C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY ,THE 30TH DAY OF NOVEMBER 2018 / 9TH AGRAHAYANA, 1940

SA.No. 744 of 1999

AGAINST THE JUDGMENT DATED 20-04-1999 IN AS 167/1997 of ADDL.SUB COURT, IRINJALAKUDA

AGAINST THE JUDGMENT DATED 26-07-1997 IN OS 619/1996 of PRL.MUNSIFF COURT.,IRINJALAKUDA

APPELLANT(APPELLANT IN AS 167/97/1ST DEFENDENT:

1 CHANDRASEKHARA MENON
S/O.VADAKEMANAKAL NANI AMMA,
KALLUR VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK(DECEASED)
* (ADDITIONAL APPELLANTS 2 AND 3 IMPLEADED)

*ADDL A2 GIRISH KUMAR, S/O.LATE CHANDRASEKHARA MENON, RESIDING AT VADAKKEMANAKIL HOUSE, KALLUR P.O, ANNAMANADA, TRICHUR DISTRICT

*ADDL A3 P.SANTHA, W/O.LATE CHANDRASEKHARA MENON, RESIDING AT VADAKKEMANAKIL HOUSE, KALLUR P.O, ANNAMANADA, TRICHUR DISTRICT

THE LEGAL REPRESENTATIVES OF DECEASED APPELLANT ARE IMPLEADED AS ADDITIONAL APPELLANTS 2 AND 3, AS PER ORDER DATED 11/08/2017 IN I.A.NO.1549/2011

BY ADVS.
SRI.T.KRISHNANUNNI (SR.)
SRI.SAJU.S.A

RESPONDENTS(RESPONDENTS IN AS 167/97/PLAINTIFF & 2ND DEFENDANT:

1 DIVAKARAN NAMBOODIRI @ M.K.D.NAMBOODIRI
S/O.MAPRAMBILLY MANAKKAL KIREEDI NAMBOODIRI,
KALLUR VADAKKUMMURI VILLAGE,
MUKUNDAPURAM TALUK(DECEASED)

2 BALAGOPALAN
DEEPA NIVAS, KALLUR VADAKKUMMURI VILLAGE,
MUKUNDAPURAM TALUK(DECEASED)
ADDITIONAL R3 TO R10 IMPLEADED

*ADDL R3 JALAJA ANTHARJANAM

W/O.LATE DIVAKARAN NAMBOOTHIRI
Y/87, HAUZKHAS, NEW DELHI – 110 016

*ADDL R4 SREEJESH, S/O.LATE DIVAKARAN NAMBOOTHIRI
Y/87, HAUZKHAS, NEW DELHI – 110 016

*ADDL R5 RAJESH, S/O.LATE DIVAKARAN NAMBOOTHIRI
Y/87, HAUZKHAS, NEW DELHI – 110 016

*ADDL R6 SANTHA, W/O.LATE DIVAKARAN NAMBOOTHIRI
Y/87, HAUZKHAS, NEW DELHI – 110 016

THE LEGAL REPRESENTATIVES OF DECEASED 1ST RESPONDENT ARE IMPLEADED AS ADDL.RESPONDENTS 3 TO 6 AS PER ORDER DATED 11/08/2017 IN I.A 1551/11

*ADDL R7 ASOKAN, S/O.LATE BALAGOPAL
"DEEPA NIVAS", KALLUR P.O, VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK, TRICHUR DISTRICT – 680 317

*ADDL R8 DEEPA, D/O.LATE BALAGOPAL
"DEEPA NIVAS", KALLUR P.O, VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK, TRICHUR DISTRICT – 680 317

*ADDL R9 KARTHIKA, D/O.LATE SURESH
"DEEPA NIVAS", KALLUR P.O, VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK, TRICHUR DISTRICT – 680 317

*ADDL R10 BALUSURESH, S/O.LATE SURESH
"DEEPA NIVAS", KALLUR P.O, VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK, TRICHUR DISTRICT – 680 317

THE LEGAL REPRESENTATIVES OF DECEASED 2ND RESPONDANT ARE IMPLEADED AS ADDL.RESPONDENTS 7 TO 10 AS PER ORDER DATED 11/08/17 IN I.A 1553/11.

R1 - BY ADVS.
SRI.K.K.MOHAMED RAVUF
SRI.LIJU. M.P
SRI.SAJAN VARGHEESE K.

ADDL.R3 – BY ADVS.
SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 30.11.2018, ALONG WITH SA.745/1999, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY ,THE 30TH DAY OF NOVEMBER 2018 / 9TH AGRAHAYANA, 1940

SA.No. 745 of 1999

AGAINST THE JUDGMENT DATED 20-04-1999 IN AS NO.148/1997 of ADDL.SUB COURT, IRINJALAKUDA

AGAINST THE JUDGMENT DATED 26-7-1997 IN OS NO.619/1996 of THE MUNSIFF COURT,IRINJALAKUDA

APPELLANT(APPELLANT IN AS 167/97/D1):

1 BALAGOPALAN
DEEPA NIVAS, KALLUR VADAKKUMMURI VILLAGE,
MUKUNDAPURAM TALUK(DECEASED)
*(LR'S IMPLEADED AS ADDL A2 TO A5)

* ADDL A2 ASOKAN, S/O.LATE BALAGOPAL
"DEEPA NIVAS", KALLUR P.O, VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK, TRICHUR DISTRICT - 680 317

* ADDL A3 DEEPA, D/O.LATE BALAGOPAL
"DEEPA NIVAS", KALLUR P.O, VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK, TRICHUR DISTRICT - 680 317

* ADDL A4 KARTHIKA, D/O.LATE SURESH
"DEEPA NIVAS", KALLUR P.O, VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK, TRICHUR DISTRICT - 680 317

* ADDL A5 BALUSURESH, S/O.LATE SURESH
"DEEPA NIVAS", KALLUR P.O, VADAKKUMURI VILLAGE,
MUKUNDAPURAM TALUK, TRICHUR DISTRICT - 680 317

LEGAL HEIRS OF DECEASED SOLE APPELLANT ARE IMPLEADED AS ADDL APPELLANTS 2 TO 5 AS PER ORDER DTD.01/09/2014 IN I.A.1521/2011

BY ADVS.
SRI.T.KRISHNANUNNI (SR.)
SRI.JAMSHEED HAFIZ

RESPONDENTS (RESPONDENTS IN AS 167/97/PLAINTIFF & D2)

1 DIVAKARAN NAMBOODIRI @M.K.D.NAMBOODIRI
S/O.MAPRAMBILLY MANAKKAL KIREEDI NAMBOODIRI,
KALLUR VADAKKUMMURI VILLAGE, MUKUNDAPURAM TALUK

*(LR'S IMPLEADED AS ADDL R3 TO R6)

* ADDL R3 JALAJA ANTHARJANAM, W/O.LATE DIVAKARAN NAMBOOTHIRI
Y/87, HAUZKHAS, NEW DELHI - 110 016

* ADDL R4 SREEJESH, S/O.LATE DIVAKARAN NAMBOOTHIRI
Y/87, HAUZKHAS, NEW DELHI - 110 016

* ADDL R5 RAJESH, S/O.LATE DIVAKARAN NAMBOOTHIRI
Y/87, HAUZKHAS, NEW DELHI - 110 016

* ADDL R6 SANTHA, W/O.LATE DIVAKARAN NAMBOOTHIRI
Y/87, HAUZKHAS, NEW DELHI - 110 016

LEGAL HEIRS OF DECEASED RESPONDENT ARE IMPLEADED AS ADDL R3 TO R6 AS PER ORDER DTD 01/09/14 IN I.A.1523/2011

2 CHANDRASEKHARA MENON
S/O.VADAKEMANAKAL NANI AMMA
KALLUR VADAKKUMMURI VILLAGE,
MUKUNDAPURAM TALUK

* (LR'S IMPLEADED AS ADDL R7 & R8)

* ADDL R7 GIRISHKUMAR, S/O.LATE CHANDRASEKHARA MENON
RESIDING AT VADAKKEMANAKIL HOUSE, KALLUR P.O,
ANNAMANADA, TRICHUR DISTRICT - 680 317

* ADDL R8 P.SANTHA, W/O.LATE CHANDRASEKHARA MENON
RESIDING AT VADAKKEMANAKIL HOUSE, KALLUR P.O,
ANNAMANADA, TRICHUR DISTRICT - 680 317

LEGAL HEIRS OF DECEASED 2ND RESPONDENT ARE IMPLEADED AS ADDL R7 & R8, AS PER ORDER DTD 01/09/14 IN I.A 1525/2011.

R1 - BY ADVS.
SRI.K.K.MOHAMED RAVUF
SRI.SAJAN VARGHEESE K.

