



2026:KER:33749

RSAs 420/12 & 759/2011 & COs 22 & 23/2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 18TH DAY OF MAY 2026 / 28TH VAISAKHA, 1948

RSA NO. 420 OF 2012

AGAINST THE JUDGMENT AND DECREE DATED 26.3.2011 IN
AS NO.72 OF 2004 OF SUB COURT, OTTAPPALAM ARISING OUT OF
THE JUDGMENT AND DECREE DATED 7.4.2004 IN OS NO.72 OF 1997
OF MUNSIF-MAGISTRATE'S COURT, PATTAMBI

APPELLANTS/RESPONDENTS 17 TO 21, 24 & 25/DEFENDANTS 19 TO
23, 26 & 27:

- 1 VIJAYAKUMARAN,
S/O.LATE KRISHNANKUTTY, MOOLATHANKOTTIL HOUSE,
CHERUKODE AMSOM DESOM, OTTAPALAM TALUK, PIN-
679337.
- 2 JEEJABHAI
D/O.LATE KRISHNANKUTTY, RESIDING AT -DO-.
- 3 RAMACHANDRAN, S/O.LATE KRISHNANKUTTY, RESIDING
AT -DO-. (DIED)
THE APPELLANTS 1,2,4 6 AND 7 ARE RECORDED AS
THE LEGAL HEIRS OF DECEASED 3RD APPELLANT AS
PER ORDER DATED 09.02.26 IN RSA 420/2012, VIDE
MEMO DTD 04/02/26
- 4 SHAILAJA
S/O.LATE KRISHNANKUTTY, RESIDING AT -DO- -DO-.
- 5 SREEKUMARAN (DIED)
S/O.AMBALAPARAMBIL KUNHAKKAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN-679101.

(IT IS RECORDED THAT THE 5TH APPELLANT EXPIRED



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AND SINCE THE 1ST APPELLANT PURCHASED HIS RIGHTS, THERE IS NO REQUIREMENT TO IMPLEAD HIS LEGAL HEIRS, AS PER ORDER DATED 20/2/2026 VIDE MEMO DATED 16/2/2026 IN RSA 420 /2012)

- 6 JALAJA
D/O.LATE KRISHNANKUTTY, MOOLATHANKOTTIL HOUSE,
CHERUKODE AMSOM, DESOM, OTTAPALAM TALUK, PIN-
679337.
- 7 GIRIJA
D/O.LATE KRISHNANKUTTY, MOOLATHANKOTTIL HOUSE,
CHERUKODE AMSOM, DESOM, OTTAPALAM TALUK, PIN-
679337.

BY ADVS.
SRI.T.KRISHNANUNNI (SR.)
SRI.P.K.MOHANAN (PALAKKAD)

RESPONDENTS/APPELLANTS & RESPONDENTS 1 TO 15 AND 22:

- 1 GOVINDAPURAM TEMPLE
REPRESENTED BY RAMANKUTTY, S/O.CHARAKKUMALIL
PADMANABHAN, (PRESIDENT-GOVINDAPURAM KSHETRA
SAMRAKSHANA SAMITHI), RESIDING AT CHERUKODE
AMSOM AND DESOM, OTTAPALAM TALUK, PIN-679337.
- 2 KUNCHU, (DIED) RECORDED
S/O. MOOLATHANKOTTIL GOPALAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN-679336.
(IT IS RECORDED THAT THE SECOND RESPONDENT DIED
ON 22.01.2007 AND SINCE THE SUIT IS ONE UNDER
ORDER I RULE 8 RIGHT TO SUIT DOES NOT SURVIVE
ON THE LEGAL HEIRS OF THE DECEASED 2ND
RESPONDENT AND HIS LEGAL HEIRS ARE NOT
NECESSARY PARTIES IN THE APPEAL AS PER ORDER
DATED 05.08.2024 IN MEMO DATED 01.08.2024)
- 3 THE SECRETARY
VALLAPPUZHA SERVICE CO-OP.BANK,



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P.O.VALLAPPUZHA, PALAKKAD DISTRICT, PIN-679337.

- 4 SALE OFFICER
-DO-, -DO-.
- 5 COMMISSIONER
H.R. & C.E.DEPARTMENT, KOZHIKODE, PIN-673524.
- 6 RAGHAVAN NAIR
S/O.THARAYATHODI KESAVAN NAIR, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK-679337.
- 7 VASUDEVAN
S/O.NADUVILPURAKKAL NARAYANAN, -DO-, -DO-.
- 8 NARAYANANKUTTY
S/O.THACHOTHPUTHANVEETIL KUNCHU NAIR, -DO-, -
DO-.
- 9 HARIHARAN
S/O.KOKKATH PALASSERI JANAKI AMMA, -DO-.
- 10 VASU
S/O.PARAKKATTUPARAMBIL MUNDAN, -DO-, -DO-.
- 11 BHARATHAN
S/O.MOOLATHANKOTTIL VELAPPAN, -DO-.
- 12 RAJAN
S/O.POOZHICKUNNATH MUNDAN, -DO-.
- 13 RAGHAVAN
S/O.NALAKATH PALLIYALIL CHAMI, -DO-.
- 14 BALAKRISHNAN
S/O.KIZHAKKEPATTUTHODI KOTHA, -DO-
- 15 SURESH,
S/O.CHARAKKUMALIL BHASKARAN, -DO-.
- 16 MURALIDHARAN,
S/O.CHARAKKUMALIL SIVARAMAN, -DO-.-DO-



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- 17 NARAYANAN,
S/O.NAMBIYATH RAVUNNI NAIR, -DO--DO-
- 18 NARAYANAN NAMBOOTHIRI,
S/O.PARAMESWARAN NAMBOOTHIRI, POZHATH MANA,
THRIKKANKODE AMSOM, CHOROTTUR DESOM, OTTAPALAM
TALUK, PIN-679337.
- *ADDL. GOVINDAPURAM TEMPLE IDOL ,
R19 REPRESENTED BY DHEERESH, S/O. LATE RAMANKUTTY,
AGED 47 YEARS, CHARAKKUMALIL HOUSE, CHERUKODU
POST, VALLAPPUZHA, PALAKKAD DISTRICT, PIN
679336. (PRESIDENT, KSHETHRA SAMRAKSHANA
SAMITHI, SREE GOVINDAPURAM VISHNU KSHETHRAM)
- *ADDL. SURENDRAN, AGED 56 YEARS
R20 S/O. LATE KARUPPAN, NAYAKKAMTHODI VEEDU,
CHERUKODU POST, VALLAPPUZHA, PALAKKAD DISTRICT,
PIN - 679 336. (PRESIDENT, KSHETHRA SAMRAKSHANA
SAMITHI, SREE GOVINDAPURAM VISHNU KSHETHRAM)

THE WORD "PRESIDENT" IN THE ADDRESS OF THE
ADDITIONAL RESPONDENT NO. 20 IS CORRECTED AS
"SECRETARY" AS PER THE ORDER DATED 29/1/2026 IN
IA 2/2026.

THE ADDITIONAL RESPONDENTS NOS. 19 & 20 ARE
IMPLEADED AS PER THE ORDER DATED 29/1/2026 IN
IA 1/2026.

BY ADVS.

SHRI.P.ANIRUDHAN FOR R15, R19 & R20
SHRI.SANTHEEP ANKARATH FOR R1, R6-R10, R12, R14,
R16 & R17, ADDL.R19 & ADDL.R20
SRI.ARUN MATHEW VADAKKAN FOR R1, R6-R10, R12,
R14, R16 & R17, ADDL.R19 & ADDL.R20
SHRI.R.LAKSHMI NARAYAN, SC, MALABAR DEVASWOM
BOARD
SMT.R.RANJANIE, SC, MALABAR DEVASWOM BOARD
SHRI.SHERRY M.V. FOR R19 & R20
SMT.BHAVANA J. MENON FOR R19 & R20



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SMT.ARUNDHATI NAIR FOR R19 & R20

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 08.04.2026, ALONG WITH RSA 759/2011 AND CROSS OBJECTION
NOS.23/2026 IN RSA 420/2012, 22/2026 IN RSA NO.759/2011,
THE COURT ON 18.05.2026 DELIVERED THE FOLLOWING:



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RSAs 420/12 & 759/2011 & COs 22 & 23/2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 18TH DAY OF MAY 2026 / 28TH VAISAKHA, 1948

CO NO. 22 OF 2026

IN RSA NO.759/2011 FILED AGAINST THE JUDGMENT AND
DECREE DATED 26.3.2011 IN AS NO.72 OF 2004 OF SUB COURT,
OTTAPPALAM ARISING OUT OF THE JUDGMENT AND DECREE DATED
7.4.2004 IN OS NO.72 OF 1997 OF MUNSIFF MAGISTRATE
COURT, PATTAMBI

