

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

RFA.No. 320 of 2014 (B)

OS 41/2003 of IST ADDL.DISTRICT COURT, ERNAKULAM, DATED 11-04-2014

APPELLANT(S)/DEFENDANTS 1,5 AND 28:

1. ST. GEROGE'S JACOBITE SYRIAN CHURCH
MANNATHUR, MANNATHUR.P.O., THIRUMARADY VILLAGE,
PIN.686 723, REPRESENTED BY ITS TRUSTEE K.M.JOSEPH.
2. V.M.KURIAKOSE, AGED 49 YEARS,
S/O.MANI, VANNAPPURATH HOUSE, MANNATHUR.P.O.
PIN-686 723.
3. K.M.JOSEPH, AGED 73 YEARS,
S/O.MATHEW, NIRMAL BHAVAN, MANNATHUR PO & KARA,
THIRUMARADY VILLAGE, PIN.686 723.

BY ADVS.SRI.S.VINOD BHAT
SRI.K.C.ELDHO
SRI.LEGITH T.KOTTAKKAL

RESPONDENT(S)/PLAINTIFFS AND DEFENDANTS 2,4,6 TO 27,29 AND 30:

1. OUSEPH CHERIYAN, AGED 56 YEARS
S/O.OUSEPH, CHOORACKAL HOUSE, MANNATHUR.P.O.
THIRUMARADY VILLAGE, PAMPAKUDA VIA
ERNAKULAM DISTRICT.
2. BINU THOMAS, AGED 25 YEARS
S/O.THOMAS, MEEKUZHICKAL HOUSE, MANNATHUR.P.O.
THIRUMARADY VILLAGE, PAMPAKUDA VIA, ERNAKULAM.
3. DEACON GEE VARGHESE KOCHUPARAMBIL, AGED 32 YEARS
S/O.K.M.ALIAS, KOCHUPARAMBIL HOUSE, MANNATHOOR.P.O.
PAMPAKUDA VIA, ERNAKULAM DISTRICT, PIN.686 723.

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RFA.No. 320 of 2014 (B)

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4. FR.ELIAS JOHN, AGED 50 YEARS
S/O.FR.M.C.JOHN, VICAR
ST.GEORGE ORTHODOX SYRIAN CHURCH, MANNATHUR
MANNATHUR.P.O., THIRUMARADI VILLAGE
RESIDING AT MANNATHIKULAM, ONAKKOOR VILLAGE
PAMPAKUDA (VIA), PIN.686 723.
 5. BABU JOHN, AGED 38 YEARS
S/O.ULAHANNAN, PUTHUMPURATHU, MANNATHUR.P.O.
PIN.686 723.
 6. C.G.JACOB, AGED 90 YEARS
S/O.GEEVARGHESE KATHANAR, CHELATTU, MANNATHUR.P.O.
PIN.686 723, THIRUMARADY, ERNAKULAM DISTRICT.
 7. T.P.JOHN, AGED 65 YEARS
S/O.K.V.PAILY, KIZHAKKUMCHERIL, MANNATHUR.P.O.
PIN.686 723.
 8. SKARIA PAILY, AGED 66 YEARS,
S/O.PAILY, KUNNUMMEL, MANNATHUR.P.O.
PIN.686 723.
 9. MATHAI T.V, AGED 67 YEARS
S/O.VARKEY, THOLANIKUNNEL, MANNATHUR.P.O.
PIN.686 723.
 10. GEORGE PETER, AGED 59 YEARS,
S/O.PETER, KOCHUPARAMBIL, MANNATHUR.P.O.
PIN-686 723.
 11. V.M.JOHN, AGED 58 YEARS
S/O.MANI, VANAPPURATHU, MANNATHUR.P.O.
PIN-686 723.
 12. SIMON, AGED 58 YEARS
S/O.MATHEW, MOOMUGALIL, MANNATHUR.P.O.
PIN.686 723.
 13. SHIBU KURIAN, AGED 42 YEARS
S/O.KURIAN, VADACKEL, OLIAPPURAM.P.O.
PIN-686 662.
 14. JOSE K.PRASAD, AGED 55 YEARS
S/O.JOSEPH, KOCHUPARAMBIL, MANNATHUR.P.O.
PIN-686 723.
 15. BABU ABRAHAM, AGED 55 YEARS
S/O.ABRAHAM, KANNAMTHORATHU, MANNATHUR.P.O.
PIN-686 723.

RFA.No. 320 of 2014 (B)

16. BABU ABRAHAM, AGED 65 YEARS
S/O.ABRHAM, MADUTHIKUDIYIL, MANNATHUR.P.O.
PIN-686 723.
17. BENNY PAILY, AGED 40 YEARS
S/O.PAILY, NEDUMTHADHIL, MANNATHUR.P.O.
PIN-686 723.
18. K.C.THANKACHAN, AGED 52 YEARS
S/O.CHACKO, MARATHANAKUNNEL, MANNATHUR.P.O.
PIN.686 723.
19. PHILIP SKARIA, AGED 45 YEARS
S/O.SKARIA, VAZHAKKULAYIL, MANNATHUR.P.O.
PIN.686 723.
20. SABU A.I, AGED 42 YEARS
S/O.AYPE, ARITHADATHIL, MANNATHUR.P.O.
PIN.686 723.
21. JOBY VARGHESE, AGED 34 YEARS
S/O.VARKEY, PUTHEPURACKAL, MANNATHUR.P.O.
PIN.686 723.
22. JOHNSON JOSEPH, AGED 42 YEARS
S/O.JOSEPH, CHERAKKALAKUDIYIL, MANNATHUR.P.O.
PIN.686 723.
23. BINU KURIAKOSE, AGED 36 YEARS
S/O.KURIAKOSE, ARITHADATHIL, MANNATHUR.P.O.
PIN-686 723.
24. SUNIL V.J, AGED 37 YEARS
S/O.JOHN, VATTAPARAMBIL, MANNATHUR.P.O.
PIN.686 723.
25. K.M.MATHAI, AGED 55 YEARS
S/O.MATHAI, KUDAPPILLIL, MANNATHUR.P.O.
PIN.686 723.
26. JINTO KURIAN, AGED 31 YEARS
S/O.KURIAN, MALAKUDIYIL, MANNATHUR.P.O.
PIN.686 723.
27. K.C.ALIAS, AGED 57 YEARS
S/O.CHACKO, MARUTHANAKUNNEL, MANNATHUR.P.O.
PIN.686 723.

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RFA.No. 320 of 2014 (B)

28. POLY ISSAC, AGED 51 YEARS
S/O.ISSAC, CHEMMANKUZHAYIL HOUSE, OLIYAPURAM.P.O.
THIRUMARADY, PIN.686 662.

29. JINTO SCARIA, AGED 35 YEARS
S/O.SCARIA, VADAKKEL HOUSE, OLIYAPURAM.P.O.
THIRUMARADY, PIN.686 662.

R1,R2,3 BY ADV. SRI.P.MARTIN JOSE (CAVEATOR)
BY ADV. SRI.SAJAN VARGHEESE K.
R4 BY ADV. SRI.K.PAUL KURIAKOSE
R6 BY ADVS. SRI.P.RAMAKRISHNAN
SRI.PRATAP ABRAHAM VARGHESE
R7 BY ADVS. SRI.JOHN JOSEPH VETTIKAD
SRI.C.JOSEPH JOHNY
R14-R18 BY ADVS. SRI.ROY ISAAC
SRI.VIJAI MATHEWS
R28-R29 BY ADV. SRI.M.S.UNNIKRISHNAN

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 11/03/20-15 ALONG WITH RFA.NO.554/2014 AND CONNECTED CASES,
THE COURT ON 20-05-2015, DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' ANNEXURES

IA.NO.2166/2014

**ANNEXURE A1: COPY OF STATEMENT OF ACCOUNT FOR THE PERIOD FOR THE
PERIOD FROM 1/1/14 TO 30/6/14**

IA.NO.2446/2014 & 2681

ANNEXURE A1: COPY OF NOTICE PUBLISHED IN THE MALAYALAM DAILY

ANNEXURE A2: COPY OF THE LETTER DATED 11/10/14 SENT BY TINU JOHN

ANNEXURE A3: COPY OF THE LETTER DATED 12/10/14 SENT BY JOSHY ABRAHAM

ANNEXURE A4: COPY OF THE LETTER DATED 13/10/14 SENT BY SAJU K.PAUL

ANNEXURE A5: COPY OF THE LETTER DATED 13/10/14 SENT BY ELDHO VARGHESE

**ANNEXURE A6: COPY OF THE ORDER DATED 10/12/2009 IN IA.4387/2009 IN RFA
766/2009 OF THE HIGH COURT OF KERALA.**

**ANNEXURE A7: COPY OF THE NOTICE PUBLISHED IN THE MALAYALAM DAILY DATED
2/11/14**

**ANNEXURE A8: COPY OF THE ORDER NO.A3 7051/12 DATED 11/10/12 OF SECRETARY
THIRUMARADY GRAMA PANCHAYAT**

**ANNEXURE A9: COPY OF THE ORDER DATED 14/8/13 OF THE TRIBUNAL FOR LOCAL
SELF GOVERNMENT INSTUTIONS, THIRUVANANTHAPURAM**

**ANNEXURE A10: COPY OF THE DIRECTION NO.A8 7923/13 DATED 16/8/14 OF
ADDITIONAL DISTRICT MAGISTRATE ERNAKULAM**

**ANNEXURE A11: COPY OF THE PROCEEDINGS NO.M 79273/13 DATED 26/12/13 OF
DISTRICT COLLECTOR, ERNAKULAM**

ANNEXURE A12: ORIGINAL OF RETURNED ENWELOP SENT BY SABU K.PAUL

ANNEXURE A13: ORIGINAL OF RETURNED ENWELOP SENT BY BABU VARGHESE

IA.NO.2645/2014

ANNEXURE A1: COPY OF ORDER IN IA.3382/2004 IN AS.176/2002 DATED 3/12/04

ANNEXURE A2: COPY OF ORDER DATED 29/11/12 IN IA.2568/12 IN AS.176/2002

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RFA.No. 320 of 2014 (B)

**ANNEXURE A3: COPY OF IA.4684/13 IN OS.41/2003 OF THE DISTRICT COURT,
ERNAKULAM WITHOUT ANNEXURE**

**ANNEXURE A4: COPY OF COUNTER AFFIDAVIT FILED BY DEFENDANTS 1,4,5 AND 28
IA.NO.4684/13 IN OS.41/2003 OF THE DISTRICT COURT ERNAKULAM**

**ANNEXURE A5: COPY OF ADDL.COUNTER AFFIDAVIT FILED BY DEFENDANTS 1,4,5
AND 28 IA.4684/13 IN OS.41/2003 OF THE DISTRICT COURT,
ERNAKULAM**

**ANNEXURE A6: COPY OF ORDER IN IA.4684/13 IN OS.41/2003 OF THE DISTRICT
COURT, ERNAKULAM DATED 18/12/13**

**ANNEXURE A7: COPY OF THE JUDGMENT IN OPC.4688/13 OF THE HONOURABLE
HIGH COURT OF KERALA.**

IA.NO.2682/2014

**ANNEXURE A1: COPY OF STATEMENT OF ACCOUNT FOR THE PERIOD FROM 1/7/14
TO 30/9/14.**

RESPONDENTS' ANNEXURE

ANNEXURE A1: COPY OF THE CONFESSION REGISTER FROM 1-2-2006 TILL DATE

**ANNEXURE A2: COPY NOTICE DATED 1/10/14 PUBLISHED BY R4 RESPONDENT IN
THE NOTICE BOARD AS WELL AS IN MANGALAM DAILY**

ANNEXURE A3: COPY OF DRAFT VOTERS LIST.

**ANNEXURE A4: COPY NOTICE DATED 2/11/14 PUBLISHED BY R4 IN THE NOTICE
BOARD AS WELL AS IN MANGALAM DAILY**

ANNEXURE A5: COPY OF FINAL VOTERS LIST DATED 9/11/14

ANNEXURE A6: COPY OF ELECTION DECLARATION DATED 9/11/14 BY THE R4

**ANNEXURE A7: (A TO S) TRUE COPY OF THE LIST OF CANDIDATES DATED 11/11/14
ALONG WITH THEIR NOMINATION.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

C.R.

P.B.SURESH KUMAR, J.

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R.F.A.Nos.320 & C.O.No.101 of 2014,

R.F.A. No.554 of 2014,

R.F.A.Nos.117 and 118 of 2015

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Dated this the 20th day of May, 2015.

J U D G M E N T

These appeals represent the latest round of litigation between the Patriarch and the Catholicos factions in the Malankara Orthodox Syrian Church. More than a century has rolled by since the said factional dispute was brought to the court. *"Do all that you can to live in peace with everyone"* (**Romans 12 : 18**) is what the Bible says, but the clergy and laity of the Church are languishing in the courts in blissful ignorance of the spirit of the said biblical verse. I think it is my duty to mention this antithesis before I proceed to decide this case on merits as I feel that there is still room for settlement of this factional dispute through conciliation.

2. Challenge in these appeals is against the decision in

O.S.No.41 of 2003 on the file of the District Court, Ernakulam. The said suit is one instituted under Section 92 of the Code of Civil Procedure, hereinafter referred to as 'the Code', for short, in respect of the first defendant Church namely St.George Orthodox Syrian Church, Mannathur. The plaintiffs are a few among the Parishioners of the first defendant Church. The second defendant is the Vicar of the Church. According to the plaintiffs, the first defendant being a Parish Church under the Malankara Orthodox Syrian Church, it is to be administered in accordance with the Constitution of the Malankara Orthodox Syrian Church formulated in the year 1934. It is alleged in the plaint that as per the said Constitution, the Vicar of the Parish Church has to call a 'pothuyogam' of the Parishioners every year to elect the office bearers for the Parish Church and since the second defendant is not taking steps to conduct election to the various offices in the Parish Church as provided for in the Constitution, defendants 3, 4 and 5 who were elected earlier to the office of the trustees and secretary of the Church are continuing as trustees and secretary of the Church even after

the expiry of their term. It is also alleged by the plaintiffs that defendants 3, 4 and 5 are not maintaining proper accounts of the income and expenditure of the Church and are misappropriating the funds of the Church. The plaintiffs have, therefore, claimed among others, a mandatory injunction directing the second defendant to call a 'pothuyogam' of the Parishioners of the Church for election to its Managing Committee in accordance with the 1934 Constitution of the Church.

3. Defendants 1, 3, 4 and 5 filed a joint written statement contending, among others, that the first defendant Church has never accepted the 1934 Constitution and the same, on the other hand, was being administered in accordance with Ext.B3 Udambady executed in the year 1890. According to them, as per the terms of Ext.B3 Udambady, the Parishioners of the Church are bound to obey and stand with the Patriarch of Antioch and the Metropolitans ordained by him. It is stated by them that when the Apex Court held in **P.M.A. Metropolitan v. Moran Mar Thomas** (AIR 1995 SC 2001) that the Church is

liable to be administered in accordance with the 1934 Constitution, the Parishioners of the first defendant Church convened a meeting and accepted the Constitution of the Jacobite Syrian Christian Association. According to them, the first defendant Church thus disassociated with Malankara Association and became part of the Jacobite Syrian Christian Association and the Church is being administered thereafter in accordance with the Constitution of the said Association. It was also contended by the said defendants that since the first defendant Church was not a party to **P.M.A.Metropolitan's case** (supra), the decision in the said case is not binding on the first defendant Church.

4. While defendants 2 and 6 filed a written statement supporting the contentions raised by the plaintiffs, defendants 7 to 27 filed a separate written statement supporting the contentions of defendants 3, 4 and 5. In addition, defendants 7 to 27 also contended that since the plaintiffs have disowned the Patriarch of Antioch, they have no right to continue as Parishioners of the first defendant Church.

5. When the contesting defendants divulged their stand in the written statements filed by them, the plaintiffs amended the plaint and incorporated additional pleadings. In the amended plaint, it is alleged, among others, that on account of the attempts made by the rival groups to take possession of the Church, the Revenue Divisional Officer, Muvattupuzha has taken possession of the Church, Chapels and Cemetery under it on 7.1.2012 and as a result, the Parishioners are prevented from availing religious services of the Church. A declaration to the effect that the second defendant and other Vicars and Priests who are appointed in accordance with the 1934 Constitution of the Church alone are entitled to conduct religious services in the Church and a declaration to the effect that the Parishioners of the first defendant Church who disowns the authorities under 1934 Constitution have no right to continue as Parishioners of the first defendant Church, were also claimed in the suit by way of amendment.

6. The evidence in the case consists of the oral testimony of PWs.1 and 2 and Exts.A1 to A8 on the side of the

plaintiffs and the oral testimony of DWs.1 and 2 and Exts.B1 to B29 on the side of the defendants.

7. The trial court, relying on the decision of the Apex Court in **P.M.A. Metropolitan's case** (supra), found that the first defendant Church being a Parish Church under the Malankara Orthodox Syrian Church, the same is liable to be administered in accordance with the 1934 Constitution of the Church. Consequently, the suit was decreed directing the second defendant to convene a general body of the first defendant Church for electing the managing committee of the Church including trustees and the secretary in accordance with the 1934 Constitution. The court, however, permitted defendants 4 and 5 to continue in office until new office bearers are elected in their place. The court also declared that the second defendant and other Vicars and Priests appointed by the authorities concerned in accordance with the 1934 Constitution of the Malankara Church alone will have the right to conduct religious services in the first defendant Church. The court further restrained the defendants by way of a permanent

prohibitory injunction from bringing any other Vicar or Priest to the first defendant Church for conducting religious services.

8. Defendants 1, 5 and 28 have challenged the decision of the trial court in R.F.A.No.320 of 2014. The remaining appeals are preferred by third parties who are aggrieved by the decision of the trial court. The plaintiffs are also aggrieved by the decision of the trial court in so far as the court permitted defendants 4 and 5 to continue as trustees of the first defendant and in so far as the court declined the relief of declaration that the Parishioners who do not give written oath of allegiance to the 1934 Constitution of the Church have no right to continue as Parishioners of the first defendant Church. Cross Objection No.101 of 2014 is filed by the plaintiffs, in the circumstances, challenging that part of the decision of the trial court.

9. Heard Senior Counsel Sri.R.D.Shenoy and Sri K.J.Kuriachan, Sri John Joseph Vettikkad and Sri Sajan Varghese K., the learned counsel for the appellants and Senior Counsel Sri.S.Sreekumar and Sri.Paul Kuriakose, the learned counsel for

the respondents.

10. A brief reference to the history of the Syrian Christians of Malankara (Malayalam speaking parts of South India) and the earlier litigations between the Patriarch and Catholicos factions in the Malankara Orthodox Syrian Church is necessary for a proper appreciation of the questions raised in these appeals. The Syrian Christians of Malankara renounced their Roman Catholic faith at a meeting held at Mattancherry in the year 1664 and came under the authority of the Patriarch of Antioch. In 1876, the representatives of all the Churches met together in a Synod called Mulanthuruthy Synod under the Presidentship of Patriarch Peter III and constituted a body called the Malankara Syrian Christian Association, (Malankara Association) to manage the affairs of the Churches and the community. The Malankara Metropolitan was made the Ex-officio President of the Malankara Association. In the year 1909, one Mar Gee Varghese Dionysius was elected as the Malankara Metropolitan and as such, he became the Ex-officio President of the Malankara Association. Mar Gee Varghese

Dionysius was ordained as the Metropolitan by Patriarch Abdulla II. Earlier, one Abdulla Messiah was the Patriarch of Antioch. While Abdulla Messiah was the reigning Patriarch of Antioch, the Sultan of Turkey had recognised Abdulla II as the Patriarch of Antioch and it was accordingly, Abdulla II started exercising the powers of the Patriarch of Antioch. There is a difference of opinion as to whether the Patriarch Abdulla Messiah was validly removed from office when Abdulla II was recognised as the Patriarch by the Sultan of Turkey. Be that as it may, at that point of time, there were two claimants to the office of Patriarch of Antioch. Among them, Abdulla II came to India and convened a meeting of the Malankara Association and demanded that the said Association should accept and acknowledge the temporal authority of the Patriarch. The Malankara Association declined to do so. Consequently, Patriarch Abdulla II ex-communicated Mar Gee Varghese Dionysius and ordained one Mar Kurilos as the Malankara Metropolitan. In 1912, Patriarch Abdulla Messiah came to India and declared the ex-communication of Mar Gee Varghese

Dionysius as invalid. In 1913, he had also issued a Kalpana establishing a catholicate in Malabar with the power to the catholicos to ordain metropolitans and thereby reducing the power of the patriarch over the Malankara Church to a vanishing point. In the light of the disputes between the factions of the Church supporting the Patriarch and the Catholicos, during 1913, the Government of India filed an inter-pleader suit in the Trivandrum District Court impleading both the claimants to the office of Malankara Metropolitan namely, Mar Gee Varghese Dionysius and Mar Kurilos for determination of the question as to which of the two rival claimants was entitled to draw the interest of the amounts standing to the credit of the Malankara Orthodox Syrian Church in the British Treasury. The said suit was later converted into a representative action on behalf of the Orthodox Syrian Christian population. The court found in the said case that Mar Gee Varghese Dionysius and his co-trustees are the lawful claimants to the amounts. In the matter of arriving at the above conclusion, the court held that the ex-communication of Mar

Gee Varghese Dionysius was invalid and that Mar Gee Varghese Dionysius and his co-trustees had not set up a new Church by accepting the establishment of the catholicate by Patriarch Abdulla Messiah.

11. On 26th December 1934, the Malankara Association elected the third Catholicos as the Malankara Metropolitan and adopted a new Constitution for the Church. In the meanwhile, the Metropolitans owing allegiance to the Patriarch convened a meeting of the representatives of the Church on 22nd August, 1935 at a place called Karingachira and elected one Poulose Athanasius as the Malankara Metropolitan and two others as the Trustees of the Church properties. Thereafter, the said persons together filed O.S.No.111 of 1113 M.E. for declaration of their title as Trustees of the properties of the Church. It is alleged in the said suit that the defendants therein have gone out of the Church by establishing a new Church. The trial court rejected the said contention of the plaintiffs and decreed the suit declaring that the defendants are the lawful Trustees of the Church properties and the decision of the trial court was

confirmed by the Apex Court in **Moran Mar Basselios Catholicos v. Thukalan Paulo Avira and others** (AIR 1959 SC 31). While the suit O.S.No.111 of 1113 M.E. was pending, the Patriarch and the Catholicos expressed their desire to resolve the disputes. Accordingly, on 26th December, 1958, in the meeting of the Malankara Association presided over by the Catholicos and attended by the representatives of both the groups, new trustees were elected. Thereafter, the dioceses of the Church were also re-allotted to Metropolitans belonging to the Patriarch faction. In the meetings of the Malankara Association held thereafter, the members of both groups have participated and managing committees were elected for the Malankara Association comprising of representatives of both groups. It seems that the representatives of the Patriarch faction who were elected to the Malankara Association have also taken the oath of office in accordance with the 1934 Constitution of the Church.

12. Unfortunately, disputes between the factions cropped up again from the year 1972 and ultimately, the

Patriarch has ex-communicated the Catholicos. A batch of suits were filed thereafter by the rival groups and those suits were finally decided by the Apex Court in **P.M.A. Metropolitan's case** (supra). It was held by the Apex Court in the said case that the Malankara Association was formed not only to manage the temporal affairs of the Church but also its religious affairs and the appointment of Metropolitans is subject to the acceptance of the people of Malankara. The relevant portion of the judgment of the Apex Court as contained in paragraph 145 reads thus:

“It is thus clear that the Malankara Association was formed not only to manage the temporal affairs of the Church but also its religious affairs and that the appointment of Metropolitans was subject to acceptance by the people of Malankara.”

It was also held by the Apex Court in the said case that the 1934 Constitution of the Church was approved by a validly convened meeting of the Malankara Association and the Patriarch having accepted the said Constitution, the faction supporting the Patriarch cannot question its legality and

validity. It was further held in that case that Malankara Church is Episcopal to the extent it is so declared in the 1934 Constitution and that the said Constitution governs the affairs of the Parish Churches as well and shall prevail. The relevant portions of the conclusions arrived at by the Apex Court as contained in paragraph 142 of the judgment read thus:

(5)The 1934 Constitution was approved at a validly convened meeting of Malankara Association, which Association was created by the Patriarch himself under the Resolutions of Mulanthuruthy Synod. The defendants in the present suits (Patriarch group) cannot question its legality and validity in view of the acts and conduct of the Patriarch and the members of his group subsequent to the judgment of this Court in AIR 1959 SC 31.

x x x x x x x x x

(6)Ex.A. 19, Kalpana, was issued by Patriarch Yakub with the full knowledge of revival of Catholicate, Ex.A. 14 and the 1934 Constitution and the various claims and contentions of both the parties put forward in Samudayam suit and the decision of this Court in AIR 1959 SC 31. It must, therefore, be held that the Patriarch has thereby accepted the validity of the revival of Catholicate Ex.A. 14 and the 1934 Constitution, and abandoned and gave up all or any objections they had in that behalf. Several members of his group including some of the defendants also accepted the Constitution and took oath to abide by it. They cannot now turn round and question the same.

x x x x x x x

(8)So far as the declaration of the Malankara Church being

Episcopal in character is concerned, all we need hold is that it is episcopal to the extent it is so declared in the 1934 Constitution. The said Constitution also governs the affairs of the Parish Churches and shall prevail.

As per the said judgment, the Apex Court directed that an election shall be conducted to the Malankara Association and pursuant to the said direction, an election to the Malankara Association was conducted and as per order dated 12.7.2002, the Apex Court declared that the said election is final and not subject to challenge in any court. From the aforesaid facts, it is evident that the 1934 Constitution of the Church, which was approved by a validly convened meeting of the Malankara Association governs the affairs of the Malankara Orthodox Syrian Church including its Parish Churches. It is also evident from the aforesaid facts that the 1934 Constitution is binding on the Parishioners of the first defendant Church owing allegiance to the Patriarch as well. The contesting defendants have no case that the first defendant Church is not a Parish Church of Malankara Orthodox Syrian Church. Ext.A1 is the 1934 Constitution of the Church. It contains provisions for the management of the Parish Churches as well. As such, the

conclusion arrived at by the trial court that the first defendant Church is liable to be administered in accordance with the 1934 Constitution is in order. Since it is found that the first defendant Church is liable to be administered in accordance with the 1934 Constitution of the Church, the declaration given by the trial court that only the Priests and Vicars appointed in accordance with the 1934 Constitution can conduct religious services in the first defendant Church and the mandatory injunction granted by the trial court directing election to the managing committee of the Church are also to be upheld.

13. The learned Counsel for the appellants in all the appeals have strenuously argued that the declaration made by the Apex Court in **P.M.A. Metropolitan's case** (supra) is only as to the episcopal nature of the Church and the finding of the court below that said judgment applies to the Parish Churches is incorrect. The Counsel have relied on the following passage in paragraph 141 of the judgment in **P.M.A. Metropolitan's case** (supra) in support of the said contention. Paragraph 141 reads thus:

“We are, however, of the opinion that in this suit no declaration can

be granted affecting the rights of Parish Churches in their absence nor can it be declared that the properties held by Malankara Parish Churches vest in the Catholicos or the Malankara Metropolitan or the Metropolitan of the concerned diocese, as the case may be. Indeed, no such specific relief has been asked for in the suit and without impleading the affected parties, no declaration can be claimed by the plaintiffs that their Church is episcopal in nature, if that declaration means that it gives the Catholicos/Malankara Metropolitan/the Metropolitan of the Diocese any title to or any control over the properties held by the Parish Churches. We have pointed out herein before that the only place in the plaint where a reference is made to the properties of the Parish Churches is in Para 24 where all that it is alleged is that the defendants and their partisans are trying to intermeddle in the affairs of individual Churches and are attempting to make use of the properties of the Church to further their illegal and unlawful objects. No list of Parish properties is enclosed nor are the particulars of the alleged intermeddling mentioned in the plaint. In the state of such a pleading, the only observation that can be made herein is that the 1934 Constitution shall govern and regulate the affairs of the Parish Churches too, insofar as the said Constitution provides for the same."

A Division Bench of this Court in **Mathew Yohannan v. Varghese** (2013 (4) KLT 945) had occasion to consider the said contention in the context of St.Peter's and St.Paul's Syrian Orthodox Church, Kolencherry, a Parish Church under the Malankara Orthodox Syrian Church. After referring to the

judgment of the Apex Court in **P.M.A. Metropolitan's case** (supra) and the judgment of this Court which was impugned in the said case, the Division Bench held that the Parish Churches are constituent units of the Malankara Church and that the 1934 Constitution is valid and binding on the Parish Churches and the Parishioners. It was also held by this Court in the said case that the clarification made by the Apex Court in paragraph 141 relied on by the learned counsel that no declaration can be granted affecting the rights of the Parish Churches in their absence is in the context of considering the question whether properties held by the Parish Churches vest in the Malankara Metropolitan/the Metropolitan of the concerned diocese, as the case may be, and not in the context of the status of the Parish Churches. The relevant passages dealing with the said aspects read thus:

“The above conclusions will show that Parish Churches are constituent units of the Malankara Church; they have fair degree of autonomy subject to the supervisory powers vesting the Managing Committee of the Malankara Association and the 1934 Constitution is valid and binding on the Malankara Association, Community, Dioceses as well as Parish Churches and Parishioners.

xxx xxx xxx
xxx xxx xxx

The clarification made by the Apex Court in para 141 that no declaration can be granted affecting the rights of Parish Churches, in their absence, is in the context of consideration of a question whether the properties held by the Malankara Parish Churches vest in the Catholicos/the Malankara Metropolitan/the Metropolitan of the concerned diocese, as the case may be. Therefore, the same is in the context of vesting of title of the properties of Parish Churches and not the status. Finally, in the said paragraph, their Lordships held that “the only observation that can be made herein is that the 1934 Constitution shall govern and regulate the affairs of the Parish Churches too, insofar as the said Constitution provides for the same. In that view of the matter, according to us, the argument of the learned Senior Counsel for the appellants that the decision of the Apex Court in P.M.A. Metropolitan's case (supra) has been wrongly relied upon by the Trial Court, is not correct.”

As in the instant case, the said case was also a case where no relief was sought in respect of the properties of the Parish Church. Instead, the parties were at issue only on the question as to the administration of the Parish Churches and the application of the 1934 Constitution of the Church. Paragraph 89 of the said judgment reads thus:

“In this case also, in the plaint no relief is sought that the

properties of the Church vest in the Parishioners or other bodies. Both sides were at issue on the question of system of administration of Parish, election and on the question whether it is Ext.A1 Udambady or Ext.B1 Constitution that governs the Church. Therefore, it is not a case where the plaintiffs have sought for a relief of declaration specifically with regard to the properties of the Church or about the vesting of the properties of the Church in a particular body. What is clear from the reliefs sought for, is that they are only seeking for enforcement of Ext.A1 Udambady as regards the administration of the Church or in the alternative, to frame a scheme for the administration. In that view of the matter, according to us, there is no error committed by the trial court, by relying upon 1934 Constitution and the finding relying upon the decision of the Apex Court in P.M.A. Metropolitan's case (supra)."

In the light of the said decision of the Division Bench, the contention of the appellants that the decision of the Apex Court in **P.M.A. Metropolitan's case** (supra) has no application to the Parish Churches under the Malankara Church is only to be rejected.

14. The learned Senior Counsel Sri.R.D.Shenoy contended that though the plaintiffs in the suit have admitted that the Parishioners of the first defendant Church belong to two different factions, the publication effected in the suit under Order 1, Rule 8 of the Code does not indicate as to the interest

of which faction that is sought to be protected in the suit. According to him, in so far as the publication was not in accordance with the requirements of law, a decree binding the Church and the Parishioners should not have been passed by the court below. He relied on the decision of the Apex Court in **Mirza Raja Pushpavathi Vijayaram v. Pushavathi Visweswar Gajapathiraj Rajkumar of Vizianagram** (AIR 1964 SC 118) in support of the said contention. A suit under Section 92 of the Code by itself is a suit in a representative capacity and when leave is granted under Section 92 of the Code to institute the suit, it is a representative suit and it does not require an application under Order 1, Rule 8 of the Code. In as much as the decision in a suit under Section 92 of the Code binds all the beneficiaries of the trust or charity, as the case may be, a public notice is issued only in compliance with the principles of natural justice. A similar view has been taken by this Court in **Vidyodaya Trust v. Mohan Prasad** (2007(1) KLT 538). True, the said decision was reversed by the Apex Court, but the aforesaid view expressed therein was not interfered

with. In the instant case, it is beyond dispute that the plaintiffs have taken out a publication under Order 1, Rule 8 of the Code. It is evident from the publication that the interest sought to be protected in the suit is the interest of the beneficiaries of the Church namely, the Parishioners. The said notice would certainly serve the requirements of the principles of natural justice. Further, Section 99 of the Code provides that no decree shall be reversed or substantially varied, nor shall in any case be remanded in appeal on account of any error, defect, irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court. As such, I do not find any merit in the contention raised by the learned Senior Counsel as to the sufficiency of the publication effected in the suit. The decision of the Apex Court in **Mirza Raja Pushpavathi Vijayaram v. Pushavathi Visweswar Gajapathiraj Rajkumar of Vizianagram** (supra), relied on by the learned Senior Counsel is a case relating to a suit under Section 92 of the Code in respect of a Mosque. There was an earlier suit under Section 92 of the Code in respect of the very

same Mosque by a few persons alleging that the Mosque belongs to Cutchi-Memons and while disposing of the said suit, the court proceeded as if the Mosque belongs to Cutchi-Memons. The subsequent suit under Section 92 of the Code was filed by a few Muslims not belonging to Cutchi-Memons, alleging that the Mosque belongs to other factions of the Muslims as well. A contention was raised in the subsequent suit to the effect that the decree passed in the earlier suit would operate as *res judicata*. In the said context, the Apex Court held that since the earlier suit was not filed by persons who could represent non-Cutchi-Memons or was defended by persons who could make a similar claim, it cannot be held that the interest of all persons interested in the Mosque are represented in the suit as required in Explanation VI to Section 11 of the Code and therefore, the decree would not operate as *res judicata* against persons claiming interest not represented in the earlier suit. As indicated above, the question considered by the Apex Court in the said case is as to whether the decision in a suit under Section 92 of the Code would operate as *res*

judicata, if the interest of all persons interested in the suit are not represented in the suit as required by Explanation VI to Section 11 of the Code. The same is not the question in the instant case. The said decision, in the circumstances, may not have any application to the facts of this case.

15. Sri.K.J.Kuriachan, the learned counsel for the appellants in R.F.A.No.554 of 2014 contended, relying on the decision of the Orissa High Court in **Sukadev v. Sri.Sidheswar Mahadev Bija Silod** (AIR 1986 Orissa 100) that the provisions contained in Order 1, Rule 8 of the Code are mandatory and not merely directory and are essential pre-conditions for the trial of a case as a representative suit. According to him, it is the duty of the court to see that the notice discloses the nature of the suit as well as the reliefs claimed therein so as to enable the persons interested in the subject matter of the suit to get themselves impleaded as parties therein either to support the case or to defend the case. It was contended by the learned counsel that the notice published in the instant case which does not disclose the nature

of the case as also the reliefs claimed therein, cannot be accepted as a notice in compliance with the requirements of law. He has also contended, relying on the decision of the Orissa High Court in **Harihar Jena v. Bhagabat Jena** (AIR 1987 Orissa 270) that if it is found that the notice under Order 1, Rule 8 of the Code is not in accordance with the requirements of law, the suit has to be remitted to the trial court for issuing proper notice. The decisions relied on by the learned Counsel are not decisions rendered in suits under Section 92 of the Code. As noticed above, I have held that a suit under Section 92 of the Code is a suit of special nature and it is not mandatory in a suit under Section 92 of the Code to have a publication under Order 1, Rule 8 of the Code. I have also held that the notice published by the plaintiffs in the instant case is in compliance with the principles of natural justice. In the said circumstances, I do not find any merit in the said contentions of the learned counsel.

16. Adv.John Joseph Vettikkad, the learned Counsel for the appellants in R.F.A.No.117 of 2015 also contended that

there was no proper notice in the suit under Order 1, Rule 8 of the Code. According to him, after the publication of the notice under Order 1, Rule 8 of the Code, the plaint was substantially amended and there was no publication thereafter indicating the nature of the reliefs sought in the suit. It was also contended by him that the appellants in the said appeal who are Parishioners of the Church as also priests have been conducting religious services in the Church in connection with the members of their family and the impugned judgment interdicts them from conducting religious services in the Church since they do not belong to the Catholicos faction. I have already found that the present suit being a suit under Section 92 of the Code, the defect, if any, of the notice published under Order 1, Rule 8 of the Code is not a ground to interfere with the impugned decision. Coming to the contention about the inability of the appellants to perform religious services in the Church, it is to be mentioned that the issue raised for decision in this batch of appeals is the issue as to whether the first defendant Church is liable to be administered in accordance with the 1934

Constitution of the Malankara Church. The inability, if any, of the appellants and similarly placed persons to perform religious services in the first defendant Church is not a fact relevant in the matter of arriving at a decision on the issue as to the administration of the first defendant Church. The arguments of the learned counsel, in the circumstances, are only to be rejected.

17. Sri.Sajan Varghese, the learned Counsel for the appellants in R.F.A.No.118 of 2015 contended, relying on the decision of the Apex Court in **S.P.Mittal v. Union of India** (AIR 1983 SC 1) that the impugned judgement which takes away the right of administration of the first defendant Church from the Patriarch faction and vests with the Catholicos faction would amount to violation of the fundamental right guaranteed to the Parishioners belonging to the Catholicos faction under Article 26 of the Constitution of India. On the merits, the learned Counsel contended that the first defendant Church has never been a constituent Church of the Malankara Church and the same is an independent Church administered in accordance

with Ext.B3 Udambaby. The learned counsel pointed out that there are independent Churches like Simhasanam Churches referred to in **Moran Mar Baseliose Marthoma Mathews I v. Most Rev. Poulose Mar Athansios** (1990(2) KLT supplement), under the Patriarch of Antioch. It was also pointed out by the learned Counsel that on 30.3.2003, the general body of the Church accepted the Constitution of the Jacobite Syrian Christian Association and thereafter the Church is being administered in accordance with the Constitution of the said Association. According to the learned counsel, the Parishioners of the first defendant Church have all the right to disassociate with Malankara Association and become part of the Jacobite Syrian Christian Association. It was contended by the learned counsel that the said right of the Parishioners is part of the fundamental right guaranteed to them under article 19 of the Constitution of India. He relied on paragraphs 43, 44, 49, 51 and 57 of the decision reported in **Moran Mar Baselious Marthoma Mathews II v. State of Kerala** (2003(1) KLT 780) in support of the said contention.

18. The contention that the impugned judgement takes away the right of administration of the first defendant Church from the Patriach faction and vests with the Catholicos faction is also without any merits. At the outset, I must point out that there is nothing on record to indicate as to who is in administration of the Church and as to the strength of the rival factions. Further, after the decision of the Apex Court in **P.M.A. Metropolitan's** case (supra), the contention that there are two factions among the Parishioners of the first defendant Church cannot be accepted. As such, the question of divesting of the administration of the Church does not arise. As regards the contention that the first defendant Church has never been a constituent Church of Malankara Orthodox Syrian Church and the said Church is an independent Church administered in accordance with Ext.B3 Udambady, I must point out that DW1, who had also raised the said contention has admitted in his evidence that the first defendant is a constituent Church of the Malankara Orthodox Syrian Church. The relevant portion of the deposition reads thus:

"ഒന്നാം പ്രതി പള്ളി മലങ്കര സഭയുടെ പള്ളിയാണ്"

Further, Sri.Sajan Varghese, the learned counsel for the appellants, has not disputed the fact that Dr.Thomas Mar Athanasious, who was the Metropolitan of the Kandanad Diocese under which the first defendant Church comes, was accepted by the Parishioners of the first defendant Church as their Metropolitan. Had the first defendant Church been an independent Church directly under the Patriarch of Antioch like the Simhasanam Churches, as contended by the appellants in the said case, there would not have been any occasion for the Parishioners of the Church to accept Dr.Thomas Mar Athanasious as their Metropolitan. Further, it is seen that the third defendant who had raised the contention that the first defendant Church is being administered in accordance with Ext.B3 Udambady, has admitted in Ext.A7 affidavit filed in O.S.No.224 of 1997 on the file of the Munsiff Court, Muvattupuzha, that the first defendant Church is being administered in accordance with the 1934 Constitution of the Church. Ext.A8 is the nomination submitted by the third

defendant for election to the office of the 'Kykkaran' of the first defendant Church during 1997-'98. Ext.A8 is in accordance with the 1934 Constitution of the Church. In Ext.A8, the nomination of the third defendant is seen proposed by the fifth defendant and the said fact has been admitted by him in his evidence as DW1. It is thus evident that the contention that the first defendant Church was never a constituent Church of the Orthodox Syrian Church and that the same is being administered in accordance with Ext.B3 udambady is without substance.

19. As regards the contention that the Parishioners of the first defendant Church are entitled to disassociate with the Malankara Church, it is worth referring to the judgment of the Apex Court in **P.M.A. Metropolitan's case** (supra) again. It was held by the Apex Court in the said case that the Parish Churches under the Malankara Church being public charities established for promoting the ideals of the Syrian Orthodox Church, they are not autonomous and its nature cannot be changed by the Parishioners. It was further held by the Apex

Court in the said case that it is not open to the Parishioners to disassociate from the Malankara Church, as the same will have the effect of the beneficiaries of the charity appropriating the trust property for themselves. Paragraph 69 of the judgment reads thus :

69. Whether a public institution or a public Church unlike private religious places is autonomous or not depends on its trust deed, the intention of the members who found it, the purpose for which it was established. The establishment of a Church is normally understood as an institution established for public charities. Its objective is religious and spiritual. Whenever a charity is created it is either public or private. The latter is for individual, may be for fixed period or for determinate person. But public charities are of permanent character, the membership of which keeps on fluctuating. Lewin on Trust explained a 'charitable trust' thus, 'a public or charitable trust, on the other hand, has for its object the members of an uncertain and fluctuating body and the trust itself is of a permanent and indefinite character and is not confined within the limits prescribed to a settlement upon a private trust. These trusts may be said to have as their object some purpose recognised by the law rather than human beneficiaries'. Tudor on Charities at page 131 of 6th Edn. has stated thus, 'when a charity has been founded and trusts have been declared, the founder has no power to revoke, vary or add to the trusts. This is so irrespective of whether the trusts have been declared by an individual, or by a body of subscribers or by trustees'. That the Parish Churches were established for promoting ideals of

Syrian Orthodox or jacobite Church has been the consistent claim of both the Patriarch and the Catholicos. Its nature cannot be changed by the persons who are entrusted to manage it. They were episcopal in character when they were found, they continue to be so at present and shall remain so in future. The character of public charities from episcopal to congregational cannot be changed as it would be against basic purpose for which these Churches were established. In *Attorney General v. Pearson*, 1814-23 All England Law Reports (Rep) 60 at 63 it was observed as under :

"But if, on the other hand, it turns out that the institution was established for the express purpose of such form of religious worship, or the teaching of such particular doctrines, as the founder has thought most conformable to the principles of the Christian religion, I do not apprehend that it is the power of individuals, having the management of that institution, at any time to alter the purpose for which it was founded, or to say to the remaining members : "We have changed our opinions, and you, who assemble in this place for the purpose of hearing the doctrines and joining in the worship prescribed by the founder, shall no longer enjoy the benefit he intended for you unless you conform to the alteration which has been taken place in our opinions'."

Therefore, once these public charities were found whether before the establishment of catholicate or after it their nature could not change. On the material on record the courts have found them to be so. Therefore, the submission that they are autonomous does not appear to be well founded. Autonomy for what, religious worship or temporal matters. Former cannot be pleaded as once a Church was found for religious worship it continued to be so. The autonomy in temporal matters as

claimed appears to be two-fold one, freedom to disassociate from Malankara Association and second to control and supervise its internal affairs. The first cannot arise. In law it is not open to members of public or public trust to appropriate trust property for themselves. Under Hill on the Law of Trusts and Trustees has explained it thus, 'However, the crucial difference surely is that no absolutely entitled members exist if the gift is on trust for future and existing members, always being for the members of the association for the time being. The members for the time being cannot under the association rules appropriate trust property for themselves for there would then be no property held on trust as intended by the testator for those persons who some years later happened to be the members of the association for the time being'. None of the Parish Churches claim autonomy in the sense that they have changed their faith and belief. Each of them claims that their spiritual head is Patriarch of Antioch. That is they are the believers and followers of Syrian Church. So are the members of Malankara Association and Catholicate of East. Therefore, the existence or exercise of autonomy for Parishes has no meaning. Similarly the independence or autonomy in temporal matters is not of any consequence. The Parishes are bound by the Constitution framed in 1934.

True, paragraph 69 of the judgment in **P.M.A.Metropolitan's case** (supra) as extracted above, is a part of the minority judgment, but a perusal of the judgment indicates that the said minority view is not in conflict with the majority view in that case. It is thus evident that the contention that the Parishioners

of the first defendant Church disassociated with the Malankara Church and became part of the Jacobite Syrian Christian Association for its administration, cannot be accepted. As regards the arguments developed on the strength of the decision of this Court reported in **Moran Mar Baselios Marthoma Mathews II v. State of Kerala** (2003 (1) KLT 780), it is seen that the said judgment has been overruled by the Apex Court in **Moran Mar Baselios Marthoma Mathews II v. State of Kerala** [2007 (3) KLT 349(SC)].

20. Coming to the Cross Objection preferred by the plaintiffs in R.F.A.No.320 of 2014, it is to be mentioned that while ordering election to the managing committee of the first defendant Church, the court below permitted defendants 4 and 5 to continue as the office bearers of the trust until new persons are elected in their place. According to the learned counsel for the plaintiffs, the said defendants are persons objecting to the administration of the first defendant church in accordance with the 1934 Constitution and as such, the court below should not have entrusted the administration of the first defendant Church

with them. According to me, there is no illegality whatsoever in the said direction as the same is only an interim arrangement till the election is over, without which there will be a vacuum in the administration of the Church. As regards the right of the plaintiffs to get a declaration that the Parishioners who do not give written oath of allegiance to the 1934 Constitution of the Church have no right to continue as Parishioners of the first defendant Church, I am of the view that such a declaration is unnecessary in the light of the declaration given by the court below that the first defendant is liable to be administered in accordance with the 1934 Constitution of the Church.

In the result, the appeals and the Cross Objection are devoid of merits and the same are, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Kvs/-

(true copy)

P.A. to Judge.