

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

FAO.No. 355 of 2014 ()

AGAINST THE ORDER IN OS 5/2012 of DISTRICT JUDGE, MANJERI DATED
20-06-2014

APPELLANTS/PLAINTIFFS:

1. N.M. HRISHIKESAN NAMBOODIRIPAD AGED 63 YEARS
S/O.LATE KADAMBAN NAMBOODIRIPAD, NADUVATH MANA
PALAPPURAM (P.O), PALAPPURAM, OTTAPPALAM TALUK
PALAKKAD DISTRICT.

2. N.M.DIVAKARAN NAMBOODIRIPAD
S/O.LATE KADAMBAN NAMBOODIRIPAD, NADUVATH MANA
PISHARIKOVIL ROAD, EROOR, COCHIN
KOCHI TALUK, ERNAKULAM DISTRICT.

3. N.M.UNNIKRISHNAN NAMBOODIRIPAD
S/O.LATE KADAMBAN NAMBOODIRIPAD, NADUVATH MANA
CHERAKKARA ROAD, MANJERI (P.O), MANJERI AMSOM
DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.S.BHARATHAN

RESPONDENTS/DEFENDANTS:

1. NADUVATH MANA PRIVATE TRUST
REPRESENTED BY ITS TRUSTEE
N.M.KADAMBAN NAMBOODIRIPAD, NADUVATH MANA
PUNNAPPALA AMSOM, CHADANGAKULAM DESOM, NILAMBUR TALUK
MALAPPURAMDISTRICT, PIN - 679 330.

2. N.M.KADAMBAN NAMBOODIRIPAD
S/O.LATE KADAMBAN NAMBOODIRIPAD, NADUVATH MANA
NADUVATH (P.O), WANDOO - VIA, NILAMBUR TALUK
MALAPPURAM DISTRICT, PIN - 679 328.

3. SANTHA M
W/O.LATE KADAMBAN NAMBOODIRIPAD, NADUVATH MANA
NADUVATH (P.O), WANDOO - VIA, NILAMBUR TALUK
MALAPPURAM DISTRICT, PIN - 679 328.

4. USHA V.M
W/O.HRISHIKESAN NAMBOODIRIPAD, NADUVATH MANA
PALAPPURAM, PALAPPURAM (P.O), OTTAPALAM TALUK
PALAKKAD DISTRICT, PIN -679 101.

5. GEETHA E.K
W/O.N.M.DIVAKARAN NAMBOODIRIPAD, NADUVATH MANA
PISHARIKOVIL ROAD, EROOR, COCHIN
KOCHI TALUK, ERNAKULAMDISTRICT, PIN - 682 306.

6. GEETHA.O

W/O.N.M.UNNIKRISHNAN NAMBOODIRIPAD, NADUVATH MANA
CHERAKKARA ROAD, MANJERI (P.O), MANJERI AMSOM
DESOM, ERNAD TALUK, MALAPPURAM DISTRICT
PIN - 676 121.

7. N.M.SREEKUMAR

S/O.KADAMBAN NAMBOODIRIPAD, SAMHITHA GARDENS
FIRST CROSS, KAGGADARAPPURA, C.V.RAMAN NAGAR
BANGALORE - 560 093.

8. N.M.JAYADEVAN

S/O.KADAMBAN NAMBOODIRIPAD, NADUVATH MANA
NADUVATH (P.O)WANDOO - VIA, NILAMBUR TALUK
MALAPPURAM DISTRICT, PIN -679 328.

9. SUBHA V.M.

W/O.N.M.SREEKUMAR, SAMHITHA GARDENS, FIRST CROSS
KAGGADARAPPURA, C.V.RAMAN NAGAR, BANGALORE -560 093.

10. RADHIKA

W/O.N.M.JAYADEVAN, NADUVATH MANA, NADUVATH (P.O)
WANDOO - VIA, NILAMBUR TALUK, MALAPPURAM DISTRICT
PIN - 679 328.

11. NEERAJ V.M. (MINOR)

REPRESENTED BY GUARDIAN THE 7TH RESPONDENT
S/O.N.M.SREEKUMAR, SAMHITHA GARDENS, FIRST CROSS
KAGGADARAPPURA, C.V.RAMAN NAGAR, BANGALORE -560 093.

12. NANDANA V.M. (MINOR)

REPRESENTED BY GUARDIAN THE 7TH RESPONDENT, D/O.N.M.SREEKUMAR
SAMHITHA GARDENS, FIRST CROSS, KAGGADARAPPURA
C.V.RAMAN NAGAR, BANGALORE - 560 093.

13. NEELIMA N.M. (MINOR)

REPRESENTED BY GUARDIAN 8TH RESPONDENT, D/O.N.M.JAYADEVAN
NADUVATH MANA, NADUVATH (P.O), WANDOO - VIA
NILAMBUR TALUK, MALAPPURAM DISTRICT, PIN - 679 328.

