

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

FAO.No. 229 of 2013 ()

AS 97/2009 of II ADDL. DISTRICT COURT, KOZHIKODE.

OS 359/2007 of ADDL. MUNSIFF - I, KOZHIKODE

APPELLANT(S)/APPELLANT/DEFENDANT NO.1:

SREE AZHAKODI DEVI TEMPLE
REP. BY ITS EXECUTIVE OFFICER, THIRUTHIYAD
P.O.PUTHIYARA, KOZHIKODE, PIN-673 004.

BY ADVS.SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SRI.GEORGE JOSEPH PULIMOOTTIL
SRI.ROVIN RODRIGUES
SRI.VETTATH EAPEN MATHAI

RESPONDENTS/RESPONDENTS/PLAINTIFFS 1 TO 4 AND DEFENDANT NO.2:

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1. PONMILI VELAYUDHAN NAIR
S/O.MEENAKSHI AMMA, KARAKKOLI HOUSE, THIRUTHIYAD.P.O.
KOZHIKODE, PIN-673 004.
 2. PANOLI JAYARAMAN
S/O.LAKSHMIKUTTY AMMA, KORICHAN PARAMBATH HOUSE
P.O.PUTHIYARA, KOZHIKODE, PIN-673 004.
 3. CHERUTHALA KOMALARAJAN
S/O.MADHAVI AMMA, KOLAPURATH HOUSE, MANASSERY.P.O.
KOZHIKODE, PIN-673 602.
 4. KOLLAT RARICHANPARAMBATH SANKARAN NAIR
KOLAPURATH HOUSE, MANASSERY.P.O., KOZHIKODE
PIN-673 602.

5. BOARD OF TRUSTEES

SREE AZHAKODI DEVI TEMPLE, REP. BY ITS CHAIRMAN
THIRUTHIYAD, P.O.PUTHIYARA, KOZHIKODE
PIN-673 004.

R1,R2,R4 BY ADV. SRI.V.V.SURENDRAN

R1,R2,R4 BY ADV. SRI.P.A.HARISH

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 10-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

F.A.O. No.229 of 2013

Dated 10th March, 2015

J U D G M E N T

The decision of the II Additional District Court, Kozhikode in A.S.No.97 of 2009, by which the suit O.S.No.359 of 2007 on the file of the Additional Munsiff Court I, Kozhikode was remitted for fresh disposal, is under challenge in this appeal. The first defendant in the suit is the appellant.

2. The suit was one for declaration and mandatory injunction. The first defendant is a public religious institution coming under the purview of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as the 'the Act' for short). The second defendant is the Board of Trustees of the first defendant ('the temple' for short). The case of the plaintiffs is that the temple was founded by the members of Kakkatt Illom, a joint family consisting of four thavazhies and that the temple was under the management of the senior most male members of the thavazhies of the joint family. According to the plaintiffs, they are the senior most male members of the

thavazhies of the joint family and therefore, they are entitled to be the hereditary trustees of the temple. They have claimed in the suit, a declaration that they are the hereditary trustees of the temple and a mandatory injunction directing the defendants to include them as hereditary trustees of the temple.

3. The defendants contested the suit, contending inter alia, that the management of the temple was handed over by the family to a public committee of devotees in the year 1943; that the said committee was managing the affairs of the temple; that during 1972, a trustee was appointed for the management of the temple by the area committee constituted under the Act and the temple was under its management. It is also contended that during 2002, a Trustee Board was appointed for the management of the temple by the area committee constituted under the Act and the said Trustee Board is managing the affairs of the temple thereafter.

4. The trial court decreed the suit declaring that the plaintiffs are the hereditary trustees of the temple and directed the defendants by way of a mandatory injunction to include

them as hereditary trustees in the Trustee Board of the temple.

5. The second defendant challenged the decision of the trial court in appeal. It seems that the second defendant had taken up a contention in the appeal that the suit is barred by limitation. It appears, on account of the said reason, the plaintiffs have filed two interlocutory applications in the appeal as I.A.Nos.2654 of 2012 and 2655 of 2012. I.A.No.2654 of 2012 was one seeking leave of the court to amend the plaint to incorporate the dates on which the plaintiffs became senior most male members in their respective thavazhies and a few facts to claim exemption from the period of limitation. I.A.No.2655 of 2012 was one seeking directions to the defendants to produce the minutes book of the Trustee Board of the temple from 1.1.2005 to 31.12.2005 to disprove the plea of limitation taken by the defendants.

6. The appellate court found that the trial court did not consider the question of limitation. The appellate court also found that in the nature of the relief sought for in the suit, the authorities under the Act also should have been made parties to the suit. The appellate court further found that though the

relief claimed by the plaintiffs in the suit was based on custom and usage, the trial court did not insist strict proof of the custom and usage pleaded by the plaintiffs. For all the aforesaid reasons, the appellate court took the view that the suit needs to be remitted to the trial court for fresh disposal. Consequently, the appellate court set aside the decision of the trial court and remitted the suit to the trial court for fresh disposal, after allowing I.A.Nos.2654 and 2655 of 2012 filed by the plaintiffs. The appellate court also permitted the plaintiffs to implead the authorities under the Act in the suit. The second defendant is aggrieved by the said decision of the appellate court.

7. Heard the learned counsel for the appellant as also the respondents.

8. The following are the substantial questions framed in the appeal.

“(a) Whether the senior most members of an erstwhile Marumakkathayam Thavazhy/Tarwad can seek a declaration that they are entitled to be the hereditary trustee of the ancestral temple which belonged to the Tarward after the enactment of the Kerala Joint Hindu Family System (Abolition) Act, 1975?

(b) By virtue of section 3(9) of the Madras Hindu Religious and

Charitable Endowment Act, succession as hereditary trustee can be established only so long as the scheme of succession is in force and when plaintiffs are claiming hereditary trusteeship as per the scheme of succession under the Marumakkathayam system of law, the very system having abolished, can the plaintiffs claim the hereditary right in the ancestral temple which belonged to their erstwhile Tarwad?

(c) When on the face of the pleadings and the evidence disclosed, the suit is barred by limitation, is the lower appellate court justified in remanding the suit to plead and prove on fresh grounds to save the limitation for the suit framed?"

9. As noticed above, the appellate court found that the trial court did not insist strict proof of the custom and usage based on which the reliefs were claimed in the suit. In other words, the suit was remitted to the trial court for fresh decision as to the right of the plaintiffs to claim the reliefs, after insisting strict proof of the custom and usage pleaded by them. The appellate court has also found that the suit was not properly instituted in so far as the authorities under the Act were not made parties therein. The appellate court further found that the trial court did not consider the question as to whether the suit is barred by limitation or not. Questions (a) and (b) framed in the appeal are questions which would arise for consideration once the plaintiffs establish the custom and usage pleaded in the

plaint. Since the appellate court has not rendered any final decision as to the custom and usage pleaded in the plaint, the said questions do not arise for consideration in this appeal. Coming to question (c), there was no issue in the suit as to whether the suit is barred by limitation or not. The impugned judgment indicates that the plea of limitation in the instant case is a mixed question of law and facts and it is on account of the said reason, the appellate court allowed the application for amendment of the plaint. As such, question (c) framed in the appeal also does not arise for consideration at this stage. On an evaluation of the materials on record, I am of the view that the appellate court is justified in remitting the suit for fresh disposal. There is, therefore, no merit in the appeal and the same is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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