IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

AS.No. 525 of 1995 (D)

AGAINST THE JUDGMENT AND DECREE IN OS 15/1984 IN THE COURT OF THE SUBORDINATE JUDGE, PATHANAMTHITTA

APPELLANTS/PLAINTIFFS 1, 3 TO 8 AND 10.
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1. NARAYANA PILLAI MADHAVAN PILLAI,
ERAVINNAKUZHI PUTHEN VEEDU,
MANNADI, KIZHAKKU KALAIKKUM PADINJARA MURI,
KADAMPANAD VILLAGE.

2.PADMANABHAN UDAYABHANU,
SARADA BHAVANAM,
MANNADI PADINJARA THAZHATHU MURI,
KADAMPANAD VILLAGE.

3.NEELAKANTAN NAIR SIVASANKARAN NAIR,
KOIPURATHU VEEDU, MANNADI KIZHAKKE KOLAIKKUM
PADINJARA MURI, KADAMPANAD VILLAGE.

4.P.VASUDEVAN POTTI, PLAKKATHU MADATHIL,
MEMMANADI MURI, KADAMPANAD VILLAGE

5.PARAMESWARAN ACHARI SUDHAKARAN,
THARAYIL VEEDU, MANNADIMUKKU MURI,
KADAMPANAD VILLAGE.

6.MADHAVAN NAIR GOPALAN NAIR,
MARAVOORAZHIKATHU,
MANNADIMUKKU MURI,
KADAMPANAD VILLAGE.

7.MADHAVAN KUMARAN, PLAPALLIL VEEDU,
MANNADI KALAIKKUM KIZHAKKE MURI,
KADAMPANAD VILLAGE

8.KOCHUKUNJUNNITHAN GOPINATHAN UNNITHAN,
VAZHAPPALLI THOTTATHIL, MANNADIMUKKU MURI,
KADAMPANAD VILLAGE.

BY ADVS. SRI.K.MOHANAKANNAN
SRI.V.B.RAMANUNNI MENON

RESPONDENTS/DEFENDANTS:PLAINTIFFS 2 AND 9
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1. KALI GOMATHI AMMA,
MANGALATHU VEEDU,
MANNADIYIL PADINJARA KIZHAKKEMURI,
KADAMPANAD VILLAGE, ADOOR TALUK.

2.N.K.SURENDRANATHAN ALIAS KERALAN KRISHNAN,(DIED)
S/O.KALIGOMATHI AMMA, -DO-DO-

(IT IS RECORDED THAT N.K.SURENDRANATHAN ALIAS KERALAN KRISHNAN, THE 2ND RESPONDENT DIED AND NO IMPLEADMENT OF LR'S IS NECESSARY, AS THE OTHER TRUSTEES ARE ADQUATELY REPRESENTED THE TRUST, AS PER ORDER DTD 22.7.2005 IN MEMO NO.8313/05)

3.M.K.RAMANUJAN ALIAS KERALAN KRISHNAN,
S/O.KALI GOMATHI AMMA, DO-DO-(DIED)

(IT IS RECORDED THAT THE 3RD RESPONDENT DIED AND NO LEGAL REPRESENTATIVES ARE TO BE IMPLEADED TO REPRESENT THE DECEASED 3RD RESPONDENT AS PER ORDER DTD.8.12.05 IN MEMO 13855/06)

4.GOMATHI AMMA SULOCHANA, D/O.KALI GOMATHI AMMA,
-DO-DO-

5.SUDHAKARA PANICKER ALIAS KERALAN KRISHNAN.
-DO-DO-

6.THANKAMMA SARALA KUMARI, DO-DO-

7.THANKAMMA CHANDRAMATHI OF -DO-DO-

8.THANKAMMA NALINI BAI, DO-DO-

9.RAMAN NAIR TULASIDHARAN PILLAI,
KOLLANTAYYATHU VEEDU,
MANNADIYIL PADINJARU KIZHAKKE MURIYIL,
KADAMBANAD VILLAGE.