14. N.M.VIVEK

S/O.N.M.HRISHIKESAN NAMBOODIRIPAD, NADUVATH MANA
PALAPPURAM, PALAPPURAM (P.O), OTTAPPALAM TALUK
PALAKKAD DISTRICT, PIN -679101

15. UMA.P

W/O.N.M.VIVEK, NADUVATH MANA, PALAPPURAM
PALAPPURAM (P.O), OTTAPPALAM TALUK, PALAKKAD DISTRICT
PIN -679101

16. VISMAYA N.M. (MINOR)

REPRESENTED BY GUARDIAN 14TH RESPONDENT, D/O.N.M.VIVEK
NADUVATH MANA, PALAPPURAM, PALAPPURAM (P.O)
OTTAPPALAM TALUK, PALAKKAD DISTRICT PIN - 679101

17. ANOOP KRISHNAN

S/O.N.M.UNNIKRISHNAN NAMBOODIRIPAD, NADUVATH MANA
CHERAKKARA ROAD, MANJERI (P.O), MALAPPURAM DISTRICT
PIN - 676121

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18. N.M.RAKESH
ARCHITECT, S/O.N.M.DIVAKARAN NAMBOODIRIPPAD
NADUVATH MANA, PISHARIKOVIL ROAD, EROOR
COCHIN, KOCHI TALUK, ERNAKULAM DISTRICT
PIN -682 306

19. N.M.BRAHMADATHAN (MINOR)
W/O.N.M.UNNIKRISHNAN NAMBOODIRIPPAD, NADUVATH MANA
CHERAKKARA ROAD, MANJERI (P.O), ERNAD TALUK
MALAPPURAM DISTRICT, (REPRESENTED BY GUARDIAN, MOTHER
GEETHA, 6TH RESPONDENT) 676121

R1,R 2 BY ADV. SRI.T.KRISHNAN UNNI (SR.)
R1,R 2 BY ADV. SRI.VINOD RAVINDRANATH
R1,R 2 BY ADV. SMT.MEENA.A.
R1,R 2 BY ADV. SRI.SAJU.S.A
R1,R 2 BY ADV. SRI.K.C.KIRAN
R4,R5,R6,R14,R15,R16 BY ADV. SRI.S.KANNAN
R4,R5,R6,R14,R15,R16 BY ADV. SMT.K.S.SANGEETHA
R4,R5,R6,R14,R15,R16 BY ADV. SMT.S.SIMY

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
16-11-2015, ALONG WITH FAO. 357/2014, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

RKC

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

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F.A.O.Nos.355 & 357 of 2014
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Dated this the 16th day of November, 2015

JUDGMENT

Antony Dominic, J.

These appeals are filed by the plaintiffs in O.S.No.5 of 2012 on the file of the District Court, Manjeri. The appellants herein filed the suit praying for framing a scheme for the first respondent, a private trust, for removal of the second respondent and for consequential reliefs. Along with the suit I.A.No.1245 of 2013 was also filed, under order 40 rule 1 of CPC seeking the appointment of one of the plaintiffs as receiver or as joint receiver in respect of the plaint scheduled property. When the I.A was heard, defendants 1 to 3 in the suit raised a contention that the District Court did not have jurisdiction to entertain the suit and that the suit should have been filed before the Munsiff Court, Manjeri. Accordingly, the maintainability of the suit was heard and by its order dated 20.6.2014 the District Court held that it did not have jurisdiction to entertain the suit. On that ground the District Court declined to pass orders on I.A.Nos.1245 of 2013

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and 1305 of 2013 and gave liberty to the plaintiff to file similar petitions before the Court in which the plaint will be represented on its return. It is in this background these appeals are filed challenging the orders passed by the District Court, Manjeri.

2. We heard the learned counsel for the appellants and the learned Senior Counsel appearing for respondents 1 to 3. The contention raised by the counsel for the appellants is that the District Court has jurisdiction to entertain the suit and that therefore the order passed by the District Court holding that it did not have jurisdiction is illegal. He referred us to various provisions of the Indian Trust Act. On the other hand the learned Senior Counsel appearing for the respondents sought to sustain the order contending that the civil court which has jurisdiction to entertain the suit, is the court of lowest grade, viz. the Sub Court. He also relied on section 15 of the CPC to sustain this argument.

3. Having considered the submissions made on both sides, we are inclined to agree with the learned Senior Counsel appearing for the respondents. It is true that in various

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provisions of the Trust Act, reference has been made to the power of the Principal Civil Court of the District namely the District Court. However those summary powers cannot extend to a suit of the nature filed by the defendants. In view of section 15 of the CPC, such a suit shall be instituted in the court of the lowest grade competent to try it. Therefore a suit such as O.S.No.5 of 2015, the orders in which are under challenge in these appeals could have been filed only before the Sub Court, Manjeri. This view that we have taken is fully supported by the Apex Court judgment in ***KT.N.RM.Thenappa Chettiar and others Vs. N.S.KR.Karuppan Chettiar and others*** (AIR 1968 SC 915) wherein paragraph 6, the Apex Court has held thus:

We proceed to consider the next question arising in the appeal, viz., whether the plaintiffs are entitled to ask for the settlement of a scheme even on the assumption that they were not cofounders of the trust. The parties in the case have proceeded on the footing that the trust is a private trust, but the authorities establish that even in the case of a private trust a suit can be filed for the removal of the trustee or for settlement of a scheme for the purpose of effectively carrying out the objects of the trust. If there is a breach of trust

or mismanagement on the part of the trustee, a suit can be brought in a civil court by any person interested for the removal of the trustee and for the proper administration of the endowment. (See, for example, Pramatha Nath Mullick's case, 52 Ind App 245 = (AIR 1925 PC 139) and Manohar Mookerjee v. Peary Mohan, 24 Cal WN 478 = (AIR 1920 Cal 210)). There are also authorities to the effect that a Civil Court may frame a scheme in the case of a private endowment at the instance of the parties interested. The question has been discussed by the Calcutta High Court in Bimal Krishna's case, 41 Cal WN 728 = (AIR 1937 Cal 338) and it was held in that case that a scheme for the administration of a private endowment can be framed by a Civil Court. Mookerjee, J. observed in that case that in India the Crown is the constitutional protector of all infants and as the deity occupies in law the position of an infant, the shebait who represent the deity are entitled to seek the assistance of the Court in case of mismanagement, fraud or maladministration on the part of the shebait and to have a proper scheme for management framed for the administration of the private trust. In Pramatha Nath Mullick's case, 52 Ind App 245 = (AIR 1925 PC 139) to which we have already made reference, the Judicial Committee itself directed the framing of a scheme in the case of a private endowment and the case was expressly remanded to the trial courts for that

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purpose. In the present case the appellants being contributors to the trust are interested in the proper administration of the trust and in our opinion, they have a sufficient right to bring a suit in a Civil Court in case there is mismanagement or breach of trust on the part of the managing trustee and for framing of a scheme

Similar view has been taken in the judgment in ***Ramchand (Dead) by his legal representatives Vs. Thakur Janki Ballabhji Maharaj and another*** (AIR 1970 SC 532), wherein paragraphs 9 and 10 it was inter alia held thus:

Xxxxxx. This is undoubtedly a private trust but the Civil Courts have jurisdiction to frame a scheme for the management of the temple which is not a public trust. The Judicial Committee of the Privy Council in Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 Ind App 245 = (AIR 1925 PC 139) directed that a scheme be framed for the regulation of the worship of the idol even though there was no public trust. In Asha Bibi v. Nabissa Sahib, AIR 1957 Mad 583 the Madras High Court held that a suit for removing the trustees of a private trust and for framing a scheme was maintainable. A similar view was also taken by the Calcutta High Court in Mahadeo Jew v. Balkrishna Vyas, AIR 1952 Cal 763.

10. The Civil Court has therefore jurisdiction

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*to frame a scheme for management of the temple
and its properties.Xxxxxxx.*

4. However learned counsel for the appellants relied on ***Nathabhai Devidas and others Vs.Vaghjibhai Jhaverbhai*** (AIR 1928 Bombay 20), ***Tara Chand Vs. Harnam Singh and another*** (AIR 1928 Lahore 237), ***Subramonia Pillai Chellam Pillai Vs. Subramonia Pillai Chathan Pillai & others*** (1953 KLT 117), ***Pazhukkamattom Devaswom Vs. Lakshmikutty Amma*** (1980 KLT 645), ***Rajasekharan Naicker Vs. Govindankutty Naicker*** (1983 KLJ 506), ***Chatrabhuj Mavji Merchant Vs. Sumati Morarjee*** (1992 Maharashtra Law Journal 1075), ***Khetan Industries Pvt. Ltd. Vs. Manju Ravindraprasad Khetan*** (AIR 1995 Bombay 43), ***Shanmughan Vs. Vishnu Bharatheeyan*** (2003 (3) KLT 901).

These judgments, in our view, do not lay down any principle contrary to the principles laid down by the Apex Court in the judgments noticed above. Therefore these judgments cannot be relied on to take the view that the District Court should have been entertained the suit filed by the appellants. Sum and

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substance of the above is that the order passed by the District Court, Manjeri holding that the suit should have been filed before the proper Court does not suffer from any illegality. Therefore we do not find any reason to interfere with the order which is impugned. The appeals fails and are dismissed. However, to cut short procedural formalities, it is ordered that the District Court, Manjeri shall on receipt of a copy of this judgment, transfer O.S.No.5 of 2012 to the files of the Sub Court, Manjeri which on receipt thereof will expeditiously try and dispose of the suit. The parties will enter appearance before the Sub Court, Manjeri on 15.12.2015.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

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