

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

RFA.No. 574 of 2010 (J)

IN OS 21/2004 of I ADDITIONAL DISTRICT COURT, ERNAKULAM

APPELLANT(S)/APPELLANT/PLAINTIFFS 2 & 3:

1. JOSE V.A. ,
S/O.ABRAHAM,AGED 46 YEARS,
VADAKEDATH HOUSE, VAZHATHOPE VILLAGE,
THADIAMPAD P.O. ,
THODUPUZHA TALUK, PIN-685 602.
2. MATHEW K.V. ,
S/O.VARKEY KAITHAKULANGARA,
AGED 56 YEARS, KAITHAKULANGARA HOUSE,
VAZHATHOPE VILLAGE, THADIAMPAD P.O. ,
THODUPHZA TALUK, PIN-685 602.

BY ADV. SRI.S.SREEKUMAR.

RESPONDENT(S)/DEFENDANTS AND IST PLAINTIFF:

1. ST.MARY'S ORTHODOX SYRIAN CHURCH,
IDUKKI COLONY P.O. , VAZHATHOPE VILLAGE, THODUPUZHA,
TALUK REP.BY ITS TRUSTEE MR.JOHN JOHN
S/O LATE FR.JOHN PANJIKKATTIL, PANJIKKOTTIL HOUSE,
VAZHATHOPE VILLAGE, IDUKKI COLONY.
2. REV.FR.BENOY JOHN,
S/O.P.P.YOHANNAN, AGED 31, VICAR,
ST.MARY'S ORTHODOX SYRIAN CHURCH
IDUKKI COLONY P.O, VAZHATHOPE VILLAGE,
THODUPUZHA TALUK, PIN-685 602.
3. JOHN JOHN,
S/O.LATE FR.JOHN PANJIKKATTIL,
PANJIKKOTTIL HOUSE, VAZHATHOPE VILLAGE
IDUKKI COLONY P.O. , THODUPUZHA TALUK (TRUSTEE) ,
PIN-685 602.

4. A.K.JACOB,
S/O.KURIAKOSE, AGED 52 YEARS, ASARUKUDIYIL HOUSE,
MARIAPURAM P.O., THANKAMANI VILLAGE,
UDYMPANCHOLA TALUK (TRUSTEE), PIN-685 602.
5. BIJU,
S/O.VARGHESE, AGED 28 YEARS,
MUNDANICKAL HOUSE, MULAKUVALLY P.O.,
IDUKKI VILLAGE-685 602.
6. SCARIA,
S/O.ABRAHAM, AGED 60 YEARS, THURUTHIKATTIL HOUSE,
KOCHUPAINAVU KARA, IDUKKI VILLAGE, PIN-685 602.
7. SAJAN,
S/O.THOMAS, AGED 32 YEARS,
MANGALATHU HOUSE, BHOOMIYANKULAM KARA
MANIYARANGUDY.PO, IDUKKI VILLAGE, PIN-685 602.
8. BIJU,
S/O.PAULOSE, AGED 32 YEARS,
PADINJAREKARA HOUSE, CHERUTHONY, IDUKKI VILLAGE
PIN-685 602.
9. A.P.KURIAKOSE,
AGED 45 YEARS, ASARIKUDIYIL HOUSE,
PEPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
10. BEENA SHAJI,
W/O.SHAJI, AGD 30 YEARS, MANIMALAYIL HOUSE,
MANIYARANKUDY KARA, IDUKKI VILLAGE, PIN-685602.
11. ISSAC PATHROSE,
S/O.PATHROSE, AGED 66 YRS, PALLIKKUNNEL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
12. JOSEPH ULAHANAN,
S/O.ULAHANAN, AGED 52 YRS, PULPPARAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
13. SOSAMMA JOSEPH,
W/O.JOSEPH, AGED 61 YEARS, PULPPARAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
14. JOBY JOSEPH,
S/O.JOSEPH, AGED 27 YEARS, PULPPARAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
15. JOLLY JOHN,
S/O.JOHN, AGED 43 YEARS, MUNDNANICKAL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.

16. ISSAC ABRAHAM,
S/O.ABRAHAM,AGED 46 YEARS, PALLIKUNNEL HOUSE,
NARAKAKKANAM KARAM, THANKAMANI VILLAGE, PIN-685 602.
17. AMMINI ISSAC,
W/O.ISSAC,AGED 39 YEARS, PALLIKUNNEL HOUSE,
NARAKAKKANAM KARAM, THANKAMANI VILLAGE, PIN-685 602.
18. SUSAMMA MATHAI,
W/O.MATHAI,AGED 64 YEARS, KIZHAKKECHALIL HOUSE,
NARAKAKKANAM KARAM, THANKAMANI VILLAGE, PIN-685 602.
19. BABU.K.M. ,
S/O.MATHAI,AGED 35 YEARS, KUZHAKKECHALIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
20. ELSY MATHEW,
AGED 30 YEARS,KIZHAKKECHALIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
21. RIBY MATHEW,
S/O.MATHAI,AGED 24 YEARS, KIZHAKKECHALIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
22. BINOY YOHANNAN,
S/O.YOHANNAN,AGED 30 YRS, THANKAPPILLI HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
23. SABEENA BINOY,
AGED 26 YEARS,THANKAPPILLI HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.,
24. LIZZY BABU,
W/O.BABU,AGED 33 YEARS, PODIPARAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
25. ALEYAMMA GEORGE,
W/O.GEORGE,AGED 56 YRS, PODIPARAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
26. SOSAMMA JOHN,
W/O.JOHN,AGED 61 YEARS, KURISUMKAL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
27. SHEEBA ALIYAS,
AGED 24 YEARS, KURISUNKAL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.

28. JOY VARGHESE,
S/O.VARGHESE,AGED 39 YEARS, PULPARAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
29. ANNAMMA VARKEY,
W/O.VARKEY,AGED 70 YEARS, PULPARAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
30. TINTU JOY,
AGED 18 YEARS,PULPARAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
31. ELDO T.J.,
S/O.JOHN,AGED 42 YEARS, THEKKEDATHU HOUSE,
THANIKKANDAM KARA, IDUKKI VILLAGE, PIN-685 602.
32. ALIYAS OUSEPH,
S/O.OUSEPH,AGED 48 YEARS, AMBATTU HOUSE,
MANJAPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
33. M.I.JOY,
S/O.ISSAC,AGED 33 YEARS, MADACKAPPILLIL HOUSE,
IDUKKI COLONY P.O.,
VAZHATHOPE KARA, IDUKKI VILLAGE, PIN-685 602.
34. SAJI T.J.,
AGED 34 YEARS,THEKKEDATH HOUSE,
VAZHATHOPE KARA, IDUKKI VILLAGE, PIN-685 602.
35. MARY PAILY,
W/O.PAILY AGED 45 YEARS,
THACHIRICKAL HOUSE, MARIYAPURAM.P.O,
VELLAKKAYA KARA, THANKAMANI VILLAGE, PIN-685 602.
36. SAJINI MATHAI,
D/O.MATHAI,AGED 28 YEARS, KIZHAKKECHALIL HOUSE,
MANIYARANKUDI KARA, IDUKKI VILLAGE, PIN-685 602.
37. SHIJI MATHAI,
D/O.MATHAI,AGED 26 YEARS, KIZHAKKECHALIL HOUSE,
MANIYARANKUDI KARA, IDUKKI VILLAGE, PIN-685 602.
38. SHAJI M.A.,
S/O.ABRAHAM,AGED 32 YEARS, MANIMALAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
39. ABRAHAM MATHAI,
S/O.MATHAI,AGED 66 YEARS, MANIMALAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.

- 40 SOSAMMA ABRAHAM,
W/O.ABRAHAM,AGED 60 YRS, MANIMALAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
41. MINI TOMY,
W/O.TOMY,AGED 33 YRS, MANIMALAYIL HOUSE,
NARAKAKKANAM KARA THANKAMANI VILLAGE, PIN-685 602.
42. TOMY,
S/O.CHACKO, AGED 36 YRS, MANIMALAYIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
43. JOY KURIAKOSE,
S/O.KURIAKOSE, AGED 47 YRS, ASATIPARAMBIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
- 44 MARY JOY,
W/O.JOY, AGED 37 YEARS, ASARIPARAMBIL HOUSE,
NARAKAKKANAM KARA, THANKAMANI VILLAGE, PIN-685 602.
45. ROY K.K. ,
S/O.KURIAN,AGED 37 YEARS, KANNALIL HOUSE,
IDUKKI COLONY.P.O, PEPPARA KARA,
IDUKKI VILLAGE, PIN-685602.
46. BINDU ROY,
W/O.ROY KANNALIL HOUSE, IDUKKI COLONY P.O.,
PEPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
47. KUTTAPPAN,
S/O.PAILY,AGED 55 YEARS, THAHIRICKAL HOUSE,
MARIYAPURAM.P.O., VELLAKKAYAM KARA,
IDUKKI VILLAGE, PIN-685 602.
48. BINOY ABRAHAM,
S/O.ABRAHAM,AGED 29 YEARS, THAHIRICKAL HOUSE,
MARIYAPURAM P.O., VELLAKKAYAM KARA,
IDUKKI VILLAGE, PIN-685 602.
49. REGI BINOY,
W/O.BINOY,AGED 26 YEARS, THAHIRICKAL HOUSE,
MARIYAPURAM P.O., VELLAKKAYAM KARA,
IDUKKI VILLAGE, PIN-685 602.
50. JANCY PAULOSE,
D/O.PAULOSE,AGED 22 YEARS,
KIZHAKKETHIL PUTHENPURA (THACHIRIKKAL) HOUSE,
MARIYAPURAM P.O., VELLAKKAYAM KARA,
IDUKKI VILLAGE PIN-685 602.

51. PAULOSE,
S/O.PONNUPILLA, AGED 52 YEARS,
KIZHAKKETHIL PUTHENPURA HOUSE, MARIYAPURAM P.O.,
VELLAKKAYAM KARA, IDUKKI VILLAGE, PIN-685 602.
52. ALYKUTTY PAULOSE,
W/O.PAULOSE, AGED 50 YRS, KIZHAKETHIL PUTHENPURA HOUSE,
MARIYAPURAM.P.O., VELLAKKAYAM KARA,
IDUKKI VILLAGE, PIN-685 602.
53. PAILY,
S/O.PAILY, AGED 73 YEARS, MUNDANICKAL HOUSE,
MULAKUVALLY.P.O, MANJAPPARA KARA
IDUKKI VILLAGE, PIN-685 602.
54. MARIYAKUTTY,
W/O.PAILY, AGED 70 YEARS, MULAKUVALLY.P.O,
MANJAPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
55. BENNY MATHAI,
S/O.ISSAC, AGED 33 YEARS, MECKATTIL HOUSE,
MULAKUVALLY.P.O, MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
56. DAISY,
W/O.BENNY, AGED 30 YEARS, MECKATTIL HOUSE,
MULAKUVALLY.P.O, MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
57. JESSY ABRAHAM,
AGED 32 YEARS, KARIMBIL HOUSE, MANIPPARA P.O.,
MANJAPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
58. ANNAMMA,
W/O.PAILY,AGED 57 YEARS, PONNALAKUDIYIL HOUSE,
MANIPPARA P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
59. MARIAKUTTY,
W/O.VARGHESE,AGED 56 YEARS, MUNDANANCKAL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
60. LALY MATHAI,
AGED 28 YEARS, MUNDANICKAL HOUSE, MULAKUVALLY P.O.,
MANJAPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
61. AMMINI,
W/O.JOHN, AGED 41 YEARS, THEVARANIYIL HOUSE,
MANIPARA KARA, IDUKKI VILLAGE, PIN-685 602.

62. OUSEPH,
S/O.ABRAHAM, AGED 96 YEARS, AMBATTU HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
63. ALIYA,
S/O.OUSEPH,AGED 48 YEARS, MULAKUVALLY P.O.,
MANJAPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
64. SALOMI,
W/O.ALIYAS,AGED 44 YEARS, AMBATTU HOUSE,
MULAKUVALLY.P.O, MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
65. JOMON K.ALIYAS,
AGED 25 YEARS, MULAKUVALLY.P.O,
MANJAPPARA KARA,IDUKKI VILLAGE, PIN-685 602.
66. JISHA K.ALIYAS,
D/O.ALIYAS,AGED 22 YEARS, MULAKUVALLY P.O.,
MANJAPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
67. MINI JOSEPH,
W/O.JOSEPH,AGED 41 YEARS, THEVARANICKAL HOUSE,
MULAKUVALLY.P.O, MANHAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
68. JOSEPH,
S/O.KURIAKOSE,AGED 51 YEARS, THAVARANICKAL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
69. JOHN,
S/O.KURIAKOSE, AGED 48 YEARS,
THEVARANICKAL HOUSE, MULAKUVALLY P.O.,
MANJAPPARA, IDUKKI VILLAGE, PIN-685 602.
70. SUNNY,
S/O.VARGHESE ,AGED 34 YEARS, MUNDANICKAL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
71. SIJO JOHN,
S/O.JOSEPH, AGED 18 YEARS, THEVARANICKAL HOUSE,
MUKAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
72. SHIJIMON,
S/O.JOSEPH, AGED 20 YEARS, THEVARANICKAL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.

73. SHAJI,
S/O.JOSEPH, AGED 31 YEARS,
MOOLEKARAYIL HOUSE, MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
74. MATHAI,
S/O.THOMAS, AGED 40 YEARS, PALAVILAYIL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
75. JOLLY,
W/O.MATHAI, AGED 35 YEARS, PALAVILAYIL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
76. ANNAKUTTY,
W/O.MATHAI, AGED 53 YEARS,
MEKKATTIL HOUSE, MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
77. MATHAI,
S/O.PAILY,AGED 61 YEARS, MUNDANANICKAL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
78. MATHAI,
S/O.ISAHAC, AGED 58 YEARS, MEKKATTIL HOUSE,
MULAKUVALLY P.O, MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
79. BIJU,
S/O.MATHAI, AGED 29 YEARS, MEKKATTIL HOUSE,
MULAKUVALLY P.O, MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
80. ALIYAMMA,
W/O.MATHAI, AGED 58 YEARS,
MUNDANANICKAL HOUSE, MULAKUVALLY P.O.,
MANJAPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
81. SHIJO MATHEW,
S/O.MATHAI,AGED 24 YEARS,
MUNDANANICKAL HOUSE, MULAKUVALLY.P.O, MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
82. M.J.JOSE,
S/O.JOSEPH,AGED 34 YEARS, MOLLEKARAYIL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.

83. NISSY,
W/O.JOSE, AGED 30 YEARS,
MOLLEKARAYIL HOUSE, MULAKUVALLY P.O.,
MANJAPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
84. JOSEPH,
S/O.KURIAKOSE, AGED 74 YEARS, MOOLEKARAYIL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
85. MARIAM,
W/O.JOSEPH, AGED 73 YEARS, MOOLEKARAYIL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
86. SUSAN,
W/O.SANNY, AGED 30 YEARS, MUNDANANICKAL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
87. M.P.VARGHESE,
S/O.PAILY, AGED 57 YEARS, MUNDANANICKAL HOUSE,
MULAKUVALLY P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
88. THOMAS A.J. ,
AGED 65 YEARS, KARUMBIL HOUSE, MANIPPARA P.O.,
MANJAPPARA KARA, IDUKKI VILLAGE, PIN-685 602.
89. SARAMMA,
W/O.THOMAS, AGED 58 YEARS, KARUMBIL HOUSE,
MANIPPARA P.O., MANJAPPARA KARA,
IDUKKI VILLAGE, PIN-685 602.
90. MINI PAULOSE,
D/O.PAULOSE, AGED 25 YEARS,
KIZHAKETHIL PUTHENPURAYIL KIZHAKETHIL) ,
MARIYAPURAM.P.O, VELLAKKAYAM KARA, IDUKKI VILLAGE,
PIN-685 602.
- 91 P.I.MATHEW,
S/O.IDICHANDI PAPPY, AGED 61,
PUTHUPURACKAL KARA, VAZHATHOPE VILLAGE,
THADIAMPADU P.O., PIN-685 602, THODUPUZHA TALUK.

R8 & 33, R6, R7, R55, R77 & 82 BY ADV. SRI. ROY CHACKO.

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

P.B.SURESH KUMAR, J.

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R.F.A.No.574 of 2010.

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Dated this the 9th day of June, 2015.

J U D G M E N T

Plaintiffs 2 and 3 in O.S.No.21 of 2004 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 of the first defendant church namely, St.Mary's Orthodox Syrian Church. The suit was instituted by the plaintiffs in a representative capacity representing the parishioners of the first defendant church. The second defendant is the Vicar and defendants 3 and 4 are the trustees of the first defendant church. According to the plaintiffs, the first defendant church is a constituent church of Malankara Orthodox Syrian Church and therefore the same has to be

administered in accordance with the constitution of the Malankara Orthodox Syrian Church framed by Malankara Association on 26.12.1934. It is the case of the plaintiff that the second defendant is the Vicar appointed by the Metropolitan of the Kandanadu Diocese of the Malankara Orthodox Syrian Church in accordance with the 1934 constitution of the church. It is alleged in the plaint that defendants 3 and 4 are causing obstructions to the second defendant in conducting religious ceremonies in the first defendant church in defiance of the provisions of the constitution of the church. It is also alleged in the plaint that defendants 2 and 3 have openly declared that the second defendant is not the Vicar of the church and that the provisions of the 1934 constitution is not binding on the first defendant church. The following are the reliefs sought for in the suit:-

- a) a decree of declaration that 1st defendant church is to be administered in accordance with the provisions of 1934 Constitution.
- b) a decree of permanent prohibitory injunction restraining

the defendants 3 and 4 their men or agents or any body claiming under them from causing any obstruction to 2nd defendant in discharging the duties of Vicar of 1st defendant church.

c) award the costs of the suit.

3. The second defendant filed written statement supporting the case of the plaintiff. Among the remaining defendants, defendants 33 and 34 filed written statement contending, among others, that the suit is one coming within the scope of Section 92 of the Code of Civil Procedure, hereinafter referred to as 'the Code' for short, and therefore, it is not maintainable as the plaintiffs have not obtained leave of the court to institute the suit.

4. In the light of the contention raised by defendants 33 and 34, a specific issue was raised as to the maintainability of the suit and the said issue was heard as a preliminary issue and it was held that in so far as the leave as provided for under Section 92 of the Code has not been obtained, the suit is not maintainable. Consequently,

the suit was dismissed. The appellants are aggrieved by the said decision of the court below.

5. Heard the learned Senior Counsel Sri.S.Sreekumar for the appellants and Advocate Sri.Roy Chacko for respondents 6, 7, 8, 33, 55, 77 and 82.

6. Section 92(1) of the Code of 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.”

A suit under Section 92 of the Code is a suit of a special nature which presupposes the existence of a public trust of a religious or charitable character. It is a suit to vindicate the rights of the public. Such suit can proceed only on the allegation that there is a breach of such trust or that directions from the court are necessary for the administration thereof. It must also pray for one or other reliefs that are specifically mentioned in the Section. It is only when these conditions are fulfilled, the suit would come within the ambit of Section 92 of the Code. [See **Pragdasji Guru Bhagwandasji v. Ishwarlalbhai Narsibhai** (AIR 1952 SC 143)]. It is settled that while examining the question as to whether the suit is a suit which comes within the ambit of Section 92 of the Code, one has to go beyond the reliefs claimed in the suit and

comprehend the purpose for which the suit is instituted. [See **Vidyodaya Trust v. Mohan Prasad R.** (AIR 2008 SC 1633)]. It is also settled that the allegations in the plaint alone need be looked into to see whether the suit falls within the ambit of Section 92 of the Code. With these principles in mind, I shall proceed to examine whether the suit in the instant case is a suit which comes under Section 92 of the Code.

7. The fact that the first defendant church is a public religious trust is not seriously disputed. Even otherwise, 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 trusts and Section 92 of the Code applies to the said churches. 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.

8. As noticed above, the essence of the case set up by the plaintiffs is that the first defendant being a constituent parish church of Malankara Orthodox Syrian Church, the same has to be administered in accordance with the 1934 constitution of the church and that defendants 3 and 4 are not permitting the administration of the first defendant church in accordance with the said constitution. Paragraph 9 of the plaint reads thus:

"But on 29.9.2002 at 7.30 A.M. when the 2nd defendant came to the church to conduct Holy Mass the defendants No.3 and 4 and their henchmen attempted to obstruct the 2nd defendant from entering into the church and also conducting holly Mass. But the timely intervention of the parishioners the 3rd and 4th defendants could not achieved their illegal aim. But they openly declared that the 2nd defendant is not a vicar of church and the decisions of the Apex Court is not binding them

and they are not ready to accept the provisions of 1934 constitution as it is not binding the 1st defendant church. It is submitted that the act done by the defendants No.3 and 4 and their men are highly illegal and against the orders passed by the Apex court through various judgments. In these circumstances in order to avoid further dispute in the administration and management of the church it is just and necessary to pass a decree declaring that the 1st defendant church is governed by 1934 constitution and also pass a decree of permanent prohibitory injunction restraining the respondent No.3 and 4 their men or agents from causing any obstruction to the 2nd defendant in discharging the duties as a vicar of 1st defendant church."

In the light of the provisions contained in Section 92 of the Code, the allegations in the plaint that the church has to be administered in accordance with the 1934 constitution framed by the Malankara Association on 26/12/1934 and that the defendants 3 and 4 are not permitting the administration of the church in accordance with the constitution amount to an allegation of breach of trust.

9. Coming to the reliefs sought in the suit, I have no hesitation to hold that the relief of declaration sought in the suit to the effect that the first defendant church is to be administered as per the 1934 constitution of the Malankara

Orthodox Syrian Church is in effect a prayer for settling a scheme for the administration of the church, as the said constitution provides for the administration of the parish churches as well. Likewise, the relief of injunction restraining defendants 3 and 4 from causing obstruction to the administration of the church in accordance with its constitution sought by the plaintiffs, is in effect a prayer for vesting the trust properties with its lawful trustees. It is thus evident that the suit is one instituted seeking the reliefs provided for in Section 92 of the Code.

In the aforesaid facts and circumstances of the case, the decision of the court below that the suit is not maintainable is in order. The appeal is, therefore, devoid of merits and the same is, accordingly, dismissed.

**Sd/-P.B.SURESH KUMAR,
(JUDGE)**

Kvs/-

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PA TO JUDGE.