10.SANKAREN PILLAI PRASSANNAN PILLAI,
ALUMINNA KALAYIL, MANNADI MURI,
KADAMBANAD VILLAGE

ADDL.RESPONDENTS: R11 TO R15 ARE IMPLEADED

R11.SHYAMALA DEVI,
MADHAVA MANDIRAM,
KUNNIDA, KURUMBAKAVU,
PATHANAMTHITTA

R12.RAJAMOHINI AMMA,
NEELESWARAM,
THEDUVATHUR,
KOTTARAKKARA

R13.AMBIKA DEVI,
AMBIKA VILASOM,
MANNADI(P.O), PATHANAMTHITTA.

R14.BHAMAKUMARI AMMA,
UZHUVATHY VEEDU,
MANNADI (PO),
PATHANAMTHITTA.

R15.SREEKALA.S,
KOMBUVEETTIL,
MANNADI (P.O),
PATHANAMTHITTA.

(ADDITIONAL RESPONDENTS R11 TO R15 ARE IMPLEADED AS PER ORDER DTD.7.8.2001 ON CMP NO.6325 OF 2000)

INTERVENERS IN I.A.NO.1754/2014

1.RAJENDRAN PILLAI,
S/O.RAMACHANDRAN PILLAI,
SREE VALSAM,
MEMANNADY, MANNADY PO,
KADAMBANAD VILLAGE,
ADOOR TALUK, PATHANAMTHITTA TALUK

2.PARAMESWARAN NAIR,
S/O.GANGADHARAN NAIR,
KIZHAKKEPATHIRAPALLY,
NADUVILEMURI, MANNADY PO,
KADAMBANAD VILLAGE,
ADOOR TALUK, PATHANAMTHITTA DISTRICT

INTERVENERS IN I.A.NO.703 OF 201

1.B.MOHANKUMAR, S/O.P.R.BHARATHAN PILLAI,
AGED 43 YEARS,
RESIDING AT MANAPPALLIL HOUSE,
MANNADY PO, KADAMPANAD,
ADOOR.

2.G.MOHANENDRA KURUP,
S/O.N.GOVINDAN NAIR,
KUNNINMEL KALIYILUVILA, MANNADY PO,
KADAMPANAD, ADOOR.

3.RAMESHKUMAR, S/O.SANKARANARAYANAN PILLAI,
KAVUNGAL, MANNADI PO, ADOOR.

4.SELVARAJ, S/O.NARAYANAN ACHARI,
PRAMAIKKAL, MANNADY, ADOOR.

R BY ADV. SRI.VPK.PANICKER
R5 BY ADV. SRI.A.KRISHNAN
R5,6,8, BY ADV. SRI.K.JAGADEESCHANDRAN NAIR
R2 BY ADV. SMT.LEENA KRISHNAN
R9 BY ADV. SRI.P.NAIJAL KUMAR
R7 BY ADV. SRI.M.NARENDRA KUMAR
R4,7 BY ADV. SRI.R.SUDHIR
R4,7 BY ADV. SMT.LEENA KRISHNAN
R4 BY ADV. SRI.B.KRISHNA MANI
R4 BY ADV. SRI.RAJESH VIJAYAN
R16 to 20 BY ADV. SRI.BINOY VASUDEVAN
BY ADV. SMT.M.M.DEEPA (ADV.COMMISSIOMER)
R21 to 23 ADDL. BY ADV. SRI.R.RAJASEKHARAN PILLAI
R21 to 23 BY ADV. SMT.SABINA JAYAN
INTERVENERS IN I.A.NO.1754/2014 BY ADV. SRI.ANCHAL C.VIJAYAN

R13 BY ADV. SRI.K.JAYAKUMAR (SR.)
R11 -R 15 BY ADV. D.KISHORE
INTERVENERS IN I.A.NO.703 OF 2011- R16 to 19 BY ADV. SRI.T.KRISHNAN UNNI (SR.)

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 10.11.2014, THE COURT ON 15-01-2015, DELIVERED THE FOLLOWING:

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AS.No. 525 of 1995 (D)
APPENDIX

APPELLANTS ANNEXURES: NIL

RESPONDENTS' ANNEXURES:

ANNEXURE-I:- COPY OF PROCEEDINGS DTD 16.7.2010 NOMINATING THE ADDITIONAL 12TH RESPONDENT AS NOMINEE OF MANGALATH FAMILY

ANNEXURE-II:- COPY OF COMMUNICATION DTD 25.10.2010

AS PER I.A.NO.354/11

ANNEXURE A: COPY OF THE ORIGINAL STATEMENT DTD 28.2.2010 SIGNED BY SMT.GOMATHI SULOCHANA AMMA AND SMT.THANKAMMA SARALA KUMARI.

ANNEXURE-A1: COPY OF INTIMATION OF NOMINATION TO THE TRIAL COURT DTD.28.9.2010.

ANNEXURE-A2: COPY OF STATEMENT DTD 7.1.2011 FILED BEFORE THE SUB COURT, PATHANAMTHITTA.

ANNEXURE-A3: COPY OF STATEMENT FILED BEFORE THE SUB COURT, PATHANAMTHITTA ON 8.2.2011.

ANNEXURE-A4: COPY OF BROACHER PUBLISHED BY THE TEMPLE AUTHORITIES.

ANNEXURE-A5: COPY OF STATEMENT OF ACCOUNT MAINTAINED BY THE PETITIONER.

ANNEXURE-A6: COPY OF STATEMENT OF ACCOUNT.

I.A.NO.1050 OF 2011

ANNEXURE-I:- FAMILY CHART

ANNEXURE-II:- ORDER ON CMP 848/02 DTD.26.2.2002

I.A.NO.354/2011 & I.A.NO.4314/2010

ANNEXURE A1: INVENTORY SHOWING THE ARTICLES KEPT IN THE LOCKER.

ANNEXURE A2: LETTER DTD 21.3.2011 BY ADVOCATE COMMISSIONER TO THE MANAGER, STATE BANK OF TRAVANCORE, ENATH BRANCH.

ANNEXURE A3: LETTER DTD 28.3.2011 ISSUED BY THE MANAGER, STATE BANK OF TRAVANCORE, EANTH BRANCH.

ANNEXURE A4: ACKNOWLEDGEMENT DTD 21.3.2011 ISSUED BY SMT.BHAMAKUMARI AMMA.

ANNEXURE A4(a): ACKNOWLEDGEMENT DTD 22.3.11 ISSUED BY SMT.BHAMAKUMARI AMMA.

ANNEXURE A4(b): ACKNOWLEDGEMENT DTD 23.3.2011 ISSUED BY

SMT.BHAMAKUMARI AMMA.

ANNEXURE A4(c): ACKNOWLEDGMENT DTD 24.3.2011 ISSUED BY SMT.BHAMAKUMARI AMMA.

ANNEXURE A4(d):ACKNOWLEDGMENT DTD 25.3.2011 ISSUED BY SMT.BHAMAKUMARI AMMA.

ANNEXURE A4(e):ACKNOWLEDGMENT DTD 26.3.2011 ISSUED BY SMT.BHAMAKUMARI AMMA.

ANNEXURE A4(f):ACKNOWLEDGMENT DTD 28.3.2011 ISSUED BY SMT.BHAMAKUMARI AMMA.

ANNEXURE A5:ACKNOWLEDGMENT DTD 28.3.2011 ISSUED BY SMT.BHAMAKUMARI AMMA & OTHERS.

<u>I.A.NO.4055 OF 2011</u>

ANNEXURE-I: COPY OF PROCEEDINGS DTD 16.7.2010 NOMINATING THE ADDITIONAL 4TH PETITIONER HEREIN AS NOMINEE OF MANGALATH FAMILY.

ANNEXURE-II: COPY OF PROCEEDINGS DTD.14.8.2011 NOMINATING THE ADDITIONAL 4TH PETITIONER HEREIN AS THE NOMINEE OF THE MANGALATHU FAMILY.

ANNEXURE R14(a): COPY OF FAMILY CHART.

ANNEXURE R14(b): COPY OF ADVOCATE COMMISSION REPORT DTD.19.12.11

ANNEXURE R14(c): COPY OF PASS BOOK DTD.22.2.2011.

ANNEXURE A: LETTER DTD 25.2.2013 ADDRESSED TO THE MANAGER, STATE BANK OF TRAVANCORE, ENATH BRANCH.

ANNEXURE B: STATEMENT OF ACCOUNT DTD.5.4.2013 PERTAINING TO THE PERIOD FROM 1.4.2012 TO 5.4.2013 ISSUED BY THE CHIEF MANAGER, STATE BANK OF TRAVANCORE, ENATH BRANCH.

