

(2014) 07 KL CK 0032

In the High Court Of Kerala

Case No : Regular First Appeal No. 515 of 2013

Narayanan Pandarathil

APPELLANT

Vs

Vasudevan Pillai

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2014) 3 KLJ 758 : (2014) 3 KLT 497

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : S. Sreekumar, Sr. Advocate, Jacob P. Alex and Joseph P. Alex, Advocate for the Appellant; V.V. Sidharthan, Sr. Advocate, Arun B. Varghese, K. Shaj, K. Reeha Khader, D.G. Vipin, Karol Mathews Sebastian Alencherry, Mathews K. Uthupachan and Terry V. James, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.

(1) Can a trustee of a private trust transform the trust into a public charitable trust?

(2) Whether the "Uraima" right being exercised by an "Uraller" of a temple is transferable to a third party?

(3) Whether Parmiv.izha Peedikayil Bhagavathy Temple and its properties have acquired the status of a public charitable trust?

(4) Whether the properties acquired in the name of the deity of Pannivizha Peedikayil Bhagavathy Temple are properties dedicated by the members of Edamnanallom?

(5) Whether the eldest male member of the Edamnana Illom, being the "Uraller" of the Pannivizha Peedikayil Bhagavathy Temple, could validly transfer the "Uraima" right in favour of the 1st defendant Society, through Ext. B3 Udampady?

(6) Can Ext. B3 be considered as a valid dedication for the creation of a public charitable trust?

(7) Can the 1st defendant Society claim the right of administration or any other right over the Pannivizha Peedikayil Bhagavathy Temple and its properties on the basis of Ext. B3?

(8) Whether the members of the public can claim opportunities to worship and make offerings at the Pannivizha Peedikayil Bhagavathy Temple, "as of right"?

1. An erstwhile Namboothiri Illom popularly known as "Edamnana Illom" having its origin at Perisserymuri, Chengannur Taluk owned and possessed extensive properties in Kunnathur Taluk. Originally, they had migrated from Thenkasi. They were considered to be the then rulers of the locality under the designation "Kiriari Pandarathir. They were holding extensive properties and were running various temples also in their properties. It seems that some of the properties were acquired in the name of the deities. The temple in question Pannivizha Peedikayil Bhagavathi Temple was one among such temples run and administered by the members of the said Edamnana Illom, also known as Edamana Madom. For the sake of convenience, it will be referred as "Madow" or "Illom", as the case may be. For the sake of convenience, the said temple is hereinafter referred to as "Pannivizha Temple". As stated above, the Illom was holding extensive properties in Kunnathur Taluk comprising of 7 Desom routes. Pannivizha was one among such Desom routes.

2. It seems that complying with the Hindu rituals, the members of the Illom, who administered the temple, had no hesitation in permitting the members of the public to worship the deity at the Pannivizha Temple and to make offerings therein. It seems that the members of the public had used to attend all the festivals of the temple, and participate in all the rituals connected with it. The public has undertaken a view that slowly the temple had earned the status of a public temple in the course of time. It is the case of the public who has come up with the case that the Pannivizha Temple and its properties have acquired the status of a public religious charitable trust capable of being governed by S. 92 of the Code of Civil Procedure, 1908.

3. It has come out that the then Urallan of Pannivizha temple, who is the father of the 6th defendant in O.S. No. 65/2006 of the Subordinate Judge's court, Pathanamthitta, as "A party", had entered into a settlement with the 1st defendant Society constituted and registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955 (hereinafter referred to as "the Act 12 of 1955") through Ext. B3 registered agreement, whereby the duty to administer the temple has been entrusted with the 1st defendant Society, who is "B party" therein. The said Society formed under Act 12 of 1955 is hereinafter referred to as "the Society".

4. On the execution of Ext. B3 on 22.06.1979, the Society started administering the temple and some of its properties. The Society maintains a case that through

the execution of Ext. B3, the Pannivizha Temple and its properties have acquired the status of a public charitable trust. It seems that disputes have arisen among the members of the Society as well as between the members of the public and the Society, and also between the members of the Illom and the Society. A section of the public has undertaken a view that the office bearers of the Society were indulging in malfeasance and misfeasance of the funds of the public charitable trust, without properly accounting it. Further, they have entertained a view that a scheme has to be formulated for the due administration of the public charitable trust under S. 92 of the Code of Civil Procedure, 1908.

5. It seems that one Vasudevan and 9 others as plaintiffs have filed O.S. No. 65/2006 as a scheme suit within the meaning of S. 92 of the Code of Civil Procedure, 1908 before the court below. The matter was hotly contested. The members of the Illom under the 6th defendant contested the suit. The 6th defendant has contended that Ext. B3 is void ab initio and it could not have transferred the right of "uraima" of the members of the Illom in favour of the Society. It is also contended that the Pannivizha Temple or its properties have never acquired the status of a public charitable trust and the temple and its properties continued to be a family temple and properties of the Illom or at the most, a private trust of which the eldest male member of the Illom being the trustee. The 6th defendant has set up a case that there was no dedication of the properties by the members of the Illom for any public charitable purpose and, therefore, there cannot be any valid dedication so as to constitute a public charitable trust. The 6th defendant has alleged mal-administration on the part of the Society as far as the temple and its properties are concerned.

6. Certain members of the public as additional defendants 18 to 28 have come up with a divergent view in the matter than the one taken by the 1st defendant and contended that a scheme has to be formulated for the due administration of the public charitable trust as there were gross maladministration and misappropriation by the office bearers of the Society. They have also contended that there was a Society in existence from 1958 onwards, which used to administer the affairs of the temple, and from 1958 onwards, the temple and its properties were being regarded as public charitable trust. They have contended that the execution of Ext. B3 is of no consequence at all as far as the nature of the trust is concerned.

7. A minor, who is the 2nd plaintiff in O.S. No. 335/2011 of the court below, represented by his mother as next friend along with the temple as the 1st plaintiff, filed the suit for the termination of Ext. B3 agreement and by seeking a decree directing the 1st defendant Society to handover possession of the properties of the Pannivizha Temple to the members of the Illom for its due administration. O.S. No. 335/2011 was initially filed as O.S. No. 13/2007 before the Munsiff's Court, Adoor, which was later transferred to the court below for joint trial along with O.S. No. 65/2006. The suit was re-numbered as O.S. No. 335/2011 on such transfer. O.S. No. 335/2011 was also strongly resisted by the

1st defendant Society as well as the other defendants by taking up the contentions in the form of the averments and contentions by the plaintiffs in O.S. No. 65/2006 as well as the 1st defendant and defendants 18 to 28 in O.S. No. 65/2006.

