

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

RFA.No. 63 of 2003 ()

AGAINST THE JUDGMENT IN OS 1190/1995 of I ADDL.SUB COURT,ERNAKULAM
APPELLANT/PLAINTIFF :

CHERANELLORE KSHETHRA KSEMA SAMITHY, REP. BY ITS PRESIDENT AND
SECRETARY.

1. PRESIDENT, P.ANANDAN, AGED 49, S/O.P.P.PADMANABHA MENON,
PADAVARAKKAL HOUSE, TEMPLE ROAD, CHERANELLORE, KOCHI - 34.
2. SECRETARY, C.P.RAVINDRA PISHARODY, PISHAROM,
AGED 50, S/O.NARAYANA PISHARODY, TEMPLE ROAD,
CHERANELLORE, KOCHI - 34.

BY ADVS. SRI.VARGHESE PARAMBIL
SRI.PRAKASH P.GEORGE
SRI.K.C.CHARLES
SRI.JOSON MANAVALAN
SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.M.N.MANMADHAN

RESPONDENT(S)/DEFENDANTS :

-
1. COCHIN DEVASWOM BOARD, REP. BY ITS SECRETARY,
OFFICE OF THE DEVASWOM BOARD, ROUND NORTH, THRISSUR.
 2. RAVI, S/O.LAKSHMANAN, AGED ABOUT 40, VELIYATHU PARAMBIL,
CHERANELLORE.
 3. MOHANAN, S/O.LAKSHMANAN, AGED 38, VELIYATHUPARAMBIL,
CHERANELLORE.
 4. VENU, S/O.KRISHNAN, AGED 38, VELIYATHUPARAMBIL,
CHERANELLORE.
 5. LELI D'SILVA (ELISABETH D'SILVA), AGED 38,
THATTAPPILLIL HOUSE, CHERANELLORE P.O., KOCHI - 34.

6. M.C.THOMAS, AGED 45, MACHU VEEDU, CHERANELLORE P.O., KOCHI - 34.
7. VARGHESE, AGED 50, KALATHIPARAMBIL HOUSE, -DO-
8. M.M.JOSEPH, AGED 50, MANAPURATHU HOUSE, -DO-
9. A.R.S.VADHYAR, S/O.RAMACHANDRAN VADHYAR, AGED 50,
YESORAM CHARITABLE TRUST, CONVENT ROAD, ERNAKULAM.
10. P.LEELA, D/O.KUMARAN MARAR, AGED 53, KUTTIKKATTIL HOUSE,
MANNUR, THRIKKALATHUR - 683 549.
11. P.INDUCHOODAN, S/O.KUMARAN MARAR, AGED 34,
SANTHI NILAYAM, CHERANELLORE P.O., KOCHI - 34 (DIED Lrs. IMPEADED)
12. P.REMA DEVI, D/O.KUMARAN MARAR, AGED 40, SANTHI NILAYAM,
CHERANELLORE P.O., KOCHI - 34.
13. A.SANKARAN, S/O.APPU MARAR, AGED ABOUT 40,
PERUMPILLIL HOUSE, CHERANELLORE P.O., KOCHI - 34 (DIED Lrs. IMPEADED)
14. P.MUKUNDAN, S/O.ANIYAN MARAR, AGED 40,
JAYASREE NIVAS, CHERANELLORE P.O., KOCHI - 34.
15. P.NANDAKUMAR, S/O.ANIYAN MARAR, AGED 47, JAYASREE NIVAS,
CHERANELLORE P.O., KOCHI - 34.
16. P.JAYASREE, D/O.ANIYAN MARAR, AGED 33, JAYASREE NIVAS,
CHERANELLORE P.O., KOCHI - 34.
17. PRASANNAKUMARI, D/O.ANIYAN MARAR, AGED 35, JAYASREE NIVAS,
CHERANELLORE P.O., KOCHI - 34.
18. A.PADMAVATHY, W/O.MADHAVAN MARAR, AGED ABOUT 45,
PADMA RAGAM, CHERANELLORE P.O., KOCHI - 34.
19. A.RADHAKRISHNA MARAR, S/O.ACHUTHA MARAR, AGED 48,
KRISHNA VIHAR, CHERANELLORE P.O., KOCHI - 34.
20. A.SARADA, D/O.ACHUTHA MARAR, AGED 53, VRINDAVANAM,
AMALAGIRI, NEAR AMMANCHERI JUNCTION, KOTTAYAM.

21. BHANUMATHY, D/O.APPU MARAR, AGED 38, AMBADY,
ARPOOKKARA, KOTTAYAM.

ADDL.R22 :

22. ANAND P.S., AAGED ABOUT 22 YEARS, S/O.LATE A SANKARAN,
REP. BY HIS MOTHER AND NATURAL GUARDIAN, SATHI DEVI,
RESIDING AT PERUMPILLIL HOUSE, CHERANELLORE P.O., KOCHI - 34.

(LEGAL REPRESENTATIVE OF THE DECEASED 13TH RESPONDENT IS IMPEADED
AS ADDL.R22 IN THE APPEAL VIDE ORDER DT. 21.1.2014 IN I.A.NO.1463/13)

ADDL.R23 :

23. JAYALAKSHMI, AGED 43 YEARS, W/O.LATE P.INDUCHOODAN,
SANTHI NILAYAM, CHERANELLORE P.O., KOCHI - 34.

ADDL.R24 :

24. SARAN, AGED 18 YEARS, S/O.LATE INDUCHOODAN,
SANTHI NILAYAM, CHERANELLORE P.O., KOCHI - 34.

(LEGAL REPRESENTATIVES OF DECEASED 11TH RESPONDENT ARE IMPEADED AS
ADDL. RESPONDENTS 23 AND 24 IN THE APPEAL VIDE ORDER DATED 21.1.2014
IN I.A.NO.1465 OF 2013.)

