

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

AS.No. 665 of 1998 (G)

JUDGMENT DATED 06-01-1998 IN OS 46/1977 OF THE ADDITIONAL DISTRICT COURT,
ERNAKULAM

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APPELLANT(S)/PLAINTIFFS 1, 2 AND 4: (3RD PLAINTIFF DIED AT TRIAL AND NO
LEGAL REPRESENTATIVES IMPEADED. HIS LEGAL REPRESENTATIVES ARE NOT
NECESSARY PARTIES.

1. REV.FR.OUSEPH, S/O.POULOSE,
RESIDING AT PATHICKAL HOUSE,
PERUMBAVOOR, DO. VILLAGE,
KUNNATHUNADU TALUK.
2. REV.FR.JACOB, RESIDING AT
ATHIRAMPUZHAYIL HOUSE, VENGOOR KARA,
VENGOOR EAST VILLAGE, KUNNATHUNADU TALUK.
3. CHACKO, S/O.AVIRA, RESIDING AT
POMACKAL HOUSE, PUNNAYAM KARA,
ASAMANNOR VILLAGE, KUNNATHUNADU TALUK.

BY ADVS.SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.BOBY MATHEW

RESPONDENT(S)/DEFENDANTS:

1. REV.FR.POULOSE PAILY,
RESIDING AT PUNNACKAPPILLI HOUSE,
KUTTALANJI KARA, ERAMALLOOR VILLAGE,
KOTHAMANGALAM TALUK.
- * 2. REV. FR.JOSEPH PAILY,
RESIDING AT PUTHUKUNNATH HOUSE,
PANIPRA KRA, KOTTAPPADY VILLAGE,
KUNNATHUNADU TALUK. (DIED)
3. REV. FR.VARGHESE, S/O.JOSEPH,
RESIDING AT ERUMALA HOUSE,
KUTTALANJI KARA, ERAMALLOOR VILLAGE,
KOTHAMANGALAM TALUK.
- * IT IS RECORDED THAT THE SECOND RESPONDENT DIED AND THAT
IT IS NOT NECESSARY TO IMPEAD THE LEGAL REPRESENTATIVES
VIDE ORDER DTD.17.10.2000 IN MEMO CF 5285/2000.

msv/

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ADDITIONAL R4 & R5 IMPEADED

4. FR.GEORGE PATLATT, S/O.LATE POULOSE PATLATT,
 AGED 75 YEARS, VICAR, ST.MARY'S CHURCH,
 ODAKKALY, ASAMANNOOR VILLAGE,
 KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.

5. FR.THOMAS PAUL RAMBAN, S/O.LATE POULOSE MARACHERIL,
 AGED 43 YEARS, ASST. VICAR, ST.MARY'S CHURCH,
 ODAKKALY, ASAMANNOOR VILLAGE,
 KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.

ARE IMPEADED AS PER ORDER DTD.12.10.2015 IN IA.NO.1409/2015.

BY ADVS. SRI.GEORGE THOMAS MEVADA (SR)
 SRI.MANU GEORGE
 SRI.AMAL GEORGE

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 12-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B.SURESH KUMAR, J.

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A.S.No.665 of 1998.

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Dated this the 12th day of October, 2015.

J U D G M E N T

The decision of the District Court, Ernakulam in O.S.No.46 of 1977 is under challenge in this appeal. Plaintiffs 1, 2 and 4 in the suit are the appellants.

2. The first plaintiff is the vicar and the second plaintiff is the assistant vicar of the plaint schedule church namely, St.Mary's Orthodox Church, Odakkali. The plaint schedule church is a parish church under the Malankara Orthodox Syrian Church, hereinafter referred to as 'the Malankara Church' for short. According to the plaintiffs, plaintiffs 3 and 4 are the trustees of the plaint schedule church. It is also the case of the plaintiffs that the defendants who are the vicars of other parish

churches under the Malankara Church have entered the premises of the plaint schedule church and conducted religious services therein. According to the plaintiffs, the defendants have no right to conduct religious services in the plaint schedule church which belong to the parishioners of the said church, without the permission and consent of the plaintiffs. It is alleged by the plaintiffs that even after informing the defendants the decision of the parish assembly of the plaint schedule church that the religious services shall not be conducted in the plaint schedule church without the permission and consent of the plaintiffs, the defendants are attempting to enter the plaint schedule church, conduct religious services therein and obstruct the religious services conducted by plaintiffs 1 and 2. The suit was filed on the said allegations seeking a decree of permanent prohibitory injunction restraining the defendants from entering the premises of the plaint schedule church or interfering with the religious services therein.

3. The defendants resisted the suit by filing a written statement. It was contended by them that defendants 3 and 4 are not duly elected trustees of the plaint schedule church. The specific case pleaded by the plaintiffs that the plaint schedule church belongs to its parishioners has been denied by the defendants. According to them, the plaint schedule church being a parish church under the Malankara Church is to be administered under the episcopal authority of the Malankara Metropolitan in accordance with the 1934 constitution of the Malankara Church. It was also contended by the defendants that they being vicars of other parish churches under the Malankara Church, are entitled to conduct religious services in the plaint schedule church also, if the parishioners of the said church request them to do so. They have also specifically denied the case set up by the plaintiffs in the plaint that without the permission of the plaintiffs, the defendants are not entitled to conduct religious services

in the plaint schedule church. They have also contended that the decision of the parish assembly dated 14th July, 1974 relied on by the plaintiffs is one taken without authority.

4. Though the case set up by the plaintiffs in the plaint as to the right of the defendants to enter the premises of the plaint schedule church and to conduct religious services therein was specifically denied by the defendants, the plaintiffs have not adduced any oral or documentary evidence in support of their case. The trial court, in the circumstances, dismissed the suit holding that the plaintiffs have not established their case. The plaintiffs 1, 2 and 4 who are aggrieved by the said decision of the trial court have thus come up in this appeal.

5. Heard the learned counsel on either side.

6. As indicated above, the case set up by the plaintiffs in the plaint has been stoutly denied by the defendants. As such, in the absence of any evidence on

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the side of the plaintiffs to establish their case, the court below cannot be faulted for having dismissed the suit. There is, therefore, no merit in the appeal and the same is accordingly dismissed. All the interlocutory applications in this appeal are closed.

**Sd/-
P.B.SURESH KUMAR, JUDGE.**

Kvs/-

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PA TO JUDGE.