

(2001) 08 AP CK 0138

In the Andhra Pradesh High Court

Case No : AAO No"s. 1089 of 2001 and Batch

Shrimad Sudhindra Thirtha Swamy

APPELLANT

Vs

Sri Kasi Math Samsthan, Tirumala, Chittoor Dist. and another

RESPONDENT

Date of Decision : 07-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4, Order 3 Rule 4(1), Order 3 Rule 4(2), Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 215, 225, 227
Contempt of Courts Act, 1971 — Section 15(2)

Citation : (2001) 5 ALD 497 : (2001) 6 ALT 329 : (2001) 2 APLJ 272

Hon'ble Judges : P.S. Narayana, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. B. Adinarayana Rao, for the Appellant; Mr. M. Venkata Ramana Reddy, for the Respondent

Judgement

P.S. Narayana, J

1. This batch of civil miscellaneous appeals and civil revision petitions arise out of the different interlocutory orders passed in OS No.34 of 2000 on the file of the III Additional District Judge, Tirupathi. Since both the parties have filed the civil miscellaneous appeals and civil revision petitions, the parties hereinafter will be referred to in their position as arrayed in OS No.34 of 2000 on the file of the III Additional District Judge, Tirupathi.

2. At the outset, we may observe that the dispute relates to the office of Matadhipathi of Sri Kashimath Samsthan. It is really unfortunate that the spiritual and religious preachers, who are expected to be pious and devotional, are involving in litigations of this nature. Mathi in fact has been the most important institution relating to Hindu religious system. The word "mata" is defined as a hut of an ascetic or student, a monastic school or college and Matadhipathi is defined as the head of such institution. See Macdonnells" dictionary and also dictionary by Apte.) In Sammantha Pandara v. Sellappa

Chetty 2 Mad. 175, it was observed " a preceptor of religious doctrine gathers around him a number of disciples whom he initiates into the particular mysteries of the order and instructs in its religious tenets. Such of these disciples as intend to become teachers renounce their connection with the family and all claims to follow wealth and as it were, affiliate themselves to the spiritual teacher whose school they have entered. Pious persons endow the schools with property which is vested in the preceptor for the time being and a home for the school is erected and math constituted". Thus the maths are the centers of theological learning established for the study practice and propagation of cult of each system of philosophy and to train and equip a line of competent teachers whose duty is to go forth into the land bearing the torch of levying and spreading its light.

3. These civil miscellaneous appeals and civil revision petitions are filed against two common orders dated 2-3-2001 and 28-3-2001. CMA No. 1603 of 2001 is filed by the first respondent against the order made in IANo.1072 of 2000, dated 29-9-2000. IANo.122 of 2001 is an application filed seeking termination of vakalat of Sri MK Kini, the Counsel representing the first defendant. CRP No.1765 of 2001 is filed aggrieved by the order directing the termination of vakalat of Sri M.V. Kini mainly on the ground that he is likely to figure as a witness in the suit. IA No.123 of 2001 is an application filed by the plaintiffs u/s 15(2) of the Contempt of Courts Act, 1971 read with Section 151 CPC and also under Order 39, Rules 1 and 2 CPC seeking a reference of criminal contempt and also for restraint order preventing the circulation of cassettes containing speeches of Mr. M.V. Kini etc. As against the said order the first defendant filed CMA No. 1089 of 2001. Sri M.K Kini and Sri R.P. Bandarkar, who are non-parties to the litigation, filed CMASR No.38851 of 2001 and as against the same order the plaintiffs filed CRPSR 43398 of 2001 under Article 227 of the Constitution of India. IANo.121 of 2001 was filed praying for the relief of restoration of status quo ante as on 5-9-2000 the date of the suit. The first defendant filed CMA No.1090 of 2001 and the plaintiffs filed CMA No.1449 of 2001 as against the said order. IA No. 1510 of 2000 was filed by the first defendant for modification of the order dated 29-9-2000 to permit him to issue general power of attorney etc., and the plaintiffs filed CMA No.1440 of 2001 as against the said order IA No.1511 of 2000 was filed seeking the relief that the second plaintiff should not be allowed to move out with Samsthan deities beyond Tirumala without prior permission of the Court and aggrieved by the same CRP No.1641 of 2000 was filed and the matter was disposed of by this Court by an order dated 17-4-2001. As already referred to above, as against the order in the temporary injunction application IA No. 1072 of 2000 dated 29-9-2000 CMA No.1603 of 2001 was filed by the first defendant.

4. The learned III Additional District Judge, Tirupathi had allowed IA No.122 of 2001 terminating the vakalat of Sri M.V. Kini and directed the first defendant to appoint some other advocate to defend his suit. As far as IA No.121 of 2001 is concerned, it was partly allowed restraining Sri M.V. Kini and Sri R.E. Bandarkar from in any manner making, printing, publishing by words or scripts distributing,

circulating and or canvassing in any manner any statements relating to the plaintiffs or the matters connected with the proceedings in the suit including further circulation and directing withdrawal of booklet title "true facts" purported to be "legal opinion" dated 20-10-2000 written by Sri M.V. Kini and the tape recorder and cassettes of his speech or any other publication or speech purporting to be touching the subject-matter of the above proceedings. But, however, the application was dismissed so far it relates to referring of the matter to this Court under the provisions of the Contempt of Courts Act, 1971. IA No. 1510 of 2000 was partly allowed taking all the facts and circumstances into consideration, which is to the following effect:

"The defendant No.1 is permitted to execute general power of attorney in favour of his disciples or disciple (1) to represent Kashimath before Courts, Tribunals and other authorities including Income Tax Authorities, (2) for construction of math buildings and for construction of math, (3) for purchasing movable properties of the math. It is made clear that the general power of attorney shall pay all payments, monies more than Rs.10,000/- through cheques or demand drafts only and accounts should be furnished to the Court".

As far as IA No. 121 of 2001 is concerned, it was ordered that it is just and reasonable to order status quo to be maintained as far as Tirumala Kasimath is concerned pending disposal of the suit and however the second plaintiff shall furnish accounts of Kasimath Tirumala to the Court".

5. Sri B. Adinarayana Rao, learned Counsel representing the first defendant in the suit and Sri Ganesh Shenoy, Counsel representing the plaintiffs in the suit had made elaborate submissions on behalf of the respective parties.

6. Before taking up the rival contentions of the parties in support of their case, the facts in brief are as follows : The first plaintiff in the suit is Kasimath Samsthan and the second plaintiff had been nominated as successor and was taken as a shishya by the first defendant and was inducted into sanyasa on 7-7-1989 and he was entrusted with all religious dharmic and social activities as well as the management of Kasimath Samsthan and handed over all deities with paraphernalia insignia etc., and in his right as matadhipathi he has been performing Trikala poojas. In view of certain disputes which arose relating to the authority of the second plaintiff, the plaintiff filed a suit OS No.34 of 2000 on the file of the III Additional District Judge, Tirupathi for declaration that the second plaintiff is the 21 pontiff and matadhipathi of the first plaintiff Sri Kasimath Samsthan and for seeking the relief of injunction restraining the opposite party from interfering the exercising his rights as matadhipathi. The plaintiffs also moved an application for temporary injunction and on 5-9-2000 an ad interim injunction was granted but however on 29-9-2000 the learned in Additional District Judge, Tirupathi while passing a common order in IA No. 1072 of 2000 and IA No.1137 of 2000 made the following order modifying the earlier order which reads as follows:

"In the result, the petitioners have failed to prove that they have prima facie case and balance of convenience, therefore, the 2nd petitioner is not entitled for interim order as prayed for i.e., restraining the respondents from in any way interfering with the exercise of powers, duties and privileges of 21st pontiff of the 1st petitioner math. However, from the record it is clear that the 2nd petitioner has been entrusted with holy deities and other paraphernalia and insignia and it appears that the 2nd petitioner has been performing Trikala pooja to the holy deities. Therefore, the respondents are hereby restrained from interfering in performing Trikala poojas to the holy deities by the 2nd petitioner. It is further directed that the 1st respondent shall not delegate his powers, particularly the authority to deal with the bank accounts and all other movable and immovable properties of Sri Kashi Matha Samsthan to any other persons i.e., the 1st respondent shall himself deal with the funds of Sri Kashi Math Samsthan and other movable and immovable properties and he shall not authorise any other person to deal with the same by executing general power of attorney or any other documents pending disposal of the suit. The earliest orders stand modified accordingly. The IA No. 1072 of 2000 is disposed of accordingly.

Before parting with this order, I hope and trust that H.H. Srimad Sudhindra Thirtha Swamiji and Srimad Raghavendra Thirtha Swamiji will make all efforts to settle the disputes between themselves and other leading personalities of Kashimath Samsthan and every one should co-operate in resolving the disputes and in upholding the great traditions of Sri Kashimath Samsthan. If any practical difficulties arise in following or implementing the above directions, the parties may again approach this Court for further orders including variation of above directions. In view of the above IA No.1137 of 2000 is also disposed of accordingly".

Here itself it may be pointed that while hearing these matters a submission was made by both the Counsel that this order was not challenged by any one of the parties but however subsequent thereto the first defendant filed CMA No.1603 of 2001 against the said order.

7. As can be seen from the record, all these interlocutory applications referred supra were filed in view of certain subsequent events. Sri M. V. Kini learned Counsel for the first defendant had published certain writings styled as legal opinion title "true facts" and circulated the same through Messrs GSB Seva Mandal of Mumbai represented by its Honorary Secretary Sri R. V. Bandarkar among the community members throughout the country and Sri M. V. Kini also had made public speeches to the community gathering at various places like Cochin, Bangalore etc., totally giving distorted version relating to the proceedings pending before the Court which are not only defamatory statements scandalising the second plaintiff and those statements also prejudices or tends to interfere with and to obstruct the administration and due course of judicial proceedings pending before the Court and the speeches made by Sri M.V. Kini and circulated through Sri R. V. Bandarkar will fall under the criminal contempt within the

meaning of Contempt of Courts Act, 1971 and in the light of this background the interlocutory applications referred to supra were filed and the orders specified above had been made by the III Additional District Judge, Tirupathi which are being assailed by way of civil miscellaneous appeals and civil revision petitions before m/s Court. CMA No.1603 of 2001 filed against the order made in IA No.1072 of 2000 dated 6-7-2001 and the matter was heard and posted along with the batch of cases already reserved for judgment.

8. Sri B. Adinarayana Rao, learned Counsel appearing for the first defendant in all these matters made the following submissions. The dispute relates to an office of Matadhipathi and even the limited order granted in IA No.1072 of 2000 relating to performance of Trikala pooja by the second defendant is not sustainable in law since the plaintiffs have neither a prima facie case nor balance of convenience is in their favour. The learned Counsel also had relied upon several decisions like S. Radhakrishna Murthy Vs. K. Narayanadas and Another, ; Nawab Mir Barkat Ali Khan Vs. Nawab Zulfikar Jah Bahadur and Others, ; Chand Sultana alias Indra Bai Vs. Khurshid Begum and Others, and contended that in the light of the clear legal position the Court below had totally erred even in granting the limited order. The learned Counsel also had drawn our attention to several portions of the order and contended that the Court below having observed that the plaintiffs have failed to prove that they have prima facie case, should not have granted even the limited order. It was also further contended that the restoration of status quo ante prayed for by the plaintiffs and the status quo order granted by the Court below also cannot be sustained since there are no changed circumstances to deviate from the order already made in IA No. 1072 of 2000. The learned Counsel also further contended that in view of the fact that the main order in IA No.1072 of 2000 itself is liable to be set aside the other orders passed in consequence of the main order also cannot be sustained. It was also further contended that there cannot be restraint order as against the non parties to the litigation and further the learned Counsel supported that the order of the Court below in declining to refer the matter to the High Court under the Contempt of Courts Act, 1971 is perfectly legal and justifiable one. The learned Counsel also had strenuously contended that the termination of vakalat of Sri M.V. Kini is totally illegal and unsustainable and had further stated that Sri M.V. Kini is not going to figure as a witness in the dispute and had undertaken to file a memo to that effect.

9. Sri Ganesh Shenoy learned Counsel for the plaintiffs representing Sri Venkataramana Reddy and Sri Srinivas Reddy made elaborate submissions. The learned Counsel had drawn our attention to certain portions of the orders made in these interlocutory applications and also cited several decisions in support of his contentions. The learned Counsel had submitted that CMA No. 1089 of 2001 and CMASR No.38851 of 2001 are not maintainable and they are liable to be dismissed on this ground alone. It was further contended that the first defendant is not aggrieved party since no order was passed against him in IA No.123 of 2001 and hence he cannot maintain a civil miscellaneous appeal as against such

an order. Further it was contended that since the restraint order as against non parties was passed u/s 151 CPC to prevent the abuse of process of Court the order is not an appealable one. Here itself we may state that since the orders have been made in exercise of the powers under Order 39, Rules 1 and 2 CPC there can be no doubt about the maintainability of the CMAs. Apart from it, an appeal being a statutory right and while deciding whether an appeal lies against a particular order, the substance of the order also may have to be looked into and as against the order of restraint even by non parties to the litigation, CMA can be maintained.

10. Sri Ganesh Shenoy in continuing his elaborate submissions also had drawn our attention to the portions of Exs.B1 and B2 and had stated that the contents of Exs.B1 and B2 clearly go to show that both Sri M.V. Kini and R.V. Bandarkar had committed criminal contempt within the meaning of the Contempt of Courts Act, 1971. It was further contended that the Court below had totally erred in declining the reference under the Contempt of Courts Act, 1971 in view of the bar imposed by the proviso to Section 10 of the Contempt of Courts Act, 1971. The learned Counsel also had drawn our attention to paras 12, 13, 14, 16, 19 and 21 of the order dated 2-3-2001 in IA No.123 of 2001. The learned Counsel also had cited several authorities to substantiate his stand that the Court in exercise of its inherent power is quite competent to issue directions in the nature of injunctions even against a third party. The learned Counsel had relied upon decisions In In Re: P.C. Sen, ; Video Movies Vs. D. Ramanujam, Madras and Others, ; The State Vs. Somnath Mahapatra, Secretary to the Govt. of Orissa, ; Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and another, ; The Newabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others, ; Pratap Singh and Another Vs. Gurbaksh Singh, ; Ramniklal v. Pranal AIR 1952 Guj 74. Further, while commenting about the order relating to the termination of vakalat the learned Counsel contended that though a reference is made to Order 3, Rule 4 CPC, it is an order passed u/s 151 CPC and the learned Counsel had stated that the proper procedure of issuing show-cause notice and other legal formalities had been complied with before passing an order of termination of vakalat and hence the Court below is justified in making out such an order and the learned Counsel had also relied upon C.S. Venkatachariar AIR 1942 Mad. 691; Chhatrapati Shivaji and Others Vs. The State and Others, ; All India Reporter v. Moghe AIR 1950 Nag. 110; R.K. Agarwal Vs. Rana Harishchandra Ranjitsingh and others, . The learned Counsel for the plaintiffs also had contended that the second plaintiff is a sanyasi. He having been nominated the successor to Sri Kashimath Samsthan he was given Dheeksha by 1st defendant. Since thereafter Sri Kasimath Samsthan had been his abode. Ever since 12-12-1994, the date on which he was entrusted with the Matadhipatyam, he had been managing the day-to-day affairs of Sri Samsthan. Even today he is holding the keys to all Samsthan properties and of branch maths. At the time of filing of the suit the 2nd plaintiff had been camping at Sri Tirumala Kashimath with Sri Samsthan deities, which are the title of the matadhipathi i.e., himself

and there he is also performing the Trikala poojas and Shashwatha Sevas Santharpanas. The devotees/disciples do visit him frequently. The 2nd plaintiff since found practical difficulties in view of the administration and financial management being made over by the trial Court by its earlier order dated 29-9-2000 and inasmuch as no funds were being released to meet the day-to-day expenses of not only the Trikala poojas and Shashwatha Sevas but also the payment of salaries and maintenance of the employees of Sri Samsthan camping with him at Sri Tirumala Kashimath it became necessary for him to move IA No.121 of 2001 seeking variation of the order. It is relevant to point out that the interest accrued on the deposit made by Shashwatha sevadars have to be made available regularly to meet the cost of the poojas. Further the amount standing in the name of the 2nd plaintiff which is duly accounted for in the Sri Samsthan account ever since the year 1994 have been got frozen at the instance of the coterie by misrepresentation to the Income Tax Department, he was also not able to provide funds in this behalf. Sri M.V. Kini and the GPA holder of defendant No.1 held out to the public in a mischievous manner that the 2nd plaintiff has accumulated funds in his individual name giving a wrong picture to the community members and also to prejudice the mind of the Court. The learned Counsel had drawn our attention to para 10 of the 2nd plaintiff's affidavit in support of IA No. 121 of 2001. This was not their case before the Court in the written statement. The Court considering the matter disposed of the said IA observing that it is not in dispute that the 2nd plaintiff has been residing in Sri Kashimath Tirumala since prior to the institution of the suit till date and therefore found it just and reasonable to order that the status quo of Sri Tirumala Kashimath be maintained by the 2nd plaintiff and also directed him to furnish accounts to the Court. In addition considering the hardship and practical difficulty faced relating insufficiency of finance for meeting the cost of Trikala pooja and day-to-day maintenance of Sri Samsthan the Court directed 1st defendant to deposit a sum of Rs.2,10,000/- every month permitting the 2nd plaintiff to withdraw the same and furnish an account to the trial Court every month. It is pertinent to note that the trial Court has relied on the above statement and passed the order accordingly. No ground is also made challenging such direction for payment in the appeal memorandum. Therefore, it is impermissible to find fault with the said portion of the order of the trial Court. As regards continuance of status quo of Sri Tirumala Kashimath is concerned, the same is also intended to prevent possible interference in the day-to-day poojas and scuffle by the coterie. Therefore the order cannot be found fault with. The trial Court's order is competent in the light of the reservation made by it on 29-9-2000 and also in the light of provision contained in Order 39, Rule 4 CPC. It may be seen that the Court is enabled to pass orders under Order 39, Rules 1 and 2 either pending disposal of the suit or until further orders. The earlier order in the light of the reservation was the one made until further orders. Therefore the application by the 2nd plaintiff had been very much competent. The relief sought in the suit is of declaration of status of 2nd plaintiff with reference to 1st plaintiff Sri Kashimath Samsthan and consequential permanent injunction. Having regard to

the nature of claim in the suit the trial Court while passing the order on 29-9-2000 took care to put the 1st defendant on terms while directing administration and finance to be looked after by him and that he should carry on the same by himself and not by delegation. Now by the interim order the trial Court there being no changed circumstances proceeded to permit issuance of general power of attorneys by the 1st defendant for the alleged construction purposes. The trial Court has not provided any safeguard in them relating to issuance of general power of attorneys.

11. The learned Counsel also had submitted that the relief sought in the suit is declaration of status of the 2nd plaintiff as matadhipathi and having regard to the nature of the claim in the suit the learned III Additional District Judge had taken care to see to put the first defendant on terms while directing administration and finance to be looked after by him by directing that he should carry on the same by himself and not by delegation.

12. Having heard both the Counsel at length in these interlocutory applications the points, which arise for consideration are as follows:

1. Whether the restraint order passed relating to the Trikala poojas is sustainable in law?
2. Whether the status quo order relating to the abode of second plaintiff is in accordance with law?
3. Whether refusing reference to High Court under the Contempt of Courts Act, 1971 is liable to be interfered with?
4. Whether the restraint order made against the non parties to the suit is sustainable?
5. Whether the order of termination of vakalat of Sri M.V. Kini is liable to be set aside?
6. Whether the first defendant can be permitted to execute the general power of attorney in favour of disciples for certain purposes?
7. What are the equitable directions which can be made in the facts and circumstances of the case ?

Point No. 1:

13. IA No.1072 of 2000 and IA No.1137 of 2000 in OS No.34 of 2000 were disposed of on 29-9-2000 by the third Additional District Judge, Tirupathi granting a limited restraint order in favour of the second plaintiff restraining the respondents from interfering in performing Trikala poojas to the holy deities and it was further directed that the first defendant-first respondent shall not delegate these powers particularly the authority to deal with the bank accounts and all other movable and immovable properties of Sri Kashimath Samsthan to any other persons and the first defendant shall himself deal with the funds of the

Kashimath Samsthan and other movable and immovable properties and he shall not authorise any other person to deal with the same by executing GPA., or any other document pending disposal of the suit. It is no doubt true that the learned III Additional District Judge after elaborately discussing Exs.P1 to P33 and Exs.R1 to R19 and also Exs.C1 to C3 at para 26 of the order had observed that the petitioners have failed to prove that they have prima facie case and balance of convenience. Therefore, the second petitioner is not entitled for interim order as prayed for i.e., restraining the respondents from in any way interfering with the exercise of powers, duties, privileges etc., of 24 pontiff of the first petitioner math. Having observed so the learned Judge felt that in equity an order of the nature stated supra will be just and proper and accordingly such a limited order was granted by the Court below. It is pertinent to note that the specific stand of the first defendant is that the second plaintiff was not appointed as maladhipathi at all and at the best his position can be characterised only as an apprentice and the first defendant alone has been holding the office of matadhipathi and that mere doing of Trikala poojas does not make him the matadhipathi. In fact the learned III Additional District Judge, while answering point No.2 at para 18 dealing with the custom or usage regarding succession of matadhipathi that has been followed in the history of Sri Kashimath Samsthan and after referring to the portions of Ex.C1, had ultimately observed that from the facts it is clear that the time bound custom in Sri Kashipath Samsthan appears to be that after the demise of matadhipathi only initiated watu that is nominated successor can become matadhipathi. The learned III Additional District Judge, has elaborately discussed the documentary evidence Exs.P1, P16, P9, P27, P2, P3, P13, P14, P17, P21, P24, P11, P28, P29 and also Exs.R3, R8 to R10, R12, R2, R5, R19, R1, R7, R4, R13 and had ultimately on appreciation of the contents of these documents had observed as follows:

"The above chronological events clearly go to show that though the 2nd petitioner was entrusted with all religious, dharmic and social activities of Sri Kashimath Samsthan except those of Vyasastram Haridwar by the first respondent, but the 2nd petitioner himself seems to have requested the first respondent to relieve him from certain duties and it also appears that there is some substance in the contention of the learned Counsel for the first respondent that the whole troubles started when the 2nd petitioner opened bank account in his individual status. It has to be seen that the 2nd petitioner except filing Exs.P1 to P3 has not filed any other document at the time of filing of the suit. He has also not whispered anything about his making the claim to the T.T. Devasthanams to extend the temple honours to him and the subsequent events thereafter and he seems to have suppressed the material documents and thus not entitled for the discretionary remedy of injunction order".

The learned Additional District Judge also had narrated the circumstances relying upon portions of Exs.C1 and C2 that the circumstances go to show that the first defendant has not relinquished all his powers and privileges of matadhipathi and after a detailed discussion in this regard the learned Additional District Judge had

arrived at a conclusion that the plaintiffs have not made out prima facie case but however on the ground of equity the limited restraint order was granted. It is needless to mention the cardinal principles or the necessary ingredients which are to be satisfied for the purpose of getting temporary injunction. In Radhakrishnamurthy's case (supra) at page 387 the Division Bench was pleased to observe as follows:

"In Nawab Mir Barkat Ali Khan Vs. Nawab Zulfikar Jah Bahadur and Others, , a Division Bench of this Court evolved the circumstances under which the Court will grant or refuse a temporary injunction. The Court held (Para 15) "the grant or refusal of a temporary injunction is covered by three well established principles viz,, (1) whether the petitioners have made out a prima facie case, (2) whether the balance of convenience is in their favour i.e., whether it would cause greater inconvenience to them if the injunction is not granted than the inconvenience which the opposite party would be put to if the temporary injunction is granted and (3) whether the petitioners would suffer irreparable injury. With the first condition as sine quation atleast two conditions should be satisfied by the petitioners conjunctively and a mere proof of one of the three conditions does not entitle them to obtain a temporary injunction in their favour.

In The Municipal Corporation of Delhi Vs. Shri Suresh Chandra Jaipuria and Another, , the Supreme Court held paras (5 and 9)

"The High Court, while agreeing with the view of the appellate Court that the balance of convenience was in favour of discharging the interim injunction held that as there was a prima facie case that the assessment had been erroneously made. The principle of balance of convenience did not apply here. Mr. Nariman, learned Counsel for the corporation is, we think, on very firm ground in contending that balance of convenience could not be ignored in such cases and that the learned Judge of the High Court erred in holding that it could be".

In a Treatise on the Law and Practice of Injunctions (6th edition) by William Williamson Kerr it is observed:

"The jurisdiction of the High Court of justice by injunction is not confined to the protection of equitable rights, but extent to the protection of legal rights to property from damage pending litigation. The protection of legal rights to property from irreparable or atleast from serious damage pending the trial of the legal right was part of the original and proper office of the Court of Chancery. In exercising the jurisdiction the Court does not pretend to determine legal rights to property, but merely keeps the property in its actual condition until the legal title can be established. The Court interferes on the assumption that the party who seeks its interference has the legal right which he asserts, but needs the aid of the Court for the protection of the property in question until the legal right can be ascertained. The office of the Court to interfere being founded on the existence of the legal right, a man who seeks the aid of the Court must be able to show a fair prima facie case in support of the title which he asserts. The

jurisdiction to grant an injunction being discretionary the Court in exercising it will have regard to the way in which the granting relief will affect the rights of the other persons".

In one of the recent cases Mrs. Angela John S. Rao v. N. Lakshminarayana (1978) 2 AWR 340 : 1978 Lab.IC 1139 to which one of us (Chennakesava Reddy, J.) was a party, it has been held (atp.1140 of Lab.IC):

"The very first principle of injunction law and a principle of universal application, is that the Court should decline to grant temporary injunction unless prima facie case is shown in the plaint and the affidavit filed by the parties. The second rule is that to justify the grant of temporary injunction there must be a further, ingredient to be made out and that is that unless the defendant is restrained by a temporary injunction, irreparable injury or inconvenience may result to the plaintiff before the suit is heard and decided upon its merits.

"What emerges from the above conspectus is that the grant of interlocutory injunction is a discretionary remedy and in the exercise of judicial discretion in granting or refusing to grant the Court will take into reckoning the following as guidelines: (1) Whether the persons seeking temporary injunction have made out & prima facie case. This is sine qua non. (2) Whether the balance of convenience is in his favour that is whether it could cause greater inconvenience to him if the injunction is not granted than the inconvenience which the other side would be put to if the injunction is granted. As to that the governing principle is whether the party seeking injunction could be adequately compensated by awarding damages and the defendant would be in a financial position to pay them. (3) Whether the person seeking temporary injunction would suffer irreparable injury. It is however not necessary that all the three conditions must obtain. With the first condition as sine qua non atleast two conditions should be satisfied by the petitioner conjunctively and a mere proof of one of the three conditions docs not entitle a person to obtain temporary injunction".

In the light of the above legal position the Court below is justified in refusing temporary injunction as prayed for but however in view of the peculiar facts and circumstances and in view of the fact that the second plaintiff has been performing Trikala poojas at Tirumala math the Court exercising equitable jurisdiction had passed the limited restraint order relating to the Trikala poojas etc.

Point No.2:

14. The learned III Additional District Judge by order dated 28-3-2001 in IA No.121 of 2001 had passed an order observing as follows:

"It is not in dispute that the second petitioner has been residing in Kashimath Tirumala since prior to the date of institution of the suit till today. Therefore, I am of the view that it is just and reasonable to order that status quo has to be maintained as far as the Tirumala Kashimath is concerned, pending disposal of

the suit. However, the petitioner i.e., the second plaintiff shall furnish accounts of Kashimath Tirumala to the Court. Hence IA No. 121 of 2001 is disposed of accordingly".

The learned III Additional District Judge, after making elaborate discussion in paras 18 to 21 in the facts and circumstances of the case felt that the status quo as on the date of the institution of the suit has to be continued till the disposal of the suit. The fact whether the second plaintiff is the matadhipathi or not is a matter to be decided after holding the trial in the main suit. It is no doubt true that in IA No. 1072 of 2000 it was observed that the plaintiffs have not made out a prima facie case. But it is pertinent to note that the dispute relates to a religious office. Hence in the facts and circumstances of the case, the order of status quo of the nature specified supra had been granted by the Court below.

Point No. 3:

15. In IA No. 121 of 2001 and IA No.123 of 2001 a common order had been passed on 2-3-2001. IA No.123 of 2001 was filed by the plaintiffs under Order 39, Rules 1 and 2 and Section 151 CPC read with Section 15(2) of the Contempt of Courts Act, 1971 praying to pass an order restraining the Counsel for defendants Sri M.V. Kini Sri R.V. Bandarkar and Sri Gin Ganesh Prasad, their men, agents working for or under them from in any manner making, printing, publishing by words or distributing, circulating and are canvassing in any manner any statements relating to the plaintiffs or to the matters connected with the proceedings in the suit including further circulation and directed the withdrawal of the booklet titled true facts purported to be a legal opinion 20-10-2000 written by Sri M.V. Kini Counsel for defendants through G.S.B. Seva Mandal and the tape recorder and cassettes of his speech or purporting to be touching the subject-matter of the above proceedings and take appropriate action in this behalf against them under the relevant provisions of the Contempt of Courts Act, 1971. The learned District Judge had declined to make a reference though a restraint order was passed. Exs.P1 and P2 were relied upon in this regard and elaborate submissions were made pointing out the portions of the said document, which read as follows:-

"From 1-12-1999 it is therefore within the knowledge of guru, his shishya and also shishya varga that the shishya has abdicated his position and is only waiting for a factual relieving order from the guru. So far so good. Therefore, it can never be said that the shishya has been ordained as the matadhipathi of Kashi-math Samsthan by his guru. Shishya's letter to Tirumala Timpathi Devasthanam authorities as a self styled matadhipathi is a obviously premature power mongering by the shishya.

Therefore our humble submission is that the above act of writing a letter on 5-6-2000 and 9-6-2000 by the shishya to the Chief Executive Officer of Tirumala Timpathi Devasthanam is an unpardonable blunder and the same is made to no less an authority as Lord Venkateshwara of Tirupathi himself and also an act of

treachery against the guru by the shishya. On this count alone, shishya has disqualified himself to be in that pious position which he was holding till 19th July, 2000.

Therefore it is incumbent upon the shishya to return all paraphernalia which was entrusted to him by the proclamation dated 4-11-1994 by the guru. What was handed over to the shishya on 4-11-1994 was an entrustment and not a transfer gift or assignment or a sate etc. In the case of entrustment as contained in the proclamation dated 4-11-1994 which means that legal right and ownership remains in the hands of the matadhipathi and the properties were entrusted for certain purpose of on the job training to the shishya.

