

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

OP(C).No. 2178 of 2014 (O)

OS 1/2014 OF II ADDL.DISTRICT COURT, THIRUVANANTHAPURAM

PETITIONER(S):

**SREEKANTAN SASTHA KSHETRA TRUST
REG.NO.98/2007, SASTHA NAGAR, KUNNAPUZHA
ARAMADA P.O, THIRUVANANTHAPURAM 695 032,
REPRESENTED BY ITS SECRETARY B.MADHU.**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE**

RESPONDENT(S):

- 1. SREEKANTAN SASTHA TEMPLE
SASTHA NAGAR, KUNNAPUZHA, ARAMADA P.O
THIRUVANANTHAPURAM 695 032
REPRESENTED BY RESPONDENTS NO.2
TO 8 HEREIN.**
- 2. PUSHPAKARAN NAIR, AGED 57 YEARS,
S/O.BHASKARAN NAIR, RESIDING AT PUSHPAGIRI
TAGORE ROAD, PEROORKONAM, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.**
- 3. GOPAKUMAR G, AGED 61 YEARS,
S/O.GOPALA PILLAI, KAMALALAYAM, NJALIKONAM
KUNNAPUZHA, ARAMADA P.O, THIRUVANANTHAPURAM 695 032.**
- 4. A.PADMAKUMAR, AGED 48 YEARS,
S/O.APPUKUTTAN NAIR, DURGA NIVAS, PUNNAKAMUGHAL
ARAMADA P.O, THIRUVANANTHAPURAM 695 032.**
- 5. SUDHAKARAN
S/O.P.N.PRABHAKARAN NAIR, SREE BHADRA TC 18/709/4
SWAPNALAYAM ROAD, ARAMADA P.O
THIRUVANANTHAPURAM 695 032**

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6. P.R.RAJAGOPAL, AGED 40 YEARS,
S/O.RAMACHANDRAN NAIR, DARSANA, PUNNAKAMUGHAL
ARAMADA P.O, THIRUVANANTHAPURAM 695 032.
7. VIJAYAKUMARAN NAIR, AGED 58 YEARS,
S/O.KESAVAN NAIR, ARUNODAYAM, NJALIKONAM
ARAMADA P.O, THIRUVANANTHAPURAM 695 032.
8. GOPAKUMAR T, AGED 52 YEARS,
S/O.THANKAPPAN PILLAI, PRODUCTION ASSISTANT
KERALJYOTHY, KOORACHAL THAZHATHU PUTHEN VEEDU
ARAMADA P.O, THIRUVANANTHAPURAM 695 032.
9. K.CHANDRAN NAIR, AGED 48 YEARS,
S/O.KRISHNAN NAIR, PRESIDENT
SREEKANTAN SASTHA KSETHRA TRUST, MAKAYIRAM, KUNNAPUZHA
ARAMADA P.O, THIRUVANANTHAPURAM 695 032.
10. GOPAKUMAR, AGED 38 YEARS,
S/O.KUNJUKUTTAN NAIR, SECRETARY
SREEKANTAN SASTHA KSHETHRA TRUST, SANNIDHANAM
TC 18/1500(1), ARAMADA P.O, THIRUVANANTHAPURAM 695 032.
11. LALITHAMBIKA,
N.S.S KARAYOGAM NO.2394, POOJAPPURA PO
THIRUVANANTHAPURAM REPRESENTED BY ITS PRESIDENT
K.SUKUMARAN NAIR, S/O.KUTTAN PILLAI
RESIDING AT JAYA BHAVAN, TC 19/2025, MUDAVANMUGHAL
POOJAPPURA THIRUVANANTHAPURAM 695 012.
12. D.AJITH KUMAR, AGED 47 YEARS,
S/O.T.K.DIVAKARAN NAIR, SHANKUCHAKRAM, NETHAJI ROAD
POOJAPPURA, THIRUVANANTHAPURAM 695 012.
13. A.HARIKUMAR
S/O.ANANDAKRISHNAN NAIR, FORMER TREASURER
SREEKANTAN SASTHA KSHETHRA TRUST
RESIDING AT MELEPUTHEN VEEDU, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
14. BHUVANACHANDRAN NAIR
ARUNODAYAM, ARAMADA P.O, THIRUVANANTHAPURAM 695 032.
15. AJITH KUMAR,
TC 18/905-5, NRWA/C-49, NJELIKONAM
ARAMADA P.O, THIRUVANANTHAPURAM 695 032.
16. MAHESWARAN NAIR
NAYANAM, NJELIKONAM, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.

