

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

RFA.No. 806 of 2009 ()

OS 1/2006 of ADDL. DISTRICT COURT, NORTH PARAVUR

APPELLANTS/PLAINTIFFS 1 TO 3 & 5 :

1. YASHIT, S/O.DAMODARAN, VATTAPARAMBIL
HOUSE, KIZHAKEPRAM KARA, KOTTUVALLY VILLAGE
PARAVUR TALUK.
2. V.G. SUNIL KUMAR,
S/O. GOPALAKRISHNAN NAIR, KARIYIL VALIA PARAMB
VELIMPARAMB, KIZHAKEPRAM KARA, KOTTUVALLY VILLAGE
PARAVUR TALUK.
3. S. PRASANTH, S/O. SREEDHARA POTHUVAL,
RESIDING AT DEVAKIYIL, KIZHAKEPRAM KARA
KOTTUVALLY VILLAGE, PARAVUR TALUK.
4. P. VENUGOPAL, S/O. RAMAN MENON,
PATTANATHUKATTIL, PATTANAM KARA, VADAKKEKARA VILLAGE
PARAVUR TALUK.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SMT.PREETHY KARUNAKARAN

RESPONDENTS/DEFENDANTS :

1. GOPALAKRISHNA PILLAI
S/O. LAKSHMIKUTTY PILLAI, THAZHATHU NIRANAM VEETIL
RESIDING AT GOVINDA VILASAM, PARAVOOTHARA MURI
PARAVUR VILLAGE, PARAVUR TALUK.
2. GOVINDA PILLAI,
S/O. LAKSHMIKUTTY PILLAI, THAZHATHU NIRANAM VEETIL
RESIDING AT GOVINDA VILASAM, PARAVOOTHARA MURI
PARAVUR VILLAGE, PARAVUR TALUK

3. LEELAVATHY PILLAI,
D/O. LAKSHMIKUTTY PILLAI, THAZHATHU NIRANAM VEETIL
RESIDING AT GOVINDA VILASAM, PARAVOOTHARA MURI
PARAVUR VILLAGE, PARAVUR TALUK.
4. ACHUTHA MENON,
S/O. LAKSHMIKUTTY PILLAI, THAZHATHU NIRANAM VEETIL
RESIDING AT GOVINDA VILASAM, PARAVOOTHARA MURI
PARAVUR VILLAGE, PARAVUR TALUK.
5. DR. VIJAYAN,
S/O. LAKSHMIKUTTY PILLAI, THAZHATHU NIRANAM VEETIL
RESIDING AT GOVINDA VILASAM, PARAVOOTHARA MURI
PARAVUR VILLAGE, PARAVUR TALUK.
6. PADMAVATHY PILLAI,
D/O. LAKSHMIKUTTY PILLAI, THAZHATHU NIRANAM VEETIL
RESIDING AT GOVINDA VILASAM, PARAVOOTHARA MURI
PARAVUR VILLAGE, PARAVUR TALUK.
7. KRISHNAN NAIR,
S/O. ACHUTHA PANICKER, PARAVOOTHARA MURI
PARAVUR VILLAGE, PARAVUR TALUK.
8. JOSEPH, S/O. THOMAS, THEKINEDATH,
PARAVOOTHARA MURI
PARAVUR VILLAGE, PARAVUR TALUK.

ADDL.R9 IMPEADED :

9. A.M. UDAYAN, S/O. MADHAVAN,
ANACHAL NEDUMPILLY VEETIL, KOTTUVALLY VILLAGE
PARAVUR TALUK. (IMPEADED AS PER ORDER DT. 16.11.2009 ON I.A.NO.3764 OF 2009)

R2,5 BY ADV. SRI.M.P.SREEKRISHNAN
R2,5 BY ADV. SMT.SHAHNA KARTHIKEYAN.

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.F.A. No.806 of 2009

Dated 15th June, 2015.

J U D G M E N T

The decision of the Additional District Court, North Paravur in O.S.No.1 of 2006 is under challenge in this appeal. Plaintiffs 1 to 3 and 5 in the suit are the appellants.

2. O.S.No.1 of 2006 is a suit filed under Section 92 of the Code of Civil Procedure ('the Code' for short). The case of the plaintiffs in the suit is that they are worshipers of 'Paravur Mandam Sree Subramania Kshetram' ('the temple' for short) and the plaint schedule property which is lying on the north of the temple is a property which is being used by the worshipers for their access to the temple and also for the performance of rituals of the temple. It is alleged by the plaintiffs that 'Kavadiyattam' on the 'Thypooyam' day is the most important ritual performed in the temple and the plaint schedule property is used on the said day by the worshipers of the temple, who are participating in the said ritual, for taking rest. It is also alleged by the plaintiffs that all along buttermilk

is supplied to the worshipers of the temple by the predecessors of defendants 1 to 7 from the plaint schedule property on certain auspicious days. According to the plaintiffs, a public trust is created in respect of the plaint schedule property as per the terms of document No.1856 of 1954 of SRO., Paravur and it is on account of the said reason, the said property is being used for the purposes referred to above. It is alleged by the plaintiffs that there are several yielding coconut and mango trees in the plaint schedule property and the income from the plaint schedule property is being utilised for meeting the expenses of the temple. It is also alleged by the plaintiffs that on the death of the second party to the document referred to above, defendants 1 to 7 who are her successors have cut and removed the trees in the plaint schedule property and are attempting to alienate the same to the eighth defendant. According to the plaintiffs, in so far as a public trust is created in respect of the plaint schedule property, the same cannot be alienated by defendants 1 to 7. The plaintiffs therefore claimed, among others, a declaration that the plaint schedule

property is a public trust and a decree of permanent prohibitory injunction restraining the defendants 1 to 7 from alienating the plaint schedule property or altering its nature.

3. Defendants 1, 2, 3, 5 and 6 contested the suit by filing a written statement. In the written statement, it was contended, among others, that there is no public trust in respect of the plaint schedule property and that defendants 1 to 6 are the absolute owners in possession of the said property.

4. The trial court, on a consideration of the materials on record, found that there is no public trust in respect of the plaint schedule property and consequently, dismissed the suit. Plaintiffs 1 to 3 and 5 are aggrieved by the said decision and hence this appeal.

5. Heard the learned counsel for the appellant.

6. In the light of the decision taken by the court below, the only issue arises for consideration in this appeal is as to whether a public trust is created in respect of the plaint schedule property. The essential distinction in Hindu Law between religious endowments which are public and which are

private is that in a public trust, the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description and in a private trust, the beneficiaries are definite and ascertained individuals [**See Mahant Ram Saroop Dasji v. S. P. Sahi, Special Officer-in-charge of Hindu Religious Trusts** (AIR 1959 SC 951)]. It is settled that mere use of a property for public purposes would not by itself create a public trust in respect of the said property and to create a public trust, there has to be a dedication involving complete cessation of ownership of the founder and vesting of the property for public or religious objects [See **Kuldip Chand v. Advocate General to Government of Himachal Pradesh** (AIR 2003 SC 1685)]. It is also settled that the question as to whether a particular religious endowment is of a private nature or of a public nature, has to be decided with reference to the facts proved in each case. With these principles in mind, I shall proceed to consider the question as to whether a public trust has been created in respect of the plaint schedule property.

7. As noticed by the court below, the evidence tendered by the second plaintiff as PW1 and the witness examined on their side as PW2 would only show that the plaint schedule property is being used by the worshipers of the temple for taking rest after 'Kavadiyattam'. The evidence tendered by the said witnesses would also indicate that buttermilk is being supplied to the worshipers of the temple on certain auspicious days by the predecessors of defendants 1 to 7 from the plaint schedule property. As rightly found by the court below, the said evidence is not sufficient to infer dedication of the plaint schedule property to the public involving a complete cessation of the ownership. Ext.A1 is the document of the year 1954 relied on by the plaintiffs to substantiate their case. The plaint schedule property is a property allotted to the second party to Ext.A1 document. True, the said document recites that the income from the plaint schedule property shall be utilised by the second party to the document for the purposes of the temple. It also recites that the second party to the document shall provide buttermilk to

the worshipers of the temple on certain auspicious days. The relevant recital in Ext.A1 reads thus :

“പട്ടിക 7-ഉം 8-ഉം നമ്പർ വസ്തുക്കളിലെ ആദായം നിങ്ങളിൽ 2-ാം നമ്പർകാരി ലക്ഷിക്കുട്ടിപിള്ള എടുത്തു മരുത്തു ഉൽസവ ദിവസവും ആലുവാ ശിവരാത്രി സംബന്ധിച്ച് ഞാൻ പതിവായി നടത്തിവരുന്ന നീരു മോരു കൊടുക്കുകയും കളരിയിൽ പതിവായി നടത്തിവരുന്ന വഴിപാടുകളും മുട്ടുകൂടാതെയും എന്നാലും നടത്തേണ്ടതാകുന്നു.”

The said recitals do not indicate that the entire beneficial interest in the plaint schedule property has been divested to the public. Further, in another part of the very same document, it is recited that the sharers to whom the properties are allotted as per the said document are entitled to hold their respective properties as absolute owners with all the rights of alienation. It has come out in evidence that the plaint schedule property was mutated pursuant to Ext.A1 document in the name of second party therein. In the aforesaid facts and circumstances, the finding of the court below that the plaintiffs have not

established that a public trust has been created in respect of the plaint schedule property, is in order. The appeal is devoid of merits and the same is, accordingly, dismissed. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)