ANNEXURE C: STATEMENT OF ACCOUNT DTD.5.4.2013 PERTAINING TO THE PERIOD 25.2.2013 TO 5.4.2013 ISSUED BY CHIEF MANAGER, STATE BANK OF TRAVANCORE, ENATH BRANCH.

ANNEXURE D: CONCISED LETTER DTD.5.4.2013 ISSUED BY THE CHIEF MANAGER, STATE BANK OF TRAVANCORE, ENATH BRANCH.

ANNEXURE E: ACKNOWLEDGEMENT DTD.5.4.2013 ISSUED BY THANKAMMA SARALAKUMARI.

ANNEXURE F: LETTER DTD.5.4.2013 ISSUED BY THE SECRETARY, MANNADI SERVICE CO-OPERATIVE BANK LTD.NO.3849, MANNADI.P.O.

<u>I.A.NO.1939 OF 2013</u>

ANNEXURE-I: COPY OF JUDGMENT DTD.21.10.2011 IN O.S.107/2006 OF SUB COURT, PATHANAMTHITTA.

ANNEXURE-II: COPY OF DECREE DTD.21.10.2011 IN O.S.NO.107/2006 OF SUB COURT, PATHANAMTHITTA.

I.A.NO.1085/2014

ANNEXURE-I: COPY OF ORDER DTD.4.10.1995 IN CMP 4090/95 IN A.S.525/1995 OF THIS COURT.

ANNEXURE II: COPY OF JUDGMENT DTD.2.4.1991 IN CMA 16/1991 OF THIS COURT.

ANNEXURE III: COPY OF COMPLAINT DTD.7.5.2014 SUBMITTED BY R15 BEFORE THE DISTICT POLICE CHIEF.

ANNEXURE III(a): COPY OF ACKNOWLEDGEMENT RECEIPT ISSUED FROM THE OFFICE OF DISTRICT POLICE CHIEF EVIDENCING THE RECEIPT OF ANNEXURE-III

ANNEXURE IV: COPY OF COMPLAINT DTD.7.5.2014 SUBMITTED BY 5TH PETITIONER BEFORE THE DISTRICT PLICE CHIEF.

ANNEXURE IV(a):COPY OF ACKNOWLEDGMENT RECEIPT ISSUED FROM THE OFFICE OF DISTRICT POLICE CHIEF EVIDENCING THE RECEIPT OF ANNEXURE-IV

ANNEXURE V: COPY OF COMPLAINT DTD.7.5.2014 SUBMITTED BY THE MEMBERS OF THE MANGALATHU THARAVAD BEFORE THE DISTRICT POLICE CHIEF.

ANNEXURE-V(a): COPY OF THE ACKNOWLEDGEMENT RECEIPT ISSUED FROM THE OFFICE OF DISTRICT POLICE CHIEF EVIDENCING THE RECEIPT OF ANNEXURE-V

ANNEXURE-VI: COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHOOMI DAILY DTD 19.5.2014.

ANNEXURE-VII: COPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY DTD.19.5.2014

I.A.NO..../2014 IN A.S.NO.525 OF 1995

ANNEXURE O: COPY OF JUDGMENT IN O.S.NO.229/1983 DATED 23.12.1986 ON THE FILES OF MUNSIFF'S COURT, ADOOR.

ANNEXURE P: COPY OF JUDGMENT IN A.S.NO.177/1987 DTD 6.9.1989 ON THE FILES OF DISTRICT COURT, PATHANAMTHITTA.

ANNEXURE Q: COPY OF VIGILANCE ENQUIRY REPORT IN VE 06/11/PTA DTD 20.1.2014 ISSUED FROM THE OFFICE OF THE STATE PUBLIC INFORMATION OFFICER, VIGILANCE AND ANTICORRUPTION BUREAU THIRUVANANTHAPURAM.

I.A.NO.1754/2014

ANNEXURE A: COPY OF ORDER D3-13605/2011 DTD 23.9.2013 ISSUED BY TAHSILDAR, ADOOR

ANNEXURE B: COPY OF AGREEMENT EXECUTED BY DEFENDANTS/RESPONDENTS 5,6 AND 7 WITH THE MANNADY PAZHAYAKAVU DEVI KSHETRA SAMRAKSHANA SAMITHY REGISTER NO.P-369/2001 DTD.22.8.2001.

