

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

OP(C).No. 2633 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN OS 1199/2015 of MUNSIF
COURT, CHAVAKKAD DATED 03.10.2015

PETITIONER(S):

PADMINI, AGED 78 YEARS,
W/O.SAMPATTER ILLATH NARAYANAN EMBRANTHIRI,
SREEMAHALAKSHMI NIVAS, MAMMIYOOR, GURUVAYOOR,
GURUVAYOOR AMSOM, MAMMIYOOR DESOMCHAVAKKAD THALUK,
THRISSUR.

BY ADV. DR.K.P.PRADEEP

RESPONDENT(S):

1. GURUVAYOOR DEVASWOM
REPRESENTED BY ITS ADMINISTRATOR, GURUVAYOOR,
GURUVAYOOR AMSOM, MAMMIYOOR DESOM, CHAVAKKAD THALUK,
P.O.GURUVAYOOR, THRISSUR.

2. GURUVAYOOR DEVASWOM COMMITTEE,
REPRESENTED BY ITS CHAIRMAN, GURUVAYOOR,
GURUVAYOOR AMSOM, MAMMIYOOR DESOM, CHAVAKKAD THALUK,
P.O.GURUVAYOOR, THRISSUR.

R BY SRI.P.GOPAL

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 17-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1: TRUE COPY OF THE PLAINT WITH DOCUMENTS IN OS NO.1199/2015 FILED
BEFORE THE LEARNED MUNSIF COURT, CHAVAKKAD

P2: TRUE COPY OF THE IA NO.5137/2015 IN OS NO.1199/2015 FILED
BEFORE THE LEARNED MUNSIF COURT, CHAVAKKAD.

P3: TRUE COPY OF THE APPLICATION DATED 2/7/2015 FILED BY THE
RESPONDENTS IN OS NO.1199/2015 BEFORE THE LEARNED MUNSIF
COURT, CHAVAKKAD

P4: TRUE COPY OF THE JUDGMENT DATED 3/10/2015 IN OS NO.1199/2015 OF
THE LEARNED MUNSIF COURT, CHAVAKKAD

RESPONDENT(S) ' EXHIBITS: NIL

// TRUE COPY //

PA TO JUDGE

K.ABRAHAM MATHEW J.

O.P.(C) No.2633 of 2015

Dated this the 17th day of December, 2015

JUDGMENT

Claiming that she is a tenant of the plaint schedule building belonging to the 1st respondent Devaswam the petitioner instituted O.S.No.1199 of 2015 in Munsiff Court, Chavakkad for a perpetual injunction prohibiting it from dispossessing her of the property except in accordance with law and from interfering with her enjoyment thereof. The Devaswam is represented by its chairman, the 2nd respondent. The respondents filed Ext P3 application in the Munsiff Court requesting it to hear the question of maintainability of the suit as, according to them, it has no jurisdiction over the subject matter. By Ext P4 order the learned Munsiff held that in view of the decision in ***Vasudevan Namboodiri v. Parameswaran Namboodiripad (2014 (3) KLT 386)*** the Munsiff court has no jurisdiction to entertain the suit, and accordingly, he ordered return of the plaint for presentation before the proper court. Its legality challenged in this petition.

2. Heard learned counsel on either side.

3. The dispute involved in Vasudevan Namboodiri v. Parameswaran Namboodiripad (supra) was with regard to selection to the post of chief priest ('melsanti') in Sreekrishna Temple at Guruvayur. The administration of the temple is governed by Guruvayur Devaswam Act at 1978. The learned single judge held that the district court concerned has exclusive jurisdiction to entertain the dispute.

4. Court is defined in section 2(d) of the Guruvayur Devaswam Act as follows:

“Court” means the District Court having jurisdiction over the area in which the temple is situated.

In the Act there are seven provisions relating to institution of suits. They are Sections 5(5),6(4),11(6),12(6),20(4), 26(4) and 28(4). The first two sections deal with institution of suits by a member of the Guruvayur Devaswam Managing Committee (hereinafter called the committee) constituted under section 3 of the Act challenging removal of him or supersession of the Committee. Sections 11(6),12(3) and 20(4) provide for institution of suits by the committee for setting aside or modifying certain decisions or orders of the commissioner. Section 26(4) is a

provision dealing with institution of suits by the committee or employees of the devaswam to set aside or modify the order passed by the commissioner under section 26(2). In all these cases the suit should be instituted before 'the court', which means the court as defined in section 2(d). The present suit is not covered by any of the above six sections.

5. Under section 28(1) of the Act the committee shall be entitled to take and be in possession of all movable and immovable properties including jewellerys, records, documents and assets belonging to the devaswam. If there is any difficulty in obtaining possession of the properties, the committee or administrator may make a requisition to the collector of the district in which the properties are situated to deliver possession thereof to the committee or the administrator as provided in section 28(2) of the Act. Sub section 3 directs the district collector to hold a summary enquiry and pass appropriate orders on receipt of the requisition. Sub section 5 of section 28 of the Act reads thus:

Nothing contained in this section shall bar the institution of a suit by any person aggrieved by an order made thereunder for establishing his title to the property.

section 28(5) presupposes existence of an order by the collector made

under section 28(3). In this case no order has been passed under section 28(3) of the Act. That apart, sub section 5 of Section 28 (3) of the Act only says that there is no bar in instituting a suit. It does not mention the court in which the suit may be instituted. In other words, sub section 5 does not prescribe that the suit shall be instituted in the court defined in Section 2(d) of the Act. So even a suit contemplated by sub section 5 can be instituted in the regular court. There is no exclusion of jurisdiction of regular civil court for instituting a suit by any person with regard to the property of the devaswam. In fact, this distinction has been taken notice of the learned judge in Vasudevan Namboodiri's case (supra). After referring to the provisions in the Act relating to institution of suits the learned judge has observed, "The only exception is where a title to the property has to be established by any person aggrieved by an order passed under the Act by the institution of a suit which is not barred under Section 28(5) of the Act wherein the term 'the court' is conspicuously absent".

6. The Guruvayur Devaswam Act does not contain any provision barring institution of suits by any person in respect of the property of the devaswam in the court in which they are to be instituted under the Civil

Courts Act read with section 15 of the Code of Civil Procedure. The learned Munsiff went wrong in holding that Munsiff Court has no jurisdiction to entertain the suit.

In the result, this Original Petition is allowed, and the impugned order is set aside. The learned Munsiff is directed to take back the suit to the file of his court.

K.ABRAHAM MATHEW
JUDGE

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