



2026:KER:58592

OP(C) NO. 1737 OF 2019

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 3RD DAY OF AUGUST 2026 / 12TH SRAVANA, 1948

OP(C) NO. 1737 OF 2019

AGAINST THE ORDER DATED 12.04.2019 IN EA 450/2016 in
EP No.167/2011 in OS NO.34/2000 OF I ADDITIONAL DISTRICT
COURT, ERNAKULAM

PETITIONER/PETITIONER IN EA NO.450/2016 IN EP 167/2011:

SRIMAD SAMYAMINDRA THIRTHA SWAMIJI
AGED 35, MATHADIPATHI OF SREE KASHI MATHA
SAMSTHAN, REPRESENTED BY THEIR
[POWER OF ATTORNEY HOLDER SRI GURUPUR GANAPATHY
PRABHU, S/O.LATE DAMODARA PRABHU, RESIDING AT
NO.1, MANUSMRITHI, DANLAT NAGAR, SANTACRUS (W)
MUMBAI-400054.]*SUBSTITUTED

*NARAYANA SHENOY KAUP @ K.NARAYANA SHENOY, S/O
LATE K. GOKULDAS SHENOY, AGED 61 YEARS, RESIDING
AT NO. 36, 2ND MAIN (SIDDHARTHA SCHOOL ROAD),
KAMAKSHIPALYA, BANGALURU - 560079
IS SUBSTITUTED AS THE POWER OF ATTORNEY HOLDER IN
THE PLACE OF LATE SRI G G PRABHU, VIDE ORDER
DATED 11.02.2026 IN IA 2/2025.

BY ADVS.
SRI.S.B.PREMACHANDRA PRABHU
SRI.R.LAKSHMI NARAYAN (SR.)
SHRI.RAMANARAYANA PRABHU
SMT.R.RANJANIE
SRI.M.ASHOK KINI



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RESPONDENT/RESPONDENT IN EA NO.450/2016 IN EP 167/2011

RAGHAVENDRA THIRTHA SWAMI, SANYASI
AGED 45 YEARS
DWARAKA KALAMANDIR, PUDUKKALAVATTOM, ELAMAKKARA,
KOCHI-682026.

BY ADVS.
SRI.P.B.KRISHNAN (SR.)
SHRI.HARISH R. MENON
SRI.K.T.SHYAMKUMAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30.06.2026,
THE COURT ON 03.08.2026 DELIVERED THE FOLLOWING:

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“C.R”

EASWARAN S., J.-----
OP(C) No.1737 of 2019
-----**Dated this the 3rd day of August 2026****J U D G M E N T****Prelude to the Litigation**

The present proceedings arise from an extraordinary facts exhibiting a dispute that emanated within the sacrosanct relationship of a *Guru* and a *Shishya*, that has traversed the spiritual realm and culminated in protracted litigation. The original decree holder, despite having successfully obtained a decree in his favour, attained *samadhi* before witnessing its execution, his last legal battle remaining unresolved. The persistent conduct of the judgment debtor in deliberately concealing his whereabouts and frustrating the execution process had, at an earlier stage, compelled this Court to describe him as an “elusive Swamiji” who had rendered himself inaccessible to the process of law. Following the demise of the decree holder, the mantle of pursuing the decree has been assumed by his nominated *Shishya*, who seeks to fulfil the wishes of his revered *Guru*.



Ironically, the resistance now encountered emanates from none other than the erstwhile *Shishya*, who had been divested of all authorities and responsibilities relating to the Math and who figures in these proceedings as the judgment debtor. Consequently, what in ordinary circumstances constituted a routine exercise seeking substitution of the deceased decree holder by his successor-in-interest has, owing to the peculiar factual background and the legal objections raised by the judgment debtor, evolved into an intricate legal controversy demanding comprehensive examination of the intricate questions of law.

Facts of the case.

2. In the year 2000, the respondent herein filed a suit for declaration as OS No.34/2000 before the IV Additional District Court, Tirupati against his own Guru, *Srimad Sudhindra Thirtha Swami*, for a declaration that he is the present Matadhipathi (21st pontiff) of the first plaintiff Math and for a permanent injunction restraining the defendants (his *Guru* and Shri Tirumala Kashi Math) from in any way interfering with the affairs of the Math. A counterclaim was lodged in



the said suit, leading to various intricate issues touching upon the subsequent nomination of another *Shishya* by the first defendant/counterclaim plaintiff and the issuance of the proclamation by which the petitioner herein was nominated as the successor in interest of the *Srimad Sudhindra Thirtha Swami*. After an extensive trial, the suit was dismissed with costs and the counterclaim was decreed and granted a permanent injunction restraining the 2nd plaintiff from interfering in the affairs of the Shri Samsthan and its administration by the counterclaimant/1st defendant and also issued a mandatory injunction to the second plaintiff -the respondent herein to hand over all the deities and other articles as per the Advocate Commissioner's report dated 1.3.2002 with commissioner's memo dated 23.2.2002 enclosed to the decree in his possession belonging to the Shri Samsthan to the counter claimant/1st defendant. This case is unique in nature, highlighting the litigant's difficulties after obtaining the decree. The respondent herein, while defending the execution petition before the Additional District Court-IV, Tirupati, for executing the decree in the counterclaim, raised a question of jurisdiction that, the Tirupati Court does not have