8. The court below, after a full fledged trial of both the suits, has passed the impugned common judgment whereby holding that Pannivizha Temple and its properties have acquired the status of a public charitable trust right through the execution of Ext. B3. It was also held that the byelaws of the 1st defendant Society require extensive modification for the due administration of the public charitable trust and, therefore, the formulation of a scheme is required. By entering the said findings, it seems that the court below has non-suited the plaintiffs in O.S. No. 335/2011 through the common judgment

9. Additional 16th and 17th defendants in O.S. No. 65/2006, who are the plaintiffs in O.S. No. 335/2011, have come up in appeal through R.F.A. No. 523/2013. The 5th defendant in O.S. No. 65/2006 has come up in appeal through R.F.A. No. 515/2013. The plaintiffs in O.S. No. 335/2011 have come up in appeal through R.F.A. No. 778/2013. The 1st defendant in O.S. No. 65/2006 is challenging the decree for the formulation of the scheme, and has come up in appeal through R.F.A. No. 133/2014.

10. Heard the learned Senior Counsel Sri. S. Sreekumar for the appellants in R.F.A. Nos. 523/2013 and 778/2013, the learned Senior counsel Sri. V.V. Sidhardhan for additional defendants 18 to 28 in O.S. No. 65/2006, Sri Jacob P. Alex in RFA No. 515/2013 for the appellant and Sri. K. Shaj for the appellant in R.F.A. No. 133/2014.

11. The crux of the matter is the question as to whether Pannivizha Temple and its properties have ever assumed the status of a public charitable trust. If it is not found that it is not a public charitable trust to be governed by the provisions of S. 92 of the Code of Civil Procedure, 1908, other questions will become mere academic. Only when it is found that the Pannivizha Temple and its properties constitute a public charitable trust, O.S. No. 65/2006 becomes maintainable. The further question to be considered is whether the execution of Ext. B3 by the father of the 6th defendant as "A party" in favour of the 1st defendant as "B party" will convey any right of administration to the 1st defendant over the Pannivizha Temple and its properties. The further question to be considered is whether Ext. B3 is void ab initio or a valid document.

12. The case forwarded by the learned Senior Counsel Sri. Sidhardhan for the additional defendants 18 to 28 in O.S. No. 65/2006 is that right from 1958 onwards the Temple and its properties were being regarded by the public as a public charitable trust, as the members of the public were worshiping the deity in the temple and were making offerings and were also taking active participation in all the rituals and festivals of the temple "as of right" and, therefore, the temple and its properties have assumed the status of a public charitable trust. The

definite case of the 1st defendant Society is that the 1st defendant Society has got right of administration of the Pannivizha Temple and its properties through the execution of Ext. B3, and right from the execution of Ext. B3 onwards, the temple and its properties have assumed the status of a public charitable trust capable of being administered by the Society. The specific stand taken by the learned Senior Counsel Sri. S. Sreekumar for additional 16th and 17th defendants in O.S. No. 65/2006, who are the plaintiffs in O.S. No. 335/2011, and the learned counsel Sri. Jacob P. Alex for the 6th defendant in O.S. No. 65/2006 as well as the appellants in R.F.A. No. 515/2013 is that the Pannivizha Temple is purely a private temple exclusively belongs to the Illom and it does not belong to the public or the 1st defendant Society. It is their further case that the father of the 6th defendant in O.S. No. 65/2006, who had executed Ext. B3 as "A party" in favour of the 1st defendant Society as "B party", had no power or authority to execute Ext. B3 or to convey or transfer the right of "uraima" over the temple and the properties of the deity. It is their specific case that being a heritable right, the right of "uraima" cannot be transferred and is inalienable and, therefore, Ext. B3 is void ab initio and it does not bind the other members of the Illom or successors-in-interest to the "A party" in Ext. B3.

13. For deciding the aforesaid questions, the 1st point to be decided is whether there was any valid dedication in respect of the properties being held by the temple, in the name of the deity. P. Ramanath Iyar on "The Major Law Lexicon", 4th Edition 2010, at pages 1839 and 1840, after discussing various precedents on the subject, has defined the term "dedication" in the following lines. "The deliberate appropriation of land by its owner for any general and public uses, reserving to himself no other rights in the soil than such as are perfectly compatible with the full exercise and enjoyment of the public use to which he has devoted his property".

It further says:

"A formal declaration by an owner of property that it will be used by or for the public".

14. Therefore, in order to constitute a valid dedication, such a dedication must be made by the owner of a property. Further, in order to create a valid dedication, the person dedicating his property should not reserve to himself any rights in the soil or the property. It is in this context, the question whether there was valid dedication of any properties in favour of the deity or the public in this case has to be examined.

15. The learned Senior Counsel Sri. S. Sreekumar has taken me through various ancient documents among "the members of the Illom. Ext. B30 is the oldest document being relied on by the learned Senior Counsel. Ext. B30 is a registered "udambady" dated 11th Thulam of 1102 ME executed among 8 members of the Illom. The 1st party in the document was Kiriar Kiriar Pandarathil who was the eldest male member. His wife is the 2nd party. The other parties are also

members of the Illom. The 5th party has participated for her as well as for her minor children. It is evident from the said document that female members of the Illom were also considered by the Illom as members having rights over the properties of the Illom. Clause 5 of Ext. B30 clearly reveals that the Illom has properties as Brahmaswom as well as Devaswom as its own by way of venpattu, anomalous mortgage, permanent lease, adima, thiruvallom, etc., spreading in 7 desom routes like Perisseri, Eramathur, Vallikode, Pannivizha, Kariara, Kozhikode and Ilambazhannur. On going through the document, it is evident that the properties of Pannivizha temple are the properties mentioned as properties situated in Pannivizha desom along with the other properties wherein the Illom is situated. It is a fact that the properties of the Pannivizha Temple and the temple are situated close to the vicinity of the other properties of the Illom. Clause 6 of Ext. B30 had authorized the continued administration of the 1st party named Kiriar Kiriar Pandarathil in respect of the properties of the Illom at Pannivizha desom route as well as Ilambazhannur desom route. The administration of the other properties were set apart to the third party named Kiriar Kiriar Esanaru Pandarathil alias Esanaru Kiriar in Ext. B30. Clause 12 of the document clearly stipulates that the Madom has its own temples. It has been mentioned that the administration of those temples should be carried out by the respective persons to whom the share for such administration was allotted through Ext. B30. Such parties are specifically directed to see that all the daily rituals, monthly rituals, attavishesham, etc., of such temple shall be performed by the respective sharers without any default and such sharers shall administer such temple and properties attached to it.