CROSS OBJECTORS/ADDL.RESPONDENTS 26 AND 27:

- 1 GOVINDAPURAM TEMPLE IDOL
REPRESENTED BY DHEERESH, AGED 47 YEARS, S/O.
LATE RAMANKUTTY, CHARAKKUMALIL HOUSE, CHERUKODU
POST, VALLAPPUZHA, PALAKKAD DISTRICT
(PRESIDENT, KSHETHRA SAMRAKSHANA SAMITHI, SREE
GOVINDAPURAM VISHNU KSHETHRAM) ., PIN - 679336
- 2 SURENDRAN
AGED 56 YEARS
S/O. LATE KARUPPAN, NAYAKKAMTHODI VEEDU,
CHERUKODU POST, VALLAPPUZHA, PALAKKAD DISTRICT
(SECRETARY, KSHETHRA SAMRAKSHANA SAMITHI, SREE
GOVINDAPURAM VISHNU KSHETHRAM), PIN - 679336

BY ADVS.
SHRI.SANTHEEP ANKARATH
SHRI.SHERRY M.V.
SHRI.P.ANIRUDHAN
SMT.BHAVANA J. MENON
SMT.ARUNDHATI NAIR



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RSAs 420/12 & 759/2011 & COs 22 & 23/2026

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RESPONDENTS/APPELLANTS & RESPONDENTS 1, 3 TO 15, 17 TO25:

- 1 THE SECRETARY
VALLAPUZHA SERVICE CO-OP. BANK, P.O.
VALLAPUZHA, PALAKKAD DISTRICT, PIN - 679337
- 2 SALE OFFICER
VALLAPUZHA SERVICE CO-OP. BANK, P.O.
VALLAPUZHA, PALAKKAD DISTRICT, PIN - 679337
- 3 GOVINDAPURAM TEMPLE IDOL
REPRESENTED BY RAMANKUTTY, S/O. CHARAKKUMBALIL
PADMANABHAN, (PRESIDENT - GOVINDAPURAM KSHETRA
SAMRAKSHANA SAMITHI), RESIDING AT CHERUKODE
AMSOM AND DESOM, OTTAPALAM TALUK,, PIN - 679337
- 4 COMMISSIONER, HR & CE DEPARTMENT
KOZHIKODE, PIN - 673524
- 5 RAGHAVAN NAIR
S/O. THARAYATHODI KESAVAN NAIR, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 6 VASUDEVAN
S/O. NADUVILPURAKKAL NARAYANAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 7 NARAYANANKUTTY
S/O. THACHOTHPUTHANVEETIL KUNCHU NAIR,
CHERUKODE AMSOM AND DESOM, OTTAPALAM TALUK, PIN
- 679337
- 8 HARIHARAN
S/O. KOKKATH PALASSERI JANAKI AMMA, CHERUKODE
AMSOM AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 9 VASU
S/O. PARAKKATTUPARAMBIL MUNDAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK,, PIN - 679337



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RSAs 420/12 & 759/2011 & COs 22 & 23/2026

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- 10 **BHARATHAN**
S/O. MOOLATHANKOTTIL VELAPPAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 11 **RAJAN**
S/O. POOZHICKUNNATH MUNDAN, CHERUKODE AMSOM AND
DESOM, OTTAPALAM TALUK, PIN - 679337
- 12 **RAGHAVAN**
S/O. NALAKATH PALLIYALIL CHAMI, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 13 **BALAKRISHNAN**
S/O. KIZHAKKEPATTUTHODI KOTHA, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 14 **SURESH**
S/O. CHARAKKUMALIL BHASKARAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 15 **MURALIDHARAN**
S/O. CHARAKKUMALIL SIVARAMAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 16 **NARAYANAN**
S/O. NAMBIYATH RAVUNNI NAIR, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 17 **VIJAYAKUMARAN**
S/O. LATE KRISHNANKUTTY, MOOLATHANKOTTIL HOUSE,
CHERUKODE AMSOM DESOM, OTTAPALAM TALUK, PIN -
679337
- 18 **JEEJABHAI**
D/O. LATE KRISHNANKUTTY, RESIDING AT
MOOLATHANKOTTIL HOUSE, CHERUKODE AMSOM DESOM,
OTTAPALAM TALUK, PIN - 679337
- 19 **RAMACHANDRAN**
S/O. LATE KRISHNANKUTTY, RESIDING AT
MOOLATHANKOTTIL HOUSE, CHERUKODE AMSOM DESOM,



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OTTAPALAM TALUK, PIN - 679337

- 20 SHAILAJA
D/O. LATE KRISHNANKUTTY, RESIDING AT
MOOLATHANKOTTIL HOUSE, CHERUKODE AMSOM DESOM,
OTTAPALAM TALUK, PIN - 679337
- 21 SREEKUMARAN
S/O. AMBALAPARAMBIL KUNHAKKAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679101
- 22 NARAYANAN NAMBOOTHIRI
S/O. PARAMESWARAN NAMBOOTHIRI, POZHATH MANA,
THRIKKANKODE AMSOM, CHOROTTUR DESOM, OTTAPALAM
TALUK, PIN - 679337
- 23 VANAJA
D/O. DECEASED 2ND DEFENDANT KRISHNANKUTTY,
MOOLATHANKOTTIL HOUSE, CHERUKODE AMSOM AND
DESOM, OTTAPALAM TALUK, PIN - 679101
- 24 JALAJA
D/O. LATE KRISHNANKUTTY, MOOLATHANKOTTIL
HOUSER, CHERUKODE AMSOM DESOM, OTTAPALAM TALUK,
PIN - 679337
- 25 GIRIJA
D/O. LATE KRISHNANKUTTY, MOOLATHANKOTTIL HOUSE,
CHERUKODE AMSOM DESOM, OTTAPALAM TALUK, PIN -
679337.

SRI.P.K.MOHANAN (PALAKKAD) FOR R17-R21 & R23-
R25 (B/O)
SMT.R.RANJANIE, SC, MDB FOR R4
SRI.R.LAKSHMI NARAYAN (SR.), SC MDB FOR R4
(B/O)
SRI.K.C.KIRAN FOR R1 & R2 (B/O)

THIS CROSS OBJECTION/CROSS APPEAL HAVING BEEN FINALLY
HEARD ON 8.4.2026, ALONG WITH RSA.420/2012 AND CONNECTED
CASES, THE COURT ON 18.05.2026 DELIVERED THE FOLLOWING:



2026:KER:33749

RSAs 420/12 & 759/2011 & COs 22 & 23/2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 18TH DAY OF MAY 2026 / 28TH VAISAKHA, 1948

CO NO. 23 OF 2026

IN RSA NO.420 OF 2012 FILED AGAINST THE JUDGMENT AND
DECREE DATED 26.3.2011 IN AS NO.72 OF 2004 OF SUB COURT,
OTTAPPALAM ARISING OUT OF THE JUDGMENT AND DECREE DATED
7.4.2004 IN OS NO.72 OF 1997 OF MUNSIF-MAGISTRATE'S
COURT, PATTAMBI

CROSS OBJECTORS/ADDL.R19 & ADDL.R20:

- 1 GOVINDAPURAM TEMPLE IDOL
REPRESENTED BY DHEERESH, AGED 47 YEARS
S/O. LATE RAMANKUTTY, CHARAKKUMALIL HOUSE,
CHERUKODU POST, VALLAPPUZHA, PALAKKAD DISTRICT
(PRESIDENT, KSHETHRA SAMRAKSHANA SAMITHI, SREE
GOVINDAPURAM VISHNU KSHETHRAM), PIN - 679336
- 2 SURENDRAN
AGED 56 YEARS
S/O. LATE KARUPPAN, NAYAKKAMTHODI VEEDU,
CHERUKODU POST, VALLAPPUZHA, PALAKKAD DISTRICT
(SECRETARY, KSHETHRA SAMRAKSHANA SAMITHI, SREE
GOVINDAPURAM VISHNU KSHETHRAM)., PIN - 679336

BY ADVS.
SHRI.SANTHEEP ANKARATH
SHRI.SHERRY M.V.
SHRI.P.ANIRUDHAN
SMT.BHAVANA J. MENON
SMT.ARUNDHATI NAIR



2026:KER:33749

RSAs 420/12 & 759/2011 & COs 22 & 23/2026

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RESPONDENTS/APPELLANTS & RESPONDENTS 1, 3 TO 18:

- 1 VIJAYAKUMARAN
S/O. LATE KRISHNANKUTTY, MOOLATHANKOTTIL HOUSE,
CHERUKODE AMSOM DESOM, OTTAPALAM TALUK, PIN -
679337
- 2 JEEJABHAI
D/O. LATE KRISHNANKUTTY, RESIDING AT
MOOLATHANKOTTIL HOUSE, CHERUKODE AMSOM DESOM,
OTTAPALAM TALUK, PIN - 679337
- 3 RAMACHANDRAN
S/O. LATE KRISHNANKUTTY, RESIDING AT
MOOLATHANKOTTIL HOUSE, CHERUKODE AMSOM DESOM,
OTTAPALAM TALUK, PIN - 679337
- 4 SHAILAJA
D/O. LATE KRISHNANKUTTY, RESIDING AT
MOOLATHANKOTTIL HOUSE, CHERUKODE AMSOM DESOM,
OTTAPALAM TALUK, PIN - 679337
- 5 SREEKUMARAN
S/O. AMBALAPARAMBIL KUNHAKKAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679101
- 6 JALAJA
D/O. LATE KRISHNANKUTTY, MOOLATHANKOTTIL
HOUSER, CHERUKODE AMSOM DESOM, OTTAPALAM
TALUK,, PIN - 679337
- 7 GIRIJA
D/O. LATE KRISHNANKUTTY, MOOLATHANKOTTIL HOUSE,
CHERUKODE AMSOM DESOM, OTTAPALAM TALUK, PIN -
679337
- 8 GOVINDAPURAM TEMPLE IDOL
REPRESENTED BY RAMANKUTTY, S/O. CHARAKKUMBALIL
PADMANABHAN, (PRESIDENT - GOVINDAPURAM KSHETRA
SAMRAKSHANA SAMITHI), RESIDING AT CHERUKODE



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RSAs 420/12 & 759/2011 & COs 22 & 23/2026

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AMSOM AND DESOM, OTTAPALAM TALUK, PIN - 679337

- 9 THE SECRETARY
VALLAPUZHA SERVICE CO-OP. BANK, P.O.
VALLAPUZHA, PALAKKAD DISTRICT, PIN - 679337
- 10 SALE OFFICER
VALLAPUZHA SERVICE CO-OP. BANK, P.O.
VALLAPUZHA, PALAKKAD DISTRICT, PIN - 679337
- 11 COMMISSIONER
HR & CE DEPARTMENT, KOZHIKODE, PIN - 673524
- 12 RAGHAVAN NAIR
S/O. THARAYATHODI KESAVAN NAIR, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 13 VASUDEVAN
S/O. NADUVILPURAKKAL NARAYANAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 14 NARAYANANKUTTY
S/O. THACHOTHPUTHANVEETIL KUNCHU NAIR,
CHERUKODE AMSOM AND DESOM, OTTAPALAM TALUK, PIN
- 679337
- 15 HARIHARAN
S/O. KOKKATH PALASSERI JANAKI AMMA, CHERUKODE
AMSOM AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 16 VASU
S/O. PARAKKATTUPARAMBIL MUNDAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 17 BHARATHAN
S/O. MOOLATHANKOTTIL VELAPPAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 18 RAJAN
S/O. POOZHICKUNNATH MUNDAN, CHERUKODE AMSOM AND
DESOM, OTTAPALAM TALUK, PIN - 679337



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- 19 RAGHAVAN
S/O. NALAKATH PALLIYALIL CHAMI, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 20 BALAKRISHNAN
S/O. KIZHAKKEPATTUTHODI KOTHA, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 21 SURESH
S/O. CHARAKKUMALIL BHASKARAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 22 MURALIDHARAN
S/O. CHARAKKUMALIL SIVARAMAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 23 NARAYANAN
S/O. NAMBIYATH RAVUNNI NAIR, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN - 679337
- 24 NARAYANAN NAMBOOTHIRI
S/O. PARAMESWARAN NAMBOOTHIRI, POZHATH MANA,
THRIKKANKODE AMSOM, CHOROTTUR DESOM, OTTAPALAM
TALUK, PIN - 679337

ADV.P.K.MOHANAN (PALAKKAD) FOR R1, R2, R4, R6 &
R7 (B/O)

ADV.R.RANJANIE, SC, MDB FOR R11

SRI.R.LAKSHMI NARAYAN (SR.), SC MDB FOR R4
(B/O)

ADV.K.C.KIRAN FOR R9 & R10 (B/O)

THIS CROSS OBJECTION HAVING BEEN FINALLY HEARD ON
8.4.2026, ALONG WITH RSA.420/2012 AND CONNECTED CASES, THE
COURT ON 18.05.2026 DELIVERED THE FOLLOWING:



2026:KER:33749

RSAs 420/12 & 759/2011 & COs 22 & 23/2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 18TH DAY OF MAY 2026 / 28TH VAISAKHA, 1948

RSA NO. 759 OF 2011

AGAINST THE JUDGMENT AND DECREE DATED 26.3.2011 IN
AS NO.72 OF 2004 OF SUB COURT, OTTAPPALAM ARISING OUT OF
THE JUDGMENT AND DECREE DATED 7.4.2004 IN OS NO.72 OF 1997
OF MUNSIF MAGISTRATE COURT, PATTAMBI

APPELLANTS/RESPONDENTS 1 & 2/DEFENDANTS 3 & 4:

- 1 THE SECRETARY,
VALLAPPUZHA SERVICE CO-OP.BANK, P.O.
VALLAPPUZHA, PALAKKAD DISTRICT.
- 2 SALE OFFICER,
VALLAPPUZHA SERVICE CO-OP.BANK, P.O.
VALLAPPUZHA, PALAKKAD DISTRICT.

BY ADVS.
SRI.T.KRISHNANUNNI (SR.)
SRI.JAMSHEED HAFIZ
SRI.K.C.KIRAN

RESPONDENTS/APPELLANTS & RESPONDENTS 3 TO 25/PLAINTIFFS
AND DEFENDANTS 5 TO 27:

- 1 GOVINDAPURAM TEMPLE IDOL,
REPRESENTED BY RAMANKUTTY, S/O.CHARAKKUMALIL
PADMANABHAN, (PRESIDENT-GOVINDAPURAM KSHETRA



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SAMRAKSHANA SAMITHI) RESIDING AT CHERUKODE
AMSOM AND DESOM, OTTAPALAM TALUK, PIN-679 101.

- 2 KUNCHU
S/O.MOOLATHANGOTTIL GOPALAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, PIN 679
101. (DELETED)
- (THE 2ND RESPONDENT IS STRUCK OFF FROM THE
PARTY ARRAY AT THE RISK OF THE PETITIONERS
(APPELLANTS) AS PER ORDER DATED 18.07.2014 IN
IA.NO.1815/2014)
- 3 COMMISSIONER,
H.R & C.E. DEPARTMENT, KOZHIKODE, PIN 673012.
- 4 RAGHAVAN NAIR
S/O.THARAYATHODI KESAVAN NAIR, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK, 679101.
- 5 VASUDEVAN
S/O.NADUVILPURAKKAL NARAYANAN, --DO-- --DO--.
- 6 NARAYANANKUTTY,
S/O.THACHOTHPUTHANVEETIL KUNCHU NAIR, --DO--
--DO--.
- 7 HARIHARAN,
S/O.KOKKATH PALASSERI JANAKI AMMA, --DO-- --
DO--.
- 8 VASU, S/O.PARAKKATTUPARAMBIL MUNDAN
-DO- -DO-
- 9 BHARATHAN, S/O.MOOLATHANKOTTIL VELAPPAN
-DO- -DO-
- 10 RAJAN, S/O.POOZHICKUNNATH MUNDAN, -DO-
-DO-
- 11 RAGHAVAN, S/O.NALAKATH PALLIYALIL CHAMI
-DO- -DO-



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- 12 BALAKRISHNAN, S/O.KIZHAKKEPATTUTHODI
KOTHA -DO- -DO-
- 13 SURESH, S/O.CHARAKKUMALIL BHASKARAN
-DO- -DO-
- 14 MURALIDHARAN, S/O.CHARAKKUMALIL
SIVARAMAN, -DO- -DO-
- 15 NARAYANAN, S/O.NAMBIYATH RAVUNNI NAIR
-DO- -DO-

- 16 KUNHILAKSHMI, (DIED) (LRS RECORDED) ,
W/O.2ND DEFENDANT
KRISHNANKUTTY, MOOLATHANKOTTIL HOUSE,
CHERUKODE, AMSOM, DESOM, OTTAPALAM TALUK, PIN
679101.

(RESPONDENTS 17,18,20,24 AND 25 ARE RECORDED AS
THE LRS OF DECEASED RESPONDENT NO.16 AS PER THE
ORDER DATED 18.07.2014 VIDE MEMO CF.4111/2014
DATED 14.07.2014)

- 17 VIJAYAKUMARAN, RESIDING AT -DO- -DO-
- 18 JEEJABHAI, RESIDING AT -DO- -DO-
- 19 RAMACHANDRAN, (DIED)
RESIDING AT -DO- -DO-

(IT IS RECORDED THAT THE 19TH RESPONDENT DIED,
HE WAS UNMARRIED AND ISSUELESS AND IS SURVIVED
BY HIS BROTHERS AND SISTERS WHO ARE ALREADY IN
THE PARTY ARRAY AS RESPONDENTS 17,18,20,23,24
AND 25, AS PER ORDER DATED 09/02/2026 IN RSA
759/2011, VIDE MEMO DATED 04.02.2026.)

- 20 SHAILAJA RESIDING AT -DO- -DO-



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(RESPONDENTS 16 TO 20 ARE LRS OF THE DECEASED,
2ND DEFENDANT KRISHNANKUTTY) .

- 21 SREEKUMARAN (DIED)
S/O.AMBALAPARAMBIL KUNHAKKAN, CHERUKODE AMSOM
AND DESOM, OTTAPALAM TALUK,, PIN 679101.

(IT IS RECORDED THAT THE 21ST RESPONDENT
EXPIRED AND SINCE THE 17TH RESPONDENT PURCHASED
HIS RIGHTS, THERE IS NO REQUIREMENT TO IMPLEAD
HIS LEGAL HEIRS, AS PER ORDER DATED 20/02/2026,
VIDE MEMO DATED 16/02/2026 IN RSA 759/2011)

- 22 NARAYANAN NAMBOOTHIRI
S/O.PARAMESWARAN NAMBOOTHIRI, POZHATH MANA,,
THRIKKANKODE AMSOM, CHOROTTUR DESOM,, OTTAPALAM
TALUK, PIN 679101.

- 23 VANAJA D/O.DECEASED 2ND DEFENDANT
KRISHNANKUTTY, MOOLATHANKOTTIL HOUSE,,
CHERUKODE AMSOM AND DESOM, OTTAPALAM TALUK,,
PIN 679101.

- 24 JALAJA D/O. -DO- -DO- RESIDING AT -DO-
-DO-

- 25 GIRIJA D/O. -DO- -DO- RESIDING AT
-DO- -DO-

- *ADDL. GOVINDAPURAM TEMPLE IDOL,
R26 REPRESENTED BY DHEERESH, S/O. LATE RAMANKUTTY,
AGED 47 YEARS, CHARAKKUMALIL HOUSE, CHERUKODU
POST, VALLAPPUZHA, PALAKKAD DISTRICT, PIN - 679
336, (PRESIDENT, KSHETHRA SAMRAKSHANA SAMITHI,
SREE GOVINDAPURAM VISHNU KSHETHRAM) .

- *ADDL. SURENDRAN,
R27 AGED 56 YEARS
S/O. LATE KARUPPAN, NAYAKKAMTHODI VEEDU,
CHERUKODU POST, VALLAPPUZHA, PALAKKAD DISTRICT,
PIN - 679 336, (SECRETARY, KSHETHRA
SAMRAKSHANA SAMITHI, SREE GOVINDAPURAM VISHNU
KSHETHRAM)



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(ADDITIONAL RESPONDENTS 26 & 27 ARE IMPEADED
AS PER ORDER DATED 29.01.2026 IN I.A. NO. 1 OF
2026 IN RSA 759/2011.)

BY ADVS.

SHRI.SANTHEEP ANKARATH FOR R1, R4-R8, R10, R12,
R14 & R15, ADDL.R26 & ADDL.R27

SRI.P.K.MOHANAN(PALAKKAD) FOR R17-R21, R23-R25

SRI.ARUN MATHEW VADAKKAN FOR R1, R4-R8, R10,
R12, R14 & R15, ADDL.R26 & ADDL.R27

SHRI.R.LAKSHMI NARAYAN, SC, MALABAR DEVASWOM
BOARD FOR R3

SRI.PARTHASARATHY.B, SC, MALABAR DEVASWOM BOARD

SRI.MAHESH V.RAMAKRISHNAN, SC, MALABAR DEVASWOM
BOARD

SMT.R.RANJANIE, SC, MALABAR DEVASWOM BOARD FOR
R3

SHRI.SHERRY M.V. FOR ADDL.R26 & ADDL.R27

SHRI.P.ANIRUDHAN FOR ADDL.R26 & ADDL.R27

SMT.BHAVANA J. MENON FOR ADDL.R26 & ADDL.R27

SMT.ARUNDHATI NAIR FOR ADDL.R26 & ADDL.R27

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 8.4.2026, ALONG WITH RSA.420/2012 AND CONNECTED CASES,
THE COURT ON 18.05.2026 DELIVERED THE FOLLOWING:



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EASWARAN. S., J.**“C.R”**

**RSA Nos.420 of 2012 & 759 of 2011
and
Cross Objection No.22 of 2026 in RSA No.759 of 2011
&
Cross Objection No.23 of 2026 in RSA No.420 of 2012**

Dated this the 18th day of May, 2026

J U D G M E N T

These appeals and cross objections raise common issue and hence are being considered together.

Facts of the case.

2. The appellants in RSA No.420/2012 are the defendants 19 to 23, 26 & 27 in OS No.72/1997 on the files of Munsiff's-Magistrate's Court, Pattambi, a suit for declaration, injunction and for eviction filed representing the devotees of the Deity of Govindapuram Vishnu Temple. The appellants in RSA No.759/2011 are the defendants 3 & 4 in the said suit. The plaint schedule properties belong to the Govindapuram Temple Idol. The original Ooralan (trustee) of the Temple was one Sankaran Namboothiri. In 1899, a registered Kanam deed was executed in respect of 1 Acre 40



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cents of property in favour of one Govindan Nair. On 9.4.1964, the lessee surrendered the lease in favour of the Idol represented by its trustee, Sankaran Namboothiri, by executing a registered document No.529/1964 (Ext.A1). It appears that proceedings were initiated for declaration of the temple as a public temple in terms of Section 57(a) of the Madras Hindu Religious and Charitable Endowments Act, 1951, which resulted in an order (Ext.B13) passed by the Deputy Commissioner of HR & CE, Kozhikode on 27.11.1978 declaring the Govindapuram Temple as a public religious institution. OS No.19/1976 on the files of the Munsiff-Magistrate's Court, Pattambi was instituted by the Govindapuram Temple represented by Parameswaran Namboothiri, S/o.Narayanan Namboothiri against the second defendant herein for recovery of possession on the ground that he had trespassed into the plaint schedule property. By judgment dated 15.1.1979, the suit was decreed. Later, the second defendant preferred an appeal as AS No.25/1979 before the first appellate court, which was also dismissed. Though it is stated that an appeal was preferred before this Court, and that during the pendency of the appeal, the matter was compromised between the



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trustee of the Govindapuram Temple and the second defendant, no evidence is produced to prove the said fact. The 2nd defendant claimed that, the right, title and interest over the item No.2 of the plaint schedule property was assigned in his favour in the year 1985 and that he had proceeded to mortgage the property with the Vallappuzha Service Co-operative Bank Limited. Later, when the bank initiated proceedings for the purpose of recovery of the debt, an award was passed in terms of the provisions of the Kerala Co-operative Societies Act, 1969 and the same was put to execution. In the execution, the Bank themselves purchased the property. However, it is stated that, later the Bank had re-conveyed the property to the original second defendant after receipt of the due amount. The appellants in RSA No.420/2012 claim title under the original second defendant by stating that the second defendant is entitled to possess the property by virtue of a registered document No.1006/1985 of the Sub Registrar's Office, Pattambi (Ext.A2) executed by the trustee of the Temple in pursuance to the compromise before this Court. The plaintiffs instituted the suit seeking a relief that the registered document executed in the year



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1985 is not binding upon the Idol, inasmuch as the interest of the Idol, who is a perpetual minor, has not been properly protected by the erstwhile trustees and that the trustees had acted in breach of the trust and conveyed the property of the temple to a third person and, therefore, the transaction is fraudulent and not binding on them and thus sought for recovery of possession. The first defendant trustee remained ex parte, and the second defendant resisted the suit by contending that, in an earlier suit for injunction at the instance of the office bearers of the Kshetra Samrakshana Samithi, the trial court found that the second defendant was in possession and accordingly dismissed the suit and thus the committee is estopped from contending otherwise in the present suit. The second defendant also disputed the *locus standi* of the second plaintiff, who sued the defendants as a next friend. On behalf of the plaintiffs, Exts.A1 & A2 documents were marked and PW1 was examined. On behalf of the defendants, Exts.B1 to B13 documents were marked, but no oral evidence was adduced. The trial court, on appreciation of the oral and documentary evidence, concluded that, the 2nd plaintiff cannot be granted the relief of



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recovery of possession on behalf of the Idol and dismissed the suit notwithstanding the fact that the Commissioner of HR & CE, Kozhikode (now the Commissioner of Malabar Devaswom Board) was a party to this suit. Aggrieved, the plaintiffs preferred AS No.72/2004 before the Sub Court, Ottappalam. The first appellate court on re-appreciation of the evidence came to the conclusion that the transfer effected in favour of the second defendant by the erstwhile trustee would not confer any title on the 2nd defendant and it further found that as far as A schedule property is concerned, the plaintiffs had claimed only a relief of declaration and consequent injunction and the failure to ask for recovery of possession is detrimental to the claim, despite finding that Ext.A2 document is not binding on the temple. However, insofar as item No.B is concerned, the first appellate court granted recovery of possession from the second defendant. The assignees of item No.A schedule property have come up in RSA No.420/2012 questioning the grant of recovery of possession against item No.B property and the Bank, which has claimed mortgage rights over the property, has come up in RSA No.759/2011.



