

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

CRP.No. 682 of 2014 ()

AGAINST THE ORDER IN E.A. 292/2013 IN E.P. 31/2013 IN OS
295/2002 of PRINCIPAL MUNSIFF,ALAPPUZHA.

REVISION PETITIONER(S)/PETITIONER:

THIRUVAMBADI SREE KRISHNA SWAMI KSHETRA TRUST,
REGISTER NO.96/1999, THIRUVAMBADI P.O.,
ALAPPUZHA DISTRICT,
REPRESENTED BY ITS PRESIDENT
BRAHMADATHAN NAMBOOTHIRI,
AGED 66 YEARS, S/O.KRISHNAN NAMBOOTHIRI.

BY ADV. SRI.S.SANAL KUMAR

RESPONDENT(S)/RESPONDENTS:

1. THIRUVAMBADI SREE KRISHNA SWAMI KSHETRAM,
REPRESENTED BY KERALA, OORAZHMA DEVASWOM BOARD,
REG.NO.77/1957, REPRESENTED BY ITS
GENERAL SECRETARY,
KERALA OORAZHMA DEVASWOM BOARD OFFICE, VADUTHALA,
ERNAKULAM, KOCHI 682 023.
2. THIRUVAMBADI SREEKRISHNA SWAMI KSHETHRA
UPADESAKA SAMITHI,
REG.NO.A 218/01, ALAPPUZHA,
REPRESENTED BY ITRS PRESIDENT, PIN 688 009.
3. THIRUVAMBADI SREE KRISHNA KSHETRA
UPADESAKA SAMITHI,
REG.NO.A 218/01, ALAPPUZHA,
REPRESENTED BY ITS SECRETARY, PIN 688 009.

R1 BY ADV. SRI.E.JAYADEV

R1 BY ADV. SRI.N.ASHOK KUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 09-03-2015, ALONG WITH CRP. 684/2014, OPC.
2833/2014, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P. BHAVADASAN, J.

C.R.P. Nos. 682 & 684 of 2014
& O.P.(C) No. 2833 of 2014

Dated this the 9th day of March, 2015.

ORDER

C.R.P. No. 682 of 2014 arises out of the order in E.A. 292 of 2013 in E.P. 31 of 2013 in O.S. No. 295 of 2002 on the file of Principal Munsiff Court, Alappuzha whereby the E.A. was dismissed. C.R.P. No. 684 of 2014 arises out of the order in E.A. No. 293 of 2013 in E.P. No. 31 of 2013 in O.S. No. 295 of 2002 which was also dismissed. O.P.(C) No. 2833 of 2014 is filed against the order in E.A. No. 195 of 2014 in E.P. No. 31 of 2013 in O.S. No. 295 of 2002 whereby the E.A. was also dismissed.

2. E.A. 292 of 2013 was a petition under Section 47 of the Code of Civil Procedure to dismiss the execution petition. E.A. 293 of 2013 was one under Section 151 of the Code of Civil Procedure to reject the report filed by the Amin. In the Original Petition, Exts. P14 and P27 orders are

challenged. Ext.P14 is the warrant issued for delivery of possession of the property and Ext. P27 is an order dismissing a petition under Order VI Rule 17 of C.P.C.. In order to understand the controversy involved in these proceedings, it is necessary to refer to certain facts.

3. Thiruvambadi Sree Krishna Swami temple and its assets belonged to certain Namboodiri families who are the Ooralans of the temple. They formed a trust called Thiruvambadi Sree Krishna Swami Kshetra Trust by virtue of deed No. 47 of 2002 of SRO, Edappally. Eversince the formation of the trust, it is claimed that the trust has been managing the temple.

4. A body registered under Act 12 of 1955, known as Thiruvambadi Sree Krishna Swami Kshetra Upadesaka Samithi, claimed that they are entitled to manage the temple. According to them, the Ooralans of the temple decided to associate public with the management of the

temple and a Committee was formed and ultimately it came to vest with the N.S.S. Karayogam. The trust formed by the Ooralans recognized the participation of the society in the affairs of the temple. It is interesting to note that the Oorazhma Devawom Board on the strength of the deed said to have been executed by a few Ooralans also claimed management of the temple.

5. Three suits came to be filed as O.S. 227 of 2002, 295 of 2002 and 485 of 2002. O.S. 227 of 2002 was one filed by Thiruvampadi Sreekrishna Swamy Kshetra Upadesakasamithy and its office bearers against Thiruvampadi Sreekrishna Swamy Kshetra Trust and other Ooralans of the temple. O.S. 295 of 2002 was filed by Thiruvampadi Sreekrishna Swamy Kshethram, represented by General Secretary of Kerala Oorazhma Devaswom Board against Kshetra Upadesaka Samithy, the Ooralans and members of the Illom. O.S. 485 of 2002 was again a suit

filed by Thiruvampadi Sreekrishna Swami Kshetra Upadesaka Samithi against Kerala Oorazhma Devaswom Board and others. O.S. 227 of 2002 was one for injunction simplicitor. O.S. 295 of 2002 was for prohibitory injunction and O.S. 485 of 2002 was a suit for a declaration that document No. 47/2002 dated 15.3.2002 was not binding on the plaint schedule property and Kshetra Upadesaka Samithy.

6. Three suits were jointly tried and O.S. 485 of 2002 was treated as a leading case. Evidence was adduced in the said case. After trial, O.S. 295 of 2002 was decreed and the other two suits were dismissed. The result was that right asserted by Oorazhma Devaswom Board was recognized by the trial court. Appeal filed against the decree failed.

7. Thereafter the Oorazhma Devaswom Board in its attempt to assert the right of management, sought to

execute the decree in O.S. 295 of 2002. There was obstruction from the side of the Upadesaka Samithy and therefore Oorazhma Devaswom Board took steps to have the obstruction removed and assume management.

8. The act so done by the Oorazhma Devaswom Board is challenged in these proceedings by the trust.

9. Learned counsel appearing for the petitioner points out that the acceptance of Amin's report regarding the delivery of property and also the procedure followed in execution of decree in O.S. 295 of 2002 was totally wrong and illegal and the court below has not applied its mind while considering the various applications filed by the petitioner. The court ought to have seen from the materials produced before it that the trust formed in 2002 by the Ooralans of the temple is in actual management of the temple even as on today and the Ooralans never handed over management to the Oorazhma Devaswom Board or

anybody else. The first respondent in the Original Petition has not produced a scrap of paper to show that they have ever exercised a right of management over the temple.

10. It is contended that the decree in O.S. 295 of 2002 is not binding on the trust since the trust was not a party to that suit. It was against the office bearers of the Samithy who claimed that they had been associated with the management of the temple. Clandestinely, it is contended that in execution, persons who are not parties to the decrees were made parties and orders obtained. The report filed by the Amin to the effect that property has been delivered and decree has been satisfied is patently false. In fact the keys were forcibly taken from the trust and that has been characterized as execution of the decree in O.S. 295 of 2002. It was nothing but a high handed action. Under these circumstances, the petitions filed by the petitioners ought to have been adjudicated on merits and the summary

dismissal of the petitions caused considerable prejudice to the petitioner. Learned counsel was very vociferous in contending that fraud has been played on the court and fraud vitiates all the proceedings. Parties to the execution petition are not parties in the suit and there is not even an iota of evidence to show that the first respondent in the suit had attended to the affairs of the temple. In support of his contention, learned counsel relied on the decisions reported in **S.P. Chengalvaraya Naidu v. Jagannath** ((1994) 1 SCC 1), **Kitta v. Kuttan** (1995 (1) I.L.R. 15) and **Sudhirkumar v. Gloria Films** (2014 (3) K.L.T. 216).

11. Further contention was that the court below having posted E.A. 292 of 2013 and 293 of 2013 for evidence, without any justification decided to foreclose evidence and went on to dispose of the applications. Reliance is placed on Ext.P24 which is an extract of the B diary. It is pointed out that on going through Ext.P24, it can

be seen that there were postings for adducing evidence but without any reason, the facility was denied to the petitioner and that causes considerable prejudice to the petitioner.

12. Another contention taken is that the decree in O.S. 295 of 2002 was sought to be executed by taking recourse under Order 21 Rule 35 of C.P.C. That has no application to the facts of the case for the simple reason that Order 21 Rule 35 C.P.C. is resorted to in case of delivery of immovable property and as far as O.S. 295 of 2002 is concerned there is no delivery of property involved and it was only a prohibitory injunction decree that was granted in the suit. It is admitted, according to the learned counsel that there was obstruction when decree in O.S. 295 of 2002 was sought to be executed and it is strange that without any further enquiry the property was got delivered. The right claimed by the petitioners ought to have been considered. None of the petitions filed for execution is

proper nor is the mode of execution resorted to correct. The manner of disposal was erratic. Learned counsel would go on to contend that the decree obtained in O.S.295 of 2002 was as a result of fraud practiced by the Upadesaka Samithy and Oorazhma Devaswom Board to defeat the rights of the trust and therefore such a decree cannot be sustained nor can any right flow from such a decree. Therefore, it is contended that the court below was in complete error in dismissing the petitions.

13. Learned counsel appearing for the first respondent would point out that none of the contentions have any basis. It is a clear attempt to sabotage the decree obtained in O.S. 295 of 2002 which was within the full knowledge of the petitioner. The Upadesaka Samithy is a body not in existence and it is a self created body. Upadesaka Samithy filed two suits, one against the Oorazhma Devaswom Board and one against the Trust in

which the trustees were also parties. Learned counsel pointed out that O.S. 485 of 2002 was treated as the leading case and evidence was adduced in that case. It could not therefore be contended that they were unaware of the proceedings in the suit. Though technically speaking the petitioners may not be parties to O.S. 295 of 2002. It is significant to notice, according to the learned counsel for the first respondent, that in the suit in which the trust was a party and wherein the Oorazhma Devaswom Board was also a party where Oorazhma Devaswom Board had asserted that they had assumed management by virtue of a document executed by certain Ooralans, there was no denial from the side of the Ooralans that it was not the case and the claim made by the Oorazhma Devaswom Board is patently false. The petitioners had filed another petition as E.A. 204 of 2012 for the very same relief and that was dismissed. They subsequently instituted two suits, O.S. 417

of 2013 and O.S. 3 of 2013. Ext.B2 is the document based on which the Oorazhma Devaswom Board came into management of the temple. The validity, veracity and genuineness of Ext.B2 is the subject matter of the two suits, namely, O.S. 417 of 2013 and 3 of 2013. The main question that arises for consideration is whether the claim made by the Oorazhma Devaswom Board that by virtue of a document by some Ooralans, they came into management of the temple.

14. While the petitioner stated that the trust constituted by the Ooralan families never gave up the management to anybody, the Oorazhma Devaswom Board says otherwise.

15. It is true that in the decision cited by the learned counsel for the petitioner, it has been held that fraud vitiates all acts. In the decision reported in **Kavita Trehan v Balsara Hygiene Products Ltd.** (AIR 1995 SC

441) it was held as follows:

"13. The Law of Restitution encompasses all claims founded upon the principle of unjust enrichment. 'Restitutionary claims are to be found in equity as well as at law'. Restitutionary law has many branches. The law of quasi-contract is "that part of restitution which stems from the common indebitatus counts for money had and received and for money paid, and from quantum meruit and quantum valebat claims." (See 'The Law of Restitution' - Goff and Jones, 4th Edn. Page 3). Halsbury's Law of England, 4th Edn. Page 434 states :

"Common Law. Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi contract or restitution.

For historical reasons, quasi contract has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed

principles which are aimed at providing a remedy for unjustifiable enrichment. It may be that today these two strands are in the process of being woven into a single topic in the law, which may be termed "restitution"."

Recently the House of Lords had occasion to examine some of these principles in *Woolwich Equitable Building Society v. Inland Revenue Commissioners*, 1993 AC 70.

14.

15. Section 144, C.P.C. incorporates only a part of the general law of restitution. It is not exhaustive. (See *Gangadhar v. Raghubar Dayal*, AIR 1975 All 102 (FB) and *State of Andhra Pradesh v. M/s. Manickchand Jeevraj and Co., Bombay*, AIR 1973 Andh Pra 27).

The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of S.144. Section 144 opens with the words "where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose....". The instant case may not strictly fall within the terms of S.144; but the aggrieved party in

such a case can appeal to the larger and general powers of restitution inherent in every court.

We have considered this submission of Sri Grover relying on Sakamma v. Eregowda, (1974) 2 Kant LJ 357, that the mere fact that the suit for permanent injunction was dismissed resulting in the vacation of the interim order of injunction granted during its pendency, would not entitle the successful defendant to seek restitution under S.144, C.P.C. That principle has no application in this case, In the case before us the injunction granted by the learned Senior Sub-Judge, Chandigarh, was not merely negative in terms interdicting interference from the respondent with the custody of the goods by the appellants; it went much further and expressly enabled the appellants to sell the goods, Pursuant to this order, the appellants disturbed the status quo as on the date of the suit and sold away respondent's goods and converted them into money. The High Court while declining the prayer for payment of the sale proceeds to the respondent, however, sought to relegate the parties to the extent practicable, to the same position as obtained on the date of the suit. This the High Court did by directing furnishment of security to the extent of the value of the goods sold away under the cover of the