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17. SASIDHARAN NAIR
UTHRADAM, KONKALAM, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
18. SUKUMARAN NAIR
VILAYIL VEEDU, KONKALAM, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
19. SARASWATHY AMMA A
PRIYA BHAVAN, NJELIKONAM, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
20. LALITHAKUMARI,
MADHAVAM, PARAPOTTA LANE, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
21. B.REMADEVI
REMA BHAVAN, NJELIKONAM, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
22. HARIKUMAR S
TC 18/775-4, KOORACHAL, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
23. SUNILKUMAR V
KARIYARATHALAKKAL VEEDU, KONKALAM, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
24. JAYACHANDRFAN V
REVATHI, NJELIKONAM, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
25. VINOD K
SIVA SAILAM, PUNNAKAMUGHAL, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
26. SREESASTHA N.S.S KARAYOGAM NO.614
NJELIKONAM, KUNNAPUZHA, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
27. G.NARAYANAN NAIR
PRESIDENT, SREESASTHA N.S.S KARAYOGAM NO.614, ASWATHY
KUNNAPPUZHA, ARAMADA P.O, THIRUVANANTHAPURAM 695 032.
28. G.SUKUMARAN NAIR
TREASURER, SREESASTHA N.S.S KARAYOGAM NO.614
PREETHA BHAVAN, TAGORE GARDEN, ARAMADA P.O
THIRUVANANTHAPURAM 695 032.
29. MADHUSUDHANAN
DEVIKA, THRIKKANNAPURAM, THIRUVANANTHAPURAM 695 032.

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30. R.SUNILKUMAR
VASANTHA VILASAM, THRIKKANNAPURAM
THIRUVANANTHAPURAM 695 032.
31. A.RAJENDRAN
HARI SREE, THRIKKANNAPURAM
THIRUVANANTHAPURAM 695 032.
32. K.RAVEENDRAN NAIR
THAZHATHU VILAKKATHU, THIRUVANANTHAPURAM 695 032.
33. CHANDRASEKHARAN NAIR
JAYA BHAVAN, THRIKKANNAPURAM
THIRUVANANTHAPURAM 695 032.
34. G.HARIKUMAR
TC 18/1006, THRIKKANNAPURAM
THIRUVANANTHAPURAM 695 032.
- R1 -R 8 BY ADV. SRI.S.EASWARAN
R9,R10 BY ADV. SRI.THIRUMALA P.K.MANI
R11 BY ADVS. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SMT.R.BINDU
SRI.JOHNSON JOSE PANJIKKARAN
BY SRI.P.G.PARAMESWARA PANICKER (SR.)
R13,R 29,R 30-R34 BY ADV. SRI.K.VIDYASAGAR
R14-R17,R 18-R21,R22-R25 BY ADV. SRI.R.SREEHARI
R26,R27 & 28 BY ADV. SRI.K.RAMACHANDRAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2015 ALONG
WITH FAO. 281/2014, OPC. 2221/2014, THE COURT ON 27-03-2015,
DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE PETITION OP. 473/2012 WHICH WAS LATER
RENUMBERED AS OS 1/2014 THE DISTRICT JUDGES COURT,
THIRUVANANTHAPURAM, DATED 20/11/12
- EXHIBIT P2. COPY OF THE ORER IN IA 3004/2012 IN OP(TRUST) 473/2012 OF THE
DISTRICT JUDGES COURT, THIRUVANANTHAPURAM, DT,5/4/13
- EXHIBIT P3. COPY OF THE GOVERNMENT ORDER G.O(RT) NO.48/63/REV. PASSED
BY THE GOVERNMENT OF KERALA, DT.7/1/63
- EXHIBIT P4. COPY OF THE JUDGMENT IN RSA 132/13 PASSED BY THE
HONOURABLE HIGH COURT OF KERALA, DT.3/7/14
- EXHIBIT P5. COPY OF THE ORDER IN IA 2037/14 IN RSA 132/13 HONOURABLE
COURT OF KERALA, DT.22/8/14
- EXHIBIT P6. COPY OF THE RECORD OF PROCEEDINGS OF THE HONOURABLE
SUPREME COURT OF INDIA IN SLP (CIVIL) NO.23583/2014, DT.NIL.
- EXHIBIT P7. COPY OF IA 1905/13 IN OP (TRUST) 473/12 THE DISTRICT JUDGES
COURT, THIRUVANANTHAPURAM, 6/7/13.
- EXHIBIT P8. COPY OF THE IA 1906/2013 IN OP (TRUST) 473/2012 THE DISTRICT
JUDGES COURT, THIRUVANANTHAPURAM, DATED 6/7/13
- EXHIBIT P9. COPY OF THE IA 356/2014 IN OS NO.1/2014 THE ADDITIONAL DISTRICT
JUDGE 11, THIRUVANANTHAPURAM, DT.11/2/14
- EXHIBIT P10. COPY OF THE ORDER IN OP (TRUST) NO.473/2012 THE ADDITIONAL
DISTRICT JUDGE 11, THIRUVANANTHAPURAM DT.10/1/14
- EXHIBIT P11. COPY OF THE LETTER FROM THE KSHETHRAM THANTRI J.DEVA
NARAYANAN POTTI, DT.15/1/14
- EXHIBIT P12. COPY OF THE LETTER FROM THE KSHETHRAM TANTHRI SHRI J DEVA
NARAYANAM POTTI, DT.28/2/12
- EXHIBIT P13. COPY OF THE IMPUGNED COMMON ORDER IN IA 356/2013 1905/2013
AND 1906/2013 PASSED BY ADDITIONAL DISTRICT JUDGE 11,
THIRUVANANTHAPURAM, DT.2/9/14.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R11(A). COPY OF THE JUDGMENT IN RSA.132 OF 2013 DT.3/7/14
- EXHIBIT R11(B). COPY OF THE ORDER IN RP.620/14 DATED 22/8/14.