3. RSA No.759/2011 was admitted on 20.11.2014 on the substantial questions of law formulated in the memorandum of appeal, which read as follows:

- i. Is the court below justified, in finding that the suit as framed is maintainable without an order of the Court appointing the plaintiffs as next friends of the idol?
- ii. Is the Court below justified in finding that the suit as framed is maintainable without following the procedure contemplated under Order 32 of the Code of Civil Procedure.
- iii. Is the Court below justified in finding that the plaintiffs are entitled to maintain the suit as worshippers of the idol.
- iv. Whether a notice under order 1 rule 8 of the Code of Civil Procedure is sufficient to cure the defects in the frame of the suit.
- v. Are the courts below justified, on the evidence oral and documentary available in this case in finding that the



plaint schedule property is the same as the property covered by Ext. A1.

- vi. Is not the bar under Section 51 of the Kerala Land Reforms Act attracted in the case of Ext. A1 and is not said document void and ineffective.
- vii. Is the Courts below justified, on the basis of evidence available in the case in finding that the plaintiffs are entitled to represent the idol.

4. Since RSA No.759/2011 was admitted, this Court by order dated 20.3.2025 admitted RSA No.420/2012. Since the substantial questions of law framed in the two appeals are one and the same, this Court needs to address those questions in common.

5. Heard Sri.T.Krishnanunni, the learned Senior Counsel assisted by Smt.Niveditha Prem, the learned counsel appearing for the appellants, Sri.Santheep Ankarath, the learned counsel appearing for respondents 1, 19 and 20 and Sri.R.Lakshmi Narayan, the learned Senior Counsel assisted by Smt.R.Ranjanie, the learned Standing Counsel appearing for the Malabar Devaswom Board.

**Submissions on behalf of Appellants**

6. Sri.T.Krishnanunni, the learned Senior Counsel appearing on behalf of the appellants, raised the following submissions:

(a) The suit at the instance of the second plaintiff representing the Idol is not maintainable, since no application under Order-XXXII Rule-3 of the Code of Civil Procedure, 1908 was filed. Since the court had not conducted an enquiry before permitting the second plaintiff to sue on behalf of the Idol as a next friend, the entire framework of the suit was flawed.

(b) The proceedings in the suit revealed that an application for taking out notice under Order-I Rule-8 of the Code of Civil Procedure, 1908 was filed and the same was granted. Since the publication was effected, the aforesaid steps suggested that the suit is by the worshiper.

(c) As a normal rule, an Idol could be represented only by a trustee, and when a trustee acts against the interest of the Idol, a worshiper can sue as the next friend, impleading the trustee as a defendant. The present suit is admittedly not by one of the trustees.



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If the suit is by a worshiper, then no recovery of possession can be granted in the said suit.

(d) In a suit under Order-XXXII of the Code of Civil Procedure, the plaintiff is required to submit an affidavit as per Rule 212 of the Civil Rules of Practice, by a disinterested person to the effect that the next friend has no conflicting interest against the person for whom he files the suit. This procedure is required for the prima facie satisfaction of the court with regard to the competency of the person filing the suit to represent the plaintiff. In the present case, the failure to file such an affidavit has taken away the valuable right of the defendant to question the *locus standi* of the next friend to institute the suit.

(e) Going by the decision of the Division Bench of the Calcutta High Court in ***Sushama Roy v. Atul Krishna Roy & Anr.***[1955 SCC OnLine Cal 166 : AIR 1955 Calcutta 624 (DB)], there should have been an appointment of the next friend by the court. Referring also to the decision of the Supreme Court in ***Vemareddi Ramaraghava Reddy and Ors. v. Konduru Seshu Reddy & Ors.*** [AIR 1967 SC 436 : 1966 SCC OnLine



SC 112], the learned Senior Counsel pointed out that the said exercise is a part of exercise of parens patriae jurisdiction vested in the court. Passages from the treatise on Hindu Religious and Charitable Endowments by Varadachari and also Mukherjeas Tagore Law Lecture series, are also referred to.

(f) The learned Senior Counsel further pointed out that since the original tenant had surrendered the property in favour of the Temple, such surrender being hit by Section 51 of the Kerala Land Reforms Act, 1963, the Temple had no title over the property and therefore, could not have asked for a declaration of title as well as recovery of possession.

(g) Surrender of the tenancy right must certainly be in terms of the provisions of the Land Reforms Act, and that, de hors the said provision, the tenant has no right to effect a surrender in favour of the landlord. Since the suit is one for declaration of title, the plaintiffs will have to establish title before going into the weakness of the defense of the defendants.

(h) Since surrender itself is invalid, the landlord was justified in assigning the Jenm rights in favour of the original second



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defendant, and therefore, it is still open for the assignees or the legal heirs of the original second defendant to claim such rights. It is further pointed out that the title over the property was transferred in favour of the second defendant, who later mortgaged it with the third defendant Bank and the third defendant had purchased the mortgaged rights in auction and therefore, the Idol has been totally divested of the title in respect of the plaint schedule property, and therefore, the entire framework of the suit itself was misconceived.

(i) No importance could be attached to the proceedings under Section 57(a) of the Madras Hindu Religious and Charitable Endowments Act, 1951 and it had nothing to do with the management and ownership of the temple. In support of his contention placed reliance on the decision of this Court in **Thiruvachira S. K. P. Committee v. Commissioner, H. R. C. Endowments [1999 KHC 384]**. To conclude his arguments, the learned Senior Counsel pointed out that since the trial court had refused to grant a decree as prayed for, the first appellate court could not have granted a decree in respect of B schedule item, especially since the Temple itself did not have any title over the property.



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Submissions on behalf of respondents 1, 19 and 20

7. *Per contra*, Sri.Santheep Ankarath, the learned counsel appearing for the respondents 1, 19 and 20, raised the following submissions:

(a) The entire structuring of the defense by the original second defendant shows the fraud played on the Idol, who is a perpetual minor, by the trustee. Referring to the sequence of events which resulted in document No.1006/1985 being executed, the learned counsel pointed out that just prior to an order being passed under Section 57(a) of the Madras Hindu Religious and Charitable Endowments Act, 1951, a suit was instituted against the second defendant for recovery of possession by the trustee of the temple, which was decreed in the year 1979 and the appeal against the same was also dismissed. It is in the meantime that order dated 27.11.1978 happened to be passed by the Commissioner of HR & CE, declaring the Temple as a Public Religious Institution. Once the Temple is declared as a Public Religious Institution, any conveyance of the property of the Temple must be done with prior sanction of



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the Commissioner of the HR & CE Department under Section 29 of the Act, and failure to do so would render such transfer void.

(b) The contention of the appellants that the Idol has no title over the property cannot be sustained because the trustee himself asserted rights over the property for and on behalf of the idol by instituting the earlier suit as OS No.19/1976 for recovery of possession against the second defendant. The decree having been passed in the year 1979 would completely obliterate the claim of the second defendant to assert a title over the property because, admittedly, he becomes a trespasser in respect of the plaint schedule property.

(c) The contention that the transfer in favour of the original second defendant is not hit by Section 29 of the Madras Hindu Religious and Charitable Endowments Act, 1951, cannot be sustained because admittedly, the transfer was after an order being passed under Section 57(a) of the said Act.

(d) Attack against Ext.A1 release deed executed by the tenant in favour of the Idol also cannot be sustained because the vesting of the rights of the landlord in favour of the State would take



effect only from 1.1.1970, since Section 72K of the Kerala Land Reforms Act, 1963 came into effect only from that date.

(e) To claim fixity of tenure under Section 13 of the Kerala Land Reforms Act, 1963, it is incumbent upon the tenant to show that he was a cultivating tenant as on 1.1.1970. In the present case, the original tenant, Govindan Nair, was not a cultivating tenant because he had surrendered the property on 9.4.1964 back to the landlord, namely the Govindapuram Temple.

(f) He further pointed out that since there is no statutory vesting in favour of the Government, it was perfectly open for the tenant to have surrendered the property back to the landlord, and at any rate, going by the contents of Ext.A1, the same could be definitely construed as a dedication in favour of the Idol which is not prohibited under law. If there is no statutory vesting in favour of the Government, the contention to the contrary should fail. In support of his contention, relied on the decision of the Single Bench of this Court in **Chandramathy v. Thankapapan and Others** [2009 KHC 136].



(g) Insofar as the contention regarding the competency of the second plaintiff to maintain the suit, it is pointed out that an application was preferred by the second plaintiff to permit him to sue for and on behalf of the first plaintiff as a next friend. IA No.281/1997 was allowed on 10.3.1997, and no attempt was made to challenge the said order or file an application to recall the said order. Based on the permission so granted, notice under Order-I Rule-8 of the Code of Civil Procedure was taken out, and IA No.282/1997 was also allowed, which was an application for injunction. Though an objection was raised to the application for injunction on the ground that it is not maintainable because of the fact that the second plaintiff cannot be permitted to sue as the next friend, the objection was overruled.

(h) Placing reliance on the Constitution Bench decision of the Supreme Court in **M. Siddiq (Dead) through legal represenatives (Ram Janmabhumi Temple-5 J.) v. Mahant Suresh Das [(2020) 1 SCC 1]**, it is pointed out that it is not necessary that the application to sue as a next friend must be allowed prior to the filing of the suit and that it can be ordered at



any time. He further pointed out that since the original plaintiff had died and the appellants themselves had come up with an application to appoint any disinterested person and that this Court has permitted the additional 19th respondent in RSA No.420/2012 to prosecute the appeal on behalf of the Idol, the objection to the contrary must fail.

(i) Lastly, it is pointed out that the courts below failed to appreciate the fact that Ext.A2 assignment deed by the trustee was not binding upon the Idol and therefore, the same would be ignored by the Idol, and thus the first appellate court erred in not granting a declaration qua plaint A schedule properties. He further pointed out that it is not always necessary that a consequential relief of recovery of possession must be sought for to claim a declaratory relief. In support of his contention, relied on the decision of the Supreme Court in **Akkamma & Others v. Vemavathi & Others** [2021 SCC OnLine SC 1146] and also the decision of this Court in **Koshy Kunju T.K. v. Lalitha S Pillai** [2025 KHC OnLine 1222].

**Submissions on behalf of Malabar Devaswom Board**

8. Sri.R.Lakshmi Narayan, the learned Senior Counsel appearing for the Malabar Devaswom Board, supported the contentions of Sri.Santheep Ankarath, the learned counsel appearing for respondents 1, 19 and 20 in RSA No.420/2012 and submitted that once the Temple is declared as a public religious institution in terms of Section 57(a) of the Madras Hindu Religious and Charitable Endowments Act, 1951, any transaction effected by the trustee in respect of the property without the sanction of the Commissioner is not binding on the Deity. He further pointed out that the fraud played by the trustee is evident from the fact that two assignments were made in respect of the temple properties, one pending in a suit for recovery of possession instituted by the trustee himself and later by Ext.A2.

9. I have considered the rival submissions raised across the bar, perused the judgments rendered by the courts below and the records of the case.

**Impact of Order XXXII Rule 3 of CPC on the suit**

10. In view of the conflicting claims, this Court must first decide as to whether the suit as framed is bad for want of leave under Order-XXXII Rule-3 of the Code of Civil Procedure. The thrust of the argument of the learned Senior Counsel for the appellants is based on the Division Bench decision of the Calcutta High Court in ***Sushama Roy v. Atul Krishna Roy & Anr.* [1955 SCC OnLine Cal 166 : AIR 1955 Calcutta 624 (DB)]**.

11. It is the specific case that, since no leave has been granted and further that, before granting of such leave, it was incumbent upon the court to conduct an enquiry with regard to the fact that the person who is seeking to represent the Idol as the next friend has no conflicting interest in the lis, the decree granted by the first appellate court cannot be sustained.

12. Although an application under Order-XXXII Rule-3 of the Code of Civil Procedure, 1908 was not preferred by the original second plaintiff, when we look into the contents of IA No.281/1997, it is evident that, a permission to represent the Idol as the next friend was sought for. The records of the proceedings indicate that



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the application was allowed on 10.3.1997. It is also an admitted fact that a notice under Order-I Rule-8 of the Code of Civil Procedure was taken out in pursuance to the permission granted by the trial court on 10.3.1997. It must be remembered that it is not essential for the court to pass an order in an application under Order-XXXII Rule-3 before institution of the suit. The permission can be granted at any point of time. The relief sought for in IA No.281/1997, being very specific in nature and to permit the second plaintiff to institute the suit for and on behalf of the 1st plaintiff as the next friend, the misstatement of the provision in the aforesaid application as one under Order-I Rule-8 is immaterial and is not detrimental to the cause projected.

13. True, the trial court could have considered the application as one under Order-XXXII Rule-3 of the Code of Civil Procedure and could have proceeded accordingly. However, the failure of the trial court in not proceeding so, cannot be held detrimental to the cause projected before this Court in the present appeals, especially since the appellants in RSA No.420/2012 themselves have come up with IA No.4/2026 and that this Court



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being satisfied that the interest of the Idol could be sufficiently protected by the additional respondent No.19, allowed IA No.4/2026 by order dated 8.4.2026, the contention to the contrary cannot be sustained.

14. That apart, it must be remembered that though the properties of the Temple vest with the trustee, it has come out in evidence that the original trustee had failed to protect the interest of the deity and has thus disqualified himself from acting for and on behalf of the Idol. Moreover, since the Malabar Devaswom Board is having an overall supervision over the affairs of the Temple, and that the Temple is a listed temple under the Devaswom, and that the Devaswom Board is also a party to the proceedings as the 5th respondent in RSA No.420 of 2012/5th defendant, this Court is satisfied that the interest of the deity is sufficiently protected by the presence of the 20th respondent as well as the Malabar Devaswom Board. Therefore, the contention to the contrary is rejected.

Whether the Suit filed by the worshipper is maintainable.

15. It must be remembered that it is not in all cases that a suit by a worshipper or a person interested in the property can be



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said to be not maintainable. There may arise a situation where the trustee has committed dereliction in performing duties, either by not acting or being complicit in the wrongful alienation of the endowed property. In such a situation, in a suit instituted for recovery of the deity's property, the action is against both the derelict trustees as well as the person possessing or claiming the property in a manner hostile to the deity. Therefore, there is no gainsay in contending that even in such cases, a suit should be necessarily under Section 92 of the Code of Civil Procedure. In such a case, the suit can only be under the general law (see **M. Siddiq (Dead) through legal representatives (Ram Janmabhumi Temple-5 J.) v. Mahant Suresh Das [(2020) 1 SCC 1]**).

16. As regards the scope of declaratory relief sought for in the suit, this Court feels that the point is squarely covered by the decision of the Supreme Court in **Vemareddi Ramaraghava Reddy & Ors. v. Konduru Seshu Reddy [1966 SCC OnLine SC 112 : AIR 1967 SC 436]**. The Supreme Court held as follows:

“12. In our opinion Section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree



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independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of Section 42 of the Specific Relief Act.”

17. Moreover, going by the decision of the Supreme Court in **M. Siddiq** (*supra*), this Court feels that there is no requirement for any further deliberation as to whether a suit at the instance of a disinterested person is maintainable in case of a failing shebait or a trustee. Paragraph 445 of the decision is extracted for reference:

“445. A necessary adjunct of managing of the temple properties is the right to sue for recovery of the said properties. Ordinarily a shebait alone will be entitled to bring a suit on behalf of the idol. In addition to being convenient and providing immediate recourse for the idol, it also provides a valuable check against strangers instituting suits, the outcomes of which may adversely impact the idol without the knowledge of the idol or the shebait. But there may be cases where the conduct of a shebait is in question. In certain cases, where the shebait itself is negligent or sets up a claim hostile to the idol, it is open for a worshipper or a next friend interested in protecting the properties of the idol to file a suit to remedy the situation. In the above case, by entering into the compromise decree declaring the temple properties as personal properties of the defendant shebait, the



defendants set up a title contrary to the title of the idol itself. This Court held that it was hence permissible for the plaintiffs, who were worshippers, to maintain a suit invalidating the compromise decree.”

18. Therefore, it is inevitable for this Court to hold that the suit filed by the 2nd plaintiff as a worshipper is clearly maintainable.

Whether recovery of possession can be granted to next friend on behalf of Idol?

19. The learned Senior Counsel for the appellants raised two fold arguments. a) The suit itself is not maintainable since the prayer for declaration is also sought for and that the declaratory suits are generally governed by Section 42 of the Specific Relief Act, 1963 and unless the conditions are satisfied the suit cannot be maintained. b) Still further, it is pointed out that the present suit does not satisfy the criteria of Section 92 of the Code of Civil Procedure, 1908 and even if it is held so, recovery of possession cannot be granted to the next friend.

20. It may appear from the argument that though the above question is a vexed one, for multiple reasons, this Court is of the view that it is not so. As regards the applicability of Section 92



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of the CPC, this Court is of the considered view that when the trustee is derelict and leaves the idol in a lurch, a person interested in the worship of the idol can be clothed with an ad hoc power of representation. In such a situation, when a suit is filed for declaration, the same falls outside the scope of Section 92 of CPC [See ***Bishwanath & Anr v. Sri Thakur Radha Ballabhji & Ors*** [1967 SCC OnLine SC 8 : AIR 1967 SC 1044]].

21. Next, it is to be considered whether the suit is hit by Section 42 of the Specific Relief Act, 1963. Section 42 no doubt prescribes the condition for maintaining a declaratory relief. However, in the present case what is sought for by the 2nd plaintiff for and on behalf of the Idol, the 1st plaintiff, is to declare the assignment by the trustee in favour of the 2nd defendant as not binding on the deity. The defense raised by the 2nd defendant is that pursuant to a compromise, the trustee has transferred the property in his favour. Therefore, essentially the dispute is with regard to the power of the trustee to execute the assignment deed.

22. In ***Vemareddi Ramaraghava Reddy Vs Konduru Seshu Reddy and others*** [AIR 1967 SC 436], the Supreme



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Court held that Section 42 of the Specific Relief Act is not exhaustive of cases where a declaratory relief can be granted and the court has power to grant declaration independently that of Section 42. However, the Supreme Court also held that the recovery of possession cannot be granted in favour of the next friend.

23. The thrust of the argument of the learned Senior Counsel is that even if it is found that the assignment in favour of the 2nd defendant is found to be bad, still decree for recovery of possession cannot be granted.

24. However, in cases where the trustee shows dereliction in protecting the interest of the Idol, the suit by the next friend on behalf of idol is inevitable. It may be true that, in such cases, recovery of possession cannot be granted. But that by itself need not deter the court from entertaining the suit because ultimately, the courts can always recast the relief when it is found that the trustee acts prejudicially to the deity's interest. In such a situation, the courts are not powerless to grant relief, especially when a statutory Board like the Malabar Devaswom Board is in the party array, which has the overall supervision and control over the affairs of the temple



and has been constituted with larger interest to protect the interest of the temple and also to keep the trustee in check. Hence, this Court concludes that though in a suit by the next friend on behalf of the idol, recovery of possession cannot be granted by the court to the next friend, the court can always restructure the relief and act accordingly.

Impact of Ext.A1 Surrender deed.

25. The entire dispute in the case centers around the construction of Ext.A1 deed. It is strenuously argued by Sri.T Krishnanunni, the learned Senior Counsel, that the surrender by the tenant has no efficacy of law, because the surrender is not in accordance with the provisions of the Kerala Land Reforms Act. According to learned Senior Counsel, any surrender of land by tenant not in accordance with Section 51 of the Kerala Land Reforms Act has no legal efficacy. He further pointed out that for surrender of the lease, an application ought to have been filed before the land tribunal and only after due process of law, the landlord can enter into the land.



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26. Having bestowed its anxious consideration to the above submissions, this Court finds itself unable to subscribe to the same for multiple reasons. What is contended before this Court is that, since the tenant is entitled to fixity of tenure in terms of Section 13 of the Kerala Land Reforms Act, 1963, unless the proper procedure for surrender is followed, the landlord will not get any title. It must be remembered that Section 51 is intended to protect the interest of the tenant against an unscrupulous landlord who, by putting pressure on the tenant, gets the tenant to surrender the tenanted premises back to him. But in a given case, where the tenant voluntarily transfers the property to the landlord and does not dispute the said surrender having been hit by any coercion or undue influence, the appellants, who admittedly are trespassers, cannot raise the plea that, the surrender by the tenant to the landlord is against the statute and therefore, the landlord does not derive title over the property.

27. A cursory reading of Ext.A1 shows that the intention of the tenant was to dedicate the property for the benefit of the Deity. Therefore, even if the nomenclature of Ext.A1 refers that it is a



surrender of tenancy right, on a reading of the whole document what is intended by the tenant is to dedicate the property in favour of the Idol. It must be remembered that notwithstanding the prohibition contained under Section 51 of the Kerala Land Reforms Act, 1963, the tenant can always dedicate the property in favour of the Idol and that such dedication is not hit by Section 51. In fact, the trial court also upheld the contention of the plaintiffs that Ext.A1 can only be construed as a dedication, but non-suited the plaintiffs for other reasons, which does not appear to be sound to this Court. At any rate, since the appellants are trespassers, they get no equity from the court, and therefore, there is no gainsay in contending that the transfer is hit by Section 51 of the Kerala Land Reforms Act, 1963.

Applicability of Section 29(a) of the Madras Hindu Religious and Charitable Endowments Act, 1951.

28. The records indicate that, the trustee had volunteered himself before the Commissioner of HR& CE and submitted that he has no objection in declaring the temple as a public temple. Sri.T.Krishnanunni, the learned Senior Counsel appearing for the appellants, strenuously pointed out that, an order under Section 57(a) cannot be taken as conferring ownership rights over the



property of a temple in favour of the HR & CE Department. This Court finds that to sustain the claim of the plaintiffs, they need not show that the ownership of the properties of the Temple vests with the HR & CE Department, or, for that matter, with the Malabar Devaswom Board.

29. It must be remembered that when the proceedings before the HR & CE Department commenced, OS No.19/76 was already instituted against the original second defendant for recovery of possession for and on behalf of the Deity, on the ground that he had trespassed into the property.

30. The appellants in RSA 420/2011 (legal heirs of the deceased 2nd defendant in the suit) trace their title to the assignment deed of 1985 executed by the trustee in favour of the 2nd defendant. What is projected by the learned Senior Counsel is that the idol was divested of the title on the basis of a compromise and therefore the effect of concurrent decree for recovery of possession is obliterated.

31. It passes one's comprehension as to how the trustee could enter into a compromise when there was a concurrent decree in favour of the Deity allowing the Deity to recover the property from



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the second defendant. At any rate, the true text of compromise is not revealed and it is only an assertion in the written statement. Be that as it may, without any doubt this Court is inclined to hold that, the trustee of the Temple had no authority to enter into a compromise ignoring the mandate of Section 29 of the Madras Hindu Religious and Charitable Endowments Act, 1951. The compromise if any is certainly a fraud on the statute as well as a fraud on the Deity, which the Deity is entitled to ignore. It is not shown before this Court that the compromise was in fact for the benefit of the Idol and therefore, this Court is not persuaded to hold otherwise.

32. Assuming that, there was in fact a compromise between the trustee and the 2nd defendant, the same is without any bona fides and that is an outcome of the fraud played by the trustee on the Idol. Therefore, it is inevitable for the court to hold that the consequential transfer by document No.1006/1985 in favour of the original second defendant has no efficacy of law and that the Idol is entitled to ignore such transfer, because the Idol is never divested of



its title since the act of the trustee is contrary to the provisions of the law and cannot be given sanctity by the courts.

33. The extent of the fraud played by the trustee is evident from a reading of Ext.A2 assignment deed. It must be remembered that whatever be the nature of the transaction between the Idol and the tenant, namely Govindan Nair, the fact remains that the tenant had dedicated the property in favour of the Temple in the year 1964. Since the trustee, contrary to the position of trust, which he has, *qua* the Deity had gone ahead and transferred the entire property in favour of his son by virtue of Ext.A2, the said document coupled with document No.1006/1985 had no effect on the rights of the Idol and it cannot be said that the Idol was divested of the title by virtue of these documents. This being the position of law, this Court finds that the trial court erred egregiously in not considering the true impact of a fraudulent compromise entered by the trustee, when he had already obtained concurrent decrees for recovery of possession against the original second defendant

34. Once it is concluded that, the compromise entered between the trustee as well as the original second defendant is void, certainly,



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the Idol is entitled to maintain the suit through a worshipper and to have the compromise and the subsequent assignment nullified.

Impact of Section 72K of the Kerala Land Reforms Act, 1963

35. This issue is only incidental and hence discussed for the sake of completion. Section 72K, which provides for vesting of rights of the landlord, was introduced into the Kerala Land Reforms Act, 1963 with effect from 1.1.1970. The vesting of the landlord's right in respect of the tenanted land takes effect only from 1.1.1970. However, the learned Senior Counsel vehemently pointed out that, notwithstanding Section 72K, once the Kerala Land Reforms Act 1963 comes into effect, the tenant is entitled to fixity of tenure. The learned Senior Counsel extensively took this Court to various provisions of the Kerala Land Reforms Act and contended that the entitlement of a tenant for fixity of tenure is not dependent on Section 72K of the Act but is decided based on the conditions specified under Section 13.

36. However, this Court is unable to agree with the learned Senior Counsel basically because, the appellants are trespassers in respect of the plaint schedule property. He has miserably failed to



show how the rights of the tenant devolved on him. The appellants in RSA No.420/2011 claim that there is an assignment of jenm right by the landlord and that it is still open to them to make application for issuance of purchase certificate. This Court is not impressed by the said argument.

37. In **Chandramathy v. Thankapapan and Others [2009 KHC 136]**, a Single Bench of this Court considered a similar question and held that a statutory vesting takes effect only from 1.1.1970. In construing a sale deed executed by the lessee in favour of the landlord, this Court held that when there is a merger of lessee's or lessor's interest, insofar as the plaintiff is concerned, the plaintiff became a part owner of the property by reason of the sale deed and therefore, is entitled to exercise his ownership rights over the entire property on the strength of the title deed. Paragraph 20 of the judgment reads as under:

“20. There is yet another fact, which seems to have escaped the notice of the lower Appellate Court when it came to the conclusion that the plaintiff did not have any title to the property to be conveyed on the date of execution of Ext. B2. The lower Appellate Court came to the said conclusion on the premise that the plaintiff schedule property was outstanding on a lease



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with the cultivating tenant on 01/01/1970 and this would have resulted in a statutory vesting on 01/01/1970. The plaintiff's mother, the first defendant, along with the plaintiff, admittedly acquired the jenmom right over the property as per Ext. A1 sale deed. Admittedly, the plaintiff's mother was one of the lessees of the property on the date of Ext. A1. There is a merger of the lessee's and lessor's interest insofar as the plaintiff's mother is concerned, by reason of Ext. A1. Plaintiff became a part owner of the property by reason of Ext. A1. Plaintiff is entitled to exercise ownership rights over the entirety of the property on the strength of Ext. A1. Plaintiff's mother, who became part owner of the property, was entitled to convey the same. Significantly, even the third defendant had contended that the plaintiff's mother was entitled to convey her share over the plaint schedule property. A residuary right over the property could have been pleaded only by Kuncheru and she had not done that. Nominal residuary leasehold interest over the property was relinquished by her in favour of the third defendant, as per Ext. B1 Release deed. In such circumstances, finding of the lower Appellate Court that the plaintiff did not have any title to be conveyed as per Ext. B2 sale deed, is unsustainable."

38. This Court is in respectful agreement with the views expressed by the learned Single Judge in the above judgment and sees no reason to take a different view. Therefore, it is inevitable for this Court to hold that the original tenant, Govindan Nair, had no



right to claim fixity of tenure as on 1.1.1970 and therefore, the statutory vesting has no effect on the dedication made by the tenant in favour of the Idol. Therefore, applying the principles laid down by this Court in **Chandramathy** (supra), the Idol is entitled to assert its rights over the plaint schedule property by virtue of its original title as well as by virtue of dedication by the tenant.

Structuring of relief in Pleint

39. The plaintiffs were successful to certain extent before the first appellate court. But the first appellate court despite having found that the 1st plaintiff was not divested of the title, refused to grant relief. A reading of the reliefs sought shows that, the plaintiffs had sought a relief to declare that the document No.1006/1985 is not binding upon the Idol and consequently sought for an injunction restraining the defendants 1 to 4 from acting contrary to the interest of the Deity and also further sought for recovery of possession with respect to item No.B property. The question before this Court would be whether the plaintiffs are entitled to get the reliefs as prayed for. It is as against the refusal of the first appellate court to decree the suit as prayed for the cross objections are preferred.



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40. Once the first appellate court concluded that Ext.A2 document will not affect the right of the deity, Ext.A2 loses its efficacy and thus renders itself as a void document and hence , no declaration is required to the effect that, the document is not binding on the deity and that the deity is entitled to ignore the document. If that be so, the title of the Deity stands unimpeachable.

41. The first appellate court non suited the plaintiffs by applying Section 34 of the Specific Relief Act 1963. In the considered view of this Court, Section 34 has no application to the facts of the case. Admittedly, plaint A schedule property belongs to the Idol and B Schedule forms part of the same. True, the 2nd defendant established his possession in respect of B Schedule property and that the plaintiffs also did not have any dispute on the same and that is the reason why prayer for recovery of possession was sought for. But, the finding of the first appellate court that defendants 16 to 20 are in possession of the property as assignees of the 2nd defendant is not supported by material evidence.

42. To arrive at such a finding, the first appellate court seems to have placed the sole reliance of evidence of PW 1, the 2nd



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plaintiff. The extracted portion of the oral testimony of PW1 does not lead to a conclusion that the Idol was divested of possession at any point of time. PW1 only spoke about the trustee getting recovery of possession. The possession if any by the trustee can only be construed as on behalf of the idol.

43. Yet another reasoning given by the first appellate court is that the commissioner during his inspection found that there is no visible boundary between A and B Schedule properties and hence without hesitation the plaint schedule property can held to be in possession of respondents 16 to 20. This Court is unable to subscribe to the above finding. Certainly, the said finding is only perverse and not supported by any evidence.

44. Once the first appellate court found that Ext.A2 document cannot affect the title of the deity, it ought to have granted the relief of injunction to plaintiffs especially since there is no evidence to show that the appellants in RSA 420/2011 or their assignees were in possession of the A schedule property. The plaintiffs could not have been non-suited on the ground of the bar under Section 34 of the Specific Relief Act, 1963. The above view



finds support from the decision of the Supreme Court in **Akkamma & Others v. Vemavathi & Others [2021 SCC OnLine SC 1146]**. Therefore, this Court is of the view that the 1st plaintiff is entitled to succeed in the cross objections.

45. Based on the discussion, the court proceeds to answer the substantial questions of law as follows.

- a) The suit filed by the worshipper on behalf of the Idol is maintainable in the facts of this case.
- b) In view of the relief sought for in IA No.281/1997 and that the application having stood allowed, the objection regarding the failure to follow procedure under Order XXXII CPC is liable to be rejected by applying the principles embodied under the maxim *actus curiae neminem gravabit*.
- c) The suit filed by the worshipper is maintainable if the trustee neglects to protect the interest of the idol
- d) Since the appellants themselves have filed IA No.4 of 2026 seeking to appoint an appropriate person to represent the Idol in view of death of 2nd plaintiff, there cannot be any defect in the framework of the suit.



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- e) In the light of oral and documentary evidence, it is established beyond doubt that the property covered by Ext.A1 and the plaint schedule property is one and the same.
- f) On construction of Ext.A1 document, it is found that, the tenant had dedicated the property in favour of the idol, and hence, the bar under Section 51 is not attracted.

46. Before parting with this case, this Court must also notice certain intervening developments insofar as the right of a mortgagee is concerned. The appellants in RSA No.759/2011 contend that the finding rendered by the courts below will have a direct impact upon the validity of the mortgage created in its favour and may operate as a detriment to its interest. In the light of the discussion, once this Court has concluded that neither the trustee nor the second defendant had any title over the property to be transferred, all consequences would follow, necessarily touching upon the validity of the mortgage created in its favour.

47. At any rate, it is pointed out that though the Bank had purchased the property in auction in execution of the decree, it has re-assigned the property back to the mortgagor, namely the second



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defendant. If that be so, this Court finds that the Bank has no subsisting interest in the *lis*, and therefore, RSA No.759/2011 is liable to be dismissed as having become infructuous.

48. In the light of the above discussion, RSA No.420/2012 is dismissed and Cross objection Nos.22/2026 & 23/2026 are allowed. The judgment and decree in AS No.72/2004 of the Sub Court, Ottappalam and the judgment and decree in OS No.72/1997 on the files of the Munsiff-Magistrate's Court, Pattambi, stand set aside and OS No.72/1997 stands decreed as prayed for. The first plaintiff will be entitled to costs throughout.

49. It is also made clear that since the first plaintiff is being permitted to represent through the 19th respondent in RSA No.420/2012, who is the office bearer of the Kshetra Samrakshana Samithi, consequent to the recovery of possession being effected, the properties shall be delivered to the first plaintiff, with the custodian being the Malabar Devaswom Board. In other words, the delivery of the properties shall be effected directly to the first plaintiff, and the same being acknowledged and received for and on



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behalf of the first plaintiff by the fifth defendant Malabar Devaswom Board.

Ordered accordingly.

Sd/-
EASWARAN S.
JUDGE

jg