IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 11th DAY OF JUNE 2026 / 21st JYAISHTA, 1948

AS NO. 439 OF 1999 (G)

AGAINST THE JUDGMENT & DECREE DATED 02.01.1999 IN OS NO.10 OF 1990 OF DISTRICT COURT, THRISSUR

APPELLANTS (PLAINTIFFS 2, 4, 5, 8 AND 9):

1 C.C.MOSSES, RESIDING AT CHERUPPANKKAL HOUSE,
NEAR MARKET ROAD, (PERAPURAM), KUNNAMKULAM (DIED)

2 K.P.WILSON, KOLADI HOUSE,
KANIPPAYYUR (PO), CHOVANNUR VILLAGE,
THALAPPILLY TALUK, KUNNAMKULAM.

3 T.N.GE0RGE, KANIYAMBAL DESOM,
KUNNAMKULAM, TALAPPILLY TALUK.

4 PETER C.CHACKO, CHEERAN HOUSE,
KUNNAMKULAM VILLAGE, DESOM, TALAPPILLY TALUK.

5 C.K.YOYAB, CHERUVATHUR HOUSE,
CHERUKUNNU DESOM,KUNNAMKULAM VILLAGE,
THALAPPILLY TALUK.

ADDL.A6 C.M.JOY, S/O.C.C.MOSSESS (LATE),
AGED 53 YEARS, RESIDING AT CHERUPPANAKKAL HOUSE,
NEAR MARKET ROAD (PERUPURAM) KUNNAMKULAM,
THRISSUR -680503
(LEGAL HEIR OF DECEASED 1ST APPELLANT IS
IMPLEADED AS ADDITIONAL 6TH APPELLANT VIDE ORDER
DATED 17/1/17 IN IA.2484/16)

BY ADV SRI.R.RAMADAS

RESPONDENTS (DEFENDANTS 1 TO 14 AND PLAINTIFFS 1,3,6 & 7:

1 STEWARD CO. LIMITED I, WITCOM,
CRESENT, BATH TOWN, ENGLAND.

2 STEWARD'S ASSOCIATION IN INDIA,
25TH RUNDALIS ROAD, VEPERY, MADRAS.

3 STEWARD ASSOCIATION IN INDIA,
9/237-A, TRICHY ROAD, COIMBATORE-641018.

4 R.G.GERMAN, SECRETARY,
STEWARDS ASSOCIATION IN INDIA,
22 POTTERY ROAD, BANGALORE.

5 C.P.JOHN, ALIM,
NELLIKUNNU, THRISSUR (DIED)

6 S.S.DAVID, SHORN,
CHEMMANTHORE, P.O.PUNALUR. (REMOVED)

7 V.T.MATHAI, EVANGLIST,
CLIFFDALE, CHUNGAM, KOTTAYAM (DIED)

8 V.C.BABU (DIED)
PEOPLE'S VILLAGE, YESUDAS ROAD, KUNNAMKULAM

9 M.P.CODLY, MECHANCHERI HOUSE,
NELLIKUNNU, THRISSUR.

10 K.I.JOHNSON, KOLACY HOUSE,
NELLIMUNNU, THRISSUR (REMOVED)

11 ATTUPURAM YOHANNAN KOCHAVA,
ATTUPURAM HOUSE, ANCHERI ROAD,
VALARKKAVU, THRISSUR (REMOVED)

12 ATTUPURAM YOHANNAN VAVACHAN,
ATTUPURAM HOUSE, ANCHERI ROAD,
VALARKKAVU, THRISSUR.

13 KUNNATH MATHAI JOY(A),
P.M.GEORGE, KUNNATH HOUSE, ANCHERI ROAD,
VALAKKAVU, THRISSUR.

14 V.KURIAKOSE, RETIRED POSTAL SUPDT.JOINT
SECRETARY, STEWARD ASSOCIATION OF INDIA,
PULINATH HOUSE, P.O.KUZHITTAM, MUVATTUPUZHA,
ERNAKULAM DISTRICT (REMOVED)

15 C.C.BABY, CHERUPPANAKKAL HOUSE,
ADUPPUTTY ROAD, KUNNAMKULAM.

16 K.T.LILLY, KAKKASSERY HOUSE, KANIAMPAL,
KUNNAMKULAM (REMOVED)

(RESPONDENTS 6,10, 11, 13, 14 AND 16 REMOVED FROM PARTY ARRAY OF THE APPEAL VIDE ORDER DATED 9.2.17 IN IA 2481/16)

17 C.T.BENZ, CHERUVATHOOR HOUSE,
PARANNUR, CHOONDAL VILLAGE, THALAPPILLY TALIK

18 K.A.DANIAL, KIDANGIL HOUSE, ANAIKIL DESOM,
CHOVANNUR VILLAGE, THALAPPILLY TALIK.

ADDL.R19 E.J.LONAPPAN, AGED 76 YEARS,
S/O.JIRMINA, NELLIKKUNNU DESOM,
NADATHARA VILLAGE, THRISSUR TALUK

(ADDL.R19 IMPLEADED AS PER THE ORDER IN IA 3612/05 DATED 5/12/05)

ADDL.R20 PARENT TEACHERS ASSOCIATION OF REHBOTH GIRLS
LOWER PRIMARY SCHOOL, REPRESENTED BY ITS
PRESIDENT SUNNY P.J.@ ZHAKKARIA, AGED 40 YEARS,
PLAGALANGATH HOUSE, C/O SHINE OFFSET PRINTERS,
ANCHERY P.O. (DESOM) OLLUR VILLAGE.

(ADDL.R20 IMPLEADED AS PER THE ORDER IS IA 3589/05 DATED 21/11/05

ADDL.R21 ANNAMMA PHILIP, AGED 28 YEARS,
D/O P.J.PHILIP, ADVOCATE, NOW RESIDING AT

REHOBOTH GIRLS ORPHANAGE, NELLIKKUNNU DESOM,
NADATHARA VILLAGE, THRISSUR TALUK, THRISSUR DIST.

(ADDL.R21 IMPLEADED AS PER THE ORDER IN IA 3613/05 DATED 28.11.05)

ADDL.R22 E.L.DINSEL LONAPPAN (50),
S/O.LONAPPAN, ELAYAHATTIL HOUSE,
NELLIKKUNN DESOM, NADATHARA VILLAGE,
THISSUR TALUK

(ADDL.R22 IS IMPLEADED AS PER ORDER DATED 20/7/11 IN IA 2138/11 IN AS 439/99)

ADDL.R23 LINS, AGED 44 YEARS,
S/O THE LATE V.C. BABU, VADAKKETHALAKKAL HOUSE,
PEOPLES VILLA, 2ND PIPELINE ROAD,
PUTHEN VETTUVAZHI,THRISSUER EAST, PIN 680001.

ADDL.R24 LOBIYANS, AGED 42 YEARS,
S/O THE LATE V.C. BABU, VADAKKETHALAKKAL HOUSE,
PEOPLES VILLA, 2ND PIPELINE ROAD,
PUTHEN VETTUVAZHI,THRISSUER EAST, PIN 680001.

(LEGAL HEIRS OF DECEASED R8 ARE IMPLEADED AS ADDITIONAL R23 AND R24,VIDE ORDER DATED 9/10/2023 IN IA NO.1/2018)

R23 & R24 BY ADVS.SHRI.K.I.MAYANKUTTY MATHER(SR.)
SMT.UTHARA ASOKAN
SRI.V.V.ASOKAN (SR.)
SMT.S.AMINA
R3 BY SRI. SRI.K.MOHANAKANNAN
R19 BY SRI.T.GOPALAKRISHNAN
R20 & R21 BY SRI.NISHIN GEORGE VIJAYABABU
R9 BY SHRI.P.PAULOCHAN ANTONY

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 27.03.2026, THE COURT ON 11.06.2026 DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

The appellants are plaintiffs 2,4,5,8,9 and respondents are defendants 1 to 14 and plaintiffs 1, 3, 6 and 7 in the suit O.S. No.10/1990 on the file of the District Court, Thrissur.

2. The plaintiffs claimed reliefs contemplated under Section 92 of the Code of Civil Procedure in respect of a constructive Trust created for public purposes of a charitable and religious nature. Defendants 1 to 14, who are dealing with the plaint schedule properties which belonged to the trust, are allegedly guilty of breach of the stipulations of the trust, and the framing of a scheme is necessary for the due and proper administration of the trust. Hence, the plaintiffs prayed that the trustees be removed and they be directed to account for the properties and income which have come into their hands.

3. Appellants are members of a religious denomination known as "Brethren Assembly”. It is contended that the plaint schedule properties were acquired by one Mr.Nagel, a Christian Missionary who had come to India as a missionary of Basal Mission, and that during the course of his missionary activities, he acquired the properties, obtained funds from Christians and others, not for his personal benefit, but for missionary work. It is further contended that though the properties were acquired in his name, the same were in fact acquired for and on behalf of a trust created by him and were impressed with the character of a trust from the very inception.

3.1. It is alleged that two items of the plaint schedule properties were obtained by Mr. Nagel by way of gift and that such acquisitions were for the benefit of the Brethren Assembly, the members of which constituted the beneficiaries of the trust, thereby giving the trust a public religious and charitable character.

3.2. Mr. Nagel left for Germany and never came back to India, and thereafter Mrs. Nagel, acting as the power of attorney holder of Mr. Nagel was handling the properties, and she created Ext.A1 document and transferred the plaint schedule properties to the 1st defendant/1st respondent, a non-profit organisation incorporated in England. The plaintiffs would contend that such a transfer under Ext.A1 is void and inoperative since the properties were trust properties and could not have been alienated as if they were the personal properties of Mr. Nagel.

3.3. The 1st respondent thereafter executed Ext.A8 Trust Transfer Deed, under which the properties were transferred to defendants 2/3 (respondents 2/3), which are only two addresses of one and the same entity, namely a society registered under the Indian Societies Registration Act under the name “Steward Association in India”. According to the plaintiffs/appellants, Ext.A8 also does not confer any valid title as the 1st respondent had no authority to deal with the trust properties.

3.4. The appellants further contend that the plaint schedule properties continued to be trust properties dedicated for religious and charitable purposes and that defendants 1 to 4, who are in management and control of the properties, are guilty of breach of the stipulations of the trust and are acting against the interests of the trust. It is contended that there is total mismanagement of the affairs of the trust and that the properties are not being properly administered for the purposes for which they were dedicated.

3.5. It is further contended that defendants 2 and 3 have entered into arrangements to alienate portions of the plaint schedule properties to strangers, including the 8th defendant, and that such acts are detrimental to the interests of the trust and amount to breach of trust.

3.6. Earlier, at the stage of grant of leave under Section 92 CPC, the trial court, by order dated 07.06.1984 in O.P. No.25 of 1982, had refused leave to institute the suit; however, this Court, by judgment dated 20.07.1990 in C.M.P. No.165 of 1984 in ***C.C. Baby and Ors. v. Steward Co. Limited and Others*** [MANU/KE/0391/1990], set aside the said order and granted leave and resultantly the suit was numbered as OS No. 10/1990, alleging mismanagement and breach of trust committed by the defendants, and praying for the Court to frame a scheme for the due and proper administration of the trust, remove the existing trustees and direct them to render accounts of the properties and income that have come into their hands, and grant such other reliefs as contemplated under Section 92 CPC.

4. The contesting respondents, on the other hand, denied the existence of any trust, express or constructive, over the plaint schedule properties. It is their specific contention that the plaint schedule properties were the self-acquisitions of Mr. Nagel, made in his personal capacity, and that he had never dedicated the same for any public religious or charitable purpose nor created any trust thereon.

4.1. Reliance was placed on Exts.A2 to A7 and B30, being the documents of acquisition, to contend that the properties stood registered exclusively in the personal name of Mr.Nagel, and that no instrument evidencing creation of a trust or dedication of the properties was brought into existence. It was further contended that Mrs. Nagel, acting as the power of attorney holder of Mr. Nagel, had validly transferred the plaint schedule properties to the 1st defendant under Ext.A1, and that the 1st defendant, being a non-profit organisation duly incorporated in England, was, under its Memorandum of Association, fully empowered to purchase, obtain, own, possess and dispose of properties. Upon such transfer under Ext.A1, it is contended, the plaint schedule properties became the exclusive and absolute properties of the 1st defendant, free from any trust obligations.

4.2. The 1st defendant thereafter validly transferred the properties to defendants 2/3, which are also duly registered entities similarly empowered under their foundational documents to acquire, hold and dispose of properties. The respondents further contended that defendants 1 to 4 had at all times acted solely in the interest of the 1st defendant company and the 2nd or 3rd defendant society respectively, and that they are answerable only to the shareholders or members of such organisations and not to the plaintiffs or the public at large. It was also urged that the judgment and decree passed by the court below dismissing the suit is legally correct and calls for no interference in appeal. The respondents additionally raised a preliminary objection as to the locus standi of the appellants to maintain the present appeal, contending that the plaintiffs do not possess the requisite interest in the alleged trust so as to entitle them to institute or pursue the suit under Section 92 of the Code of Civil Procedure.

5. The trial court framed the following issues:

Issue No.1: Whether the suit is maintainable?

Issue No.2: Whether the plaint schedule property belong to a religious and charitable trust as alleged?

Issue No.3: Whether D1 to D4 are trustees?

Issue No.4: Whether D1 to D4 are liable to be removed?

Issue No.5: Whether D1 to D4 are liable to account?

Issue No.6: Whether a scheme is liable to be settled for administration of trust and if so, what should be the scheme?

Issue No.7: Reliefs and cost.

Additional Issue No.8: Whether the suit is barred by adverse possession and limitation?

6. The supplemental 4th plaintiff was examined as PW1. Exhibits A1 to A14 were marked on the side of the plaintiffs. On the side of the contesting defendants, defendant No.14 examined himself as DW1 and Exhibits B1 to B30 were marked.

7. The trial court answered issue No.1 regarding maintainability in favour of the plaintiffs' and proceeded to consider issue No.2 relating to the existence of a public religious and charitable trust. The court found against the plaintiff on issue No.2 and, treating the remaining issues as consequential, did not render any independent findings on issue Nos.3 to 6 and 8 relating to trusteeship, removal of trustees, rendition of accounts and settlement of scheme.

8. The findings of the trial court on issue No.2 are that the case set up by the plaintiffs that the plaintiffs' schedule properties were impressed with the character of a trust is not borne out by the

evidence on record. The documents of acquisition, namely Exts. A2 to A7 and B30, clearly show that the properties were acquired by Mr. Nagel in his personal capacity, and no document evidencing the creation of a trust or dedication of the properties has been produced.

8.1. The court further found that though reliance was placed on Ext.A1 and Ext.A8 and though expressions such as "Trust Transfer Deed", "trustees" etc. are seen used in those documents, a reading of the recitals therein would show that what was effected was an absolute transfer of the properties. Under Ext.A1, Mrs.Nagel, as power of attorney holder of Mr.Nagel, transferred the properties to the 1st defendant, and the said transfer was not subject to any restriction or obligation so as to indicate that the properties were to be held in trust. Likewise, under Ext.A8, the 1st defendant transferred the properties to defendants 2/3, and the said document also does not create any trust, but only affects a transfer of ownership.

8.2. It was also found that Ext.B1, the Memorandum of

Association of the 1st defendant, and Ext.B2, the MOA of the 2nd/3rd defendant society, only show that those entities are entitled to acquire, hold and dispose of properties and to carry out their objects, and those documents do not show that the plaint schedule properties were dedicated to a trust or that the defendants are holding the properties as trustees.

8.3. The court further found that the conduct of Mr. Nagel was that of an absolute owner. He had acquired the properties in his own name, and there is no evidence to show that he had ever divested himself of his ownership or imposed any obligation on himself or on others in respect of the properties. The subsequent transfer by Mrs. Nagel under Ext.A1 was also treated as a transfer of absolute ownership and not as a transfer of trust properties.

8.4. The court also took note of the fact that the defendants, after obtaining the properties, had been dealing with the same as their own, including entering into arrangements for transfer of portions of the property to the 8th defendant, and such dealings are inconsistent with the existence of any trust.

8.5. On the contention that the properties were used for Gospel or missionary purposes, the court found that mere use of the properties for religious or charitable purposes is not sufficient to hold that the properties as trust properties, in the absence of clear and cogent evidence of dedication. The court held that such a use will not, by itself, convert private property into property belonging to a public, religious or charitable trust.

8.6. In the above circumstances, the court found that the plaintiffs have failed to establish that the plaintiffs' schedule properties belong to any express or implied trust created for public purposes of a charitable or religious nature and that no constructive trust can also be inferred from the facts proved in the case. It was therefore held that the essential requirements for maintaining a suit under Section 92 C.P.C. are not satisfied, and the suit O.S. No. 10/1990 was accordingly dismissed.

9. The learned Senior Counsel Sri. T.Krishnanunni, instructed by Sri. R. Ramadas argued on behalf of the appellants that, having regard to the pleadings and evidence on record, the

Trial Court ought to have decreed O.S. No.10/1990 and found that the plaint schedule properties belong to a public religious and charitable trust and that defendants 1 to 4 are trustees liable to be removed for mismanagement of the trust properties and for breach of the stipulations of the trust.

9.1. It is submitted by the appellants that the finding of the court below that the plaint schedule properties do not belong to a public trust of a religious and charitable nature is legally unsustainable and contrary to the principles governing Section 92 CPC. According to the appellants, the court below erred in ignoring the *prima facie* finding rendered earlier by this Court that there are materials to indicate that the plaint schedule properties belong to a public trust for religious and charitable purposes. It is further contended that the evidence on record clearly establishes that Mr.Nagel had dedicated the properties for public, religious and charitable purposes connected with the missionary and Gospel activities of the Brethren Assembly and that the court below erred in treating the properties as private properties merely because the acquisition stood in the personal name of Mr. Nagel. The findings entered by the trial court are based on surmises and conjectures and that the court below failed to apply the correct legal principles governing constructive trust and public, charitable and religious endowments.

10. In I.A. No. 3613 of 2005 in A.S. No. 439 of 1999, filed by Smt.Annamma Philip seeking impleadment, it was contended that she was a member of the "Rehoboth Brethren Assembly, Nellikunnu", presently known as "Zion Brethren Assembly, Nellikunnu", and also an inmate and beneficiary of the "Rehoboth Girls Orphanage". It was averred that, owing to financial difficulties faced by her family, she became an inmate of the orphanage on 16.05.1988 while studying in the 7th standard and that all her educational and personal needs were thereafter taken care of by the orphanage administered by Smt. P.N. Treasure, who was also stated to be the Manager of the Rehoboth Girls Lower Primary School.

10.1. Detailed assertions were also made regarding the charitable activities allegedly carried out by the institution, including care of orphaned children, economically weaker sections, old persons, educational assistance, professional training, marriage assistance and medical support. The applicant further contended that the institution was effectively functioning under the management of Smt. P.N. Treasure and that substantial prejudice would be caused to the inmates and beneficiaries if the interests of the institution were adversely affected.

11. In I.A. No.2586 of 2010 in A.S. No.439 of 1999, filed by the additional 19th respondent, namely E.J. Lonappan, who claimed to be the President of Rehoboth Brethren Assembly, Nellikunnu, it was specifically contended that Mr.Nagel had established institutions such as a home for destitute and orphans, an L.P. School, an auditorium, a burial ground, institutions for widows, and a prayer hall for believers, and that on leaving India, the management of the properties and institutions was entrusted to "Stewards Association in India", which supervised the activities of the various Brethren Assemblies.

11.1. It was further averred in the said affidavit that the

Rehoboth Brethren Assembly was established in the year 1903 and that a break-away faction started functioning under the name "Zion Brethren Assembly" only from the year 1980 onwards. Reliance was also placed on Annexure R15(a), namely the cover page and extract at page 250 of the directory published by the Stewards Association in India, and Annexure R15(b), namely page 253 of the same directory, to contend that the Rehoboth Brethren Assembly had been functioning from 1903 onwards and that the Zion Brethren Assembly came into existence only subsequently as a separate faction.

11.2. The deponent had also referred to Annexure R15(c), being a copy of the compromise dated 22.06.1971 entered into between the factions, Annexure R15(d), photograph of the prayer hall captioned as "Rehoboth Brethren Hall, Nellikunnu", and Annexure R15(e), photograph showing both the prayer hall and the L.P. School situated in the same compound having an extent of 49 acres, in support of the contention that the properties were being continuously used for religious and charitable purposes connected with the Brethren Assembly.

11.3. It was further contended therein that O.S. No.10 of 1990 had been instituted for framing a scheme in respect of the trust allegedly established by Mr.Nagel and that the rights relating to the administration of the trust were pending consideration in A.S. No.439 of 1999 before this Court. No objection has been filed by the respondents to the above applications.

12. On behalf of the respondents, the learned Senior Counsel Sri. V.V. Asokan, instructed by Smt. Uthara Asokan, and the learned counsel Smt. M.A. Zohra, argued that the court below had correctly appreciated the evidence on record and rightly concluded that the plaint schedule properties were the personal acquisitions of Mr.Nagel, held and dealt with by him as absolute owner throughout his lifetime. It was submitted that the expressions such as "Trust Transfer Deed" and "trustees" appearing in Exts.A1 and A8 are merely descriptive and do not, either individually or collectively, have the effect of creating any trust obligation over the properties.

13. Learned counsel further urged that the institutional and charitable activities, if any, carried on within the properties were purely voluntary in nature and cannot, in law, be construed as amounting to a dedication for public purposes. It was also contended that the appellants had failed to produce any cogent or credible evidence to rebut the presumption of personal ownership arising from the title deeds.

13.1. It was further submitted that the successive transfers effected under Ext.A1 and Ext.A8 were valid, legal and binding transfers of absolute ownership, made by parties fully competent to convey title, and that each transferee had acquired a clear and indefeasible title to the properties free from any encumbrance or trust obligation.

14. Insofar as the transfer of portions of the plaint schedule properties in favour of the 8th defendant is concerned, it was contended by Sri. V.V. Asokan, learned Senior Counsel, that the 8th defendant was a bona fide purchaser for value without notice of any alleged trust, and that the said transfer was effected by

defendants 2/3 in the lawful exercise of their right as absolute owners of the properties. It was urged that no injunction or restraint operating against such transfer was in existence at the relevant point of time and that the 8th defendant cannot be visited with any adverse consequence on account of allegations of breach of trust made against the earlier transferors. The long-standing dealings of defendants 1 to 4 with the properties as absolute owners, including the transfers made thereunder, were therefore argued to be wholly consistent with private ownership and entirely inconsistent with the existence of any public trust. The impugned judgment, it was therefore argued, is well-reasoned, legally sustainable and calls for no interference.

15. The point for determination in the present appeal is whether the plaint schedule properties are properties impressed with the character of a public religious and charitable trust so as to grant the relief enumerated under Section 92 of the CPC and, consequently, whether the dismissal of O.S. No.10/1990 by the court below is legally sustainable.

16. In order to appreciate the contentions raised on both sides it is necessary to refer to Section 92 of CPC, which reads as given below:

> *"92. Public charities – (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [2] [leave of the Court], may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree -*
>
> *(a) removing any trustee;*
>
> *(b) appointing a new trustee;*
>
> *(c) vesting any property in a trustee;*
>
> *[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property];*

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

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

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be

applied cy pres in one or more of the following circumstances, namely :

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

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

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

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

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

(d) where the original purposes, in whole or in part, were laid down by reference to an area

which then was, but has since ceased to be, a unit for such purposes; or

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

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

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

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

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

17. A suit under Section 92 CPC is one of a special nature and necessarily presupposes the existence of a public trust of a religious or charitable character. A suit under Section 92 CPC shall be filed only after obtaining the leave of the Court because the court has to consider the interests of the trust and to ensure that the trustees of public charities are not put to unnecessary harassment

by filing vexatious suits by parties who have ulterior motives, that is in the nature of a protection to the trustees. What is to see in this section is whether petitioners were able to establish a *prima facie* case and fulfill the conditions stipulated in Section 92(1) CPC. The order granting leave is administrative in nature and that reasons need not be given in the order granting leave. The existence of such a trust, whether express or constructive, is therefore the foundational requirement for the maintainability of the suit. At the same time, it is now well settled that an express deed of dedication or formal declaration of trust is not a *sine qua non* for invoking Section 92 CPC and that a public trust may be inferred from the surrounding circumstances, conduct of parties, long course of user and other circumstances.

18. The legal principles governing determination of a public trust have been consistently reiterated in the precedents. In ***Babu Bhagwan Din and Ors. v. Gir Har Saroop and Ors.*** [AIR 1940 PC 7 = MANU/PR/0045/1939] the Privy Council was concerned with a question whether a public trust of a religious character existed in

the facts and circumstances of the case. The decision also considered when a private temple may become dedicated to the public by subsequent dealings. While negativing the contention that the private temple constituted a public trust, emphasis was particularly laid on two aspects i.e., - First, the land in question granted by the then Nawab of Oudh in 1781 was not a grant to the idol or an endowment of a temple or a gift made by way of trust for a public religious purpose. Instead, it was a grant to a private individual and to his heirs in perpetuity. Therefore, the historical setting and the circumstances of the grant was given importance to. Secondly, while acknowledging that a private temple may become dedicated to the public and morph into a public trust of a religious nature over the course of years, it was held that such dedication has to be proved and the mere fact that the public were never turned away and that offerings from them were accepted would not by itself be sufficient proof of dedication, especially in the absence of an inference that the public user exercised any ‘right pertaining to the temple or had acquired any interest. Another pertinent factual aspect was also that the various forms of profit, whether by offerings or rents received by letting out portions of the lands in their own names, were divided amongst the family.

19. In ***Gurunatharudhaswami Guru Shidharudhaswami v. Bhimappa Gangadharappa Divate and Ors.*** [AIR 1948 PC 214 = MANU/PR/0033/1948] the Privy Council held that the properties therein constitute properties of a public religious and charitable trust since the offerings and gifts received were consistently applied towards the purposes of the Math and because the public at large had liberty to worship and participate in the institutions connected therewith. The Court treated the subsequent acquisitions and gifts as accretions to the original religious and charitable foundation.

20. In ***The Bihar State Board Religious Trust, Patna v. Biseshwar Das*** [(1971) 1 SCC 574 = MANU/SC/0727/1971] the Hon'ble Supreme Court held that a charitable trust may either be created by an express grant or may subsequently arise where the grantee dedicates the property for charitable purposes. The Court further

held that the nature of the grant, surrounding circumstances, usage and custom of the institution, and the manner in which the properties were dealt with are all relevant factors for determining whether the properties are impressed with the character of a public trust. It was also held that the burden to establish the existence of a public trust lies on the party asserting it.

21. In ***Kuldip Chand and Ors v. Advocate-General to Government of Himachal Pradesh and Ors*** [(2003) 5 SCC 46 = MANU/SC/0128/2003], the Hon'ble Supreme Court reiterated that the history of the institution, conduct of the parties and use of the properties are relevant circumstances for determining whether a public trust exists. The Court held that dedication for public purposes necessarily involves relinquishment of ownership and vesting of the property for religious or charitable purposes and in circumstances where the dedication is not made via formal or express endowment, its character may have to be determined on the basis of the history of the institution along with the conduct of the founder and his heirs.

22. In ***Dhaneshwarbuwa Guru Purshottambuwa, Owner of Shri Vithal Rukhamai Sansthan v. Charity Commissioner, State of Bombay*** [(1976) 2 SCC 417], the Hon'ble Supreme Court held that the character of a public trust is to be determined from factors such as the origin of the institution, the manner of management, the nature and extent of public gifts and contributions, the rights exercised by the public in relation to worship and user, the manner in which the institution has been held out to the public, and the treatment of the institution by those in management. It was further held that it is not always possible to find all the indicia of a public trust in every case and that even the presence of some of the recognised tests may, in an appropriate case, be sufficient to enable the Court to conclude that the institution is a public trust.

23. Recently, in ***Operation Asha v. Shelly Batra and Ors.*** [(2026) 1 SCC 569 = MANU/SC/1020/2025], the Hon'ble Supreme Court, after considering several earlier decisions dealing with the scope of Section 92 CPC and the determination of public trusts, held that the foremost question to be examined is whether the

institution or organisation in relation to which reliefs are sought can be regarded as an express trust or a constructive trust created for public purposes of a charitable or religious nature. The Court explained that a constructive trust may arise by operation of law where the holder of the property cannot conscientiously retain the same for his own benefit and where the circumstances disclose fiduciary obligations in relation to the property. It was further held that, in the absence of a formal deed of dedication or declaration of trust, the existence of a public trust is not ruled out and may be inferred from circumstances surrounding the coming into existence of and functioning of the institution/entity in question. The Court accordingly identified the following non-exhaustive list of tests as relevant for determining whether a public trust exists:

(i) the method of devolution of the property to the institution or its acquisition and the circumstances and intention behind the grant of property i.e. whether it was for the benefit of the organisation/public beneficiaries or for the personal benefit of any particular individual/family;

(ii) whether the grant is accompanied with any fetter/obligation or qualified with a condition, either express or implied, regarding its use by the grantee;

(iii) whether the dedication was complete, i.e. whether there was an absolute cessation or complete relinquishment of ownership of the property on the part of the grantor and a subsequent vesting of the property in another individual (trustee) for the said object;

(iv) whether the public user or an unascertained class of individuals could exercise any right over the organisation and its properties;

(v) the manner of use of the profits accrued, more particularly, whether it is applied/re-applied towards the benefit of the organisation and its objective etc.;

24. From the above exposition of law evolved through precedents, it is clear that even if there is no trust created expressly through declaration or deed, inference of one can be made through

a set of tests.

25. On the basis of the above principles, when Ext.A1 gift deed executed by Mrs. Nagel is analysed, it is demonstrated that the plaint schedule properties were transferred to the 1st defendant for the purpose of utilising the income therefrom for "Gospel work" and the donee was permitted to possess and enjoy the properties. The records further disclose that the 1st defendant had executed power of attorney in favour of one Donald and thereafter transferred the properties to the 2nd defendant in the year 1973. The document was executed by the power of attorney holder of 1st defendant company and the document is styled as a transfer of trust deed. First defendant who is an international association has purported to take their rights over the properties in favour of the second defendant who is a domestic association. The transfer has been made in favour of 2nd defendant on behalf of the Christian Association by name Brethren and the transfer was necessitated for the sake of convenience in managing the properties. The transfer was directed to possess these properties in trust for Stewards'

Association in India.

26. The specific case pleaded by the appellants is that Mr.Nagel had acquired and held the properties on behalf of the Brethren Assembly and not for his personal benefit. Ext.B1 Memorandum of Association of the 1st defendant shows that the objects of the institution include advancement of religion, propagation of the Gospel, charitable activities and education in the Holy Scriptures and that the company was empowered to acquire, hold and dispose of properties for the fulfillment of such objects. The pleadings and materials on record further indicate that the properties had been utilised for prayer halls, orphanages, schools, burial grounds and other charitable and religious activities connected with the Brethren Assembly. The records further show that Ext.A8 executed subsequently is styled as a "Trust Transfer Deed" and that the properties continued to remain with institutions connected with Gospel and missionary activities.

27. Even if it is conceded that there is no express declaration of trust or formal deed of dedication creating a public

trust, it is well settled that the absence of an express trust is not decisive. A trust can be said to be created for a public purpose when the beneficiaries constitute either the general public or an unascertained and fluctuating section thereof, as distinguished from a determinate body of specified individuals. In the present case, the materials on record prima facie indicate that the beneficiaries of the religious and charitable activities carried on in the plaint schedule properties comprise an identifiable section of the public connected with the Brethren Assembly and the institutions functioning therein. The question, therefore, is whether the surrounding circumstances and conduct of the parties satisfy the recognised tests for inferring the existence of a constructive public religious and charitable trust. The facts of the present case shall now be examined in the light of those principles.

28. Applying the first and second principles, namely, the method of acquisition and devolution of the property, the intention behind the grant and the existence of any express or implied obligation regulating its use, the materials on record strongly

indicate that the properties were intended to serve religious and charitable purposes rather than private ownership. The historical setting in which the properties came to be acquired assumes considerable significance. The consistent case of the appellants is that Mr.Nagel came to India as a Christian missionary and acquired the properties during the course of his missionary and Gospel activities connected with the Brethren Assembly. Though the title deeds stood in his personal name, the surrounding circumstances indicate that the properties were associated with missionary work and religious activities from the inception. The most significant document is Ext.A1. Under Ext.A1, Mrs. Nagel, acting as the power-of-attorney holder of Mr. Nagel, transferred the plaint schedule properties to the 1st defendant. The document does not merely transfer the properties; it expressly records that the transfer is for the purpose of carrying on "Gospel work". The recital assumes importance because it identifies the very object and purpose of the transfer. The purpose is neither private enjoyment nor commercial exploitation, but the advancement of religious activities. The grant is therefore accompanied by a clear indication regarding the manner in which the properties are to be utilised. Such a stipulation is wholly inconsistent with a transfer intended solely for the benefit of a particular individual.

29. The significance of Ext.A8 also cannot be overlooked. The subsequent transfer is styled as a “Trust Transfer Deed”. Though nomenclature alone may not be conclusive, it nevertheless constitutes an important surrounding circumstance. The recitals indicate that the transfer was effected between institutions associated with the Brethren movement and was intended to facilitate continued administration of the properties in furtherance of the same religious objectives. Viewed in the light of the historical background, the purpose recitals contained in Ext.A1 and the nature of the transaction evidenced by Ext.A8 probabilise that the properties were being held and transferred for religious and charitable purposes and not as ordinary private assets.

30. The third principle requires the Court to examine whether there was a complete relinquishment of ownership by the

transferor and a corresponding vesting of the property in another person or institution for carrying out the object of the dedication. In the present case, Ext.A1 evidences a complete transfer of the properties by Mrs. Nagel in favour of the 1st defendant. Though the transfer takes the form of a gift, it is not an unconditional transfer bereft of purpose. The document specifically records that the transfer is intended for Gospel work. The significance of this recital lies in the fact that the transferor did not merely part with the property, but simultaneously indicated the purpose for which the property was to be utilised. The subsequent transaction evidenced by Ext.A8 strengthens this inference. Ext.A8 is expressly described as a "Trust Transfer Deed". The transferor and transferee are both described as trustees associated with institutions belonging to the Brethren movement. The document does not suggest a transfer to an outsider or a commercial purchaser, but a transfer within organisations engaged in the same religious activities. The description of the parties as trustees and the document itself as a trust transfer deed cannot be completely disregarded while examining whether the circumstances disclose a trust relationship.

31. A careful reading of Ext.B1 Memorandum of Association and the foundational documents of the institutions further shows that the objects of the organisations include propagation of the Gospel, advancement of religion, charitable activities and religious instruction. The power to acquire and hold property is conferred only as an incident of achieving those objectives. The institutional character of the transferees therefore supports the inference that the properties were vested in them not for private ownership, but for carrying out the religious and charitable purposes for which they were transferred. The cumulative effect of these circumstances is clearly indicative of a relinquishment of beneficial ownership and a vesting of the properties in institutions charged with carrying out religious and charitable objects.

32. The fourth principle concerns the nature of the beneficiaries and whether the properties have been used by the public or by an unascertained section of the public. On this aspect,

the evidence on record is significant. The plaintiffs have consistently relied upon the fact that the plaint schedule properties have been utilised for prayer halls, schools, orphanages, homes for widows, burial grounds and other religious and charitable institutions associated with the Brethren Assembly. These institutions have been functioning for several decades and have catered to a large body of persons who are incapable of precise identification.

33. The materials on record further disclose that the prayer halls situated within the properties have been continuously used by members of the Brethren Assembly for worship and religious gatherings. Likewise, the burial grounds situated within the properties have been used for burials connected with the religious denomination. Orphanages, schools and charitable institutions functioning within the properties have catered to beneficiaries extending beyond any closed group of individuals. The beneficiaries are therefore not the members of a single family nor a determinate body of specifically identified persons. They constitute

a fluctuating and unascertained body of persons connected with the religious and charitable activities of the Assembly. Such long-standing public participation and user constitute a strong circumstance pointing towards the public character of the trust.

34. The fifth principle relates to the manner in which the properties and the income generated therefrom have been applied. The relevant inquiry is whether the profits and benefits derived from the properties were appropriated for personal gain or were consistently utilised for achieving the religious and charitable objectives associated with the institution. The evidence on record does not indicate that either Mr. Nagel or Mrs. Nagel appropriated the properties or their income for personal enrichment. The very recital contained in Ext.A1 requiring the properties to be utilised for Gospel work indicates the intended destination of the income and benefits arising from the properties.

35. The evidence regarding the continued functioning of educational, religious and charitable institutions within the properties further probabilises that the benefits arising from the

properties were being re-applied towards the advancement of the same objectives. The long-standing continuation of such activities is inconsistent with the notion that the properties were treated as purely private assets. Rather, it supports the inference that the properties and their income were being utilised for the benefit of the religious and charitable institutions associated with the Brethren Assembly and the beneficiaries thereof.

36. Having regard to the cumulative effect of the pleadings, documentary materials, historical circumstances, public user, nature of beneficiaries and long-standing charitable and religious activities conducted in the properties, I am of the firm view that the plaintiffs have succeeded in establishing sufficient materials from which the existence of a constructive public religious and charitable trust can reasonably be inferred. The court below failed to apply the correct legal principles governing constructive public trusts and ignored material circumstances relevant for adjudication of a case of this kind.

37. Consequently, the finding of the court below that the

plaint schedule properties are not impressed with the character of a public religious and charitable trust cannot be sustained. The impugned judgment, therefore, warrants interference.

Accordingly, the appeal is allowed:

(i) The judgment and decree passed in O.S. No.10/1990 on the file of the District Court, Thrissur, will stand set aside, and it is declared that the plaint schedule properties are properties impressed with the character of a constructive public religious and charitable trust.

(ii) The trial court, having answered only Issue Nos.1 and 2, omitted to adjudicate Issue Nos.3 to 6 and 8. The matter is therefore remanded to the trial court for consideration and determination of Issue Nos.3 to 6 and 8 and for disposal of the suit afresh in the light of the findings contained in this judgment and in accordance with law.

(iii) Since the suit is of the year 1990, the trial court will endeavour to finally dispose of the suit within six months from the date of first appearance of the parties. The parties are directed to appear before the court concerned on 02.07.2026.

The Appeal is allowed as above.

Sd/-

MOHAMMED NIAS C.P.

JUDGE

DMR/-

Judgment reserved	27/03/26
Date of Judgment	11/06/26
Judgment dictated	20/05/26
Draft judgment placed	22/05/26
Final judgment uploaded	11/06/26

APPENDIX

RESPONDENTS' ANNEXURES:

ANNEXURE R15(a): A TRUE PHOTOCOPY OF THE EXTRACTS FROM THE DIRECTORY PUBLISHED BY THE AFORESAID STEWARDS ASSOCIATION IN INDIA OCCURRING AT PAGE 250 ALONG WITH THE COVER PAGE FOR IDENTIFICATION.

ANNEXURE R15(b): A TRUE PHOTOCOPY OF THE EXTRACTS FROM THE DIRECTORY PUBLISHED BY THE AFORESAID STEWARDS ASSOCIATION IN INDIA OCCURRING AT PAGE 253 ALONG WITH THE COVER PAGE FOR IDENTIFICATION.

ANNEXURE R15(c): A TRUE PHOTOCOPY OF A COMPROMISE ENTERED INTO BETWEEN THE PARTIES DATED 22.06.1971.

ANNEXURE R15(d): A TRUE PHOTOGRAPH OF A PRAYER HALL CAPTIONED AS REHOBATH BROTHEREN HALL NELLIKUNNU.

ANNEXURE R15(e): A TRUE PHOTOGRAPH SHOWING BOTH THE BUILDING OF PRAYER HALL AND THE L.P.SCHOOL.

EXHIBIT R19(a) : TRUE COPY OF THE LETTER DATED 4.10.2005 BY THE PETITIOER TO THE STEWARDS ASSOCIATION.

EXHIBIT R19(b) : TRUE COPY OF THE LETTER DATED 10.10.2005 BY THE PETITIONER TO THE STEWARDS ASSOCIATION.

EXHIBIT R19(c) : TRUE COPY OF THE JUDGMENT DATED 28.10.2005 IN WP(C)No.30251/2005 OF THIS HON'BLE

COURT.

ANNEXURE 1 : COPY OF THE WP(C) 30251/05 FILED BEFORE THE HON'BLE HIGH COURT OF KERALA.

ANNEXURE 2 : INTERIM ORDER IN WP(C) 30251/05 DATED 28th OCTOBER 2005.

ANNEXURE 3 : PETITION PREFERRED BEFORE THE SUB INSPECTOR OF POLICE OLLUR BY THE RGLPS SHADABTHI JUBILEE AKHOSHA COMMITTEE.

ANNEXURE 4 : COPY OF THE RECEIPT CONFIRMING THE RECEPTION OF THE ANNEXURE 3 PETITION ISSUED FROM THE OLLUR POLICE STATION.

ANNEXURE 5 : PHOTOGRAPH SHOWING THE PLANTS UPROOTED IN THE SCHOOL PREMISES.

ANNEUXRE 6 : PHOTOGRAPH SHOWING THE REMOVED DECORATION FLAGS REMOVED BY THE ADDITIONAL 15th RESPONDENT.