16. Therefore, Ext. B30 gives a clear indication that the members of the Illom had regarded all those temples in their desom routes as the temples of the Illom, and the properties attached to it as the properties belonged to the respective shares from which yield has to be taken for the due administration of the temples and also for meeting their livelihood. Specific provisions are there in Ext. B30 as well as other documents among the members of the Illom thereby entitling the sharers to whom properties were set apart to appropriate the income from such temples and the properties allotted to the temple for meeting the expenses of the temples as well as meeting the expenses towards the livelihood of such sharers and their family members. Can such properties be considered as an absolute dedication even if such properties stand in the name of the deity? Ext. B30 and the subsequent documents clearly reveal that the sharers were permitted to appropriate income from the properties of the temples belong to the Illom for the due administration of the temple as well as for meeting their livelihood. Even though properties were allotted to the deity and were treated as Devaswom properties of the Illom, it cannot be said that there was any valid dedication in the matter. In order to constitute a valid dedication, one should be the owner of the property. Of course, it may be said that the members of the Illom were the owners of the property in ancient times and, therefore, they could dedicate the property in favour of the deity. At the same

time, in order to create a valid dedication, there is another condition that the person who dedicates such properties, should not reserve anything for himself from the soil. That means he should not reserve any income from such properties for his livelihood or that of his family members, and that he should dedicate the property to have exclusive right of taking income in favour of the public or the deity to whom it is dedicated. Here, it is the admitted case that the members of the Illom were taking the yield from the properties attached to those temples coming under the Illom.

17. The learned Senior Counsel Sri. S. Sreekumar has taken me through the contents of Ext. B28 partition deed executed by E.K. Gireesaru Pandarathil and his father Esanaru Kiriar. Ext. B28 is dated 31st Meenam 1113 ME. It reveals that there are 9 members in the Illom during the period of execution of Ext. B28 having rights over the properties of the Illom. Clause 2 of Ext. B28 makes it clear that the Illom had properties both Brahmaswom and Devaswom. At Perissery, Eramamur, Vallikode, Pannivizha, Kariara, Kozhikode including Mukhathala and Ilambazhannur. Clause No. 2 in it clearly denotes the existence of the properties of the Illom and the ownership of the Illom over the temples in such Desom routes as contained in Clause No. 5 of Ext. B30. Similarly, clause 3 in Ext. B28 clearly asserts the execution of Ext. B30. Clause 5 of Ext. B28 reveals that the properties in Kozhikode desom are allotted to the share of E.K. Gireesaru Pandarathil and his wife Seethadevi Antharjanam for meeting their livelihood. Clause 6 enables them to collect all taxes including arrears of michavaram in respect of the said properties. Clause 6 clearly permits them to appropriate the income from such properties for meeting their livelihood and also for meeting all the expenses for conducting various rituals in the temple. Therefore, it is evident that when properties were allotted to the sharers through various documents, they were permitted to meet the expenses for their livelihood as well as the day-to-day expenses in the temple from such properties. At any stretch of imagination, it cannot be regarded as an absolute dedication to the deity alone. When a right to meet the expenses for their livelihood was clearly created, it seems that such a right was reserved in the soil and, therefore, it could not be an absolute dedication.

18. Ext. B29 is a registered partition deed dated 29th Medom 1115 ME executed by Kiriar Esanaru Pandarathil alias Esanaru Kiriar and E.K. Gireesaru Pandarathil alias Kiriar Kiriar. Clause 2 of Ext. B29 again asserts the properties of the Illom as Brahmaswom and Devaswom in various desom routes including Pannivizha. As per clause 5, the Kozhikode desom route was taken back to the family members of the Illom and instead of it, the Pannivizha desom route was granted to the father of the 6th defendant and his wife Seethadevi Andiarjanam. A specific assertion has been made in the said recital by entitling the father and the mother of the 6th defendant to appropriate income from the properties for their livelihood and also for meeting the expenses for the livelihood of Sreedevi Andiarjanam who is the wife of Kiriar Kiriar Pandarathil. Through clause 5 itself, the parents of the 6th defendant were specifically directed to appropriate the

income from the properties to meet their livelihood as well as for meeting the day-to-day expenses of the temple. Therefore, it is evident that the properties of the Illom at Pannivizha desom even if allotted to the deity were meant for appropriating income for the livelihood of the parents of the 6th defendant as well as for meeting the day-to-day expenses of the temple. As per clause No. 7, E.K. Gireesaru Pandarathil was permitted to collect jenmikaram, pattom, michavaram, arrears of michavaram, etc. in respect of all the properties in Pannivizha desom.

19. In this context, Ext B31 dated 24th Chingam 1119 ME also assumes importance. The same was executed by Kiriaru Esanaru Pandarathil in favour of E.K. Gireesaru Pandaradiil, his wife Seethadevi Antharjanam, and son, the then one year old Kiriari Kiriari Pandarathil. The recitals in the document clearly show that the tax being collected in the form of jenmikaram from the desom route and also the income being derived from the properties are not sufficient for meeting the livelihood of the said persons and also for meeting the day-to-day expenses of the temples and, therefore, another piece of property has also been allotted to E.K. Gireesaru Pandarathil and others for the said purposes, thereby enabling them to meet their livelihood as well as to meet the expenses of all the temples. Another condition was also incorporated stating that on providing other properties by acquiring properties at Pannivizha, Adoor, the said properties allotted through Ext. B31 should be returned.

20. On going through all the said documents mentioned above, it is evident that the Mom was treating those properties allotted to the temple not exclusively as temple properties, whereas, those properties were allotted for appropriating the income for meeting the livelihood of the sharers as well as all the day-to-day expenses of the temples or devaswoms concerned. The members of the Illom were acting in a pious manner and wanted to see at any cost the day-to-day rituals of the temple should be conducted without fail. When the income being derived from those properties were not adequate for incurring the expenses of the temples, other properties were also set apart for the same. From all these, it is evident that the Illom had never parted with the possession of those properties to anybody other than the members of the Illom. Much discussion is not required to conclude that there were no absolute dedications in respect of those properties. It is true that the properties were acquired in the name of the deity; at the same time, those acquisitions or allocations cannot be treated as absolute dedications as they had retained control and administration over it, and exclusive right has been reserved on the soil to take income from those properties not only for the purpose of the expenses of the temple but also for meeting their livelihood. When those reservations were there, it could not have been considered as absolute dedications.

21. The learned Senior Counsel Sri. S. Sreekumar has pointed out that Ext. B3 is not worthy for any purpose for which it has been executed. It is a document that is void ab initio. The father of the 6th defendant, who executed the document as

"A party", had no power or authority to convey anything contained in the document to "B party", the 1st defendant Society as what was conveyed therein was the inalienable right which could not have been transferred otherwise than through inheritance among the members of the Illom. Ext. B3 is dated 22.06.1979 and the same was registered as document No. 2730/1979 of the Adoor Sub Registry. It was executed in the form of an "udampady". The learned counsel for the Society has taken the stand that it can only be a document which has settled certain disputes among "A party" and "B party". At the same time, the Society claims possession and administration over the properties covered by Ext. B3 on the basis of Ext. B3. Their specific case is that Ext. B3 makes the temple as well as its properties as public charitable trust. The specific case of the Society is that only from the execution of Ext. B3 onwards, the properties and the temple have become a public charitable trust.

22. Ext. B3 is executed by E.K. Gireesaru Pandarathil styling himself as "Aparty" in favour of the Society as "B party". It was executed as if it was an administration deed. By accepting Ext. B3, at least the "B party" Society has given a go-by to their contention that "A party" or the members of the Illom had no rights over the properties. The objective of the document is shown as for settling the disputes which arose in between "Aparty" and "B party" for the administration of the Pannivizha Temple. It does not show that there were any such disputes in between "Aparty" and "B party" regarding the administration of the properties of the temple. The so-called disputes were confined to the administration of the temple alone. It has to be noted that as per clause No. 4, the "B party" has to administer the temple and to carry out all the rituals by meeting all the expenses. As per clause No. 7, the Society has to give 101 paras of paddy from the "parayideel" collection yearly or in the alternative, its market value to "A party", one week prior to the annual festival of the temple. As per clause No. 8, another right has been incorporated in favour of "A party" to appropriate half the offerings in the coffer placed in front of the "Thirumudi". Several other rights were also identified and acknowledged in favour of "A party" in Ext. B3. By executing Ext. B3, the Society has unequivocally agreed to the proposition that the members of the Illom have subsisting rights over the properties of the temple as well as the temple. Without fail, every year 101 paras of paddy or its equivalent value have to be provided by "B party" to "A party". Similarly, "A party" or his successors in interest in the Illom have absolute right to appropriate half the offerings in the coffer placed in front of the "Thirumudi" in the temple. Therefore, if as a matter of fact, the temple and its properties are considered to be properties of a public charitable trust, such conditions could not have been incorporated. On the incorporation of such conditions in Ext. B3, the Society have identified and acknowledged the rights of the Illom over the temple as well as its properties.

23. The learned Senior Counsel Sri. S. Sreekumar has invited the attention of this Court to page Nos. 201 and 202 of B.K. Mukherjeaon "The Hindu Law of Religious and Charitable Trusts", 5th Edition, wherein it has been noted that "It is

in an ideal sense that the dedicated property vests in an idol, and in the nature of things, the possession and management of it must be entrusted to some person as Shebait or manager". The Shebait is considered to be a human ministrant of the deity. Admittedly, Oorallens are known as Shebaites also. It has been noted therein that "This human ministrant of the deity, who is its manager and representative, is known by the name of Shebait in Bengal and Northern India. He is called the Dharmakarta in the Tamil and Telugu districts, Panchayatdar in places like Tanjore and Oorallen in Malabar. He is the person entitled to speak on behalf of the deity on earth and is endowed with authority to deal with all its temporal affairs". It has been further noted therein that as regards the temple property, Oorallens are nothing but mere trustees. In page No. 230, the question whether the Shebaiti right is alienable or not in law has been discussed in detail. It has been noted therein that as the personal interest of the Oorallen or Shebait cannot be detached from the duties, such a transfer of Shebaitship would mean delegation of the duties of the transferor, which would not only be contrary to the express intentions of the founder, but would also contravene the very policy of law. A transfer of Shebaitship or, for the matter of that, of any religious office has nowhere been countenanced by Hindu lawyers. Therefore, it is evident that the uraima right cannot be alienated or transferred. Right of uraima or Shebaitship is considered by Hindu law as inalienable as the personal interest of Oorallens/Shebaites cannot be detached from their duties. The aforesaid propositions in Dr. B.K. Mukherjea (supra) have been endorsed by the Apex court in a series of judicial pronouncements.

24. The said position had reached a 7 Judges' Bench of the Privy Council in (1876) L.R. 4 I.A. 76 (Privy Council). In that case, the matters in controversy were, (1) whether the wallers or managers of a pagoda could lawfully alienate to the appellant their right to manage the said pagoda?, and (2) if so, whether the alienation which they admittedly made in his favour conferred any and what rights against the respondents? In that case, the Cherakel Rajah obtained a document executed from the wallers of the pagoda as if he had purchased the properties of the pagoda including the jewels kept in a building attached to the pagoda. When the Rajah attempted to take away the jewels and shift the same from that place, the dispute has arisen. The Rajah claimed to be the assignee of the uraima right, or right of management of the pagoda and the temples coming under it. In that case, it was held that the acquisition of properties by the deity or transfer of properties in favour of a deity will create an extra commercium and such proceeds are not alienable. The Madras High Court in the matter decided that the assignment in question in favour of Rajah was not valid because all the wallers had not joined in it. When the matter came up before Privy Council, it was held that wallers had no power under what may be termed the common law of India, to transfer their uraima right to Cherekel Rajah.

25. The validity of such a transfer by a Shebait had come up before the Apex court in Kali Kinkor Ganguly Vs. Panna Banerjee and Others, , wherein the decision in Rajah Veumah Valia (supra) was relied on by the Apex Court in

paragraph 15 and held,

"An assignment of religious office for the pecuniary benefit of the holder of the office was held to be against public policy and contrary to the intentions of the founder. Such transfer was said to amount to delegation of delegated authority and could not be sanctioned even on the footing of a custom because it would be against public policy".

It was further held therein that" an alienation of a religious office by which the alienor gets a pecuniary benefit cannot be upheld even if a custom is set up sanctioning such alienation". In paragraph 23, the Apex Court has placed reliance on Dr. B.K. Mukherjea (*supra*) to lay down the law that "even if the transfer is for no consideration, the transfer would be bad if it is not in favour of those next in the line of succession". There, the Apex Court has relied on the law on the subject by clearly holding that even if a transfer is made by a Shebait or Oorallen for no consideration, such transfer would be bad if it is not in favour of those next in the line of succession. In a substance, such a transfer can be made if at all it is made, only in favour of those next in the line of succession. In paragraph 25, it was clearly held that the doctrine of transfer of Shebaiti right for the benefit of the deity, cannot also be swallowed as a valid transfer as it is illegal for the principal reason that neither the temple nor the deities nor the Shebaiti right can be transferred by sale for pecuniary consideration. The transfer by sale is void in its inception.

