

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

RSA.No. 988 of 2015

**JUDGMENT DATED 30-05-2015 IN AS 274/2011 OF ADDITIONAL DISTRICT COURT - III,
THIRUVANANTHAPURAM**

**OS 500/2006 OF PRINCIPAL MUNSIF COURT, THIRUVANANTHAPURAM
DATED 07-09-2015**
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APPELLANT(S)/RESPONDENT/DEFENDANT:

**KERALA KSHETRA SAMRAKSHANA SAMITHI,
A SOCIETY, REGISTERED AS NO.142/77 UNDER THE SOCIETIES
REGISTRATION ACT OF 1860 AND REPRESENTED IN THE
LOWER COURTS BY ITS FORMER PRESIDENT
DR.K.BALAKRISHNA WARRIER, PADINJARE WARRIAM VEEDU
CHINGOL VILLAGE, KARTHIKAPPALLY TALUK AND
REPRESENTED IN THIS PROCEEDINGS BY THE PRESENT
PRESIDENT, SWAMI AYYAPPA DAS @ K.P.RAJAN,
S/O.PARAMESWARAN NAIR, AGED 65 YEARS,
KUMBALATHIL HOUSE, MUTHALAKKAD P.O., THODUPUZHA.**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S)/APPELLANTS/PLAINTIFFS:

- 1. SARASWATHY AMMA,
D/O.JANAKI AMMA, CHEMAVILAYIL VEEDU, NEMOM,
EDAGRAMAM, THIRUVANANTHAPURAM - 695 020.**
- 2. VASANTHA KUMARI AMMA,
D/O.JANAKI AMMA, KANNANGRAHATHU VEEDU, KALLUVILAKOM,
EDAGRAMAM, KARAMANA, THIRUVANANTHAPURAM - 695 002.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

R.S.A. No.988 of 2015

Dated 8th September, 2015.

J U D G M E N T

The defendant in a suit for declaration and recovery of possession is the appellant.

2. The case of the plaintiffs is that the plaint schedule temple belongs to their family as set apart under the common ownership of the members of the family as per the terms of Ext.A1 partition deed, with a provision for its management. According to the plaintiffs, the mother of the plaintiffs is empowered to administer the affairs of the temple as per the terms of Ext.A1 partition deed and that the plaintiffs are administering the affairs of the temple on her behalf. It is alleged by the plaintiffs that while so, the defendant society and persons claiming under them usurped the administration of the temple on the strength of Ext.A9 gift deed executed by a few members of the family. According to the plaintiffs, they are, therefore, entitled to recover the plaint schedule temple from the defendant. They also sought a decree to set aside

Ext.A9 gift deed.

3. The defendant resisted the suit by filing a written statement. According to them, the plaint schedule temple is a public temple and the defendant organization has been formed by the local public for the administration of the same. It was also contended by them that Ext.A1 partition deed does not confer any title to the plaintiffs over the plaint schedule temple.

4. The first plaintiff gave evidence in the case as PW1. Exts.A1 to A9 are the documents produced on the side of the plaintiffs. The defendant has not adduced any evidence, either oral or documentary.

5. The trial court dismissed the suit holding that the suit filed without impleading all the members of the family as also the executants of Ext.A9 gift deed, is not maintainable. The plaintiffs challenged the decision of the trial court in appeal. The appellate court, however, reversed the decision of the trial court and decreed the suit as prayed for. The defendant is aggrieved by the decision of the appellate court.

6. Heard the learned counsel for the appellant.

7. The learned counsel for the appellant contended that in so far as the plaintiffs prayed for a decree to set aside Ext.A9 gift deed in favour of the defendant, the suit filed without impleading the executants of the said document is not maintainable. According to him, the said contention has not been correctly comprehended and decided by the appellate court. The learned counsel for the appellant also contended that the plaintiffs have not established title to the plaintiff schedule temple and therefore, the appellate court erred in decreeing the suit. According to the learned counsel, the title of the plaintiffs over the suit temple was sought to be established only on the strength of Ext.A1 partition deed and that the same does not confer on the plaintiffs and others title to the suit temple.

8. There is no merit in the contentions advanced by the learned counsel for the appellant. As noticed above, the specific case of the plaintiffs is that the suit temple belongs to the family of the plaintiffs. The contention of the defendant is that in so far as the plaintiffs seek a decree for setting aside Ext.A9

gift deed, they should have impleaded the executants of the said document as necessary parties to the suit and the suit instituted without them on the array of parties is not maintainable. Ext.A9 gift deed is a document executed by some of the members of the family of the plaintiffs in favour of the defendant. I do not think that the executants of Ext.A9 gift deed are necessary parties to the suit, especially when the beneficiary of the said document is a party to the suit. That apart, the defendant does not claim any right under Ext.A9 gift deed. The case of the defendant is not that the suit temple was a temple owned by the family of the plaintiffs and that the defendant is administering its affairs on the strength of Ext.A9 gift deed. Instead, their case is that the suit temple is a public temple and that they are administering its affairs as authorised by the public. In so far as the defendant is not claiming any right under Ext.A9 gift deed, I do not think they are entitled to attack the decision of the lower appellate court on that ground.

9. Coming to the contention raised by the learned counsel for the defendant that the plaintiffs have not

established title to the plaint schedule temple, I must rely on the recitals in Ext.A1 partition deed. Ext.A1 partition deed is a document executed in the 1113 M.E. It categorically recites that the suit temple is the family temple of the plaintiffs. True, the inclusion of the suit temple in Ext.A1 partition deed alone by itself does not confer title over the same on the family. But, as far as the present case is concerned, as noticed above, the defendant has not adduced any evidence in support of their case that the suit temple is a public temple. In the absence of any evidence on the side of the defendant in support of their contention that the suit temple is a public temple, I am of the view that the appellate court cannot be faulted for having relied on the recitals in Ext.A1 partition deed to hold that the plaintiffs have established title to the suit temple.

In the said view of the matter, I do not find any merit in the Second Appeal. There is no question of law, much less any substantial question of law, involved in this Second Appeal. The Second Appeal, in the circumstances, is devoid of merits and the same is accordingly, dismissed *in limine*. However, it is

clarified that the present suit being not a suit instituted against the public in a representative capacity, the decision of the lower appellate court would only bind the defendant in the suit. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)