

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
KOTTAYAM**

Present: Sri. Manoj M., Principal District Judge

Friday, the 10th day of April, 2026
20th day of Chaithra, 1948

Appeal Suit No.27/2024

(E.A. No.9/2023 in E.P. No.26/2014 in O.S No. 206/2012 of
the Munsiff's Court, Ettumanoor)

Appellant/Petitioner:-

P.K.Mani, aged 75 years, S/o. Kumaran Kochu,
Peedamcherinjathil House, Thellakom P.O.,
Kottayam Taluk, Kottayam District.

By Adv. Sri. Jayakrishnan.R

Counter Petitioners/Respondents:

- 1 Alexander K.A., aged 55 years, S/o. Abraham,
Kaiparettu House, Thellakom P.O.,
Peroor Village, Kottayam Taluk.
- 2 Madhu C.G., aged 47 years, S/o. Gopalan,
Choorakulangara House, Thellakom P.O.,
Peroor Village, Kottayam Taluk.
- 3 K.Y.Thomas @ Babu, aged 53 years, S/o. Yohannan,
Pallippurathumalil House, Thellakom P.O.,
Peroor Village, Kottayam Taluk.
- 4 Shaji P.M., aged 49 years, S/o. Marcose,
Vallemkunnel House, Thellakom P.O.,
Peroor Village, Kottayam Taluk.
- 5 Suja Shaji, aged 45 years, W/o. Shaji,
Vallemkunnel House, Thellakom P.O.,
Peroor Village, Kottayam Taluk.

- 6 Tomy Chacko, aged 48 years, S/o. K.J.Chacko, Kaithakulangara House, Thellakom P.O., Peroor Village, Kottayam Taluk.
- 7 Shajeendran, aged 58 years, S/o. Sivaraman Nair, Villoonickal House, Thellakom P.O., Peroor Village, Kottayam Taluk.
- 8 Reji, S/o. Thankappan, Nelloor House, Thellakom P.O., Peroor Village, Kottayam Taluk.
- 9 Ginu, aged about 35 years, Naduviledathu House, Thellakom P.O., Peroor Village, Kottayam Taluk.
- 10 Sadasivan Nair, S/o. Sivaraman Nair, Villoonickal House, Thellakom P.O., Peroor Village, Kottayam Taluk.
- 11 Swami Vivekananda Cultural Society, Register Number 322/93, Paramkulangara Temple Complex, Kaloor, Kochi-17, represented by the President of Kanayannoor Taluk.
- 12 Thirukeralapurathu Devaswom, Thellakom, Represented by its present President - Binu K.V., aged 51 years, Kannachel House, Thellakom P.O., Peroor Village, Kottayam Taluk.

R1, R3, R4, R5, R7 by Adv. T.S. Sasikumar &
Adv. Baby Parvathy

R12 by Adv. Manu Tom Thomas &
Adv. Navya Maria

R2, R6, R8 to R11 No Vakalath seen filed.

Appeal Memorandum filed under Order XLI, Rule 1 of the Code of Civil Procedure.

This Appeal Suit coming up on for final hearing on 21.03.2026 and the Court on 10.04.2026 delivered the following:

JUDGMENT

This appeal is preferred by the appellant, who is the petitioner in E.A. No.9/2023 an obstruction petition in E.P. No.26/2014 on the file of the Munsiff's Court, Ettumanoor challenging the order dated 22.12.2023, whereby the petition against the execution of the decree was dismissed.

2. The parties are referred as per their status in the trial court.

3. The case of the petitioner before the trial court in a nutshell is as follows :- E.P.26/2014 was filed for executing the compromise decree in O.S.No.206/2012 filed before the court. E.A.9/2023 was filed by the petitioner, who is a devotee of Srikrishna Swamy the deity of Keralapurath Devaswom, a public temple. The devaswom was popularly known as the Thirukeralapurath Devaswom, and the temple was managed by