Rs. One crore came into his personal account. Obviously, the shishya could not explain. But he may have been stunned that his act of depositing money in his individual status has come to the knowledge of the samaj and therefore he did not write any reply and explain to the Income Tax Authorities, but took some steps under fear and confusion to save rupees one crore, which was subsequently seized by the Income Tax Authorities. It is now clear that letter of 5-6-2000 and 9-6-2000 addressed to TTD temple claiming shishya as matadhipathi was futile idea to get some documentary evidence that shishya has become the matadhipathi.

The criminality of the shishya has come out clearly that he does not deserve to get any relief in the equity Court of granting injunction. The sub-standard pleadings with falsehood has come out very clearly before the Hon"ble Court. The above three letters produced and relied upon in the suit by the shishya does not confer upon the shishya the concluded right that he has been pointed as the matadhipathi nor he has established more than a prima facie case of his existence of his concluded right to be the matadhipathi. Therefore, the ex parte injunction obtained against guru may not be correct in law.

That the shishya has committed various and serious irregularities and fraud on the time tested and age old religious functions wantonly to assert his authority with arrogance for which large number of complaints have been received by guru. That his decision in 1999 to say at once place, Tirupathi for two years is against religious tenets.

After hearing all these submissions on behalf of guru, the Hon"ble Court passed an order dated 29-9-2000 declaring that the guru is the matadhipathi and shishya has not attained the position of matadhipathi at all and that all financial aspects of the samsthan rests in the hands of the guru including the administration of its entire properties etc.

Now in view of the above order of the Court, the shishya has in effect become an archaka or a pujari performing the pujas for the deities thrice a day under the matadhipathi, the guru. Shishya has earned his disqualification to be the sanyasi on account of various acts of commission and omission.

The above submission brings out clearly the prima facie case against the shishya that he is unfit to be the shishya and does not deserve to be treated as a shishya by the guru and that the proclamation dated 19-7-2000 issued by the guru is perfectly, legally and morally in order.

One can clearly conclude that there is total absence of the principle of uberrimae fidei i.e., the principle of utmost good faith required to be maintained in such relationships of guru and his shishya.

We request the samaj Bandhawas that these facts may please be circulated to the masses in their area in local languages so that gossip mongering and his misinformation is not passed on to the community at large. This is being done in the absolute interest of our community.

If we have to improve further, when can we claim that, we have still improved there should in between be a "pit". In 1959 such small "pit" with the shishya sweekar of shivananda pai our samaj has sustained what can be called as bad path.

Even during the training period, so many complaints had come. To guard against that, that is the system, the sanyasi should move from place to place and should not have interest, vested interest in a particular place. So this is one of the qualities to be a sanyasin to be a sanyasin. In 1999 when I had visited Tirupathi, I could notice boards on computers all over the place to this effect. We will not move out of here for three years. We will stay back here, no one should talk, no one should do anything. This is against the ethics and the moral also because sanyasi has to travel from place to place.

He sivanand pai after 19th July, 2000, shishya swamiji means you are insulting the farma poojaya Sreemad Sudhindra Thirtha Swamiji. After having received the Court orders, I would like to take your permission to address him as sivananda pai.

From 1994 to 1999 he did all sorts of mismanagement.

This happened in January, before that on 16th December, Swamiji wrote him that since he has reached the stage of criminality after crossing ethical moral and civil barriers. Now you have come to the stage of criminality.

A criminal writing to his guru that you are everything for me, and you are guru to me or every thing to me.

On 16th January, he has committed this criminality against the Swamiji.

He is not a matadhipathi. When there is a matadhipathi, he cannot deposit when his own name. It is a total unauthorised criminal act.

Anyhow advocates are available in lakhs, catch hold of anyone lawyer and go to the Court. What to do in the Court? Nothing, file a declaration suit in the Court investing 200 rupees saying that you are the matadhipathi.

This is a greatest fraud he has committed on the judicial system of India.

The lawyer who filed the suit also knows that he is not a matadhipathi.

Where we have disturbed him. He is a disturbed person that is why he is going from pillar to post.

I would have said that he was an idiot. But although he was an idiot.

I gave an application saying that our religious feelings have been injured. In IPC it is an offence. To call an idiot or stupid or something like that is not a big offence here. But to say something derogatory about our religious matters like wearing of sacred threads or applying of sandal paste there is provision in the IPC for one year imprisonment.

That act itself of shivananda pai is a criminality on the Court. It is a fraud on the Court, nobody can excuse him. This itself is enough to send him to jail for one year, that one incident is enough.

Our elation should be further fostered and we should not hate them. This is my request because, after all crime is to be hated and not the person who has committed it. They are not even 0,001%. We are in absolute super majority. It is our duty to guide them to bring them on the main path.

So he is absolutely a criminal brain and criminal tendencies are there and in future if he becomes matadhipathi our samsthan will be ruined."

As already observed supra the learned Counsel for the plaintiffs contended that these statements amount to criminal contempt and the Court below had totally erred in declining to refer the matter to the High Court under the Contempt of Courts Act, 1971. It may be relevant to deal with certain provisions of the Contempt of Courts Act, 1971 before discussing the matter further. Section 2(c) of the Contempt of Courts Act, 1971 defines criminal contempt as follows:

" "Criminal Contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any Court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

Proviso to Section 10 of the Contempt of Courts Act reads as follows:

"Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court, subordinate to it where such contempt is

an offence punishable under the Indian Penal Code (45 of 1860)."

In P.C. Sen case (supra) the Supreme Court held as follows:

"The law relating to contempt of Court is well settled. Any act done or writing published which is calculated to bring a Court or a Judge into contempt or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court is a contempt of Court. R.V. Gray 1900-2 QB 36 at p.40. Contempt by speech or writing may be by scandalising the Court itself, or by abusing parties to actions, or by prejudicing mankind in favour or against a party before the cause is heard. It is incumbent upon Courts of justice to preserve their proceedings from being misrepresented, from prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speeches or writings misrepresenting the proceedings of the Court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources. The question in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. The question is not so much of the intention of the contemner as whether it is calculated to interfere with the administration of justice. As observed by the judicial committee in AIR 1943 202 (Privy Council)

.... the test applied by the xxxx Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law".

If, therefore, the speech which was broadcast by the Chief Minister was calculated to interfere with the course of justice, it was liable to be declared a contempt of the Court even assuming that he had not intended thereby to interfere with the due course of justice.