/ TRUE COPY /

P.B.SURESH KUMAR, J.

O.P.(C) Nos.2178 & 2221 of 2014

and

F.A.O.No.281 of 2014

Dated 27th March, 2015.

J U D G M E N T

The common order by which the II Additional District Court, Thiruvananthapuram disposed of the interlocutory applications in O.S.No.1 of 2014 relating to the reconstruction of Sreekandan Sastha Temple, Kunnappuzha, hereinafter referred to as 'the temple' for short, is under challenge in these matters. O.P.(Civil) No.2178 of 2014 is preferred challenging the orders on I.A.Nos.356 of 2013, 1905 of 2013 and 1906 of 2013. O.P.(Civil) NO.2221 of 2014 is preferred challenging the order on I.A.No.356 of 2013. F.A.O.No.281 of 2014 is preferred challenging the order on I.A.No.2950 of 2012.

2. O.S.No.1 of 2014 is a suit filed under Section 92 of the Code of Civil Procedure in respect of the temple. A few devotees of the temple filed the suit for framing a scheme for the administration of the temple. The fifth defendant in the suit

is a N.S.S. Karayogam. They filed a suit earlier as O.S.No.1478 of 2007 before the Munsiff Court, Thiruvananthapuram against the first defendant trust and others seeking a declaration that they are entitled to administer the affairs of the temple. The said suit was filed alleging that they have been managing the temple in accordance with Ext.A4 bye law in that suit and that some of the office bearers of the Devaswom, who were elected in terms of Ext.A4 bye law, formed the first defendant trust and attempting to usurp the management and control of the temple. The first defendant trust and its office bearers resisted the suit contending that the fifth defendant has no right over the temple and that the temple is being managed by the public, constituting the first defendant trust. O.S.No.1478 of 2007 was decreed declaring that the plaintiff therein has the right to administer and manage the affairs of the temple in accordance with Ext.A4 bye law till a proper scheme for the administration of the temple is formulated in appropriate legal proceedings. The court also restrained the first defendant trust and others from interfering with the administration of the temple by the

