Madras High Court
Chockalingam (Now Died) vs Nambi Pandiyan on 29 November, 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29/11/2010

CORAM
THE HONOURABLE MS.JUSTICE R.MALA

S.A.(MD).No.1075 of 2009
and
S.A.(MD).No.176 of 2010
and
S.A.(MD).No.646 of 2010
and
S.A.S.R.(MD).No.16491 of 2010
and
M.P.(MD).No.1 of 2010 in S.A.S.R.(MD).16491 of 2010
and
M.P.(MD).Nos.1 of 2009 & 1 of 2010 in S.A.(MD).1075 of 2009

Chockalingam (now died), Sundara Subramanian (for themselves and as representatives of Saivaites) .. Appellant in S.A.(MD).No.1075 of 2009 Vs

1. Nambi Pandiyan

2. Vellappandian

3. Nallamuthu

4. Thirukurungudi Jeeyar Mutt, through its Jeeyer Swamigal, Thirukurungudi, Nanguneri Taluk.

5. The Deputy Commissioner, H.R. & C.E., Nungambakkam, Chennai.

6. The Joint Commissioner, H.R. & C.E., Tirunelveli, Thiruvanandapuram Road, Palayamkottai, Tirunelveli.

7. The State of Tamil Nadu, through its District Collector, Kokkirakulam, Tirunelveli-9.

8. Divya Desa Paramparia Padukappu Peravai, Trichirapalli, through its Secretary, Sri Krishnamachari, S/o Anandachari, 214, Keela Uthira Theru, Thirunagar, Madurai-6.

9. Hindu Bakta Jana Sabai State Committee, through State President Thiyagarajan, S/o Vadivel Thevar, No.5, Joseph Nagar, 1st Cross Street, Tirunagar, Madurai-6.

.. Respondents in S.A.(MD).No.1075 of 2009 Divya Desa Paramparia Padukappu Peravai, Trichirapalli,through its Secretary, Sri Krishnamachari, S/o Anandachari, 214, Keela Uthira Theru, Thirunagar, Madurai-6.

.. Appellant in S.A.(MD).No.176 of 2010 Vs

1. Nambi Pandiyan

2. Vellappandian

3. Nallamuthu

4. Thirukurungudi Jeeyar Mutt, through its Jeeyer Swamigal, Thirukurungudi, Nanguneri Taluk.

5. The Deputy Commissioner, H.R. & C.E., Nungambakkam, Chennai.

6. The Joint Commissioner, H.R. & C.E., Tirunelveli, Thiruvanandapuram Road, Palayamkottai, Tirunelveli.

7. The State of Tamil Nadu, through its District Collector, Kokkirakulam, Tirunelveli-9.

8. Hindu Bakta Jana Sabai State Committee, through State President Thiyagarajan, S/o Vadivel Thevar, No.5, Joseph Nagar, 1st Cross Street, Tirunagar, Madurai-6.

Chockalingam (now died)

9. Sundara Subramanian (ninth respondent for himself and as the representative of people belonging to Saivaist) .. Respondents in S.A.(MD).No.176 of 2010 Hindu Bakta Jana Sabai State Committee, through State President Thiyagarajan, S/o Vadivel Thevar, No.5, Joseph Nagar, 1st Cross Street, Madurai-6.

.. Appellant in S.A.(MD).No.646 of 2010 Vs

1. Nambi Pandiyan

2. Vellappandian

3. Nallamuthu

4. Thirukkurungudi Jeeyar Mutt, through its Jeeyer Swamigal, Thirukkurungudi, Nanguneri Taluk.

5. The Deputy Commissioner, H.R. & C.E., Nungambakkam, Chennai.

6. The Joint Commissioner, H.R. & C.E., Tirunelveli, Thiruvanandapuram Road, Palayamkottai, Tirunelveli.

7. The State of Tamil Nadu, through its District Collector, Kokkirakulam, Tirunelveli-9.

8. Divya Desa Paramparia Padukappu Peravai, Trichirapalli, through its Secretary, Sri Krishnamachari, S/o Anandachari, 214, Keela Uthira Theru, Thirunagar, Madurai-6.

Chockalingam (now died)

9. Sundara Subramanian (for members and as the representative of people belonging to Saivasangam) .. Respondents in S.A.(MD).No.646 of 2010

1. Vallimanalan

2. P.Vadivazhagia Nambi .. Appellants in S.A.S.R.(MD).No.16491 of 2010 Vs Chockalingam (now died)

1. Sundara Subramanian (for members and as the representative of people belonging to Saivasangam)

2. Nambi Pandiyan

3. Vellappandian

4. Nallamuthu

5. Thirukkurungudi Jeeyar Mutt, through its Jeeyer Swamigal, Thirukkurungudi, Nanguneri Taluk.

6. The Deputy Commissioner, H.R. & C.E., Nungambakkam, Chennai.

7. The Joint Commissioner, H.R. & C.E., Tirunelveli, Thiruvanandapuram Road, Palayamkottai, Tirunelveli.

8. The State of Tamil Nadu, through its District Collector, Kokkirakulam, Tirunelveli-9.

9. Divya Desa Paramparia Padukappu Peravai, Trichirapalli, through its Secretary, Sri Krishnamachari, S/o Anandachari, 214, Keela Uthira Theru, Thirunagar, Madurai-6.

10. Hindu Bakta Jana Sabai State Committee, through State President Thiyagarajan, S/o Vadivel Thevar, No.5, Joseph Nagar, 1st Cross Street, Madurai-6.

.. Respondents in S.A.S.R.(MD).No.16491 of 2010 Second Appeals against the judgment and decree dated 14.10.2009 in A.S.Nos.29, 37 and 63 of 2007 on the file of the Subordinate Judge's Court, Valliyoor, against the judgment and decree dated 14.3.2006 in O.S.No.288 of 2004 on the file of the Additional District Munsif Court, Nanguneri.

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!For appellants
S.A.(MD).No.1075 of 2009  ... Mr.M.Vallinayagam
SA.(MD).No.176 of 2010    ... Prof.M.Krishna
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S.A.(MD).No.646 of 2010 ... Mr.V.Selvaraj for Mr.N.Dilipkumar S.A.(SR).No.16491 of 2010 ... Mr.R.Vijayakumar ^For respondents in S.A.(MD).Nos.1075 of 2009 and 176 and 646 of 2010:

Mr.R.Shanmugasundaram, Senior Counsel for M/s.K.Azhaguraman, K.Govindarajan, S.Ravi for RR-1 to 3 Mr.T.R.Rajagopalan, Senior Counsel and Mr.Chandrasekaran, for M/s.N.Krishnaveni & P.Thiagarajan for R-4 Mr.K.M.Vijaya Kumar, Spl.G.P. for RR-5 to 7 Prof.M.Krishna for R-8 in S.A.(MD).Nos.1075 of 2009 and 646 of 2010 Mr.V.Selvaraj for Mr.N.Dilipkumar for R-8 in S.A.(MD).No.176 of 2010 and for R-9 in S.A.(MD).No.1075 of 2009 Mr.M.Vallinayagam for R-9 in S.A.(MD).Nos.176 and 646 of 2010 :COMMON JUDGMENT As all the Second Appeals arise out of the judgment and decree passed in O.S.No.288 of 2004 on the file of the Additional District Munsif Court, Nanguneri, they are taken up and disposed of by this common judgment.

2. For the purpose of convenience, the parties are referred to as they are originally ranked in the Original Suit No.288 of 2004 on the file of the Additional District Munsif Court, Nanguneri.

3. All the Second Appeals arise out of the judgment and decree dated 14.10.2009 in A.S.Nos.29, 37 and 63 of 2007 on the file of the Subordinate Judge's Court, Valliyoor, reversing the judgment and decree dated 14.3.2006 in O.S.No.288 of 2004 on the file of the Additional District Munsif Court, Nanguneri.

4. The averments in the plaint filed by the plaintiffs--Chockalingam, Sundarasubramanian, in O.S.No.288 of 2004, are as follows:

(a) Thirukurungudi Azhagiya Nambirayar Temple is one of 108 "Divya Desams" (108 Sacred Vaishnavaite Shrine Temples), where Vaishnavaite Deities (Vishnu/Perumal) is there in different postures, namely, Standing Posture, Sitting Posture and Sayanam, and all these three Postures of God Vishnu are in three Idols/Garbagraham, namely Sanctum Sanctorum and the Gods were named as Lord Nindra Nambi, Lord Veetririnda Nambi and Lord Pallikonda Nambi.

(b) In front of the Lord Veetririnda Nambi, there is one Lord Siva Sannathi (Lingam) called Lord Mahendragirinathar, which had been existence from time immemorial, as is evidenced by the recitals/Pasurams rendered by Thirumangai Azhwar.

(c) Even though both Saivaites and Vaishnavaites were different Hindu religious Sects, but in this Thirukurungudi Temple, both Saivaite and Vaishavaite are offering worship to both Deities. It is

common in Vaishnavaite that Saivaite Siva Idol is inscripted, likewise, in Siva Temple, Perumal Deity (Vaishnavaite Deity) has been incripted. For example, in Tirunelveli Nellaiappar Temple and Palli Konda Perumal Sannathi and in Tiruchendur Lord Murugan Temple, Perumal (Vaishanavaite Deity) Sannathi (Sanctum Sanctorum) is separately there and in Chidambaram also, there is separate Sannathi for Peruamal.

(d) Saint Thirumoolar has also said in his preachings/divine poems that if any person removes the idol of Siva, it will cause law and order problem/other chaos/calamities in the State. For example, Ayodhya Babar Masjid problem. So, in view of the problem, Central Act 42 of 1991 was enacted not to change or modify or alter the idol or Temple or even restrainment from removing.

(e) The Priests who perform poojas in the Temples of Vaishnavaites (Vishnu) are called as "Bhattachariyars" and the Priests who perform poojas in the Temples of Saivaites (Siva) are called as "Sivachariyars". There was one custom prevailing in the Thirukurungudi Temple, i.e. the Bhattachariyar will ask the Sivachariyar as to whether the Lord Mahendragirinathar had His food, i.e. in Tamil, it is called as @mKJ cz;lhwh@ and that custom has been altered by the defendants.

(f) On 1.6.2004, Lord Mahendragirinathar Sannathi (Lingam) has been altered, removed and demolished and hence, there was commotion/opposition from the general public and so, the plaintiffs, who are the Saivaites, were affected by the activities of the defendants 1 to 4. The first plaintiff is the President of Saiva Velalar Association of Thirukurungudi and the second plaintiff is a native of Thirukurungudi and both of them are following the customs and rituals of Saivism.

(g) The Temple was under the control of the first defendant-Jeeyar of Thirukurungudu Jeeyar Madam and the defendants 2 and 3, namely the Commissioner of H.R. & C.E., Chennai and the Joint Commissioner of H.R. & C.E., Palayamkottai, respectively, are the Administrative Officers and they are under the control of the fourth defendant-State of Tamil Nadu, represented by District Collector.

(h) Hence, for the reasons stated above, on behalf of all the Saivaites, both the plaintiffs have come forward with the suit for the following reliefs:- (hi) to declare that the demolition, removal and relocation the Sannathi of Lord Mahendragirinathar, situated in North-East of Sanctum Santorum of the Temple and in front of Veetriruntha Nambi's (sitting posture) Sannathi within the premises of Arulmighu Azhagia Nambirayar Temple, Thirukurungudi, to a different place, is invalid and (hii) for injunction to subsequently instal the aforesaid Arulmighu Mahendragirinathar Sannathi in the same place as existed earlier. During the pendency of the suit, defendants 5 to 9 were impleaded as parties.

5. The gist and essence of the written statement filed by the first defendant-Jeeyar Mutt of Thirukurungudi, rep. by its Jeeyar Swamigal, are as follows:

(a) The plaintiffs are not the regular worshippers of the Arulmighu Azhagia Nambirayar Temple, Thirukurungudi (hereinafter referred to as 'the Temple'), or the Lord Shiva therein. They have no locus-standi to file the suit. The third defendant-Joint Commissioner, Hindu Religious and

Charitable Endowments Department, Palayamkottai, is an unnecessary party to the suit. The suit is bad for mis-joinder of party.

(b) The Lord Shiva, while wandering in the Mahendragiri Forests, was afflicted by some curse and Sri Sundara Paripooranar, the Lord of the Temple gave Dharshan and requested Him to stay there and that is why the great Vaishnavaite Saint Thirumangai Azhwar has sung in praise of Lord Shiva and referred to Him as "Pakkam Nindraar". The Deity Lord Shiva should be on the side and cannot be opposite to the Presiding Deity.

(c) The Lord Shiva known as Shri Mahendragirinathar was originally enshrined on the Hill Top and as the worshippers could not reach there, slowly the Shrine got defunct and the Linga was brought and placed within the Vaishnavite Temple and that structure is now being removed, had no foundation and was apparently put to as a temporary make-shift arrangement at that time. It was not originally not part of the Temple, but a later addition.

(d) The Temple is a Vaishnavaite Temple under the administration of the Head of the Mutt, His Holiness The Jeeyar Swamigal. The Mutt had to seek the help of donors and the TVS Group agreed to renovate the Temple at a cost of nearly Rs.1 crore and the founder of the TVS Group belonged to the Village of the Temple and his family members have great devotion to the Deities in the Temple.

(e) As per the tradition and accepted practice, before taking up the renovation work, Deiva Prasanam was conducted to seek divine sanction and to perform the requisite rituals found necessary and to rectify the defects, if any. The acclaimed Tantric Shri Unnikrishnan was consulted and the divine ordination disclosed that the then dilapidated Shiva Temple on the North-East of the Village known as Arulmighu Shri Analleswara Temple be renovated first before the renovation work in the Arulmighu Azhagiya Nambriyar Perumal Temple. Accordingly, the same was done.

(f) The Deiva Prasanam further disclosed that the practice of preparation of Neivediyam in common in Madapalli (Divine Kitchen) in the Temple was not proper and be discontinued. Since the offering thus made to Lord Shiva was indignant as constituting as Sesham (residue) and that separate Shrine and Madapalli be built exclusively for Lord Shiva as per Saastric prescriptions. These disclosures coincided with the opinion of scholars, Jeeyar Swamigal, who is the sole Administrator of the Temple, and also various other religious Heads of eminence and erudite scholars having special knowledge of Aagama Saastras and most of the devotees expressed their consent to Jeeyer Swamigal's views.

(g) Renovation work is thus not for removing the Siva Linga but for providing proper place and eminence appropriate to Lord Shiva as per saastric prescriptions. The divine ordination and saastric requirements are not appreciated but objected to by the plaintiffs. If they are true Saivaite devotees, they should come forward to help the Temple authorities to install the Shrine of Lord Shiva with a separate Madapalli and greater facilities as proposed.

(h) In "Aagama Saastras", there is no absolute bar that an Idol/Linga Temple cannot be shifted from its place to another under any circumstances. Prathistha (installation) texts of the Aagama Saastras,

permit and make provision for Punar Nirmanam (re-installation) and prescribes the rules therefor. The proposal is to ensure and enhance the solemnity and dignity of the worship of Lord Shiva in the Temple precincts by rectifying the defects disclosed in the Deiva Prasanam in conformity with Saastric prescriptions with the constrains of space inside the Temple and not to cast any indignity to the Lingam as alleged in the plaint.

(i) All the Poojas to the Lord Shiva will be performed as before, with separate Neivedaya in the new Divine Kitchen after the chance of location to the right place and hence, the first defendant-Jeeyar of Thirukurungui Mutt prayed for dismissal of the suit.

6. The gist and essence of the additional written statement filed by the first defendant-Jeeyar Mutt of Thirukurungudi, represented by its Jeeyar Swamigal, are as follows:

(a) The Government of Tamil Nadu issued G.O.Ms.No.55, Tamil Development, Culture and Religious Endowments Department, dated 8.4.2005, ratifying the action of the Temple authorities in shifting the Shrine of the Lord Shiva and permitted the consecration in the new Shiva Shrine in granite in the east of north-east quadrant of the third Prakaram of the Temple with the Sanctum Sanctorum, the Artha Mandapam, the Maha Mandapam along with the Subordinate Deities.

(b) The location of the Idol at the proper place cannot affect the religious sentiments of any worshipper. The religious function of the Head of the Mutt, is not subject to supervisory control of the H.R.& C.E. Board. The Azhagiya Nambiraya Perumal Temple required extensive repairs and the structures were in a dilapidated condition. The Mutt was not in a position to undertake the renovation work due to financial constraints. The Venugopala Swamy Kainkarya Trust had been undertaking renovation/restoration of ancient Temples in Southern India by adopting a holistic approach blending science and ancient wisdom. The Trust had been involved in the restoration activities of several Temples in Padaveedu, Tiruvannamalai District, Sri Kapaleeswarar Temple, Chennai, Sri Nellaiappar Temple, Tirunelveli, and the Temples at Sri Rangam and Tiruttani.

(c) The Temple is unique in its architectural conception and iconographic formation having three Shrines, dedicated to the Lord Vishnu, in the Standing, Sitting and Reclining Postures, all facing east as prescribed in Vaikhanasa Agama, the scripture followed in the Temple. The Shrine of Lord Shiva without any inscription on its walls or any old architectural details, located in front of the shrine of the Lord Vishnu, in Sitting Posture and obscuring its view, indicates that it was probably a construction of more recent times. The Agamas prescribe that no Shrine should ever be built obscuring the view of another and the Shrine of Lord Shiva not only goes against Agamic prescriptions, but also against the architectural conventions and practices prevalent in the State.

(d) On consultation with the experts, who opined that the Shrine was a later day addition, and the same being also fortified by the presence of the Bronze Idol belonging to the near-by Shiva Temple, attached to the Nambi Temple, these would indicate that the Shrine of Lord Shiva should be re-located to the north-eastern portion within the Temple and it was opined that due honour will be given to the Lord Shiva.

(e) Before commencing the renovation work, Deva (Deiva) Prasannam was conducted at the Temple premises in the presence of the first defendant-Jeeyar of Thirukurungudi Mutt, Agama experts, local public and Sthapathi, among the various revelations, it was pointed out that the Shiva Shrine needs to be re- located and a separate kitchen established for preparing food offerings to the Lord Shiva.

(f) It is to be noted that Mr.A.Krishnamachari earlier filed Writ Petition No.23193 of 2004, 13382 of 2005 and 18450 of 2005 and he himself is the author of a Book "Sri Renga Temple Prasanam", wherein he has praised the ability and recommendtions of Sri Unnikrishna Panickar who has conducted the Deiva Prasannam in this case also. In the said Book, it is mentioned that Sri Unnikrishna Panickar conducted Deiva Prasannam at Nava Thirupathi, Thirukurugudi and Srivilliputhur and remedial measures ordained were carried out. It is also specifically stated that due to the efforts taken by Sri Venu Srinivasan, Divya Desams were renovated and their pristine glory restored.

(g) The Head of the Mutt has taken in the interests of the religion and worshippers and the decision to shift the Idol was made, and as no new Idol was to be installed, the sanctity of the Temple would not be diminished. His Holiness Shri Kanchi Sankaracharya of Kanchi Kamakoti Peetam opined that the Idol of the Lord Shiva can be re-located as per the Agamic injunctions.

(h) A detailed plan was prepared and care was taken to ensure the involvement of the local community in the implementation. The entire structure was carefully removed and all the stones duly preserved and identified. Stone by stone and without any damage, the Shrine was re-located by scientific methods. As a part of the renovation work, the Idol of the Lord Shiva with Subordinate Deities, were to be re-located in the Third Circumambulatory Path (Prakaram), which is within the Temple.

(i) Re-locating the Shrine of the Lord Shiva within the same Temple does not and cannot amount to changing the character of the Temple. The character of the said Temple continues to remain a Vaishnavaite Temple. There is no new Temple which has been created for the Shiva Deity. There is no violation of the provisions of "The Places of Worship (Special Provisions) Act, 1991 (Act No.42 of 1991)".

(j) Besides an expert committee was constituted on 25.2.2003 on the directions of the Government to go into the issue and the said committee submitted its report on 31.3.2003, and after considering the report submitted by the expert committee, the Government issued G.O.Ms.No.55, Tamil Development Culture and Religious Endowments Department, dated 8.4.2005, ratifying the action of the Temple authorities in shifting the Shrine of the Lord Shiva to the north-east quadrant. All the actions of the Head of the Mutt stand validated in pursuance of the said G.O. issued by the Government. Hence, the first defendant prayed for dismissal of the suit.

7. The gist and essence of the second additional written statement filed by the first defendant-Jeeyar Mutt of Thirukurungudi, rep. by its Jeeyar Swamigal, are as follows:

(a) The fifth defendant-Divya Desa Parampariya Padukappu Peravai, Trichy, represented by its Secretary and the sixth defendant-Hindu Baktha Jana Sabai State Committee, through its State President Thiyagarajan, are neither regular worshippers of the Lord Shiva in the Temple, nor worshippers of the Temple. They cannot represent the body of persons whom they appear to represent and they are unnecessary parties.

(b) The Sivan Sannithi was installed recently. In Periya Thirumozhi, sung by Thirumangai Azhwar, he refers as "Pakkam Nirka Ninra Panbaroor", which means "Who Is Standing Besides". But the said hymn does not denote the Sivan Deity in question. The Sivan Idol is not on the side of any of the Vishnu Idols and the Sivan Deity is installed in front of the Vishnu Deity in Sitting Posture. The "Sthala Puranam" refers to a deity of Sivan in the above Temple, but none of these texts say that it is more than 1000 years old. The Idols of Lord Vinayagar and Lord Murugan were installed during Samprokshanam held in 1911 and 1981 respectively. Though there are several references about the "Pakkam Nindra Sivan" in Tamil Literature works, but none of them refers to the Sivan Idol, which was installed in front of the Lord Vishnu in the Sitting Posture. All these references are made only to the Mountain called "Mahendragiri" and the said Hill is in the form of a "Lingam" and is being referred to as "Pakkam Nindrar" and only in that context, the Azhwar made the above said references.

(c) There was no foundation for the Lord Sivan Shrine and the pillars over which the Lord Shiva Shrine stood, are there for any one to see and these six pillars are of pieces and bits of granite stones and the granite over it, that is, around the top are also of like nature.

