

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

Tuesday, the 2nd day of August 2022 / 11th Sravana, 1944

CRP NO. 285 OF 2020

OP (SCHEME) 1/2017 OF SUB COURT AT PUNALUR, KOLLAM.

REVISION PETITIONERS/ RESPONDENTS 1 TO 10, 12 & 13:

1. PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, REPRESENTED BY ITS PRESIDENT.
2. N.P. JOHN, AGED 68 YEARS, CHITHIRA, THOLICODU P.O, PUNALUR, PRESIDENT OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
3. ASHOK B. VIKRAMAN, AGED 61 YEARS, VIKRAMASILA, PUNALUR P.O, PUNALUR, SECRETARY OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
4. N.MAHESAN, AGED 68 YEARS, KOLLAMPARAMBIL VEEDU, MATHRA P.O, THOLICODU, PUNALUR, SCHOOL MANAGER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305.
5. ADOOR N. JAYAPRASAD, AGED 61 YEARS, ISWARYA BHARANIKAVU, PUNALUR, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
6. ADV. PRADEEP CHANDRAN, AGED 59 YEARS, AMBADIYIL, MATHRA P.O, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
7. ADV. S.M.KHALEEL, AGED 59 YEARS, PUNALUR ESTATE BUNGLOW, VALACODE P.O, PUNALUR, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
8. VIJAYA KUMAR, AGED 63 YEARS, K. ELLUKATTUVEEDU, ARAMPUNNA, PUNALUR, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
9. C.VIJAYAKUMAR, AGED 51 YEARS, VADAKKEKARA VEEDU, MANIYAR, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
10. C.P. SAMUEL, AGED 63 YEARS, CHAMKKARA PUTHEN VEEDU, KARAVALOOR P.O, COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
11. S. NOWSHARUDEEN, AGED 61 YEARS, NABEEZATHU BUILDING, PUNALUR, CO-OPTED COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305
12. PUNALUR TALUK SAMAJAM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305, REPRESENTED BY ITS PRESIDENT.

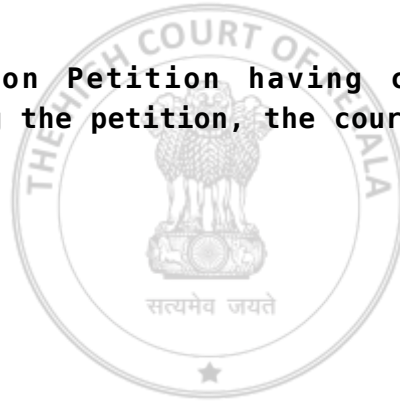
BY ADVS. SRI. S.SREEKUMAR, SENIOR ADVOCATE ALONG WITH SRI. MANOJ RAMASWAMY.

RESPONDENTS/ PETITIONERS & RESPONDENT NO. 11:

1. K.K.SURENDRAN, AGED 67 YEARS, S/O. KUNJU PILLAI, RESIDING NOW AT VEENA, VILAKKUVATTOM, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305, (MEMBER NO. 362 OF THE PATHANAPURAM TALUK SAMAJAM).
2. ABRAHAM MATHEW, AGED 57 YEARS, S/O. ABRAHAM V. MATHAI, VILLIES COTTATE, VALACODU P.O, PUNALUR, KOLLAM DISTRICT-691 305, (MEMBER NO. 26/2 OF THE PATHANAPURAM TALUK SAMAJAM).
3. K.M. YOHANNAN, AGED 66 YEARS, KAVUMKAL HOUSE , (KAVUVILA HOUSE), BHARANIKKAVU, PUNALUR, KOLLAM DISTRICT-691 305 (MEMBER NO. 3768 OF THE PATHANAPURAM TALUK SAMAJAM).
4. N. JOEY (JOEY LUKKOSE), AGED 50 YEARS, S/O.LUKKOSE, CHARUVILAVEEDU, CHEMMANTHOOR, PUNALUR, KOLLAM DISTRICT-691 305, (MEMBER NO. 3120 OF THE PATHANAPURAM TALUK SAMAJAM).
5. KADAVIL BABU, AGED 64 YEARS, KADAVIL, THOLICODU P.O, PUNALUR CO-OPTED COMMITTEE MEMBER OF THE PATHANAPURAM TALUK SAMAJAM, VALACODE P.O, KOLLAM DISTRICT-691 305

BY ADVS. M/S P.B.SAHASRANAMAN, T.S.HARIKUMAR & G.N.DEEPA FOR R1 to R4

This Civil Revision Petition having come up for orders on 02-08-2022, upon perusing the petition, the court on the same day passed the following.



[PTO]

C.S.DIAS,J.

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O.P.(C) No.2148 of 2019 & C.R.P No. 285 of 2020

Dated this the 2nd day of August, 2022

COMMON REFERENCE ORDER

The question posed for reference in both the cases is whether the Court of the Subordinate Judge is competent to grant leave to institute a suit and, thereafter, try and dispose of the suit under Section 92 of the Code of Civil Procedure 1908 (in short 'Code').

2. O.P.(C)No.2148/2019 is filed by the respondents 3 to 9 in O.P. No.7/2017 of the Court of the Subordinate Judge, Attingal. O.P No.7/2017 was filed by the respondents 1 to 3 before the court below, seeking leave to institute the suit under Section 92 of the Code. The respondents 4 and 5 before this Court were the respondents 1 and 2 before the court below.

3. C.R.P. No.285/2020 is filed by the respondents 1 to 10, 12 and 13 in O.P.(Scheme) No.1/2017 of the Court of the Subordinate Judge, Punalur. O.P (Scheme) No.1/2017 was filed by the respondents 1 to 4 before the court below. The 5th respondent herein was the 11th respondent before the court below.

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4. In both cases, the respective Subordinate Judges have granted leave to the petitioners to institute the suits under Section 92 of the Code.

5. When these cases were taken up for consideration, Sri. R.T. Pradeep, the learned Counsel appearing for the petitioners in O.P.(C)No. 2148/2019 and Sri. Manoj Ramaswamy, the learned Counsel appearing for the petitioners in C.R.P.No.285/2020, argued that the impugned orders passed by the learned Subordinate Judges, granting leave to institute the suits, are unsustainable in law in view of the decision of this Court in **Sree Gurudeva Charitable and Educational Trust, Kayamkulam and Others v. K. Gopalakrishnan and Others** [2020 (5) KHC 343], wherein, a learned Single Judge of this Court has held that even the Additional District Court has no jurisdiction to grant leave to institute a suit under Section 92 of the Code. Instead, only the District Court, i.e., the Principal District Judge has the jurisdiction to grant leave under Section 92 of the Code. Therefore, the above cases are to be allowed, and impugned orders are to be set aside.

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6. The above submission was vehemently opposed by the Sri. M.R.Rajesh, the learned Counsel appearing for the respondents in O.P.(C) No.2148/2019 and Sri.S.Sreekumar, the learned Senior Counsel appearing for the respondents in C.R.P. No.285/2020. They contended that the law laid down in **Sree Gurudeva Charitable and Educational Trust, Kayamkulam and Others v. K. Gopalakrishnan and Others** (in short '**Sree Gurudeva Charitable and Educational Trust**') is not good law because the learned Single Judge has not considered the law laid down by a Division Bench of this Court in **St.Peter's Orthodox Syrian Church v. Fr. Abraham Mathews** [2011 (4) KLT 540], wherein it is categorically held that both the District Courts and the Subordinate Judge's Courts have concurrent jurisdiction to grant leave under Section 92 of the Code, in the light of the notification dated 24.10.1966 issued by the Government of Kerala. They also placed reliance on the decisions of this Court in **Muralimohan C.K. V. M/s Asok Finance Corporation** [2008 (3) KHC 407] and **Reshmi Construction, Builders and Contractors (M/S) v.**

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MTPC Ltd. [2011 (1) KHC 61], to canvass the position that the Principal Civil Courts of original jurisdiction in a District would include not only the Principal District Judge but also the Additional District Judges' as well. The learned Single Judge has not appreciated the provisions of the Kerala Civil Courts Act, 1957, instead has given undue emphasis to Section 3 (17) of the General Clauses Act, 1897, which has no relevance to the issue at hand, especially since the Code of Civil Procedure is a self-contained enactment. Therefore, in unison, they prayed that the decision in **Sree Gurudeva Charitable and Educational Trust** requires reconsideration by a Bench of this Court.

7. Section 92 of the Code of Civil Procedure prior to and post 1976 amendment (w.e.f.1.2.1977) reads as follows:

(i) **Section 92 C.P.C, prior to the 1976 amendment:**

"92. Public charities.- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of any such trust, the Advocate

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*General, or two or more persons having an interest in the trust and having obtained **the consent in writing of the Advocate- General**, may institute a suit, whether contentious or not, in the principal civil court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction whole or any part of the subject matter of the trust is situate to obtain a decree—*

- (a) removing any trustee;*
- (b) appointing a new trustee;*
- (c) vesting any property in a trustee;*
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;*
- (d) directing accounts and inquiries;*
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;*
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;*
- (g) settling a scheme; or*
- (h) granting such further or other relief as the nature of the case may require.*

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), or by any responding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(ii) Section 92 C.P.C, after the 1976 amendment, reads as follows:

92. *Public charities:- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the [leave of the Court], may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject -matter of the trust is situate to obtain a decree-*

- (a) *removing any trustee;*
- (b) *appointing a new trustee;*
- (c) *vesting any property in a trustee;*
- (cc) *directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;*
- (d) *directing accounts and inquiries;*
- (e) *declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;*
- (f) *authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;*
- (g) *settling a scheme; or*
- (h) *granting such further or other relief as the nature of the case may require.*

(2) *Save as provided by the Religious Endowments Act, 1863 for by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States] no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.*

(3) *The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypres in one or more the following circumstances, namely;-*

(a) *where the original purposes of the trust, in whole or in part,-*

(i) *have been, as far as may be, fulfilled, or*

(ii) *cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or*

(b) *where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or*

(c) *where the property available by virtue of the trust of other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or*

(d) *where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or*

(e) *where the original purposes, in whole or in part, have, since they were laid down,-*

(i) *been adequately provided for by other means, or*

(ii) *ceased, as being useless or harmful to the community, or*

(iii) *ceased to be, in law, charitable, or*

(iv) *ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust”.*

8. On an analysis of the pre and post-amended provision, it can be seen that the words **“the leave of the court”** has been inserted in Section 92 (1) of the Code in substitution of the words **“the consent in writing of the Advocate General”**. Therefore, post the amendment of

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Section 92 of the Code, the first step is to obtain leave from the Court and, thereafter, institute the suit.

9. Before the amendment, the Government of Kerala had promulgated the notification dated 24.10.1966, which reads as follows:-

"CODE OF CIVIL PROCEDURE, 1908

(Act V of 1908)

(Section 92)

Empowering the Courts of Subordinate Judges of Kerala within the limits of their respective jurisdiction to try and dispose of cases under Section 92 of the Code of Civil Procedure

Notification No.G.O.(Ms) 384/66/Home dated 24th October, 1966 published in the Kerala Gazette dated 1st November, 1966.

Part I, Page 528

(Home C)

NOTIFICATIONS

*G.O.(Ms)384/66/Home
1966*

★ Dated, Trivandrum, 24th October,

(i)

In exercise of the powers conferred by Section 2 of the Religious endowment Act 1863 (Central Act XX of 1863) the Government of Kerala, hereby empower the Courts of Subordinate Judges of Malabar District referred to in sub-section (2) of Section 5 of the States Reorganisation Act 1956 (Act 37 of 1956) within the limit of their respective jurisdiction to try and dispose of cases under the Religious Endowment Act 1863.

(ii)

In exercise of the powers conferred by section of the Code of Civil Procedure (Act V of 1908) Government of Kerala, hereby empower the court Subordinate judges of Kerala, within the limits their respective jurisdiction, to try and dispose cases under section 92 of the Code of Civil Procedure.