the territorial jurisdiction to entertain the execution petition, since he is no longer residing within the jurisdiction of the Tirupati Court. Accepting the said plea, on an application by the decree holder in the counterclaim, the Addl. District Court-IV, Tirupati transferred the decree for execution to the Ernakulam Court. The jurisdiction of the District Court, Ernakulam to execute the decree of the Addl. District Court-IV, Tirupati was questioned by the respondent herein in CRP No.398/2011, which got dismissed by this Court by Ext.P4 judgment dated 05.09.2011. Later, even though the judgment debtor filed objection to the execution applications questioning the executability of the decree of the Addl. District Court-IV, Tirupati, the same was rejected by the Addl. District Court, Ernakulam and allowed EA Nos.465 and 466 of 2011 in EP No.167/2011 and directed the judgment debtor to comply with the decree. This led to the filing of CRP No.525/2011. On 01.12.2011, by Ext.P5 judgment, this Court once again rejected the claim of the judgment debtor and held that the transferee executing court has jurisdiction to decide the execution of the decree. Later, the decree holder filed an application as E.A. No.345/2012 in EP No.167/2011 in OS No.34/2000 seeking for



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assistance of the Director General of Police (State Police Chief, Kerala) to arrest and produce the judgment debtor in executing court to facilitate his detention in civil prison, and to direct the said officer to locate the paraphernalia and other items in terms of the decree sought to be executed. By order dated 28.11.2012, the executing court refused to grant relief which led to the decree holder filing OP(C) No.256/2013 and by Ext.P6 judgment dated 11.02.2013, this Court allowed the application and directed the IG of Police, Central Range to constitute a team of police officers to render necessary assistance to the Amin to trace, arrest and produce the respondent- judgment debtor before the executing court. In the meantime, appeals preferred by the respondent-judgment debtor before the High Court of Judicature at Hyderabad as A.S Nos.90 & 91 of 2009 were dismissed by Ext.P7 judgment dated 01.06.2015, and affirmed the judgment and decree of the Addl. District Court-IV, Tirupati in OS No.34/2000 and in the counterclaim. Later, the decree holder filed Tr.P(C) No.496/2014 before this Court to transfer the execution petition to this Court. This Court by Ext.P8 order dated 12.8.2015 dismissed the transfer petition, and IA No.17447/2013 in OP(C) No.256/2013 was



allowed, handing over the investigation to the Central Bureau of Investigation, New Delhi in order to trace out the missing judgment debtor. In the meantime, *Shrimad Sudhindra Thirtha Swamiji* attained *Samadhi* on 16.01.2017 at Haridwar, Utharakhand. Based on a registered Will dated 06.11.2003 and a proclamation dated 08.09.2015 of the former Madathipathi, which fortifies the petitioner herein as the *Shishya*, who is to succeed him as the Madathipathi of the Kashi Math Samsthan, the petitioner filed Ext.P9 application under Section 146 read with Section 151 of the Code of Civil Procedure to get him substituted as the decree holder in the execution proceedings. The application was met with stiff opposition from the judgment debtor. Ext.P9 application was taken up for consideration by the Addl. District Court-I, Ernakulam and by Ext.P12 order dated 12.04.2019, the Additional District Court-I, Ernakulam opined that the remedy of the petitioner is to move the court which passed the decree and obtain permission from the Additional District Court-IV, Tirupati to substitute himself as the decree holder and thereafter proceed with the execution proceedings. Challenging Ext.P12 order, the present original petition is filed.



3. Heard Sri.R.Lakshmi Narayan, the learned Senior Counsel assisted by Smt.R.Ranjanie, appearing for the petitioner and Sri.P.B.Krishnan, the learned Senior Counsel assisted by Sri.Harish R. Menon, appearing for the respondent.

Submissions on behalf of the Petitioner.

4. Sri.R.Lakshmi Narayan, the learned Senior Counsel appearing for the petitioner, raised the following submissions:

- A) The finding in Ext.P12 order of the Additional District Court-I, Ernakulam that the remedy of the petitioner is to approach the court which passed the decree to have himself substituted in the place of the decree holder is erroneous. According to the learned Senior Counsel, in the light of the Explanation added to Order-XXI Rule-16 of the Code of Civil Procedure, an application under Section 146 of the Code of Civil Procedure is maintainable, and therefore it is unnecessary for the petitioner to approach the court which passed the decree that is, the Additional District Court-IV, Tirupati.
- B) It is further submitted that the court had completely misconstrued the provisions of Order-XXI Rule-16 of the



Code of Civil Procedure and failed to properly comprehend the scope of the Explanation to Order - XXI Rule - 16 and should have interpreted Section 146 in a more liberal manner.