There is nothing in Saibal Kumar Gupta and Others Vs. B.K. Sen and Another, on which Counsel for the appellant relied, which supports his contention that intention of the contemner is the decisive test. The observations of Imam, J., speaking for the majority of the Court, that the appellants should be acquitted, because they "had at on time intended to interfere with the course of justice and their conduct did not tend to interfere with the course of justice", does not imply that conduct which tends to or is calculated to interfere with the administration of justice is not liable to be punished as contempt because the contemner had no intention to interfere with the course of justice. Nor does the judgment of the Judicial Committee in Arthur Reginald Perera v. The King 1951 AC 482, support the contention that in determining whether conduct which is otherwise calculated to interfere with the due administration of justice will not be contempt of Court

because on the part of the contemner there was no intention to interfere with the administration of justice. In that case, a member of the House of Representatives in Ceylon, on receiving a complaint from some of the prisoners about the practice of producing followed by the Jail Authorities in the Court when an appeal filed by the prisoners was being heard, made an entry in the prison visitors book that "the present practice of appeals of remand prisoners being heard in their absence is not healthy. When represented by Counsel or otherwise the prisoner should be present at proceedings. Information conveyed to perera was inaccurate. It was held by the Judicial Committee that perera acted in good faith and in discharge of what he believed to be his public duty as a member of the Legislature, and that he had not committed any contempt of Court because the words made no direct reference to the Court or to any of its Judges, or to the course of justice or to the process of the Courts. His criticism was honest criticism on a matter of public importance and there was nothing in his conduct which came within the definition of contempt of Court."

In Haji Rasheed Mohammed case (supra) the Division Bench of the Madras High Court had observed that where knowing about the pendency of and stay granted in writ proceedings in the High Court challenging the validity of video legislation the participants in a Doordarshan discussion programme referred to such proceedings and talked in favour of and justified the legislation, they were guilty of committing contempt of Court. In Vidya Charon Shukla case (supra) the Full Bench of the Madras High Court held as follows:

"We can see thus clearly that the Courts in India invariably accepted the law applied in England and found (1) a party to the suit if he had notice or knowledge of the order of the Court and (2) a third party or a stranger, if he had aided or abetted the violation with notice or knowledge of the order of injunction guilty of civil contempt and otherwise found a third party guilty of criminal contempt if he has been found knowingly obstructing implementation of its order of direction, if it is found in the instant suit that Sri Shukla was directly or indirectly a party defendant in the suit and the order of the learned single Judge was directed to his conduct and also and he violated the order after notice or knowledge, he shall be guilty of civil contempt. He can still be found guilty of civil contempt if he is found to have aided and abetted the violation of the order of the Court. Even otherwise it is found that he obstructed or attempted to obstruct the implementation of the Court's injunction/direction, he may be found guilty of criminal contempt provided he had the notice of the knowledge of the order of the Court. It will be only after a determination of the nature of the disobedience that it will be possible for the Court to say whether the procedure applied to a civil contempt shall be applied to contempt proceeding in his case or the procedure applied to a criminal contempt will be applied to it. In the former case the learned Judge shall be competent to proceed. In the latter case, it shall be before a Division Bench and subject to such conditions as are envisaged under the Contempt of Courts Act, 1971. We have however no hesitation in view of the principles of law noticed by us that this Court's power as the Court of record will

extend not only to. the determination of the contempt but also the determination whether on the allegations brought before it, a civil contempt is made out or a criminal contempt is made out and instead of any action of committal for contempt, the Court should make any such order which would be in the administration of justice or not. We have already noticed that there are provisions in Order XXXIX, Rule 2-A of the CPC as a remedy for the violation of temporary or interim injunction. Besides what is contemplated under Order XXXIX, Rule 2-A of the CPC Courts have found another source of power in Section 151 of the CPC and if that is also ignored for a moment, this Court's power as a Court of record and a Court of special jurisdiction is preserved under Articles 215 and 225 of the Constitution of India. There have been cases before several Courts in which when faced with situations that some order or direction was violated and the violation resulted in grave and serious injury, the Courts took the view that the CPC is not exhaustive. There are cases which say that if remedy to do justice is not provided for in the Code or any other Act, the High Court must not fold its hands and allow injustice to be done".

The learned Counsel for the plaintiffs also had relied upon several other decisions and had contended that declining to refer the matter is bad in law.

16. On the basis of the material available on record, the contention of the plaintiff itself is that the statements speeches etc., made are per se defamatory. The offence of defamation is punishable under the provisions of the Indian Penal Code. At this stage, we do not want to go into the aspect whether the allegations made in Exs.B1 and B2 etc., constitute defamation or not. In R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, ; the Apex Court observed that the contempt is a matter between the Court and the contemner and the aggrieved party has no right to insist that the Court should exercise its jurisdiction. The restraint order is made in relation to Exs.P1 and P2 and the speeches, cassettes, etc., Sri M.V. Kini and Sri Bandarkar are not parties to the litigation. In fact Sri M.V. Kini was representing the first defendant as an advocate in the present litigation. The present restraint order against these parties is made on particular set of facts in the light of the subsequent events, which have taken place during the pendency of the proceedings. In our considered opinion, all these facts constitute a different cause of action and if the plaintiffs are aggrieved against such non-parties to the litigation, whatever may be the reasons, the plaintiffs are at liberty to initiate separate proceedings in this regard. To make a restraint order on an application filed by the plaintiffs in declaratory suit filed by them, is not sustainable.

Point No.5:.

17. IA No. 122 of 2001 was filed by the plaintiffs under Order 3, Rule 4 and Section 151, CPC seeking to pass an order terminating the vakalat of the Counsel Sri M.V. Kini appearing for the first defendant in the suit and thereby restraining his further appearance in the above proceedings. The learned III Additional District Judge had allowed the application on the main ground that Sri M.V. Kini

may become a witness in the suit.

18. At the outset we are inclined to observe that this is a serious drastic step taken by the Court below. Order 3, Rule 4 CPC dealing with the appointment of pleader reads as follows:

"R4. Appointment of Pleader :--(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose of such person by a document in writing signed by such person or by his recognised agent, or by some other person duly authorised by or under a power of attorney to make such appointment.

