

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

THURSDAY, THE 26TH DAY OF AUGUST 2021 / 4TH BHADRA, 1943

EX.FA NO. 4 OF 2021

AGAINST THE ORDER/JUDGMENT DATED 12.07.2019 IN E.A.399/2016 IN

E.P.NO.133/2007 IN OS 90/2006 OF SUB COURT,ALAPPUZHA

APPELLANTS/PETITIONERS:

- 1 T.MADHU, S/O.THANKAPPAN, VELIMPARAMBU, ARATTUVAZHI, ALAPPUZHA.
- 2 P.S.AJAYAN, AGED 56, S/O.SANKARAN, PUTHENPURACKAL, ARATTUVAZHI, ALAPPUZHA.

BY ADVS.

M.NARENDRA KUMAR

SHRI.P.S SANDEEP KRISHNAN

RESPONDENTS/RESPONDENTS:

- 1 K.K.SURESH,S/O.K.A.KAMALAKARAN, KUDUVASSERIL VEEDU, THUMPOLLY P.O., ALAPPUZHA, PIN-688 001.
- 2 SREE KANDAKARNA KSHETHRAYOGAM, KANJIRAMCHIRA, REPRESENTED BY ITS PRESIDENT AND SECRETARY, OFFICE OF THE SREE KANDAKARNA KSHETHRAHOGAM, KANJIRAMCHIRA, ALAPPUZHA, PIN-688 001.
- 3 SREEPADAM FUNDS, KANJIRAMCHIRA, ALAPPUZHA REPRESENTED BY CHAIRMAN, OFFICE OF THE SREE KANDAKARNA KSHETHRAYOGAM, KANJIRAMCHIRA AND SECRETARY SREE KANDAKARNA KSHETHRAYOGAM, KANJIRAMCHIRA, PIN-688 001.

BY ADVS.

SRI.SADCHITH.P.KURUP

SRI.JOSE ANTONY

SRI.C.P.ANIL RAJ

THIS EXECUTION FIRST APPEAL HAVING COME UP FOR ADMISSION ON 26.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

Two devotees of a public temple representing the deity by name Sree Khandakarna Kshethram, Kanjiramchira, Alappuzha came up with a petition under Order XXI Rule 97 C.P.C. obstructing the delivery of a portion of property belonged to the deity in execution of a money decree. It was dismissed by the Sub Judge on the ground that no document was produced by the petitioners to show their right, title or interest over the property to obstruct the delivery. The fundamental principles governing a perpetual minor and competency of a devotee to represent the deity/idol in a legal proceedings, the binding force of a decree against a perpetual minor and the legal entity of an idol in a public temple, though raised, were not even taken into consideration in the impugned order. It is unfortunate that the officer (Sub Judge concerned) did not even go into the abovesaid issues or understand the dispute involved in the petition, but dismissed the same on an extraneous ground that none of the claim petitioners produced any document

of their right, title or interest to obstruct delivery.

2. It is a case wherein a decree is sought to be executed against the property held by a public temple and the idol thereof. Neither the public temple nor the idol was made as a party to the suit or the decree thereof. It is a money decree against two unincorporated associations named after the temple viz., Sree Khandakarna Kshethrayogam, Kanjiramchira, Alappuzha represented by its President P.Rajeev, its Secretary S.N.Thyagarajan, the first defendant and The Sreepadam Funds, Kanjiramchira, Alappuzha represented by Chairman V.V.Viswan, the second defendant. Since the defendants are unregistered and unincorporated associations, leave was granted to institute the suit under Order I Rule 8 C.P.C.