fifth defendant in accordance with Ext.A4 bye law. The matter was taken in appeal by the first defendant trust as also by the fifth defendant before the Principal Sub Court, Thiruvananthapuram. A.S.No.111 of 2009 was the appeal preferred by the first defendant and A.S.No.26 of 2010 was the appeal preferred by the fifth defendant. The appellate court, on an independent evaluation of the materials on record, confirmed the decree and judgment of the trial court. The appellate court also held that the creation of the first defendant trust is void *ab initio* and directed the defendants in the suit to deliver the original of the trust deed to the concerned Sub Registrar for cancellation. The first defendant trust has taken up the matter further before this Court in R.S.A.No.132 of 2013 and this Court confirmed the decision of the courts below and dismissed the Second Appeal. Ext.P4 in O.P.(C) No.2178 of 2014 is the judgment in R.S.A.No.132 of 2013. In the said judgment, this Court also found that the fifth defendant has been in administration of the temple and the trust has not acquired any right over the temple. The suit

O.S.No.1 of 2014 was filed during the pendency of R.S.A.No.132 of 2013. In view of the pendency of O.S.No.1 of 2014, this Court also held that all pending issues relating to the temple shall be worked out in the said suit. Earlier, during the pendency of A.S.No.111 of 2009, the temple was demolished by the first defendant trust. When the said fact was brought to the notice of this Court in the Second Appeal referred to above, this Court directed that appropriate provision for reconstruction of the temple can be made in O.S.No.1 of 2014 on such terms and conditions as the court deems fit.

3. In the light of the observations and directions issued by this Court in R.S.A.No.132 OF 2013, I.A.No.2950 of 2013 was filed by the plaintiffs in O.S.No.1 of 2014 seeking to appoint a receiver for the proper and effective management of the temple and also for the reconstruction of the temple. I.A.No.356 of 2013 was filed by the fifth defendant seeking the leave of the court to reconstruct the temple on a budget of Rs.25,00,000/-. I.A.Nos.1906 of 2010 and 1905 of 2013 were filed by the first defendant trust seeking permission to

reconstruct the temple and to accept the plan and estimate for the reconstruction of the temple.

4. On an elaborate consideration of the materials on record, the court below disposed of the interlocutory applications by a common order. Ext.P13 in O.P.(C) No.2178 of 2014 is the common order passed by the court below. As per the said order, the court below permitted the fifth defendant to reconstruct the temple on a budget of Rs.25,00,000/-. It was, however, clarified in the order that the permission granted to the fifth defendant to reconstruct the temple shall not affect the right of the plaintiffs and others to get a scheme framed for the administration of the temple. It was also clarified in the order that in the event a scheme is framed for the administration of the temple, the fifth defendant will only be entitled to get back the amounts spent by them for the reconstruction of the temple. It was further clarified in the order that the permission granted to the fifth defendant will not confer on them any right for the future administration of the temple and the rights of parties will be decided in the suit independent of the common

order passed in the interlocutory applications. As noticed above, the plaintiffs, the first defendant and others are aggrieved by the said decision of the court below.

5. Heard the learned counsel for the parties.

6. As noticed above, in R.S.A.No.132 of 2013, this Court had upheld the decision of the lower appellate court in A.S.No.26 of 2010 that the creation of the first defendant trust is void ab initio. As such, the first defendant trust cannot be granted permission to reconstruct the temple and the decision of the court below in rejecting the interlocutory application filed by the first defendant trust, is in order and does not call for any interference.

7. In R.S.A.No.132 of 2013, this Court had also upheld the decision in O.S.No.1478 of 2007 declaring the right of the fifth defendant Karayogam to administer and manage the affairs of the temple in accordance with Ext.A4 bye law in that suit till a proper scheme for the administration of the temple is formulated. This Court had upheld and confirmed the decision in O.S.No.1478 of 2007 after taking note of the pendency of the

suit O.S.No.1 of 2014 and the application for appointment of a receiver filed in the said suit. The fact that the temple structure has been demolished and the same needs to be reconstructed is also seen taken note of by this Court while rendering the said decision. As such, the view taken by the court below that the fifth defendant can be permitted to reconstruct the temple cannot be found fault with, especially when permission is granted without prejudice to the rights of the parties to the suit including the plaintiff to get a decree for framing a scheme for the administration of the temple.