- C) The objection raised by the judgment debtor after these protracted proceedings is *per se* unsustainable. The judgment debtor has no right to oppose the impleading application by the petitioner to substitute himself in the place of the decree holder, especially in the light of the proclamation issued in the year 2000 and the Will issued in the year 2003 and the subsequent proclamation of the year 2015.
- D) It is further pointed out that the judgment debtor having failed in his attempt to challenge the decree in the counterclaim, cannot be heard to contend that the decree in the counterclaim is of a personal nature. He also pointed out the subsequent conduct of the respondent, where he went to the extent of creating a fraudulent trust deed dated 16.05.2017, which led to the petitioner filing OS No.4838/2017 before the Court of XXVII Additional City



Civil and Sessions Judge (CCH-9) at Bengaluru, which resulted in judgment dated 26.02.2024 declaring the creation of the trust as illegal and restraining the defendants therein, including the respondent herein, from interfering with the affairs of Shree Kashi Math Samsthan, Varanasi. The said judgment clearly shows that the court had pronounced upon the validity of the Will executed by the Guruji in favour of the petitioner and that the Will having been recognized by a court of law, there is no requirement for the petitioner to approach the Additional District Court-IV, Tirupati to get himself substituted in the place of the decree holder.

- E) He further pointed out that Order-XXI Rule-16 of the Code of Civil Procedure will apply only in a case of assignment of decree. In a case where the interest in the decree schedule property is transferred, the subsequent transferee is not required to file an application under Order- XXI Rule-16 and that he becomes the representative of the decree holder, entitling him to move an application under Section 146 of the Code of Civil Procedure. In support of his contention, relied



on the decision of the Supreme Court in ***Vaishno Devi Construction v. Union of India [(2022) 2 SCC 290]***.

He further pointed out that the reliance placed by the I Additional District Court, Ernakulam in the impugned order on the decision of this Court in ***Mathai v. Joy [1986 KHC 319]*** is not correct and in the light of the decision of the Supreme Court in ***Vaishno Devi Construction*** (supra) and also in view of the fact that the Single Bench of this Court had not taken into consideration the Explanation to Order - XXI Rule - 16 of the Code of Civil Procedure and also the provisions of Section 146 of Code of Civil Procedure, the judgment in ***Mathai*** (supra) is liable to be treated as one rendered per incuriam. Therefore, it is prayed that the impugned order be set aside and the application filed on behalf of the petitioner be allowed.

Submissions on behalf of the respondent.

5. Sri.P.B.Krishnan, the learned Senior Counsel appearing for the respondent, raised the following contentions:



- (a) The requirement of law that the petitioner must approach the court which passed the decree cannot be bypassed. He pointed out that Order - XXI Rule - 16 of the Code of Civil Procedure explicitly shows that all transfers, including one by operation of law, come within the purview of Order - XXI Rule - 16. Even assuming that the transfer of interest in the decree schedule property was through inheritance or through a testamentary succession in the form of a Will, it will come under the definition of operation of transfer by law, and therefore the requirement to obtain permission from the court which passed the decree cannot be done away with.
- (b) He further pointed out that Section 146 of the Code of Civil Procedure is only an enabling provision by which the subsequent assignee is empowered to move an application for continuing the execution proceedings. Since Section 146 does not prescribe any procedure, one will have to necessarily come under Order-XXI Rule-16. Once Order-XXI Rule-16 is applied, the assignee of the decree holder will have to move before the court which passed the decree.



- (c) It is pointed out that in the light of the decision of this Court in ***Mathai v. Joy [1986 KHC 319]***, and also the Division Bench decision of this Court in ***Sankarambal v. Lalitha Ganesan [1978 KHC 51]***, the question of applicability of Order-XXI Rule-16 on the death of a decree holder is no longer *res integra*. Therefore, it is pointed out that this Court is bound by the dictum laid down by the Single Bench of this Court in ***Mathai*** (supra) and the Division Bench decision of this Court in ***Sankarambal*** (supra).
- (d) He further submitted that if this Court were to disagree with the views expressed by the Single Bench in ***Mathai*** (supra), necessarily the matter should go before the Division Bench. He further pointed out that even assuming that in ***Sankarambal*** (supra), the Division Bench did not take into consideration the impact of Section 146 as well as the Explanation to Order - XXI Rule – 16 of the Code of Civil Procedure, even then the propriety demands that this Court either follows the Division Bench decision of this Court in ***Sankarambal*** (supra) or the matter should be referred to



the Division Bench for reconsidering the issue as regards the applicability of the Explanation to Order - XXI Rule - 16 and Section 146 of the Code of Civil Procedure.

