

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

OP(C).No. 1291 of 2014 (O)

**AGAINST THE ORDER IN I.A NO.2684/2014 IN O.S NO.42/2003 DATED 4-6-2014 OF IST
ADDITIONAL DISTRICT JUDGE, ERNAKULAM.**

PETITIONER(S):

**1. O.V.JOHN, S/O VARGHESE,
OOMELLIL HOSUE, KOKKAPPILLY KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK.**

**2. N. V.GEROGE, S/O VARGHESE,
NADEVALAPARAMBIL HOUSE, KOKKAPPILLY KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK.**

**BY ADVS.SRI.P.MARTIN JOSE.
SRI.ELDHO CHERIAN.
SRI.P.PRIJITH.**

RESPONDENT(S):

**1. V.P.GEORGE,, AGED 55 YEARS,
S/O PAULOSE, VATTUKATTEAL HOUSE, KOKKAPPILLY DEOSM,
THIRUVANIYOOR VILLAGE, KUNNATHUNAD TALUK,
ERNAKULAM DISTRICT 682 308.**

**2. ST. JOHN'S OTHODOX SYRIAN CHURCH,
KANNIYATTUNIRAPPU, KUZHIYARA KARA.
THIRUVANIYOOR VILLAGE.
REPRESENTED BY ITS VICAR 682 308.**

**3. M.V GEROGE,S/O VARKEY,
MUREKKAL HOUSE, THALAKODE KARA,
KANAYANNUR VILLAGE, DO TALUK 682 308.**

**4. P.M. JOY,S/O MANI,
PADINJAREKUDIYIL HOUSE, KOKKAPPILLY KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK 682 308.**

5. FR. JOHN MOOLAMATTOM,
S/O FR. KURIAKOSE, VICAR
ST. JOHN'S ORTHODOX SYRIAN CHURCH,
KANNEYATTUNIRAPPU, KUZHIYARA KARA 682 308.
6. K.P VARGHESE, S/O PATHROSE,
KATTARATHUNMALIL HOUSE, KOKKAPPILLY KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK 682 308.
7. M.Y SAJU, S/O YOHANNAN,
ADVOCATE, MALIECKAL HOUSE,
KOKKAPPILY KARA, THIRUVANIYOOR VILLAGE,
KUNNATHUNADU TALUK, MANAGER, ST. JOHN'S HIGH SCHOOL,
KANNEYATTUNIRAPPU 682 308.
8. REJI N.K, NADUMOLAYIL HOUSE,
KUZHIYARA KARA, THIRUVANIYOOR VILLAGE,
KUNNATHUNADU TALUK, SECRETARY,
ST JOHN'S HOSPITAL, KANNEYATTUNIRAPPU 682 308.
9. JOY, S/O KOCHUKUNJU,
CHELACHUVATTIL, THIRUVANIYOOR KARA,
THIRUVANIYOOR VILLAGE 682 308.
10. E.V JAMES, S/O VARGHESE,
EDAPPALLMATTATHIL, THIRUVANIYOOR KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK 682 308.
11. YACOB, S/O KUNJAPPAN KEELATH,
THIRUVANIYOOR KARA, DO VILLAGE,
KUNNATHUNADU TALUK 682 308.
12. BENNY PAUL, S/O PAULY,
PATTULLIL, THIRUVANIYOOR KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK 682 308.
13. P.V. KURIACHAN,
S/O VARKEY, PUTHENVEETIL, THIRUVANIYOOR KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK 682 308.
14. K.T. PAULOSE, S/O THOMMAN,
KOLLAMKULATHIL, KIDANGYAM KARA,
KANAYANNUR VILLAGE, KUNNATHUNADU TALUK 682308.
15. C.A. THANKAHCHAN,
S/O ABRAHAM, CHIRAPPATU, KIDANGAYAM KARA,
KANAYANNUR VILLAGE, KUNNATHUNADU TALUK 682 308.

16. BABU,S/O VARGHESE,
CHARAPPATTU, KIDANGYAM KARA,
KANAYANNUR VILLAGE, KUNNATHUNADU TALUK 682 308.
17. V.M. PAULOSE,S/O MATHEW,
VAZHAKALAYIL KANAYANNUR VILLAGE,
KUNNATHUNADU TALUK 682 308.
18. ELIAS,S/O PAPPY,
PARAKULANGARA, KIDANGAYAM,
KANAYANNUR VILLAGE, KUNNATHUNADU TALUK 682 308.
19. GEEVARGHESE,
S/O YACOB, KOKKATTU, KUZHIYARA KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK 682 308.
20. N.U JOSPEH,
S/O ULAHANNAN, NJATTUTHOTTIYIL, KUZHIYARA KARA,
THIRUVANIYOOR VILLAGE, 682 308.
21. T.P WILSON,
S/O PAILY, THACHETH, KOKKAPPILLY KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK 682 308.
22. PAUL VARGHESE,
S/O VARGHESE, VATTAPPILLIL, KOKKAPPILLY KARA,
THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK 682 308.

R1 BY ADVS. SRI.K.J.KURIACHAN.
SRI.SUNIL JACOB.
R2, R5, R15 & R17 BY ADV. SRI.S.VAIDYANATHAN.
R12 BY ADV. SRI.K.PAUL KURIAKOSE.
R8 & R21 BY ADVS. SRI.SHAHUL HAMEED MOOPPAN.
SRI.K.M.VARGHESE.
R4 BY ADV. SRI.S.R.DAYANANDA PRABHU.
R16 BY ADVS. SRI.P.VISWANATHAN.
SRI.K.C.BIJU.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-02-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF I.A NO 2684/2014 IN O.S NO 42/2003 FILED BY THE IST RESPONDENT BEFORE THE IST ADDL. DISTRICT COURT, ERNAKULAM.
- EXHIBIT P2 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 5TH RESPONDENT IN I.A NO 2684/2014 IN O.S NO 42/2003 BEFORE THE IST ADDL. DISTRICT COURT, ERNAKULAM.
- EXHIBIT P3 : TRUE COPY OF THE LIST DOCUMENTS FILED ALONG WITH EXHIBIT P2.
- EXHIBIT P4 : TRUE COPY OF THE JUDGMENT IN C.M.A NO 3 OF 2001 DATED 16-02-2011 OF THIS HON'BLE COURT.
- EXHIBIT P5 : TRUE COPY OF THE ORDER IN A.F.A NO 16/2001 DATED 12-06-2001 OF THIS HON'BLE COURT.
- EXHIBIT P6 : TRUE COPY OF THE ORDER DATED 17-08-2011 IN R.P NO 269 OF 2001 OF THIS HON'BLE COURT.
- EXHIBIT P7 : TRUE COPY OF THE ORDER IN C.M.P NO 10262/2001 DATED 23-02-2001 OF THIS HON'BLE COURT.
- EXHIBIT P8 : TRUE COPY OF THE JUDGMENT IN OP368/2001 DATED 27-03-2001 OF THIS HON'BLE COURT.
- EXHIBIT P9 : TRUE COPY OF THE ORDER IN C.M.P NO 20605/2001 IN OP NO 368/2001 DATED 19-07-2001 OF THIS HON'BLE COURT.
- EXHIBIT P10 : TRUE COPY OF THE ORDER IN CCC NO 868/2002 DATED 18-11-2002 OF THIS HON'BLE COURT.
- EXHIBIT P11 : TRUE COPY OF THEN ORDER IN CCC NO868/2002 DATED 04-06-2004 OF THIS HON'BLE COURT.
- EXHIBIT P12 : TRUE COPY OF THE JUDGMENT IN WPC NO 3497/2005 DATED 13-10-2005 OF THIS HON'BLE COURT.
- EXHIBIT P13 : TRUE COPY OF THE JUDGMENT IN WA NO 2507/2005 DATED 12-01-2006 OF THIS HON'BLE COURT.
- EXHIBIT P14 : TRUE COPY OF THE JUDGMENT IN O.S NO 35/2000 DATED 20-12-2012 PASSED BY THE IST ADDL. DISTRICT COURT, ERNAKULAM.

- EXHIBIT P15 : TRUE COPY OF THE DECREE IN OS NO 35/2000 DATED 20-12-2012 PASSED BY THE IST ADDL DISTRICT COURT, ERNAKULAM.
- EXHIBIT 16 : TRUE COPY OF THE JUDGMENT IN CC NO 263/2004 OF JUDICIAL FIRST CLASS MAGISTRATE COURT NO I KOLENCHERRY DATED 11-06-2013.
- EXHIBIT P17 : TRUE COPY OF THE FINAL REPORT IN CRIME NO 2 OF 2012 OF PUZHENCROUZ POLICE STATION.
- EXHIBIT P18 : TRUE COPY OF THE ORDER IN I.A NO 2684 OF 2014 IN OS NO 42 OF 2003 DATED 04-06-2014 OF THE IST ADDITIONAL DISTRICT COURT, ERNAKULAM.
- EXHIBIT P19 : TRUE COPY OF THE JUDGMENT IN WPC NO 503 OF 2005 DATED 05-01-2005 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A TO JUDGE

amk

A.HARIPRASAD, J.

O.P(C) No.1291 of 2014

Dated this the 23rd day of February, 2015.

J U D G M E N T

The order under challenge (Ext.P18) was passed by the learned Additional District Judge in an interlocutory application filed in a disposed suit. The decree in the suit has become final. The subject matter of dispute is a Malankara Church, which is found to be administered under 1934 Constitution. The interlocutory application was filed by a parishioner before the learned Additional District Judge seeking permission to conduct burial services of the petitioner's father with the help of a priest of his choice. That application was allowed, against which this petition has been filed.

2. Heard the learned Senior Counsel Sri.S.Sreekumar for the petitioners and the learned counsel for the respondents 1 and 4.

3. Grievance of the petitioners is that the court below by allowing the application has gone beyond the scope of the

decree in the suit. It was conclusively found that the church has to be administered under 1934 Constitution. It is also submitted that the finding of this court that the church is to be administered under 1934 Constitution has been confirmed by an order in S.L.P(C) by the Supreme Court. Ext.P12 is the judgment passed by a learned Single Judge of this court in W.P.(C) No.3497/2005. Ext.P12 judgment was taken in writ appeal and the judgment therein is Ext.P13, wherein this court refused to interfere with the findings in Ext.P12. Thereafter, R.P No.956/2005 was filed for review of Ext.P12 judgment, which was also dismissed on 13-01-2006. I.A No.1047/2006 was filed to modify the order in R.P No.956/2005 which was also dismissed on 25-01-2006. I.A No.890/2008 was filed to reopen Ext.P12 judgment which was also dismissed on 06-08-2006. S.L.P(C) No.23419/2005 was filed against Ext.P12 was also dismissed on 25-11-2005. The state of affairs being so, learned Senior Counsel for the petitioners would submit that the

impugned order is legally unsustainable because it caused reopening of the whole issues decided by this court that the church in dispute is to be administered under 1934 Constitution.

4. Learned counsel for the petitioners submitted that the order has been worked out and the entire writ petition has become infructuous. Learned counsel for the fourth respondent also submitted that the matter has become infructuous. Besides, learned counsel submitted that another suit disposed by the learned Additional District Judge in respect of the same church is pending in appeal before this court. Whatever that be, the fact that the church in question is to be administered under 1934 Constitution is presently beyond any pale of dispute. The impugned order will certainly have an effect of overriding the concluded findings. Learned counsel for the petitioners contended that if the order is allowed to stand, it will cause prejudice to the petitioners. My attention is drawn to the judgment passed by this court in O.P (C) No.1483/2014 wherein

another order was passed by the learned Additional District Judge in I.A No.2778/2014 in the same suit between the same parties was challenged. Learned Single Judge disposed of the above original petition as follows :

“In the result, this O.P is allowed, and the impugned order is quashed. At the same time, the first respondent, who is the petitioner before the court below, and his family members are permitted to conduct any rites or rituals at the cemetery and tomb on 12.7.2014 in connection with the 40th day of demise of the father of the first respondent herein by availing the services of a priest of their choice. They are further permitted to conduct other religious rites, rituals and Holy mass in the church also by availing the services of a priest, who is appointed or ordained under 1934 Constitution, or in the alternative, by obtaining the services of the 6th respondent, if they are so advised.”

Therefore, the finding that the church in dispute is to be administered under 1934 Constitution cannot be reopened at this stage. As the effect of the impugned order is to go against the consistent finding, I am of the view that the court below should have considered the earlier judgments relating to the subject matter before passing orders. However, as there is no workable order survives, it is made clear that the court below shall not entertain any petition in future in this matter which will have a conflict with the judgments of this court, confirmed by the Supreme Court and the rights of the parties shall be decided only in accordance with 1934 Constitution.

With this observation, the original petition is disposed of.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**

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//True copy//

PA to Judge