8. Coming to the application for appointment of the receiver filed by the plaintiffs in the suit, it is to be noted that the plaintiffs are espousing the cause of the beneficiaries of the temple. They only want the temple to be reconstructed and administered properly. It is for the said purpose, they preferred the application for appointment of the receiver. It is beyond dispute that the temple structure is not in existence now and what is decided by the court below is only as to the right of the

parties to reconstruct the temple. It is now settled that a receiver cannot be appointed merely for the reason that the appointment will do no harm to the parties. A receiver can be appointed only when the court finds it just and convenient for the parties to appoint a receiver. It is settled that even a party to a suit can be appointed as receiver. The decision of the court below in permitting the fifth defendant to reconstruct the temple can also be taken as a decision appointing the fifth defendant as the receiver to reconstruct the temple, especially when the said permission is accorded without prejudice to the rights of parties and without conferring on the fifth defendant any right for the future administration of the temple. The court below has also directed the fifth defendant to submit periodical reports concerning the progress of the construction of the temple. In the said circumstances, according to me, there is no illegality or impropriety in the dismissal of I.A.No.2950 of 2012.

9. O.P.(C) No.2221 of 2014 is preferred by another N.S.S.Karayogam claiming that they are entitled to administer the affairs of the temple. There is nothing on record which

establishes the preferential right, if any, of the petitioner in O.P. (C) No.2221 of 2014 to administer the affairs of the temple. As noticed above, the temple is a public temple and even the right of the fifth defendant to administer the affairs of the temple as recognised by this Court is only till a proper scheme is framed for the administration of the temple. As such, there is no merit in the said original petition.

10. It is seen that the court below has permitted the fifth defendant to reconstruct the temple in accordance with the lay out plan marked as Ext.R2 in the affidavit filed in support of I.A.No.356 of 2013. From the pleadings in O.P.(C) No.2178 of 2014, it is seen that as per order dated 10.1.2014, the court below had permitted the Thantri of the temple to lay the foundation stone for the temple structure, and the foundation stone was laid accordingly by the Thantri on 13.1.2014. It is also seen that for the purpose of laying the foundation stone of the temple structure, a lay out plan was finalised and the foundation stone was laid in accordance with that plan. The Thantri of the temple being the ultimate authority to decide all

matters relating to the usages, customs and rituals of the temple, it needs to be clarified that the reconstruction of the temple by the fifth defendant shall be only in accordance with the concurrence of the Thantri of the temple.

11. It is seen that the court below, while permitting the fifth defendant to reconstruct the temple, made it clear that in the event a scheme is framed for the administration of the temple negating the contentions of the fifth defendant, they will be entitled to claim back the amounts spent for the reconstruction of the temple from the trust to be formed in accordance with the decision to be taken in the suit. Petitioners in the original petitions and the appellant in F.A.O.No.281 of 2014 have stoutly objected the said direction issued by the court below. According to them, the fifth defendant would reconstruct the temple only by raising contributions from the general public and as such, they can never be permitted to claim back the amounts spent by them for the reconstruction of the temple. They have also pointed out that they are prepared to reconstruct the temple by raising contributions from the

general public without any right to claim back the amount under the supervision of a receiver to be appointed by the court. In the context of the clarification made by the court below, the learned counsel for the fifth defendant submitted in the course of arguments that the fifth defendant has decided to construct the temple without raising any contribution from the general public. He has also submitted that the construction will be completed by them with their own funds and they will not claim back any amount from the trust to be formed in accordance with the decision in the suit. As such, there cannot be any grievance for anyone concerning the said direction issued by the court below.

12. In the result, the original petitions and the appeal are disposed of confirming the impugned common order, subject to the following conditions :

(1) The reconstruction of the temple by the fifth defendant shall be only in accordance with the concurrence of the Thantri of the temple.

(2) The fifth defendant shall complete the

reconstruction of the temple without raising any contributions from the general public and they will not have any right to claim back the amount spent for the reconstruction, under any circumstances.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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Order dated 11.01.2016 in R.P.No.401 of 2015 in O.P.(C) No.2221 of 2014 & R.P.No.402 of 2015 in F.A.O.No.281 of 2014 recalling and reviewing the judgment dated 27.03.2015 in O.P. (C) Nos.2178 & 2221 of 2014 and F.A.O.No.281 of 2014 is appended.

Sd/- Registrar (Judicial).