26. When the Society claims that they can get the right to administer the temple and its properties through the execution of Ext. B3, they have no legs to stand as the document is per se illegal and void ab initio. Whatever be the terms contained in Ext. B3, it is evident that the terms indicate some consideration in favour of "A party" for the execution of the said document Ext. B3 identifies and acknowledges the right of "Aparty" or the members of the Illom to get 101 paras of paddy per year as well as half the offerings in the coffer placed in front of the "Thirumudi" in the temple. Is it not consideration? It seems that the unfortunate old man who could not withstand the pressure from the members of the Society was compelled to execute Ext. B3 in parting with his right over the temple and some of its properties by accepting such a paltry consideration. In fact, he was compelled to sell his rights of Urallershship in favour of "B party". At any rate, such a sale cannot be countenanced by the principles of Hindu Law on the subject Apart from that the transfer of Urallershship by way of transferring the administration of the temple is not recognized as the same as done through Ext. B3 is in favour of a third party, who are strangers to the Illom. It could have been countenanced, had it been made in favour of those in the Monti who were next in succession to E.K. Gireesaru Pandarathil.

27. The next question to be considered is that even without the execution of Ext B3 whether there occurred a creation of a public charitable trust with regard to the temple and its properties. Even though the learned Senior Counsel Sri. Sidharthan has argued that even prior to the formation of the present Society,

there was another Society in existence and the said Society was managing the affairs of the temple and administering the temple properties. No documents are there or evidence is there to prove any such administration by such a Society or even the existence of such a Society. The learned Senior Counsel has pointed out that even in the absence of any such documentary evidence relating to the creation of a public trust, it could have been inferred from all the surrounding circumstances relating to the continued worship of a sizable number of members of the public, the innumerable offerings being made by them, and their continued participation in all the festivals at the temple.

28. Now, the question to be decided is whether such worship by a sizable number of members of the public at a private temple will tend to transfer the nature of that private into a public temple, and whether the participation of the members of the public in the festivals of the temple or whether their continued offerings at the temple will transform a private temple into a public temple? The learned Senior Counsel Sri. S. Sreekumar has invited my attention to the decision in Kunhunni Nambudiripad Vs. Cochin Devaswom Board, . In paragraph 4 of the decision, by relying on the decision of the Privy Council reported in AIR 1934 PC 280 that the impression regarding the temples in Malabar would seem to have been that those Nair temples were private, it was held that the position is not different in the case of Nambudiri temples also. It was held therein that even dedication of properties to a temple is not inconsistent with its private ownership. Here, in this particular case, even though the properties belong to the Illom were vested with the deity, it could not have been said that such a dedication to the deity is not inconsistent with its private ownership.

29. In Kunhunni Nambudiripad (supra), it was held that even in cases where the worshipers have attended or that they used to attend the temple and were not turned out by the Illom, no presumption can be made that such worship or user was as of right once the temple is proved to belong to the Illom. It cannot be said that worshiping without let or hindrance by the members of the public has been held to raise a presumption that such worship or user was "as of right".

30. The Privy Council in Babu Rhagwan Din v. Gir Har Varoop (1940 (1) MLJ 1) held:-

In these circumstances it is not enough, in their Lordships' opinion, to deprive the family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. Worshipers are naturally welcome at a temple because of the offerings they bring and the repute they give to the idol; they do not have to be turned away on pain of forfeiture of the temple property as having become property belonging to a public trust. Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present; and dedication to the public is not to be readily inferred when it is known that the temple property was

acquired by grant to an individual or family. Such an interference if made from the fact of user by the public is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshipers should be turned away; and as worship generally implies offerings of some kind it is not to be expected that the managers of private temple should in all circumstances desire to discourage popularity."

31. On this point, the learned Senior Counsel Sri. Sidharthan has invited my attention to the decision in *Deoki Nandan Vs. Murlidhar*, wherein it was held that "the distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter, they are the general public or a class thereof. While in the former, the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter, they constitute a body which is incapable of ascertainment". In paragraph 7 of *Deoki Nandan* (supra), it was held:

"When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshipers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshipers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individual's are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers."

The said proposition of law is based on the fact that there was an absolute dedication in that case in respect of the properties. Here, in this particular case, it cannot be said that there was any such absolute dedication.

32. In *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, , it was held in paragraph 23:

"The question as to whether a Hindu temple is private or public has often been considered by Judicial decisions. A temple belonging to a family which is a private temple is not unknown to Hindu law. In the case of a private temple it is also not unlikely that the religious reputation of the founder may be of such a high order that the private temple founded by him may attract devotees in large numbers and the mere fact that a large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public temple. On the other hand, a public temple can be built by subscriptions raised by the public and a deity installed to enable all the members of the public to offer worship. In such a case the temple would clearly be a public temple. Where

evidence in regard to the foundation of the temple is not clearly available, sometimes, judicial decisions rely on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may prima facie appear to be a public temple? The appearance of the temple of course cannot be a decisive factor; at best it may be relevant factor. Are the members of the public entitled to an entry in the temple? Are they entitled to take part in offering service and taking Darshan in the temple? Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple? Are their offerings accepted as a matter of right? The participation of the member of the public in the Darshan in the temple and in the daily acts of worship or in the celebrations of festival occasions may be a very important factor to consider in determining the character of the temple. In the present proceedings, no such evidence has been led and it is, therefore, not shown that admission to the temple is controlled or regulated or that there are other factors present which indicate clearly that the temple is a private temple. Therefore, the case for the Tilkayat cannot rest on any such considerations which, if they may have helped to establish either that the temple is private or is public."

(emphasis supplied)

33. The mere fact that the members of the public are allowed to worship in a particular temple and that they were not restrained or obstructed by the members of the concerned family from worshiping at the temple or even in a case wherein they make offerings at the temple, that cannot transform a private temple into a public temple if such freedoms were not exercised as of right by such unascertainable number of individuals.

34. Regarding the question of dedication, the learned Senior Counsel Sri. S. Sreekumar relies on Sri Radhakanta Deb and another v. Commissioner of Hindu Religious Endowments, Orissa ((1981) 2 SCC 226) and AIR 1940 7 (Privy Council). In Sri Radhakanta Deb (supra), it was held,

"The question as to whether the religious endowment of a private nature or of a public nature has to be decided with reference to the facts proved in each case and it is difficult to lay down any test or tests which may be of universal application".

It was further held,

"It is manifest that where the endowment is lost in antiquity or shrouded in mystery, there being no document or revenue entry to prove its origin, the task of the court becomes difficult and it has to rely merely on circumstantial evidence regarding the nature of the user of the temple".

35. Here in this particular case also, all agree to the proposition that the deity "Vanadurga" in Pannivizha temple had its own origin as "Swayambhoo". There is no documentary evidence to show the installation of the deity by any particular person in the temple. At the same time, as I have noted earlier, there is enough

indication that the temple as well as its properties belong to the erstwhile Illom and they were considering the temple and its properties as their properties. There is no contra evidence available in the matter other than the execution of Ext. B3. In the absence of any contra evidence, and when the preponderance of probabilities clearly point towards the fact that the temple and its properties being private temple and properties as is evident from the various documents which I have discussed earlier, it has to be considered that the temple and its properties are private properties and it did not assume the status of a public trust. Even through Ext. B3, such a status cannot be conferred as the then Oorallen, who executed the document was at the most, merely a trustee in respect of the said properties. A trustee, who has got only a limited power of administration only, cannot transform a private trust into a public trust in derogation of the rights of all other members of the Illom.

36. From the discussions made above, it is evident that there was no total divestment of the interest of the members of the Illom over the properties. There is no total renunciation or parting with the properties. They continued to hold the properties as their own. They continued to appropriate the income from those properties for their livelihood as well as for meeting the expenses in these temples at their will and pleasure. When income were not adequate for such purposes, the then Karanavans of the family had gone to the extent of making further allotments of properties to the shares of those managers or Oorallens for such purposes. The preponderance of probabilities point towards the fact that the temple had never assumed the status of a public temple or the properties of the temple have never assumed the status of public trust properties.

37. In *Bhagwan Din* (supra), it was held,

"While it is certainly possible that in the course of years a private temple should have been so dealt with as to have become dedicated for the benefit of the Hindu public as a public temple, such a dedication requires to be proved".

From a mere assertion that in the course of years, the temple has assumed the status of a public temple, it cannot be taken as granted without any formal proof of such fact. It was further held therein,

"Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present; and dedication to the public is it is known that the temple property was acquired by grant to an individual or family. Such an inference if made from the fact of user by the public is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshipers should be turned away; and as worship generally implies offering of some kind it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity. Thus in *Mundancheri Koman v. Achuthan Nair* the Board expressed itself as being slow to act on the mere fact of the public having been freely admitted to a temple. The value of public user as

evidence of dedication depend on the circumstances which give strength to the inference that the user was as of right. Their Lordships do not consider that the case before them is in general outline the same as the case of the Madras temple, *Pujari Lakshmana Goundan v. Subramania Ayyar* (supra), in which it was held that the founder who had enlarged the house in which the idol had been installed by him, constructed circular roads for processions, built a rest house in the village for worshipers, and so forth, had held out and represented to the Hindu public that it was a public temple. The Chief Court have, in the opinion of the Board, correctly estimated the particular facts of the case before them and have rightly negatived the contentions that the temple is a public temple and that the property in suit is impressed with a trust of a public religious character."

38. In *Sri Radhakanta Deb* (supra), it was held in paragraph 12,

"It may thus be noticed that this Court has invariably held that the mere fact that the members of the public used to visit the temple for the purpose of worship without any hindrance or freely admitted therein would not be a clear indication of the nature of the endowment. It is manifest that whenever a dedication is made for religious purposes and a deity installed in a temple, the worship of the deity is a necessary concomitant of the installation of the deity, and therefore, the mere factum of worship would not determine the nature of the endowment. Indeed if it is proved that the worship by the members of the public is as of right that may be a circumstance which may in some cases conclusively establish that the endowment was of a public nature. In *Dhaneshwarbuwa Guru Purshottambuwa, Owner of Shri Vithal Rukhamai Sansthan Vs. The Charity Commissioner, State of Bombay*, , all the aforesaid cases were summarised and the principles indicated above were reiterated."

39. In *The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das*, , it was held that,

"The mere fact of the public having been freely admitted to the temple cannot mean that Courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right."

(emphasis supplied)

40. In *Sri Radhakanta Deb* (supra), the Apex Court has qualified the norms required to decide whether the endowment is of a private or public nature, in the following lines:

"Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature:

(i) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;

(ii) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance when the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(iii) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(iv) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."

41. The learned Senior Counsel Sri. Sidharthan as well as the learned counsel for the Society have argued that the public were not asked to go away from the temple when they had advanced for worship and that itself gives a presumption that the temple is purely a public temple. The learned Senior Counsel Sri. S. Sreekumar relies on the decision in Bihar State Board Religious Trust (supra), wherein it was held in paragraph 13 that,

"The mere fact that the public was never asked to go away, or absence of proof that they were allowed on permission and invitation only cannot be conclusive evidence of the temple being one in which the public have by user acquired interest."

In paragraph 14, it was held as that,

"The mere fact of public having been freely admitted to the temple cannot lead to an inference of dedication to the public. The value of such user as an evidence of dedication depends on the circumstances."

42. In Appukutty and Others Vs. Kuniyil Achuthan , the question was whether the temple in question belongs to the family members of Kuniyil Tarwad or a public temple. In that case, it was held that there is no acceptable evidence to show that the participation in festivals and worshipping were done by the public as of right and, therefore, it is insufficient to convert the temple into a public temple. In Appu Pattar and Another Vs. Sri Kurumba Bhagavati Devaswom Uttama Panampalli Kurumba Umma and Others, , it was held that where a temple was originally a private temple, there must be clear and strong proof of subsequent dedication to the public, to sustain a plea that the temple subsequently became a public temple. Apart from the oral assertion that from 1958 onwards, a society was manning the administration and the public were worshipping the temple and partaking in the festivals as of right and making offerings as of right, no proof

has been furnished to show that there had occurred a dedication to the public after 1958. In *M. Gangadharan Nair and Another Vs. The Commissioner and Others*, , T.R. Ramachandran Nair, J. speaking for the Bench held in paragraph 48 by relying on the decision of the Apex court in *Tilkayat Shri Govindlalji Maharaj* (supra) as follows:-

"The discussion above will therefore show that importance will have to be given with regard to dedication, to find out whether it is a family Temple or a public Temple. Various aspects will have to be assessed based on the intention of the propounder and other factors. Merely because public were allowed to worship, it is not conclusive to hold that it is a public religious institution. Various other factors will have to be assessed. When the evidence regarding the nature of the Temple is not clearly available, how it could be assessed, has been laid down by the Apex Court in *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, ."

43. In *Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others*, , it was held in paragraph 15,

"Though most of the present day Hindu public temples have been founded as public temples, there are instances of private temples becoming public temples in course of time. Some of the private temples have acquired great deal of religious reputation either because of the eminence of its founder or because of other circumstances. They have attracted large number of devotees. Gradually in course of time they have become public temples. Public temples are generally built or raised by the public and the deity installed to enable the members of the public or a section thereof to offer worship. In such a case the temple would clearly be a public temple. If a temple is proved to have originated as a public temple, nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple. In such cases the true character of the particular temple is decided on the basis of various circumstances. In those cases the courts have to address themselves to various questions such as-

- (1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple?
- (2) Are the members of the public entitled to worship in that temple as of right?
- (3) Are the temple expenses met from the contributions made by the public?
- (4) Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples?
- (5) Have the management as well as the devotees been treating that temple as a public temple?"

