

IN THE COURT OF THE MUNSIFF, KOYILANDY
Present:- Miss. Raveena Naz, Munsiff, Koyilandy
Tuesday the 24th day of February, 2026
I.A. No. 03/2026 in O.S. No. 28/2026

Between:

K.K Veera Varma Raja, Aged 81 years,
 S/o. Narayana Namboothiri, Fit person of Hereditary
 Trustee of Sri. K.K.C Kerala Varma Raja, Hereditary
 Trustee of Sri. Balussery Kotta Chala Devaswom,
 Panangadu, Panangadu Village, Balussery, Koyilandy
 Taluk, Kozhikode, Residing at Rajasree, Kinalur PO,
 Balussery, Kozhikode. } **Petitioner**

And :

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| <ol style="list-style-type: none"> 1 Malabar Devaswom Board, Housefed Complex,
Eranjipalam, Kozhikode District, 673003, Represented
by its Secretary. 2 The Commissioner, Malabar Devaswom Board,
Housefed Complex, Eranjipalam, Kozhikode District,
673003. 3 The Assistant Commissioner, Malabar Devaswom
Board, Office of the Assistant Commissioner, Civil
Station, Kozhikode- 673020 4 Kozhikode Division Area Committee Represented by
Chairman, Malabar Devaswom Board, Housefed
Complex, East Nadakkavu, Eranjipalam, Kozhikode
District, 673003, Represented by its Chairman. | } | Respondents |
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This Petition coming on this day for hearing before me in the presence of Sri. U.S. Ganesh Kumar, Smt. Harishma Hari. S and Sri. Amal Krishnan. P, Advocates for Petitioner and Sri. Thomas P. M, Advocate for Respondents and the Court passed the following:

ORDER

1. The Application is filed under Order 39 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

2. The averments in the Application in brief are as follows: The Applicant herein is the Plaintiff in the suit. The Applicant is the fit person of the present hereditary trustee of Sree Balussery Kotta Devaswom, an ancient and well-known temple. The Applicant herein have been approved, accepted and announced as hereditary trustee by the proceedings of the Malabar Devaswom Board vide Order No. A4-681/2025MBD dated 29.08.2025. The selection, approval and appointment of the non-hereditary trustee shall be in consultation with the hereditary trustee. The Applicant herein, since his appointment as the fit person of the hereditary trustee, has been carrying out the duties and responsibilities of the hereditary trustee. Non-hereditary trustees are appointed for a period of 2 years. Neither the Applicant nor the hereditary trustee was communicated with the circular of the meetings or statement of accounts. There has been gross allegations and mismanagement and loss of gold ornaments of the deity and Balussery Police has already registered a crime. The present non-hereditary trustees are released from their liabilities and the 3rd Respondent circulated a communication calling for the formulation of non-hereditary trustee for Balussery Kotta Chala Devaswom. Though the notices are to be exhibited in the notice board of the Village Office Panangad, Panchayat Office, Panangad and temple notice board, no such notice was published on the respective notice boards for canvassing the attention of the general public who are interested in the welfare of the temple management and its smooth

functioning. Two notices which are to be published in the public notice board was seen abandoned. Even though specific bar is imposed by the Hon'ble High Court of Kerala from appointing politicians as non-hereditary trustee, the intention behind the communication dated 20.12.2025 is to set free the present non-hereditary trustees and put some other politicians in the board of non-hereditary trustees. The information obtained under the Right to Information Act from the Public Information Officer of the Malabar Devaswom Board shows that there were defects and loss of gold and silver ornaments on inspection. Further, the audit report submitted by the Local Fund Audit of Kerala under Kerala Local Fund Audit Act, 1994 and the Kerala Local Fund Audit Rules also conclude that there were serious flaws and maladministration in the management of the temple by the non-hereditary trustee from time to time for the reason that the non-hereditary trustees are selected and appointed among the politicians attached to the ruling political parties in contradiction of the directions issued by the Division Bench of the Hon'ble High Court of Kerala in *Muraleedharan v. Malabar Devaswom Board* as well as *Balan and Another v. Malabar Devaswom Board and Others*. Hence the Applicant seeks for an ad-interim order of injunction restraining the Respondents from proceeding any further with the notification dated 20.12.2025 which has been published without the consent and knowledge of the hereditary trustee and from appointing the non-hereditary trustee for the

management and administration of the temple without fixing the liability of the present non-hereditary trustee.

3. Notice was served on the Respondents. The Respondents filed Objection contending as follows: The Respondents deny the averments in the Application. The Court has no jurisdiction with respect to the subject matter of the suit as Sree Balussery Kotta Chala Devaswom is an institution within the preview of the HR & CE Act, 1951. Notification was made by the 3rd Respondent for and behalf of the Area Committee, since the temple is under the supervisory control of Area Committee, Malabar Devaswom Board, Kozhikode, an authority under Section 12 of the Act. Since the provision for revision is provided under Section 18 of the Act, against the notification under challenge, the suit was filed without exhausting the remedy available under the Act and the suit is barred under Section 93 of the Act. The notification which is under challenge herein was issued on the expected expiry of the term of non-hereditary trustees on 03.01.2026. In the matter of continued appointment of non-hereditary trustees, the Hon'ble High Court as per judgment in WP(C) No. 17285/2015 dated 20.10.2017 held that notice under Section 39(2) to the hereditary trustee is unnecessary, since the notification was made to the existing vacancy on the expectation of the occurrence on 03.01.2026. Since there is an Executive Officer in the temple, any liability in the course of administration occurred on the implementation of the decisions

in which the Executive Officer shall be liable which are decided by the Auditors. If there was an allegation or evidence against the Applicant for the appointment of non-hereditary trustees the 3rd Defendant is liable to publish the name of the Applicants which can be brought before the Assistant Commissioner and the Area Committee is liable to enquire on such allegations. The Applicant is aged 81 and is appointed for a term of one year from 29.08.2025 to 28.08.2026. If the term of appointment could not be renewed on any grounds whatsoever, there will be no trustee in the temple, if non-hereditary trustees were not appointed. So, the appointment of the non-hereditary trustee is indispensable to protect the temple interest. The Application is to be dismissed with costs to the Respondents.

4. The following points arose for consideration:
 1. Could the Applicant establish a *prima facie* case?
 2. Could the Applicant prove that irreparable injury and hardship will be caused to him, if ad-interim injunction is not granted and the balance of convenience is in his favour?
 3. Is the Applicant entitled to an order of interim prohibitory injunction as prayed for?
 4. What shall be the order as to costs?
5. For the purpose of inquiry, the documents produced from the side of the Applicant along with the plaint are marked as Exts. A1 to A4. No oral evidence

adduced from the side of Applicant. No documents produced from the side of the Respondents.

6. Heard the learned counsel for the Applicant and Respondents.

7. **Point Nos. 1 to 3**

The Applicant herein is the fit person of the hereditary trustee of Sree Balussery Kotta Chala Devaswom as per Ext. A1. It is also admitted by the Respondents that the Applicant was appointed as the fit person of hereditary trustee of Sree Balussery Kotta Chala Devaswom as per Ext. A1. The Applicant contends, as evident from Ext. A2 that there has been gross mismanagement and loss of gold and silver from Sree Balussery Kotta Chala Devaswom has been reported and a crime has also been registered against Sri. K. K. Vinodan, former Executive Officer. Ext. A2 substantiate the contention of the Applicant. Further, the Respondents in the Objection had also admitted the same. But the contention of the Respondents is that the liability is upon the executive officer and both the non-hereditary and hereditary trustees have equal responsibilities. The major contention put forward by the Respondents is that the suit is not maintainable as the jurisdiction of this Court is barred under the Madras Hindu Religious and Charitable Endowments Act, 1951. But as per the decision of the Hon'ble High Court of Kerala in **Payyannur Coop. Educational Society v. Narayanan 2000 KHC 609** it was held, "*Under S.9 of the Code of Civil Procedure, all suits of a civil nature are maintainable in a civil court, unless it is barred*

expressly or impliedly. If the rights are created under the general law, the remedy lies in the civil court for the enforcement of the same. Certain rights are created by statutes. With regard to those rights, it has been held that a suit for enforcement of that right in a civil court is maintainable unless the statutes itself provides a remedy. If the statutes create rights and also provide the remedy, then the person will have to exhaust the remedy under the Act. In such cases, whether the suit will lie or not will depend upon how far the statute was complied with. In Wolverhampton New Waterworks Co. v. Hawkesford, 1859 (6) CB NS 336, it was held thus: "There are three classes of cases in which a liberty may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words existed which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The present case falls within this latter class, if any liability at all exists. The remedy provided by the statute must be followed,

and it is not competent to the party to pursue the course applicable to cases of the second class". In Secretary of State v. Mask & Co., AIR 1940 PC 105, it was held as follows: "It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressly or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal, has not acted in conformity with the fundamental principle of judicial procedure". It is also now clear from the decision of the Supreme Court that even if there is bar under the statute, the civil court can go into the controversy when the provisions of the statute have not been complied with by the authorities".

8. The contention of the Applicant herein is that the provision under Section 39 and Section 41 of the Madras Hindu Religious and Charitable Endowment Act has not been complied in appointing a non-hereditary trustee. Section 39(2) of the Act reads, "(2) *Where, in the case of any such institution having a hereditary trustee or trustees; the Commissioner after notice to such trustee or trustees, and after such enquiry as he deems adequate, considers for reasons to be recorded, that the affairs of the institution are not, and are not likely to be, properly managed by the hereditary trustee or trustees, the Commissioner may, by order appoint such number of non-hereditary trustees as he thinks necessary, so however that the total number of trustees does not*

exceed five. Therefore, the contention of the Respondents is that the suit is not maintainable is not tenable." But strict procedure has been elaborated under the Act for appointment of non-hereditary trustee. It is specifically stated in Section 39(2) of the Act that in any institution where there is a hereditary trustee or trustees the Commissioner shall issue notice to the trustee or the trustees, should conduct an inquiry, record reasons that the affairs of the institution are not likely to be properly managed by the trustee or trustees. Further, as per the decision of the Hon'ble High Court of Kerala in **Balan and Another v Malabar Devasom Board 2025 KER:49979**, it was held, "*The decision taken by the Area Committee shall be communicated to the hereditary trustee, before issuing any fresh notification. We also make it clear that in case a fresh notification is issued after complying with the mandate of sub-section (5) of Section 39 of the Act, read with sub-section (1) of Section 41, the entire process of appointment shall be strictly in terms of the law laid down by the Division Bench of this Court in **Muraleedharan M. v. Malabar Devaswom Board and others [2024 (6) KHC SN 20]**, subject to the interim order dated 20.01.2025 of the Apex Court in SLP(C) No. 4484 of 2025*". Further in **Sankaran P. V. Malabar Devaswom Board and others, 2025 KHC Online 89** it was held that neither the Commissioner nor the Area Committee can issue an order filling up the vacancies of non-hereditary trustees appointing under Sec.39(2) in a religious institution having hereditary trustee or trustees as a routine order in continuation of an earlier order

appointing non-hereditary trustees in that religious institution. The said decision has also been referred to in **Balan and Others v. Malabar Devaswom Board and Others 2025: KER: 49979** where it was held,

“Having considered the submissions made by the learned Senior Counsel for Malabar Devaswom Board on the above aspect, we deem it appropriate to issue the following directions in the matter of appointment of non hereditary trustees in Devaswoms / Temples, which are controlled institutions under the Malabar Devaswom Board in order to ensure a fair and transparent mechanism for such appointment, taking into consideration the requirements of the provisions contained in the Madras Hindu Religious and Charitable Endowments Act, till rules are made for that purpose under the said Act.

(i) The notifications issued for the appointment as non hereditary trustees in Devaswoms / Temples, which are controlled institutions under the Malabar Devaswom Board, shall be published in a local daily having wide circulation. The notification shall also be published in the notice board of the Devaswom/Temple, at a prominent place, for the information of the devotees, and also in the notice board of the concerned Local Self - Government Institution and the Village Office.

(ii) Once applications are received, the details of the applicants shall be exhibited on the notice board of the Devaswom/Temple, at a prominent place, so as to enable the devotees to point out the disqualifications, if

any, of any of the applicants, by submitting written objections before the 2nd respondent Commissioner or the concerned Area Committee, as the case may be, furnishing therewith their name, address and mobile number. Those objections shall also be dealt with appropriately by the 2nd respondent Commissioner or the concerned Area Committee, as the case may be, after obtaining individual reports on those complaints from the concerned Divisional Inspector.

(iii) In the case of Devaswoms/Temples in which appointment of non-hereditary trustees is made by the concerned Area Committee, the evaluation of the applicants with reference to the report of the concerned Divisional Inspector shall be made by a Committee consisting of a member of the Area Committee to be nominated by its Chairman, the concerned Assistant Commissioner and the hereditary trustee of the Devaswom / Temple. In the absence of a hereditary trustee, the Tantri or Melsanthi of the Devaswom / Temple shall be a member of that Committee. The said Committee shall have a comparative assessment of the applicants with specific reference to the eligibilities and disqualifications provided in the guidelines dated 18/05/2004 issued by the Commissioner of the erstwhile Hindu Religious and Charitable Endowments (Administration) Department and the said assessment shall be the basis for the appointment of non-hereditary trustees by the concerned Area Committee.

(iv) In the case of Devaswoms/Temples in which appointment of non hereditary concerned Divisional Inspector shall be made by a Committee consisting of a Board, the evaluation of the applicants with reference to the report of the trustees is made by the 2nd respondent Commissioner. Malabar Devaswom the concerned Assistant Commissioner and the hereditary trustee of the member of the concerned Area Committee to be nominated by the Commissioner Melsanthi of the Devaswom / Temple shall be a member of that Committee. The Devaswom / Temple. In the absence of a hereditary trustee, the Tantri or specific reference to the eligibilities and disqualifications provided in the said Committee shall have a comparative assessment of the applicants with guidelines dated 18/05/2004 issued by the Commissioner of the erstwhile Hindu (Administration) assessment shall be the basis for the appointment of non-hereditary trustees by the Commissioner, Malabar Devaswom Board.

9. In the case at hand, there is no dispute that the Applicant herein is the fit person appointed under Ext. A1. The Respondents had not submitted by what means they had appointed a non-hereditary trustee without complying with the requirements as stipulated in the decisions referred above and the provisions of the Act. Therefore, the Applicant has established a *prima facie* case and being the fit person of the hereditary trustee as per Ext. A1, the balance of convenience is also in favour of the Applicant. If there are gross violations regarding the mandatory procedures to be followed in appointing a non-

hereditary trustee, irreparable injury and hardship to be caused to the institution. Therefore, the Application is allowed and the Respondents are restrained by way of an ad-interim order of injunction from appointing a non-hereditary trustee as per notification dated 20.12.2025 in violation of the stipulations in the Act including notice to the hereditary trustee as well as publication in a newspaper daily.

Point Nos. 1 to 3 found in favour of the Applicant.

10. **Point No. 4**

Reckoning the facts and circumstances, of the case no order as to costs.

In the result,

The Application is allowed and the Respondents are restrained by way of an ad-interim order of injunction from appointing a non-hereditary trustee as per notification dated 20.12.2025 in violation of the stipulations in the Act including notice to the hereditary trustee as well as publication in a newspaper daily.

(Dictated to Confidential Assistant, typed by her in Office Computer, corrected and pronounced by me in Open Court, on this the 24th day of February, 2026)

Sd/-
MUNSIFF

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Order in IA 03/2026
in OS 28/2026 Dated: 24.02.2026