- (e) He further pointed out that the reason why the respondent is raising this objection is that the nature of the decree passed in the counterclaim is one of personal nature and, therefore, it is always open to the judgment debtor to question the executability of the decree at the instance of the petitioner, if an application is filed before the Additional District Court-IV, Tirupati. This is more so when going by the judgment *inter partes*, the transferee executing court cannot decide the question of executability of the decree, and therefore the respondent will be prejudiced if the application for continuing the execution proceedings is allowed at the instance of the petitioner.
- (f) In support of his contentions, relied on the decision of this Court in ***Ramankutty v. Kali Nani* [1986 KHC 20]**, the decision of the Division Bench of the Patna High Court in ***Harsukhrai M. Doshi v. Ahmad Kareem* [1974 SCC**



OnLine Pat 125 : AIR 1975 Pat 150], the decisions of the Supreme Court in ***Jugalkishore Saraf v. Raw Cotton Co. Ltd.*, (1955) 1 SCC 248]** and ***Mahalinga Thambiran Swamigal v. Arulnandi Thambiran Swamigal*, [(1974) 1 SCC 150]**.

6. I have considered the rival submissions raised across the bar and the order impugned in the present original petition.

Consideration by the Court.

(i). Whether reference to a Larger Bench is required?

7. Before examining this question, it is imperative for this court to determine whether the dictum laid down by the learned Single Judge of this Court in ***Mathai v. Joy* [1986 KHC 319]** continues to hold the field or whether the said decision warrants reconsideration in the light of the legal questions raised in the present case. Equally, this Court must examine whether the controversy involved in this Original Petition stands concluded by the ratio of the Division Bench in ***Sankarambal v. Lalitha Ganesan* [1978 KHC 51]**. Should it be found that the issue falls outside the ambit of the



aforesaid binding precedents, it would then become necessary for this Court to resolve the issues presented before it.

8. According to Sri.P.B.Krishnan, the learned Senior Counsel appearing for the respondent, the issue presented before this Court is covered by the decision of the Single Bench of this Court in ***Mathai v. Joy [1986 KHC 319]*** and the Division Bench of this Court in ***Sankarambal v. Lalitha Ganesan [1978 KHC 51]*** and hence the impugned order is liable to be sustained. The submissions may appear to be attractive. But it is indisputable that in both the cases, the impact of the Explanation to Order XXI Rule 16 and also the scope of Section 146 of the Code of Civil Procedure were never considered. Accordingly, this Court is left with no alternative but to conclude that the controversy arising in the present Original Petition is neither governed by the decision of the learned Single Judge in ***Mathai (supra)*** nor concluded by the ratio of the Division Bench in ***Sankarambal (supra)***. Consequently, a question may arise- whether the matter ought to be referred to a Larger Bench for an authoritative pronouncement on the issues that have surfaced in the



present proceedings, particularly when the specific questions now requiring adjudication neither fell for consideration nor were addressed in the aforesaid decisions of the Single Bench and the Division Bench.

9. Prima facie, this Court is of the view that the necessity of referring the matter to a Larger Bench does not arise, for the questions that fall for determination in the present proceedings neither arose for consideration nor were decided in the aforesaid judgments. The issues can, therefore, be resolved by applying the settled principles of law without transgressing upon or departing from the ratio laid down in either of the said decisions. The reason why reference to a larger bench is not necessitated by this Court is discussed below.

10. The provision relating to execution by a transferee of a decree is governed by Order XXI Rule 16 of the CPC which reads as under :

“16. Application for execution by transferee of decree.—

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by



assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the applications were made by such decree-holder:

PROVIDED that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

PROVIDED also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Explanation.—Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.”

Section 146 of the Code of Civil Procedure is also extracted as under:

“146. Proceedings by or against representatives

Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.”

Prior to 1977, one could easily find that despite Section 146 in existence, the question of execution of a decree at the hands of a subsequent assignee of the property would be governed by Order – XXI Rule – 16. But during the year 1976-77, the Law Commission of



India, in its recommendation, suggested an amendment to Order – XXI Rule – 16. The main reason as to why the Law Commission suggested amendment to Order – XXI Rule – 16 of the Code of Civil Procedure is the divergent opinions expressed by the various High Courts. The recommendation of the Law Commission is extracted hereunder:

“Section 146 and Order 21, Rule 16

1-O-34. The general principle that a transferee succeeds to the right of his predecessor, is to be found in section 146 of the Code, which is as follows:-

“146. Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceedings may be taken or the application may be made by or against any person claiming under him.”

The special provision as to the execution of decrees by assignees of the decree is contained in Order 21, rule 16, which provides that a decree may be executed by assignees, if there is an assignment of the decree in writing.

The question has arisen whether a person who does not have a written assignment of the decree assigned (Order 21, rule 6), but who has succeeded to the decree holder's right, is entitled to execute the decree under section 146.

A conflict of decisions

1-O-35. A Madras case illustrates the conflict. In that case P (through her attorney, the contesting respondent) filed



a suit in Madurai against 29 defendants, for delivery of possession of certain property. A decree was passed in 1944. Pending the appeal, P transferred all her rights in the property in favour of the respondent, N. for a certain sum of money. Later, P died, and N was brought on record in the appeal. N sought to execute the decree by filing Execution Petition 373 of 1950. This petition was opposed by one L, who claimed that he was the legal representative of the deceased P. L contested the right of N. to execute the decree, and the executing court found that the dispute between N and L could not be gone into under section 47, C.P.C. It was held that N was not an assignee decree holder and could not execute the decree.

N then filed a suit for the declaration that he was entitled to execute the decree; the suit was dismissed by the subordinate court. On appeal to the High Court, the appeal was compromised, and a compromise decree was passed in which N's right to execute the decree was recognised. Subsequently, an execution petition was filed by N which was dismissed. Subsequently, another Execution Petition 209 of 1957 was filed, out of which the present second appeal arose.

A number of questions were raised, but only one is material for the present purpose. It was contended that N could not be said to be an assignee decree-holder, and therefore could not avail himself of Order 21, rule 15, C.P.C. and that, as the transfer of the property by the decree-holder was made after the decree was passed, he could not maintain an execution petition even under section 146, C.P.C.

It was held that this was not a transfer of the rights of the decree in writing as required under Order 21, rule 16, C.P.C. but was a transfer of property after the decree was passed without transferring the rights in the decree, Reference was made to a Supreme Court case, in which it had been held that:



“Either the respondent company are transferees of the decree by an assignment in writing or by operation of law, in which case they fall within Order 21, Rule 16, C.P.C. or they are not such transferees, in which case even they may avail themselves of the provisions of section 146, if the other condition is fulfilled.”

Following this Supreme Court judgment, it was held in the Madras case that transferees, if they do not fall within the provisions of Order 21, rule 16, may avail themselves of the provisions of section 146. Further, it was held that this would also include a transferee of the property after the decree is passed.

And, Kailasam J. in the Madras case referred to above, did not accept the interpretation put by Jagadisan, J. in an earlier case on the 1955 Supreme Court case. In that case it had been held by Jagadisan J. the true principle is, that a decree cannot be executed by anybody other than the decree-holder, except by an assignee who satisfies the requirements of Order 21, rule 16 and that section 146, C.P.C. cannot have the effect of overriding the provisions of Order 21, rule 16.

The result was, that the contention that N being an assignee of the property after the decree was passed was not entitled to maintain an execution petition, was not accepted.

1-0-36. The later Madras view is in accord with the view of the Andhra Pradesh, Patna and Kerala’ High Courts.

Recommendation as to Order 21 Rule 16

1-0-37. In the above state of the case-law, it appears to be desirable to amend Order 21, Rule 16, to make it clear that it does not affect the provisions of section 146, and a transferee of rights can obtain execution of the decree without a separate assignment of the decree.”

- 11.** Pursuant to the recommendation of the Law Commission,



the Explanation to Order XXI Rule 16 of the Code of Civil Procedure was inserted by Act 104 of 1976 with effect from 01.02.1977. The Explanation expressly provides that a transferee of rights in the property which forms the subject matter of the suit may apply for execution of the decree without obtaining a separate assignment of the decree as contemplated under Rule 16. Consequently, where the subject matter of the decree is assigned, the subsequent assignee is not required to invoke Order XXI Rule 16 CPC or obtain substitution before the court which passed the decree.

12. A plain reading of Order XXI Rule 16 CPC indicates that the requirement of approaching the court which passed the decree arises only when (i) the decree has been passed jointly in favour of two or more persons, or (ii) the interest of the decree-holder in the decree itself has been transferred either by an assignment in writing or by operation of law. A clear distinction must therefore be drawn between the transfer of the decree itself and the transfer of the property which constitutes the subject matter of the decree. While the former attracts Order XXI Rule 16, the latter is specifically governed by the



Explanation thereto read with Section 146 CPC.

13. Sri P.B. Krishnan, the learned Senior Counsel appearing for the respondent, contended that irrespective of whether the transfer is by operation of law, such as inheritance, or by an independent assignment of the property forming the subject matter of the decree, Order XXI Rule 16 would invariably apply. In support of this proposition, reliance was placed on the decision of the three-Judge Bench of the Supreme Court in ***Jugalkishore Saraf v. Raw Cotton Co. Ltd.*** [(1955) 1 SCC 248].

14. This Court is unable to accept the aforesaid submission. The decision in ***Jugalkishore Saraf*** (supra) was rendered long before the insertion of the Explanation to Order XXI Rule 16 by the Amendment Act of 1976. Consequently, the Supreme Court had no occasion to consider the legal effect of the Explanation or the legislative intent underlying its insertion. The respondent's argument, therefore, overlooks the significant statutory change introduced by the Parliament.

