

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

CRP.NO. 21 OF 2014

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AGAINST THE ORDERIN OS 7/2010 OF ADDITIONAL DISTRICT COURT-I, TRIVANDRUM
DATED 23-07-2013**

PETITIONERS/DEFENDANTS 1 TO 4:

- 1. PERAPPOORU DEVI TEMPLE TRUST
REPRESENTED BY ITS SECRETARY, S.P.SAJIKUMARAN NAIR
AGED ABOUT 42 YEARS,
RESIDING AT 'SAJAS', AYANIKKAD, KUDAPPANAKUNNU P.O.
THIRUVANANTHAPURAM-695 043.**
- 2. PERAPPOORU DEVI TEMPLE TRUST,
REPRESENTED BY ITS PRESIDENT, K.KOCHU NARAYANAN NAIR,
AGED ABOUT 75 YEARS
RESIDING AT PARVATHY VILASOM, POOMALLIYOORKONAM
PEROORKADA P.O., THIRUVANANTHAPURAM-695 005.**
- 3. PERAPPORU DEVI TEMPLE TRUST,
REPRESENTED BY ITS TREASURER, RAJESH
S/O. DAMODHARAN PILLAI, AGED ABOUT 35 YEARS,
RAJIVAM, PERAPOOR
MUKKOLA P.O., THIRUVANANTHAPURAM-695 044.**
- 4. G.KRISHNAN NAIR, AGED ABOUT 56 YEARS
S/O. GOPALA PILLAI, RESIDING AT 'NILA', KUMBIVILA
MUKKOLA P.O., THIRUVANANTHAPURAM-695 044.**

**BY ADVS.SRI.G.KRISHNAKUMAR
SMT.P.M.NASEEMA
SRI.D.R.BALAKRISHNA PRABHU**

**RESPONDENTS/PLAINTIFFS & ADDITIONAL DEFENDANTS 5 TO 14 IMPEADED IN THE
SUIT:**

- 1. PHARIKUMAR, AGED 50 YEARS
S/O. PADMANABHA PILLAI
FOUNDER MEMBER OF THE TRUST DEED
RESIDING AT VADAKKEVILA, KUSAVARAKKAL
MUKKOLAKKAL P.O., THIRUVANANTHAPURAM-695 044.**
- 2. MAHESH KUMAR M.S., AGED 35 YEARS
S/O. MADHAVAN NAIR, HEMA BHAVAN, PERAPPOORU
MUKKOLAKKAL P.O., THIRUVANANTHAPURAM-695 044.**

CONT...

3. SREEKUMAR K., AGED 28 YEARS
S/O. KARUNAKARAN NAIR, ESWARIMANGALAM, VADAKKEVILA
PERAPPORU, MUKKOLAKKAL, THIRUVANANTHAPURAM-695 044.
4. CHITROD KUMAR, AGED 33 YEARS
S/O. K.M.THAMPI, "LEELA VIHAR", CHITTIRA NAGAR
POOMALLIYOORKONAM, PEROORKADA P.O.
THIRUVANANTHAPURAM-695 005.
5. SURESH KUMAR, AGED 49 YEARS
S/O. SEKHARAN NAIR, "SOORYA SREE", CHEGASSERY VEEDU
KUDAPPANAKKUNNU-695 043.
6. V.S.ARUN KUMAR , AGED 31 YEARS
S/O. SASIDHARAN NAIR, MANASWANT, MUKKOLAKAL P.O.
THIRUVANANTHAPURAM-695 044.
7. NARENDRA MOHAN V., AGED 32 YEARS
S/O. MOHANAKUMARAN NAIR, UMA NILAYAM
KUDAPPANAKKUNNU P.O., THIRUVANANTHAPURAM-695 043.
8. THULASI
S/O. SOMAN, THRIVENI GARGAN, PATHIRAPPALLI
KUDAPPANAKKUNNU P.O., THIRUVANANTHAPURAM-695 043.
9. C.CHANDRAN NAIR
S/O. CHELLAPPAN PILLAI, ABHILASH BHAVAN, GOWRI NAGAR
PERAPPOORU, MUKKOLAKKAL, MUKKOLA P.O.
THIRUVANANTHAPURAM-695 044.
10. AJAYAKUMAR B.
S/O. BALAN, KUDAPPATTU VEEDU, PERAPPOORU
MUKKOLAKKAL, MUKKOLA P.O., KUDAPPANAKKUNNU
THIRUVANANTHAPURAM-695 044.
11. GOPAKUMARAN NAIR K.
S/O. KRISHNAN NAIR, SANDHYA RAGAM
KUDAPPANAKKUNNU P.O., THIRUVANANTHAPURAM-695 043.
12. ANILKUMAR M.
S/O. MADHAVAN VAIDHYAN, AMBUJA VILASOM
MUKKOLAKKAL P.O., THIRUVANANTHAPURAM-695 044.
13. V.SIVAN
S/O. VELUPILLAI, V.S.BHAVAN, KALIYIL VILA MALAMEL NADA
MUKKOLAKKAL P.O., THIRUVANANTHAPURAM-695 044.