ANNEXURE-C: COPY OF NOTICE PUBLISHED IN CONNECTION WITH THE ASHTAMANGALYA DEVA PRASHNAM CONDUCTED ON 29.10.2001 IN THE MANNADY PAZHAYAKAVU DEVI TEMPLE.

ANNEXURE-D: COPY OF NOTICE PUBLISHED BY THE SAMITHI FOR THE SPECIAL

POOJAS, CONDUCTED ON 17.8.2004 AT THE MANNADY DEVI TEMPLE.

ANNEXURE-E: COPY OF ORDER GO(RT) NO.634/2005/F& WLD DTD.23.11.2005 ISSUED BY THE FOREST AND WILD LIFE DEPARTMENT.

ANNEXURE F: COPY OF REQUEST MADE BY SMT.RADHAMONY, SWEEPER OF THE TEMPLE TO THE SECRETARY OF THE SAMITHI DTD.17.2.2008 FOR ENHANCEMENT OF SALARY AND BONUS.

ANNEXURE G; COPY OF ORDER NO.C.1409/2008 DTD 23.2.2008 ISSUED BY THE DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, THIRUVANANTHAPURAM.

ANNEXURE H: COPY OF NOTICE ISSUED BY THE SAMITHI IN CONNECTION WITH THE COPPER INSTALLATION VAZHIPAD DTD 7.10.2009

ANNEXURE I: COPY OF NOTICE ISSUED BY SAMITHI FOR THE DEDICATION OF NADAPANTHAL OF THE PAZHAYAKAVU DEVI TEMPLE DTD.10.2.2010.

ANNEXURE J: COPY OF ORDER NO.C 1410/2010 DTD.11.3.2010 ISSUED BY DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES, THIRUVANANTHAPURAM.

ANNEXURE K: COPY OF BILL ISSUED BY THE BHARATH SANCHAR NIGAM LIMITED TO THE SECRETARY PAZHAYAKAVU DEVI TEMPLE.

ANNEXURE L: COPY OF LICENCE ISSUED BY THE KERALA POLICE FOR THE USE OF LOUD SPEAKER IN FAVOUR OF SECRETARY, PAZHAYAKAVU DEVI TEMPLE.

ANNEXURE M: COPY OF NOTICE PUBLISHED BY THE SAMITHI FOR UCHABALI FESTIVAL OF 2014.

ANNEXURE N: COPY OF PROCEEDINGS ISSUED BY THE DISTRICT COLLECTOR, PATHANAMTHITTA VIDE NO.B.3/19842/2014 DTD 10.6.2014.

/TRUE COPY/

P.S.TO JUDGE

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K.ABRAHAM MATHEW J.

A.S.No.525 of 1995

Dated this the 15th day of January, 2015

JUDGMENT

The plaintiffs are residents of Mannadi in Kadambanad village in Adoor Taluk. They are worshipers of Mannadi Bhagavathy Temple. The temple is a public temple. The plaint schedule properties belong to the temple. The administration of the temple happened to be in the hands of Mangalath tarwad, to which the defendants belong. They have some rights to conduct certain rituals in the temple. They are only trustees. The main festival in the temple is 'Uchabali' and it is conducted by the public. The income from the properties and the temple can be used only for the purposes of the temple. But the defendants misappropriated the income for their own use and they do not maintain any accounts. On these allegations the plaintiffs representing the worshippers prayed for removal of the defendants from the management of the temple and for framing a scheme for its administration and for a direction to the defendants to account for the income from the properties and the temple for three years prior to the institution of the suit.

2. The second defendant alone filed a written statement. His contention is that the temple and the properties are in the ownership and possession of Mangalath tarwad and the defendants reside in the house in the premises of the temple. The main ritual is 'Kalamezhuthum Pattum' and it is conducted by the tarwad.

Nivedyam is offered by the tarwad and the deity is their family deity. The tarwad has allowed the public to worship in the temple. The offerings made at the temple are given to the tarwad. The contributions received from the public are spent for the purposes of the temple. The defendants are not liable to account for the income. The second respondent prayed for dismissal of the suit.