(d) The practice of Pooja by Pothis of Kerala origin is very common in the Village, so also the seeing of Prasannam. As per the tradition and accepted practice, Deiva Prasannam was conducted by the acclaimed Tantric Sri Unnikrishnan to find out the defects, if any, and to rectify the same for the welfare of the villagers and devotees at large. Deiva Prasannam was conducted on 22.8.1996 and one of the disclosures of the Deiva Prasannam was the renovation of the Siva Temple situated on the north-east of the Village on the bank of the River called Lord Analleswarar and the Temple had almost crumbled and was mostly buried. The work had been taken up with all devotion as per the injunctions in Deiva Prasannam and the whole Temple was pulled out from the debris, totally renovated and Saivaite Heads of the Mutts attended the Kumbabishekam of the said Temple. The Deiva Prasannam also indicated that the Lord Sivan Idol with its Parivara Devathai, in the Nambirayar Temple, obstructing the view of the Lord Vishnu, in Sitting Posture, is not proper, and should be re-located in consultation with Agama experts. The Devia Prasannam further disclosed that the Lord Sivan should be given due position as a main Deity and not as a Parivara Devatha, that is, as a Sub-Deity, as per Saiva and Vaikhanasa Agama, underwhich the entire Temple functions. A separate Madapalli (Divine Kitchen) should be constructed and Naivedyam has to be prepared separately for the Lord Shiva and the Lord Vishnu.

(e) The various religious Heads also opined that the Idol of Lord Shiva can be re-located as per the injunctions of the "Agamas" and approved the same. The villages who are the regular devotees, have also given a written representation for re-locating the Lord Shiva Shrine. The Idol of Lord Shiva was removed as per the "Agama Principles". After the shifting of Lord Shiva Idol, the village and the

neighbouring villages, had a good rain and cultivation also improved. Almost all the Lakes in the District got filled.

(f) The character of the Temple is not changed and the re-location of the Sivan Idol is not against the rules and regulations of the Tamil Nadu H.R. & C.E. Act. In the present case, although no permission is necessary for shifting, the Government granted the same by issuing G.O.(Ms).No.55, dated 8.4.2005. There is no illegality in shifting the Idol from the present position to the Third Prakaram of the Temple.

(g) First defendant-Jeer as the Head of the Mutt, has control and management of the entire Temple and he is the authority to decide the religious matters and his decision cannot be interfered with by anybody. The renovation work was carried out with the full view of the public and there is no foundation of the Idol. No valuable stones were kept under the Idol. Even after the shifting of the Shiva Idol, it continues to be the Lord Vishnu Temple and it has not changed to any other character. The worshipper can continue to worship Lord Shiva and Lord Vishnu and there is absolutely no impediment to the worshipper to worship the Deities.

(h) In any event, the Tantric Unnikrishna Panicker did not suggest to re- locate for the purpose of TVS Group. On the contrary, it was ascertained the 'will' of the Presiding Deity that 'Deva Prasannam' was conducted and re- location was suggested for the well-being of the entire village. The shifting of the Lord Shiva is only a religious matter. The power of superintendence all over the Temple under Section 23 of the Tamil Nadu H.R. & C.E. Act will not apply to the religious function of the Head of the Mutt. Even the Expert Committee appointed by the Government gave an opinion that the re-location of the Shivan Idol to the North-East corner of the Third Quadrant (Third Prakaram) of the Temple is proper and can be done.

(i) The Head of the Mutt has wide and ample powers to change the location, so that the Idols are placed in appropriate places and in accordance with "Agamas". The renovation of Arulmigh Azhagiya Nambirayar Temple was done in accordance with 'Agamic' principle keeping in view of the religious sentiments of the worshipper. Hence, the D-1 prayed for dismissal of the suit.

8. The nut-shell of the written statement filed by D3, is as follows: D2-Commissioner of H.R. & C.E. Department, passed an order constituting a high level committee to pursue the request received from the Jeer Mutt regarding the re-location of Arulmighu Mahendragirinathar Sannathi and they submitted a report, opining as follows:

"1. The Shiva Lingam in the main sanctum sanctorum of the Shiva Temple shall not be re-located.

2. In the Demi-God Temples, if the Shivan Shrine is re-located either because of its dilapidated condition or because of someone else accidentally, it would be re-installed in its original place as per the religious customs and conventions. It could be done by rules of atonement enumerated in Saastras. For this, the song sung by some individual cannot be taken as guidelines. Further, the installation of Lingas is of three types, namely Deiviga, Arsha and Manusha. 'Deiviga' is the installation made by 'Devas'. 'Arsha' is the installation made by 'Rishis'. The 'Suyambu Lingam"

should not be disturbed. The Shiva Linga available at present belongs to subordinate Deity. It has been made recently. This Committee opines that the same could be installed again in the appropriate place as per the practice and Saastric conventions."

All these proposals are under consideration. The Government of Tamil Nadu passed a Government Order in G.O.No.58, dated 23.4.1999 granting administrative and technical consent for Rs.62,95,000/- regarding the construction of the Temple and performance of consecration to this Shrine. First defendant-Jeer wrongly taken up in his hands acting independently and performed the "Balalayam" on 2.6.2004, by demolishing and re-locating Arulmighu Mahendragirinathar Shrine. First defendant-Jeer did not obtain any permission either to perform "Balalayam" or for 're-locating' the Shrine. Explanation had been called for from First defendant, who has given written explanation to D2. The plaintiffs are not competent to file the suit. Hence, D3 prayed for dismissal of the suit.

9. Shorn of the contents in the additional written statement of D3, are as follows:

D2 and D3 are the statutory authorities discharging their duties in accordance with the provisions of the Tamil Nadu H.R. & C.E. Act in the matters of religious affairs and "Agamas". They are also empowered to ascertain the opinion of the religious experts well-versed in "Agamas". D2 constituted a Committee which submitted a report on 31.3.2003, and according to the report, the Siva Linga Idol should not be shifted and it is in the main 'Karbagraham' (Sanctum Sanctorum) of the Temple and there is no objection for shifting the Siva Lingam from the Sub-Shrine of the Temple. In this case, the Shiva Lingam is not the main "Karbagraham" of the Temple, but remained only as a Sub-Shrine. Without the knowledge of the H.R. & C.E. Department, the Shiva Linga Idol had been removed and kept in "Dhanya Vaasam" (inside paddy). The H.R. & C.E. Administrative Department did not grant any permission either to demolish the Sivan Sannathi or to remove the Siva Lingam.

10. Short contents of the written statement filed by D5, are as follows:

(a) Arulmighu Azhagiya Nambirayar Perumal Temple at Thirukurungudi Village is more than 1300 years old. The said Temple has been sanctified by the hymns of grant Vaishnava Saints, namely Nammazhvar, Thirumangai Azhwar, Periyazhwar and Thirumazhisai Azhwar. In front of the Lord Veetrirundha Nambi Sannathi, the Lord Shiva Sannathi had been in existence for more than 1000 years. The Shivan Deity is called as "Mahendragirinathar".

(b) In the first hymn of Periya Thirumozhi, sung by the Saint Thirumangai Azhwar, in the Eighth Century BC, he had referred the Deity Siva as "Pakkam Nirka Nindra Panbaroe". The Vedic Period "Sthala Puranam" also had a reference about the Deity Shivan in the Temple. The Manual of Tirunelveli complied in 1879, which was re-published by Manonmaniam Sundaranar University, had a reference about Shivan Deity at Chapter 15 page No.404. The Lord Shivan Deity is situated close to the Deity of Veetrirundha Nambi, as referred to in the literary work. Poet Haridasar who lived in 16th Century, mentioned the same in his book "Iru Samaya Vilakkam".

(c) The age old custom by offering a portion of "Naivediyam" prepared in the Temple, to the Lord Shiva, had been strictly followed. Thus, the Temple stood as a mark of good relations among the

"Vaishnavaites" and the "Saivaites". The Lord Shivan Shrine was there inside the Temple for more than 1000 years as a mark of religious amity between Vaishnavaities and Saivaites. So far as the Tamil Nadu State is concerned, the kind of "Prasannam" as alleged by First defendant in the written statement , is unheard of and there is no legal sanctity or religious authority for such kind of "Prasannam" in the Tamil Nadu State. The "Prasannam" and other "thanthirams" are all irrelevant and are all not accepted as authorities in the Lord Vishnu Temples. The Agamas, traditions and customs are supreme when compared to "Prasannam". 48th Jeer of D-1 / Mutt has vehemently resisted the plan for removal of Sivan Sannathi from the Temple till his death on 24.2.2004. After the present Jeer of D-1/Mutt assumption of Office, the removal of Sivan Sannithi was effected.

(d) In fact, the purported reason for blasting the Sivan Sannithi from the present location, is said to be the advise of Tantric Unnikrishnan to the TVS Group, because Sivan Deity is blocking the Veetrirundha Nambi, affecting the TVS Group family and if the said Deity is shifted from the said location, it would have been benevolent to the said Tantric Unnikrishnan, who is a consultant in such mystical matters for politicians and other powerful persons. First defendant and the other so-called religious leaders, are all recipients directly or indirectly in respect of Lord's contributions made by TVS Group of Companies and from various descendants of TVS Group and First defendant and other religious leaders seem to have accorded their approval for such demolition.

(e) The entire operation has nothing to do with the renovation of religious or spiritual purpose and the only purpose for which the blasting was done was for selfish purpose and approval from the so-called religious leaders, founded on financial contributions. D2 and D3 have not acted diligently and all the norms are flouted. Hence, D5 prayed for restoration of the Lord Shiva in the original place within a stipulated time.

11. The sum and substance of the written statement filed by D6, is as follows:

The Hindu Public Religious Institute is a Trust and once the Temple is built, idols are consecrated and dedicated to the Universe, the Trust is complete. The Trustees, whether they are hereditary trustees or non-hereditary trustees, or Madathipathis, have no right to change the existing statues. The wish of the Founder of the Trust and dedication by the Founder, cannot be interfered with by a Trustee. The Trustees have no right to change the position of the Idols installed or to shift the Idols from one place to another. The importance of Arulmighu Azhagiya Nambirayar Temple at Thirukurungudi, is the existence of the Lord Shiva by the side of the Lord Vishnu in Standing Posture, and described as "Pakkam Nindrar". Hence, D6 prayed for restoration of Lord Shiva Idol in original form.

12. The brief contents of the written statement filed by D7 to D9, are as follows:

(a) The plaintiffs, D5 and D6 are neither the regular worshippers of the Temple, nor the worshippers of Lord Shiva in the Temple. The villagers and residents, for unknown reasons, did not experience prosperity and there was unhappiness all-round. The Head of the Mutt, realising the difficult conditions faced by the villagers, took the lead in obtaining expert opinion on the issue. As per the tradition and accepted practice, "Deva Prasannam" was conducted by the acclaimed Tantric Shri

Unni Krishna to find out the defects, if any and to rectify the same for the welfare of the villagers and devotees at large. The "Deva Prasannam" was conducted on 22.8.1996, in which it was suggested to predict the course of action for the welfare of the people of the village at large and the renovation / rectification / modification of the Temple, is part of it.

(b) Shifting of the Lord Shiva Idol was one among the suggestions in "Deva Prasannam". There had been no rain or scanty rain and the villagers in general suffered. This necessitated the calling of Shri.Unni Krishnan and the conduct of "Deva Prasannam". He was not called for shifting of Shiva Shrine. One of the well known methods is to ascertain the 'will' of the Deity by "Deva Prasannam" and the renovation / rectification / modification of the Temple, was performed one by one in due course of time and the only thing that remains is the "Kumbhabhishekam" of the Shivan Deity in the newly built Shrine.

(c) The villagers could perceive and live a better life than before. The faith of the villagers could never be questioned nor decided by a Court of Law and the same is not justifiable. Hence, the suit is not maintainable. The villagers can now have a free Dharshan of the Lord Veetrirundha Nambi as well as Lord Shiva. All the villagers who were present at the time of "Deva Prasannam" also requested First defendant to take steps to remove the defects that emerged during the "Deva Prasanna". First defendant also ascertained the views of experts on Agamas. Only thereafter, First defendant took decision to re-locate the Idol of Lord Shiva and the said decision was fully endorsed by the villagers who are the worshippers at the Temple.

(d) The new Shrine appears to have been built using the very same stones and in the very manner. To the knowledge of D7 to D9, the Idol of Lord Murugan was consecrated only in 1981 and that of the Idol of Lord Vinayagar, some where in 1911. No damage was caused to any of the Idols. There were no valuable stones or parts under any of the Idols. Only a copper plate and some stones which are not precious, were recovered under the Idol of Lord Subrahmanya.

(e) After the decision to re-locate, the villagers had bountiful rains and good harvest. There has been all-round prosperity in the Village. There has also been no change in the character of the Temple and the worshippers can continue to worship the Lord Vishnu or the Lord Shiva. In fact, the earlier location of the Lord Shiva was very old and there was no proper Shrine. The new structure is at the appropriate location. In fact, the religious sentiments of Saivaites were also fully taken care of in the sense that the stones which formed the structure of the Shiva Deity, were numbered and removed one by one and were re-laid as per the numbers in the "Karbhagraha" (sanctum sanctorum) of the newly built Shrine of the Lord Shiva. Therefore, D7 to D9 prayed for dismissal of the suit.

13. On the basis of the pleadings and arguments advanced by learned counsel on both sides, the trial Court framed necessary issues and considering the oral and documentary evidence, the trial Court decreed the suit as prayed for by the plaintiffs, against which, D1 to D3 and D7 to D9 preferred First Appeals and the first appellate Court allowed those First Appeals and dismissed the suit. Challenging the same, the plaintiffs and D5 and D6 have preferred the present Second Appeals. The proposed parties before the first appellate Court, whose I.As. for impleadment, were dismissed by the first appellate Court on the date of disposal of the First Appeals, have preferred a petition before

this Court seeking leave to appeal in S.A.S.R.No.16491 of 2010.

14. At the time of admission of Second Appeal (MD).No.1075 of 2009, the following substantial questions of law were framed for consideration, which would apply to all the Second Appeals:

"(i) Whether the lower appellate Court is right in disposing of the First Appeal, without framing proper points for determination under Order 41 Rule 31, CPC ?

(ii) Whether the lower appellate Court is right in holding that the plaintiffs have no locus-standi to file the suit ?

(iii) Whether the lower appellate Court is right in holding that as per G.O.(Ms).No.55, dated 8.4.2005, the H.R.& C.E. Department, has ratified the shifting of the Idol of Lord Shiva, when especially the Division Bench of this Court has directed the lower Court to decide the suit, without reference to G.O.(Ms).No.55, dated 8.4.2005 ?

(iv) Whether the lower appellate Court is justified in holding that the shifting of the Idol Lord Shiva was done on the basis of the Deva Prasannam, without any reference to the Agama Saastrams ?

(v) Whether the lower appellate Court is right in holding that the first defendant, viz., Jeer, has got power to make changes, which according to him, is against Agama Saastras ?

(vi) Whether the lower appellate Court is right in holding that the shifting of the Idol of Lord Shiva is correct and it is in accordance with Agama Saastras, without making it clear the relevant Agama Saastras to that effect ?

(vii) Whether the lower appellate Court is right in allowing the First Appeal, when admittedly the Idol of Lord Shiva was shifted and the defendants failed to establish that the shifting of Idol of Lord Shiva was in accordance with Agama Saastras or other religious text ?

(viii) Whether the lower appellate Court is justified in rendering the judment without disposing of the applications filed under Order 1 Rule 8(5) CPC and Order 1 Rule 10(2) of CPC ?

(ix) Whether the lower appellate Court is right in placing the burden on the appellants to prove that the shifting of Lord Shiva is against the Agama Saastras ? and

(x) Whether the lower appellate Court is right in rendering the judgment, when Tr.O.P.Nos.148 and 149 of 2009 were filed and pending, on the file of the Principal District Judge, Tirunelveli, wherein, serious allegations were made against the learned Sub-Judge, Valliyoor, who disposed of the appeal ? "

15. At the time of admission of S.A.(MD).No.1075 of 2009, the above ten substantial questions of law were framed by this Court and at the time of admission of S.A.(MD).No.176 of 2010, it was specifically observed by this Court that the above ten substantial questions of law are sufficient to

dispose of S.A.(MD).No.176 of 2010 also. The same would also apply to the other appeal in S.A.(MD).No.646 of 2010. Hence, the above ten substantial questions of law cover all the three Second Appeals.

16. Substantial question of law (i) Whether the lower appellate Court is right in disposing of the First Appeal, without framing proper points for determination under Order 41 Rule 31, CPC ? It is worthwhile to refer Order 41 Rule 31 of CPC, which reads as follows: Order 41: Appeals from Original Decrees:

Rule 31: Contents, date and signature of judgment.-- The judgment of the Appellate Court shall be in writing and shall state--

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

High Court Amendment (Madras): Substitute the following for R.31: "31. The judgment of the Appellate Court shall be in writing and shall state.--(a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall bear the date on which it is pronounced and shall be signed by the Judge or the Judges concurring therein:

Provided that, where the presiding Judge is specially empowered by the High Court to pronounce his judgment by dictation to a shorthand-writer in open Court the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary be signed by the Judge."

17. Learned counsel appearing for the plaintiffs submitted that the first appellate Court has not given opportunity to them to put forth their arguments and it heard the arguments of the defendants and without framing proper points for determination so as to comply with the provisions of under Order 41 Rule 31 CPC, the judgment had been pronounced and hence, the judgment and decree of the first appellate Court are liable to be set aside.

18. On the other hand, the learned Senior Counsel and the other counsel for the defendants submitted that even though the first appellate Court has not specifically framed the points for determination, it has dealt with the issues framed and decided by the trial Court and so, as per the decisions of the Supreme Court reported in 2006 (3) SCC 224 = 2007 (1) L.W. 869 (G.Amalorpavam & Others Vs. R.C.Diocese of Madurai and others) and 2008 (2) SCC 728 (Nopany Investments (P)

Ltd. Vs. Santokh Singh (HUF)), it is not a ground for setting aside the judgment and decree of the first appellate Court.

19. While considering the rival submissions of both sides, it is appropriate to see as to whether the said decisions of the Supreme Court are applicable to the facts of the present case with regard to the non-framing of points for determination by the first appellate Court while rendering the judgment.

20. In the decision reported in 2006 (3) SCC 224 = 2007 (1) L.W. 869 (G.Amalorpavam & Others Vs. R.C.Diocese of Madurai and others), the Supreme Court held as follows:

"9. The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisement of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. ..."

(emphasis supplied)

21. In the decision of the Supreme Court reported in 2008 (2) SCC 728 (Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)), the Apex Court observed as follows in paragraphs 15 and 18:

"15. In our view, it is difficult for us to set aside the findings of the High Court on the question whether the first appellate court, while deciding the questions of fact and law, had complied with the requirements under Order 41 CPC. We are in agreement with the findings of the High Court as on a perusal of the judgment of the first appellate court, it does not appear to us that the findings arrived at by the first appellate court affirming the judgment of the trial court on any issue were either very cryptic or based on non-consideration of the arguments advanced by the parties before it. ..." "18. In view of our discussions made hereinabove, we are, therefore, unable to agree with the learned Senior Counsel for the appellant Mr Gupta that the High Court was not justified in holding that the findings of the first appellate court were in compliance with Order 41 CPC. That apart, the learned Senior Counsel for the appellant Mr Gupta could not satisfy us or even point out the specific issues which, in his opinion, had been left to be addressed by the first appellate court. In view of the discussions

made hereinabove, we are, therefore, of the view that no ground was made out by the appellant to set aside the judgment of the High Court on the question whether the judgment of the first appellate court was liable to be set aside for non-compliance with the mandatory provisions of Order 41 CPC."

22. While applying the abovesaid decisions of the Apex Court to the facts of the present case, and also considering the judgment and decree of the first appellate Court, it is seen that the first appellate Court in this case has considered all the issues and it has also deliberated on the issues framed by the trial Court, even though the first appellate Court did not frame any point for determination and so, I am of the view that as per the decisions reported in 2006 (3) SCC 224 (cited supra) and 2008 (2) SCC 728 (cited supra), the impugned judgment and decree of the first appellate Court are not vitiated by the absence of framing the points for determination. Substantial question of law (i) is answered accordingly.

23. Substantial question of law (ii):

Whether the lower appellate Court is right in holding that the plaintiffs have no locus-standi to file the suit ?

Learned counsel appearing for the plaintiffs submitted that the suit has been filed under Order 1 Rule 8 C.P.C. for collective interest of the persons and the application filed under Order 1 Rule 8 C.P.C. had been allowed. Moreover, the locus-standi of the plaintiffs to file the suit has been upheld in Ex.C-5 which is the judgment dated 3.10.2005 passed by the Division Bench of this Court in Writ Appeal No.1204 of 2005, etc., batch cases. Furthermore, the plaintiffs are the devotees and they are the worshippers and so, the first appellate Court committed error in coming to the conclusion that the plaintiffs have no locus-standi to agitate the case, whereas the trial Court considered this aspect and came to the correct conclusion that the plaintiffs were competent to agitate the suit. Learned counsel for the plaintiffs further submitted that the arguments advanced by the first defendant-Jeeyar of Thirukurugudi Mutt that the plaintiffs are not the regular worshippers of the Temple in question, and there is no pleading to that effect in the plaint and so, the first defendant attacked the locus-standi of the plaintiffs.

24. Per contra, learned Senior Counsel for the defendants submitted that the suit was filed by the plaintiffs in a representative capacity of the Saivaites and the first plaintiff-Chockalingam was the Head of the Saivaite Vellala Sangam and the second plaintiff-Sundarasubramanian belongs to Thirukurungudi Village; the first defendant-Jeeyer of Thirukurungudi Mutt in paragraph 2 of the first written statement filed by him, stated that the plaintiffs are not even the regular worshippers of the Temple or the Shrine of the Lord Shiva therein.

25. While considering the arguments advanced on either side, it is seen that the plaintiffs have filed the suit in a representative capacity and they are competent to file the same being the worshippers of the Temple. In this connection, it is worthwhile to refer Articles 25 and 26 of the Constitution of India, as follows:

"Article 25: Freedom of conscience and free profession, practice and propagation of religion:--(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law--

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.--The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.--In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

"Article 26: Freedom to manage religious affairs:

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right--

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

26. Regarding the aspect of "religion" and "dharma" in conjunction with Articles 25 and 26 of the Constitution of India, learned counsel for First defendant-Jeer relied on a decision of the Supreme Court reported in 1996 (9) SCC 548 (A.S.Narayana Deekshitulu Vs. State of .P), wherein, the Apex Court has quoted in detail, as under:

"Articles 25 and 26 of the Constitution of India deal with and protect religious freedom. Religion as used in these Articles must be construed in its strict and etymological sense. Religion is that which binds a man with his Cosmos, his Creator or super force. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the Universe. Religion is not necessarily theistic."

"Dharma embraces every type of righteous conduct covering every aspect of life essential for the sustenance and welfare of the individual and the society and includes those rules which guide and enable those who believe in God and heaven to attain moksha (eternal bliss). Rules of dharma are meant to regulate the individual conduct, in such a way as to restrict the rights, liberty, interest and desires of an individual as regards all matters to the extent necessary in the interest of other individuals, i.e., the society and at the same time making it obligatory for the society to safeguard and protect the individual in all respects through its social and political institutions. Shortly put, dharma regulates the mutual obligations of individual and the society. The word 'dharma' or 'Hindu dharma' denotes upholding, supporting, nourishing that which upholds, nourishes or supports the stability of the society, maintaining social order and general well-being and progress of mankind; whatever conduces to the fulfilment of these objects is dharma, it is Hindu dharma and ultimately "Sarva Dharma Sambhava". Dharma is that which approves oneself or good consciousness or springs from due deliberation for one's own happiness and also for welfare of all beings free from fear, desire, disease, cherishing good feelings and sense of brotherhood, unity and friendship for integration of Bharat. This is the core religion to which the Constitution accords protection."

"A religion undoubtedly has its basis in a system of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. But a religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safeguarded by Articles 25 and 26 nor has the Constitution provided that every religious activity cannot be interfered with. Every religion must believe in a conscience and ethical and moral precepts. ... The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with pragmatism since by the very nature of things, it would be extremely difficult, if not impossible, to define the expression religion or matters of religion or religious belief or practice."

"The right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity - economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by the State. Though religious practices and performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence - factual or legislative or historic - presented in that context is required to be considered and a decision reached. The Court, therefore, while interpreting Articles 25 and 26 strikes a careful balance between the freedom of the individual or the group in regard to religion, matters of religion, religious belief, faith or worship, religious practice or custom which are essential and integral part and those which are not essential and integral and the need for the State to regulate or control in the interest of the community." "The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes

of worships which are integral parts of the religion. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious belief and religious practices and guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. ..... The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the Court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question here." "The Act (A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987) regulates administration and maintenance of charitable and Hindu religious institutions and endowments in their secular administration. It lays emphasis on preserving Hindu dharma and performance of religious worship, ceremonies and poojas in religious institutions according to their prevailing Sampradayams and Agamas. ..."

"There is a distinction between religious service and the person who performs the service; performance of the religious service according to the tenets, Agamas, customs and usages prevalent in the temple etc., is an integral part of the religious faith and belief and to that extent the legislature cannot intervene to regulate it. ...."

"A conjoint reading of Sections 13 and 142 of the Act preserves the existing customs, performances, religious worships, ceremonies and poojas according to Sampradayams and Agamas followed in such institutions. Section 142 issues an injunction against an officer from interfering with such observances. Yet it would not, by operation thereof, amount to revival of what has been expressly abolished under Section 34(1)(b) of the Act. ... ... The further contention is that interference with matters based on custom or usage relating to "religious institution" as defined in Section 2(23) amounts to interference with the freedom of conscience and free practice of religion. Therefore, it is violative of Article 25(1) and is untenable in law. As held earlier, being secular actions they are not integral parts of the religion or religious matters."

"The further contention that the power of transfer under Section 39 is within the grinding teeth of Article 25(1) is also not acceptable. Sections 13 and 142 would take care of the apprehended catastrophe. On mere apprehension, Section 39 cannot be declared to be ultra vires. If in any individual case any transfer was effected of a person who had no accomplishment of Agamic rules, customs, practices or sampradayams applicable to that particular temple, it would be considered and dealt with accordingly. It cannot be expected that the Commissioner would act in violation thereof and would act in a way inconsistent with Sections 13 and 142. Each case would be considered

on its own merits and correctness of such transfer would be tested in an appropriate proceedings. Therefore, on that score alone, Section 39 cannot be declared arbitrary or ultra vires or unjust."

"Very often the words 'religion' and 'dharma' are used to signify one and the same concept or notion; to put it differently, they are used interchangeably. This, however, is not so, the word 'religion', as used in Articles 25 and 26 of the Constitution cannot be confined, cabined and crabbed, to what is generally thought to be religion. The word religion in the two Articles has really been used, not as is colloquially understood by the word religion, but in the sense of it comprehending our concept of dharma. The English language having had no parallel word to dharma, the word religion was used in these two Articles. It is a different matter that the word dharma has now been accepted even in the English language, as would appear from Webster's New Collegiate Dictionary."

"The sings and symptoms of dharma are that which has no room for narrow- mindedness, sectarianism, blind faith, and dogma. The purity of dharma, therefore, cannot be compromised with sectarianism. A sectarian religion is open to a limited group of people whereas dharma embraces all and excludes none. This is the core of our dharma, our psyche. Having love for all human beings is dharma. Helping others ahead of one's personal gain is the dharma of those who follow the path of selfless service. Defending one's nation and society is the dharma of soldiers and warriors. In other words, any action, big or small, that is free from selfishness is part of dharma."

"The word 'religion' in Articles 25 and 26 has to be understood not in a narrow sectarian sense but encompassing our ethos of "Sarve Bhavanthu Sukinaha". Let us strive to achieve this; let us spread the message of our dharma by availing and taking advantage of the freedom guaranteed by Articles 25 and 26 of our Constitution."

27. Learned counsel for First defendant-Jeer relied on the decision of the Apex Court reported in AIR 1959 SC 860 (Sarup Singh Vs.State of Punjab), in which the Supreme Court held as follows:

"The distinction between Clauses (b) and (d) of Article 26 of the Constitution of India, strikes one at once. So far as administration of its property is concerned, the right of a religious denomination is to be exercised in accordance with law, but there is no such qualification in Clause (b). The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose.

Freedom of religion in our Constitution is not confined to religious beliefs only, but extends to essential religious practices as well, subject to the restrictions which the Constitution has laid down. Under Art.26(b), a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religions they hold."

(emphasis supplied)

28. Learned counsel for First defendant-Jeer further relied upon the judgment of the Apex Court reported in AIR 1961 SC 1402 (Durgah Committee Vs. Hussain Ali), wherein, the Apex Court held as follows: "Matters of religion in Art.26(b) of the Constitution include even practices which are regarded by the community as part of its religion. In order that the practices in question should be treated as a part of religion, they must however be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion, are apt to be clothed with a religion form and may make a claim for being treated as religious practices within the meaning of Art.26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense, be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion, their claim for the protection under Art.26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other."

29. Learned counsel for First defendant-Jeer further relied on a decision of the Supreme Court reported in AIR 1972 SC 1586 (E.R.J.Swami Vs. State of Tamil Nadu), wherein the Apex Court observed as follows: "The protection of Articles 25 and 26 is not limited to matters of doctrine or belief. They extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. What constitutes an essential part of a religious or religious practice, has to be decided by the Courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."

30. While considering the above decisions relied on by learned counsel for the first defendant-Jeer, the protection guaranteed under Articles 25 and 26 of the Constitution of India,is not limited to the matters of doctrine or belief and that they extend also to the acts done in pursuance of religion, and therefore, contain a guarantee for rituals and observances, ceremonies and modes of worship, which are integral parts of religion. In the present case, the worship of the Lord Shiva in the "Karbhagraham" (Sanctum Sanctorum) in front of the Lord Veetrirundha Nambhi or where the new Shrine has been constructed in the Third Pragaram (III Quadrant), has to be decided by this Court. As per the above decisions, the worshipper has every right to worship the Deity as and where the same was originally installed.

31. Learned counsel for the first defendant-Jeer submitted that the plaintiffs are not the worshippers and they have no locus-standi to file the suit, and hence, it is worthwhile to refer the book titled, "V.K.Varadachari's Law of Hindu Religious and Charitable Endowments", Revised by Dr.R.Prakash, Advocate, Supreme Court, Fourth Edition 2005, Published by Eastern Book Company, Lucknow, which is relied on by the learned counsel for the plaintiffs, in which, it is noted by the renowned author with regard to the meaning of "worshipper" in page 565, as follows:

"The word worshipper does not mean only those persons who engage themselves in some sort of rituals for performing worship. It has a wide meaning. Thus, a person merely visiting some temple and after paying his respects goes away, is also a worshipper. A pujari, devotee, archaka, sewak, person coming to have darshan and pay respect are all included in 'worshipper'. Even a single

annual visit is sufficient to make one as worshipper of a particular deity. A person may not have even gone to some temple, even then if he is devoted to that particular one, he will be a worshipper." (emphasis supplied)

32. The first plaintiff was the President of Saiva Velalar Association of Thirukurungudi. Further, even though there is no pleading that the second plaintiff is the worshipper of the Temple, as per the evidence of P.W.1 (first plaintiff), the second plaintiff is the native of Thirukurungudi who has worshipped in the Thirukurungudi Temple and in such circumstances, I am of the view that the plaintiffs are the worshippers of the Lord Shiva in the Temple.

33. Learned counsel for the plaintiffs submitted that the plaintiffs are the "persons interested" and so, they are entitled to file the suit. In this regard, it is useful to refer the definition of the expression "person having interest" as enunciated Section 6(15) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for shot, "the H.R. & C.E. Act"), as follows: "6. Definitions.--In this Act, unless the context otherwise requires-- ..

(15) "person having interest" means--

(a) in the case of math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;

(c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;"

34. As held in the decision relied on by the learned counsel for the plaintiffs, reported in 1995 Supp (4) SCC 286 (Most Rev.P.M.A. Metropolitan Vs. Moran Mar Marthoma), in which, the Supreme Court referred to its another judgment reported in 1970 (3) SCC 831 = AIR 1971 SC 2540 = 1971 (2) SCR 836 (Ugam Singh Vs. Kesrimal), right to worship is a civil right, which can be subject matter of a civil suit and if there is any infringement, the person whose right has been prevented, has every right to work out his remedy before civil forum. Are religious rights, for instance, right to worship in a religious place, entry in a Temple, administration of religious shrines for instance a Temple, Mosque or a Church, are rights of civil nature? Religion in India has always been ritualistic. The Muslim rulers were by and large tolerant and understanding. They made India their home. They invaded, ruled and became Indian. But Britishers made it a colony. However they did not interfere with religion. Disputes pertaining to religious office including performance of rituals were always decided by the Courts established by law. There are numerous authorities where dispute about entry in the Temple, right to worship, performing certain rituals, have been taken cognizance of and decided by civil Courts. The Court protects persons in the enjoyment of a certain status or property and it may incidentally become the duty of the Civil Court to determine what are the accepted tenets

of the followers of a creed and what is the usage they have accepted as established for the regulation of their rights inter-se. As per the decision of the Supreme Court reported in 1970 (3) SCC 831 = AIR 1971 SC 2540 = 1971 (2) SCR 836 (Ugam Singh Vs. Kesrimal), the right to worship is a civil right, which can be subject matter of a civil suit.

35. Even though P.W.1, the first plaintiff in his evidence stated that he has not pleaded that he is the worshipper, but he has stated that he belongs to Saivaite Community and he was the President of Thirukurungudi Saivaite Vellala Sangam and the second plaintiff belongs to Thirukurungudi Village and he was doing service to Saivaite community. The first plaintiff, along with the villagers of Thirukurungudi, sent a representation Ex.B-37, to the Government/H.R. & C.E. Department praying not to remove the Idol of Lord Shiva from the place where it was situated. While considering the cross-examination of P.W.1, he has stated that he has visited the Temple frequently and so, as per the definition of the expression "person having interest" in the H.R. & C.E. Act, even a single visit to a Temple is enough for considering a person to be a "worshipper" and in such a situation, the argument advanced by the learned Senior Counsel for the defendants that the plaintiffs are not the worshippers, and they have no locus-standi to file the suit, does not merit acceptance.

36. Learned Senior Counsel for the defendants submitted that the suit was filed on behalf of the Saivaites in general and not on behalf of the worshippers of the suit-Temple, and the suit-Temple is a Vaishnavaite Temple and it is one among the "108 Divya Desams" of the Lord Vishnu and so, the defendants 7 to 9 who are opposing the plaintiff's claim, were impleaded as parties to the suit, and only the "person interested" in the well-being of the Temple can only file the suit in a representative capacity and not the plaintiffs as in the present case.

37. Learned counsel for First defendant-Jeer relied on a decision of a Division Bench of this Court reported in Vol.91 L.W. 205 (Kumudavalli Ammal alias Kuppammal Vs. P.N.Purushotham), wherein, it was held as follows: "5. .... It should be established that the persons, who are complaining against the administrators of the trust have a real interest in praesenti and not a mere sentimental interest. The purposeful use of the expression "two or more persons having a direct interest in the trust" was intended to widen the class of persons entitled to institute the suit under the section (Section 92 CPC). Here again, the interest should be real, substantive and an existing interest, and not a mere remote, fictitious or contingent one. It would, therefore, appear from the meaningful expansion of the word 'interest' in Section 92 CPC, that a person in order to lay a suit under it should plead and establish that he has some tangible interest towards the maintenance and progress of the public trust. .... What is to be primarily established is that the suit relates to a trust created for a public purpose, (2) it should contain allegations against the persons-in-breach, such as breach of trust, misappropriation or mismanagement, and (3) the necessity in the particular circumstance of a given case for administration of the trust by a body other than the body in management. If two or more persons having an interest in the trust file such a suit, then it is maintainable. ...."

"7. .... It is not necessary that a particular person to have an interest under Section 92 CPC, should be personally interested or personally affected by any act done by the administrator of the trust. If it could be established that they are interested in the proper conduct and running of the trust and are

involuntarily involved in evincing interest in its being regulated and conducted in accordance with the terms of the trust, it could reasonably be said that such a person has enough of an interest in the trust concerned."

38. Learned counsel for First defendant-Jeer also relied on the decision reported in Vol.100 L.W. 182 (Guhan etc., S. Vs. Rukmini Devi Arundale, etc.), in which, the Division Bench of this Court held as follows: "One of the requirements of Section 92 CPC is that it will be obligatory on the part of the plaintiff in such a suit while seeking for a direction to aver in the plaint about any 'necessity' existing for a direction to be issued for the administration of the Trust. For this purpose, the plaintiff has to give details in the plaint as to how the affairs of the Trust are being carried out and as to what are the circumstances which had occasioned and which could not be prevented, but for the directions being issued by Court. The 'Necessity' for moving the Court for direction has to be spelt out, by referring to the relevant facts and circumstances. The plaint nowhere states as to what was the machinery existing during the five decades of its existence, and how far the existing machinery was not adequate and that it has now become necessary, to get directions of Court for its administration. As the plaint is totally silent regarding the particulars of the machinery which has been existing for five decades, and what necessity had arise to evolve a different method of managing and administering the Trust, it is held that a fundamental pre-requisite to maintain a suit under Section 92 CPC is absent in the plaint. On the basis of such an ill-drafted plaint, which does not contain required particulars making out necessity to issue directions, the suit under Section 92 CPC is not maintainable."

39. The decision reported in AIR 1961 SC 1720 (Sinha Ramanuja Vs. Ranga Ramanuja), relied on by learned counsel for First defendant-Jeer, does not apply to the facts of the present case, as it deals with the dispute between two Jeers and their religious rights of office, which is not the case on hand.

40. It would be now appropriate to consider the decisions relied on by both sides.

(i) Vol.XLII ILR 360, Madras Series (T.R.Ramachandra Aiyar Vs. Parameswaran Unni):

"Suppose, there had been a deed of dedication with respect to the temple in suit, and that deed stated in so many words that Mr.T.R.Ramachandra Aiyar and all other worshippers of Sri Rama would be entitled to worship there, it could hardly be contended then that Mr.T.R.Ramachandra Aiyar would not be a beneficiary of the trust and as such entitled to maintain the suit. It cannot in my opinion make any difference in this respect that there is no such deed of dedication available in this case, if, as is admitted, the temple in question was in fact intended for the use of worshippers of Sri Rama and Mr.T.R.Ramachandra Aiyar is a devotee of Sri Rama and as such entitled to worship in this temple."

Learned Senior Counsel for the defendants submitted that since the persons who have not frequently visited a Temple, are not the worshippers, they are not entitled to maintain the suit, as laid down in the said decision reported in Vol.XLII ILR 360, Madras Series (cited supra). But this citation is not applicable to the facts of the present case, because, that decision was rendered in 1918 and the H.R. & C.E. came into force from 1959. Furthermore, the worshipper who visited the

Temple and worshipped even once a year (annually), is entitled to maintain the suit being a worshipper, as stated above, in the said book of "V.K.Varadhachari's Law of Hindu Religious and Charitable Endowments".

(ii) AIR 1967 SC 1415 = 1967 (2) SCR 739 (Mahant Harnam Singh Vs. Gurdian Singh):

"6. .. The only allegation was that a Langar used to be run in this institution where free kitchen was provided to visitors. It was nowhere stated that any such free kitchen was being run for the general residents of Village Jhandawala who could, as of right, claim to be fed in Langar. Mere residence in a village where free kitchen is being run for providing food to visitors does not create any interest in the residents of the village of such a nature as to claim that they can institute a suit for the removal of the Mahant. The nature of the interest that a person must have in order to entitle him to institute a suit under Section 92 CPC, was first examined in detail by the Madras High Court in T.R.Ramachandra Aiyar v. Parmeswaran Unni, ILR 42 Mad 360 : (AIR 1919 MAD

384). After the dismissal of the suit under Section 92 CPC, by the District Judge, the case came up in appeal before Wallis,C.J., and Kumaraswami Sastri, J., who delivered dissenting judgments. The appeal was dismissed and then came up before a Full Bench of three Judges under the Letters Patent. Three different judgments were delivered by the members of the Full Bench, Abdur Rahim, Oldfield and Coutts Trotter, JJ. Wallis, C.J., when dealing with the appeal at the earlier stage, expressed his opinion that to entitle him to sue under Section 92 CPC, it is not enough that the plaintiff is a Hindu by religion, but he must have a clear interest in the particular trust over and above that which millions of his countrymen may be said to have by virtue of their religion; and this opinion was expressed even though the word "direct" in Section 92 CPC, had been omitted. It is not necessary to refer to other opinions expressed by the learned Judges in that case in view of the decision of their Lordships of the Privy Council in Vaidyanatha Ayyar v. Swaminatha Ayyar, 51 Ind.App. 282: (AIR 1924 PC

221)(2), where they approved the opinion expressed by Sir John Wallis, C.J., in the case cited above, and held: "They agree with Sir John Wallis that the bare possibility, however remote, that a Hindu might desire to resort to a particular temple gives him an interest in the trust appears to defeat the object with which the Legislature inserted these words in the section. That object was to prevent people interfering by virtue of this section in the administration of charitable trusts merely in the interests of others and without any real interests of their own." Agreeing with the view expressed by the Privy Council, we hold that in the present case the plaintiff-respondents, who were merely Lambardars and residents of Village Jhandawala, had, in those capacities, no such interest as could entitle them to institute this suit."

(iii) Vol.88 L.W. 577 (Madras High Court): (C.Kalahasti Vs. R.Sukhantharaj):

"3. ... We are not quite sure whether the last requisite, namely, that the person must be in a position to derive some benefit from the trust in respect of which the suit is filed, in order to qualify himself that he is a person having interest in the trust, is entirely correct. All that the majority of the Full Bench meant to say was that the plaintiff must stand on a special relationship with the trust as

distinct from the rest of the community in respect of the suit trust, so that he may have a particular direct relationship with the institution. To hold that any member of the public, who may have a distinct or indirect connection or relationship with the institution, is a person having interest in the trust, would dilute the requirement of S.92. ..."

41. Learned Senior Counsel appearing for the defendants 7 to 9 submitted that the villagers of Thirukurungui have sent a representation Ex.B-39 dated 2.9.2003, which is much prior to the suit. They are the real worshippers at Azhagiya Nambirayar Perumal Temple, Thirukurungui. Ex.B-40 is the document relating to another representation of the villagers, dated 12.9.2003, stating that since the Shrine of the Presiding Deity is closed in the evening, the Villagers were unable to celebrate the overnight festival of Sivarathiri and Pradhosham and the other festivals of Lord Siva like Thirukalyanam and Thiruvidaiyatri, as the Idol was in the Shrine of the Presiding Deity. Likewise, they have also sent another representation dated 25.10.2004 with the same request. So, the plaintiffs, with the mala-fide intention, to create a division among the peace-loving villagers, have filed the suit under Order 1 Rule 8 CPC, in a representative capacity and so, the plaintiffs have no locus-standi to file the suit.

42. Admittedly, the suit was filed under Order 1 Rule 8 CPC, which reads as follows:

Order 1 CPC: Parties to suits:

Rule 8: One person may sue or defend on behalf of all in same interest: (1) Where there are numerous persons having the same interest in one suit,--

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested; (b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub- rule (1), and no such suit shall be withdrawn under sub-rule (3), of Rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in

the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation.--For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

43. The defendants 7 to 9 have earlier filed an application to implead themselves as parties to the suit and were also impleaded as parties to the suit, as ordered by this Court in C.R.P.(PD).No.970 of 2005, dated 24.11.2005. After impleading applications were allowed after following procedures and the defendants 7 to 9 were impleaded as parties to the suit, D7 to D9 pleaded that none of the villagers made an objection for removal of the Lord Shiva Deity. In such circumstances, I am of the view that the plaintiffs who are worshippers of the Temple, are entitled to file the suit on behalf of Saivaites of Thirukurungudi.

44. Now, it is proper for this Court to consider the decision relied on by the learned counsel for the plaintiffs reported in 1995 Supp (4) SCC 286 (cited supra), to show that right to worship is a civil right, which can be the subject matter of a civil suit. The plaintiffs in the present case are the worshippers of the Temple and the persons interested and so, they are having right to file the suit.

45. Further, learned counsel for the defendants submitted that the suit is hit by the provisions of Section 92 CPC, but this argument does not merit acceptance.

46. Section 92 of CPC reads as follows:

" Section 92 CPC: 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 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 inquires;

(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 suits 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;

(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."

47. Section 92 CPC is in respect of "public charities", but the suit has been filed by the plaintiffs as the worshippers of the Temple, the first plaintiff is the President of Thirukurungudi Saiva Velalar Organisation and the second plaintiff is a worshipper of Lord Siva. In such circumstances, the argument advanced by learned counsel for the plaintiffs that without permission under Section 92 CPC, the suit is not maintainable, does not merit acceptance. So, the decisions reported in AIR 1967 SC 1415 (cited supra) and Vol.88 L.W. 577 (cited supra) are not applicable to the facts of the present case.

48. Admittedly, the suit is filed under Order 1 Rule 8 CPC and the permission was accorded by Court and the suit has been contested by the plaintiffs and during the pendency of the proceedings, the first plaintiff Chockalingam died and the second plaintiff is proceeding with the suit. In such circumstances, I am of the view that the worshipper has a right to worship the Deity "Pakkam Nindrar" and the right to worship at a particular place is equal to the right to worship and so, I am of the view that the plaintiffs have locus- standi to file the suit.

49. Learned counsel for the plaintiffs also submitted that the plaintiffs have filed the suit in a representative capacity and also obtained an ex-parte order of injunction before the trial Court, against which, Civil Revision Petition has also been preferred before this Court. At this juncture, the Government passed G.O.(Ms).No.55, dated 8.4.2005, ratifying the action of shifting of Lord Shiva and so, the Division Bench of this Court as found in Ex.C-5 judgment, dated 3.10.2005 in Writ Appeal Nos.1204 to 1207 of 2005, 1275 of 2005, W.P.Nos.23178, 23193, 704, 1002 and 2246 of 2004, 18450 of 2005 and C.R.P.PD.Nos.27 and 28 of 2004, passed an order observing that the parties interested can agitate their rights before the trial Court and in paragraph 6, the Division Bench further observed as follows:

"7. ... . Since the suit is filed in a representative capacity under Order 1 Rule 8 of the Code of Civil Procedure, it is needless to state that any person in whose behalf or for whose benefit the suit is instituted or defended may apply to the court to be made as a party to the court (See Order 1 Rule 8(3) of the CPC). Under these circumstances, if any person comes before the court with an application under Order 1 Rule 8(3) of the Code to get himself impleaded, the learned trial Judge is directed to take up that application also and dispose of the same in accordance with law within 15 days from the date of receipt of such application."

50. So, learned counsel for the plaintiffs submitted that the Division Bench of this Court in the said Ex.C-5 judgment, came to the conclusion that the plaintiffs have filed the suit in a representative

capacity and hence, it is contended by the learned counsel for the plaintiffs that the plaintiffs are competent to institute the suit in a representative capacity. But now, the defendants are not entitled to take up the defence that the plaintiffs are not the worshippers of the Temple and the plaintiffs have no locus-standi to file the suit.

51. The defendants further contend that there is no pleading in the plaint that they are the worshippers. To substantiate this point, learned counsel for the plaintiffs relied upon a decision of this Court reported in 1999 SAR [Supreme Appeals Reporters] (Civil) 472 (Sardul Singh Vs. Pritam Singh and others) and 1998 SAR (Civil) 544 (Ganesh Shet Vs. Dr.C.S.G.K.Setty and others), in which decisions, it is held by the Apex Court as follows: 1999 SAR (Civil) 472: (Sardul Singh Vs. Pritam Singh and others):

"12. ... It is well-settled that notwithstanding the absence of pleadings before a court or authority, still if an issue is framed and the parties are conscious of it and went to trial on that issue and adduced evidence and had an opportunity to produce evidence or cross examine witnesses in relation to the said issue, no objection as to want of a specific pleading can be permitted to be raised later. ..."

1998 SAR (Civil) 544(Ganesh Shet Vs.Dr.C.S.G.K.Setty and others): "Held: While normally it is permissible to grant relief on the basis of what emerges from the evidence - even if not pleaded, provided there is no prejudice to the opposite party, such a principle is not applied in suits relating to specific performance. Other relief to be granted must be consistent with both pleading and proof in suits for specific performance. In a suit for specific performance, the plaintiff cannot be given relief under the general prayer "such other relief as this Hon'ble Court may deem fit to grant in the circumstances of the case", in the light of Order 7, Rule 7 CPC - There is a difference between suits for specific performance and other suits."

52. It is further contended by the learned counsel for the plaintiffs that as per Ex.C-5 jugment of the Division Bench in the writ petitions and other connected cases, the suit filed by the plaintiffs is a comprehensive suit on the issue and the "lis" involved in the suit has to be decided on merits and thus, the locus-standi of the plaintiffs had been impliedly upheld by the Division Bench as observed in Ex.C-5 judgment. First defendant, who accepted the verdict of the Division Bench, while disposing of the batch of cases, is not at all entitled to question the locus-standi of the plaintiffs to maintain the suit.

53. Learned counsel for the defendants also relied upon a decision of the Supreme Court reported in AIR 1964 SC 107 (Ahmad Adam Vs. Makhri), wherein the Apex Court held as follows:

"17. A similar result follows if a suit is either brought or defended under O.1 R.8. In that case, persons either suing or defending an action are doing so in a representative character, and so, the decree passed in such a suit binds all those whose interests were represented either by the plaintiffs or by the defendants. Thus, it is clear that in determining the question about the effect of a decree passed in a representative suit, it is essential to enquire which interests were represented by the plaintiffs or the defendants. If the decree was passed in a suit under S.92, it will become necessary to

examine the plaint in order to decide in what character the plaintiffs had sued and what interests they had claimed. If a suit is brought under O.1 R.8, the same process will have to be adopted and if a suit is defended under O.1 R.8, the plea taken by the defendants will have to be examined with a view to decide which interests the defendants purported to defend in common with others. The decision of this question would be material in determining the correctness of the argument urged by Mr.Setalvad before us."

54. Learned counsel for the defendants further relied on a decision of this Court reported in AIR 1984 Madras 328 (P.Sivagurunatha Pillai Vs. P.Mani Pillai), in which, in paragraph 10, it was held by a Division Bench of this Court that the interest contemplated under Section 92 of the CPC, should be real, substantive and an existing interest though it need not be a direct interest; mere residence of the party to the suit in a village would not enable the party to claim that he is a person interested in properties and as such, entitled to maintain the action under Section 92 CPC.

55. There is no quarrel over the proposition of law laid down in the above decision reported in AIR 1984 Madras 328 (cited supra). As already observed, the plaintiffs are the worshippers of the Temple and even during the visit by the Expert Committee of the H.R. & C.E., appointed by the Government, the plaintiffs and the villagers objected for removal of the Lord Shiva and hence, they are having interest in the Temple.

56. Learned counsel for the defendants also relied upon a decision of this Court reported in Vol.52 MLJ 288 = AIR 1927 Madras 465 (Venkatachala Mudaliar Vs. Sambasiva Mudaliar), in which it was held as follows: "Where an old Hindu temple with a consecrated image in it has become insanitary due to the collecting of water all round it and its being situated very near the roadway, and in the interests of the general body of worshippers a very large majority of them is for the removal of the old temple to a new site, the Court should not interfere with their discretion as what they do is, according to their notions, beneficial to the whole community." Relying on the said decision reported in Vol.52 MLJ 288 = AIR 1927 Madras 465 (cited supra), learned counsel for the defendants submitted that the opinion of the entire village is important than the section of the people.

57. In this case, after the disposal of the cases by the Division Bench as found in Ex.C-5, D7 to D9 have been impleaded and they have put forth their case that they are supporting the case of the first defendant-Jeer. As already stated, the Lord Shiva was there even during the period of Thirumangai Azhwar, i.e. in 7th Century. In such circumstances, there is no need to alter the Deity from the original place. As per the documents before this Court, even in 1911 and 1981, the Temple Consecration (Kumbhabhishekam) was performed and at that point of time, no one raised their little finger for removal of the Idol of Lord Shiva/Lord Mahendragirinathar from the original place. Only in 1996 after "Deva Prasannam" was conducted, the villagers raised their representation/objection in 2003 and before that, no one gave any representation/objection either to the H.R. & C.E. Department or to the first defendant-Jeer of the Mutt and no document has been filed before this Court in this regard.

58. Learned counsel for the defendants relied on a decision of the Full Bench of this Court reported in AIR 1930 Madras 817 (Abdul Sac. Vs. Sundara Mudaliar), wherein, the Full Bench observed as follows: "Whether a defendant against whom a suit is dismissed continues or ceases to be party within the meaning of S.47 CPC does not entirely depend upon whether his name has been struck off from or retained on the record, and consequently in order to determine whether a particular defendant against whom the suit is dismissed is or is not a party to the suit within the meaning of S.47, it is the duty of the Court not only to refer to the decree but also to judgment and pleadings."

"Where a suit is dismissed against a person on the ground that he was improperly impleaded as party having no concern with the suit, such a person does not remain a party to the suit for the purposes of S.47, notwithstanding whether his name has or has not been removed from record. In such cases, it is the duty of the Court to strike out the name of the party improperly impleaded; it is quite wrong procedure to dismiss the suit as against him. It is quite otherwise in the case where the plaintiff abandons his claim against the defendant and the suit is dismissed as against him. In the latter case, the defendant is not a person to whom Order 1 Rule 10(2) CPC applies."

59. Relying on the said decision of the Full Bench, it is contended that S.A.(MD).Nos.176 and 646 of 2010 filed by D5 and D6, is not maintainable, since the trial Court came to the conclusion that they are not necessary parties to the suit, even though they have filed impleading petition to implead themselves as parties to the suit, ultimately, as stated above, after trial, the trial Court came to the conclusion that D5 and D6 are not necessary parties to the suit, against which, D5 and D6 did not prefer any First Appeal. The trial Court decreed the suit as prayed for by the plaintiffs, against which, First defendant-Jeer and D2, D3 and D7 to D9 alone preferred First Appeals, whereas D5 and D6 did not prefer any First Appeal. The first appellate Court allowed those First Appeals and dismissed the prayer sought for in the suit. Now, D5 and D6 have filed the Second Appeals in S.A.(MD).Nos.176 and 646 of 2010 and it is the contention of the learned counsel for the first defendant-Jeer that those Second Appeals by D5 and D6 are not maintainable.

60. In reply, learned counsel for D5 and D6 submitted that the suit had been filed by the plaintiffs, and D5 and D6 have impleaded themselves as parties in support of the prayer sought for by the plaintiffs and they are also supporting some portion of the plaintiff's pleadings. But however, the trial Court decreed the suit as prayed for by the plaintiffs, even though it was held that D5 and D6 are not necessary parties and since the object and aim of D5 and D6 had been fulfilled and since no judgment and decree had been rendered against D5 and D6, no First Appeal was filed as against the very findings rendered by the trial Court against D5 and D6. Therefore, learned counsel for D5 and D6 submitted that there is no ground for fling the First Appeal by the D5 and D6 before the first appellate Court and since the First Appeals by the other defendants, namely D1 to D3 and D7 to D9, have been allowed, the relief sought for by D5 and D6 in the written statement, has ultimately been negatived by the first appellate Court and only thereafter, the right to appeal by D5 and D6, arises, and hence, D5 and D6 have filed the respective Second Appeals, and hence, they are entitled to maintain those Second Appeals. He further submitted that since judgment and decree had been rendered against D5 and D6 before the trial Court, no First Appeal was preferred by them as there was no need to file the First Appeals.

61. The said decision of the Full Bench reported in AIR 1930 Madras 817 (cited supra), is not applicable to the facts of the present case, because, in that decision, D2 claims an independent title and he has endorsed on the plaint that he does not derive his title from the mortgagor but quite independently of him and therefore, the trial Court held that he is not a necessary party to the suit and the suit must be therefore dismissed with costs against D2 to D6 therein, and it also observed that the plaintiffs will get a decree against the other defendants in the suit and the suit was accordingly dismissed as against D2 to D6. But, in the instant case, D5 and D6 impleaded themselves as parties to the suit, and their prayer was to direct the defendants to restore the Idol of Lord Shiva in the original place within stipulated time as may be granted by Court. The trial Court decreed the suit as prayed for by the plaintiffs, even though it came to the conclusion that D5 and D6 are not necessary parties to the proceedings. Since the object of D5 and D6 had been ultimately fulfilled, it is stated that they have not preferred any First Appeal. Since the First Appeals have been filed only by D1 to D3 and D7 to D9, which have also been allowed, resulting in the dismissal of the suit, now D5 and D6 have preferred these Second Appeals.

62. Learned counsel for First defendant-Jeer also submitted that the suit is hit by the principles of 'res-judicata' and in support of the same, he relied upon the following decisions of the Supreme Court:

(i) AIR 1964 SC 993 (Arjun Singh Vs. Mohindra Kumar) :

Held: Scope of the principle of res-judicata is not confined to what is contained in Section 11 CPC, but is of more general application. Again, res- judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. If the court which rendered the first decision was competent to entertain the suit or other proceeding, and had therefore competency to decide the issue or matter, the circumstance that it is a tribunal of exclusive jurisdiction or one from whose decision no appeal lay, would not by themselves negative the finding on the issue by it being res- judicata in later proceedings. Where the principle of res-judicata is invoked in the case of the different stages of proceedings in the same suit, the nature of the proceedings, the scope of the enquiry which the adjectival law provides for the decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and relevant factors to be considered before the principle is held applicable."

Relying on the said decision reported in AIR 1964 SC 993 (cited supra), learned counsel for First defendant-Jeer submitted that the scope of the principle of res-judicata, is not confined to what is contained in Section 11 CPC, but is of more general application; again res-judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. He further submitted that the trial Court and the first appellate Court came to the conclusion that D5 and D6 are not necessary parties to the suit, and hence, D5 and D6 are not entitled to file any Second Appeal. Though there is no quarrel over the proposition of law laid down in the said decision, but the same is not applicable to the facts of the present case.

(ii) AIR 1977 SC 34 (J.Narasimha Vs. A.S.Krishna & Co.) "3. This appeal is only by the first defendant (appellant). The second defendant, whose interests are affected by the decree, has not

preferred any appeal against the decree. That being the position, the appellant cannot be heard to contest the decree in view of the admitted position that he had executed the sale agreement and had received part consideration. At any rate, he cannot question the agreement. The finding that the entire suit property is the self-acquired property of the appellant cannot be contested by him in this appeal. The real person who should be aggrieved by this finding has not even chosen to appeal against the decree. There is, therefore, no merit in the objection taken by the learned counsel with regard to the character of the suit property."

As per this decision, the appeal therein was only by D1 and D2, whose interests are affected by the decree, has not preferred any appeal against the decree, and that being the position, it was held that the appellant-First defendant therein cannot be heard to contest the decree in view of the admitted position that he had executed the sale agreement and had received part consideration. In the case on hand, no decree has been passed against D5 and D6 and hence, the said decision reported in AIR 1977 SC 34 (cited supra), is not applicable to the facts of the present case.

(iii) AIR 1996 SC 869 (Mahesh Chand Sharma Vs. Raj Kumari Sharma): "32. The plea of limitation raised by the defendant-appellant cannot be upheld for more than one reason. The reasons are the following:

(a) Among the issues framed in the suit, Issue No.5 pertains to the plea of limitation put forward by Defendant Nos..2 to 5. The issue runs thus:- "Whether the suit is within time?" On this issue, the learned single Judges (Trial Judge) recorded a finding in favour of the plaintiff. He found the suit within limitation. The decision on the above issue was not contested by the parties before the Division Bench. The Division Bench has expressly recorded that 'the decisions on the above issues (Issues 1,2,3,4,5 and 6) are not contested by the parties in this appeal and, therefore, the findings of the learned single Judge are hereby affirmed". Once this is so, it is not open to the third defendant-appellant in these appeals to seek to re-agitate the said plea. We cannot allow him to do so. A party who abandons a particular plea at a particular stage cannot be allowed to re-agitate in appeal."

This citation is not applicable to the facts of the present case.

63. It is further submitted by learned counsel for First defendant-Jeer that the findings rendered by the Court, operate as 'res-judicata' between the co-defendants. In this regard, the following decisions are relied on by the counsel for the parties:

(i) AIR 1970 SC 809 (S.P.Misra Vs. Babuaji):

Held: that the question whether the suit lands appertained to the village of the deity became res sub judice on filing of first appeal and since this question was not finally decided between deity and other contesting defendants in appeal in the absence of any decision by High Court on merits on this question there was no final decision against deity. Thus there was no question of res judicata between co-defendants. "

(ii) AIR 1974 SC 749 (Iftikhar Ahmed Vs. Syed Meharban Ali): "The rule of res judicata while founded on ancient precedent is dictated by a wisdom and the application of the rule should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law. The raison d'etre of the rule is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest." "It is now settled that for a judgment to operate as res judicata between or among the co-defendants, it is necessary to establish that (1) there was a conflict of interest between the co-defendants (2) that it was necessary to decide the conflict in order to give relief which the plaintiff claimed; and (3) that the Court actually decided the question. If thus a previous decision can operate as res judicata between the co-defendants under certain conditions, there is no reason why a previous decision should not operate as res judicata between the co-plaintiffs is the same conditions are mutatis mutandis satisfied."

(iii) 1995 (3) SCC 693 (Mahboob Sahab Vs. Syed Ismail): "8. .... Under Section 11 CPC when the matter has been directly or substantially in issue in a former suit between the same parties or between parties under whom they or any of them claimed, litigating under the same title, the decree in the former suit would be res-judicata between the plaintiff and the defendant or as between the co-plaintiffs or co-defendants. But for application of this doctrine between co-defendants four conditions must be satisfied, namely that (1) there must be a conflict of interest between the defendants concerned; (2) it must be necessary to decide the conflict in order to give the reliefs which the plaintiff claims; (3) the question between the defendants must have been finally decided; and (4) the co-defendants were necessary or proper parties in the former suit. .... if a plaintiff cannot get at his right without trying and deciding a case between co- defendants, the Court will try and decide the case, and the co-defendants will be bound by the decree. But if the relief given to the plaintiff does not require or involve a decision of any case between co-defendants, the co-defendants will not be bound as between each other."

64. There is no quarrel over the propositions of law laid down in the above two decisions reported in AIR 1970 SC 809 and AIR 1974 SC 749 (both cited supra). But these citations are not applicable to the facts of the present case, because, the trial Court and the first appellate Court came to the conclusion that D5 to D9 are not necessary parties for adjudication of the suit. Admittedly, no First Appeal has been preferred by D5 and D6, whereas D1 to D3 and D7 to D9 have preferred First Appeals, since they are supporting the case of First defendant-Jeer, and since the suit was decreed. The First Appeal preferred by D7 to D9 was allowed along with the First Appeals preferred by D1 to D3.

65. Learned counsel for First defendant-Jeer submitted that without filing the First Appeal, D5 and D6 are not entitled to file Second Appeals. To substantiate this submission, he relied on the following decisions of the Supreme Court:

(i) AIR 1982 SC 98 (Choudhary Sahu Vs. State of Bihar):

"Where the Collector on the basis of the material placed before him allowed certain units to the various landholders who feeling aggrieved went up in appeal before the Commissioner of the Division but the State of Bihar submitted to the order and did not go up in appeal nor did it file

cross- objection, held, committed a mainfest error in reversing the finding regarding allotment of units to the various appellants (landholders) in the absence of any appeal by the State of Bihar when the same had become final and rights of the State of Bihar had come to an end to that extent by not filing any appeal or cross-objection within the period of limitation. On the strength of the first part of sub-clause (1) of Rule 22 of Order 41 CPC, the State of Bihar could only support the decree not only on the grounds decided in its favour but also on the grounds decided against it. The Commissioner however, could not set aside the findings in favour of the appellant on the strength of O.41 R.22 (1)." "Nor was the Commissioner empowered to do it by invoking O.41 R.33, CPC as the Rule did not confer an unrestricted right to re-open decrees which had become final merely because the appellate Court did not agree with the opinion of the Court appealed from."

(ii) AIR 2003 SC 1682 (Shankar Popat Gaidhani Vs. Hiraman Umaji More): "12. The plaintiff, as noticed hereinbefore, did not question the judgment and decree passed by the Trial Court. Evidently, the Court did not grant a decree for recovery of possession so far as the suit land is concerned. In that view of the matter, the High Court, in our opinion, committed a serious error in granting a relief in favour of the plaintiff in an appeal filed by Defendant No.1 purporting to modify Relief (a), as aforementioned, particularly in view of the fact that amongst others, the Appellant claimed himself to be in physical possession of the lands in question. The Appellant, indisputably was not a party to the said agreement for sale.

12. The High Court also could not have exercised its jurisdiction in issuing the said direction even under Order 41 Rule 33 of the Code of Civil Procedure inasmuch the said provision could not be invoked by one respondent as against another as therefor it was obligatory on the part of the plaintiff to file a cross objection in terms of Order 41, Rule 22 of the Code of Civil Procedure and give notice in relation thereto to the parties who claimed independent possession over the suit land."

(iii) AIR 1962 SC 630 (Union of India Vs. P.K.More):

"When an improper conduct is alleged, it must be set out with all particulars. A plaintiff cannot complain if general allegations made by him in the plaint are answered by equally general allegations in the written statement. Where the plaint alleged that the order of removal of the plaintiff from service was in violation of Articles 14 and 16 of the Constitution inasmuch as the plaintiff was arbitrarily picked up and sacked and the defendant answered the allegation in its written statement by stating that the defendant denied that the order of removal was in violation of Articles 14 and 16 of the Constitution:

Held, that, in the absence of the particulars in the plaint all that the defendant could do would be simply to deny that there had been discrimination. When the defendant in its written statement said that there had been no violation of Articles 14 and 16 of the Constitution, it meant that there had been no arbitrary or hostile discrimination as alleged in the plaint; otherwise of course, the written statement would be meaningless. In such a state of the pleadings, it could not be said that the defendant had admitted that there had been discrimination."

(iv) AIR 1950 Bombay 161 (Rammohanrai Vs. Somabhai) (Division Bench of the Bombay High Court):

"9. ... Under Order 41 Rule 22 CPC, a party can file any cross-objection to a decree which could have been taken by way of appeal. Where a party cannot appeal from a decree, because nothing is decided against him, he cannot file any cross-objections to it. The cross-objections must also be in respect of something decided by the particular decree from which the appeal is preferred."

66. Learned Senior Counsel appearing for D7 to D9 submitted that D5 and D6 ought to have filed Cross Appeals against the findings rendered against them by the trial Court. At this juncture, it is appropriate to consider the decision relied on by learned counsel for D5 and D6, i.e. the judgment of the Supreme Court reported in AIR 2003 SC 1989 (Banarsi Vs. Ram Phal), wherein, the Apex Court observed as follows:

"8. ... No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment."

"9. ..... Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross-objection is preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross-objections though certain finding may be against him. Appeal and cross-objection - both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment. This was well-settled position of law under the unamended CPC."

"12. .... No compensation or any other relief including the relief of refund shall be granted by the Court unless it has been specifically claimed in the plaint by the plaintiff. ..."

67. From the said decisions relating to filing of Appeals/Cross-objections under the CPC, it is clear that just as an appeal is preferred by a person aggrieved by the decree, so also a cross-objection is preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross-objections though certain finding may be against him. Hence, the contention made by learned counsel for D5 and D6 that only the finding is against them, and therefore, there is no need to file any First Appeal, merits acceptance.

68. As already discussed, as the plaintiffs are the worshippers and the right to worship is a civil right, they are entitled to maintain the suit and since the right of the worshippers had been disturbed and objected, they have locus-standi to file the suit. Substantial question of law (ii) is answered in the above terms.

69. Substantial questions of law (iv), (vi), (vii) and (ix) :

(iv) Whether the lower appellate Court is justified in holding that the shifting of the Idol Lord Shiva was done on the basis of the Deva Prasannam, without any reference to the Agama Saastrams ?

(vi) Whether the lower appellate Court is right in holding that the shifting of the Idol of Lord Shiva is correct and it is in accordance with Agama Saastras, without making it clear the relevant Agama Saastras to that effect ?

(vii) Whether the lower appellate Court is right in allowing the First Appeal, when admittedly the Idol of Lord Shiva was shifted and the defendants failed to establish that the shifting of Idol of Lord Shiva was in accordance with Agama Saastras or other religious text ?

(ix) Whether the lower appellate Court is right in placing the burden on the appellants to prove that the shifting of Lord Shiva is against the Agama Saastras ?

The above four substantial questions of law deal with the correctness of the removing and shifting of the Idol of Lord Shiva from the original place to new place.

70. The original place of Idol of Lord Shiva--Mahendragirinathar before removal, is admitted. Learned counsel for the plaintiffs submitted that the Lord Shiva is mentioned as "Pakkam Nindrar" and the Temple has been constructed from time immemorial, which is evidenced by the recitals of Thirumangai Azhwar as: @mf;Fk;g[y[padjS KilahutbuhUth;

gf;;fk;epw;fepd;w gz;gU:h;BghYk;

jf;fkuj;jpd; jhH;rpidBawp jha;thapy;

bfhf;fpd;gps;is bts;spwt[z;Zk; FWA;FoBa@ So, the Idol of Lord Shiva is not a later construction as alleged by the defendants. At this juncture, learned counsel for the plaintiffs culled out a portion of the oral and documentary evidence and submitted that as per the evidence of D.W.4 Narayanan, who is the "Sri Kariyam" (Manager) of the Jeer Mutt, himself admitted that the idol of Lord Shiva is there for more than 200 years.

71. In this regard, it is appropriate to consider the findings of the first appellate Court, which is the last fact finding Court, as this Court has powers to re-appreciate the oral and documentary evidence under Section 103 CPC. Section 103 CPC reads as follows:

"Section 103 CPC: Power of High Court to determine issue of fact.--In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,--

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100."

72. Learned counsel for the plaintiffs submitted that the first appellate Court has not heard the arguments of the plaintiffs, who are the respondents in the first appellate Court and it has not considered the petitions seeking for substitution of parties, in I.A.No.130 of 2009 in A.S.No.29 of 2007, I.A.No.133 of 2009 in A.S.No.37 of 2007, I.A.No.136 of 2009 in A.S.No.63 of 2007 and I.A.No.142 of 2009 in A.S.No.37 of 2007 in proper perspective and the first appellate Court has simultaneously disposed of the said I.As. along with the respective First Appeals. So, the judgment of the first appellate Court is perverse and this Court has ample powers under Section 103 CPC to interfere with the findings of the first appellate Court, as they are perverse.

73. Furthermore, during the pendency of Tr.O.Ps., without giving opportunity to the plaintiffs/respondents in the first appellate Court to put forth their case, the learned first appellate Judge hastily disposed of the First Appeals, along with the above said I.As., simultaneously, without considering the materials available on record. In such circumstances, I am of the view that this Court has ample powers to re-appreciate the oral and documentary evidence, as per the provisions of Section 103 CPC.

74. At this juncture, this Court has to consider the oral and documentary evidence. Regarding the existence of the Temple, D.W.4 in his cross-examination stated that the Shiva Temple has been constructed 200 years ago, but the original Temple was constructed 1300 years ago. In his cross-examination, D.W.4 fairly conceded that the Lord Shiva-Mahendragirinathar came into existence 200 years ago, and he also mentioned about the Lord Pakkam Nindrar, i.e. the present Lord Shiva in the original position. In his cross-examination he has fairly conceded that in 1911, there was a "Kumbhabhishekam" (consecration ceremony of the Temple) and at that time, it was also mentioned as "Lord Pakkam Nindrar". So, learned counsel for the plaintiffs submitted that the existence of Lord Siva Temple in the place where it was originally situated as per the version of D.W.4, is much prior, nearly 200 years ago. After that, several "Kumbhabhishekams" have been performed and the Temple Trustees have not taken steps to remove the Idol of Lord Shiva.

75. In this connection, it is appropriate to consider the documents filed by the defendants. In Ex.B-3 which is the "Thirukurungudi Divya Sthala Malar", in page 47, it is stated that the Lord Shiva is in the Vaishnavaite Temple while praising the Lord Vishnu. It is stated therein as follows: "mf;Fk;g[y[padjS KilahutbuhUth;

gf;;fk;epw;fepd;w gz;gU:h;BghYk;

jf;fkuj;jpd; jhH;rpidBawp jha;thapy;

bfhf;fpd;gps;is bts;spwt[z;Zk; FWA;FoBa@ bfhf;fpd; Fl;oahdJ (jdf;F Vwj;) jFe;jjhd xU kuj;jpDila jhH;e;j fpisapy; Vwp jha;f;bfhf;fpd; thapypUf;fpw *bts;spwh* vd;Dk; rhjp kPid cz;zg;bgw;w jpUf;FW';Fobad;Dk; jykhdJ--vYk;iga[k; g[ypapd; Bjhiya[k; cilatuhd rptgpuhdhfpw xUth; mUBfapUf;f (nlA;bfhLj;J) vGe;jUspapUf;fpd;w rPyFzKilauhd bgUkhSila jpt;aBjrkhk;@ Ex.B-3 came into existence in 1967 much prior to the litigation. Furthermore, it was marked through D.W.1.

76. Learned Senior Counsel for D7 to D9 submitted that in the book titled "Thiruvaimozhi", it was mentioned that always, the Lord Vishnu has given His right side of the body to the Lord Shiva. Likewise, as per the Divine Hymn of the Saint Thirumangai Azhwar, "mf;Fk;g[y[padjS KilahutbuhUth; gf;;fk;epw;fepd;w gz;gU:h;BghYk; jf;fkuj;jpd; jhH;rpidBawp jha;thapy; bfhf;fpd;gps;is bts;spwt[z;Zk; FWA';FoBa@, which means that the Lord Shiva is taking part and is besides the Lord Vishnu in the village called Thirukurungudi. But the above reliance on the book "Thiruvaimozhi" does not merit acceptance, because, as per the version in the Divine Hymn of the Saint Thirumangai Azhwar, as quoted above, the Lord Shiva was in existence in the village Thirukurungudi as "Lord Pakkam Nindrar" to the Lord Vishnu.

77. Nextly, learned counsel for the plaintiffs submitted that in Ex.B-4 Gazetteer, the Lord Pakkam Nindrar has been mentioned even in 1879 Gazetteer and subsequently, the said Ex.B-4 Gazetteer was re-published on 12.3.1916. This shows that even prior to 1879, the Lord Shiva is in the place from where it was removed.

78. Learned counsel for the defendants 7 to 9 submitted that Ex.B-4 Gazetteer is not admissible in evidence. To substantiate the same, learned counsel for the defendants 7 to 9 relied on the decisions reported in AIR 1928 Privy Council 10 (Martand Rao Vs. Malhar Rao) and AIR 1995 SC 167 = 1995 Supp (1) SCC 485 (Bala Shankar Maha Shankar Bhattjee Vs. Charity Commr. Gujarat). On the other hand, learned counsel for the plaintiffs relied upon the decision of the Supreme Court reported in AIR 1967 SC 256 (Srinivas R.Das Vs. Surjanarayan) and submitted that Ex.B-4 is admissible in evidence.

79. It is worthwhile to note the Dictionary meanings of "Gazette" and "Gazetteer", as relied on by learned counsel for D7 to D9, and extracted hereunder:

I. "The Chambers Dictionary: by Allied Chambers (India) Limited, New Delhi: Gazette:

(i) An official newspaper containing lists of Government appointments, legal notices, despatches, etc.;

(ii) a title used for some newspapers to publish or mention in a gazette; (iiii to announce or confirm (a person's appointment or promotion), esp. in an official gazette;

Gazetteer:

(i) a geographical dictionary, a reference book containing alphabetical entries for places of the world, with maps, etc;

(ii) a writer for a gazette, an official journalist , to describe in a gazetteer;"

II. Mitra's Legal & Commercial Dictionary: Sixth Edition, 2006: by Tapash Gan Choudhury, Advocate, High Court, Calcutta: Published by Eastern Law House, Kolkata and New Delhi :

"Gazette: It is a publication of an official character which contains Government notifications, lists of public appointments and honours, legal notices, etc., which are presumed to be genuine.

The official publication of news of all kinds the Government desire to make known to the public. (General Clauses Act, S.3(39)). Gazetteer:

A dictionary which contains a historical account, or the general description of any place, district or province; a dictionary of geographical names."

80. Now, it would be appropriate on the part of this Court to consider the decisions relied on by the learned counsel for both sides to decide whether Ex.B-4 Gazetteer is admissible in evidence. In AIR 1967 SC 256 (Srinivas R.Das Vs. Surjanarayan), the Apex Court observed as follows: "26. It is urged for the appellant that what is stated in the Gazetteer cannot be treated as evidence. These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and the practice followed by the Math and its head. The Gazetteer can be consulted on matters of public history." (emphasis supplied)

81. In AIR 1928 Privy Council 10 (Martand Rao Vs. Malhar Rao), the Privy Council held as follows:

"Official reports regarding the nature of any estate are valuable and in many cases the best evidence of facts stated therein, but opinions therein expressed should not be treated as conclusive in respect of matters requiring judicial determination, however eminent the authors of such reports may be." The above citation reported in AIR 1928 Privy Council 10, relates to official reports regarding the nature of any estate which are valuables and the Privy Council held that the opinions expressed therein should not be treated as conclusive in respect of matters requiring judicial determination, however eminent the authors of such reports may be. This citation deals with neither the "gazetteer" nor the "gazette" and it only refers the official reports of the eminent authors. In such circumstances, this citation is not applicable to the facts of the present case.

82. In AIR 1995 SC 167 = 1995 Supp (1) SCC 485 (Bala Shankar Maha Shankar Bhattje Vs. Charity Commr., Gujarat), the Supreme Court, while dealing with Gazette of Bombay Presidency, which was also published in 1879, containing historical material relating to the dispute whether the Temple in question therein is public or private, the Supreme Court held that it is a piece of evidence under Section 45 of the Evidence Act (1 of 1872) and the Supreme Court further held that though the said Gazette was not conclusive, the Court may consider such evidence in conjunction with the other evidence.

83. While going through the above three citations, it is seen that the decision reported in AIR 1995 SC 167 = 1995 Supp (1) SCC 485 (cited supra), is in respect of a "Gazette" and not in respect of a "Gazetteer" and in that decision, the Supreme Court observed that the Gazette is admissible being official record evidencing public affairs and the Court may presume the contents as genuine and the statement contained therein can be taken into account to discover the historical material contained therein and the facts stated therein is evidence under Section 45 of the Indian Evidence Act and the Court may in conjunction with the other evidence and circumstances take into consideration in

adjudging the dispute in question, though may not be treated as conclusive evidence. So, the learned counsel for the plaintiffs submitted that even though the Gazette is admissible in evidence, it is not a conclusive proof of evidence, whereas, the Gazetteer is not issued by the Government and so, it is not admissible in evidence. Per contra, as per the decision reported in AIR 1967 SC 256 (cited supra), Gazetteer cannot be treated as an evidence and the statements in the Gazetteer could not be relied on as evidence of title, but as providing historical material and the practice followed by the Math and its Head and that the Gazetteer can be consulted on matters of public history. In the present case, in Ex.B-4 Gazetteer, it is stated as follows:

"A curious feature of the temple, one which is generally quoted as illustrating the breadth of view of its distinguished founder, is the existence within the Vaishnavite temple of one dedicated to Siva. Paramasivan, it is said, whilst wandering over the earth under the ban of a curse, came one day to Tirukkurungudi. There the god Nambi, an incarnation of Vishnu, treated him with kindness and promised his visitor that he should receive equal respect with himself. So the new god was established and received the name "Pakka-nindrar" "he who stands by the side."

84. Therefore, even in 1879, it was mentioned in Ex.B-4 Gazetteer about the history of Thirukurungudi Temple and in such circumstances, I am of the view that Ex.B-4 Gazetteer has to be taken as supporting evidence to decide as to whether the Lord Pakkam Nindrar, i.e. Idol of Lord Siva, was situated in the Vaishnavaite Temple, namely Arulmighu Azhagiya Nambirayar Temple, and so, the Lord Pakkam Nindrar was in existence from ancient times.

85. In Ex.B-5 is the "Kumbhabhishekam Invitation" (consecration invitation), namely, "= jpUf;FWA;Fo = !;thkp ek;gpapDila tpkhehjp $Ph;Bzhjhuz gpujp&;lh gj;jpupif"@ which is of the year 1911, in which it is stated that the Kumbhabhishekam is also being performed for the Lord "Pakkam Nindrar". It is stated therein as follows:

@ "..... epiwe;j Brhjpbts;sk; R{H;e;j ePz;l bghd;BkdpBahLk; vGe;jUspapUf;fpw ek;gpapDila "bjd;dd; FWA;Foa[s; brk;gtsf;Fd;wpid' vd;Dk; g;uthshf;a tpkhej;jpd; $Ph;BzhjhuzKk;, tPw;wpUe;j ek;gp tpkhdk; gs;spbfhz;l ek;gp tpkhdk;. FWA;Foty;ypj;jhahh; FWA;ifehafp tpkhdk;. mf;Fk;g[ypapdjSKilahwtbuhUth; gf;fk; epw;fpd;w gf;f epd;whuhd kBcwe;jpufphpehjh; tpkhdk; ..... "

86. In Ex.B-6 book called "@ifrpf g[uhzk; (gl;lh; t;ahf;ahzj;Jld;)"@, a topic is mentioned about "@ek;gpa[k; ek;ghLthDk;"@, in which, there is a reference as @"mf;Fk; g[ypapd";@.

87. In Ex.B-8 which is the book titled @guk;giur; rpwg;g[@ of Thirukurungudi Madathipathi Sri Perarulaala Ramanuja Jeer Swamigal, was published in 1919, and it is the pamphlet exhibiting the importance of Thirukurungudi Mutt. In Ex.B-8, it is stated as follows:

@"KLf;F@"

1. ... bghpabgUkhbsd;Dk; epd;w ek;gpf;Fk; - bgUikahfbt tPw;wpe;j ek;gpf;Fk; - cuBfrd; kPJ radpj;j ek;gpf;Fk; - chpikahfbt gf;fk; epd;dhh;f;Fk; fhy iguth; Kjyhd Bjth;fVshA;Fk; - gz;ghd Bfhtpy;fSf;F

!;JhgpfSk; - rhpiahaikj;Js;spYs;s Kh;j;jpfl;Fk;-rh!;jpug;go glhr;rhjdq;bra;Jk;-fhpakhyhkHf ek;gpa[s; kfpH-fdkpF";rpj;jpuj; Bjbuhd;wikj;Jk;-bghpa jpUkjpy;fspy; gpd;dKw;wjid-bghpajha;e;J rPuhf;fp _ gypkz;lgj;jpw;-Fwpaew;wpUg;gzpfs; gjpide;J gj;jp cte;j Bgud;gpdhy; cWjpaha;r; bra;Jk-MyA;Fsk; Cr;rpf; Fsbkd;DKhpy; mwpatpk;klj;jpw;F ghj;jpag;gl;l-nkyhdnahpfspy; kilfSk;fl;o ... " This shows that during the tenure of 35th Jeer, His Holiness did the above works and the Lord Pakkam Nindrar/Lord Shiva, was in existence even at that time.

88. Ex.B-9 is the book titled @_ mHfpaek;gp cyh jpUf;FWA;Fo@, and it was published in 1983, and in Ex.B-9, it is stated as follows: @ "... tps;Skt dhkk; tpsA;FKh; - cs;skfpH;

Bfhokfh jPh;j;jA; Fyt[jy bkd;Wtpz;Bzhh;

ehoapiwq; RA;FWA;if ed;dfuhd-tPLbgw Berpj; jyh;brhhpe;J epd;bwGgj; bjz;gpukh;

g{rpj; jpdpBjj;Jk; bghw;gjj;jhd; - Bjrpfkhq;

brf;fr; rpte;j brGq;Rliug; Bgjkwg;

gf;fj;jpy; itj;j ghptpdhd; ...@"

This shows that the Lord Shiva has been in existence.

89. In Ex.B-10 which is also the book titled "@jpUf;FWA;Fo mHfpa ek;gpa[yh"@, published in 1981, there is a mention about the Lord Mahendragirinathar "(gf;fk; epd;whh;)". This also shows that the Lord Shiva was in existence.

90. Ex.B-11 which is the sloga @totHfpa !_g;ughjk;@, which was published in 1992, it is stated as follows:

"@jhahh; !_g;ughjk;@"

(7) !j;BToj;ughyfphp$hgjpB!t;akhd fhuz;lg[&;fhpzp fhjl!_!;jpBjd ! fpU&;Bze !k;a[j f;Ughfu fhkUg b!se;jh;a g{h;z gfte; jt !_g;ughjk;/ gjt[iu !j;BT&j;ughy-iguth; vd;w BT&j;ughyuhYk; fphp$hgjp gf;fepd;whuhd rptgpuhdhYk; B!t;akhd-bjhHg;gl;ltBd?""

91. In Ex.B-12 which is the book @MH;thh;fs; fhyepiy (Kjw;gFjp)@ there is a mention about "Thirumangai Azhwar" who was alive during 7th Century, and in Ex.B-12, it is stated as follows:

"@... MH;thh;fsp xUfhyj;jtuhfBt jpt;atr{hprhpjk; bjspthff; TWjypfspw; bgUk;ghByhh; gukgjk;bgw;w gpd;g[k; thH;e;j jpUkA;ifkd;dd; vd;Bw, Bkw;Fwpj;j rhpj;jpuBtW ehk; nizj;Jf;bfhs;sj;jFk;. m jhtJ - Kd;dh; Bghe;jthW. 7-Mk; Eh}w;whz;od; gpw;gFjpapy; mtjhpj; Eh}w;whz;od; nilg;gFjpapy; jpUehlyA';fhpj;jth;thh; vd;gjhk;"@

92. So, those documents and evidence of the defendants through D.W.4 show that the Lord Pakkam Nindrar / Mahendragirinathar was in the original place eversince from 1911. As per the documents, it is clearly proved that the Lord Pakkam Nindrar was there even during the period of the Saint Thirumangai Azhwar, who recited the "Pasuram" (Divine Hymn), in which His Holiness Thirumangai Azhwar has stated that "@mf;Fk;g[y[padjS KilahutbuhUth; gf;;fk;epw;fepd;w gz;gUh;BghYk"; ..... FWA';FoBa@ and hence, it could be concluded that the Lord Shiva Mahendragirinathar was there in Thirukurungudi even during 7th Century when the Saint Thirumangai Azhwar lived.

93. In this context, learned counsel for the plaintiffs relied on the decision of the Supreme Court reported in AIR 1966 SC 605 (Ambika Prasad Vs. Ram Ekbal), wherein, the Apex Court held as follows:

"15. ..... The presumption of future continuance is noticed in Illustration (d) of Section 114 of the Indian Evidence Act, 1872. In appropriate cases, an inference of the continuity of a thing or state of things backwards may be drawn under this section, though on this point the section does not give a separate illustration. The rule that the presumption of continuance may operate retrospectively has been recognised both in India .... and England, ... that there is no rule of evidence by which one can presume the continuity of things backwards cannot be supported. The presumption of continuity weakens with the passage of time. How far the presumption may be drawn both backwards and forwards depends upon the nature of the thing and the surrounding circumstances. ... "

In the present case, the Lord Shiva Idol/Lord Mahendragirinathar was there from time immemorial. First defendant-Jeer failed to prove that the Lord Shiva Idol was only later addition. Since the Jeer is the competent person who has succeeded the Trusteeship of the Thirukurungudi Mutt, i.e. His Holiness Jeer is the Madathipathi, he would have possessed all the relevant documents in respect of the "Sthala Puranam" and other aspects relating to the existence of the Lord Shiva Idol. For non-filing of those relevant documents, this Court has to draw adverse inference against the authorities of the Mutt/Jeer. So, I am of the view that the abovesaid citation reported in AIR 1966 SC 605, is squarely applicable to the facts of the present case.

94. Now, this Court has to consider as to whether the Deity/Idol of Lord Shiva has been removed from its original place in accordance with "Agama Saastras". Admittedly, the plaintiffs have not stated about the "Agama Saastras", but defendants 1 to 3 alone raised a plea that they have to remove the Lord Shiva Idol from the place where it was originally situated till it was removed and disturbed only to instal the same in accordance with "Agama Saastras". Since the defendants 1 to 3 have raised such a plea, it is their duty to prove that only in accordance with "Agama Saastras", they have removed the Idol of Lord Shiva.

95. Admittedly, the first defendant-Jeer mentioned in the written statement that the Idol of Lord Shiva has been removed only as per the "Agama Saastras" requirements. In this context, it is worthwhile to mention that the defendants have never proved that they made changes in the Temple by shifting the Idol of Lord Shiva only in accordance with "Agama" principles.

96. It is pertinent to note that "Agamas" are a set of ancient texts and are the guardians of the tradition. The "Agama Saastras" specify the conduct of worship services, rites, rituals, and festivals and the principles and practices of "Deity" worship. Thus, the "Agama Saastras" is basically concerned with the attitudes, procedures and rituals of "Deity" worship in the Temples.

97. At this juncture, learned counsel for the plaintiffs submitted that it is true that the Temples are constructed in accordance with "Agama Saastras"; even some of the ancient Temples are not constructed and the Deities were not incarnated according to "Agama Saastras", but there is one more Temple custom called as "Sishtachar" (Virtuous practice and the practice of great people) and from time immemorial, the authorities follow the said Temple custom-Sishtachar. Admittedly, in respect of offering "Neivediyam" (Food to Divine God), i.e. to Lord Vishnu, at that time, the "Bhattachariyars" (Temple Priest of Lord Vishnu) questions the "Sivachariyar" (Temple Priest of Lord Shiva) as to whether the Lord Shiva Had His Food, namely "Amudhu Undara" (mKJ cz;lhwh), which is the Temple custom of Thirukurungudi Temple, i.e. it is a "Sishtachar". Further, the Divine Feet of Lord Vishnu, called as "Sadari", has been handed over by "Araiyars" (miwah;fs;) to "Thayaar" (Goddess Lakshmi), even though the said "Sadari" is not usually touched by any other person except the "Bhattachariyars" of the Lord Vishnu Deity. Learned counsel also mentioned that in so many Temples in Tamil Nadu, namely Tirunelveli, Chidambaram,Tiruchendur, etc., which are Saivaite Temples, the Lord Vishnu is being installed. Likewise, in Thirukurungudi, the Lord Pakkam Nindrar / Lord Shiva, had been incarnated. Learned counsel culled out some portion of the plaint, regarding the existence of Lord Vishnu in Saivaite Temples, and the relevant portion of the plaint reads as follows:

"@6. ..... rkaj;jpdhplKk; rka bghiwia Vw;gLj;j rptd; Bfhtpy;fspy; bgUkhs; rd;djpa[k;. bgUkhs; Bfhtpy;fspy; rptd; rd;djpa[k;. gy nlA;fspy; mike;Js;sd. cjhuzkhf jpUbey;Btypapy; cs;s mUs;kpF bey;iyag;gh; jpUf;Bfhtpypy; rptd; rd;djpf;F mUfpy; gs;sp bfhz;l bgUkhs; rd;djp cs;sJ. jpUr;bre;Jh}h; mUs;kpF Rg;gpukzpa Rthkp BfhtpypYk; bgUkhs; rd;djp cs;sJ. mBjBghy; kpft[k; g[fH;bgw;w rpjk;guk; jpUf;BfhtpypYk; bgUkhSf;F rd;djp cs;sJ. ne;j gHikahd mikg;ghdJ gz;ghl;Lr; rpd;dkhFk;. rka xw;Wikia milahsr; rpd;dkhf fhl;Lk; rhl;rpfs; MFk;. ....."@ Admittedly, there is no quarrel over the said argument.

98. Learned counsel for the plaintiffs submitted that Thirukurungudi is a special Temple and it is having both Lord Shiva and Lord Vishnu Sannadhis, and in the State of Tamil Nadu, in many Vaishnavaite Temples, Lord Sivan Sannadhi is in existence and vice-versa, and to substantiate his argument, learned counsel for the plaintiffs relied on a judgment reported in 2009 (4) CTC 801 (Division Bench of this Court) (Sri Sabhanayagar Temple, Chidambaram Vs. The State of Tamil Nadu), and the special character of Thirukurungudi Temple is the existence of Sivan Sannadhi. As already observed, in Saivaite Temples in Chidambaram, Tiruchendur, Tirukoshtiyur and Kancheepuram, the Lord Vishnu's Sannadhi is in existence and hence, Thirukurungudi Temple is meant both for Saivaite and Vaishnavaite religious groups and these two religious groups are offering worship and prayer every day and they belong to different faiths.

99. It is also pertinent to note that in the written statement filed by First defendant-Jeer, it is stated that the Temple is unique in its architectural conception and iconographic formation having three

Shrines decided to the Lord Vishnu, in the Standing, Sitting and Reclining Postures, all facing East as prescribed in Vaikhanasa Agama, the scripture followed in the Temple. But it has to be noted that since the Thirukurungudi Temple is a Special Temple consisting of both Saivaite and Vaishnavaite Lords, and hence, I am of the view that neither the First defendant-Jeer, nor D2 and D3 (H.R. & C.E. Authorities), have the authority or right to remove the Idol of Lord Shiva from the original place.

100. It is also relevant to note as mentioned in the written statement filed by D-1Jeer, in paragraph 5, as follows:

"5. The Sthala Purana has it that Lord Siva, while wandering in the Mahendragiri Forests, was afflicted by some curse and Sri Sundara Paripooranar, the Lord of this Temple gave Dharshan and requested Him to stay there. That is why the great Vaishnavaite Saint Thirumangai Azhwar has sung in praise of Lord Shiva and referred to His as "Pakkam Nindraar". This expression in the Pasuram is wrongly construed in the plaint as "Standing Close" overlooking the inner meaning that Siva and Vishnu are always together. ..." But to prove the said contents of the written statement filed by the first defendant-Jeer, no document has been filed by the first defendant-Jeer. But the documents exhibited before the trial Court show that even in 1911, the Temple Consecration (Kumbhabhishekam) had been performed and it is stated in the documents that the Temple Consecration was performed for the "Vimanam of Pakkan Nindrar" also, along with the Vimanam of the Lord Azhagiya Nambirayar. In such circumstances, I am of the view that the argument advanced by learned counsel for the defendants that the Lord Shiva had been removed from the Hill Top and installed in front of the Veetrirundha Nambi, is an unacceptable one.

101. D.W.4, the witness of the first defendant-Jeer Mutt, is well-versed about the "Agama Saastras"; D.W.4 in his evidence, fairly conceded in cross- examination that in most of the Temples, "Agama Saastras" are not followed, but "Sishtachar" is being followed. Further, it is to be noted that in Thirumogur, "Thaayaar Sannadhi" has been obscuring the view of "Sakkarathazhwar" and in Thirukoshtiyur, the Lord Siva is obscuring the Lord Kannan Sannidhi. Hence, learned counsel for the plaintiffs submitted that establishment of Lord Mahendragirinathar Temple at Thirukurungudi, is only a "Sishtachar" and that has been clarified by the evidence of D.W.4. Hence, D.W.4 is the person who is competent to depose about the "Agama Saastras" and "Sishtachar".

102. At this juncture, it is also relevant to consider the oral evidence of D.W.5, who was the Junior to the "Bhattachariyar" of the Temple and who has also been examined on behalf of the first defendant-Jeer of the Mutt, and in his deposition, D.W.5 has stated as follows:

"@..... ng;bghGJ g[jpjhf fl;lg;gl;Ls;s nlj;jpy; rptid ghpthuA;fSld; gpujp&;il bra;jhy; itfhd! Mfkgo mike;j rd;djpahf tpsA;Fk; vd;W bjhptpj;Jf; bfhs;fpBwd;. ..."@ @"@rptd; rd;djp vt;tst[Mz;Lfhykhf nUe;J tUfpwJ vd;W bjhpahJ. ehA;fs; gz;ojh;fs; Brh;e;J KobtLj;j tprak; Mfk hPjpahf cs;s tpraA;fs; mog;gilapy;jhd;. BtW fhuzA;fs; ny;iy. me;j Bfhtpy; jpt;aKh;j;jp !;jhgdk;. jpt;aKh;j;jp vd;gJ tp&;Z rptd; mika[k; nlkhFk. itfhdr Mfkj;jpy; vd;bdd;d bja;tA;fis vA;bfA;F gpujp&lil bra;aBtz;Lbkd;W Twg;gl;Ls;sJ. vd;bdd;d bja;tA;fis ve;bje;j nlj;jpy; gpujp&;il bra;af;TlhJ vd;W VJk; mjpy; ny;iy. ...@"@ "@@.... jpUKft{hpy; rf;fuj;jhH;thh; rd;djpia kiwj;J jhahh; rd;djp mike;Js;sJ. jpUf;Bfhl;oa{hpy; Kyth; fz;zd; rd;djpia kiwj;J rptd; rd;djp mikf;fg;gl;Ls;sJ vd;why; rhpjhd;. mt;thW

mikf;f Mfk tpjpfs; nlk; bfhLf;fpwJ vd;why; rhpjhd;. mt;thW mikf;f Mfk tpjpfs; nlk; bfhLf;fpwJ vd;gJ gw;wp bjhpe;jth;fSk; Mfk gz;oj bghpath;fSk; mA;F cs;sdh. jpUf;FWA;Fo epiwa Mfk gz;ojh;fSk; uhkhD$h; cl;gl gyh; te;J brd;w !;jyk; MFk;. btA;fl;uhk gz;ojh; Bghd;wth;fs; mA;F trpj;jth;fs;. mth;fs; fhyj;jpy; vtUk; mfw;wg;gl;l rptd; rd;djp Mfk tpBuhjk; vd;W fUjtpy;iy vd;why; rhpjhd;. ...@"@ "@... 1981y; ele;j Fk;ghgpB&fj;jpy; fye;Js;Bsd;. btA;fl;uhk gl;lh; jiyik gl;luhf nUe;jhh. Bfhghy gl;lUk; cldpUe;jhh;. me;j Beuj;jpy; rptDf;Fk; gf;fk; epd;whUf;Fk; nUtUf;Fkhd Bfhg[uA;fSf;Fk; Fk;ghgpB&fk; ele;jJ. gf;fk; epd;whh; mUfpy; nUg;gJ Mfk tpBuhjk; vd;W Bfhghy gl;lBuh btA;fl;uhk gl;lBuh VJk; Twtpy;iy. Mfk tpBuhjk; vd;why; mij ijhpakhf brhy;yf;Toa mstpy; mth;fs; ijhpakhdth;fs;. mth;fSf;F Jzpt[k; bjspt[k; cz;L."@@

103. So, as per the evidence of D.Ws.4 and 5, it is clearly proved that the Lord Shiva Temple obscuring the view of the Lord Veetrirundha Nambi, is amounting to "Sishtachar" and it is not in violation of the "Agama Saastras". Furthermore, there is no clinching evidence to show that only for curing the defects and to act in accordance with "Agama Saastras", the Lord Shiva Idol had been removed. So, the contention of the first defendant-Jeer in this regard is unacceptable.

104. Learned Spl.G.P. appearing for H.R. & C.E./District Collector, submitted that in the present case, the public has presented an application for shifting of the Lord Shiva Deity and only considering the same, the Idol of Lord Shiva was shifted. He further submitted that the Government ratified the action of the first defendant-Jeer for removal of the Idol of Lord Shiva and to keep the Idol for worship in the new place in accordance with Hindu Agama Saastras.

105. In this regard, learned counsel for D-1 relied upon the decision reported in AIR 1960 SC 100 (Narayan Vs. Gopal), wherein, while referring to the Judgment of the Bombay High Court reported in ILR 44 Bombay 466 = AIR 1920 Bombay 67 (2) (Hari Raghunath Vs. Antaji Bhikaji), the Apex Court held as follows:

"36. In Hari Raghunath Vs. Antaji Bhikaji ILR 44 Bom 466 : (AIR 1920 Bom 67 (2)), the temple was a public one. It was held by the High Court that under Hindu law, the manager of a public temple has no right to remove the image from the old temple and instal it in another new building, especially when the removal is objected to by a majority of the worshippers. .... The case is an authority for the proposition that the idol cannot be removed permanently to another place, because that would be tantamount to establishing a new temple. However, if the public agreed to a temporary removal, it could be done for a valid reason."

106. Therefore, learned Spl.G.P. and learned counsel for D-1 Jeer submitted that the first defendant-Jeer and D-2 and D3/H.R. & C.E. Department considered the said aspect and the Government ratified the action of removal of the Idol of Lord Shiva, in G.O.(Ms.).No,54 dated 8.4.2005, by ordering for removal and hence, they prayed for dismissal of the Second Appeals.

107. Relying upon the said decision reported in AIR 1960 SC 100 (cited supra), it is contended by learned counsel for the plaintiffs stated that the Idol of Lord Shiva cannot be removed permanently to another place, because, that would tantamount to establishment of a new Temple, but however, if the public agreed to temporarily remove the Idol, it can be done for valid reasons. In the present

case, there is no document to show that the removal was only temporary and there is also no document to show that the public agreed for temporary removal. The said citation (AIR 1960 SC 100) only favours the plaintiff and against the first defendant-Jeer.

108. Hence, I am of the view that the first defendant-Jeer has no right to remove the Idol of Lord Shiva, in view of the letters/correspondences between the first defendant-Jeer and D2 and D3/H.R. & C.E. authorities. Even during the pendency of the suit, the permission has been accorded by the Government by passing the G.O.(Ms).No.55, dated 8.4.2005 by ratifying the action of the first defendant-Jeer. The communications between the first defendant-Jeer and D-2 and D-3/H.R. & C.E. authorities, clearly proved that the first defendant-Jeer has no right to remove the Idol of Lord Shiva.

109. Further, learned counsel for the plaintiffs submitted that the first defendant-Jeer has no right as per the provisions of Section 3 of "The Places of Worship (Special Provisions) Act, 1991 (Act 42 of 1991), and hence, the Jeer is not entitled to convert the place of worship. Section 3 of the said Act 42 of 1991 reads as follows:

"Section 3: Bar of conversion of places of worship.--No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof." On this aspect, learned counsel for First defendant-Jeer stated that such provisions of Section 3 of Act 42 of 1991 is not applicable to the case on hand, which cannot be countenanced by this Court, since the Lord Shiva / Pakkam Nindrar Idol was admittedly situated in front of the Lord "Veetrirundha Nambi"; further, as per the evidence of DW4 (examined on behalf of First defendant- Jeer), who was the "Srikariyam" (Manager) of the Mutt, the Lord Shiva had been in existence more than 200 years, which has now been removed and kept in "Dhanya Vaasam" (In Paddy). Only after coming into force of the said Act 42 of 1991, the Temple authorities wanted to instal the Lord Shiva Idol from the original place to the Third Prakaram (III Quadrant) of the Temple and for this reason only, it has been changed from the original place. Therefore, I am of the view that the argument advanced by learned counsel for First defendant-Jeer does not merit acceptance.

110. Furthermore, admittedly, Thirukurungudi Temple, which is one of "108 Divya Desams" of the Lord Vishnu, is a Special Temple, having both Saivaite Gods and Vaishnavaite Gods. First defendant-Jeer removed the Lord Shiva to admittedly instal the same in a separate Temple constructed only for Saivaites, has literally changed the character of the Thirukurungudi Azhagiya Nambirayar Temple. Hence, I am of the view that the provisions of Section 3 of the said Act 42 of 1991 will squarely apply to the facts of the case on hand.

111. Nextly, learned counsel for the plaintiffs submitted that First defendant-Jeer is not entitled to pick up one or other statement here and there from the evidence of D.Ws.1 and 2 and such an approach is not permissible under law. To substantiate this contention, learned counsel for the plaintiffs relied on the decision of the Supreme Court reported in 2000 (3) MLJ 199 (SC) (Boramma Vs. Krishna Gowda), wherein the Apex Court held as follows: "10. ... it will not be a sound rule of appreciation of evidence to pick up an answer from the cross-examination of a witness and draw

inference taking it in isolation. The court must see as to how consistent the testimony of the witness is and as to how that answer fits in with the rest of the evidence and probabilities of the case. ..."

It is true that the Court must see as to how consistent the testimony of the witness is, and as to ho the answer fits in with the rest of the evidence and probabilities of the case. The Court cannot pick and choose one or two statements from the cross-examination of the witnesses and rely upon the same. Though there is no quarrel over the law laid down in the said decision reported in 2000 (3) MLJ 199 (SC) (cited supra), the same is not the case here, because in this case, the evidence of the witnesses D.Ws.4 and 5 are relied on the whole in respect of the pleadings raised by the parties.

112. Learned counsel for the plaintiffs submitted that non-examination of the first defendant-Jeer, is fatal and in this regard, he relied on a decision of the Supreme Court reported in 2005 SAR (Civil) 103 (Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. and others), wherein the Apex Court held as follows:

"14. Apart from what has been stated, this Court in the case of Vidhyadhar Vs. Manlkrao and another, 1999 (3) SCC 573, observed at page 583 SCC that, "where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct". In civil dispute the conduct of the parties is material. The appellants have not approached the Court with clean hands. From the conduct of the parties it is apparent that it was a ploy to salvage the property from sale in the execution of Decree."

Relying on the said decision reported in 2005 SAR (Civil) 103 (Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. and others), it is contended by learned for the plaintiffs, that in the pleadings, the defendants stated that they acted according to the "Agama Saastras" and to prove the "Agama Saastras", none has been examined; either the "Jeer" or the "Agama Pandithar" ought to have been examined on the side of First defendant-Jeer, but they have not appeared and not been examined before Court. This decision is not applicable to the facts of the present case, because, in the present case, on behalf of First defendant- Jeer, the "Srikariyam" (Manager) of the Mutt had been examined as D.W.4 (Narayanan). In such circumstances, I do not find any merit in the said argument advanced by learned counsel for the plaintiffs based on the said decision. Furthermore, it is the duty of First defendant-Jeer to prove the averments made in the written statement, and so, the non-examination of First defendant-Jeer will not in any way affect the case of the defendants, since the Manager (DW4) had been authorised on behalf of the Jeer-Mutt to depose the evidence.

113. Learned counsel for First defendant-Jeer submitted that the first defendant-Jeer has right to remove and re-instal the Lord Shiva Idol in good faith and to prove this contention, he relied on the decision of this Court reported in AIR 1929 Madras 118 (Panchapagesa Gurukkal Vs. Sinna Sevugam Chettiar), wherein a Division Bench of this Court held as follows:

"If there is no lack of good faith in the exercise of discretion by the Dharmakartha or the Trustee in deciding whether a Temple is so dilapidated as to admit entire renovation, there seems to be no legal principle enabling the Court to review the discretion of the Dharmakartha."

This citation (AIR 1929 Madras 118) is not applicable to the facts of the present case, because, since 1300 years ago, the Lord Shiva - Pakkam Nindrar was there and as per the version of D.W.4 examined on behalf of First defendant- Jeer, it was there for more than nearly 200 years and after the Temple Consecration (Kumbhabhishekam) had been performed, the Temple authorities did not take any steps to conduct the alleged "Deva Prasannam" for removal of the Deity Lord Shiva from the original place and re-instal the Lord Shiva Idol to some other place. Furthermore, as per Rule 52 of the Management and Preservation of Properties of Religious Institutions Rules, without prior permission, the Temple authorities have removed the Lord Shiva Idol and explanation has also been called for from the Jeer and since the Temple is under the control of the H.R. & C.E. Department, First defendant-Jeer has no right to remove the same. Furthermore, the said decision relates only to renovation of the Temple, and not regarding the removal of any Deity/Idol and installing the same to some other place and hence, it is not applicable to the facts of the present case.

Deva Prasannam:

114. "Deva Prasannam" is the Division of Astrology to find out the "Will" of the God (Devahitam). There is an expectation by devotees that The God "Parama Siva" had created Thirty Three Crores Demi-Gods in this Universe. It is clearly depicted in the Astrological book about the different expressions and peculiarity of their state. There can be many more things in a Temple which create damage to the Divine life force or vigour. For recognising these damages in time and curing this by fostering the worship of God, the Astrologers totally depend on Astrology, a part of spiritual knowledge or holy scriptures. As all these think about God's subject, it is termed as "Deva Prasannam". An Astrologer needs scientific knowledge, "Guru Kripa", God's Grace, beyond above all, he should have the blessings of God of the particular Temple in which he is dealing, then only, the result of the Astrological calculation will be favourable or pleasing.

115. Learned counsel appearing for the plaintiffs submitted that the defendants in their written statement pleaded that the Tantric Unnikrishnan Panicker, has given "Deva Prasannam"---The Voice of God. As per the Deva Prasannam only, the Idol of Lord Shiva-Mahendragirinathar was removed from the original place. At this juncture, learned counsel for the plaintiffs submitted that Deva Prasannam is recognised only in Kerala State and not in the State of Tamil Nadu and so, the arguments of the learned counsel for the defendants cannot be looked into. In this regard, learned counsel for the defendants submitted that the Deva Prasannam had been conducted to hear the "Voice of God" only to cure the defects mentioned and the Deva Prasannam is a recognised one. To substantiate the same, learned counsel for the defendants relied upon the decisions reported in AIR 1993 Kerala 42 (S.Mahendran Vs. Secretary, Travancore Devaswom Board) and AIR 1925 Privy Council 139 (Pramatha Nath Vs. Pradhyumna Kumar), and in the respective decisions, it is held as follows: AIR 1993 Kerala 42 (S.Mahendran Vs. Secretary, Travancore Devaswom Board): "36. The Thanthri of the temple Sri Maheswararu had mentioned about the Devaprasnams conducted at Sabarimala by well known astrologers in Ext.C2. He had mentioned in that reply that in all the Devaprasnams it was revealed that young women should not be permitted to worship at the temple. The report of the Devaprasnam conducted in 1985 (from 5.4.1985 to 8.4.1985) was exhibited as Ext.C1. That is a Devaswom publication, the authenticity of which is not in dispute. The English translation of the relevant portion contained at page 7 of the original report reads as follows:

"It is seen that the deity does not like young ladies entering the precincts of the temple."

C.W.5, the Secretary of the Ayyappa Seva Sangham, who was present at the time of Devaprasnam had spoken about what was revealed at the Devaprasnam. First respondent in its counter affidavit has mentioned about the practice followed to set right controversial religious and ritualistic problems. It is stated that the Thanthri will suggest that it can be resolved by a Devaprasnam. The practice of resorting to Devaprasnam to ascertain the wishes of the deity had been in vogue from time immemorial and the Thanthri of Sabarimala also had suggested conduct of Devaprasnam whenever occasion arose. The report of the Devaprasnam is rather conclusive or decisive. The wishes of the Lord were thus revealed through the well-known method of Devaprasnam and the temple authorities and worshippers cannot go against such wishes. If the wish of Lord Ayyappa as revealed in the Devaprasnam conducted at the temple is to prohibit woman of a particular age group from worshipping in the temple, the same has to be honoured and followed by the worshippers and the temple authorities. The Board has a duty to implement the astrological findings and prediction on Devaprasnam. The Board has therefore no power to act against the report which will be virtually disregarding the wishes of the deity revealed in the prasnam."

116. Admittedly, in Kerala, "Deva Prasannam" is conducted in all the Temples for performing the Poojas and other related matters. But there is no citation produced to prove that the "Deva Prasannam" is conducted in every Temple in the State of Tamil Nadu and seeing the "Deva Prasannam" is the practice prevailing in the Tamil Nadu while performing the annual Poojas and "Kumbhabhishekarm" and other related matters.

AIR 1925 Privy Council 139 (Pramatha Nath Vs. Pradhyumna Kumar): "It is open to an idol acting through its guardian the Shebait, to conduct its worship in its own way at its own place always on the assumption that the acts of the shebait expressing its will are not inconsistent with the reverent and proper conduct of its worship by those members of the family who render service and pay homage to it."

The above citation in AIR 1925 Privy Council 139, is not applicable to the facts of the present case, because, the Idol is a juristic person and the Shebait is its representative and it can sue and be sued and the Idol can express its will through "Shebait".

117. There is no evidence to show that the Deva Prasannam was an accepted practice in the State of Tamil Nadu. There is no decision to show that Deva Prasannam is well-known in the State of Tamil Nadu. In Ex.B-16, which is the book titled "Srirangam Koil Prasnam", there is a mention about the dates A.C. 7th, 8th and 9th February, 2001, on which dates, "Deva Prasannam" was conducted in the said Srirangam Temple by the same Tantric, namely Shri.Unni Krishnan. In this context, it is to be noted that the "Deva Prasannam" of Arulmighu Azhagiya Nambirayar Temple at Thirukurungudi, was performed on 22.8.1996 by the same Trantric Unni Krishnan, which is admittedly before the conduct of "Deva Prasannam" at Srirangam Temple, which was in 2001. Hence, the argument advanced by learned counsel for defendants that the "Deva Prasannam" is recognised in the State of Tamil Nadu, as in Srirangam as stated above, the "Deva Prasannam" was conducted, does not merit acceptance. Further, there is no document to show that before the conduct of "Deva Prasannam" at

Thirukurungudi, the "Deva Prasannam" was conducted in the Temples of the State of Tamil Nadu. Admittedly, Mr.Muthiah Sthabathai, who is the Sthabathi-Sculptor of the Tamil Nadu H.R. & C.E. Department, was representing the State of Tamil Nadu and if really the said "Deva Prasannam" was earlier conducted in Tamil Nadu, some persons would have been nominated for such a post like the said Sthapathi-Sculptor. In such circumstances, I am of the view that the argument advanced by learned counsel for the defendants that the Deva Prasannam is accepted in the State of Tamil Nadu, does not merit acceptance. Furthermore, Tantric Unnikrishnan Panicker was not examined before Court to prove the contents of the "Deva Prasannam".

118. Learned counsel for First defendant-Jeer submitted that the suit by worshippers against the custodian of the Deity, to look at it in a particular place, is not maintainable before a Civil Court, as the plaintiffs are not prevented from worshipping at the place where the Deity was situated before removal. To substantiate the same, he relied upon a decision reported in AIR 1949 Orissa 1 (Radhakrishna Das Vs. Radharamana Swami), wherein the Orissa High Court observed as follows:

"In a suit for a declaration that the alienation of the plaintiff deity and its installation elsewhere is against the will and the interest of the plaintiff deity and of its rights to revert to its original place of installation, the Court must determine whether it is the will of the deity to be so removed and whether it is in its interest to be so removed. It does not matter whether the "next friend" who brings the suit is wholly disinterested." "The will of the deity must be determined in the light of what is in the best interests of the idol. Where rival sebayets claim to represent the will of the deity in conflicting ways, the duty of determining what should be the will of the deity must ultimately devolve upon the Court."

"A suit by a worshipper, not based on any right to the property in the idol or to an office, against its custodians to locate it in a particular temple instead of in another, there being no allegation that the plaintiff is prevented from worshipping the idol at the latter temple, is not cognizable by the Civil Court."

While considering the said decision of the Orissa High Court, in that citation also, the "Will" of the Deity has been considered by Court and in the facts stated therein, there has been rival claims regarding the "Will" of the Deity and in that background, it was held that the duty of determining as to what should be the "Will" of the Deity, must ultimately devolve upon the Court. Furthermore, in the present case, the Lord Shiva/Pakkam Nindraar was in front of the Lord Deity Veetrirundha Nambi and now the proposal is to instal the Lord Shiva Idol (which is now kept in "Dhanya Vaasam") in the new Temple constructed at the Third Prakaram (Quadrant). In such circumstances, the said decision of the Orissa High Court is not applicable to the facts of the present case.

119. At this juncture, learned counsel for the plaintiffs submitted that D.W.4 is the person who heard the Deva Prasannam, does not know Malayalam and the Tantric Unnikrishna Panicker does not know Tamil and without any Translator/Interpreter, it is not known as to how both D.W.4 and the Tantric Unnikrishna Panicker interacted each other and as to how the Deva Prasannam was reduced into writing. Learned counsel for the plaintiffs mainly focussed on this point. Admittedly, the script of Deva Prasannam is filed as Ex.B-26. In the said Ex.B-26, Tantric Unnikrishnan Panicker stated

that the Idol of Lord Shiva was installed only in a later point of time and also stated to be obscuring the main Deity and so, the Tantric advised to re-instal the same into another place as per the advice of sculptor (Sthabathi).

120. In this connection, learned Senior Counsel appearing for D7 to D9 submitted that Muthiah Sthabathi is the competent person in Tamil Nadu to fix and find out the place as to where the Deity has to be installed. Learned Senior Counsel further relied on Ex.B-38 which is the report of the Expert Committee in the meeting held on 31.3.2003, and the said Expert Committee was appointed by the H.R. & C.E. Department, and it consisted of the Joint Commissioner of Tirunelveli H.R. & C.E. Department; Mr.Muthiah Sthabathi, "Sthabathi Alosakar" of the H.R.& C.E. Department, Chennai as members and other members including the experts in Agama Saastras, Sivacharya and Bhattacharya. It is stated therein that while the said Expert Committee was going on, the "Saiva Peravai", K.Chockalingam (first plaintiff) and others, gave representation objecting to the shifting of Lord Shiva Idol and on the said objection/representation, the Expert Committee decided as follows (as translated from Ex.B-38): "(i) The Sivalinga in the main sanctum sanctorum of the Shiva Temple shall not be re-located.

(ii) But in the Demi God (Parivara) Temples, if the Siva Shrine is dislodged or it is changed by some persons unexpectedly, we establish the same again in the original place as per the Saastric customs. It could also be done as per the "Prayachitta" Rules mentioned in the Saastras. For this, Thirumoolar's song could not be taken as example. Further, the Lingas are of three types, namely Deivigam, Arsham and Manusham. Deivigam is installed by Devas, Arsham is installed by Rishis. The 'Suyambu' lingas shall not be disturbed. The Lingam at present belongs to Demi-God (Parivara). It was installed recently. The Committee opines that it can be re-installed again in appropriate place as per the practice and Saastric conventions."

121. Learned Senior Counsel appearing for the defendants 7 to 9 relied upon a Division Bench judgment of this Court reported in 2009 (4) CTC 143 (Akila and K.Periyakaruppan Vs. The Government of Tamil Nadu), and also relied another Division Bench judgment dated 19.8.2009 of Madurai Bench of this Court, in W.P.(MD).No.8800 of 2008, and both the Division Benches have observed and accepted the expert opinion given by Thiru.M.Muthiah Sthapathi, President/Sthabathi Advisory Committee, H.R.& C.E. Department, Government of Tamil Nadu. Learned Senior Counsel appearing for D7 to D9 therefore submitted that the opinion of the said Muthiah Sthapathi, has been accepted by a Court of law and his opinion has also been taken into consideration by the Division Bench of this Court and orders passed thereon. In Ex.B-38, which is the report of the Expert Committee appointed by the Tamil Nadu H.R. & C.E., the said Muthiah Sthapathi who was also one of the members of the Expert Committee, viewed that the Idol of Lord Shiva could be installed again in appropriate place as per the practice and "Saastric" conventions.

122. D.Ws.1 and 2 stated that since the Temple was not in accordance with the "Agama Saastras", to rectify the defects and restore the "Agama Saastras", the Idol of Lord Shiva has been removed. But while perusing Ex.B-10, which is the book titled "Azhagiya Nambi Ula", it is specifically mentioned that for giving "Dharshan" to "Nambaduvan", the "Kodi Maram" of the Temple, moved from its original place and so, the Temple is not in accordance with the "Agama Saastras". Admittedly, the

authorities of the Temple/Mutt did not take any steps to correct the position of "Kodi Maram" in accordance with "Agama Saastras".

123. In this connection, it is appropriate to consider the arguments of the learned counsel for the plaintiffs that some important Temples are constructed in accordance with the "Agama Saastras" and in some Temples, "Sishtachar" is being followed, which is also a recognised one and the same is also being followed in the Thirukurungudi Temple from time immemorial and it is not against the principles of "Agama Saastras" and that has been fortified by the evidence of D.W.4.

124. At this juncture, it is appropriate to consider the evidence of D.W.4, who stated as follows:

"@@ ...!;jy g[uhzj;jpYk; fA;fhBjtp g[uhzj;jpYk; rptd; ve;j gf;fkhf vA;F epw;fBtz;Lbkd;W Twg;gltpy;iy. rptbgUkhd; gf;fk; epw;gJ, bfhokuk; tpyfp epw;gJ midj;Jk; g[uhzg;go vd;why; rhpjhd. me;j nuz;Lk; Mfkg;go my;;y. Mfkj;jpw;F vjpuhf cs;sJ vd;why; rhpjhd. Mfkj;jpd;go my;yhkYk; g[uhzg;goahd mk;rgoa[k; jpUf;Bfhtpy; mike;Js;sJ. mJBghd;w jdp eilKiwfis rp&;lhrhuk; vd;W Twthh;fs;. mJ bghpBahh;fs; brhd;dJ. mija[k; Mfkk; Bghd;W Vw;fBtz;Lk;. Mfkg;goa[k; bghpBahh;fs; brhd;dgoa[k; ele;Jbfhs;sBtz;Lk;. nuz;ow;Fk; xBu kjpg;g[jhd. ePz;lfhykhf nUe;JtUk; eilKiwia ehA;fs; khw;Wtjw;fhd fhuzA;fs; xBu klg;gs;spapy; nUtUf;Fk; bea;Btj;jpak; jahhpg;gJ Br&k; vd;gjhy; khw;wBtz;Lbkd;gJ fhuzk; vd;W brhy;ypa[s;Bshk. ...@"@

125. D.W.5 Raju @ Lakshmana Battar, who is the Temple Priest (Archakar) of Thirukurungudi Temple, and who was examined on the side of the first defendant- Jeer of the Mutt, stated in his evidence as follows:

"@@.... miwah;fs; rlhhpia vLj;J jhahhplk; xg;gilg;gJ rp&;lhrhuk; vd;w eilKiwahFk;. rp&;lhrhuj;ij khw;wpaikf;f KoahJ. Mfkj;jpw;F bfhLf;Fk; khpahij mjw;Fk; cz;L. khwhf i& braYf;F Mfkk; tpyfp tHpglBtz;Lk;. jilahf nUf;ff;TlhJ. jpUf;FWA;Fo Mfk tpjpfSf;F tpyfp jdpj;jpUg;gJ mjd; rpwg;ghFk. 2 itzt MfkA;fSk; KytUf;F Beh; vjpuhf bfhokuk; mikaBtz;Lbkd;W tpjp brhy;fpwJ. Mdhy; Mfkj;jpd;go my;yhky; bfhokuk; tpyfp cs;sJ. mJ ek;ghLthDf;fhd jdp rpwg;ghFk;. mit Mfkj;jpw;F vjpuhdJ vd;Wk; mij khw;wpaikf;f Btz;Lbkd;Wk; Mfk gz;ojh; vtUk; Twtpy;iy. mJ rp&;lhrhuk; vd;gjhy; mij khw;wpaikf;f ahUk; Twg;Bghtjpy;iy/ rptd; rd;djp mUfpy; cs;sJ Mfkj;jpw;F vjpuhdJ vd;gJjhd; vA;fs; fUj;J. mJ rp&;lhrhuj;jpy; tUfpwjh ny;iyah vd;W ehA;fs; Mbyhrpf;ftpy;iy. ...@ "@

126. So, both "Sishtachar" and "Agama Saastra" are having equal importance. "Agama Saastras" have not been strictly followed in Thirukurungudi Temple and "Sishtachar" has been followed. Furthermore, 'Kodimaram' is not in accordance with the "Agama Saastras" in the Thirukurungudi Temple. Considering the evidence of D.Ws.4 and 5, I am of the view that the defence raised by the defendants that only as per the "Agama Saastras", the Lord Shiva Idol had been removed from the original place, does not merit acceptance.

127. In this context, it is appropriate to consider the arguments advanced by learned Senior Counsel appearing for the defendants 7 to 9 that since the villagers have given a representation that because the Lord Shiva is in the Vaishnavaite Temple, the Saivaites are unable to perform the Poojas for "Sivarathiri" and "Pradhosham". But the above argument does not merit acceptance, for the

following reasons:

(i) Admittedly, even from the Seventh Century onwards i.e. during the period of the Saint Thirumangai Azhwar , the Lord Shiva Shrine was there in the original place of the Temple and even though the defendants submitted that the Lord Shiva Idol is only a later addition, there is no evidence to show that the Idol was installed only at a later point of time and no one has given representation till 2003 for shifting of the Lord Shiva so as to perform the Poojas of "Sivarathiri" and "Pradhosham".

(ii) As per the evidence of D.W.4, the Lord Shiva Idol was installed in the Temple nearly 200 years ago and till 2003, no one has given representation for shifting the Idol of Lord Shiva, so as to perform the Poojas to Lord Shiva on "Sivarathiri" and "Pradhosham" days.

(iii) Till 2003 and even when the "Deva Prasannam" was conducted in 1996, no one has given representation for performing the said Poojas to Lord Shiva. Hence, the argument advanced by the learned Senior Counsel for D7 toD9 that to fulfil the wishes of the villagers of Thirukurungudi, the Idol of Lord Shiva had been removed, does not merit acceptance.

128. Further, the defence raised by D7 to D9 in their written statement is that after the removal of the Idol of Lord Shiva from the place where it was originally situated, there was been prosperity in the Village and there had been copious rain. Admittedly, no oral or documentary evidence has been produced by them on this aspect. Furthermore, as per the evidence of D.W.4, the Lord Shiva Idol was in existence even before 200 years and there is no evidence for the past 200 years that the people of the Village of Thirukurungudi were starving and were in doom.

129. It is also pertinent to note that the "Lord Kala Bairavar" Shrine is in the Temple at Thirukurungudi, since the inception of the Temple. Admittedly, the "Lord Kala Bairavar" will only be in the Saivaite Temples. This has clearly proved that the Idol of Lord Shiva been in existence from time immemorial and the defendants have not taken any steps to instal the "Kala Bairavar" Shrine in the newly constructed Temple.

130. From the ancient documents marked as Exhibits, which are already discussed earlier in this judgment, it is clearly proved that the Lord "Pakkam Nindrar" was there even during the period of Thirumangai Azhwar, i.e. in Seventh Century. Hence, I am of the view that the removal of the Idol of Lord Shiva is not in accordance with the "Agama Saastras". Though the "Kodimaram" is situated against the "Agama Saastras", but no steps have been taken to instal the same straight to the Deity.

131. Now this Court has to decide as to whether the shifting of the Lord Shiva was on the basis of the "Deva Prasannam" without reference to "Agama Saastras". It is pertinent to note that conducting "Deva Prasannam" is not in practice in the State of Tamil Nadu while performing "Jeernodharana Kumbhabhishekam" (Temple consecration), as already discussed in this judgment.

132. In this context, it is appropriate to consider the written statement filed by the first defendant, and in paragraphs 9 and 10, it is stated therein that as per the tradition and accepted practice, before

taking up the renovation work, the "Deva Prasannam" was conducted to seek "Divine Sanction" and to perform the requisite rituals found necessary to rectify the defects if any. In paragraphs 9 and 10 of the written statement filed by First defendant, the further disclosures of the "Deva Prasannam" were mentioned. But while perusing Ex.B-38, which is the report of the Expert Committee appointed by the H.R. & C.E. Department, it is seen that it does not contain the disclosures of the "Deva Prasannam". In paragraph 9 of the written statement filed by First defendant, it is stated that, "the acclaimed Tantric Sri Unnikrishnan was consulted and the divine ordination disclosed that the then dilapidated Siva Temple on the north-east of the village known as Sri Analleswara Temple be renovated first before the renovation work in the Azhagiya Nambiraya Perumal Temple was taken up." In paragraph 10 of the written statement filed by First defendant, it is stated that, "The Deva Prasannam further diclosed that the practice of preparation of Neivedyam in common in the Madapalli (Kitchen) in the Temple was not proper and be discontinued. Since the offering thus made to Lord Siva was inelegant as constituting a Sesham (residue) and that the separate Shrine and Madapalli be built exclusively for Lord Siva as per Saastric prescriptions." But as already stated, only one "Madapalli" (Divine Kitchen) was there in the Temple and that the Lord Pakkam Nindrar was there from time immemorial even during the period of the Saint Thirumangai Azhwar. Furthermore, as per the documents filed on behalf of the defendants, even during the period of 35th Jeer, the Temple consecration (Kumbhabhishekam) was performed for Lord Shiva "Pakkam Nindrar" along with the other Deities' Gopuram (Vimanam), but no one suggested to remove the same at that time. Even in the year 1911, the Temple consecration was performed and during that period, it was not the case that at that time, "Deva Prasannam" was conducted suggesting removal of the Lord Shiva Shrine. Furthermore, as per the decision reported in AIR 1949 Orissa 1 (cited supra), if there is conflict "Will" of the Lord as had been expressed by the rival parties through the methods like "Deva Prasannam", the Court has to devolve upon the same and render its judgment. Admittedly, in this case, the Deva Prasannam was conducted only by the Tantric Unni Krishna Panicker, and there is no second person conflicting the views of the said Tantric in the conduct of Deva Prasannam. In such circumstances, I am of the view that the contention that only in accordance with "Deva Prasannam", the Lord Shiva Idol has been shifted, is unacceptable.

133. Moreover, while considering the day-to-day activities of the Temples, only in the Temples of Kerala State, the "Deva Prasannam" was conducted, that too, only for the performance of "Poojas" in the Temples and not for removal or installation of any Deities. Hence, I am of the opinion that the first appellate Court has erroneously come to the conclusion that the shifting of the Idol of Lord Shiva was done on the basis of "Deva Prasannam", without any reference to "Agama Saastras". As already discussed earlier, not only in Thirukurungudi Azhagiya Nambi Temple, but in most of the famous Hindu Temples, the "Agama Saastras" are not being followed, for example, in the Temples of Nataraja Swamy at Chidambaram, Thirumogur Temple, Tiruchendur Subramanya Swamy Temple, Thirukoshtiyur Temple, etc. So, the argument advanced by learned counsel for the defendants that only as per "Deva Prasannam" and without any reference to "Agama Saastras", the Idol of Lord Shiva, was shifted, does not merit acceptance. The substantial questions of law (iv), (vi), (vii) and (ix) are answered in the above terms.

134. Substantial question of law (v):

Whether the lower appellate Court is right in holding that the first respondent, viz., Jeer, has got powers to make changes, which according to him, is against Agama Saastras ?

Learned counsel for the plaintiffs submitted that the Jeer is only the Head of the Mutt, i.e. "Madathipathi" and since the Temple is under the supervision and control of H.R. & C.E., the Jeer has got no powers to make changes in the structures/Idols/Deities. To substantiate the same, he relied on Sections 23 and 105 of the Tamil Nadu H.R. & C.E. Act, which read as follows: Section 23: Powers and duties of Commissioner in respect of temples and religious endowments:

Subject to the provisions of this Act, the administration of all temples (including specific endowments attached thereto) and all religious endowments shall be subject to the general superintendence and control of the Commissioner; and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such temples and endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist:

Provided that the Commissioner shall not pass any order prejudicial to any temple or endowment unless the trustees concerned have had a reasonable opportunity of making their representations."

Section 105: Saving: -- Nothing contained in this Act shall--

(a) save as otherwise expressly provided in this Act or the rules made thereunder, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution, or its established usage in regard to any other matter;

or

(b) authorise any interference with the religious and spiritual functions of the head of a Math including those relating to the imparting of religious instruction or the rendering of spiritual service."

135. Section 6(13) of the Tamil Nadu H.R. & C.E. Act deals with "math", which reads as follows:

Section 6: Definitions.--In this Act, unless the context otherwise requires-- ....

(13) "math" means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the founder of the institution or is regulated by usage and--

(i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service; or

(ii) who exercises or claims to exercise spiritual head-ship over a body of disciples;

and includes places of religious worship or instruction which are appurtenant to the institution;

Explanation.--Where the headquarters of a math are outside the State but the math has properties situated within the State, control shall be exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the State are concerned;"

136. In this connection, learned counsel for the plaintiffs also relied upon the book "V.K.Varadachari's Law of Hindu Religious and Charitable Endowments", Revised by Dr.R.Prakash, Advocate, Supreme Court, Published by Eastern Book Company, Lucknow, Fourth Edition 2005, in which, page 466 deals with Chapter VIII regarding Maths and Mahants, and Clause 2 therein, deals with "Maths and Temples" and submitted that there is a difference between "Math" and "Temple" and so, the "Madathipathi" (Head of the Mutt) is only having administrative powers of the "Mutt" and not the Temple; the Temple and Math are supplementary to each other; a Temple is practical aspect while a Math is theoretical part and both have separate objects; in Math, provision for residence is a must and "Math" has been serving as a School, where the initiated and lay disciples of some great Teacher are instructed in a certain philosophy in order to help them lead a healthy, pure and spiritual life. Learned counsel for the plaintiffs further submitted that the "Madathipathi" has no right to add or remove any features of the Temple and if he did anything in the features of the Temple, the same can be questioned by fling a representative suit. For this submission, he relied upon the decisions reported in Vol.LVI, 1920 Indian Cases 459 (Hari Raghunath Patvardhan Vs. Antaji Bhikaji Patvardhan) and AIR 1958 Orissa 26 (Ramakrushna Vs. Gangadhar) and also relied on various provisions of Section 116 of the Tamil Nadu H.R. & C.E. Act to the effect that the Government alone has power to make Rules by Notification to carry out the purposes of the said Act for preservation of the image of the Temples. He also relied on Rules 31, 37 and 52 of the Management and Preservation of Properties of Religious Institutions Rules, 1964 and submitted that no one has power to alter the Idol of Lord Shiva in the Temple, and therefore, he submitted that the Madathipathi/Jeer/First defendant has no right to remove the Idol of Lord Shiva from the place where it was originally situated. Admittedly, the Idol of Lord Shiva is now in "Dhanya Vaasam" (inside the paddy).

137. Learned counsel for the defendants submitted that Section 105(b) of the Tamil Nadu H.R. & C.E. Act shall not apply to the religious activities of the Mutt and Section 105(b) specifically provides that the officials cannot interfere with the religious and spiritual functions of the Head of a Math. He further submitted that the plaintiffs have not given any evidence in this aspect.

138. It it true that the plaintiffs have filed the suit simpliciter for declaration that the removal of Idol of Lord Shiva is null and void and they have not questioned the rights of the Jeer, whereas, the first defendant-Jeer himself stated that he has every right to alter the Idols of the Temple, and so, it is the duty of the first defendant-Jeer to prove the contents in the additional written statement that, "....defendant as the Head of the Mutt, is in control and management of the entire Temple, he is the authority to decide the religious matters and his decision cannot be interfered by anybody...."

139. Learned counsel for the defendants submitted that First defendant Jeer has administrative powers for management of the Temple/Mutt and that the Jeer is the hereditary Trustee for

administering the Temple and constructing the Temple or of religious matters, and the Jeer has every right as per the religious practice to re-instal the Idols of Azhagiya Nambirayar Temple. D.W.4 who is the Manager of the Mutt (Srikariyam of the Mutt) was examined on these aspects and there was no cross-examination of D.W.4 on the aspect of the powers of Jeer to remove the Idol of Lord Shiva. Learned counsel for the defendants further submitted that as per Section 105(b) of the Tamil Nadu H.R. & C.E. Act, the Jeer has control as the Head of the Mutt and he is having absolute powers in the administration and management of the Temple/Mutt. Learned counsel for the defendants further stated that the Rules 31, 37 and 52 of the Management and Preservation of Properties of Religious Institutions Rules, relied on by the learned counsel for the plaintiffs, are not applicable to the facts of the present case on hand.

140. Learned counsel for First defendant-Jeer relied on a judgment of a Division Bench of this Court reported in Vol.95 LW 502 (His Holiness Sri-la-Sri Ambalayana Pandarasannathi Avergal Vs. State of Tamil Nadu), which relates to the powers of the "Madathipathi" in regard to appointment/nomination of the Junior of His Holiness "Madathipathi", which is not the question in the case on hand and hence, this citation is not applicable to the facts of the present case.

141. Learned counsel for First defendant-Jeer also relied upon the decision of the Supreme Court reported in AIR 1954 SC 282 (Commr., H.R. E. Vs. L.T.Swamiar), which deals with the rights and duties of "Mahant". This decision is not applicable to the facts of the present case, because the Tamil Nadu H.R. & C.E. Act came into existence only in 1959 and this decision pertains to the year 1954. Furthermore, in the present case, then and there, First defendant- Jeer sought for permission from H.R. & C.E. Department and also requested the authorities of H.R. & C.E. to be present on the date of "Balalayam", which is evidenced by the documents marked on the side of the first defendant-Jeer.

142. Learned counsel for First defendant-Jeer further relied on a judgment of the Apex Court reported in 2002 (8) SCC 106 (N.Adithayan Vs. Travancore Devaswom Board), which deals with violation of human rights, which is not the case here.

143. While considering the arguments advanced by learned counsel on both sides, it is seen that admittedly, the Temple in question is under the supervision and control of the Tamil Nadu H.R. & C.E. Department and under the superintendence of the Joint Commissioner of H.R. & C.E. Furthermore, it is pertinent to note that after the removal of the Idol of Lord Shiva, the Government passed a G.O., ratifying the act of the Jeer, which has clearly proved that the Madathipathi has only administrative control in respect of the Mutt and not the Temple.

144. Further, the document Ex.B-33 relied on by the learned Senior Counsel for D7 to D9, has clearly proved that, then and there, on behalf of the Jeer, a communication was sent to the H.R. & C.E. Department in respect of the performance of renovation work and "Balalayam" of the Temple, and in Ex.B-33 dated 4.6.2002, the letter addressed by the Manager of the Temple to the H.R. & C.E. Authorities, in the "Subject" column, it is mentioned about the renovation of "Sri Swami Azhagiya Nambirayar Thirukoil, Thirukurungudi" and "change of Sivan Temple" and in paragraph 4 therein, it was mentioned about the Siva Temple. The Special Commissioner and Commissioner of H.R. & C.E. Department, has appointed an Expert Committee, as evidenced by Ex.B-34. There is

another communication/Ex.B-35, dated 13.3.2003, sent by Joint Commissioner, H.R.& C.E., Tirunelveli, to the Muthiah Sthapathi, Sivachariyar and Bhattachariar, asking them to inspect the Temple and give their views. Ex.B-36 is the Minutes of the Meeting of the Expert Committee, dated 31.3.2003 and on the same day, i.e. on 31.3.2003, the plaintiffs and villagers of Thirukurungudi, have sent a communication (Ex.B-37) to the Assistant Commissioner, H.R. & C.E. Department, Tirunelveli, objecting to the shifting of Lord Shiva Idol. There is another representation by the villagers of Thirukurungudi, which is marked as Ex.B-40, addressed to Commissioner of H.R. & C.E., Tamil Nadu, and in Ex.B-40, the seal of the H.R. & C.E. Department contains the date 12.5.2003. The Commissioner of H.R. & C.E. Department, Chennai, has sent a communication-Ex.B-44, to Jeer Swamigal of Thirukurungudi of Arulmighu Azhagiya Nambirayar Temple, dated 6.8.2004, in which, it is stated that without obtaining prior permission, the Lord Mahendragirinathar/ Lord Shiva, had been removed and put in "Dhanya Vaasam" and the Commissioner called for explanation on the said aspect from the first defendant-Jeer. Ex.B-43 is the communication dated 23.6.2004 addressed by the Assistant Commissioner of H.R. & C.E., Tirunelveli to the Joint Commissioner of H.R. & C.E., Tirunelveli and it contains the correspondences relating to "Balalayam" of Lord Siva Idol; it contains a communication dated 31.5.2004, in which, it was mentioned on behalf of Jagadguru Sri Sankaracharya Swamigal, Kancheepuram, that consent was given by His Holiness Sri Acharya Swamigal for Balalayam and renovation works of Lord Siva and Goddess Ambal Deities. On the same day, i.e. on 31.5.2004, on behalf of the Jeer Swamigal of Thirukurungudi, the Manager of the Temple has addressed a letter to Joint Commissioner of H.R. & C.E. Department, Tirunelveli, seeking for permission for performance of "Balalayam", and in the said communication, on behalf of the Jeer, it is stated that without shifting the Deities, (Kh;j;jp rydkpy;yhky;), they are going to perform the Balalayam and the relevant portion of the communication dated 31.5.2004 sent on behalf of the Jeer to Joint Commissioner, reads as follows: "@@mHfpa ek;gpuhah; jpUf;Bfhtpy; $Ph;Bzhjhuzj;jpd; xU gFjpahf rptd; re;epjp ghyhyak; 2/6/2004y; jpl;lkpl;lgo eilbgw;W tUfpwJ. fhq;rP _ _ $Bae;jpu !;thkpfSk; xg;g[jy; bjhptpj;Js;shh;fs;. fPHf;;fz;l KyBgu Kh;j;jpfs; ghyhyak;, Kh;j;jp rydk; ny;yhky; eilbgWfpwJ. 1.kBcwe;jpu fphpehjh; 2.gps;isahh; 3.Rg;ukzpah; 4.ee;jp

5.rz;Bl!;tuh;. MfBt i& jpdj;jpy; fhiy 9-10 kzpf;F Jiw mjpfhhpfs; gpurd;dkhf nUf;ft[k; ghyhyaj;Jf;F cj;jput[gpwg;gpf;FkhW[k; gzptd;g[ld; Btz;of; bfhs;fpBwd;. ... "@

145. So, all the communications discussed above, especially the communication between First defendant-Jeer and the H.R.& C.E. Department, clearly proved that the H.R. & C.E. Department alone has control over the Temple and the Jeer is only the hereditary Trustee of the Mutt and is the Madathipathi of the Mutt pertaining to Arulmighu Azhagiya Nambi Temple. Therefore, the argument advanced by learned counsel for the defendants that the Jeer has every right, power and authority to instal and remove the Deities in the Temple, is unacceptable one.

146. Admittedly, on 2.6.2004, the Jeer Mutt people removed the Idol of Lord Shiva from the original place and the Lord Shiva Idol is now in "Dhanya Vaasam" (kept inside paddy). This has clearly proved that the first defendant- Jeer acted against his earlier statement.

147. In this regard, it is worthwhile to refer Rules 31, 37 and 52 of the Management and Preservation of Properties of Religious Institutions Rules, which are extracted hereunder:

"The Management and Preservation of Properties of Religious Institutions Rules, 1964:

Rule 31: Repairs, alterations, etc., to Antiquities: (1) A trustee or the Board of Trustees as the case may be, shall not repair, alter, replace, sell, gift away or destroy any antiquities or other objects of interest such a sculptures, carvings, inscriptions or paintings, without the written permission of the Commissioner and such permission shall be granted only on obtaining competent advice thereon.

(2) While granting permission under Sub-rule (1) the Commissioner shall issue such instructions to the Trustee or the Board of Trustees, as may be necessary, for preservation of works of art, sculpture paintings, antiquities and other articles of interest and the trustees shall be bound to carry out such instructions.

Rule 37: Care of structures: It shall be the duty of the trustee or the Board of Trustees to ensure the utmost care is taken of the architectural, sculptural and archaeological features of every structure in the temple or on its lands in his or its charge.

Rule 52: Alterations to or melting of idols : No trustee or the Board of Trustees shall alter the character of, or repair, remove, melt, or replace any metallic or other idol or image in the temple, whether fixed or otherwise, without the express permission of the Commissioner in writing."

148. As per Rule 52 of the Management and Preservation of Properties of Religious Institutions Rules, 1964, the Jeer has no power to remove the Lord Shiva Idol from the original place of installation. Hence, I am of the view that the first appellate Court committed error in coming to the conclusion that First defendant-Jeer has every right to alter, change, etc., of the Idols and the Vimanam (Gopuram), which is against the "Agama Saastras". The substantial question of law (v) is answered accordingly.

149. Substantial question of law (iii):

Whether the lower appellate Court is right in holding that as per G.O.(Ms).No.55, dated 8.4.2005, the H.R. & C.E. Department, has ratified the shifting of the Idol of Lord Shiva, when especially the Division Bench of this Court has directed the lower Court to decide the suit, without reference to G.O.(Ms).No.55, dated 8.4.2005 ?

Since the Idol of Lord Shiva was removed and kept in "Dhanya Vaasam" (kept inside paddy), immediately, the plaintiffs and villagers of Thirukurungudi sent representation(s) to the Government, in pursuance of which, explanation has been called for from the Jeer by the Tamil Nadu H.R. & C.E. Department. The suit has been filed on 1.7.2004 by the plaintiffs. Only during the pendency of the suit, G.O.(Ms).No.55, Tamil Development, Culture and Religious Endowments Department, dated 8.4.2005, which is marked as Ex.B-45, has been passed. In the said G.O. itself, it is specifically stated that the suit is pending before the District Munsif Court and challenging the

interim order passed in the suit, the Jeer has preferred a Civil Revision Petition (Madurai Bench) before this Court, and in the meantime, Hindu Bhaktha Jana Sabai and Divya Desa Parambariya Padukappu Peravari, preferred Writ Petitions and as seen from the said G.O., the belated permission sought for shifting has been accorded by ratifying the act. Admittedly, the validity of the said G.O. has been under challenge in W.P.No.18450 of 2005 before this Court. At this juncture, it is appropriate to incorporate the order passed by this Court while disposing of W.P.No.18450 of 2005 along with the other connected cases, on 3.10.2005: "5. .... The last of the writ petition is W.P.No.18450/2005. The writ petitioner in that writ petition challenges the validity of G.O.Ms.No.55 TDC RE Department dated 08.04.2005. Under this Government Order, the Government ratified the action of the temple authorities in shifting the shrine of Lord Siva from Arulmigu Nambirayar Temple at Thirukurungudi to a new shrine. This ratification is stated to be under Rule 52 of the Management and Preservation of Properties of Religious Institutions Rules framed under section 116 of the Hindu Religious and Charitable Endowments Act. Of course, as rightly contended by the plaintiffs in the suit, the validity of the above referred to Government Order cannot be challenged in that suit. In our considered opinion, the decision in the pending suit may have a bearing on the validity of the Government Order challenged in this writ petition. In other words, if the civil court, on evidence, holds that shifting the idol of Lord Siva from it's original place to the new place is not in violation of either Agama Sasthras or any known religious principle or faith, then it cannot be said that such a finding may have no bearing at all in deciding the validity of the Government Order. Therefore, we are not taking up W.P.No.18450/2005 for disposal and instead, direct the Registry to post it before court after O.S.No.288/2004 pending on the file of the learned District Munsif, Nanguneri is disposed of."

150. So, the challenge to the said G.O. is pending before this Court in W.P.No.18450 of 2005. In the said order dated 3.10.2005, the Division Bench of this Court has specifically mentioned that, "Therefore, we are not taking up W.P.No.18450/2005 for disposal and instead, direct the Registry to post it before court after O.S.No.288/2004 pending on the file of the learned District Munsif, Nanguneri is disposed of." In such circumstances, the first appellate Court has considered the G.O. and came to the conclusion that the H.R. & C.E. Department has ratified the act of shifting the Shrine of Lord Shiva from the original place to the new place, and the first appellate Court, in paragraphs 60 and 61 of its judgment, came to the conclusion that as per Rule 52 of the Management and Preservation of Properties of Religious Institutions Rules, the G.O. had been passed, giving permission for re-installing the Shrine of Lord Shiva into the new constructed place of the "Third Prakaram of the Temple" as per the decision of the Expert Committee of the Tamil Nadu H.R. & C.E. Department and the permission was accorded in the said G.O. only after the removal of the Shrine. Hence, the first appellate Court committed error in coming to the said conclusion, relying on the said G.O. while disposing of the First Appeals, when admittedly, the challenge to the said G.O. is pending before this Court. Substantial question of law (iii) is answered accordingly.

151. Substantial question of law (viii) :

Whether the lower appellate Court is right in rendering the judgment without disposing of the applications filed under Order 1 Rule 8(5) of CPC and Order 1 Rule 10(2) of CPC ?

Learned counsel for the plaintiffs submitted that when the impleading petitions are pending before the first appellate Court, it is not proper on the part of the first appellate Court to hastily dispose of the First Appeals simultaneously along with those impleading petitions, and it has not considered the impleading petitions in proper perspective, when admittedly, the suit is filed in a representative capacity. In such circumstances, it is the duty of the first appellate Court to consider those interlocutory applications for impleadment, in its own merits and only after giving a detailed order, the First Appeals should have been heard for arguments and disposed of subsequently.

152. Admittedly, the impleading applications were disposed of simultaneously on the same day the First Appeals were disposed of. The first appellate Court did not consider those impleading applications in proper perspective and it will have a bearing on the disposal of the First Appeals, as the suit has already been filed in a representative capacity and impleading of those parties is necessary or not, has to be decided and finding has to be rendered separately on the said applications and then only, the First Appeals should have been heard and disposed of. Hence, I am of the view that the first appellate Court committed error in disposing of the impleading applications along with the First Appeals. Substantial question of law (viii) is answered accordingly.

153. Substantial question of law (x):

Whether the lower appellate Court is right in rendering the judgment, when Tr.O.P.Nos.148 and 149 of 2009 were filed and pending on the file of the Principal District Judge, Tirunelveli, wherein serious allegations were made against the learned Sub-Judge, Valliyoor, who disposed of the appeals ? Learned counsel for the plaintiffs submitted that while Tr.O.Ps. were filed and pending, making serious allegations against the Judicial Officer concerned, the Judicial Officer concerned has hastily disposed of the First Appeals and hence, he prayed for setting aside the judgment and decree of the first appellate Court. The pendency of the Tr.O.Ps. will have no bearing on the disposal of the First Appeals, since there is no evidence to show that the plaintiffs have obtained any order of interim stay of disposal of the First Appeals. Hence, I am of the view that the question as to whether the learned Subordinate Judge, Valliyoor is right in rendering the judgment, when the said Tr.O.Ps. are pending, is not a substantial question of law to be considered and hence, this Court is not answering this substantial question of law.

154. One more aspect to be noted is that during the pendency of S.A.(MD).Nos.1075 of 2009 and 176 and 646 of 2010, one Valli Manalan and Vadivazhagiya Nambi, filed an application seeking for leave to file Second Appeal in S.A.S.R.(MD).No.16491 of 2010. These two petitioners earlier filed I.A.No.130 of 2009 in A.S.No.29 of 2007, I.A.No.133 of 2009 in A.S.No.37 of 2007 and I.A.No.136 of 2009 in A.S.No.63 of 2007 before the lower appellate Court to substitute their names in the name of the plaintiffs. After contest, the said I.As. were dismissed. The Second Appeal has been preferred by the plaintiff(s) on 24.11.2009 in S.A.(MD).No.1075 of 2009. But the petition to leave to appeal in S.A.S.R.(MD).No.16491 of 2010, was filed only on 12.4.2010, as the said applications in I.As. seeking to substitute their names in the place of the plaintiffs, were dismissed by the first appellate Court. Only during the course of arguments in S.A.(MD).Nos.1075 of 2009 and 176 and 646 of 2010, the appellants in S.A.S.R.(MD).No.16491 of 2010 appeared through counsel on 3.9.2010 which was the last date of hearing the Second Appeals, and their counsel filed the written arguments only on that

day. Furthermore, in the said three Second Appeals, the appellants/plaintiff(s)/defendant(s) in the respective cases, engaged counsel(s) and argued the cases elaborately. The interest of the petitioner/appellant in S.A.S.R.(MD).No.16491 of 2010, is protected by the appellants in the other three Second Appeals. In such circumstances, there is no reason to allow the petition seeking leave to appeal in S.A.S.R.(MD).No.16491 of 2010, which is accordingly rejected. Consequently, S.A.S.R.(MD).No.16491 of 2010 is also rejected.

155. In view of the answers given above to the substantial questions of law:

(i) The plaintiffs have locus-standi to file the suit in a representative capacity;

(ii) D2 and D3/H.R. & C.E. authorities sought for explanation from the first defendant-Jeer regarding the removal of the Idol of Lord Shiva from the place, which is admittedly now kept in "Dhanya Vaasam" (inside paddy). This shows that the first defendant-Jeer has no authority to remove the Idol of Lord Shiva from the place where it was originally situated;

(iii) the Government have also passed the G.O. ratifying the said action of the Jeer, when admittedly, as on today, the challenge to the said G.O. is pending before this Court in W.P.No.18450 of 2005

156. The judgment and decree of the first appellate Court are liable to be set aside and that of the trial Court are to be restored. Therefore, the plaintiffs are entitled to get the declaration that the demolition, removal and re-location of the Lord Shiva/Mahendragirinathar Sannadhi situated on the north- east of Sancum Sanctorum of the Temple and in front of the Shrine Veetrirundha Nambi, to a different place, within the premises of Arulmighu Azhagiya Nambirayar Temple, Thirukurungudi, is illegal and invalid. Accordingly, the declaration sought for by the plaintiffs, is granted. There will be a direction to defendants 1 to 4 to restore the Lord Shiva Sannadhi, namely Arulmighu Sri Mahendragirinathar, to the original place from where it was removed, within three months from today.

157. For the foregoing reasonings:

(a) The Second Appeal filed the plaintiffs in S.A.(MD).No.1075 of 2009 is allowed.

(b) The Second Appeal filed by D5, in S.A.(MD).No.176 of 2010, is also allowed.

(c) The Second Appeal filed by D6, in S.A.(MD).No.646 of 2010, is also allowed.

(d) The Second Appeal in S.A.S.R.(MD).No.16491 of 2010, filed by the proposed parties who sought for impleadment before the first appellate Court during the pendency of First Appeals, and leave to sue in M.P.(MD).No.1 of 2010 in S.A.SR.(MD).No.16491 of 2010, are rejected.

(e) The judgment and decree of the first appellate Court are set aside and that of the trial Court are restored.

(f) The suit in O.S.No.288 of 2004 is decreed as prayed for.

(g) There will be a declaration that the demolition, removal and re- location of the Lord Shiva/Mahendragirinathar Sannadhi situated on the north- east of Sancum Sanctorum of the Temple and in front of the Shrine Veetrirundha Nambi, to a different place, within the premises of Arulmighu Azhagiya Nambirayar Temple, Thirukurungudi, is illegal and invalid.

(h) Three months' time is granted to the defendants to re-instal the Lord Shiva Idol to its original place in Thirukkurungudi Azhagiya Nambirayar Temple.

(i) No costs.

(j) The Miscellaneous Petitions are closed.

cs To

1. Additional District Munsif, Nanguneri.

2. Subordinate Judge, Valliyoor.

3. Thirukurungudi Jeeyar Mutt, through its Jeeyer Swamigal, Thirukurungudi, Nanguneri Taluk.

4. The Deputy Commissioner, H.R. & C.E., Nungambakkam, Chennai.

5. The Joint Commissioner, H.R. & C.E., Tirunelveli, Thiruvanandapuram Road, Palayamkottai, Tirunelveli.

6. The State of Tamil Nadu, through its District Collector, Kokkirakulam, Tirunelveli-9.

7. The Record Keeper, V.R. Section, Madurai Bench of Madras High Court, Madurai.