It was further held that though the appearance of a temple is a relevant

circumstance, it is by no means a decisive one. The circumstances to show that the public or a section thereof have been regularly worshiping in the temple as a matter of course and they can take part in the festivals and ceremonies conducted in that temple apparently as a matter of right is a strong piece of evidence to establish the public character of the temple.

44. The learned Senior Counsel Sri. Sidharthan relies on Bala Shankar Maha Shankar Bhattjee and others Vs. Charity Commissioner, Gujarat State, and pointed out that an idol being a juristic person, the property endowed to it vests in it; but the worshipers are the beneficiaries. It is also argued that when the origin of the temple is lost in antiquity, it is difficult to prove dedication to public worship and, therefore, it must be inferred from the proved facts and circumstances of a given case whether there was dedication to public purpose or not.

45. The learned Senior Counsel Sri. S. Sreekumar relies on Kuldeep Chand and Another Vs. Advocate General to Government of Himachal Pradesh and Others, to prove as to illustrate as to what constitutes dedication. In paragraph 38, it was held therein that a dedication for public purposes and for the benefit of the general public would involve complete cessation of ownership on the part of the founder and vesting of the property for the religious object. In the absence of a formal and express endowment, the character of the dedication may have to be determined on the basis of the history of the institution and the conduct of the founder and his heirs. Here, the conduct of the members of the Illom, who were functioning as wallers of the temple, has to be gone through. The history of the property and the conduct of the members of the Illom, who were in absolute administration of the temple and its properties, clearly reveals that there was no absolute dedication.

46. In the decision in Kuldeep Chand (supra), it was held that a dedication may either be complete or partial. A right of easement in favour of a community or a part of the community would not constitute such dedication where the owner retained the property for himself. Mere parting with of a right of easement cannot be said to be a dedication for constituting or creating a public trust. A dedication must be of a complete relinquishment of its rights of ownership over the property. It is the admitted case that the members of the Illom in ancient times were considered to be the rulers of the locality. No wonder that the then properties with the Illom were the absolute properties of the members of the Illom. Being rulers of the locality, it cannot be inferred that a member of the public would have attended the temple at least without the implied permission from the then rulers who own the said temple. It may be true that in all their humility, and by expressing their pious conduct, they would have permitted the members of the public who worship in the temple. They might not have obstructed the public from making offerings at the temple. But, it is a fact that they retain the properties as their own and they continued to enjoy the properties. Therefore, there cannot be any valid dedication in this case and

further, there cannot be any creation of a public charitable trust in this case as far as the temple and its properties are concerned.

47. Applying the principles enunciated in the decisions noted supra to the facts of these cases, at any stretch of imagination, it cannot be held that the Pannivizha Temple and its properties have acquired the status of a public charitable trust. When documents are available to show that the control and management of the temple is retained with the founder or his descendants and that extensive properties are dedicated for the purpose of the maintenance of the temple belongs to the founder himself, it will go to prove that the endowment was of a private nature. Further, when there is evidence to show that the founder of the endowment did not make any stipulation for offerings and contributions to be made by the members of the public to the temple, this would mean an important intrinsic circumstances to indicate the private nature of the endowment. The mere fact that the members of the public have made offerings is not the crux of the matter. At the same time, the question is whether the persons created the endowment had made provisions for such offerings by the members of the public and on account of such provisions made by the persons created the endowment the public have made offerings, is the crux of the matter. When there is no evidence to show that any such provision was made by the members of the Illom who created the endowment the public cannot claim that as a matter of right they have made offerings at the temple. For celestial achievement some of the public might have repeated the offerings at the temple. Unless and until a provision is made for that purpose, the mere making of such offerings to the God in order to please the deity, does not transform the temple from a private temple into a public temple.

48. The learned counsel for the Society has been harping upon the matter by arguing that Ext. B3 has created a public charitable trust. The Society has no case that prior to the execution of Ext. B3, the temple and its properties had the character of a public charitable trust. The specific case of the Society is that Ext. B3 has created a public charitable trust. When the "A party" to the document was exercising "uraima" right over the property, he could not have created any public charitable trust. The "A party" had no right or authority to dedicate the property to the public as he was not the owner of the property. The members of the Illom had heritable right of administration over the entire properties and the temple, and they were doing so. It is true that "A party" to Ext. B3 was me senior most male member of the family, who was acting as the Karanavar, and me other members being silent members, would not have stood in the way of things being done by the "A party". That does not mean that there was acquiescence from the part of the other members of the Illom to all the acts of the "A party". In the case of acquiescence, there must be consent either expressed or implied from the part of the other members of the family or the next in the line of succession. It cannot be inferred in this case, especially because the 2nd plaintiff in O.S. No. 335/2011 has not yet attained the age of majority. When there is a right of survivorship, which was inalienable in nature

even the unborn members of the Illom in the line of succession could not have been deprived of their rights over the property and the temple.

49. The learned counsel for the Society has strenuously contended that there is clear acquiescence from the part of the members of the Illom in respect of Ext. B3 and, therefore, they cannot claim any further rights over the properties or the temple. Black's Law Dictionary defines the term "acquiescence" as "a person's tacit or passive acceptance; implied consent to an act". There is nothing to show that there was implied consent from all the other remaining members of the Illom in succession, who are entitled to succeed the right of administration, the right of "uraima" and the right of taking yield from the properties.

50. The question is, could the father of the 6th defendant alone alienate or surrender the rights of the other members of the Illom before the public or before the members of the Society? On that point, the learned counsel for the Society is relying on Ext. B27. Ext. B27 is Will dated 06.03.1984 executed by E.K. Gireesaru Pandarathil ("A party" to Ext. B3) and his wife Seethadevi Antharjanam. According to the learned counsel for the Society, through Ext. B27, Seethadevi Antharjanam has accepted the execution of Ext. B3 and acknowledged it. It is true that Ext. B3 has been mentioned in Ext. B27. At the same time, the recitals in the said Will clearly show that the Pannivizha Temple is the family temple of their Illom. Execution of Ext. B27 itself is not sufficient to deprive the other members of the Illom from enjoying the properties in question. Ext. B27 cannot stand in the way of the right of inheritance of the others in succession in the Horn in respect of the "uraima" right over the Pannivizha Temple and its properties.

51. The learned Senior Counsel Sri. Sidharthan has finally pointed out that Exts. B49 and 50 tax receipt as well as tax assessment register of the local authority show that the properties in question is "Pannivizha Kshethram vaka". True that the properties offered to the deity are properties of the deity. That does not mean that the members of the Illom had no right of administration or to take yield from those properties or to possess those properties. It has been further pointed out that as per Ext. B52, during the period 1999-2000, "Aparty" had obtained 101 paras of paddy and an amount of Rs. 7,182.10 as half the offerings in the coffer based on Ext. B3. Likewise, for the previous year, as per Ext. B51, he had obtained "uraima" of 101 paras of paddy as well as an amount of Rs. 2,066.10. As per Ext. B53, for 2000-"01, "Aparty" had obtained 101 paras of paddy and an amount of Rs. 6,728.05. Through Ext. B4, for the year 2001-"02, "Aparty" had obtained 101 paras of paddy and an amount of Rs. 7,916/-.

52. True that for some period, the Society had managed the property based on Ext. B3 and attempted to pacify the members of the Illom by giving 101 paras of paddy each per year and half the amount of offerings in the coffer. But, that does not mean that there is acquiescence from the part of other members of the Illom in the matter. By merely extending such paltry payments, a conscious attempt was there from the part of the Society to snatch away the properties and the

temple from the Namboothiri Illom. Not only that, their further acts were in such a way as to deprive other members of the Illom even from entering into the property or the temple. The words of the 6th defendant in evidence clearly reveal that he was totally afraid of the members of the Society and he could not withstand and, therefore, he could not sue. Finally, it seems that a female member of the Illom as the next friend of the second plaintiff in O.S. No. 335/2011 has come forward to claim her rights as well as the rights of the other members of the Illom and also that of her minor son, the second plaintiff.

53. The learned counsel for the Society has raised the question of limitation. The said question was not raised in any of the pleadings. Even if the question of limitation is raised, it has to be held that the suit cannot be barred by limitation as the 2nd plaintiff in O.S. No. 335/2011 has not still attained the age of majority.

54. The tenor of the evidence tendered on behalf of the public as well as the Society clearly show that there are conscious attempts to make it appear that the Illom has no right over the temple and the properties. It seems that they have forgotten the fact that once the members of the Illom were the rulers of the locality and once the public were under their administration. The entire properties were snatched away and they are nowhere now. Such a situation cannot be permitted to continue. It seems that by stating that the Society is doing everything which are right, the Society wants to harp upon the property. After all, what is the right of the Society over me property? Ext. B3 has not created any right and it could not create any right. When Ext. B3 is void ab initio, the plaintiffs in O.S. No. 335/2011 need not have sought for a relief for the termination of Ext. B3. Ext. B3 is a nonest and is void ab initio. It cannot take effect and it cannot deprive the other members of the Illom from enjoying the properties and also from administering the temple. Either the public or the Society have no right over the properties in question or Pannivizha Temple. They have no right to restrict the user of the members of the Illom in the matter of administration of the Pannivizha Temple or its properties.

55. From all the discussions made above, it is evident that Pannivizha temple or its properties have never acquired the status of a public charitable trust. At the most, "A party" to Ext. B3 could only be a trustee in respect of the properties. No doubt, all the members of the Illom are entitled to be trustees in the line of their succession. The said right of "uraima", the said right of enjoining the properties, the said right of administering the temple are clearly inalienable or transferable. Ext. B3 is, therefore, a nonest in the hand of law. It has never created any right of administration of the temple or its properties on the Society.

56. In fact, the matters in controversy in O.S. No. 65/2006 is only a private affair among the members of the public and the members of the Society or the person administering the Society. It will not in any way bind the members of the Illoms. The formulation of a scheme of the Society is also such a private affair among its members themselves. It will never bind on the Pannivizha Temple or its properties. It will never bind the members of the Illom as well as their rights

over the Pannivizha temple and its properties are concerned. The Pannivizha temple and its properties are proved to be the properties of the Illom. Of course, in their continued humility, they may continue to allow others to worship at the temple; but that should be at their mercy and not as of right. Matters being so, the properties in question have never become the properties of any public charitable trust and, therefore, O.S. No. 65/2006 is not maintainable under S. 92 of the Code of Civil Procedure, 1908. Therefore, the impugned judgment to the contrary is liable to be set aside.

57. As far as O.S. No. 335/2011 is concerned, Ext. B3 need not be set aside or terminated at all as it has never come into effect and it could not take effect. It is a document, which is void ab initio and has to be considered as a nonest, which is not capable of conveying anything. By subsequent acts on the part of "A party" to Ext. B3 in receiving the paltry amounts offered to him, the document could not have been made a valid one.

58. Regarding the next aspect of restoration of the properties, the position of the members of the Society in holding the properties is in the form of rank trespassers and they are basing their claim on Ext. B3, which is void ab initio. They need not be evicted from the property as they have no right to continue. A trespasser cannot protect his possession over the property. They have no right of entry in the property. Of course, they can continue to worship in the temple as the members of the Illom will never oppose such peaceful worship. Under the guise of worship, they are not entitled to snatch away the properties or to appropriate the income from the Pannivizha temple and its properties. When they are exercising unauthorised occupation of the properties, they can be directed through a mandatory injunction to handover the possession of the properties back to the members of the Illom. O.S. No. 335/2011 can be decreed to that much extent by directing the Society to handover possession of the properties obtained by the Society through Ext. B3, back to the successors in interest of the "A party", who are the members of the Illom. O.S. No. 335/2011 has to be decreed in favour of the plaintiffs, being the deity as well as being a minor represented by his mother as next friend.

59. The properties are presently in the possession of the Receiver appointed by the court below. The Receiver shall furnish his accounts and his receivership will stand discharged on his furnishing such accounts within a period of one month from today. Any further formal order of such discharge is not required. The Receiver shall handover the keys, the records and the properties back to the next friend, who is representing the second plaintiff in O.S. No. 335/2011. The next friend representing the second plaintiff in O.S. No. 335/2011 can obtain the key and accounts from the receiver as afore said. The Receiver shall prepare an inventory and obtain the acknowledgment from the next friend as to the movables in question. The sanctum sanctorum of the temple is in a dilapidated state and the deity is presently placed in a cage like structure called "Pancharakood". The members of the Illom as well as other worshipers of the

temple shall have the anxiety to see the sanctum sanctorum constructed at the earliest. We can hope that the members of the Illom will proceed with the renovation work at the earliest so that the worshipers can have a "darsan" on the deity. Even without waiting for the furnishing of the accounts by the Receiver and the formal surrender of the key, the members of the Illom can proceed with the reconstruction works of the sanctum sanctorum at the earliest.

In the result, R.F.A. No. 523 of 2013, R.F.A. No. 515 of 2013 and R.F.A. No. 778/2013 are allowed, and O.S. No. 335 of 2011 of the court below stands decreed to the extent mentioned above. O.S. No. 65 of 2006 of the court below is dismissed. R.F.A. No. 133 of 2014 stands dismissed. In the nature of these appeals, there is no order as to costs.

All Interlocutory Applications in these appeals are closed.