15. Parliament consciously accepted the recommendation of



the Law Commission and inserted the Explanation to Order XXI Rule 16 declaring that nothing contained in the Rule shall affect the operation of Section 146 CPC and that a transferee of rights in the property, which is the subject matter of the suit, may apply directly for execution of the decree. The legislative intent is manifest—to obviate the necessity of obtaining a separate assignment of the decree or seeking substitution before the court which passed it. To insist upon compliance with Order XXI Rule 16 notwithstanding the Explanation would render the amendment wholly otiose and defeat the very object sought to be achieved.

16. Equally, the decisions of this Court in ***Sankarambal*** (supra) and ***Mathai*** (supra) do not advance the respondent's case. Neither the decisions considered the Explanation to Order XXI Rule 16 nor examined the legislative history leading to the amendment. The effect of Section 146 CPC, read with the Explanation to Order XXI Rule 16 CPC, also did not fall for consideration.

17. It necessarily follows that neither ***Sankarambal*** (supra)



nor ***Mathai*** (supra) constitutes a binding authority for the proposition canvassed by the respondent. Despite the clear indication that neither of these decisions decided the issue that has arisen in this case, still should this Court refer the case to a Larger Bench because propriety demands the same.

18. Before answering that question, it is necessary to examine the subsequent authoritative pronouncements of the Supreme Court governing the issue. The discussion on the precedents governing the point will ultimately lead to a solution for the impasse presented before this Court.

19. In ***Zila Singh v. Hazari [(1979) 3 SCC 265]***, the Supreme Court explained the scope of Section 146 CPC and held that the provision was enacted to facilitate the exercise of rights by persons in whom such rights have devolved by assignment or operation of law. Being a beneficent provision, it must receive a liberal interpretation advancing the cause of justice. The Court further held that where there is an assignment of the decree itself, Order XXI Rule 16 would apply; however, where the decree-holder has transferred the property



after perfecting title, and there is no assignment of the decree, an application under Section 146 CPC is maintainable.

20. In *Raj Kumar v. Sardari Lal [(2004) 2 SCC 601]*, while considering the rights of a transferee pendente lite, the Supreme Court held that where the subject matter of the suit is transferred attracting Section 52 of the Transfer of Property Act, and the transferee has not been brought on record under Order XXII Rule 10 CPC, such transferee is nevertheless entitled to invoke Section 146 CPC in execution proceedings.

21. More recently, in *Vaishno Devi Construction v. Union of India [(2022) 2 SCC 290]*, the Supreme Court authoritatively explained the object of both Section 146 CPC and the Explanation to Order XXI Rule 16. It was held that the purpose of the amendment was to avoid multiplicity of proceedings by enabling questions relating to assignment to be decided in execution itself and by removing the distinction between assignments made before and after the decree. The Court expressly recognised that the Explanation permits a transferee of rights in the property forming the subject



matter of the suit to apply directly for execution without insisting upon a separate assignment of the decree.

22. The principles laid down in ***Zila Singh*** (supra), ***Raj Kumar*** (supra) and ***Vaishno Devi Construction*** (supra) leave no room for doubt that the view expressed by this Court in ***Sankarambal*** (supra) and ***Mathai*** (supra) can no longer be regarded as laying down the correct law. To the extent those decisions are inconsistent with the subsequently declared law of the Supreme Court, they cease to have binding precedential value.

23. In ***Sundeep Kumar Bafna v. State of Maharashtra [(2014) 16 SCC 623]***, the Supreme Court held that a decision rendered in ignorance of a binding precedent is liable to be treated as *per incuriam*. Applying that principle, the continued reliance placed on ***Sankarambal*** (supra) and ***Mathai*** (supra) cannot be sustained.

24. The learned Senior Counsel Sri P.B. Krishnan nevertheless urged that, as a matter of judicial propriety, the issue ought to be referred to a Larger Bench. This Court is unable to agree.



Once the legal position stands authoritatively settled by the Supreme Court in ***Zila Singh*** (supra), ***Raj Kumar*** (supra) and ***Vaishno Devi Construction*** (supra), no useful purpose would be served by such a reference. On the contrary, adopting the restrictive interpretation suggested by the respondent would defeat the legislative intent behind the Explanation to Order XXI Rule 16, undermine the liberal construction consistently accorded to Section 146 CPC and unnecessarily provide a judgment-debtor with procedural objections to delay the execution, this court concludes that the reference to a larger bench on the issue raised in this Original Petition is not required.

(ii). Whether an assignee of the decree schedule property is required to invoke Order XXI Rule 16 CPC?

