

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

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

OP(C).No. 548 of 2015 (O)

(OS 48/2014 of MUNSIF COURT, HARIPPADU)

PETITIONERS:

1. EASANANAN NAMBOOTHIRI AGED 72 YEARS
S/O.LATE EASANAN DAMODARAN NAMBOOTHIRI
PLAKKUDI ILLOM, AMBALAPPUZHA P.O.
AMBALAPPUZHA VILLAGE, AMBALAPPUZHA TALUK
ALAPPUZHA DISTRICT.
2. HARINARAYANAN NAMBOOTHIRI, AGED 45 YEARS
S/O.EASANANAN NAMBOOTHIRI, PLAKKUDI ILLOM
AMBALAPPUZHA P.O., AMBALAPPUZHA VILLAGE
AMBALAPPUZHA TALUK, ALAPPUZHA DISTRICT.

BY ADVS.SRI.P.HARIDAS
SMT.S.SIKKY
SRI.P.C.SHIJIN

RESPONDENTS/PLAINTIFFS AND 3RD DEFENDANT:

1. THE TEMPLE ADVISORY COMMITTEE
VALIYAKULANGARA DEVI TEMPLE, MAHADEVIKAD P.O.
MAHADEVIKAD MURI, KARTHIKAPALLY VILLAGE
KARTHIKAPPALLY TALUK, ALAPPUZHA DIST - 690 516
REPRESENTED BY ITS SECRETARY.
2. G.SURESH, AGED 51 YEARS, S/O.GOVINDAN,
SECRETARY, THE TEMPLE ADVISORY COMMITTEE
VALIYAKULANGARA DEVI TEMPLE
RESIDING AT CHERUSSERIL HOUSE, MAHADEVIKAD P.O.
KARTHIKAPALLY VILLAGE, ALAPPUZHA -690 516.
3. G.CHELLAPPAN, AGED 64 YEARS,
S/O.LATE GOVINDAN, PRESIDENT,
TEMPLE ADVISORY COMMITTEE,
VALIYAKULANGARA DEVI TEMPLE
RESIDING AT CHERUSSERIL HOUSE, MAHADEVIKAD P.O.
KARTHIKAPALLY VILLAGE, ALAPPUZHA - 690 516.

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4. TRAVANCORE DEVASWOM BOARD,
REP. BY THE SECRETARY
OFFICE OF THE TRAVANCORE DEVASWOM BOARD
DEVASWOM BUILDINGS, NANDANCODE,
THIRUVANANTHAPURAM - 695 003.

R4 BY ADV. SRI.M.V.S.NAMBOOTHIRI, SC, TRAVANCORE
DEVASWOM BOARD.
R1 -R 3 BY ADV. SRI.G.BENO

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

- P1: TRUE COPY OF RELEVANT PAGES OF THE REPORT OF THE DEVASWOM ASSISTANT COMMISSIONER OF THE STATE OF TRAVANCORE STANDARDIZING THE PADITHARAM IN ITS TRANSLATED FORM.
- P2: TRUE COPY OF THE LETTER ADDRESSED TO FATHER OF THE 1ST PETITIONER BY ASSISTANT COMMISSIONER OF DEVASWOM, MAVELIKKARA DATED 13/02/1984.
- P3: TRUE COPY OF THE LETTER SEND BY ASSISTANT DEVASWOM COMMISSIONER AMBALAPPUZHA TO 1ST PETITIONER DATED 7/6/2004.
- P4: TRUE COPY OF THE LETTER ISSUED BY THE ASSISTANT DEVASWOM COMMISSIONER, MAVELIKKARA SEEKING OPINION OF THE FATHER OF THE 1ST PETITIONER DATED 12/10/2004.
- P5: TRUE COPY OF THE ANOTHER LETTER ADDRESSED TO FATHER OF THE 1ST PETITIONER ISSUED BY ASSISTANT DEVASWOM COMMISSIONER, MAVELIKKARA DATED 18/02/2005.
- P6: TRUE COPY OF THE LETTER OF THE ASSISTANT DEVASWOM COMMISSIONER, HARIPPADU ADDRESSING 1ST PETITIONER TO PERFORM FESTIVAL DATED 18/2/2012.
- P7: TRUE COPY OF THE REPLY DATED 12/6/2004.
- P8: TRUE COPY OF THE LETTER DATED 25/02/2013.
- P9: TRUE COPY OF THE PLAINT IN OS NO.48/2014 OF MUNSIF COURT, HARIPPADU DATED 31/1/2014.
- P10: TRUE COPY OF THE IA NO.234/2014 IN OS NO.48/2014 OF MUNSIF COURT, HARIPPADU DATED 31/01/2014.
- P11: TRUE COPY OF THE ORDER OF INJUNCTION OF MUNSIF COURT, HARIPPADU DATED 11/02/2014 IN I.A.234/14 IN O.S.48/14.
- P12: TRUE COPY OF THE IA NO.2187/2014 OF MUNSIF COURT HARIPPADU DATED NIL.
- P13: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS IN EXHIBIT P10 DATED NIL.
- P14: TRUE COPY OF THE IA NO.2178/2014 OF MUNSIF COURT, HARIPPADU DATED IN 2014.