ADDL.R3 - BY ADVS.
SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 30.11.2018, ALONG WITH SA.744/1999, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

These second appeals arise from O.S. No.619 of 1996 on the files of the Munsiff Court, Irinjalakuda. Among the appeals, S.A.No.744 of 1999 is by the first defendant in the suit and S.A.No.745 of 1999 is by the second defendant. The plaintiff in the suit is stated to be a member of an erstwhile Namboothiri illom. The plaint B schedule property is an item measuring 50 cents and the plaint C schedule property is an item measuring 40 cents. The plaint B and C schedule properties are portions of the plaint A schedule property. The case set out by the plaintiff in the plaint is that the plaint A schedule property is the property where one of the temples of the illom namely “Gokunnath Kshethram” ('the temple') is situated; that the management of the temple and its properties vests with the Karanavan of the illom in terms of Ext.A1 partition deed; that defendants 1 and 2 are possessing the plaint B and C schedule properties on the basis that they have leasehold interest over the same; that the Karanavan of the illom is not empowered to lease out temple properties;

that the possession of the plaint B and C schedule properties by defendants 1 and 2 is, therefore, illegal, unauthorised and not binding on the illom or the temple and that being a member of the illom, the plaintiff is entitled to recover possession of the plaint B and C schedule properties from defendants 1 and 2 on behalf of the temple. The suit was, therefore, for a declaration that the possession of the plaint B and C schedule properties by defendants 1 and 2 is illegal, unauthorised and not binding on the illom or the temple and for recovery of possession of the same on behalf of the temple.

2. The first defendant contested the suit contending that the 90 cents comprising of the plaint B and C schedule properties was leased out by the Karanavan of the illom to one of its members namely Narayanan Namboodiri in terms of Ext.B3 lease deed as early as on 16/01/1113 ME; that the lessee Narayanan Namboodiri later assigned the leasehold interest over the plaint B Schedule property in terms of Ext.B1 assignment deed to the first defendant; that he obtained thereupon Ext.B2 purchase certificate in respect

of the plaint B schedule property and thus became the absolute owner of the plaint B schedule property. According to the first defendant, he is possessing the plaint B schedule property on that basis and even if it is found that the plaintiff or anybody else has any right over the said property, the same is lost by adverse possession and limitation.

3. The second defendant also contested the suit contending inter alia that Narayanan Namboodiri who obtained leasehold interest in the property in terms of Ext.B3 lease deed from the karanavan of the illom assigned the leasehold interest in respect of the plaint C schedule property to one Rugmini Antharjanam in terms of Ext.B8 assignment deed; that Rugmini Antharjanam in turn, assigned the rights obtained by her over the plaint C schedule property to one Chandramathi Amma in terms of Ext.B7 assignment deed; that Chandramathi Amma thereupon, obtained Ext.B9 purchase certificate in respect of the said property and that the second defendant purchased the plaint C schedule property thereafter from Chandramathi Amma in terms of Ext.B6 assignment deed. According to the second defendant,

he has, therefore, become the absolute owner of the plaint C schedule property. The second defendant also raised a plea of adverse possession as raised by the first defendant.

4. The trial court found that the plaint B and C schedule properties are part of the temple premises; that Ext.B3 lease created by the then Karanavan of the illom being one against the terms of Ext.A1 partition deed, the same is invalid; that the purchase certificates obtained by the first defendant and Chandramathi Amma in terms of the Kerala Land Reforms Act are invalid as the provisions of Chapter III therein do not apply to temple premises in the light of Section 3(i)(x) of the said Act and that the plea of adverse possession taken by defendants 1 and 2 is unsustainable. Though it was found that the illom of the plaintiff is not in existence after the Kerala Joint Hindu Family System (Abolition) Act 1975, the trial court held that the plaintiff is entitled to institute a suit of this nature as a co-owner of the suit properties. In the light of the aforesaid findings, the trial court permitted the plaintiff to recover possession of the plaint B and C schedule properties from defendants 1 and 2.

