that contention.

In the result, the appeal is allowed, the judgment and decree impugned in this appeal are set aside and the suit O.S.No.21 of 1994 is remitted to the trial court for fresh disposal. The court below is directed to re-frame the issues as indicated in this judgment and decide the suit afresh after affording the parties an effective opportunity to adduce evidence. Since the matter is being remitted to the trial court for fresh disposal, I.A.No.1980 of 2013 filed by the Board is allowed. The plaintiffs will be at liberty to file additional pleadings, if so advised. The parties are directed to appear before the court below on 25.5.2015.

Sd/-
P.B.SURESH KUMAR, JUDGE.

tgs/kvs

// true copy //

PA TO JUDGE.