25. Alternatively, it is the case of the respondent that even if the decisions in ***Mathai*** (supra) and ***Sankarambal*** (supra) are not applied, even then the contextual interpretation of Order XXI Rule 16 will require this Court to hold that the executing court cannot substitute the petitioner without an order passed by the court which passed the decree. The issue assumes significance because the



respondent seeks to compel the assignee of the decree schedule property to obtain substitution from the court which passed the decree.

26. Upon a conjoint reading of Order XXI Rule 16, its Explanation and Section 146 CPC, this Court is of the considered view that where there is merely a devolution or assignment of interest in the decree schedule property, and not an assignment of the decree itself, the Explanation to Order XXI Rule 16 is attracted. In such circumstances, the assignee is entitled to seek execution directly before the executing court by invoking Section 146 CPC, without first obtaining substitution under Order XXI Rule 16 before the court which passed the decree.

27. The contention that Section 42(4)(a) CPC bars the executing court from entertaining such an application is equally misconceived. The embargo contained therein applies only where execution is sought by a transferee of the decree. It has no application where the transferee merely acquires rights in the property which constitutes the subject matter of the decree. Consequently, a person



who acquires such an interest is entitled to invoke Section 146 CPC read with the Explanation to Order XXI Rule 16 and is not required to seek substitution before the court which passed the decree. The contention to the contrary is rejected.

(iii) Whether the judgment debtor is entitled to resist the substitution?

28. Normally, this Court would not have ventured to consider this issue in view of the findings on the points (i) & (ii). However, this court will address this issue for the sake of completion.

29. The respondent now raises a plea that the decree passed in the counterclaim is personal in nature and is unenforceable against him. According to him, the decree cannot be enforced against him personally. The petitioner, on the other hand, claims that he is the legatee under a Will executed by his *Guru*. Finding that the respondent herein had clandestinely created a trust deed, the petitioner filed O.S. No.4838/2017 before the XXVII Additional City Civil and Sessions Judge, Bengaluru. The judgment and decree passed in the suit revealed that a declaratory decree was passed in favour of the petitioner, declaring the trust deed created by the respondent



herein as fraudulent, null and void, and a decree for injunction was passed restraining the respondent from interfering with the administration of the first plaintiff Math. Consequently, as the matters presently stand, the petitioner holds a valid declaration recognizing him as the Madathipathi of the Kashi Math Samsthan, Varanasi.

30. It is true that the said judgment is presently under challenge before the High Court of Karnataka. Nevertheless, until it is set aside, it continues to operate. The pendency of the appeal cannot furnish a legitimate ground to postpone the execution of a decree which has remained unexecuted since 2011. The respondent's attempt to resurrect issues already concluded in earlier proceedings is clearly intended to protract the execution proceedings and frustrate the decree-holder's rights.

31. The conduct of the respondent throughout the litigation unmistakably demonstrates a persistent effort to delay the inevitable. If this Court were to accept the respondent's contention and require the petitioner to once again approach the court which passed the



decree, it would effectively reopen issues that stood concluded and defeat the very object behind the amendment to Order XXI Rule 16. Such an interpretation would not only result in a travesty of justice but would also encourage abuse of the execution process by the judgment-debtor through technical and dilatory objections.

32. The objections appear to have been raised solely with an intention to reopen the issues which stood concluded by the decision of the High Court of Judicature at Hyderabad when the appeals filed against Ext.P1 judgment were dismissed on 1-6-2015, which is on record as Ext.P7. It is pertinent to mention here that the respondent did not challenge Ext.P7 judgment dismissing the appeals.

33. That apart, a cursory reading of the Ext P 7 judgment shows that the respondent did not address any argument on the decree passed against him in the counterclaim since his civil revision petition was pending before the court. Later, finding that the statement made in paragraph 52 of Ext.P7 judgment is incorrect, the decree holder filed ASMP No.1416 of 2015 & ASMP No.1440 of 2015, which were ordered by the High Court of Andhra Pradesh by order



dated 21-8-2015. The order passed in these review petitions shows that the counsel for the judgment debtor had not argued on the merits of the counterclaim. Admittedly, the judgment debtor did not challenge these orders before the Supreme Court, and hence the issue stands concluded between the parties. Thus, it is clear that whatever objection the respondent-judgment debtor was entitled to take ought to have been taken in the appeals preferred against Ext.P1 judgment. After conclusion of these proceedings, the judgment debtor cannot be permitted to take the objections to the decree. In fact, a perusal of the objection to the impleading petition shows that this is precisely what is intended by the judgment debtor.

34. The sole reason why the judgment debtor raises the objection to the transferee executing court considering the application is that he will not be entitled to raise this objection in view of the inter-party judgment rendered by this Court in earlier proceedings. Hence, it is pointed out that if the application is moved before the court which passed the decree, perhaps the judgment debtor may be entitled to raise the maintainability of the petition on



the ground that the decree is personal. However, in the considered view of this Court, the respondent/judgment debtor cannot be permitted to raise this question because he has been categorically nonsuited on all counts by the High Court of Andhra Pradesh and it will be wholly impermissible for this Court to permit the respondent to rake up issues that stand concluded. Accordingly, this Court holds that the objections raised by the respondent are wholly devoid of merit and are liable to be rejected. The petitioner is entitled to continue the execution proceedings by invoking Section 146 CPC read with the Explanation to Order XXI Rule 16 CPC, and no prior substitution before the court which passed the decree is necessary.

