IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

RFA.No. 774 of 2010 ( )

OS 16/2009 of I ADDL.DISTRICT COURT, ERNAKULAM

APPELLANT/PLAINTIFF::

FR.K.M.ZACHARIAH, AGED 50 YEARS,
S/O.MATHEW, RESIDING AT KOODATHINKAL HOUSE
PARIARAM P.O., PUTHUPPALLY VILLAGE, KOTTAYAM TALUK.

BY ADVS.SRI.S.SREEKUMAR
SRI.P.MARTIN JOSE
SRI.M.A.MOHAMMED SIRAJ
SRI.P.PRIJITH

RESPONDENT(S)/DEFENDANTS::

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1. FR.K.T.JAMES, AGED 62 YEARS,
S/O.FR.IPE THOMAS, RESIDING AT, KANDAMUNDARIL HOUSE
PULIKUTTISSERY P.O., AYMANAM VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT, PIN-686 015.

2. FR.KOSHI EZHARAPPARA, AGED ABOUT
45 YEARS, RESIDING AT EZHARAPPARA HOUSE, IRATTUNADA
MANARCADU P.O., KOTTAYAM TALUK, KOTTAYAM DISTRICT
PIN-686 019.

3. P.K.THOMAS, AGED ABOUT 60 YEARS,
RESIDING AT PULIMOOTTIL HOUSE, VILLOONNI P.O.
ARPOOKARA VILLGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT
PIN-686 008.

4. JACOB KURIAN, AGED ABOUT 55 YEARS,
S/O.KURIAN, RESIDING AT KALLUMKATHRA HOUSE
AYMANAM P.O., AYMANAM VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT, PIN-686 015.

5. P.K.MARKOSE, AGED ABOUT 70 YEARS,
RESIDING AT PULIMOOTTIL HOUSE, VILLOONNI P.O.
ARPOOKARA VILLAGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT
PIN-686 008. (DIED)
(LEGAL HEIRS OF 5TH RESPONDENT ARE NOT NECESSARY PARTY IN THE SUIT AND APPEAL AND HENCE NOT IMPLEADED)

BY ADV. SRI.P.J. PHILIP (R1, R2 & R4)

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.F.A.No.774 of 2010.

Dated 20th March, 2015.

J U D G M E N T

The plaintiff in O.S.No.16 of 2009 on the file of the First Additional District Court, Ernakulam has come up in this appeal challenging the dismissal of the said suit.

2. O.S.No.16 of 2009 is a representative suit. The plaint A schedule church namely, St.George Orthodox Syrian Church, Kallumkathara is a constituent Parish church of Malankara Orthodox Syrian Church (hereinafter referred to as 'the Malankara Church' for short). According to the plaintiff, the plaint A schedule church is liable to be administered in accordance with the 1934 constitution of the Malankara church and defendants 1 and 2 who have disowned the 1934 constitution are functioning as Priests of the said church without authority. It was also alleged by the plaintiff that he has been appointed as the Vicar of the plaint A schedule church by HG. Geevarghese Mar Ivanios, the Diocesan Metropolitan of Kottayam and only Vicars and the Priest assistants appointed by the Diocesan Metropolitan of Kottayam

have the right to function as the Priests in plaint A schedule church. It was further alleged by the plaintiff that a section of the parishioners of the plaint A schedule church who are opposing the governance of the church under the 1934 constitution, are supporting defendants 1 and 2. Defendants 3 to 5 have been impleaded in the suit in a representative capacity to represent the parishioners who oppose the governance of the church in accordance with the 1934 constitution. The following are the reliefs sought for in the suit:

> (a) Declaring that the plaintiff, his successors and priest assistants appointed by the Diocesan Metropolitan of Kottayam, HG Gheevarghese Mar Iavnios and his successors, as the lawfully appointed Vicar and priest assistants, alone are entitled to function as the priests in the Church in plaint A schedule property.
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> (b) And for a permanent prohibitory injunction restraining the defendants and their supporters from preventing or obstructing the plaintiff his lawfully appointed successors and priest assistants from functioning as the Vicar and priests of the Saint George Orthodox Syrian Church Kallumkathara in the plaint A schedule property.

3. The defendants contested the suit, contending among others, that the plaint A schedule church is a public trust and the suit instituted substantially for the reliefs provided for in Section 92 of the Code of Civil Procedure without obtaining the leave of the

court, is not maintainable.

4. In the light of the contentions raised by the defendants, the issue whether the suit is maintainable or not was heard by the court below as a preliminary issue and the suit was dismissed holding that the suit is not maintainable.

5. The fact that the plaint A schedule church is a trust of a charitable or religious nature is not in dispute. Likewise, 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-
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> (a) removing any trustee;
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> (b) appointing a new trustee;
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> (c) vesting any property in a trustee;
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> (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;
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> (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, the suit must be a suit instituted on an allegation of breach of trust 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. 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. The specific pleading of the plaintiff in the plaint is that plaint A schedule church is a constituent parish church of Malankara church. Thus, the appellant cannot be heard to contend that the plaint schedule 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 substance of the case of the plaintiff is that the plaint A schedule church is a constituent Parish church of the Malankara Church; that the same is bound by the 1934 constitution of the Malankara Church and that the defendants who are in administration of the church are opposing the governance of the church in accordance with the 1934 constitution of the church. Thus, it is evident that the plaintiff is attributing breach of trust against the defendants.

7. As noticed above, the plaintiff claims a declaration that only Priests appointed by the Diocesan Metropolitan of Kottayam, namely, HG. Geevarghese Mar Ivanios and his successors, alone are entitled to function as Priests in plaint A schedule church. In other words, the suit is not one instituted for vindication of the private right of the plaintiff. Coming to the relief 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 also fall within the ambit of Section 92 of the Code [See **Charan**

Singh v. Darshan Singh (AIR 1975 SC 371)]. In **Swami Parmatmanand Saraswati v. Ramji Tripathi** (AIR 1974 SC 2141), it was held that to ascertain whether the relief claimed in the suit would fall within the scope of Section 92(1) of the Code, the court must go beyond the relief and comprehend the object and purpose for which the suit is instituted. Going by the plaint averments, it is evident that the purpose of the suit is to remove defendants 1 and 2 from the management of the church and to manage the affairs of the church in accordance with its 1934 constitution. The said relief would certainly come under 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.

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(true copy)