

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

SA.No. 624 of 1997 (G)

AGAINST THE JUDGMENT AND DECREE IN A.S.NO. 7/1993 of SUB COURT, ATTINGAL

AGAINST THE JUDGMENT AND DECREE IN O.S.NO. 189/1986 of MUNSIF COURT,
ATTINGAL

APPELLANT(S)/APPELLANTS/PLAINTIFFS:

1. THORIYOTTU MADAN, MANAMPOOR VILLAGE,
CHIRAYINKEEZH TALUK
2. A.VEDAPALAN, DAIVAPURA VEEDU, MANAMPOOR VILLAGE
MANMPOOR DESOM.
3. RAGHAVAN JAIN, CHATHARAVILA VEEDU, KILIMANNOOR,
REPRESENTED BY POWER OF ATTORNEY - A.SADASIVAN,
DAIVAPURA VEEDU, MANMPOOR VILLAGE.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- (*v)1. KRISHNAN SUKUMARAN, SETHU BHAVAN, MANAMPOOR DESOM,
MANAMPOOR VILLAGE (DIED. LRS. IMPEADED)
2. GOVINDAN SATHYAVRITHAN, G.H.BHAVAN, MANAMPOOR DESOM,
MANAMPOOR VILLAGE.
- (*ii)3. MATHEVAN RAMAKRISHNAN, PARAKKAL VEEDU, MANAMPOOR
VILLAGE (DIED. RECORDED. LRS. IMPEADED)
4. NARAYANAN JAYARAJ, NARAYANAVILASATHU VEEDU,
MANAMPOOR VILLAGE.
5. MARTHANDAN BHODANANDAN, VILAYIL VEEDU,
MANAMPOOR DESOM, MANAMPOOR VILLAGE.
6. KAMALASANAN BHODAYANI OF -DO- -DO-
- (*iii)7. KUNCHU SAHADEVAN, ANITHA NIVAS OF -DO- -DO- (DIED. RECORDED.
LRS. IMPEADED)
8. KESAVAN VIDYADHARAN, MANCHU BHAVAN OF -DO- -DO-
9. RAMANKUTTY JAYADEVAN, LAILA SADANAM, MANAMPOOR
DESOM, MANAMPOOR VILLAGE.

- (*iv)10. RAMANKUTTY SIVADASAN, PRASANNA MANDIRAM,
-DO- -DO- (DIED. RECORDED. LRS. IMPEADED)
- (*i)11. GOVINDAN PUSHANGADAN, AKKARAVILA VEEDU,
-DO- -DO- (DIED. RECORDED) (ALIVE)
12. KRISHNAN NAKULAN, OF LAVANYA OF -DO- -DO-
13. KOCHUKRISHNAN SOMANATHAN, VAGUMKOTTY VEEDU, -DO- -DO-

*THE DEATH OF RESPONDENTS 3, 7, 10 AND 11 ARE RECORDED VIDE ORDER DATED 6.6.2011 IN MEMO BEARING CF 2211/11 ATED 30.03.2011

(*i)'R11 IS ALIVE' AS PER ORDER DATED 14.11.2014 IN SA 624/1997.

ADDL.RESPONDENTS:

- (*ii) R14. SMT.OMANA, W/O.LATE RAMAKRISHNAN, PARAKKAL VEEDU,
MANAMPOOR VILLAGE.
- R15. K.RAJIVE, S/O.LATE RAMAKRISHNAN, PARAKKAL VEEDU,
MANAMPOOR VILLAGE
- R16. REJITHA, D/O.LATE RAMAKRISHNAN, PARAKKAL VEEDU,
MANAMPOOR VILLAGE
- R17. REJEEVE, S/O.LATE RAMAKRISHNAN, PARAKKAL VEEDU,
MANAMPOOR VILLAGE
- R18. SMT.MADANAVATHI, W/O.LATE SAHADEVAN, ANITHA NIVAS,
VILAYIL VEEDU, MANAMPOOR DESOM, MANAMPOOR VILLAGE,
ATTINGAL, THIRUVANANTHAPURAM.

ADDL.R14 TO R18 IMPEADED BEING LRS OF DECEASED R3 AS PER ORDER DATED 14/11/14 IN IA NO.1530/11.

- (*iii) R19. DILEEP KUMAR, S/O.LATE SAHADEVAN, ANITHA NIVAS,
VILAYIL VEEDU, MANAMPOOR DESOM, MANAMPOOR VILLAGE,
ATTINGAL, THIRUVANANTHAPURAM, PIN 696101
- R20. ANITHA, D/O.LATE SAHADEVAN, ANITHA NIVAS,
VILAYIL VEEDU, MANAMPOOR DESOM, MANAMPOOR VILLAGE,
ATTINGAL, THIRUVANANTHAPURAM, PIN-696101
- R21. RINKU, D/O.REENA SAHADEVAN,
VILAYIL VEEDU, MANAMPOOR DESOM, MANAMPOOR VILLAGE,
ATTINGAL, THIRUVANANTHAPURAM, PIN-696101
- R22. GEETHU, D/O.REENA SAHADEVAN,
VILAYIL VEEDU, MANAMPOOR DESOM, MANAMPOOR VILLAGE,
ATTINGAL, THIRUVANANTHAPURAM, PIN-696101

ADDL.R19 TO R22 IMPEADED BEING LRS OF DECEASED R7 AS PER ORDER DATED 14/11/14 IN IA NO.1473/11.

- (*iv) R23. PANKAJAKSHI, W/O.LATE SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R24. RADHAMANI, D/O.LATE SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R25. RADHA RAMANAN, D/O.LATE SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R26. SREEVALSAN, S/O.LATE SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R27. PRASANNA, D/O.LATE SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R28. SUDHAMANI, D/O.LATE SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R29. MOHANDAS, S/O.LATE SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R30. ARUNA JAYAPRAKASH, S/O.JAYAPRAKASH SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R31. PRAJOSH, S/O.LATE JAYAPRAKASH SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R32. JYOTSNA, D/O.LATE JAYAPRAKASH SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.
- R33. SUNIL KUMAR, @ PATEL, S/O.SIVADASAN, PRASANNA MANDIRAM, MANAMPOOR DESOM, MANAMPOOR VILLAGE, ATTINGAL, THIRUVANANTHAPURAM, PIN-696101.

ADDL.R23 TO R33 IMPEADED BEING LRS OF DECEASED R10 AS PER ORDER DATED 14/11/14 IN IA NO.1475/2011

- (*v) R34. SMT. K.N.LAXMIKUTTY, W/O.KRISHNAN SUKUMAR , RESIDING AT SETHU BHAVAN, MANAMPOOR DESOM, MANAMPOOR VILLAGE.

- R35. SMT.SETHU, D/O.KRISHNAN SUKUMAR ,
RESIDING AT SETHU BHAVAN, MANAMPOOR DESOM,
MANAMPOOR VILLAGE.
- R36. SMT.SUDHA, D/O.KRISHNAN SUKUMAR ,
RESIDING AT SETHU BHAVAN, MANAMPOOR DESOM,
MANAMPOOR VILLAGE.
- R37. SMT.LATHA, D/O.KRISHNAN SUKUMAR ,
RESIDING AT SETHU BHAVAN, MANAMPOOR DESOM,
MANAMPOOR VILLAGE
- R38. SMT.ANITHA, D/O.KRISHNAN SUKUMAR ,
RESIDING AT SETHU BHAVAN, MANAMPOOR DESOM,
MANAMPOOR VILLAGE.

ADDL.R34 TO R38 IMPEADED BEING LRS OF DECEASED R1 AS PER ORDER
DATED 14/11/14 IN IA 1301/12.

R5, R6, R8, R9, R11 & R12 BY ADV. SRI.G.S.REGHUNATH

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 11.03.2015, THE
COURT ON 17-03-2015 DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

S.A. No.624 of 1997

Dated this the 17th day of March, 2015

JUDGMENT

Appeal by the plaintiffs, who lost both in the trial court and in the first appellate court. The suit is one for declaration and consequential injunction. The dispute is in respect of a temple consecrated in the plaint schedule property. Essence of the dispute is whether the temple is a private temple or a public temple. Incidentally, whether the plaintiffs, as members of a particular tarwad, could claim exclusive right of management of the affairs of the temple also arises for consideration.

2. Heard Shri P.K.Muhammed, learned counsel for the appellants/plaintiffs and Shri G.S.Reghunath, learned counsel for the respondents/defendants.

3. Bare minimum facts can be considered first. Plaintiffs are members of an Ezhava marumakkathayam tarwad called Pulivilakom tarwad. They are permanent residents of Manampoor Village. As there are numerous persons in the tarwad, who are interested in the affairs of the temple, plaintiffs sought permission from the trial court to institute the suit under Order 1 Rule 8 CPC and the permission was granted. Similarly, the

defendants are also impleaded as representatives of the persons, who are interested in opposing the plaintiffs' claim. According to the plaint averments, the property admeasuring 5½ cents, where the temple is located, belongs to the family of the plaintiffs. There was a partition in the year 1103 ME and as per the partition deed, the plaint schedule property was kept in common to all the members of the tarwad. The document specifically recites the exclusive right of members to administer the temple. Members of the family spent substantial amounts for constructing structures in the temple. Main deity in the temple is Thoriyodu Madan. The defendants formed a committee called Thoriyodu Madan Nada Kshethra Samithy and proclaimed that they have right to administer the temple. Hence the suit for declaration that the plaintiffs have right of ownership and management over the temple and also for a consequential injunction against the defendants from interfering with the administration of the temple.

4. Defendants 1 to 5 opposed the suit by contending that the suit is without any bonafides and the plaintiffs are not entitled to get any relief. It is admitted that Pulivilakom tarwad is an ancient Ezhava tarwad. The main tarwad by passage of time had branched out to various sub tarwads. Plaintiffs are only members of a sub tarwad. They have no authority to

claim exclusive right over the temple. Further, the document relied on by the plaintiffs itself does not confer any right on the plaintiffs as the recital therein would show that the seniormost male member has the right to administer the temple and the plaintiffs are not the senior most male members. That apart, the inclusion of the temple and its properties in 1103 ME partition deed itself was baseless, because even prior to that document, the temple was in existence and the property vested in the idol. The avements in the partition deed relied on by the plaintiffs that the temple property was kept in common is legally and factually incorrect. According to the defendants, the temple is a public temple and the plaintiffs are not entitled to get the declaration or injunction as claimed for.

5. Learned trial Judge, after considering the evidence of witnesses examined on the side of the plaintiffs and defendants and also based on the documents produced by the contesting parties, arrived at a conclusion that the suit must fail for too many reasons. Firstly, the identity of the property shown in the plaint could not be established and the compound of the temple lies as part of a large property extending more than 11 cents. Secondly, the land on which the temple had been consecrated vested in the deity and nature of the temple is that of a public temple. Therefore, it was necessary for the plaintiffs to file a suit under

Section 92 CPC in a proper forum. Thirdly, it is also found that the plaintiffs, going by Ext.A1 partition deed of the year 1103 ME, could not claim exclusive right as they do not satisfy the qualification prescribed in the document. The lower appellate court without much discussion disposed the appeal against the appellants. It is pertinent to note that before the lower appellate court the idol was impleaded as an additional appellant to cure the defect in the form of the suit. Now, the question urged before this Court is whether the reasons stated for dismissing the suit by the courts below are proper and valid.

6. Learned counsel for the appellants contended that the interpretation placed by the courts below on Ext.A1 is totally unsustainable. According to him, the defendants, as members of a committee constituted temporarily for the conduct of a festival in the temple, cannot claim any right in the day today administration of the temple. It will be profitable to look into Ext.A1 to appreciate the rival contentions. It is a partition deed between certain members of Pulivilakath veedu. Admittedly the parties were following marumakkathayam. Title to the properties included in Ext.A1 had been traced in the document. The contention raised by the defendants is that the parties to Ext.A1 had no right to include the properties dedicated to the temple long before 1103 ME. Learned counsel

for the defendants relied on a recital in Ext.A1 that the properties set apart to the temple should be possessed by the eldest member in the tarwad and he should conduct the rituals in the temple. Item No.7 in the document is the property set apart to Madan Kavu. On a reading of Ext.A1, it could be seen that the temple was in existence even prior to Ext.A1. It is the contention of the appellants that the recitals in Ext.A1 would clearly indicate that the temple is a private temple kept in common for the worship of members of Pulivilakom tarwad. Learned counsel for the appellants relied on a decision of the Supreme Court in **Deoki Nandan v. Murlidhar and others (AIR 1957 SC 133)**. His Lordship Shri Venkatarama Ayyar has lucidly explained the distinction between a public temple and a private temple in the following terms:

“When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshipers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshipers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public

or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.”

It is unchallengeable that if the disputed temple is a public temple, certainly members of the public have a right to worship in it as a matter of right. It is equally well settled that if the expenses for administration of the temple are met substantially from public contribution, the temple assumes the character of a public temple. The structures situated therein, which are constructed by strangers to the family, give an indication that the public have acquired a right of worship in the temple. Learned counsel for the defendants contended that admission by PW1 at the time of his examination will destroy the case pleaded in the plaint. When cross-examined, PW1 admitted that there are numerous members in Pulivilakom tarwad and the original tarwad had been branched out to various sub

tarwads even much prior to the litigation. There is a candid admission by PW1 that even the defendants in the suit are members of the common tarwad, but, according to him, they are not members of his branch. PW1 plainly admitted that the 1st defendant Sukumaran was elder to him and other members were also present in the tarwad elder than PW1. On these reasons, it is contended by the learned counsel for the respondents that the right claimed in the plaint has been given a go by at the time when PW1 was examined. Even if Ext.A1 is treated as the document showing the terms and conditions for administering the affairs of the temple, it is come out in evidence that the plaintiffs cannot claim exclusive right in the administration of the temple and also they have no right to exclude the defendants.

7. Learned counsel for the respondents placed reliance on the commissioner's report to contend that the case pleaded in the plaint is not vouchsafed by the commissioner's report and plan. The temple occupies more than 5 ½ cents shown in the plaint. It is virtually spread out in an area approximately 11 cents. Further, structures are situated outside the extent shown in the plaint schedule. These facts will indicate that the plaintiffs' claim that the property is still in existence as shown in Ext.A1 is incorrect. Therefore, the trial court is justified in finding that the identity of

the plaint schedule property could not be established by the plaintiffs.

8. Learned counsel for the plaintiffs contended that they are in actual management of the temple. In fact, in the plaint itself, we will find a statement that the defendants are members of a committee formed to help the plaintiffs in the administration of the temple. Whereas, the defendants would contend that they are administering the temple on their own right and not on any concession of the plaintiffs. Case of the defendants is more probable considering the materials available before the court.

9. Another contention raised by the learned counsel for the plaintiffs is that a petition under Order 41 Rule 27 CPC before the lower appellate court was not considered by the court below. It is the grievance of the plaintiffs that no order had been passed in the application neither accepting or rejecting the same. It is true that there is an illegality committed by the lower appellate court in not considering the application for reception of additional evidence. The documents produced have been carefully perused by me at the time of hearing. Some of them are registered documents and some are counter foil of receipt books, apparently printed at the time when the festival in the temple took place. Plaintiffs' case is that until the suit was filed, they were in peaceful administration of the temple. But, this fact is denied by the contesting

defendants producing certain minute books of the years 1982 and 1983. Even though, it can be said that the court below committed a mistake in not considering the additional evidence, after hearing both sides and perusing the additional evidence, I am of the definite view that the additional evidence sought to be produced before the lower appellate court would never improve the case of the plaintiffs. Not only that, no valid reason is established for not producing the same at the time of trial.

10. Totality of evidence would go to show that the temple is being managed as a public temple and not in accordance with the terms in Ext.A1. Therefore, the trial court is perfectly correct in finding that the question of administration of a public temple can be raked up in a properly constituted suit under Section 92 CPC and that too, before a competent court.

11. Another reason pointed out by the learned counsel for the defendants in opposition to the plaint claim is that though the deity was impleaded at the appellate stage, the deity, being a perpetual minor, should have been made a party through a next friend. Admittedly that was not done in this case. Therefore, impleadment of deity without a next friend is no impleadment in the eye of law. The evidence indicates that the property in dispute had been vested in the deity and it cannot be claimed to be a co-

ownership property any more. At the most, the members of the tarwad could have claimed right of administration. At any rate, such a claim cannot be granted against the members of the same tarwad and with a view to exclude them from the administration. Viewing from any angle, I find, especially from the judgment of the trial court, that the courts below have taken a correct view. Hence, I find no merit in the appeal.

In the result, the appeal is dismissed. There is no order as to costs.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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A.Hariprasad, J.

S.A.No.624 of 1997

JUDGMENT

17th March, 2015