Conclusion

35. As an upshot of the above finding, this Court has no hesitation in holding that Ext.P12 order dated 12.04.2019, passed in EA No.450/2016 in EP No.167/2011 in OS No.34/2000 by the I Additional District Court, Ernakulam, is legally unsustainable and liable to be set aside. The refusal of the executing court to implead the petitioner as an additional decree holder, despite the devolution of the

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rights over the decree-schedule property in his favour, is contrary to the settled principles governing the field.

Accordingly, the Original Petition is allowed. Ext.P12 order dated 12.04.2019 in EA No.450/2016 in EP No.167/2011 in OS No.34/2000 on the file of the I Additional District Court, Ernakulam, is hereby set aside. Consequently, EA No.450/2016 in EP No.167/2011 in OS No.34/2000, preferred by the petitioner and produced as Ext.P9, shall stand allowed. The I Additional District Court, Ernakulam, shall forthwith carry out the necessary amendment in the execution petition by impleading the petitioner as an additional decree holder and shall thereafter proceed with the execution proceedings in accordance with law and bring the same to its logical conclusion as expeditiously as possible. No order as to costs.

Ordered accordingly.

Sd/-
EASWARAN S.
JUDGE



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APPENDIX OF OP(C) NO. 1737 OF 2019

PETITIONER EXHIBITS

EXHIBIT P1	THE PHOTOCOPY OF THE JUDGMENT DATED 28.1.2009 IN O.S.NO.34/2000 OF IVTH ADDITIONAL DISTRICT COURT, THIRUPATHI
EXHIBIT P2	THE PHOTOCOPY OF THE AMENDMENT DECREE DATED 28.01.2009 IN COUNTER CLAIM ON THE FIVE OF IVTH ADDL.DISTRICT COURT, THIRUPATHI
EXHIBIT P3	THE PHOTOCOPY OF THE EXECUTION PETITION E.P.NO.167/2011 ON THE FILE OF DISTRICT COURT, ERNAKULAM
EXHIBIT P4	THE PHOTOCOPY OF THE JUDGMENT DATED 05.09.2011 IN CRP NO.398/2011 ON THE FILE OF THE HON'BLE HIGH COURT OF KERALA.
EXHIBIT P5	THE PHOTOCOPY OF THE JUDGMENT DATED 1.12.2011 IN CRP NO.525/2011 ON THE FILE OF HON'BLE HIGH COURT OF KERALA
EXHIBIT P6	THE PHOTOCOPY OF THE JUDGMENT DATED 11.02.2013 IN OPC NO.256/2013 ON THE FILE OF HON'BLE HIGH COURT OF KERALA.
EXHIBIT P7	THE PHOTOCOPY OF THE JUDGMENT DATED 1.06.2015 IN APPEAL SUITS NOS.90 AND 91 OF 2009 ON THE FILE OF THE HON'BLE HIGH COURT OF ANDHARA PRADESH
EXHIBIT P8	THE PHOTOCOPY OF THE JUDGMENT DATED 12.08.2015 IN TRP(C)496/2014 AND IA 17447/2013 IN OPC NO.256/2013 ON THE FILE OF HON'BLE HIGH COURT OF KERALA
EXHIBIT P9	THE PHOTOCOPY OF THE APPLICATION FILED BY THE PETITIONER (E.A.NO.450/2016) IN E.P.NP.167/2011(IN OS 34/2000) FILE BEFORE DISTRICT COURT, ERNAKULAM
EXHIBIT P10	THE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENT IN E.A.NO.450/2016 IN E.P.NO.167/2011 ON THE FILE OF THE FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM
EXHIBIT P11	THE PHOTOCOPY OF THE REPLY AFFIDAVIT



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	FILED BY THE PETITIONER IN EA NO.450/2016 IN E.P.NO.167/2011(IN OS 34/2000) FILED BEFORE DISTRICT COURT, ERNAKULAM
EXHIBIT P12	THE PHOTOCOPY OF THE ORDER DATED 12.4.2019 IN E.A.NO.450/2016 IN E.P.NO.167/2011 ON THE FILE OF THE FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM
EXHIBIT P13	THE PHOTOCOPY OF THE POWER OF ATTORNEY DATED 17.02.2016
Exhibit P14	THE TRUE PHOTOCOPY OF THE JUDGMENT DATED 26.2.2024 OF THE COURT OF THE XXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-9) AT BENGALURU IN O.S. NO. 4838 / 2017