By order of the Governor

*XXXXX
Secretary"*

10. In the light of the above notification, a suit under Section 92 of the Code is permitted to be instituted in the Principal Civil Court of the original jurisdiction or in the Court of the Subordinate Judge. However, a reading of notification dated 24.10.1966 shows that it empowers the **Courts of the Subordinate Judges to only try and dispose of the cases filed under Section 92 of the Code.**

11. Then, the question is whether the notification takes within its fold the grant of leave also or whether there should be a separate notification authorising the Subordinate Judge's Court to grant leave.

12. Nevertheless, the Division Benches of this Court in **Pazhukkamattom Devaswom v. Lakshmikutty Amma** [1980 KHC 170], and **St.Peter's Orthodox Syrian Church v. Fr. Abraham Mathews**[2011 (4) KLT 540], have held that both the District Courts and the Subordinate Judges' Courts have the jurisdiction to grant leave and try and dispose of a suit filed under Section 92 of the Code.

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13. On an analysis of the Code of Civil Procedure, except in Section 24 (3) (a) of the Code, wherein the Additional District Judges are deemed to be subordinate to the District Court for the general power of transfer and withdrawal, the Code does not deal with the subordination of the Civil Courts. The said matter is only dealt in the Kerala Civil Courts Act, 1957.

14. Sections 2, 3, and 4 of the Kerala Civil Courts Act reads as follows:-



PART II

**ESTABLISHMENT AND CONSTITUTION OF
SUBORDINATE CIVIL COURTS**

2. Classes of subordinate Civil Courts-*In addition to the courts established under any other law for the time being in force, there shall be the following classes of Civil Courts in the State, namely:-*

- (i) the Court of a District Judge (hereinafter referred to as the District Court);*
- (ii) the Court of a Subordinate Judge (hereinafter referred to as the Subordinate Judge's Court);*
- (iii) the Court of a Munsiff (hereinafter referred to as the Munsiff's Court).*

3. Establishment of District Courts. - *(1) For the purposes of this Act, the Government may, by notification in the Gazette, divide the State into civil districts (hereinafter referred to as districts) and alter the limits or the number of such districts.*

(2) The Government shall establish a District Court for each district and a Judge (hereinafter called the District Judge) shall be appointed to such Court.

4. Appointment of Additional District Judges. - *(1) When the state of business pending before a District Court so requires, one or more Additional District Judges may be appointed to that Court for such period as is deemed necessary.*

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(2) An Additional District Judge shall discharge all or any of the functions of the District Judge under this Act in respect of all matters which the District Judge may assign to him, or which under the provisions of Section 7 may be instituted before him, and in the discharge of those functions he shall exercise the same powers as the District Judge.

15. By virtue of Section 3 (2) of the Kerala Civil Courts Act, a District Court is to be established in every District and District judge is to be appointed to every such District Court. Section 4 (1) of the Kerala Civil Courts Act postulates that when the state of business pending before a District Court requires one or more Additional District Judge, the same may be appointed to such court for such period as is deemed necessary. The Additional District Judge is empowered to discharge all or any of the functions of the District Judge under the said Act. Therefore, the Additional District Judge is appointed to the same District Court, where the District Judge is appointed, when the court's business requires an Additional District Judge. The Additional District Judge has all the powers of the District Judge, perhaps, except for administrative superintendence. The expression Principal Civil Court of original jurisdiction in a District has been succinctly laid

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down by this Court in **Muralimohan C.K. and Reshmi constructions** (supra).

16. In the light of the afore-quoted provisions and law laid down by the two Division Benches and two Single Judges of this Court, I am of the view that the decision in **Sree Gurudeva Charitable and Educational Trust** does not lay down the correct law. Moreover, the question whether the notification dated 24.10.1966 will take within its fold “leave of the court” is also to be considered. As the said question is also of substantial importance, I am of the view that the same also requires to be considered by a bench of two or more judges, so that the above two questions can be authoritatively answered.

The Registry is, therefore, directed to place the cases before the Honourable Chief Justice, who may, if felt necessary, place the matter before the bench of two or more judges.

Sd/-

C.S.DIAS, JUDGE

rmm/2.8.2022