

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

RFA.No. 506 of 2007 ()

AGAINST THE JUDGMENT IN OS 19/1977 of I ADDL.DISTRICT COURT,
ERNAKULAM, DATED 28-09-2007

APPELLANTS/PLAINTIFFS 2 AND 3:-

1. VARKEY ITTAN, AGED 78,
NEDUMKUZHIYIL, KUNNAKKAL KARA, VALAKOM VILLAGE
MUVATTUPUZHA TALUK.

2. O.P. PAUL, S/O. PAULOSE,
AGED 60 YEARS, ORAVANMANYIL HOUSE, KONNAKKAD P.O.
MUVATTUPUZHA.

BY ADVS.SRI.S.SREEKUMAR
SRI.P.MARTIN JOSE

RESPONDENTS/DEFENDANTS 1,2,7 TO 13:-

1. KURUVILA MATHAI KATHANAR, AGED 30,
RESIDING AT ELANGANAPATTATHIL, NELLAD KARA
MAZHUVANNOOR VILLAGE, KUNNATHUNAD TALUK, NELLAD P.O

2. ITTAN PAULOSE KATHANAR, AGED 42,
RESIDING AT NEDUMKAZHIYIL KUNNAKKAL KARA
VALAKOM VILLAGE, MUVATTUPUZHA TALUK, KUNNAKKAL P.O.

3. P.C. VARGHESE, S/O. CHACKO,
PUTHIYEDATH HOUSE, KUNNAKKAL KARA, VALAKOM VILLAGE
MUVATTUPUZHA TALUK.

4. T.U. CHACKO, S/O. UTHUP,
THAZHATHEDATH HOUSE, KUNNAKKAL POST, KUNNAKKAL KARA
VALAKOM VILLAGE, MUVATTUPUZHA TALUK.

5. P.V. GEORGE, S/O. VARGHESE,
PAPPALI HOUSE, KUNNAKKAL POST, KUNNAKKAL KARA
VALAKOM VILLAGE, MUVATTUPUZHA TALUK.

6. BINU MATHAI, S/O. MATHAI,
CHAVANATHUPUTHENPURA HOUSE, KUNNAKKAL POST
KUNNAKKAL KARA, VALAKOM VILLAGE, MUVATTUPUZHA TALUK

7. ABRAHAM T.C., S/O. CHERIAN,
THEVARMADATHIL HOUSE, KUNNAKKAL POST, KUNNAKKAL KARA
VALAKOM VILLAGE, MUVATTUPUZHA TALUK

(.....2)

8. K.P. MATHAI, S/O. PAULOSE,
KAYYARICKAL, NELLAD POST, MAZHUVANNUR VILLAGE
KUNNATHUNAD TALUK.

9. GEORGEKUTTY KURIAKOSE, S/O. KURIAKOSE,
MANIRICKAL HOUSE, KUNNAKKAL POST, KUNNACKAL KARA
VALAKOM VILLAGE, MUVATTUPUZHA TALUK.
(DEFENDANTS 3 TO 6 ARE DEAD).

R4 TO 6 BY ADV. SRI.K.J.KURIACHAN
R4 TO 6 BY ADV. SRI.K.J.KURIACHAN
R7 TO 9 BY ADV. SRI.SAJAN VARGHEESE K.
R7 TO 9 BY ADV. SRI.LIJU. M.P
R2 BY ADV. SRI.K.SURENDRA MOHAN
ADDL.R10 TO 14 BY ADV. SMT.SHAHNA KARTHIKEYAN
ADDL.R10 TO 14 BY ADV. SRI.V.ARUN
R1 & ADDL R7 BY ADV. SRI.P.V.ELIAS

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
06-03-2015, ALONG WITH CROSS OBJECTION NOS.79 & 87 OF 2007, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

= = = = =

R.F.A.No.506 of 2007

&

Cross Objection Nos.79 & 87 of 2007

= = = = =

Dated this the 6th day of March, 2015.

J U D G M E N T

Plaintiffs 2 and 3 in O.S.No.19 of 1977 on the file of the District Court, Ernakulam have come up in this appeal challenging the dismissal of the said suit.

2. The plaintiffs are the parishioners and members of the Yogam of the plaint schedule church namely, St.George Orthodox Syrian Church. The first defendant was the Vicar of the plaint schedule church. The second defendant was the priest and defendants 3, 4 and 6 to 13 were the parishioners of the church. According to the plaintiffs, the plaint schedule church is a constituent church of Malankara Syrian Orthodox Church, hereinafter referred to as 'the Malankara church', for short, and is liable to be administered in accordance with the constitution adopted by the Malankara Association on 26.12.1934. It is the case of the plaintiffs that of late, a few members of the Malankara Church formed an organisation called Yacobaya Suriyani Christiani Association with a view to remove the

Parish Churches under the Malankara Church from out of the control, constitution and hierarchy of Malankara Church and the first defendant is a sympathiser of the said association. It is stated in the plaint that on 23.3.1975, with a view to remove the plaint schedule church from the hierarchy of Malankara Church, the first defendant caused the second defendant to announce in the church that a parish meeting to elect the office bearers of the plaint schedule church will be held on 6th of April, 1975. According to the plaintiffs, only those parishioners who owe allegiance to the Catholicose and the Malankara Metropolitan and the constitution of the Malankara church are entitled to attend the meetings of the Parish Yogam or participate in the election to the office bearers of the plaint schedule church. It is the case of the plaintiffs that there are a number of persons in the plaint schedule church who defy the authority of the Catholicose and the Constitution of Malankara church and if a meeting of the plaint schedule church is permitted to be convened without settling the list of members entitled to participate in the Yogam, it is likely that the temporal administration of the assets of the plaint schedule church would go to the hands of the people who are opposed to the Catholicose and the constitution of Malankara church. The plaintiffs, in the circumstance, claimed the

following reliefs in the suit:

(a) Declaring that the plaint church is to be administered under the Episcopal authority of the Catholicose Malankara Metropolitan and the Kandanad diocesan Metropolitan of the Malankara Orthodox Syrian Church or whomsoever may succeed them in such offices and under the constitution of the said Malankara Church.

(b) Prohibiting by a decree of injunction, the first defendant from holding any parish yogam of the plaint church on 6.4.75 or on other dates without preparing a list of persons entitled to participate in parish meetings as provided under the constitution of the Malankara Orthodox Syrian Church, restraining the defendants 3 and 4 from handing over their charge of office as Kaikars to any one not elected and appointed as Kaikars of the plaint church under the constitution of the Malankara church; and the 5th defendant or whomsoever may succeed him in office from approving the election of any office-bearers for the plaint church who is not accepting allegiance to the Catholicose Malankara Metropolitan and the constitution of the Malankara church and all the defendants from doing any act in denial of the Episcopal authority of the Catholicose Malankara metropolitan Moran Mar Baselios Ougen I or whomsoever may succeed him in office and the constitution and authority of the Malankara Orthodox Syrian church.

(c) Directing the contesting defendants to pay the cost of this suit and

(d) Granting such other reliefs as are just and proper in the circumstances of this case, to preserve the plaint church and a constitution."

3. The defendants contested the suit, contending mainly that

the plaint schedule church is being administered in accordance with the decision taken in the pothuyogam of the church on 15.7.1952 and the 1934 constitution is not binding on the plaint schedule church. It was also contended by them that the plaint schedule church is a public trust and therefore 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 plaint schedule church is a constituent unit of Malankara Orthodox Syrian Church and the plaint schedule church cannot defy the authority of the Malankara Diocesan Metropolitan or cannot question the validity of 1934 constitution. The court below also found that a parish yogam can be convened only in accordance with 1934 constitution of the church. Despite the said findings, the suit was dismissed holding that the plaintiffs have not obtained leave of the court to institute the suit as provided for under Section 92(1) of the Code of Civil Procedure. Plaintiffs 2 and 3 are aggrieved by the said decision and hence this appeal.

5. Heard the learned counsel for the appellants and the respondents.

6. 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 in the plaint is that the plaint schedule church is a constituent 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 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 church of Malankara Church, is also a public trust of religious and charitable nature. Thus, the appellants cannot be heard to contend that the plaint schedule church is not a public trust.

7. 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 plaint schedule church has to be administered in accordance with 1934 constitution and the defendants who formed a new organisation defied the authority of the Malankara Metropolitan and are trying to convene a meeting of the parishioners otherwise than in accordance with 1934 constitution. It is pleaded in the plaint that if the defendants convene the meeting of the parishioners as proposed by them, their conduct would amount to breach of trust. The relevant portion of the averment in the plaint read thus:

"If the defendants do so it is illegal and will not bind the plaint church and will result in breach of trust. If the persons who are not qualified to participate in the parish yogam do participate in the elections to be held in the parish church it is very likely to cause of breach of trust and departure from the principles of the foundation of the plaint church."

It is thus evident from the averments of the plaint itself that the

plaintiffs attribute breach of trust against the contesting defendants.

8. 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 public trust 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 plaint schedule church has to be administered under the episcopal authority of the Catholicose and the Malankara Metropolitan as also the Kandanadu Diocesan Metropolitan of Malankara Orthodox Syrian Church as per the 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)]. As rightly noticed by the court below, the substance of the relief sought for in the plaint is for a declaration that the plaint schedule church has to be administered in accordance with the 1934 constitution of the Malankara church. The said relief would 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.

9. The learned counsel for respondents 4 to 6 and 7 to

**R.F.A.No.506 of 2007 &
Cross Objection Nos.79 & 87/07.**

9

9 who have preferred the Cross Objections submitted that in the event this Court confirming the decision of the court below as to the maintainability of the suit, the Cross Objections are not pressed.

In the result, the appeal and the Cross Objections are dismissed.

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

Kvs

// true coy //

PA TO JUDGE.