

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 28TH DAY OF APRIL 2015/8TH VAISAKHA, 1937

Cr1.Rev.Pet.No. 210 of 2014 ()

AGAINST THE ORDER IN CRL.R.P.NO.23/2008 of ADDL.SESIONS COURT,
ALAPPUZHA. DATED 04-09-2008

AGAINST THE ORDER IN MC 76/1980 of SUB DIVISIONL MAGISTRATE, ALAPPUZHA

AGAINST THE ORDER IN Cr1.MC 3467/2008 of HIGH COURT OF KERALA
DATED 09.09.2008

REVISION PETITIONERS/RESPONDENTS 2 & 3:

1. REV.FR.KURIAN JOSEPH,
AGED 60 YEARS, S/O.JOSEPH, VICAR,
ST.THOMAS ORTHODOX SYRIAN CHURCH,
MANTHALIR, RESIDING AT ST.GEORGE CHAPPEL BUILDINGS
KULANADA VILLAGE
REPRESENTED BY 1ST RESPONDENT CHURCH.

2. P.M. MATHAI, PLAVUNILKUNNA MANNIL HOUSE,
KULANADA VILLAGE, REP.BY POWER OF ATTORNEY HOLDER
P.J.KORUTHU, S/O. T.N.YOHANNAN, AGED 62 YEARS.

BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.PRIJITH
SRI.P.MARTIN JOSE

RESPONDENTS/REVISION PETITIONER & RESPONDENTS 1 & 3:

1. C.A.GEORGE, S/O.CHACKO,
ERUTHIKOVIL HOUSE, MANTHUKA P.O.,
KULANADA VILLAGE
KOZHANCHERY TALUK.

2. REV.FR.P.M.GEORGE, VICAR, MANTHALIR,
ST. THOMAS ORTHODOX SYRIAN CHURCH,
MANTHUKA, KULANADA
FROM PULIAMPLAVIL VEEDU, VANMAZHI MURI,
PANDANAD VILLAGE, CHENGANNUR TALUK.

3. STATE OF KERALA REPRESENTED BY CHIEF
SECRETARY, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

R1 BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
R1 BY ADV. SRI.G.PRIYADARSAN THAMPI
R1 BY ADV. SRI.ANTONY MUKKATH
R3 BY P.P.SMT.V.H. JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-04-2015, THE COURT ON 28.4.2015 PASSED THE FOLLOWING:

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A1: COPY OF THE JUDGMENT IN O.S.NO.13/76 AND O.S.NO.149/77 OF THE 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM DATED 29.8.98.

ANNEXURE A2: COPY OF THE JUDGMENT IN A.S.NO.768/98 DATED 8.10.07 OF THIS COURT.

ANNEXURE A3: CERTIFIED COPY OF THE ORDER DATED 7.7.08 OF THE SUB DIVISIONAL MAGISTRATE, ALAPPUZHA IN M.C.NO.76/80.

ANNEXURE A4: THE CERTIFIED COPY OF THE MAHAZAR PREPARED BY THE VILLAGE OFFICER DATED 7.7.08 AT THE TIME OF HANDING OVER THE PROPERTIES.

ANNEXURE A5: COPY OF THE I.A.NO.2755/2008 IN RP.NO.134/08 IN AS.NO.768/98 FILED BY THE FIRST RESPONDENT DATED 7.7.08.

ANNEXURE A6: COPY OF THE OBJECTION FILED BY THE PETITIONERS IN RP.NO.23/2008 BEFORE THE ADDITIONAL SESSIONS COURT, ALAPPUZHA.

ANNEXURE A7: CERTIFIED COPY OF THE ORDER DATED 4.9.008 IN R.P.NO.23/2008 ON THE FILES OF THE ADDL.SSESSIONS JUDGE, ALAPPUZHA.

ANNEXURE A8: COPY OF THE PLAINT IN O.S.NO.79/74 ON THE FILES OF SUB COURT, ALAPPUZHA.

RESPONDENTS' ANNEXURES:

ANNEXURE R1: CERTIFIED COPY OF THE JUDGMENT OF THIS COURT DATED 4.1.2012 IN A.S.NO.768/1998.

/TRUE COPY/

P.S.TO JUDGE

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.210 of 2014
.....

Dated this the 28th day of April, 2015.

O R D E R

The second and third petitioners in M.C.No.76/1980 of the Sub Divisional Magistrate Court, Alappuzha are the revision petitioners herein. Revision petitioners are the members of St.Thomas Orthodox Syrian Church claiming to be under the management of Malankara Orthodox Syrian Church headed by catholicos, while respondents 1 and 2 are the truncated faction of the same group headed by Patriarch faction. The church was originally under the management of Malankara Orthodox Syrian Church headed by Catholicos and after the difference of opinion between these two groups regarding their affiliation and religious status, there arose dispute regarding management of the church and on account that dispute, in fact, public tranquility was affected and conduct of prayers and worship in the church became difficult. So, on the basis of the complaint given by 'A' party and on the basis of the report of the police, originally the Sub Divisional Magistrate, Chengannur initiated proceedings under Section

145 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short) as M.C.No.12/75 in respect of the properties of the church including the present church. Thereafter the same was transferred to the Sub Divisional Magistrate Court, Alappuzha, where it was renumbered as M.C.No.76/80 and as per the orders of the Sub Divisional Magistrate, Chengannur, under section 146 of the Code, possession of the property has been taken over and entrusted to the Village Officer. Present 'A' party in M.C.76/80 instituted civil suit for establishing their rights before the Sub Court, Mavelikkara and also O.S.No.21/75 before the Munsiff Court, Chengannur and thereafter they were transferred to First Additional District Court, Ernakulam, (Special Court for Church Cases) where they were renumbered as O.S.Nos.13/76 and 149/77 respectively. After trial, both the cases were decided in favour of the revision petitioners as per Annexure-A1 judgment whereby the Additional District Court has directed the Sub Divisional Magistrate to hand over possession of the plaint schedule properties except item-3 in the plaint schedule to the revision petitioners. The first respondent herein along with another filed A.S.No.768/1998 before this Court and that was

dismissed for default on 8.10.2007 as per Annexure-A2 judgment. Four months after the dismissal of the appeal, the revision petitioners filed an application before the Sub Divisional Magistrate, Alappuzha to redeliver the properties to them as directed by the Additional District Court in Annexure-A1 judgment and after hearing both sides, the learned Sub Divisional Magistrate as per Annexure-A3 order dated 7.7.2008 in M.C.No.76/80 directed the Village Officer to hand over possession of the properties as per the directions of the civil court to the revision petitioners and accordingly, the Village Officer on the same date handed over possession of the properties as directed in Annexure-A1 judgment as per Annexure-A4 mahazer to the revision petitioners. Thereafter the first respondent filed RP.No.134/2008 to review the order of dismissal of the appeal and filed I.A.No.2755/2008 seeking certain directions as Annexure-A5. But no orders have been passed by this Court on that application disturbing the order of handing over possession of the property or management of the properties as per the orders of the Additional District Court (Special Court for Church Cases). It is alleged in the revision petition that, suppressing these facts, the first respondent filed

Crl.R.P.No.23/2008 before the Sessions Court, Alappuzha which was made over to the Additional Sessions Court, Alappuzha for disposal and the learned Additional Sessions Judge allowed the revision setting aside the order in M.C.No.76/80 but did not mention as to what is to be done by the Magistrate in respect of the properties. Aggrieved by the same, the petitioners earlier filed Crl.M.C.No.3467/2008 to quash the orders of the Additional Sessions Court under section 482 of the Code and this Court found that the remedy of the petitioners is to file revision and not to file an application under section 482 of the Code and accordingly, the Criminal Miscellaneous Case was converted into the present revision and accordingly it was renumbered as Crl.R.P.No.210/2014. While this Court passing that order, directed the parties to maintain the position as directed in Annexure-A1 judgment of the Additional District Court which was produced and marked as Annexure-A3 in the proceedings and further directed not to obstruct the pathway leading to the Cemetery for the purpose of burial and service conducted in respect of the same and that will continue till the disposal of the civil appeal or till the disposal of this proceedings, whichever is earlier.

2. Heard Sri.S.Sreekumar, the senior counsel appearing for the revision petitioners, Sri. O.V.Radhakrishnan, the senior counsel appearing for respondents 1 and 2 and the Public Prosecutor Smt.V.H.Jasmine and perused the lower court records.

3. Sri.S.Sreekumar, the senior counsel appearing for the revision petitioners submitted that as per the judgment of the Supreme Court in **Most. Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma and another** (AIR 1995 SC 2001) the Hon'ble Supreme Court has observed that :

“Both Catholicos and Patriarch group continue to be members of the Syrian Orthodox Church. The Patriarch of Antioch has no temporal powers over the Malankara Churches. The effect of the creation of Catholicate at Malankara and 1934 Constitution is that the Patriarch can exercise spiritual powers subject to the Constitution. The Spiritual powers of the Patriarch of Antioch can be exercised by the Catholico in accordance with the Constitution. Relationship between the two spiritual superiors, that is, the Patriarch of Antioch and Catholico of the East and Malankara is neither of superior not subordinate but of two independent spiritual authorities with Patriarch at the highest in the hierarchy. The Catholicos and the Patriarch are declared as followers of one creed, namely, Syrian Orthodox Church. The constitution framed by the Malankara Association as amended from time to time shall

govern the Churches attached to the Malankara Association”.

4. Further as per this judgment, election was directed to be conducted and elections were conducted and faction belongs to catholicos won the election and they are entitled to be in possession of the property and the respondents cannot claim any right over the same. He also relied on the decisions reported in **Moran Mar Thoma Mathews v. Most Rev. Thomas Mar D. Metropolitan** (2002 (1) KT 125 (SC), **Mathew Yohannan v. Varghese** (2013 (4) KLT 945), **Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma Mathews and another** (1997 (10) SCC 614), **Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma Mathews and another** (1996 (8) SCC 470), **Moran Mar Basselios Catholicos v. Thukalan Paulo Avira and others** (AIR 1959 SC 31) and **Basselios Thomas I Catholicos v. Thomas Mar Athanasius** (2003 (1) KLT 10) in support of his case.

5. On the other hand, Sri.O.V. Radhakrishnan, the senior counsel appearing for the respondents submitted that the suit filed by the petitioners has been dismissed by this Court by virtue of Annexure-R1 judgment and the suit was filed by

them for declaration of right and for injunction wherein they have admitted possession of the church with the respondents. After the dismissal of the suit, they have not filed any other suit. In the absence of filing any suit and getting their right declared, they are not entitled to get possession. Further, under section 145 of the Code, the Sub Divisional Magistrate is only entitled to enquire into the question as to who was in possession of the property as on the date of the passing of the order and he is not entitled to go into the question regarding the title or the person entitled to possess. He had relied on the decisions reported in **Shanti Kumar Panda v. Shakuntala Devi** (2004 (1) SCC 438), **Ram Sumer Puri Mahant v. State of U.P and Others** (1985 (1) SCC 427), **Jhummamal Alias Devandas v. State of Madhya Pradesh and others** (1988 (4) SCC 452) and **Ashok Kumar v. State of Uttarakhand and others** (2013 (3) SCC 366) and submitted that the court below was justified in allowing the revision as the petitioners are not entitled to possess and they were in possession of the property as directed by the Additional District Court by the impugned judgment, which was later set aside by this Court. So according to him,

no illegality has been committed by the court below on this aspect.

6. It is an admitted fact that the church in respect of which the dispute now subsists had been consecrated at the time when the two groups were together and known as Malankara Orthodox Syrian Christians which was originally managed by Malankara Metropolitan and thereafter administration of Malankara Orthodox Syrian Community Churches and its properties have come under the administration of Catholicos and thereafter there were some disputes arose and that was divided into Catholicos and Patriarch faction and they have started fighting each other to get administration of the churches, thereby the disputes arose which even caused threat to public tranquility and on account of that, proceedings under sections 145 and 146 of the Code were initiated as M.C.No.12/75 of the Sub Divisional Magistrate, Chengannur earlier and the properties were attached and kept under the receivership of the village officer and it is thereafter that the properties are being managed by the village officer as receiver appointed under the Code. It is also an admitted fact that there were number of litigations

between these two groups regarding ownership, title and management of these properties. It is also an admitted fact that, in the meantime, the proceedings of the Sub Divisional Magistrate, Chengannur was transferred to the Sub Divisional Magistrate, Alappuzha, where it was originally numbered as M.C.74/80 and later renumbered as M.C.No.76/80, when the revision petitioner filed application for repossession of the properties on the basis of Annexure-A1 judgment. It is also an admitted fact that suits were filed before the Munsiff Court, Chengannur and the Sub Court, Mavelikkara in respect of ownership and management of the properties and later they were transferred to First Additional District Court, Ernakulam (Special Court for Church cases) and they were renumbered as O.S.Nos.13/76 and 149/77 respectively and they were jointly tried and as per Annexure-A1 judgment, the Additional District Judge found that the plaintiffs in that suit are entitled to manage the properties and decreed the suit, O.S.No.13/76 as follows:

“In the result, plaintiffs title over all the plaint schedule properties and the church is declared. Plaintiffs are entitled to conduct services in the plaint

church and administer the entire properties, except
plaint item number 3 in accordance with the provisions of
the Constitution of 1934 of the church. Defendants can
continue to conduct services in the chappal situated in the
5 cents shown as plaint item number 3 until a new
managing committee is elected for the entire Malankara
Orthodox Syrian Church and that committee takes
decisions. Till then the defendants are restrained from
causing any obstructions to the plaintiffs 4 and 5 and
their successors in office in conducting services or
administering the plaint schedule properties except plaint
item No.3".

7. Against this, the first defendant in that suit, who is the
first respondent herein and another filed A.S.No.768/1998
before this Court and that appeal was dismissed for default
as per Annexure-A2 judgment. Thereafter the present petitioners
filed a petition before the Sub Divisional Magistrate, Alappuzha
which was numbered as M.C.No.76/80 for handing over the
property as directed in the suit and accordingly Annexure-A3
order was passed by the Sub Divisional Magistrate directing
handing over of the properties except item No.3 to the 'A' party
in that proceedings who are the revision petitioners herein and
as per Annexure-A4 mahazer, the properties were handed

over to the revision petitioners. The respondents herein filed Crl.RP.No.23/2008 before the Sessions Court, Alappuzha, which was made over to the Additional Sessions Court, Alappuzha for disposal. In the meantime, the respondents filed review petition to review the order of dismissal of A.S.No.768/1998 and that was later reviewed and the case was taken on file. On the basis of that order, the learned Additional Sessions Judge allowed the revision setting aside the order of the Sub Divisional Magistrate handing over possession of the property. But no direction was given to the Sub Divisional Magistrate to decide the issue. Against this, the petitioners filed Crl.M.C.No.3467/2008 to quash the order of the Additional Sessions Judge, Alappuzha and as per the interim order, this Court has directed to maintain status quo of the property as directed by the Additional District Court in Annexure-A1 judgment on the basis of which, possession of the properties were given as per Annexure-A3 order and Annexure-A4 mahazer. Thereafter the Criminal Miscellaneous Case was converted into present criminal revision and now as per Annexure-R1 judgment, this Court has allowed the appeal filed by the respondents against the judgment and decree in

O.S.No.13/76 of Additional District Court, Ernakulam and dismissed the suit on the ground that it will come under section 92 of the Code and without obtaining leave, the suit is not maintainable. It is also an admitted fact that thereafter no fresh suits have been filed in this regard by either party.

8. Let me consider the scope of sections 145 and 146 of the Code on the basis of the precedent in this aspect. In the decision reported in **Ashok Kumar v. State of Uttarakhand and others** (2013 (3) SCC 366), the Hon'ble Supreme Court has held that:

“Sections 145 and 146 Cr.P.C together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145 Cr.P.C. It can only be read in the context of Section 145 Cr.P.C.

The object of Section 145 Cr.P.C is merely to maintain law and order and to prevent breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession. The scope of enquiry under Section 145 is in respect of actual possession without reference to the merits or claim of any of the parties to a right to possess the subject of dispute. If after the enquiry under Section 145 Cr.P.C, the

Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof. But, when the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency.

The ingredients necessary for passing an order under Section 145(1) Cr.P.C would not automatically attract the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under section 146 Cr.P.C has to be distinguished from a mere case of apprehension of a breach of the peace. The Magistrate, before passing an order under Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be material on record before the Magistrate when the submission of the parties is filed, documents produced or evidence adduced".

9. In the decision reported in **Jhummal Alias Devandas v. State of Madhya Pradesh and Others** (1988 (4) SCC 452)

while considering the scope of section 145 Cr.P.C, the Hon'ble Supreme Court has observed that :

“Although the Supreme Court in **Ram Sumer Case** (1985 (1) SCC 427) has held that a party should not be permitted to litigate before the criminal court when the civil suit is pending in respect of the same subject matter, but that does not mean that a concluded order under Section 145 Cr.P.C made by the Magistrate of competent jurisdiction should be set at naught merely because the unsuccessful party has approached the civil court. An order made under Section 145 Cr.P.C deals only with the factum of possession of the party as on a particular day. It confers no title to remain in possession of the disputed property. The order is subject to decision of the civil court. The unsuccessful party therefore must get relief only in the civil court. He may move the civil court with properly constituted suit. He may file a suit for declaration and prove a better right to possession. The civil court has jurisdiction to give a finding different from that which the Magistrate has reached”.

10. In the decision reported in **Ram Sumer Puri Mahant v. State of U.P and others** (1985 (1) SCC 427), the Hon'ble Supreme Court has held that:

“When a civil litigation is pending for the same property wherein the question of possession is involved and

the parties are in a position to approach the civil court for interim orders such as injunction of appointment of receiver for adequate protection of the property during pendency of the dispute, there is no jurisdiction for initiating a parallel criminal proceeding under Section 145 Cr.P.C. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. Therefore, the parallel proceeding should not continue and the order of the Magistrate directing initiation of such a proceeding under Section 145 Cr.P.C must be quashed”.

11. In the decision reported in **Most. Rev.P.M.A. Metropolitan and others v.Moran Mar Marthoma and another** (AIR 1995 SC 2001), the Hon'ble Supreme Court had considered the right of both groups and it has been observed that :

“Both Catholicos and Patriarch group continue to be members of the Syrian Orthodox Church. The Patriarch of Antioch has no temporal powers over the Malankara Churches. The effect of the creation of Catholicate at Malankara and 1934 Constitution is that the Patriarch can exercise spiritual powers subject to the Constitution. The Spiritual powers of the Patriarch of Antioch can be exercised by the Catholicos in accordance with the Constitution. Relationship

between the two spiritual superiors, that is, the Patriarch of Antioch and Catholico of the East and Malankara is neither of superior nor subordinate but of two independent spiritual authorities with Patriarch at the highest in the hierarchy. The Catholicos and the Patriarch are declared as followers of one creed, namely, Syrian Orthodox Church. The constitution framed by the Malankara Association as amended from time to time shall govern the Churches attached to the Malankara Association”.

12. Regarding the governance of the church, the Hon'ble Supreme Court has observed as follows:

“The catholicate was revived and re-established by Patriarch Abdul Messiah in the year 1912. The powers and functions of the Catholicos are set out in Ex.A14. Moreover by virtue of their acts and conduct subsequent to the judgment of Supreme Court in AIR 1959 SC 31, the members of the Patriarch group cannot now dispute the validity of the revival of the Catholicate or of Ex.A14. It may be that by conferring upon the Catholicos the powers of ordaining Metropolitans, consecrating Morone and to exercise other spiritual powers over Malankara Church, the Patriarch may not have denuded himself completely of the said powers which he enjoyed until then. But, in view of the fact that he had himself created another

centre of power in India with the aforesaid powers, it would be reasonable to hold that thereafter the Patriarch cannot exercise those powers unilaterally, i.e. without reference to the Catholicos. He can exercise those powers only in consultation with the Catholicos. Moreover, the person to be appointed as Metropolitan or Malankara Metropolitan has to be accepted by the people as has been affirmed in the judgment in Seminary suit. The Patriarch's power to ordain the Metropolitans now is subject to the Constitution of 1934. It may be that by virtue of the revival of Catholicate and by issuing the Kalpana Ex.A.14- and also by accepting the 1934 Constitution the power of the Patriarch may have been reduced to a vanishing point, but all the same he remains the supreme head of the Syrian Church of which the Malankara Church is a division. He is spiritually superior to the Catholicos though he does not, and indeed never did, enjoy and temporal powers over the Malankara Church or its properties. The 1934 Constitution was approved at a validly convened meeting of Malankara Association, which Association was created by the Patriarch himself under the Resolutions of Mulanthuruthy Synod. The Patriarch group cannot question its legality and validity in view of the acts and conduct of the Patriarch and the members of his group subsequent to the judgment of Supreme Court in

AIR 1959 SC 31. Ex.A.19, Kalpana was issued by Patriarch Yakub with the full knowledge of revival of Catholicate, Ex.A.14 and the 1934 Constitution and the various claims and contentions of both the parties put forward in Samudayam suit and the decision of Supreme Court in AIR 1959 SC 31. The Patriarch has thereby accepted the validity of the revival of Catholicate Ex.14 and the 1934 Constitution, and abandoned and gave up all or any objections they had in that behalf. Several members of his group including some of the defendants also accepted the Constitution and took oath to abide by it. They cannot now turn round and question the same.

Though the Patriarch raised objections to the honorifics e.g, use of "Holiness" with the name of the Catholicos and his assertion that he was sealed "on the Throne of St. Thomas in the East" and to the qualification added by the Catholicos in his Kalpana Ex.A.20 i.e., accepting the Patriarch subject to the Constitution, the Patriarch must be deemed to have given up and abandoned all those objections when he came to India, pursuant to a canonical invitation from the Malankara Synod and installed and consecrated the new Catholicos on May, 22, 1964".

13. In the decision reported in **Mathew Yohannan v. Varghese** (2013 (4) KLT 945), this Court while disposing

RFA.Nos.589 & 655 of 2011 which arose out of the decree and judgment in O.S.No.43/2007 of First Additional District Court, Ernakulam has come to the conclusion in paragraph 103 of the judgment which reads as follows:

“As we have already found, the truce after 1959 in the entire Church brought in unity between two factions and even in this case P.W.2 also admitted of such a truce and in the light of the documents produced by the third defendant including Exts. B4, B5 and B5(a) as well as the declaration given by the first plaintiff along with Shri Cheria Pathrose, declaring allegiance to the 1934. Constitution, produced as Ext.B8, the conclusion arrived at by the trial judge in favour of defendants 1, 3 and 9 cannot be said to be wrong or unsustainable on any ground.

14. In the decision reported in **Moran Mar Thoma Mathews v. Most Rev.Thomas Mar D. Metropolitan** (2002 (1) KLT 125) the Supreme Court has disposed of the matter as follows:

“With the consent of the parties, we give the following directions:-

(i) The impugned judgment of the Kerala High Court dated 6th April, 2001, passed in C.M.P.No.2079/1997 in A.S.No.331/1980 is set aside.

(ii) Notwithstanding the withdrawal of the interim applications which were filed in this Court previously, fresh elections to the Malankara Association will be held and no court other than this Court will entertain any suit, application or interfere with the elections or the election process or results at any stage.

(iii) Fresh elections shall be called by Moran Mar Baselius Marthoma Mathews-II by issuing necessary Kalpanas to Parishes and the Malankara Association will be convened under Art.74 of the 1934 Constitution, as amended.

Both the parties desire that an observer should be appointed to ensure free and fair elections. Mr. Justice V.S. Malimath (Retired Chief Justice of the Kerala High Court) may be requested to accept Office of Observer and to oversee that the elections so called are held in a free and fair manner. In this connection, he will be at liberty to give such advise as he may think necessary for ensuring the execution of this Court's decree.

(iv) If the Malankara Association when convened, decides by majority that Moran Mar Baselius Marthoma Mathews-II is not the Malankara Metropolitan third respondent will voluntarily resign his office as Malankara Metropolitan. If the Malankara Association when convened

decides by majority that he is the Malankara Metropolitan, all parties will accept the decision as final and binding, ie., this decision will not be subject to challenge in any court or other forum.

(v) Time-schedule for elections and thereafter for convening the Malankara Association will be worked out in accordance with past practice and procedure by the third respondent in consultation with the Observer.

(iv) Each of the two parties will deposit initially a sum of Rs.50,000/- with the Registrar of this Court towards the cost, expenses and the remuneration of the Observer. Copy of this order be sent by the Registrar (Judl.) to Mr. Justice V.S.Malimath with the request that he may kindly convey his acceptance at an early date”.

and directed election to be conducted as per the Constitution of 1934 and Mr.Justice V.S.Malimath was appointed as Observer to conduct election. Accordingly election was conducted and the Patriarch faction did not participate in the election and election was accepted by the Hon'ble Supreme Court.

15. In the decision reported in **Basselios Thomas I Catholicos v. Thomas Mar Athanasius** (2003 (1) KLT 10), this Court has observed in paragraph 31 of the judgment, which reads as follows:

“The trial court has found that the Malankara Metropolitan is also the Catholicos. On behalf of the appellant, it was contended that such an arrangement is not permitted under the Constitution of 1934. On behalf of the respondent it was pointed out that under Art.97 the Metropolitan has to be elected by the Association. Under Art.98 the Catholicos is permitted to “also hold the office of the Malankara Metropolitan”. It has been further provided that “when the Catholicos and the Malankara Metropolitan happened to be two individuals, regulations needed shall be made about respective rights and powers”. Thus it is clear that the Catholicos can be the Malankara Metropolitan also and that if two individuals hold the two offices, then regulations are needed. Nothing has been pointed out from the record to show that any regulation has been framed. Thus, it appears prima facie safe to conclude that both the offices can be held by one individual”.

and in paragraph 34 expressed the concern of the court regarding the attitude of the persons managing the affairs of the church as follows:

“Today, there is a devaluation of the values. Resultantly, man and misery are constant companions. The people need the Church” which holds the world within its starlit aisles; that claims the great and good of every

race and clime; that finds with joy the grain of gold in every creed, and floods with light and love the germs of good in every soul." Not the Church that Fights. God and not gold has to be the modern man's goal. The Christian Church must work for the perfection of society. Only preserving its purity can preserve the peace of the Church".

16. In the decision reported in **Most. Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma Mathews and another** (1996(8) SCC 470), the Hon'ble Supreme Court has reiterated the earlier decision of the Supreme Court and confirmed the same with some modifications and amended the Articles 71 and 46 of the Constitution from the date of that order and the decree was directed to be drafted accordingly. The same was accepted in the decision reported in **Most. Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma Mathews and another** (1997 (1) SCC 614).

17. **Moran Mar Basselios Catholicos v. Thukalan Paulo Avira and others** (AIR 1959 SC 31) is the basic decision on the basis of which the Supreme Court has declared that parties are bound by 1934 Constitution as amended from

time to time which were later followed by the apex court in the decision cited supra.

18. In the decision reported in **Bhinka v. Charan Singh** (AIR 1959 SC 960), the Hon'ble Supreme Court in paragraph 5 of the judgment has observed that:

“s.145 of the said Code does not confer on a Magistrate any power to make an order directing the delivery of possession to a person who is not in possession on the date of the preliminary order made by him under s.145(1) of the Code. Under s.145(1) of the Code his jurisdiction is confined only to decide whether any and which of the parties was on the date of the preliminary order in possession of the land in dispute. The order only declares the actual possession of a party on a specified date and does not purport to give possession or authorise any party to take possession. Even in the case of 'any party who has been forcibly and wrongfully dispossessed within two months next before the date of the preliminary order, the Magistrate is only authorised to treat that party who is dispossessed as if he had been in possession on such date'.

19. Further in the same decision it has been observed that:

“Under s.145(6) of the Code, a Magistrate is authorized to issue an order declaring a party to be entitled to possession

of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is on apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is conterminous with the passing of a decree by a Civil court and the moment a Civil court makes an order of eviction, it displaces the order of the Criminal court”.

20. From the above decisions it is clear that the Magistrate passing an order under section 145 of the Code only declares the factum of possession of party on the date on which the preliminary order was passed and that person is permitted to continue in possession till he is evicted in due course of law. Further, the Magistrate does not decide the title or right to possession but only decides who was in actual possession of the property as on the date of the preliminary order. Further, if the Magistrate is satisfied that there is a possibility of public tranquility on account of the dispute between the rival parties regarding the possession of the property, then the Magistrate

can order attachment of the property under section 146 of the Code and entrust the same to the village officer to maintain the property as a receiver till the rights of the parties are decided by the civil court. It is also settled law that if the Magistrate is not able to decide the question as to who was in possession as on the date of preliminary order, then relegate the parties to move the civil court to get their right declared and till then direct the possession of the property under the receivership of the village officer and after the right are declared by the civil court, then hand over the property to the party as per the judgment of the civil court.

21. Admittedly in this case, the property belongs to St.Thomas Orthodox Syrian Church and, in fact, it was originally under the management of Malankara Metropolitan and when dispute arose between two factions, namely Catholicos and Patriarchs, suits were filed and in the year 1959, the Hon'ble Supreme Court has declared that both the Catholicos and Patriarchs belong to Orthodox Syrian Christian Community and they are under the Catholicos and management of the the parish churches to be managed as per the Constitution of 1934 and as amended from time to time and the declaration

made by the Patriarchs is not legal and the ultimate spiritual superiority is with the Patriarch of Antioch. It is also an admitted fact that, rivalry between these two factions continued, which resulted in crisis in the management of the churches and some of the churches have filed independent suits to declare their rights. This church also filed two such suits and they were tried and disposed of by the First Additional District Court, Ernakulam (Special Court for Church cases) as per Annexure-A1 judgment. It is also an admitted fact that, prior to that, proceedings under section 145 of the Code has been initiated originally by the Sub Divisional Magistrate, Chengannur as M.C.No.12/75 and possession of the property was taken and entrusted to the village officer by the Sub Divisional Magistrate invoking the power under section 146 of the Code. Thereafter, it was transferred to the Sub Divisional Magistrate, Alappuzha, where it was renumbered as M.C.76/80. It is also an admitted fact that, as per Annexure-A1 judgment, the right of the 'A' party in this M.C. 76/80, the revision petitioners herein, was declared and the Sub Divisional Magistrate was directed to hand over the properties except Item No.3 and that was challenged by the 'B' party in

this case along with another by filing A.S.No.768/1998 and that was dismissed for default by Annexure-A2 judgment and it was during that time, on the basis of the application filed by the 'A' party in that proceedings, who are the revision petitioners herein, the Sub Divisional Magistrate, Alappuzha had passed the impugned order directing the village officer to hand over possession of the property as per Annexure-A1 judgment. That was being challenged by the respondents herein before the Sessions Court by filing Crl.R.P.No.23/2008, which was made over to the Additional Sessions Court, Alappuzha for disposal and the learned Additional Sessions Judge passed the impugned order setting aside the order of the Sub Divisional Magistrate. Before passing the order, this Court has allowed the review petition filed by the B party, who are the appellants therein and the appeal was restored to file and later Annexure-R1 judgment was passed holding that suit is not maintainable for want of leave under section 92 of the Code and dismissed the suit O.S.No.13/76 of Additional District Court (Special Court), Ernakulam and none of the parties have filed any fresh suit thereafter.

22. It may be mentioned here that, earlier several suits were filed in respect of the same dispute in respect of several churches and O.S.No.8/1979 was one such suit filed by Catholicos of East and Malankara Metropolitan Moran Mar Basselios Ougen in respect of the very same property involved in the proceedings and that suit was disposed of by this court by a common judgment along with O.S.Nos.1,2,3,5,6 and 7/79, against which the parties filed appeal before the Supreme Court and the Supreme Court by judgment in **Most Rev. P.M.A. Metropolitan and others v. Moran Mar Marthoma and another**(AIR 1995 SC 2001), observed that, parties are bound by the 1934 Constitution and directed the election to be conducted and on that basis under the supervision of Mr.Justice V.S.Malimath elections were conducted and faction represented by 'A' parties to M.C.74/80, the present revision petitioners were elected and found to be entitled to manage the properties and that election was not challenged and it was accepted by the Hon'ble Supreme Court as well and that has become final and binding on both the factions.

23. In fact the earlier suit was filed as a representative suit, in which the Supreme Court has declared that, parties are bound

by 1934 Constitution and the management of the church has to be done in accordance with the Provisions of the 1934 Constitution as amended subsequently, which is evident from the decision reported in **Moran Mar Thoma Mathews v. Most Rev. Thomas Mar D. Metropolitan** [2002(1) KLT 125 (SC)] and it was on the basis of this order that Mr. Justice V.S. Malimath was appointed as observer and the observer conducted the election as per Constitution of 1934 as amended from time to time and patriarch fraction did not participate in the election and the catholicos were elected to manage the properties and the election was accepted by the Supreme Court. It is on the basis of this that, this court in **Mathew Yohannan v. Varghese** (2013(4) KLT 945) disposed of R.F.A. Nos. 589 and 655/2011, which is in respect of St. Pauls Syrian Orthodox Church, Kolencherry and held that the election conducted as per the directions of the Supreme Court is binding on the parties.

24. It is true that, after the disposal of the appeal by this court as per Annexure-R1 judgment, no fresh suits have been filed by either of the parties. As rightly argued by the counsel for the revision petitioners, earlier a suit as O.S.No.8/79 was filed in the representative capacity which reached the Supreme

Court on the basis of which elections were conducted and the results of the election conducted under the supervision of Mr. Justice V.S. Malimath was accepted by the Supreme Court and that is binding on all the parties as well. So under the circumstances, though there is no fresh suit filed after the disposal of the suits in respect of which R1 judgment was pronounced by the High Court, the earlier decision of the Supreme Court on the same subject matter which was filed on the basis of the suits in a representative capacity will be binding on the parties. There is no other evidence adduced before this court that, after that any fresh elections have been conducted in which 'A' party in M.C.74/80 had obtained any right of management of the churches.

25. It will be seen from the decisions cited (supra) that after the elections conducted under the supervision of Mr. Justice V.S. Malimath, the committee elected in that election namely Catholicos is under the control and management of the churches and entitled to manage the affairs of the churches as well. So under the circumstances, though the suit filed by 'A' party in M.C.76/80 were dismissed for want of sanctions under Section 92 of the Code, the earlier decision on the subject matter will be

binding on the parties. Since the appeal was dismissed on technical ground for want of sanction under Section 92 of the Code of Civil Procedure and since both the parties did not file any suit to get their rights declared independently and in view of the fact that even prior to that, faction represented by 'A' party in M.C.76/80 had obtained an order in their favour in a representative suit filed by them as per the judgment of the Supreme Court mentioned above and this was approved by this Court in some other litigation in respect of other churches. The revision petitioners have to be declared to be in possession of the disputed churches and possession of the same has to be restored to them. These aspects were not considered by the revisional court while disposing the present revision under challenge, namely, Crl.R.P.134/2008. So under the circumstances, the order passed by the Additional Sessions Judge is set aside and the order passed by the Sub Divisional Magistrate which was set aside by the Additional Sessions Judge, Alappuzha and the possession of the property now given to 'A' party in M.C.76/80 who are the revision petitioners herein is confirmed and restored.

With the above direction and observation, the revision is

allowed and disposed of accordingly.

Office is directed to communicate this order to the court below at the earliest.

Sd/-

K. RAMAKRISHNAN, JUDGE

cl

/true copy/

P.S to Judge