

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

RFA.No. 114 of 2006 (F)

OS 19/2003 of I ADDITIONAL DISTRICT COURT, ERNAKULAM

APPELLANTS/PLAINTIFFS:

1. K.T.SIMON, AGED 54,
S/O.THOMAS KONAMPURATH HOUSE, MANNAMANGALAM
MURIKKUMPARA, THRISSUR-14.
2. K.M.CHERIAN, AGED 48,
S/O.MATHAI, KOLLAMPADIYIL HOUSE, KOLANKUNDU
MANNAMANGALAM, THRISSUR.
3. P.U.POULOSE,
AGED 55, S/O.ULAHANNAN, PARACKAL HOUSE
MANNAMANGALAM, THRISSUR.

BY ADVS.SRI.BIJU ABRAHAM
SRI.B.G.BHASKAR

RESPONDENTS/DEFENDANTS:

1. M.V.GEORGE, AGED 50,
S/O.VARKEY, MUNDASSERI HOUSE, KOLANKUNDU
MANNAMANGALAM, THRISSUR.
2. O.U.ELIYAS,
AGED 42, S/O.ULAHANNAN, OONNUKALLINGAL HOUSE
MANNAMANGALAM, TRICHUR DISTRICT.
3. K.A.BABU, AGED 40,
S/O.ABRAHAM, KOCHUNKOONAM MAMOOTTIL HOUSE
ASARIKADU, TRICHUR.
4. P.U.MATHACHAN,
AGED 43, S/O.ULAHANNAN, PARACKAL HOUSE
DARBAYIL, MANNAMANGALAM, TRICHUR.
5. REF.FR.PAULOSE,
VAKKANAMPADATHIL, AGED 66, S/O.KURIAN
VICAR OF THE ST.MARY'S ORTHODOX SYRIAN, CHURCH
MANNAMANGALAM, THRISSUR.

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6. T.S.BOSE, AGED 35,
S/O.SCARIA, TACHERLIKKARA PUTHENPURAYIL, HOUSE
PUTHANKADU, P.O., VETTUKAD
TRICHUR DISTRICT.

R1-4&6 BY ADV. SRI.K.J.KURIACHAN
R5 BY ADV. SRI.ISAC SANJAY

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.B.SURESH KUMAR, J.

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R.F.A.No.114 of 2006

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Dated this the 19th day of March, 2015.

J U D G M E N T

The plaintiffs in O.S.No.19 of 2003 on the file of the 1st Additional District Court, Ernakulam have come up in this appeal aggrieved by the dismissal of the said suit.

2. The plaintiffs are the parishioners of St.Mary's Orthodox Syrian Church, Mannamangalam ('the church'). Defendants 5 and 6 are the duly appointed Vicar and Kaikkaran respectively of the church. According to the plaintiffs, the church is a constituent Parish church of Malankara Syrian Orthodox Church, hereinafter referred to as 'the Malankara church', and is liable to be administered in accordance with its 1934 constitution. It is alleged by the plaintiffs that defendants 1 to 4 and others had formed an organisation called Yacobaya Suriyani Christian Church with a separate bye-law and are attempting to oppose the administration of the church in accordance with the 1934 constitution of the Malankara Church. It is also alleged by the plaintiffs that defendants 1 to 4 are attempting to compel defendants 5 and 6 to administer the church in accordance with the bye-law of the Yacobaya Suriyani Christian Church. The plaintiffs, in the

circumstance, claimed the following reliefs in the suit:

(A) For a declaration that the St.Maray's Orthodox Syrian Church, Mannamangalam is a Parish Church of the Malankara Orthodox Syrian Church, liable to be administered under the 1934 Church Constitution and for consequential injunctions.

(B) Prohibiting defendants 1 to 4 and their supporters from passing any resolution denigrating the 1934 constitution and the constitutionally selected Thrissur Diocesan Metropolitan, approving the applicability of the 2002 byelaws created at Puthencruz to the St.Maray's Orthodox Syrian Church, and for remembering the names of anyone other than that of the only true and rightful Catholicos, HH Moran Mar Baselios Marthoma Mathews II and the Thrissur Diocesan Metropolitan HG Yuhanon Mar Miletius in the Tubdein.

(C) And injunction against defendants 5 and 6 prohibiting them from preparing the list of members eligible to attend the Parish assembly except strictly in accordance with Section 7 of the 1934 constitution and prohibiting them from admitting parishioners other than duly qualified Parish Assembly members from entering the venue of the Parish Assembly meeting.

3. The defendants contested the suit, contending mainly that the church is a public trust and the suit filed without obtaining leave of the court as provided under Section 92 of the Code of Civil Procedure is not maintainable.

4. The court below found that the church is a public trust and

the suit filed without obtaining the leave of the court as provided under Section 92(1) of the Code of Civil Procedure is not maintainable. The court also found that in so far as the church was not made a party to the suit, the suit is bad for non-joinder of necessary parties. On merits, the court found that the plaintiffs are not entitled to the declaration and injunction sought for in the suit. The plaintiffs are aggrieved by the said decision.

5. The fact that the suit was instituted without obtaining leave of the court as provided for under Section 92 of the Code of Civil Procedure ('the Code'), is not in dispute. Section 92(1) of the Code reads thus:

"92. **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.”

It is settled that for the application of Section 92 of the Code, the trust must be an express or constructive trust created for public purposes of a charitable or religious nature, there must be an allegation of breach of such trust, the suit must be a representative one on behalf of the public and the relief claimed must be one of the reliefs provided for in sub clauses (a) to (h) of Section 92(1) of the Code. The specific case of the plaintiffs is that the plaintiff schedule church is a constituent Parish church of Malankara church. In **St. Peters Orthodox Syrian Church v. Fr. Abraham Mathews** (2011 (4) KLT 540) a Division Bench of this Court, relying on the decision of the Apex Court in **P.M.A.Metropolitan v. Moran Mar**

Marthoma (AIR 1995 SC 2001), held that constituent Parish churches of Malankara Church are public religious and charitable trusts to which Section 92 of the Code applies. The said judgment was rendered in the context of a similar dispute in relation to St.Peter's Orthodox Syrian Church, Puthencruz. Following the decision of this Court in **St.Peters Orthodox Syrian Church v. Fr. Abraham Mathews** (supra), a learned single Judge of this Court has also held in A.S.No.768 of 1998 that St.Thomas Orthodox Syrian Church, another constituent Parish church of Malankara Church, is also a public trust of religious and charitable nature. Thus, the appellants cannot be heard to contend that the church which is a constituent Parish church of Malankara church is not a public trust.

6. It is trite that only the allegations in the plaint need to be looked into to see whether the suit falls within the ambit of Section 92 of the Code. As noticed above, the case of the plaintiffs is that the church has to be administered in accordance with 1934 constitution and the defendants who formed a new organisation is attempting to remove the church out of the 1934 constitution of the Malankara church. In other words, the plaintiffs are attributing breach of trust against the contesting defendants.

7. It is not in dispute that the suit is one filed by the plaintiffs in a representative capacity on behalf of the beneficiaries of the church and not one instituted for vindication of their private rights. Coming to the reliefs claimed in the suit, the main relief is for a declaration that the church is a Parish church of the Malankara Orthodox Syrian Church and is liable to be administered under the 1934 constitution of the Malankara Church. They have also claimed a prohibitory injunction restraining defendants 1 to 4 and others from passing any resolution denigrating the 1934 constitution of the Malankara Church. They have further claimed a prohibitory injunction restraining defendants 5 and 6 from preparing the list of persons entitled to participate in the Parish assembly otherwise than in accordance with the 1934 constitution of the Malankara church. It is settled that a suit claiming any relief akin to the reliefs mentioned in clauses (a) to (g) of Section 92(1) of the Code, would also fall within the ambit of Section 92 of the Code. [See **Charan Singh v. Darshan Singh** (AIR 1975 SC 371)]. Going by the reliefs claimed in the suit, the purpose of the suit is to ensure the administration of the church in accordance with the 1934 constitution of the Malankara church. The said relief would certainly come under clause (g) of Section 92(1) of

the Code. The finding of the court below that the suit is not maintainable is, therefore, in order.

8. Since it is found that the suit is not maintainable for want of sanction provided for under Section 92 of the Code, I am not examining the correctness of the finding rendered by the court below on merits.

In the result, the appeal is dismissed.

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

Kvs

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PA TO JUDGE.