R,2, R3, R4 & R7 BY ADV. SRI.M.C.CHERIAN

R,2, R3, R4 & R7 , BY ADV. SMT.SARAMMA CHERIAN

R, BY ADV. SMT.ASHA CHERIAN

R, BY ADV. SRI.E.D.GEORGE

R, BY ADV. SRI.SABU S.KALLARAMOOLA

R, BY ADV. SRI.P.M.SANEER

R9 BY ADV. SRI.R.LAKSHMI NARAYANAN

R6,8,10, 11, 12.18, 19 & 20 BY ADV. SRI.K.A.SHAJI MATHEW &
SRI.PRINCE VARGHESE K.

R1 BY ADV.SRI.M.RAMESH CHANDER

R1 BY ADV. SRI.C.E.UNNIKRISHNAN,SC,COCHIN DEV.BOAR

R1 BY ADV. SRI.KRISHNA MENON, SC, COCHIN DEVASWOM BOARD

R22-R24 BY ADV. SRI.JEEMON JOHN

R22-R24 BY ADV. SRI.P.M.MANOJ

R22-R24 BY ADV. SRI.S.RUSSEL

R22-R24 BY ADV. SRI.V.R.ARUN

R22-R24 BY ADV. SRI.AJEESH K.SASI

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 1.4.2015, THE COURT
ON 22.5.2015 DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.F.A. No.63 of 2003

Dated 22nd May, 2015.

J U D G M E N T

The defeated plaintiffs in O.S.No.1190 of 1995 of on the file of the Sub Court, Ernakulam are the appellants.

2. The first defendant is the Cochin Devaswom Board administering the affairs of Cheranalloor Bhagavathy Temple, hereinafter referred to as 'the temple' for short. The plaintiffs are the office bearers of a Samithy called Cheranalloor Kshetra Kshema Samithy constituted by the worshippers of the temple. The suit was a representative action on behalf of the worshippers of the temple. The case of the plaintiffs is that on the strength of Ext.A5 lease deed, one Dudachan obtained Ext.A6 purchase certificate under the Land Reforms Act in respect of 1 acre 13 cents of property of the temple, including the pathway to the temple from the nearby public road. According to the plaintiffs, Ext.A6 purchase certificate is vitiated

by fraud; that the Special Tahsildar who had issued the purchase certificate was incompetent to issue the same and that the same takes away the right of the worshippers to have access to the temple. Defendants 2 to 4 are the children of the brother of Dudachan. It is alleged that on the death of Dudachan, the property covered by Ext.A6 purchase certificate devolved on his wife Rugmini and she transferred the said property to the said defendants. Defendants 5 to 21 are the assignees of the said property from defendants 2 to 4. The relief claimed in the suit was a decree to set aside Ext.A6 purchase certificate obtained by Dudachan.

3. Defendants 1 and 21 remained ex parte. The remaining defendants contested the suit by filing four separate written statements. The essence of the contentions raised by the defendants was that the purchase certificate is not vitiated in any manner and that the same is binding on the temple. The stand taken by the defendants concerning the pathway is that though purchase certificate was obtained in favour of the whole property covered by the lease, since the lease in favour

of Dudachan was excluding the right of way to the temple, there were no subsequent alienations in respect of the excluded pathway to the temple and that therefore, the right of way to the temple is not affected at all by the grant of purchase certificate.

4. The trial court, on an elaborate consideration of the entire materials on record, found that the plaintiffs have not established that the purchase certificate is vitiated by fraud, as contended by them. The trial court also found that the plaintiffs have not established that the Special Tahsildar who had issued Ext.A6 purchase certificate was incompetent to issue the same. As regards the contention raised by the plaintiffs regarding the right of way of the worshippers, the trial court found that in so far as Ext.A5 lease deed was executed excluding the way and in so far as there has been no subsequent alienations in respect of the way, the apprehension highlighted by the plaintiffs that their right of way will be obstructed is without any basis. On the basis of the said findings, the trial court dismissed the suit.

5. Heard the learned counsel for the appellants as

also the learned counsel for respondent Nos.1, 2, 3, 4 and 7, respondent Nos.6, 8, 10, 11, 12, 18, 19, 20, 22, 23 and respondent No.25.

6. As indicated above, the apprehension of the plaintiffs concerns the right of the worshippers to use the pathway covered by the purchase certificate for access to the temple and for procession and related ceremonies in connection with the festival of the temple. As found by the court below, the purchase certificate has been obtained based on Ext.A5 lease deed executed by Dudachan. Ext.A5 lease deed specifically excludes the pathway to the temple. As such, it cannot be contended that Dudachan had obtained a purchase certificate in respect of the pathway. In other words, Ext.A6 purchase certificate does not take in the pathway which is excluded in Ext.A5 lease deed. There is nothing on record to indicate that any of the contesting defendants do assert any right over the pathway. The said issue has been considered by the court below. The relevant passage in Paragraph 25 of the judgment dealing with the said issue reads thus :

"It is curious to note that in Ext.A8 the plaintiff would set up allegations of trespass upon road. The existence of road admitted. PWs.1 to 3 and DW1 would depose that still temple fete being conducted and procession would be passing through the way in existence. Admittedly Ext.A5 executed excluding the way. Ext.X1, A7 and A6 would reveal that assignment was effected excluding the way. Hence at no stretch of imagination it can be concluded that the Ext.A6 affect the right of plaintiff and worshippers to conduct procession."

In the light of the factual conclusions arrived at by the court below, especially with regard to the right of way to the temple, there is no scope for any grievance to the appellants. The appeal is therefore, devoid of merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)