5. Defendants 1 and 2 filed separate appeals challenging the decision of the trial court. The appellate court, on a re-appraisal of the materials on record, affirmed the findings of the trial court except the finding that the suit property is to be regarded as the co-ownership property of the plaintiff. According to the appellate court, in so far as the illom has divested itself of the ownership of the plaint schedule properties in favour of the temple, the same cannot be regarded as the co-ownership properties of the plaintiff any more. It was also found by the appellate court that nevertheless, the plaintiff is entitled to institute a suit of this nature for recovery of possession of the plaint B and C schedule properties as a beneficiary of the temple. Needless to say, the appellate court confirmed the decision of the trial court on that basis. Defendants 1 and 2 are aggrieved by the said decisions of the courts below. Hence these second appeals.

6. Heard the learned senior counsel for the legal representatives of the appellants and the learned counsel for the legal representatives of the plaintiff.

7. The learned senior counsel for the legal representatives of the appellants, with all vehemence at his command, contended that a suit for recovery of possession of properties of an endowment improperly alienated can be instituted only by its trustee or by the deity through a duly appointed next friend. Though it was conceded by the learned senior counsel that a beneficiary of a temple is also entitled to file a suit challenging the improper alienations of temple properties, it was contended that the beneficiary in such a suit is not entitled to claim a decree for recovery of possession of the properties on behalf of the temple. The learned senior counsel placed reliance on the decision of the Apex Court in **Veruareddi Ramaraghava Reddy and others** v. **Konduru Seshu Reddy and others** [AIR 1967 SC 436], in support of the said contention. According to the learned counsel, the suit in the instant case being one instituted by a beneficiary of the temple for recovery of possession of the temple properties, it is not maintainable. The fact that the plaint A schedule property is a property described in Ext.A1 partition deed as the property of the temple has not been disputed by the

learned senior counsel. He has also not disputed the fact that the plaint B and C schedule properties are part of the plaint A schedule property. The learned senior counsel, however, contended that there was no interdiction at all in Ext.A1 partition deed in leasing out temple properties without specifying a term. According to the learned counsel, Ext.B3 lease being a lease without a term, the same cannot be said to be unauthorised or invalid on any ground whatsoever. It was also contended that even if it is admitted that fixity cannot be claimed in respect of the plaint B and C schedule properties in the light of Clause 3(i)(x) of the Kerala Land Reforms Act, Ext.B3 being a valid lease, the same needs to be terminated in terms of the provisions contained in the Transfer of Property Act before recovery of possession of the leasehold is sought by its owner or anybody else for its owner. According to the learned senior counsel, in so far as the suit is instituted without terminating the lease, it is not maintainable on that count as well.

8. Per contra, the learned counsel for the respondents contended that the temple being a private

temple established by the illom for the spiritual benefit of its members, its properties do not vest in the deity, and the members of the illom would continue to be owners of the property. According to the learned counsel, in the circumstances, being a member of the illom and a co-owner of the property, the plaintiff is certainly entitled to institute a suit of the present nature. He placed reliance on the decision of this Court in **Kochara Panicker** v. **Sekhara Panicker** [1988 (2) KLT 469], in support of his contention. The learned counsel also submitted that there are no infirmities whatsoever in the various findings rendered by the courts below.

9. I have given my thoughtful consideration to the submissions made by the learned counsel on either side. As noted, the appellate court has found categorically, placing reliance on the recitals contained in Ext.A1 partition deed, that the suit properties are properties divested of by the illom in favour of the temple and that the same cannot, therefore, be regarded as co-ownership properties of the plaintiff as found by the trial court. Nevertheless, the appellate court upheld the decree passed by the trial court holding that the plaintiff is

entitled to institute a suit of the instant nature as a beneficiary of the trust. The recitals concerning the plaint schedule properties as contained in Ext.A1 partition deed read thus :

> "ഇല്ലത്തെ വകയായി മേൽ പ്രസ്ഥാവിച്ച *3* ദേവസ്വങ്ങൾ കൂടിയുള്ളതിനാൽ ആ ദേവസ്വങ്ങൾ വകയായിട്ടുള്ള സ്വത്തുക്കൾ ഇല്ലത്തെ അതതു കാലത്തുള്ള കാരണവരുടെ അധീനത്തിലും ഭരണത്തിലും താഴെ വിവരിക്കുന്ന നിശ്ചയങ്ങള്ഓട്ടു കൂടിയുള്ള കൈകാര്യ കത്റ്റുത്ത്വത്തിലും വെച്ച ആ വക വസ്തുക്കൾക്കു ഇപ്പോൾ കിട്ടി വരുന്ന നികുതി മിച്ചവാരം പാട്ടം അതതു കാലങ്ങളിലുണ്ടാകുന്ന അവകാശം കാഴ്ച മുതലായ എനങ്ങളിലുള്ള നെല്ലും പൺടങ്ങളും കിഴക്കടെയുള്ള ആദായത്തിൽ കുറവു വരുത്താതെ കാരണവരുടെ പ്റത്യേക രശീതിയിനാൽ പിരിച്ച ടി ദേവസ്വങ്ങൾ വകയായി കിഴവെപ്പനുസരിച്ചും ഉള്ള ചിലവുകൾ നടത്തേൺടതിലേക്ക് നിശ്ചയിച്ച എ പട്ടികയിൽ ചേർത്ത ഇപ്പോഴത്തെ കാരണവരായ ഒന്നാം നമ്പരുകാരനെ ഏൽപ്പിച്ചതും ;"
>
> *XXX* *XXXX* *XXXX*
>
> "മേൽ പ്രസ്താവിച്ച ദേവസ്വങ്ങൾ വകയായി എ പട്ടികയിൽ ചേർത്ത ഒന്നാം നമ്പരുകാരന്റെ ഭരണത്തിലിരിക്കുന്ന വഹകൾ അതതുകാലത്തെ കാരണവരുടെ കൈവശം വച്ച ആദായങ്ങളും അവകാശം മുതലായതു കാരണവർ തനിച്ച രശീതു കൊടുത്തൊ വേൺടി വന്നാൽ വ്യവഹാരപ്പെട്ടോ വസൂൽ ചെയ്തും കാണം പണയം ആധാരങ്ങൾ ഇപ്പോൾ നിൽക്കുന്ന സംഖ്യക്ക് മാത്രവും ആദായത്തിൽ കുറവു വരാതെയും പൊളിച്ചെഴുതി കൊടുത്ത വാങ്ങുന്ന അവകാശസംഖ്യയും ടി ദേവസ്വങ്ങളിലേക്ക് ഉപയൊഗിപ്പാൻ അതതുകാലത്തെ ഭരണക്കാർക്ക് അധികാരവും ചുമതലയും ഉള്ളതും അതു കൂടാതെ പുതിയതായ സംഖ്യ കടം വാങ്ങുന്നതിനൊ കാലാവധിയൊട്ടു കൂടി എ പട്ടിക വഹകൾ പാട്ടത്തിന്നു ഏൽപിപ്പാനൊ *12* കൊല്ലത്തിനധികമായ കാലനിർണയത്തോട്ടു കൂടിയുള്ള പണയമൊ കാണമൊ എഴുതിക്കൊടുക്കുന്നതിനൊ ഒന്നാം നമ്പറുകാരനൊ മേലാൽ ആ സ്ഥാനത്തു വരുന്ന കാരണവർക്കൊ അധികാരമില്ലാത്തതും ആകുന്നു.
> *(Underline supplied)*

It is evident from the aforesaid recitals that the illom has divested itself of the ownership of the suit properties in favour of the temple even before the execution of the said document.

The finding of the appellate court that the suit properties are not co-ownership properties of the plaintiff is, therefore, in order. True, when a deity is consecrated in a private property of a Hindu family for the spiritual benefit of its members, the property would not vest in the deity. In such cases, the title of the property would continue to be with the family and if the family is disrupted, the members of the family would own such properties as their co-ownership properties. The said principle may not and cannot apply, according to me, to a case where the family dedicates properties in favour of the deity, for there is no prohibition in law in making such dedications. In other words, in such cases, the deity would own the property. In short, the principle is only that merely for the reason that a temple exists in a private property, it cannot be presumed that there is a vesting of property in favour of the deity. Coming to the facts of the present case, as noted, the materials on record would indicate that the illom of the plaintiff has divested itself of the ownership of the suit properties in favour of the temple. When it is established that the ownership of the suit properties has been divested,

the illom of the plaintiff cannot be said to be the owner of the properties and as rightly found by the appellate court, the suit can be regarded, therefore, only as a suit by a beneficiary of the temple. The following are, therefore, the substantial questions of law arising for consideration in the second appeals:

> (i) The plaintiff being only a beneficiary of the temple which owns the plaint schedule properties, is he entitled to seek a decree for recovery of possession of the plaint schedule properties on behalf of the temple on the basis that the alienation in respect of the same are unauthorized or improper?;
>
> (ii) Are not the findings rendered concurrently by the courts below that Ext.B3 is a lease created contrary to the terms of Ext.A1 partition deed and hence void, perverse in law ?