its general body that consisted of the devotees of the same, which was an unincorporated and amorphous body. The petitioner was also a member of the general body. Being the devotee of the public temple and also being the member of the general body of the temple the petitioner was a person interested in the day to day affairs of the temple and its properties and its administration and affairs among other numerous persons. In order to facilitate rituals and ceremonies of the said temple a committee was selected among the devotees, and though, such a committee was present, general body of the devotees was the supreme authority that took the decisions regarding the temple which was of extreme importance. The committee that was elected implemented decisions of the general body. The management committee had no independent authority, and it was functioning as per the instructions and approval of the general body. In the year 2012, O.S.206/2012 was filed, and it was filed by the respondents 1 to 7 in E.A.9/2023. Respondents 8 to 11 were the defendants of the said suit and respondent 12 was the present president of the committee, who was selected from among the general body. The first contention raised by the

obstruction petitioner in the E.A was that the relief of the suit was sought against the property of the Devaswom temple. The cause title of the plaint showed that the devaswom was represented by the president of the committee. It also was contented that there ought to have been a publication under Order 1 Rule 8 as respondent Nos.8 and 9 had no authority to represent the deity in Thirukeralapurath Temple, Thellakom. Respondent Nos.10 and 11 had no interest in the subject matter of the suit, and they were also arrayed as defendants. The contention of the petitioner in the E.A was that O.S. No.206/2012 was a result of collusion and a fraudulent suit was filed by the plaintiffs with the respondent Nos.8 and 9, and the then committee selected, with malafide intention to cut open a new cartable road through the temple property. Defendant Nos.3 and 4 in the suit (O.S. No.206/2012) had no right over the temple or its property. According to their plan, they had conceded for the right of a way that was not in existence, by defeating the proprietary rights and title of the deity in the temple. Resultantly, a compromise decree had been passed. Now, this same was tried to be executed for creating a new way. There was no public notice with regard to

suit proceedings and the compromise. The committee selected for the facilitation of the rights and rituals of the temple including respondent Nos.8 and 9 did not inform the general body regarding the institution of the suit, or had obtained approval of the general body to appear before the court representing the deity. The fact that the 1st and 2nd defendants were incompetent to represent the devaswom or temple was not brought before the court and the court accepted the compromise and passed the decree. The Court overlooked the mandatory provisions contemplated under Order XXIII Rule 3B before accepting the alleged compromise agreement in the suit. Moreover, the Court had also overlooked the fact that the second defendant; not the fourth defendant had signed the compromise. The petitioner alleged that through the terms of the settlement agreement considerable extent of property which belonged to the devaswom was surrendered to the third party for constructing a cartable road. The devaswom was deprived of its valuable properties for the personal gains of certain individuals, who had no right title or interest over the properties of the devaswom. The petitioner alleged that the value of the property would fetch at least Rs.20,00,000/- and as

per the terms of the agreement the same was surrendered for a petty amount of Rs.50,000/-. The terms of the agreement was made in the manner causing great prejudice and irreparable injury to the devaswom and also by defeating the title and rights of the deity of the temple. Even at the time of signing the compromise, no prior consent or approval was obtained by the first defendant, who had signed the compromise posing to be the representative of the devaswom. This compromise was made against the property of a public trust and a public temple, and the committee was not registered entity as all the decisions concerning the devaswom was to be taken with the consent and approval of the general body. The general body had not given any authority to then president or secretary to represent the devaswom or to compromise the suit. The petitioner is a devotee of the deity of the temple and had every locus standi to approach the court as the collusive decree was not executable. The petitioner submitted that the decree ought to be executed was void for the following reasons. 1) No leave was obtained and Order 1 Rule 8 of Code of Civil Procedure to institute a suit against devaswom which is a public temple. 2) The persons who appeared and signed the compromise was

having no authority to represent the devaswom. 3) The suit and compromise decree was obtained by playing fraud on numerous persons interested in the subject matter as well as the Hon'ble Court. 4) The then management committee had acted against the interest of the devaswom, and had committed mismanagement and breach of trust. 5) Due to the noncompliance of the mandatory provisions of Order XXIII Rule 3B of the Code of Civil Procedure decree was void and non-est in the eyes of law and 6) It was not binding on the deity, its devaswom, temple, its properties, and all the devotees thereof.