3. The learned Sub Judge after the trial came to the conclusion that the temple is a private temple of the defendants' tarwad and the plaintiffs are not entitled to any of the reliefs prayed for in the suit. The judgment and the decree are challenged in this appeal.

4. Heard the learned counsel Sri.Mohanakannan and V.B.Raman Unni appearing for the appellants, learned Senior counsel Sri.K.Jayakumar and Sri.K.Jagadeesachandran Nair appearing for the respondents. I also heard learned senior counsel Sri.T.Krishnan Unni; and Sri.Anchal C.Vijayan who filed applications for impleadment of strangers.

5. Certain facts are admitted. The management of the Bhagavathy temple at Mannadi has been with the Mangalath tarwad for several decades. The public are allowed to worship in the temple. The temple gets contributions from the public.

6. Learned Senior counsel Sri.Jayakumar submits that in Kerala there is no presumption that temples are public temples though it is not so in other parts of India; all temples in Kerala are

open to the public. He would submit that merely because public are allowed to worship, the temple does not become a public temple. He relies on the observations in 'Malabar and Aliyasanthana Law' written by Sundara Aiyar. He also places reliance on the various decisions of the Supreme Court including **Jadunath Roy and others v. Parameswar Mullick and others (AIR 1940 Privy Council 11)**,**Sri.Govindlalji v. State of Rajasthan (AIR 1963 SC 1638)** and **Pratapsinhji N.Desai v. Deputy Charity Commissioner, Gujarat & others (AIR 1987 SC 2064)** The learned counsel Sri.Jagadeesachandran Nair also places reliances on decisions of the Privy Council and of the Supreme Court in support of his arguments that merely because public are allowed to worship in a temple the court should not come to the conclusion that it is a public temple and dedication should not be inferred easily. He has brought to my notice the decisions of the Privy Council in **Mundacheri Koman v. Thachangat Puthan Vittil Achuthan Nair and others (AIR 1934 PC 230)**, **Babu Bhagwan Din and others v. Gir Har Saroop and others (AIR 1940 PC 7)** and of the Supreme Court in **The Bihar State Board of Religious Trust, (Patna) v. Mahanth Sri.Biseshwar Das (AIR 1971 SC 2057)**, **Shri Vallabharaya Swami Varu(Deity) of Swarna v. Deevi Hanumancharyulu and others (AIR 1979 SC 1147)**, and of this Court in **Sree Kandakarna Kshethra v. Karunakara Thandar (1994 (2) KLT 246)**.

7. Learned Senior counsel for the appellants does not dispute the above proposition of the respondents. He has invited my attention to a catena of decisions of the Supreme Court which lay down the tests to determine whether a temple is a public or private temple. Some of the important decisions relied on by him are **Deoki Nandan v. Murlidhar and others (AIR 1957 SC 133)**, **Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and others (AIR 1960 SC 100)**, **Sri.Govindlalji v. State of Rajasthan (AIR 1963 SC 1638)** and **Goswami Shri Mahalaxmi Vahuji v. Shah Ranchhoddas Kalidas(Dead) and others (AIR 1970 SC 2025)**. He also places reliance on the observations in the **Mayne's Treatise on Hindu Law and Usage** and in the **Malabar & Aliyasanthana Law** by Sundara Aiyar.

8. The tests to determine whether the temple is public or private have been summed up in **Mayne's Treatise on Hindu Law** (**17th Edn.Ch.28 pages 1576 and 1577**) as follows:

> If
> 1. the beneficiaries are ascertained individuals,
> 2. the grantor 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. the revenue records or entries suggest the land being in possession of an individual and not in the deity
> it is a private temple.
> On the other hand, if the following conditions are satisfied it is a public temple (1) The public visit the temple as of right 2) The endowment is in the name of deity 3) The

> beneficiaries are the public, 4) The management is made through the agency of the public or the accounts of the temple are being scrutinized by the public.

9. The second defendant relies on Ext B1 partition deed executed by the members of his tarwad to prove that the temple and the properties belong to his tarwad. Ext B1 was executed in 1123 M.E corresponding to 1948 A.D. The partition deed mentions that the temple and the properties are the properties of the tarwad. Provision has been made for their administration. It is on the basis of this document the learned Sub Judge held that the temple and the properties belong to the tarwad.

10. There cannot be any quarrel about the proposition that a partition deed cannot create a right in favour of the members of a family for the first time in a property over which it has no title, right or interest. Only a pre-existing right can be the subject matter of a partition deed. It is very strange that Ext B1 partition deed does not mention how the tarwad acquired title to the the temple or the properties. The second defendant has not been able to explain the source of the right of the tarwad to the temple and the properties. Merely because there is a mention in the partition deed that the temple and the properties belong to the tarwad, it does not get any title to them. The learned Sub Judge went wrong in holding that Ext B1 partition deed proves the title of the tarwad to the temple and the properties.

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 Bhagavathy. It is further shown that it is 'thanathu' 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.

12. The evidentiary value of the entries in revenue records has been discussed by the Supreme Court in various decisions. As observed by the Supreme Court in **State of Andhra Pradesh v. Hyderabad Potteries (P) Ltd. & another (AIR 2010 SC 2760)** the entries in revenue records alone will not prove title to the property. But at the same time in **E.Parasuraman (Dead) by LRs.**

v. V.Doraiswami (Dead) by LRs.(AIR 2006 SC 376) the apex court held that the entries in revenue records may raise a presumption as to the title of the property though they do not conclusively confer title.

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.

14. It may also be noticed that the survey number of the properties given in Ext B1 partition deed is different from those of the plaint schedule properties. Learned counsel Sri.Anchal C.Vijayan submitted that the survey number given in Ext B1 is conspicuously absent in Exts A1 and A2 Settlement Registers and there is no property comprised in the said survey number and the survey number is imaginary.

15. Sri.T.Krishnan Unni, learned counsel for the petitioners in the impleading application submits that the defendants have no case that the tarwad was entitled to exclude the public from any function and it also fully supports the view that the temple is a public temple. I think there is much weight in the submission. In **Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and others (AIR 1960 SC 100)** a three Judge of the Supreme Court has made the following observation:

> "Similarly, when user by the public generally to the extent to which there is a worshipping public in the locality is established, it is not unreasonable to presume that the user by the public was as of right, unless there are circumstances clearly suggesting that the user must have been permissive or that the authorities in charge of the temple have exercised such arbitrary power of exclusion that it can only be ascribed to the private character of the institution".(emphasis supplied)

This also lends assurance to the conclusion that Mannadi Bhagavathi temple is a public temple.

16. The defendants are only trustees of the temple. There is no dispute that they do not maintain an account. Their definite case is that they are not bound to account to anyone. As trustees of the public temple they should have maintained proper accounts and should have used its income only for the purposes of the temple. They are guilty of mismanagement of the affairs of the temple. They are liable to be removed from the administration of the temple.

17. It is also the argument of the learned counsel for the respondents that deity is a necessary party and the failure to implead it is fatal. In **Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and others (AIR 1960 SC 100)** the Supreme Court took the view that in a suit for declaration that the deity and the properties attached to the temple are not under a public trust but are the properties of the plaintiff the deity is a necessary party. The principle is applicable to the facts of the case

though it is the plaintiffs in this case who allege that the temple is a public temple. In **Govindan Nair v. Gopalakrishna Sharma (1988 (1)KLT 739)** this court also took the view that in a suit for framing a scheme for administration of the properties of a temple the deity is a necessary party. I accept the argument of the learned counsel that the suit is bad for nonjoinder of the deity.

18. The learned counsel for the appellants made a request that the matter may be remanded to enable the plaintiffs to implead the deity as a party to the suit. I think the request is reasonable.

In the result, the judgment and the decree of the lower court are set aside and the matter is remanded. The parties will appear before the trial court on 12.2.2015. The plaintiffs shall file application for impleadment along with application for consequential amendment as provided in Order 1 Rule 10(4) of the Code of Civil Procedure within two weeks of their appearance in the lower court. The impleading applications and other interlocutory applications are closed. The lower court will appoint a receiver for the temple and its properties till the suit is disposed of.

K.ABRAHAM MATHEW,
JUDGE

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The court noticed the mistakes in referring to the advocates appearing for the parties and ordered on 16.1.2015 correction of the mistakes. Accordingly, the mistakes were corrected.