10. Question (i): An idol of a Hindu temple is a juridical person and when there is a shebait or a trustee to manage its affairs, ordinarily no person other than the shebait or trustee can represent the idol in a legal proceedings. These concepts are well settled. Equally well settled is the concept that a worshipper of an idol being its beneficiary in a spiritual

sense is entitled to represent the idol when the shebait or trustee acts adverse to its interest or fails to take action to safeguard its interest. The principle behind this concept is that when the person who is duty-bound to and empowered to protect the idol leaves the idol in a lurch, a person interested in the worship of the idol can certainly be clothed with the authority to protect the interests of the idol. The principle being that, such suits are in effect, suits on behalf of the trust and the worshippers must be deemed to be invoking the right of the trustee. The scope of suits by worshippers/beneficiaries of Hindu temples has been considered by the Apex Court in **Veruareddi Ramaraghava Reddy** (supra). It was held in the said case that notwithstanding the provision in Section 42 of the Specific Relief Act, worshippers are entitled to institute a suit even for a mere declaration that the alienation of the temple properties by the *de jure* shebait is invalid and not binding upon the temple. It was, however, made clear in the said case by the Apex Court that no decree for recovery of possession can be passed in such suits, unless the plaintiff has a present right to be in possession of the properties. The

reason being that in such suits, the worshipper is not exercising the right of the deity to protect its interest. The position would be totally different if the deity institutes the suit through a duly appointed next friend. Of course, there are decisions to the effect that in such suits, if it is found that the alienation is bad and if either the deity represented by a duly appointed next friend or the shebait/trustee is a party, the court can direct delivery of possession of the trust property to be given to the trustee after declaring the alienation invalid. (See **A.Subramania Iyer** v. **P.Nagarathna Naicker & others** [(1909) 20 M.L.J. 151]). But, in a case where neither the deity nor the trustee is a party to a suit instituted by a worshipper for a declaration that the alienation is improper, the court cannot pass a decree permitting the worshipper to recover possession of the property of the deity for, if such a decree is passed, only the plaintiff therein could execute the same and in such an event, the property may or may not inure to the benefit of the temple and if the property does not go to the hands of the trustee, the trustee may have to file a suit again for the same. The possibility of the worshipper

decree holder creating encumbrances over the property of the temple or committing waste therein on the strength of the decree obtained by him cannot also be ruled out. This appears to be the logic and reason behind the principle that a decree for recovery of possession cannot be granted in a suit filed by a worshipper. Coming to the facts of the present case, neither the deity nor the trustee is in the array of parties in the suit. As such, even if the court finds that the alienations impugned in the suit are bad, it cannot pass a decree directing the possession to be handed over to the deity or to the trustee. In the circumstances, I am inclined to hold that the suit, insofar as it relates to the decree for recovery of possession, is not maintainable. The question is answered accordingly.

11. Question (ii): the recitals contained in Ext.A1 partition deed as extracted in paragraph 8 above indicates beyond doubt that the karnavan of the Illom was interdicted in terms of the provisions therein from borrowing further amounts on the security of the temple properties and leasing out the same for a specified period. Similarly, the karnavan

was also interdicted in terms of the said document from creating mortgages in respect of the temple properties for a period exceeding twelve years. I do not find any interdiction in Ext.A1 partition deed against leasing out the temple properties without specifying the term of lease. There cannot, therefore, be any doubt that if properties are leased out without specifying the term of lease, such leases can be terminated and the properties can be recovered back from the lessees, if the lessors choose to recover the properties. This might be the reason why leases without specifying the term of lease were not interdicted in terms of the document. Be that as it may, as it is found that there was no interdiction in Ext.A1 partition deed in leasing out temple properties without specifying the term of lease and as it is seen that Ext.B3 is a lease without specifying the term of lease, it cannot be said to be invalid. The findings to the contrary rendered by the courts below, according to me, are perverse. The question is answered accordingly.

12. In the light of the findings on the questions formulated for decision in the second appeals, the second

appeals are allowed, the impugned decisions are set aside and the suit O.S. No.619 of 1996 on the files of the Munsiff Court, Irinjalakuda is dismissed. It is, however, made clear that this decision will not preclude the deity or the trustee of the temple from instituting a suit for recovery possession of the suit properties in accordance with law.

Sd/-
P.B.SURESH KUMAR
JUDGE

PV