4. The decree holder had filed objection to the E.A. No.9/2023 on the terms that the petitioner had no legal authority to obstruct the execution of the decree. The petition was filed in collusion with the judgment debtors of E.P. No.26/2014, and was not filed in good faith. Petition was filed based on the instigation by the judgment debtors and was hence, liable to be dismissed. The only intention of the judgment debtor and the petitioner was to delay the execution proceedings and to stretch a litigation, and thereby, prevent

the decree holders from enjoying the fruits of the decree that was passed as early as in 12.06.2014. The petition was filed under Order XXI Rule 97 and 99 read with section 151 of the CPC. Order XXI Rule 97 of CPC provides that it is only the decree holder, who is entitled to maintain the application in case where he is offered resistance or obstruction by any person. The same legal position has been reiterated by the Hon'ble Supreme Court in **Sriram Housing Finance and Investment India Ltd v. Omesh Mishra Memorial Charitable Trust** in Civil Appeal No.4649/2022. Hence, the petition filed by the obstructor invoking Order XXI Rule 97 was not maintainable. The resistance or obstruction alleged by the petitioner claiming to be in possession of the property, is not in his own account or on account of any person other than the judgment debtor so as to invoke Order XXI Rule 99 CPC. All the rights of the petitioner had been clearly derived from the judgment debtor, who was bound by the decree. The petitioner has no independent right or title with regard to the property in question and he is bound by the decree, and hence, the petition was not maintainable. The petitioner was a member of

the general body of the devaswom, and he was only claiming under the judgment debtor, devaswom. The executive committee is a body elected by the general body and decision of the executive committee will be binding on all the members, and no members shall interfere with the decisions duly taken by the executive committee. There was nothing on record to show that Judgment Debtor 2 and Judgment Debtor 3 were not authorised persons of Judgment Debtor 1, devaswom and hence, as lawful authorities compromise entered into by Judgment Debtor 1, Judgment Debtor 2 and Judgment Debtor 3 were lawful and binding on all the members of the general body. The decree holder also contented that as per Order XXI Rule 99 CPC, it is required to establish that any person other than the Judgment Debtor is dispossessed of immovable property by the holder of the decree. But, herein, there is no record to show actual physical dispossession of the petitioner from the suit properties so as to enable the court to adjudicate his claim. The petitioner has failed to establish the requisite ingredients of actual physical dispossession and hence, there is no scope for adjudicating his claim under Order XXI Rule 99 CPC. The Original Suit was for declaration of prescriptive

easement right over item No.8 way and for a permanent prohibitory injunction restraining the defendants from causing any obstruction or annexing portions of item No.8 pathway. There was no question of dispossession arising there but, the declaration of right of easement by prescription over item No.8 pathway. No one including the petitioner or the judgment debtor was dispossessed of the property so as to invoke Order XXI Rule 99 as easement is only a legal right for occupancy, use, and beneficial enjoyment of the land concerned for a specific purpose. The title remains intact with the owners. As per the compromise decree the pathway, which was existing across the middle of the defendants property was agreed to be shifted to the western extremity and the owners of the property lying adjacent to the pathway had agreed to give portions of their land for facilitating passage through the pathway. This shows that the parties were only benefited by the same, and as agreed by the parties to the compromise the decree holders had deposited Rs.50,000/- in the court as early as in the year 2014. The contention of the petitioner regarding the deprivation of the property and the value of the same is only an exaggeration. As per Order XXI Rule 101 the questions

to be determined by adjudication of application by petition under Rule 97 or 99 is specifically with regard to the right, title, or interest in the property between the parties to the said proceeding. The court cannot go into other questions. The same grounds raised by the petitioner questioning the validity of the decree and the allegations of fraud, collusion, and that of non compliance of Order XXIII Rule 3 CPC had been already considered twice by the court. As the petition was filed only invoking Order XXI Rule 97 and 99 CPC, the court can only consider the question regarding the right, title, and interest of the obstracter and no other questions which have been already adjudicated by the court. Moreover, the question regarding the religious endowment being a private nature or a public nature is to be proved, and it cannot be presumed. The Hindu Law of Religious and Charitable Trust by P.K. Mukharjee 5th edition chapter 5 deals with management of Shebaitship - its legal character and incidents. Shebait is the manager and the legal representative of the deity and in Malabar is known as Urallen. He is a person who is entitled to speak on behalf of the deity on earth and is endowed with the authority to deal with all its temporal affairs. Urallen was made

a party to the suit, and the decree was hence binding on the deity. The petitioner also being a member of the general body of the devaswom was expected to be aware of the existence of the decree. The matter was pending before the court from 2012 and this petition is highly belated, and with mala fide intention with collusion with the judgment debtors to resist the execution of the decree. Hence, the application which is filed at the very belated stage ought to have been dismissed.

5. After hearing both sides, the executing court framed the following points :-

1. *Are the questions raised on Suit of representative capacity, and the validity of the signatures put by judgment debtors in the compromise petitions and the applicability of Order XXIII Rule 3B needed to be considered in this petition ?*
2. *Is the obstruction petition maintainable?*
3. *Is the decree a nullity as it was obtained by fraud?*
4. *What is the order as to costs?*

6. The executing court examined PW1 and PW2 and

Exts.A1 to A5 and Ext.X1 series were marked. No defence evidence adduced.

7. The executing court appreciated the evidence and dismissed the petition inter alia holding that; the questions regarding Order I Rule 8 publication regarding representative nature of the suit, validity of signatures put by judgment debtors and the applicability of Order XXIII Rule 3B was determined by the executing court under Sec.47 of the Code of Civil Procedure and the matter is sub judice before the appellate forum and hence the matter cannot be re-agitated when the matter was sub judice in the appellate forum ; that the obstruction petition was filed not in consultation with the general body of the temple or the executive committee ; that the obstruction petition was an after thought to aid the judgment debtors ; that fraud in obtaining the decree is not proved by the obstruction petitioner and that judgment sought to be executed is not a nullity ; and dismissed the petition which was filed under Order XXI Rule 97 and 99 of CPC.

8. Against the said order, the petitioner has filed the appeal urging the following main grounds (all of the grounds are not

stated and only the main grounds of challenge are stated). The order of the trial court is against law, facts and evidence and based on surmises and conjunctures and not on evidence ; that the facts and evidence in this case has not been judiciously evaluated by the trial court ; the trial court omitted to consider the locus standi of the petitioner as a devotee of a public temple to file the obstruction petition and his right to intervene in the case of mismanagement and breach of trust and the fact that the obstruction petitioner is neither a judgment debtor nor a member of the administrative committee ; the finding of the trial court that the petitioner has not shown that he has any right over the property in question or has he brought out actual dispossession is erroneous and unsustainable ; the findings of the trial court that there was no claim made to institute an application under Order 1 Rule 8 in the written statement and that shows that the suit was never a representative suit and the parties signed the compromise had the right to sign the compromise is erroneous and unsustainable and while arriving at such a finding, the trial court misconstrued the law regarding a representative suit and the need for publication under O.I Rule 8 ; the trial court ought

to have found that the contentions regarding the incapacity of the persons arrayed in the suit as representatives of the temple and the necessity for O.I Rule 8 publication etc were not taken up in the written statement ; the trial court ignored the evidence let in by PW1 and PW2 and found that there was never a representative suit and the parties who had signed the compromise petition had the right to sign the same ; the trial court ought to have found that no contrary evidence is adduced by the decree holder to disprove the contentions raised and the evidence adduced by the petitioner ; the trial court ought to have found that the contentions raised by the petitioner like Thirukeralapuram Devaswom is a public temple, there are numerous devotees, who are the members of the general body, that the devotees are persons interested in the affairs of the temple and its property and that the defendants were arrayed in the suit in a representative capacity were not disputed by the respondents ; the finding of the trial court that the persons who are in possession of the property or paying tax have not appeared before the court is false ; the trial court ought to have found that the management committee can take decisions with regard to the properties of the temple only on the basis of

the decisions of the general body and the pendency of the suit, subsequent compromise etc were deliberately suppressed from the general body ; the finding of the trial court that the petitioner failed to prove the alleged fraud and there were only vague allegations of fraud are unsustainable ; the findings of the trial court that there was no evidence adduced to show that the property would fetch more than this agreed amount is perverse and the trial court overlooked the fact that the property is having a higher value is an admitted fact and the same need not be proved and that no sufficient opportunity was afforded to the petitioner to adduce evidence.

9. Heard both sides and considered the trial court records.

10. The only point which arises for consideration is

Whether the impugned order dated 22.12.2023 in E.A. No.9/2023 in E.P. No.26/2014 on the file of the Munsiff's Court, Ettumanoor is legally sustainable ?

11. The point :- In this case, the suit was for declaration of

easement right, permanent prohibitory injunction and other reliefs. Defendant No.4 one Swami Vivekananda Cultural Society was impleaded as the owner of the Thirukeralapuram Temple. Defendant Nos.1 and 2 are the president and Secretary of Thirukeralapuram Devaswam as per Ext.A4, compromise petition, forming part of the decree and vide Exts.A3 and A4 Judgment and decree a compromise decree was passed. As per that, the plaintiffs right for easement right was declared and the alignment of the pathway was shifted on the payment of Rs.50,000/- as construction of boundary separating the pathway and property of Devaswom.

12. Order XXI Rule 97 to 99 CPC reads as follows :

“97. Resistance or obstruction to possession of immovable property:

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under Sub-Rule (1), the Court shall proceed to adjudicate the upon

the application in accordance with the provisions herein contained.”

Order XXI, Rule 98 reads as follows:

“98. Orders after adjudication:

(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of Sub-Rule (2):

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application.

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.”

Order XXI, Rule 99 reads as follows:

“99. Dispossession by decree-holder or purchaser:

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

13. It needs to be noticed that Order XXI Rule 97 deals with obstruction to execution of decree for possession. Admittedly in the decree in this case easementary rights were claimed. In **Chirayil Sugathan Vs. Asees** [2022(7) KHC 329] the Hon'ble High Court of Kerala discussed the ambit of Order XXI R.97 CPC.

“6. We shall now advert to R.97 Order XXI CPC and other provisions related to resistance in delivery of possession to the decree holder or the auction purchaser etc. Order XXI R.97 CPC is the provision available to a person to lawfully resist the delivery of

*possession in execution. It is open for a person to resist the delivery either before or after actual delivery. (See the judgment in **Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and Another**, 1997 (3) SCC 694). The scheme of statutory provisions under Order XXI R.97 CPC followed by other provisions, is to protect the legal possession or physical possession of the person raising objection to the delivery, on any legally sustainable ground.*

7. *The legal possession denotes control over the immovable property, it is not necessary that the person should have actual possession to resist the delivery in the execution. (See the judgment of the Hon'ble Apex Court in **Ashan Devi and Another v. Phulwasi Devi and Others**, [2003 (12) SCC 219]. The actual possession means, physical possession. (See the judgment of the Hon'ble Apex Court distinguishing between legal and physical possession, **Sadashiv Shyama Samant (Dead) through the Lrs. and Others v. Anita Anant Sawant**, [2010 (3) SCC 385].*

8. *The person raising obstruction before the execution Court must demonstrate that on delivery, his legal possession or physical possession would be affected, to maintain a petition under R.97, Order XXI CPC. If the person's legal possession or physical possession is not affected, that person cannot*

maintain a petition under Order XXI R.97 CPC.

9. Admittedly, in this matter, the tenanted premises is in the occupation of a tenant. That means, the obstructor has no actual or physical possession of the building. On delivery of the tenanted premises to another co - owner, his legal possession also is not affected in as much as that if he is a true co - owner, he can still retain control over the immovable property on an order of delivery. That means, on delivery of a tenanted premises to another co - owner, based on an order of eviction, neither his legal possession nor his right to claim actual possession is affected. In such circumstances, a person claiming to be co - owner cannot maintain a petition under Order XXI R.97 to obstruct delivery of order of eviction obtained by another co - owner.”

14. On analysing the scope of the above provisions it is evident that the same are applicable only with respect to execution of a decree for possession of property. The decree in this case, which pertains to easement right is evidently not a decree for possession of the property. In a decree regarding easement possessory rights are not adjudicated in as much as the title and possession of the servient owner is admitted by the person claiming easement. The obstruction petitioner

cannot claim any possessory right over the property. Therefore, the provisions under Order XXI Rule 97 CPC is not applicable to the execution of the decree sought to be executed. The petitioners have several contentions that the Secretary of the Devaswom had not signed in the compromise petition and the compromise decree is void. In this case, first of all since the decree is not for possession of property. Order XXI Rule 97 is not applicable. Moreover, the executing court has specifically held that all these matters are already decided under Sec.47 CPC and the matter is now pending before the appellate court and is sub judice.

15. Moreover, the decree schedule property is claimed to be a temple property of the Keralapurath Dewasom. However, in **Jayakuttan Vs. Kerala Purath Dewasvom Board, Thellakom**, (2023 KHC 663), while dealing with the above said temple properties , the Hon'ble High Court of Kerala has held that the Vattappilly Illom is the owner of the temple properties and there was no dedication of the property to the public. It is to be noted that it could be seen that the true owners of the property, the Vattappilly Illom are not parties to the suit.

16. It is worthwhile to consider the finding of the court as follows;

"26. Evaluating the rival contentions and also discussing the various authorities in the field, the question was determined as to whether there was any dedication of the temple by Adiyodi Nair or anybody thereafter and whether Adiyodi Nair or the Namboothiri families or anybody else have held out to the general public that the temple is a public temple. Ultimately Division Bench of this Court found that the plaintiff failed to prove that it is a public temple or that the temple was held out to be a public temple. On evaluating the fact situation of Kidangoor Devaswom what could be gathered is that though originally the temple was built up by Adiyodi Nair, the case of the defendant was that on a later period, he left the place by entrusting the temple with the 14 Namboothiri families who are the Urallens of the temple. That would clearly probabalise the version in 'Aithihya Mala' that the residuary Urallens of Thellakam Sree Krishna Swami Temple left out the temple to Kumaranelloor Devaswom and the people of Kumaranelloor Devaswom has given the temple to Vattappilli Moothathu and the temple now belongs to Vattappilli Moothathu. That is why in 1951 registered

mortgage deed as well as in the 1954 partition deed there is specific mention that Thellakam Sree Krishna Swami Temple belong to Vattappilli Illom.

27. R.15 of Transfer of Registry Rules, 1966 was relied on by the defendants to establish the right of defendant over the schedule properties. According to them, the property was dedicated by the predecessor - in - interest of the plaintiff several years back and Exts.B3 to B22 and Exts.B25 to B33 etc. would establish and prove that the temple committee is administering the affairs of the temple over the last several years and it is a question of fact and hence there is no reason whatsoever to interfere with the concurrent findings entered into by the courts below. (Whether there is dedication by the plaintiff's father or not would be determined in the coming paragraphs.)

28. But the counsel for plaintiff would contend that only document which would confer title to any party over a property is the document issued under the Record of Rights Act, 1968 (Kerala) and no such document has been produced by the defendant so as to claim any right over the plaint schedule properties. The Act has been provided for preparation of record of right in respect of lands in the State of Kerala. S.3 of the Act deals with preparation of record of right. S.3 is relevant in this context to be extracted which

reads thus :

3. Preparation of record of rights.--

(1) A record of rights shall be prepared by the prescribed officer in the prescribed manner in respect of any area or areas notified by the Government in this behalf in the Gazette.

(2) The record of rights in respect of any land shall include the following particulars namely

(a) the description and extent of the land;

(b) the name and address of the person in occupation of the land;

(c) the names and addresses of other persons interested in the land;

(d) the nature and extent of the respective interest of the persons referred to in clauses (b) and (c);

(e) the names and addresses of the kudikidappukars, if any; and

(f) such other particulars as may be prescribed,

(3) The record of rights shall be maintained by such officer as may be prescribed, and different officers may be prescribed for different areas.

29. So, the provisions under the Act would make it clear that a record of rights maintained by the authorised officer is a document proving the rights of a party with respect to a property.

30. In Pradeepan v. State of Kerala, 2019 (1) KLT 623 the petitioner challenged an order passed by the

Village Officer wherein he was directed to produce an affidavit showing that the person who used the property in question as the right of way had no objection in the petitioner securing record of rights (ROR) in terms of the provision contained in the Kerala Record of Rights Act, 1968. While disposing the matter, this Court held that it is the duty of the prescribed officer to conduct necessary enquiries and find out the names and addresses of the persons who would fulfill the requirement of persons interested in the land as envisaged in S.3(2)(c) of the Act.

31. In the present case, Ext.A6, the order of the Tahsildar would prove that an attempt was made by the President and Secretary of the Devaswom to get pattayam with respect to the property in question showing the plaintiff as the landlord. That petition was dismissed for default. A devaswom is unheard of being a tenant under any individual also. So on a totality of the facts, circumstances and evidence adduced, I don't have any hesitation to hold that Vattappilly Illom is the owner of Thellakam Sree Krishna Swami Temple and properties. Hence the contention of the defendant that the suit is not maintainable without a prayer for declaration also is not sustainable. Points are so answered in favour of the plaintiff.

60. In the year 1972 when the dedication alleged to

have been made by the plaintiff's father he had no independent right over the temple or its properties. Ext.A5 prior partition deed would reveal that the administration of the temple was entrusted with Sakha No.1 in which the plaintiff's father was also a member and as per Ext.A3 partition deed of 1974 the temple and the properties have been set apart to the share of the plaintiff's father for the administration of the temple and it is also provided that he is entitled to receive all the income therefrom. Since there is a specific description in Ext.A3 partition deed also that the temple belongs to illam and the plaintiff's father has been entrusted only with the administration and the connected matters in relation to the temple and to receive the income therefrom it will not give any right to the plaintiff's father also to dedicate the property which is of the illam. As has been held in Narayanan Pandarathil in order to constitute a valid dedication such a dedication must be made by the owner of the property. First of all, in the year 1972, the property actually belongs to Sakha No.1 in Ext.A5. Sankaran Moothathu has no right whatsoever to dedicate the property which is allotted to the Sakha in which he is only a member and that too when the right given to the Sakha No.1 in 1954 partition deed, Ext.A3 is to look after the whole affairs of the temple in effecting the administration of

the temple belonging to illom. In the year 1972, the father of the plaintiff has no exclusive right even for administration of the temple and as per Ext.A3 partition deed in 1974 the right has been given to him for the administration of the temple and its affairs exclusively. That also will not confer any right upon him to dedicate the temple which does not absolutely belongs to him. In Ext.A3, he has been given the right to conduct the administration or to get it done and to receive the income directly. Whenever there is specific provision entitling the sharers to appropriate income from the properties allotted to the temple for meeting expenses personally and not for the temple as held in Narayanan Pandarathil, the reasonable inference would be that the property is still set apart as provided to the family and the plaintiff's father was given the right of administration as well as to take income while doing administration directly or through anybody else. That may be the reason why it has come out that he has entrusted the administration of the temple with the committee. That will not in any way amounts to dedication as contemplated under the Hindu Law. Moreover, since he is not the absolute owner of the temple even as per Ext.A3 he will not have any right to dedicate the temple or the properties to a third party viz. a

committee or the general public. Learned counsel for the plaintiff in this context also brings to my attention a stipulation in Ext.A3 partition deed wherein Sankaran Moothathu has been allotted 64 1/4 cents of property described in C schedule and giving him absolute right for alienation. That also is an indication that with respect to the temple and the property he has no right of alienation.

61. So findings made by the courts below that plaintiff's father gave evidence in Ext.B2 that the property was dedicated to the temple committee is due to misappreciation of evidence since he has not ever stated in Ext.B2 about dedication of the temple to the committee. Further finding that admittedly there is a public trust is also wrong since from the beginning the case of plaintiff is that the temple and property belongs to him and there is no admission that it is a public trust. Hence the above findings of the trial court as confirmed by the first appellate court is perverse and this Court is empowered to interfere with the said finding under S.100 and S.103 of the Code of Civil Procedure also (See Nagarajappa v. Narasimha Reddy, 2021 (5) KLT OnLine 1137. For the reasons stated above, the point so found in favour of plaintiff."

17. Thus, it could be seen that the defendants in O.S.

No.206/2012, wherein the decree sought to be executed was passed were not the real owners of the property. However, the validity of the decree and executability of the decree cannot be challenged in this case under Order XXI Rule 97 CPC, since the decree is not for possession of property.

18. In the said circumstances, there are no grounds to interfere with the impugned order passed by the learned Munsiff. Consequently, it is found that the appeal fails.

In the result, the appeal is dismissed.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected by me and pronounced in open Court, on this the 10th day of April, 2026.

Sd/-
Manoj M.
District Judge

APPENDIX : NIL

Id/-
District Judge.

// True Copy //

Copied by :

Sd/-

Compared by :

Manoj M.
District Judge