interlocutory order. That an appeal filed against the said interlocutory order was withdrawn, does not, in our opinion make any difference. Upon dismissal of the suit, the interlocutory order stood set aside and that whatever was done to upset the status quo, was required to be undone to the extent possible. It is unfortunate that the learned Sub-Judge, Ist Class made an order which, we think, ought not to have been made. If the Trial Judge, felt that it was in the interest of justice that the goods required to be disposed of, he should have ordered the sale by or under the supervision of a Commissioner of the court ensuring that the sale proceeds were under the court's control. We are constrained to observe that the order of the learned Sub-Judge, Ist Class, failed to have due regard to the need to protect the interests of the opposite party and, to say the least, an improper order was passed. The ex parte order granted by the learned Sub-Judge, Ist Class, was not of mere negative import but virtually enabled and authorised the appellants to sell away respondent's goods of which appellants were mere clearing and forwarding agents. This permission to sell implicit in the form of the order enabled the appellants to purport to convey, respecting the goods, a better title than what appellants themselves had.

That such a thing was achieved by an ex parte order, tends to shake litigants' faith in the judicial process. The learned Sub-Judge, Ist Class ought not to have made an ex parte order which occasioned serious prejudice and loss to the respondent. On the administrative side, the High Court may have to look into the propriety of the conduct of the learned Sub-Judge, Ist Class, in this case."

16. In the decision reported in **Kitta v. Kuttan** (1995(1) I.L.R. 15), it was held as follows:

"11. In the present case the execution petition was protracted for several years either by the legal representatives of the decree-holders or by one of the sons of one of the decree-holders, setting up a plea of tenancy with the result that delivery was obtained more than 13 years after the filing of the petition. This is therefore a fit case where revision petitioner is entitled to get profits for the period for which he was prevented from getting restoration of possession. Since that aspect has not been considered by the executing court, the matter has to go back for consideration of the same."

17. In the decision reported in **Sudhirkumar v. Gloria Films** (2014(1) K.L.T. 216) it was held as follows:

“Can restitution be ordered de hors S.144 of the Code of Civil Procedure, 1908. I should at the outset state that S.144 of the C.P.C. Will not *stricto sensu* apply as the same can be called in aid only on an application filed by the party entitled to the benefit of restitution. But here is a case where the first defendant had to lose its property in sale in execution of a decree which has been held to be not sustainable at the end. The plaintiff would not have gained an advantage and the first defendant would not have suffered an impoverishment but for the original decree. The first defendant asserts that it would have mustered the necessary money to avert the execution sale had the amount due under the decree been correctly reckoned. The first defendant adds that the execution of sale took place only because it could not make up the sum of Rs.5,73,308/- even though it had the sum of Rs.4,37,482/- necessary to discharge the decree debt. The above contention of the first defendant cannot be lightly brushed aside and I will be shirking my duty if the execution sale is not toppled down. There is therefore no fetter for me to invoke

the inherent jurisdiction of this Court to order restitution in order to remedy a wrong committed due to an erroneous decree. A serious injury has been caused to the first defendant due to the knocking off its property in an execution sale under a decree which did not reflect the correct amount due. The advantage obtained by the plaintiff on account of a sale in execution of a decree which has since been modified cannot be permitted to be retained. It is only proper that the sale held on 15.9.2008 be set aside and the court below directed to surge ahead with the execution proceedings as per the modified decree.”

The proposition laid down by the above decisions admits of no doubt. But the question is whether it applies to the facts of the case.

18. The main grievance voiced by the petitioner is that the decree in O.S. 295 of 2002 was obtained by fraud and collusion between Oorazhma Devaswom Board and Upadesaka Samithy to defeat the rights of the trust. The question then arises is how far this can be accepted. One cannot forget that O.S. 295 of 2002 and 485 of 2002 were

jointly tried and as repeatedly said O.S. 485 of 2002 was treated as the leading case. In the said case, the Upadesaka Samithy, Trust and the Oorazhma Devaswom Board were parties. The Oorazhma Devaswom Board in their written statement claimed that they have come into management of the temple. This claim made by the Oorazhma Devaswom Board was not controverted by the trust in that suit. Therefore, the claim made by the trust that they were unaware of the right claimed by Oorazhma Devaswom Board and the right agitated in O.S. 295 of 2002 was behind their back cannot be accepted. It is also significant to notice that the suit filed by Oorazhma Devaswom Board in O.S. 295 of 2002 was decreed which the other two suits were dismissed. Even though in O.S. 272 of 2002 the trust was a party, the plaintiff claiming to be the Upadesaka Samithy confined their relief to the first and second defendants. It is significant to notice that in the

decree in O.S. 295 of 2002 there is a clear declaration that Oorazhma Devaswom Board had come into management of the temple and they were entitled to continue the management.

19. Though technically speaking the petitioners might not have been a party to O.S. 295 of 2002, they cannot plead ignorance of the rights agitated by the Oorazhma Devaswom Board and also the result of the said claim agitated by them in O.S. 295 of 2002. Even after being aware of the stand taken by the Oorazhma Devaswom Board, neither the trust nor Ooralans in the three suits thought it necessary to controvert the claim made by the Oorazhma Devaswom Board and they did not venture to say that Oorazhma Devaswom Board by virtue of deed No. 47/2002 did not come into management of the affairs of the temple. In the light of the above facts and materials, the plea that fraud was played and a decree was obtained

behind the back of the trust and Ooralans cannot be sustained. It is learnt that the appeal filed against the decree in O.S. 295 of 2002 was dismissed and in that appeal also the trust was a party.

20. It is true that the trust was not a party to O.S. 292 of 2002. That was a case laid by the Oorazhma Devaswom Board complaining about the interference with the management of the temple by Upadesaka Samithy. As already noticed, the suit was decreed and when the obstruction continued, the Oorazhma Devaswom Board was left with no choice but to execute the decree. They did so. Ext.P14 in the Original Petition is the warrant and Ext.P15 is the kychit and delivery report and the acknowledgment given by the decree holder.

21. The complaint raised is that the warrant issued for execution is one that relates to the delivery of the property and therefore the entire execution proceedings is

vitiating cannot be accepted. The petitioner was not able to show any other fact that is relevant for the purpose and in the warrant it is clearly stated how the decree had to be executed. It was when the decree was sought to be executed, obstruction was offered and that was sought to be removed by the decree holder. As already stated, Exts.P14 and P15 are the relevant documents. By removing the obstruction as evidenced by Exts.P14 and P15, the movables of the temple were taken possession of by the Oorazhma Devaswom Board.

22. From the above facts, it could be seen that the claim made by the trust and the Ooralans that they were totally unaware of what was happening and everything was done behind their back and in a fraudulent manner is difficult to accept. It is also significant to notice that whenever an interim order was passed by the court in the suit, this Court was approached seeking relief and in all

those proceedings the trust and trustees were parties. Again, one cannot omit to note that the petitioner had approached the court below both under Order 21 Rule 97 and Section 47 of C.P.C. They took up the very same contentions in both the petitions. Petition filed by the petitioner under Order 21 Rule 97 was dismissed rightly so because the execution did not relate to delivery of possession of any property. The petition under Section 47 was dismissed on their own showing for the simple reason that as averred by the petitioner, petitioner was not a party to the decree. It was while these petitions were pending that the trustees and the Ooralans ventured to file two suits O.S. 419 of 2013 and O.S. 3 of 2013.

23. O.S. 417 of 2013 is to annul the decree in O.S. 295 of 2002 and O.S. 3 of 2013 is for framing a scheme for the administration of the temple. The plaintiffs in those suits filed I.A. 958 of 2013 in O.S. 3 of 2013 for

interim injunction. The District Court greatly impressed by the case put forward by the trust and Ooralans, granted an injunction against the Oorazhma Devaswom Board. That was challenged in F.A.O. 352 of 2013 by the first respondent herein. At the time when that F.A.O. was taken up for hearing, it was pointed out that two suits were pending. The F.A.O. was disposed of as follows:

“8. Order of injunction applied for by plaintiffs is prima facie shown to be for and on behalf of temple trust (fourth defendant) which is bound by the decision in O.S. 295/02 and also by Ext.P2 agreement entered with first defendant. Challenges raised against the decree in the above suit as a collusive decree by plaintiffs cannot be accepted on face value. They have not challenged Ext.P2 agreement, and some of them were parties in one or the other suit jointly tried with O.S.295/02. Some of the plaintiffs have even moved applications in the execution proceedings arising from the decree passed in O.S.295/02. If there was excess execution of that decree remedy of the parties is to approach the execution court for setting right whatever mischief

committed in execution of the decree. Further more, on the facts presented how far a society registered under the trust, which is continuing as such, could impeach a decree binding on the trust filing a suit under Section 25 of the Act is also a serious question to be probed in the case. Section 25 of the Act contemplates intervention by the court subject to satisfaction of the conditions for entertaining an application/suit thereunder. That application/suit can be entertained only on certain contingencies like removing the existing governing body and appointing a fresh governing body, or framing a scheme for the better and efficient management of the society, or dissolving the society. An application/suit is instituted by 10 per cent of the members of the society for framing a scheme, cannot be the basis for entertaining the proceeding. Discretionary reliefs canvassed in the present suit, normally, are also outside the scope and ambit of Section 25 of the Act. An application for interim injunction against the opposite party in such proceedings can be entertained, but, only in exceptional cases, taking note that the proceedings are governed by Section 141 of the Code of Civil Procedure. Entertainability of the application/suit under section 25 of the Act having regard to the facts

of the case has necessarily to be examined at the appropriate stage, and it cannot be decided solely on the basis that it has been filed by 10% of the members of the society.”

24. In the above judgment in F.A.O., it is significant to notice that an observation has been made as follows:

“Excess execution of decree, even if that be so, by first defendant would no way confer empowerment on plaintiffs to impeach the decree passed in O.S.295/02 as a collusive decree, nor enable them to institute a suit to protect the interest of the fourth defendant, temple trust, when the decision rendered in that suit is binding on that trust also.”

25. True, while disposing of the F.A.O., this Court observed that if the grievance of the respondents before the Court was one of excess delivery, the proper procedure to be followed is to file a petition under Section 47 of C.P.C. Probably taking cue from the said observation, the petitioners have filed E.A. before the court below. The court

below, finding that the petitioners were not parties to the decree, took the view that they could not entertain a petition under section 47 C.P.C. The said view taken by the court below seems to be legal in the light of the decision reported in **Parasuraman v. Sreenivasa Raghavan** (2014 (3) K.L.T. 779) wherein it was held as follows:

“9. The question in controversy falls under S.47 of C.P.C., which reads as follows:-

“47. Questions to be determined by the Court executing decree.-- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit”.

The scope and extent of the determination of questions under Section 47, are confined as hereunder.

- i) All questions arising between the parties or their representatives alone can be considered under Section 47; and
- ii) Such questions must have been related to the execution, discharge or satisfaction of the decree.

10. Therefore, for invoking jurisdiction under S.47 of the C.P.C. before the Execution Court, the above said statutory requisites are to be satisfied. It is pertinent to note that the above requisites are conjunctive and unless the aforesaid statutory requisites under S.47 are satisfied, the execution court cannot exercise jurisdiction under S.47 of the C.P.C. To sum up, this jurisdiction under S.47 of C.P.C. is not amenable to the strangers to the suit.”

26. It was then contended that even as on today, Oorazhma Devasom Board has not been able to produce even a scrap of paper to show that they have been managing the temple from 2002 onwards. On the other hand, the petitioner claims that they have produced several documents to show that they were continued to be in management and that Oorazhma Devaswom Board never came into possession of the temple. The production of many of the documents at this stage cannot be readily accepted. Nothing prevented the petitioners from doing so in the lower court.

27. Regarding the complaint of having denied opportunity to adduce evidence, that is equally without force. Both the E.As. were dismissed as not maintainable. Since the E.As. are not maintainable one fails to understand how the parties are prejudiced by the denial of opportunity to adduce evidence.

28. It is clear that decree in O.S. 295 of 2002 is sought to be set at naught in O.S. 417 of 2013 and O.S. 3 of 2013.

29. In fact, in the pleadings in O.S. 417 of 2013 there is an admission in the plaint itself that the Oorazhma Devaswom Board came into management in 2002. In the light of the above facts, this Court finds little merit in the C.R.Ps. and O.P.(C) filed before this Court against the various orders passed by the court below. This court finds that there is no illegality or irregularity or impropriety in the orders passed by the court below.

These petitions are without merits and they are accordingly dismissed. However, the observation made by this Court shall not stand in the way of the plaintiffs in O.S. 417 of 2013 and O.S. 3 of 2013 highlighting their claims and agitating their rights and the court concerned may dispose of the suits untrammelled by any observation made by this Court while disposing of these matters.

P. BHAVADASAN,
JUDGE

sb.