3. It is submitted by the respondent/decreed holder that since there is a publication under Order I Rule 8 C.P.C., the claim petitioners are bound by the decree though the idol or the public temple was not made as a party to the suit or the decree thereof. The said contention is not seen either taken up or discussed by the Sub Judge who passed the impugned order. The purpose

of Order I Rule 8 CPC is to give notice to all interested persons, when there are numerous persons having the same interest in one suit. The expression "on behalf of" incorporated in Rule 8(1) of Order I C.P.C. must be appreciated and understood in relation to the words "having the same interest in one suit". Order I Rule 8 C.P.C. would operate only against a person, who is having the same interest as that of a person, who was permitted to either institute a suit or defend a suit in a representative capacity and it will not have any operation or binding force to any other person who is having a different interest. Necessarily, the binding nature of the suit or the decree, if any, passed therein in compliance with Order I Rule 8 C.P.C. must be understood as binding on only those persons in whose behalf the suit was instituted or defended in a representative capacity having the "same interest" and none else.

4. The deity or the public temple was not made as a party to the suit and no leave was obtained to institute a suit in a representative capacity as against the idol or the public temple, though the idol would constitute a

jural and legal entity as a perpetual minor. Since the devotees are numerous, a fluctuating body, of course, in order to institute or defend a suit against the deity or idol, leave has to be obtained under Order I Rule 8 C.P.C., for which, the deity or idol should be in the party array and the suit must be one either by the idol or against the idol represented by a competent person.

5. In the instant case, the deity or the idol or the temple is not in the party array. Two unincorporated associations named after the temple were made as the defendants and it is a money decree against the abovesaid two unincorporated associations and it would bind only on the persons who are the members of the unincorporated associations or having interest thereof.

6. Further, Ext.A1 document purported to be a settlement deed has not been taken into consideration by the court below. It is based on Ext.A1 deed, the prior owners of the family temple entrusted the temple and its properties to the public for the welfare of the deity and its devotees. Party Nos.6 to 11 in the document were initially entrusted with the administration with a stipulation that 35 members should be elected from the

general public for administering the temple and thereby created a public trust. Ext.A1 document is of the year 1121ME. Hence the money decree against two unincorporated associations, though named after the deity, cannot be executed against the deity or the idol. It is so strange enough that the court below observed that PW1 obstructed the delivery, eventhough he is not a member of the Executive Committee and had admitted that the temple is being managed by the administrative committee. The well settled legal principle is that even a worshipper or a devotee can also maintain a legal proceeding, when there is failure on the part of the administrative committee or the committee constituted for its administration or on a breach of trust. Hence, the resistance and obstruction offered by the petitioners are lawful as the decree cannot be executed against the properties of idol, who are not bound by the decree. The execution proceedings initiated against the idol and its property are hence liable to be set aside. Hence, the dismissal of the application under Order XXI Rule 97 C.P.C. against the petitioners cannot be sustained. E.A.No.399/2016 will stand allowed. The appeal is allowed accordingly.

The Registry is directed to forward a copy of this judgment to the Directorate of Training attached to this Court for future guidance while imparting training to the judicial officers.

Sd/-

P. SOMARAJAN

JUDGE

msp

APPENDIX OF EX.FA.NO.4/2021

PETITIONERS ANNEXURES:NIL

RESPONDENTS ANNEXURES:

ANNEXURE R1A	TRUE COPY OF THE PLAINT DATED 11.7.2006 IN O.S.NO.90/2006
ANNEXURE R1B	TRUE COPY OF THE JUDGMENT DATED 23.02.2007 PASSED IN OS.NO.90/2006
ANNEXURE R1C	TRUE COPY OF EP NO.133/2007 IN OS NO.90/2006
ANNEXURE R1D	TRUE COPY OF SALE CERTIFICATE DATED 13.5.2015
ANNEXURE R1E	TRUE COPY OF EA NO.589/2009 IN EP NO.133/2007 IN O.S.NO.90/2006
ANNEXURE R1F	TRUE COPY OF ORDER DATED 14.1.2015 PASSED IN EA NO.589/2009 IN EP 133/2007 IN OS NO.90/2006
ANNEXURE R1G	TRUE COPY OF EA NO.399/2016 IN EA NO.445/2015 IN EP NO.133/2007 IN O.S.NO.90/2006

//TRUE COPY//

P.A.TO JUDGE