(2) Every such appointment shall be (filed in Court and shall for the purposes of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

Explanation :--For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,--

- (a) an application for the review of decree or order in the suit;
- (b) An application u/s 144 or u/s 152 of this Code, in relation to any decree or order made in the suit;
- (c) An appeal from any decree or order in the suit; and
- (d) Any application or act for the purposes of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.

(3) Nothing in sub-rule (2) shall be construed-

- (a) as extending as between the pleader and his client, the duration for which the pleader is engaged; or
- (b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged except where such service was expressly agreed to by the client I the document referred to in sub-rule (1).

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party unless he has filed in Court a memorandum of appearance signed by himself and stating-

- (a) the names of the parties to the suit;
- (b) the name of the party for whom he appears; and
- (c) the name of the person by whom he is authorised to appear :

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party".

As already observed the termination of vakalat of an advocate is a serious and extreme step and normally the Courts should not adopt such extreme step unless there are compelling circumstances to do so. The existence of power is something different from exercise of the power. In a case of this nature the learned III Additional District Judge should have shown some restraint while making an order of this nature. It may be relevant to observe that for an independent judiciary both the Bar and the Bench are the two strong pillars. An advocate is expected to represent the case of his client and no doubt he owes a duty towards the Court also. It may be relevant to quote the words of Justice Carzodo "an advocate has been received into the ancient fellowship for something more than private gain. He becomes an officer of the Court and like the Court itself an instrument or agency to advance justice". In *V. Venkata Rao and another Vs. Deputy Transport Commissioner and Secretary, Kakinada and others*, , on the role of lawyers it was observed as follows:

"In view of the general importance of the question as to the Role of Lawyers, propose to make few observations before parting away with the case. A lawyer is an integral part of administration of justice. Courts to a very large extent depend upon the learning, scholarship and wisdom of the Counsel appearing in the matter. The Courts lean heavily upon the Counsel for guidance. True, every advocate has right to give such advice to his client, which he bona fide believes to be true and correct. It may be part of his duty. But he has important responsibilities to the Courts as well as to his client. A lawyer cannot be viewed as a hired gun. The advocate is more than a mouthpiece. He owes allegiance to a higher cause (See *Rondel v. Worsley*, 1967 (1) AB 443 (Lord Denning MR))"

Advocates" profession is not a profession of commercial nature and Judges should not shut their eyes to the dignity, decorum and self-respect of an advocate and advocate also should not act merely as a mouth-piece of his client only. In the present set of facts and circumstances we are of the opinion that the order terminating the vakalat of Sri M.V. Kini is not sustainable in law. At any rate, in view of the undertaking given by Sri B. Adinarayana Rao, Counsel representing Mr. M.V. Kini that he is not going to figure as a witness in the suit we have no hesitation to say that the said order is liable to be set aside.

Point No.6:

19. In IA No.1510 of 2000 the Court below had passed an order permitting the first defendant to execute general power of attorney in favour of his disciples-

(1) to represent the Kashimath before Courts, Tribunals and other authorities ignoring Income Tax authorities; (2) for construction of math buildings and for construction of math; (3) for purchasing movable properties of the math. It is made clear that the general power of attorney shall pay all payments monies, more than Rs.10,000/- through cheques or demand drafts only and all accounts should be furnished to the Court. Considering all the facts and circumstances the learned III Additional District Judge had passed an order, which can be said to be a just order in the peculiar facts and circumstances of the case,

Point No. 7:

20. As already observed dispute relates to the religious office of matadhipathi and the religious preachers who are expected to preach religion and guide the ordinary people, had involved themselves in the present litigation. In the order dated 28-3-2001 made in IA No. 1510 of 2000 and other applications at para 23 the learned III Additional District Judge had observed as follows:

"Since the 2nd plaintiff has expressed his difficulty that he has no sufficient money to perform Trikala pooja and that Rs.5,000/- to Rs.7,000/- per day is required for performing Trikala poojas and for offering Nitya pooja and for offering Nithya Nivedyam etc., and the 1st defendant himself has expressed concern about the due performance of Trikala pooja, the defendant No.1 is directed to deposit Rs.2,10,000/- per month which can be withdrawn by the 2nd plaintiff for performance of Trikala pooja and to meet the necessary expenses. The 2nd plaintiff is also directed to furnish regular accounts of the same,

Both the parties are directed to make efforts and co-operate with the commissioners to arrive at a compromise and also the file draft issues within 15 days from the date of this order.

Since it is submitted that the 2nd plaintiff has not furnished accounts of Kashimath, Tirumala to the Auditors and the 2nd plaintiff has denied the same, without prejudice to the contentions of both the parties, the 2nd plaintiff is directed to furnish additional copy of accounts of Kashimath, Tirumala to the Court before 16-4-2001 and the Auditor of the 1st defendant can take the same from this Court".

It is not clear from the order how and why a particular amount had been fixed and it will be appropriate if an order is passed on an independent application wherein the plaintiffs may specify all the details of the necessary expenditure and in the event of the plaintiffs making such an application the Court below is at liberty to make an appropriate order in this regard.

21. For the foregoing reasons we make the following order:

CRP No.1765 of 2001 is allowed; CMA No.1089 of 2001 and CMA SR No. 38851 of 2001 are allowed giving liberty to the plaintiffs to initiate separate action against non parties if they are so advised; CMA No.1090 of 2001 and CMA No.1449 of 2001 are hereby dismissed; CMA No.1440 of 2001 also is dismissed.

CMA No.1603 of 2001 is partly allowed to the limited extent setting aside the order "directing the first respondent-first defendant not to delegate his powers particularly the authority who deal with bank accounts and of other movable and immovable properties of Kashimath Samsthan to any other person i.e., the first respondent shall himself deal with the funds of Sri Kashimath Samsthan and other movable and immovable properties and he shall not authorise any other person to deal with the same by executing general power of attorney or any other document pending disposal of the suit" and however the direction relating to performance of Trikala poojas stands and CRP SR No. 43398 of 2001 filed by the plaintiffs under Article 227 of the Constitution of India also is dismissed.

22. However, before parting with this case we are inclined to issue the following further, directions in the facts and circumstances of the case.

23. After the judgment has been delivered, it is submitted that the direction issued by this Court in CRP to dispose of the suit by the end of July, 2001 is difficult to be complied with. We see some force in this submission. Further, the witness on in the suit are spreadover in eight States of the country. In the circumstances, suit shall be disposed of before the end of April, 2002 by the Court below.