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P15: TRUE COPY OF THE ASHTAMANGALA PRASHNACHARTHU
DATED 28/03/2013.

P16: TRUE COPY OF THE CERTIFIED COPY OF THE DOCUMENT PRODUCED
AS PRASHNACHARTHU BY THE RESPONDENT 1 & 2.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.548 OF 2015

Dated this the 10th day of March, 2015.

J U D G M E N T

Challenging Ext.P11 order and also complaining about non disposal of Exts.P12 and P14, petitioners have come up before this Court with this original petition under Article 227 of the Constitution of India. Ext.P12 is a petition to set aside the ex parte order passed against the petitioners and Ext.P14 is to vacate the interim order of injunction.

2. The matter relates to appointment of Tantri to 'Sree Valiyakulangara Devi Temple'. The petitioners claimed to be hereditary Tantries of the said temple. They have been holding 'thanthram right' of the temple from time immemorial. Thanthram right of the family was accepted by Travancore Devaswom Board. While things stood so, there was some dispute between the velan of the temple and members of advisory committee and officials of Devaswom Board. Ultimately, it resulted in respondents 1 and 2 filing a suit for injunction seeking

to restrain the petitioners from entering into the temple and performing poojas. Ext.P9 is the plaint. Along with the suit, they moved I.A.No.234/2014 for interim relief and that petition is produced as Ext.P10.

3. Even though the petitioners have received notice, since they were not keeping well, they could not appear before the court below resulting in Ext.P11 order being passed. The petitioners have been set ex parte. Ext.P12 petition was filed seeking to have the ex parte decree set aside which has not been considered so far. The petitioners also filed Ext.P14 i.e. I.A.No.2178/2014 seeking to have the plaint returned and suit rejected.

4. It is pointed out by the learned counsel appearing for the petitioners that change of Tantries was not proper and legal and the reason given are unsustainable. There are well principles regarding change of Tantries and the case on hand does not satisfy any one of that principles and the change of Tantri in the present case is illegal and therefore Ext.P11 order cannot be sustained.

5. It has to be noticed that Ext.P11 order is an appealable order. The proper remedy of the petitioner is to file an appeal.

6. The petitioners have filed Exts.P12 and P14 petitions before the court below. The court below is bound to consider the same on merits.

7. The petitioners pointed out that they may be given some time to prefer an appeal against Ext.P11 order and till that time, Ext.P11 order may be kept in abeyance.

8. On the very face of it, the reason given for change of Tantri does not appear to be very convincing enough. This Court had occasion to consider this issue in another case and held that change of Tantri is only on exceptional circumstances and the case on hand does not appear to fall within that category.

9. Whatever that be, the court below is bound to consider the appeal in case the petitioner files an appeal against Ext.P11 order. The court below is also bound to consider Exts.P12 and P14 petitions filed by the petitioners.

10. There will be a direction to the court below to consider Exts.P12 and P14 petitions as expeditiously as possible, at any

rate, within a period of one month from today. In order to enable the petitioners to file an appeal against Ext.P11, Ext.P11 order shall be kept in abeyance for a period of one month.

11. Learned counsel appearing for the petitioners pointed out that even though they had filed an application for getting the certified copy of the documents, that was refused on the ground that only photostat copies of the documents have been produced.

Going by the provisions of the Code of Civil Procedure, any document produced before the court below will have to be given to the other side. It is well settled that certified copies of the photostat copies cannot be given to other side. However, if the court below feels it proper to issue copies of the photostat copies of the documents, the documents may be given to the petitioners.

Sd/-

P.BHAVADASAN
JUDGE

smp