R1 TO R3 BY ADV. SRI.R.S.KALKURA
R4 TO R7, R11 TO R13 BY ADV. RAJU SEBSTIN VADAKKEKARA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

AS

A.HARIPRASAD, J.

C.R.P.No.21 of 2014

Dated this the 10th day of June, 2015

ORDER

Petitioners are defendants 1 to 4 in O.S.No.7 of 2010 pending before the learned Additional District Judge, Thiruvananthapuram. Challenge in this revision is levelled against an order passed by the learned Additional District Judge on the question of maintainability of the suit.

2. Heard the learned counsel for the petitioners and the learned counsel for the contesting respondents/plaintiffs.

3. The suit is filed under Section 92 of the Code of Civil Procedure, 1908 (in short 'CPC') seeking removal of petitioners 1 to 4 from the management of the temple described in the plaint schedule and for other reliefs. The temple administration was being run under the supervision of elder members of a family by name Perappooru. Subsequently, a society was formed in the year 1983 and it was registered under the provisions of

the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955. Thereafter, in the year 1993, a trust deed was registered in respect of the administration of temple. It is the allegation of the plaintiffs that the present administrators of the temple are acting in an autocratic manner and they are mis-managing the temple properties. According to the plaintiffs, the defendants, without any authority, created an Udampadi in the year 2008 against the original trust deed and against the interests of the temple.

4. The petitioners (defendants) contended that the suit is not maintainable on the ground that the temple is not a trust, but a society registered under the above said Act of 1955. Hence a suit without complying with the provisions of Section 25 of the Act of 1955 is not maintainable. Learned Additional District Judge considered the arguments advanced on both sides and entered a finding that the suit is maintainable. Aggrieved by the same, the defendants have come up in this revision. Learned counsel for the revision petitioners contended

that the impugned order is not sustainable essentially on two points. Firstly, the learned District Judge ought to have found that the suit is not one falling within Section 92 CPC. It is an admitted case that the temple was a private temple at one point of time exclusively belonging to a family. Learned counsel for the respondents read out portions of the plaint to urge a contention that later the public started contributing to the administration of the temple and they started worship in the temple. Thereafter, according to the learned counsel for the respondents, the temple has become a religious institution of public nature. The respondents would contend that the society was formed only after the nature of the temple had been transformed into a public temple. Therefore, the society can, at the most, claim only a right of administration on the temple. Per contra, the learned counsel for the petitioners submitted that no trust was formed before the formation of a society. It is a property belonging to a society which cannot be made over to a trust without taking recourse of the provisions in the Act

of 1955.

5. The question to be resolved in this case is whether the temple in dispute is a public religious charity or a private temple. It is well settled that sanction under Section 92 CPC can be granted merely looking at the pleadings in the plaint. It is also settled that leave granted on frivolous or reckless allegations is not conclusive and can be revoked later after evidence is adduced. (See **R.M.Narayana Chettiar and another v. N.Lakshmanan Chettiar and others** [AIR 1991 SC 221] and **St.Mary's Church v. Saju** [2001 (2) KLT SN.Page 6 Case No.6]). On going through the impugned order, I find the learned District Judge was *prima facie* satisfied that there is every reason to grant sanction to institute the suit under Section 92 CPC.

6. Second contention raised by the petitioners is that they may lose one forum if a suit under Section 92 CPC is not directed to be filed in a court of the lowest degree competent to try it. Learned counsel for the petitioners contended that the principle in Section 15 CPC

has been violated by filing a suit before the District Court, Thiruvananthapuram. I am afraid, I cannot accept this contention because as per a Government notification in the year 1966 concurrent jurisdiction has been confirmed on the District Court and the Subordinate Judge's Court in respect of matters falling under Section 92 CPC. In law it can only be presumed when two courts have concurrent jurisdiction over a subject matter, that one court is not subordinate to the other and so much so one cannot insist on adherence to the provisions in Section 15 CPC. Section 15 CPC can be applied only in cases which are required to be filed by following the procedure described in CPC as well as the Civil Courts Act, 1957. We can see a parallel in an original petition filed under the Indian Succession Act for Succession Certificate. The contention of the petitioners that they will lose one forum if the suit is filed before the District Court, cannot be countenanced. Apart from the above reason, I also find that it is well settled that no party has a right to a forum either for institution or for appellate jurisdiction. Therefore, this contentions of

the petitioners cannot be accepted. It is made clear that the court below shall dispose of the matter untrammelled by any of the observations contained in this order and the question of sustainability of sanction under Section 92 CPC can be challenged by the defendants even after taking evidence in this matter.

With these observations, this revision petition is dismissed.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge