

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. 306 of 2008 ()

AGAINST THE JUDGMENT IN OS 16/2003 of I ADDL.DISTRICT COURT,
ERNAKULAM, DATED 02-02-2008

APPELLANTS/PLAINTIFFS:-

1. REV.FR.JOSE ABRAHAM, S/O.ABRAHAM, AGED
32, VETTIKUZHY HOUSE, EZHAKKARANADU SOUTH P.O.
PUTHENCROUZ AND VICAR
ST.GEORGE SYRIAN ORTHODOX CHURCH, MALAPPURAM.

2. KURIAKOSE, S/O.ULAHANNAN, AGED 50,
KALAPPURAKKAL HOUSE, MALAPPURAM P.O., KARIMANNOOR.

3. C.P.MATHAI, S/O.PAILY, AGED 75,
SRAMPICKAL HOUSE, MALAPPURAM P.O. KARIMANNOOR.

BY ADVS.SRI.S.SREEKUMAR
SRI.S.VAIDYANATHAN

RESPONDENTS/DEFENDANTS:-

1. ST.GEORGE SYRIAN ORTHODOX CHURCH,
MALAPPURAM, REPRESENTED BY THE TRUSTEE.

2. FR.PHILIP VARGHESE, S/O.VARGHESE,
AGED 40, C/O.VARGHESE PUTHUSSERIL, KADAKKANADU KARA
KADAKKANADU P.O., MAZHUVANNOOR, VILLAGE
ERNAKULAM DISTRICT.

(*) 3. FR.ELIAS, S/O.VARGHESE, AGED 45,
MARIYIL HOUSE, PATTIMATTOM P.O., KIZHAKKAMBALAM (VIA).

4. C.S.VARGHESE, AGED 58, CHATHANATTU HOUSE
MALAPPURAM P.O. KARIMANNOOR.

5. K.P.BABY, S/O.PAILY, AGED 60, KOKKATTU,
MALAPPURAM P.O.KARIMANM.

(*) (R3 IS DELTED FROM THE PARTY ARRAY AT THE RISK OF THE
APPELLANTS VIDE ORDER DATED 17.7.2009 IN IA.NO.2266/2009)

R1,2,4 & 5 BY ADV. SRI.K.J.KURIACHAN

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

= = = = =

R.F.A.No.306 of 2008.

= = = = =

Dated this the 6th day of March, 2015.

J U D G M E N T

Plaintiffs in O.S.No.16 of 2003 on the file of the First Additional District Court, Ernakulam have come up in this appeal challenging the dismissal of the said suit.

2. The case of the plaintiffs is that the first plaintiff is the Vicar and plaintiffs 2 and 3 are the parishioners of the first defendant church which is a constituent church of Malankara church coming under Kandanadu diocese; that parish churches under the Malankara church are to be administered in accordance with the constitution of the church as adopted by the Malankara association in the year 1934; that Thomas Mar Athanacious, the Metropolitan of the Kandanadu Diocese has appointed the first plaintiff as the Vicar of the first defendant church; that the first plaintiff was discharging the duties of the Vicar of the church accordingly and while so on 16.6.2002, when the first plaintiff went to the church to conduct Holy Mass, defendants 4 and 5 and their agents, with the active support of defendants 2 and 3, attempted to obstruct him from entering the church and conducting Holy Mass. According to the plaintiffs, the defendants are maintaining the stand that the first

defendant church is not bound by the 1934 constitution of Malankara church and the church has to be administered independent of the said constitution. The following are the reliefs sought for in the suit:

(a) a decree of declaration that the first defendant church is governed by 1934 Constitution.

(b) a decree of permanent prohibitory injunction restraining the defendants their men or agents from causing obstruction to the first plaintiff from entering into the church and conducting holy Mass and other spiritual ecclesiastical and temporal functions as a vicar of the first defendant church.

(c) award cost of the suit and

(d) award such other relief as this Hon'ble court may deem fit.

3. The defendants 1, 2, 4 and 5 contested the suit. The main contention of the defendants was that the plaintiff church is a public trust and the suit being one for the reliefs provided for in Section 92 of the Code of Civil Procedure, the same is not maintainable as the plaintiffs have not obtained leave of the court to institute the suit. They have also contended that the first defendant church has never adopted or approved 1934 constitution and therefore the said constitution is not binding on the first defendant church.

4. In the light of the contentions raised by the defendants, one of the issues framed for trial was whether the suit is maintainable.

5. At the trial, on the side of the plaintiffs, PWs.1 and 2 were examined and Exts.A1 to A3(a), X1 and X2 were marked. On the side of the defendants, DW1 was examined and Exts.B1 to B16 were marked.

6. The court below, on an appraisal of the materials on record, found that the plaint schedule church is a public trust and the suit instituted without obtaining leave of the court as provided under Section 92(1) of the Code of Civil Procedure, is not maintainable and dismissed the suit accordingly. The plaintiffs are aggrieved by the said decision and hence this appeal.

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

8. The fact that the suit was instituted without obtaining the 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. As far as the present suit is concerned, there is no dispute to

the fact that the first defendant church is a public trust of a religious nature. In the proof affidavit filed by the second plaintiff, it is admitted by him that the first defendant is a public trust of a religious nature. 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 first defendant church is liable to be administered in accordance with 1934 constitution and the defendants are causing obstructions to the administration of the church in accordance with the said constitution. It is thus evident that the plaintiffs are attributing breach of trust as against the contesting defendants.

9. 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, it is now 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 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, prayer (a) in the plaint is for a declaration that the first defendant church is liable to administered in accordance with the 1934 constitution. The second plaintiff as PW1 has deposed that the suit

is filed for obtaining relief to administer the affairs of the first defendant church in accordance with 1934 constitution. The said prayer, if allowed would amount to settling a scheme for the administration of the first defendant church in accordance with 1934 constitution. In other words, as observed by the court below, the relief claimed in the suit is one coming under sub 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. The appeal is devoid of merits and the same is accordingly, dismissed.

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

Kvs

// true copy //

PA TO JUDGE.