

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE A. BADHARUDEEN**

**TUESDAY, THE 27<sup>TH</sup> DAY OF SEPTEMBER 2022 / 5TH ASWINA, 1944**

**OP(C) NO. 2158 OF 2016**

**AGAINST EXT.P3 ORDER DATED 23.08.2016 IN I.A.NO.3671/2016**

**IN OS 46/2009 OF PRINCIPAL MUNSIF COURT, NEYYATTINKARA**

**PETITIONERS/PLAINTIFFS 3 & 4:**

- 1 SADASIVAN  
S/O. GANGADHARAN PILLAI, 'DWARAKA',  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR VILLAGE,  
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM.
- 2 SAJI,  
S/O. SIVANKUTTY NAIR, SAJI SADANAM,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR VILLAGE,  
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM.  
BY ADVS.  
SRI.V.G.ARUN (K/795/2004)  
SMT.INDULEKHA JOSEPH  
SMT.V.JAYA RAGI  
SRI.NEERAJ NARAYAN

**RESPONDENTS/DEFENDANTS :**

- 1 SADASIVAN NAIR  
S/O. SANKARA PILLAI, KAILAS, PERUMPAZHUTHOOR  
DESOM, PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA  
TALUK, THIRUVANANTHAPURAM-695 121.
- 2 MADHUSOODANAN NAIR  
S/O. VELAPPAN NAIR, VASANTHA VILASAM,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR VILLAGE,  
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-695 121.
- 3 KRISHNAN NAIR,  
RAMAN PILLAI, PADMAVILASOM, NELLIVILA,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 4 RAVEENDRAN NAIR  
GOVINDA PILLAI, RAJI BHAVAN, PERUMPAZHUTHOOR  
DESOM, PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA  
TALUK, THIRUVANANTHAPURAM-695 121.

- 5 VIKRAMAN NAIR,  
KESAVA PILLAI, LALUSADANAM, PERUMPAZHUTHOOR DESOM,  
PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA TALUK,  
THIRUVANANTHAPURAM-695 121.
- 6 ANIL KUMAR  
S/O. KARUNAKARAN NAIR, VIJAYA GANGA,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 7 ANIL KUMAR  
S/O. VELAPPAN NAIR, LEKSHMI SADANAM,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 8 ANIL KUMAR  
S/O. KRISHNAN NAIR, SANKARAVILASOM BUNGLOW,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 9 BAIJENDRAKUMAR  
S/O. BALAKRISHNAN NAIR, MELEKALLADIKONATHU VEEDU,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 10 VIJAYAN  
S/O. RAMACHANDRAN NAIR, PANAYARATHALA VEEDU,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 11 AMBUJAKSHAN NAIR  
S/O. PARAMESWARAN PILLAI, PARAKKAVILA VEEDU,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 12 CHANDRASEKHARAN NAIR,  
S/O. ESWARA PILLAI, CHANDRA BHAVAN, PUNNAKKADU,  
VADAKODU DESOM, PERUMPAZHUTHOOR VILLAGE,  
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-695 121.

- 13 SUKUMARAN NAIR  
S/O. VELAYUDHAN PILLAI, LEKSHMISREE,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 14 KUMARAN NAIR  
S/O. MADHAVAN PILLAI, VIJAYACHANDRA VILASOM,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 15 RADHAKRISHNAN NAIR,  
S/O. VELU PILLAI, REVATHI, PERUMPAZHUTHOOR DESOM,  
PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA TALUK,  
THIRUVANANTHAPURAM-695 121.
- 16 BINU KUMAR ALIAS KUTTAN,  
S/O. SUKUMARAN NAIR, BINU BHAVAN, PERUMPAZHUTHOOR  
DESOM, PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA  
TALUK, THIRUVANANTHAPURAM-695 121.
- 17 MURALEEDHARAN NAIR,  
S/O. KRISHNA PILLAI, MELEPARAKKAVILA VEEDU,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 18 SURESH KUMAR,  
S/O. GOPINATHAN NAIR, ATHIRA BHAVAN,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 19 PADMANABHAN NAIR,  
S/O. PADMANABHAVAN PILLAI, KANNANKARA VEEDU,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 20 SURESH KUMAR ALIAS GANGA  
S/O. SUKUMARAN NAIR, KIZHAMACHAVILAKAM VEEDU,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.

- 21 SUNIL KUMAR,  
S/O. GOPINATHAN NAIR, KARTHIKA, THATTAMVILAKAM,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 22 VENUDHARAN NAIR,  
S/O. SUKUMARAN NAIR, KIZHAMACHAVILAKAM VEEDU,  
PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR  
VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-  
695 121.
- 23 VIJAYAN,  
S/O. JYOTHI NADATHI, KRIPA BHAVAN,  
KIZHAMACHAVILAKAM VEEDU, PERUMPAZHUTHOOR DESOM,  
PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA TALUK,  
THIRUVANANTHAPURAM-695 121.
- 24 N.S.S. KARAYOGAM  
NO.1786, PERUMPAZHUTHOOR, REPRESENTED BY PRESIDENT  
K.CHANDRASEKHARA PILLAI, PIN-695 126.

BY ADVS.

SHRI.AJIT G ANJARLEKAR

FOR R1-R12 SRI.G.P.SHINOD

FOR R20-R23 SRI.VINOD RAVEENDRANATH

FOR R20-R23 SMT.MEENA

FOR R14-R15 SRI.GOVIND PADMANAABHAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON  
14.09.2022, THE COURT ON 27.09.2022 DELIVERED THE FOLLOWING:

**“C.R”**

***A. BADHARUDEEN, J.***

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*O.P(C) No.2158 of 2016*  
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*Dated this the 27<sup>th</sup> day of September, 2022*

**J U D G M E N T**

This Original Petition has been filed under Article 227 of the Constitution of India challenging Ext.P3 order, viz., order in I.A.No.3671/2016 in O.S.No.46/2009 on the file of Principal Munsiff Court, Neyyattinkara, dated 23.08.2016. The original petitioners are the plaintiffs in the above Suit and the respondents herein are the respondents in the above Suit.

2. Heard the learned counsel for the petitioners Advocate Arun.V.G; Advocate Shinod.P, appearing for respondents 1 to 12; Advocate Govind Padmanabhan appearing for Respondents R14 and 15 and Advocate Vinod Raveendra Nath appearing for

respondents 20 to 23.

3. Originally, the petitioners herein as plaintiffs filed a Suit for a prohibitory injunction restraining the defendants from forcefully taking the administration of Alara Sree Bhadrakali Temple, Perumpazhuthoor and also from forcefully obstructing the construction of Sreekovil as part of temple reformation. While the Suit has been pending, Ext.P2 application was filed to hear and decide issue No.3, viz. "Is the suit maintainable in view of S.92 of the Civil Procedure Code, 1908?". It has been contended before the trial court that the additional third issue referred above shall be heard and decided before trial.

4. The respondents filed objection and resisted the said prayer.

5. The court below addressed the contentions raised by the petitioners as well as the respondents and finally dismissed the application holding that additional issue No.3 in this case cannot be

decided without going into the facts of the case. Hence not preliminary.

6. It is argued by the learned counsel for the petitioners that while deciding the nature of a Suit as to whether the same would fall under Section 92 of the Code of Civil Procedure, the court need only look into averments in the plaint and the same is a simple question of law. He relied on the decision reported in [AIR 2008 SC 1635 : 2008 (2) KLT 68 : ILR 2008 (1) Ker. 781 : 2008 (2) KHC 75], *Vidyodaya Trust v. Mohan Prasad.R* as well as another decision reported in [2015 (4) KHC 685], *John T.J & anr. v. Church of South India* in this regard.

7. Per contra, the learned counsel for the respondents placed a decision of this Court reported in [2014 (2) KHC 59 : 2014 (1) KLT SN 91 : 2014 (2) KLJ 1 : ILR 2014 (2) Ker. 125 : AIR 2014 Ker. 95], *Fr.John Jacob & Ors. v. Fr. N.I.Paulose & Ors.* and argued that when relief in the Suit on its face value is one

for simple injunction, when the subject matter of the Suit which is a public trust with reference to the allegations raised in the plaint, then it is necessary to consider as to whether the reliefs styling for injunction would take the Suit out of the ambit and sphere of Section 92 of C.P.C.

8. Here, admittedly, the Trust filed a Suit for prohibitory injunction. But, the respondents resisted the same contending that the Suit is one falling under Section 92 of C.P.C.

9. It is true that in order to ascertain as to whether leave to be granted to institute the Suit under Section 92 of C.P.C, the plaint averments alone need to be looked into. *Fr. John Jacob & Ors. v. Fr. N.I. Paulose & Ors. (supra)*, has been given emphasis.

10. In the decision reported in [2022 KHC 249 : ILR 2022 (2) Ker. 727], *Sreenarayana Vidya Mandir Trust & anr. v. Unnikrishnan & Ors.* this Court considered the parameters to be considered while granting leave under Section 92(1) of the Code of



Civil Procedure Code referring earlier decisions in this regard in [1966 KHC 517 : AIR 1966 SC 878 : 1966 (2) SCR 151], *Madappa v. M.N.Mahanthadevaru*; [1967 KHC 696 : AIR 1967 SC 1415 : 1967 (2) SCR 739 : 69 Punj LR 805], *Harnam Singh v. Gurdial Singh*; [1969 KHC 752 : AIR 1969 SC 884 : 1969 (3) SCR 83], *Sugra Bibi v. Hazi Kummu Mia*; [1974 (2) SCC 695 : 1974 KHC 498 : AIR 1974 SC 2141 : 1975 (1) SCR 790], *Swami Paramatmanand Saraswathi v. Ramji Tripathi*; [1991 KHC 7 : 1991(1) KLJ 219 : 1991 (1) SCC 48 : AIR 1991 SC 221], *R.M.Narayana Chettiar v. N.Lakshmanan Chettiar*; [2008(2) KHC 35 : 2008 (3) SCALE 273 : ILR 2008 (1) Ker. 785 : 2008 (2) KLT 68 : 2008 (4) SCC 115 : AIR 2008 SC 1633 : 2008 (3) MPLJ 133 : 2008 (4) Mah LJ 18], *Vidyodaya Trust v. Mohan Prasad R.*; [2018 (1) KHC 958 : 2018 (1) KLT 936 : ILR 2018 (1) Ker. 954 : 2018 (2) KLJ 174], *Valia Koonambaikulam Sree Bhadrakali Temple, Vadakkevila & Ors. v. Rajendran & Ors.*; [2020 KHC 489

: 2020 (4) KHC SN 6 ], *Fr. O.S.Kuriakose & Ors. v. Fr. Andrews Chiravathara & Ors.*, and held that in the matter of grant of leave under Section 92(1) of C.P.C, the plaint averments alone need to be looked into.

11. Another important aspect to be noted is as per the scheme of C.P.C, a Suit under Section 92 can be prosecuted only with the leave of the court. If in a Suit filed by the plaintiff a dispute arose on the ground that the Suit would fall under Section 92 of C.P.C, the said question shall be decided by the parameters discussed in the above decisions and if it is found that the Suit requires leave, the party must be given an opportunity to file the Suit with leave petition to the proper court. Only after getting leave, the trial can be proceeded.

12. Most importantly, for deciding the question as to whether a Suit would fall under Section 92 of C.P.C, if the parties will be relegated till the finalisation of the trial and if ultimately it

is found that the Suit requires leave, the entire exercise of trial will become futile and wastage of valuable time of the court, as the Suit itself becomes barred for want of leave. It is not in dispute that the Munsiff Court shall not have jurisdiction to entertain a Suit under Section 92 of C.P.C. In view of the matter, in the present Suit the plaint averments and nature of the reliefs need to be considered while deciding additional issue No.3 and the said exercise shall be done before trial. Therefore the impugned order holding otherwise shall not sustain and as such the same stands set aside.

13. In the result, this Original Petition stands allowed and the learned Munsiff is directed to hear and decide the additional issue No.3 as the first issue and pass orders on merits.

Since the Suit is of the year 2009, the learned Munsiff is directed to decide the additional 3<sup>rd</sup> issue within a period of one month from the date of receipt or production of a copy of this judgment.

*Sd/- (A. BADHARUDEEN, JUDGE)*

*rtr/*

**APPENDIX OF OP(C) 2158/2016**

PETITIONERS' EXHIBITS

- EXHIBIT P1 COPY OF THE PLAINT IN OS NO.46/2009 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA.
- EXHIBIT P2 COPY OF IA NO.3671/2016 IN OS NO.46/2009 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA.
- EXHIBIT P3 COPY OF ORDER DATED 23.8.2016 IN IA NO.3671/2016 IN OS NO.46/2009 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA.