

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

RPNo. 822 of 2015 ()

(AGAINST THE JUDGMENT IN RFA.NO. 193/2014 DATED 21-08-2015)

REVIEW PETITIONER(S)/RESPONDENTS 1, 3, 5 TO 9 IN RFA.NO.193 OF 2014 :

1. ST. MARY'S ORTHODOX CHURCH,
VARIKOLI, VARIKOLI P.O., PUTHENCruz,
REP. BY ITS TRUSTEE.
2. C.A. VARGHESE, AGED 60 YEARS,S/O.ABRAHAM,
CHEMMOTH HOUSE, CHEMMANADU, B.K.PURAM P.O.
3. V.E.THOMAS, S/O.ITTOOP, AGED 64 YEARS,
VELLOOR HOUSE, MATTAKKUZHI, VARIKKOLI P.O.,
PUTHENCruz VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DIST, PIN-682 308.
4. P.A. GEORGE,S/O.ALEXANDER, AGED 61 YEARS,
PADIYIL HOUSE, MATTAKKUZHI, VARIKKOLI P.O.,
KUNNATHUNADU TALUK, ERNAKULAM DIST, PIN-682 308.
5. K.I. YACOB,S/O.ISHAC, AGED 59 YEARS,
KIZHIPILLIL HOUSE, MATTAKKUZHI,VARIKKOLI P.O.,
KUNNATHUNADU TALUK, ERNAKULAM DIST, PIN-682 308.
6. V.V. MATHAI, S/O.VARKEY, AGED 54 YEARS,
VELLOOR PUTHENPURAYIL HOUSE, CHOONDY,
VADYAMBADY P.O., AIKKARANAD SOUTH VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM DIST, PIN-682 308.
7. AJOSH GEORGE, S/O.GEORGE, AGED 32 YEARS,
PADIYIL HOUSE, MATTAKKUZHI,VARIKKOLI P.O.,
PUTHENCruz VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DIST, PIN-682 308.

BY ADVS.SRI.P.J.PHILIP
SRI.K.J.KURIACHAN

RESPONDENT(S)/APPELLANTS AND RESPONDENTS 2 AND 4 AND ADDITIONAL
TENTH RESPONDENT:

1. MATHAI VARGHESE,S/O.VARGHESE, AGED 65 YEARS,
MUTHIRAKALAYIL HOUSE, MATTAKKUZHI,
VARIKOLI P.O., PIN-682 308.

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2. T.M. PAULOSE, S/O.MATHAI, AGED 63 YEARS,
THELAKKAT HOUSE, VARIKOLI P.O.,
PUTHENCROUZ VILLAGE, PIN-682 308.
3. C.E. GEEVARGHESE, AGED 48 YEARS,
S/O.ELIAS, CHENNEKKATTIL HOUSE, MATTAKUZHI,
VARIKKOLI P.O., THIRUVANIYOOR VILLAGE, PIN-682 308.
4. M.C. PAULSON, AGED 58 YEARS,
S/O.CHACKO, MALAI HOUSE, MATTAKUZHI,
VARIKOLI P.O., THIRUVANIYOOR VILLAGE, PIN-682 308.
5. T.T. PAULOSE, AGED 48 YEARS,S/O.THOMAS,
THONNAMATTATHIL HOUSE, MATTAKUZHI,
VARIKKOLI P.O., THIRUVANIYOOR VILLAGE, PIN-682 308.
6. T.V. THOMAS, AGED 54 YEARS,
S/O.VARKEY, THEKKINETH HOUSE, MATTAKUZHI,
VARIKKOLI P.O., THIRUVANIYOOR VILLAGE, PIN-682 308.
7. M.K. PAULOSE, AGED 55 YEARS,
S/O.KURIAKOSE, MUNDAKKAL HOUSE, MATTAKUZHI,
VARIKKOLI P.O., THIRUVANIYOOR VILLAGE, PIN-682 308.
8. BABY JOSEPH, AGED 55 YEARS,
S/O.JOSEPH, PALAKKATTIL HOUSE, MATTAKUZHI,
VARIKKOLI P.O., THIRUVANIYOOR VILLAGE, PIN-682 308.
9. C.C. PHILIP, AGED 55 YEARS,
S/O.CHERIAN, CHAKKYATTIL HOUSE, VARIKOLI P.O.,
PUTHENCROUZ VILLAGE, PIN-682 308.
10. BINOY VARGHESE, AGED 31 YEARS,
S/O.VARGHESE, IKKARAYIL HOUSE, MATTAKUZHI,
VARIKKOLI P.O., PIN-682 308.
11. REV. FR. MATHAI VADAKKINETH,
VADAKKINETH HOUSE, EZHAKKARANAD SOUTH P.O.,
MANEED VILLAGE, PIN-682 308.
12. ADDL.R10: FR. VIJU EALIAS, AGED 32 YEARS,
S/O.T.V. ELIAS, THANNIKUZHAYIL, VETTICKAL,
MULANTHURUTHY VILLAGE, KANAYANNUR TALUK.

R1 TO R9 BY ADV.SRI.P.MARTIN JOSE
R11 BY ADV.SRI.P.VIJAYAKUMAR
R12 BY ADV. SRI.K.PAUL KURIAKOSE

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 30-09-2015 , THE COURT ON 12-10-2015 PASSED
THE FOLLOWING:

R.P.NO.822/2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEX A COPY OF THE DECREE OF THE HONOURABLE SUPREME COURT OF INDIA IN AIR 1995 SC 2001, AIR 1996 SC 3121 AND AIR 1997 SC 1035.

ANNEX B COPY OF THE DECREE SUGGESTED BY THE REGISTRAR OF THE HONOURABLE SUPREME COURT OF INDIA WITH OBJECTIONS BY COUNSEL FOR RESPONDENTS IN C.A. NO.4958-4960 OF 1990.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

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P.B.SURESH KUMAR, J.

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Review Petition No.822 of 2015

in

R.S.A.No.193 of 2014.

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Dated this the 12th day of October, 2015.

O R D E R

Respondents 1, 3 and 5 to 9 in the appeal seek review of the judgment.

2. The appeal was preferred by the plaintiffs in a suit under Section 92 of the Code of Civil Procedure challenging the dismissal of the suit. The suit was concerning the management of the first defendant which is a Parish Church under the Malankara Orthodox Syrian Church ('the Malankara Church' for short). The suit was filed by a few parishioners of the first defendant church, alleging that the first defendant church which is governed by the 1934 Constitution of the Malankara Church, is not being administered in accordance with the said constitution. The

relief claimed in the suit was mainly a decree declaring that the first defendant church is liable to be administered in accordance with the 1934 Constitution of the church. Consequential reliefs were also sought. The defendants contended that the parishioners of the first defendant church are loyal to the Patriarch of Antioch; that they accept only the hierarchy of priests loyal to the Patriarch of Antioch; that the 1934 Constitution of the Malankara Church does not recognize the Patriarch of Antioch and that therefore the Parish Assembly of the first defendant church has adopted the Constitution of Yacobaya Suriyani Christian Association on 30.6.2002. According to the defendants, in the aforesaid circumstances, the plaintiffs are not entitled to the reliefs sought in the suit. The trial court found that the first defendant church is to be administered in accordance with the 1934 Constitution of the Malankara Church. Nevertheless, the suit was dismissed holding that the plaintiffs who do not recognize the Patriarch of Antioch as the supreme spiritual head of the church are not entitled to the reliefs claimed in the suit.

3. After hearing the parties at length, relying on the decision of the Apex Court in **P.M.A.Metropolitan v. Moran Mar Marthoma** (AIR 1995 SC 2001), I have found that the Parish churches under the Malankara Church are to be administered in accordance with the 1934 Constitution and since it is found that the first defendant Church is not being administered in accordance with the said Constitution, the plaintiffs have to succeed. The main argument advanced by the review petitioners to support the decision of the trial court at the time of hearing of the appeal was that the spiritual supremacy of the Patriarch of Antioch has been upheld by the Apex Court in **P.M.A.Metropolitan's case** (*supra*) and therefore, a Parish Church cannot be permitted to be administered as per the 1934 Constitution which does not recognize the Patriarch of Antioch. I have rejected the said argument holding that the 1934 Constitution of the Malankara Church do recognize the Patriarch of Antioch canonically consecrated with the cooperation of the Catholicos as their supreme spiritual head and Article 101 of the 1934 constitution providing

that the Malankara Church shall recognize the Patriarch canonically consecrated with the cooperation of the Catholicos has been upheld by the Apex Court also in the said case. Consequently, the suit was decreed, reversing the decision of the trial court.

4. Before dealing with the various grounds raised in the review petition, I would like to remind myself of the principles governing the exercise of the review jurisdiction conferred on me. Under order 47 rule 1 of the Code of Civil Procedure, a judgment is open to review only if there is an error apparent on the face of the record. An error apparent on the face of the record is an error which is self evident and manifest on the face of the record. It must be an error of inadvertence. An error which could be detected only by a process of reasoning will never be an error apparent on the face of the record. Even an erroneous decision cannot be corrected in exercise of the review jurisdiction. In other words, a review petition has a limited purpose and the same cannot be allowed to be an appeal in disguise. (See **Parsion Devi v. Sumitri Devi** [(1997) 8

SCC 715] and **S.Bagirathi Ammal v. Palani Roman Catholic Mission** [(2009)10 SCC 464]).

5. Heard the learned counsel for the review petitioners.

6. The first and foremost ground urged by the review petitioners is that the Apex Court has upheld the inherent power of general supervision of the Patriarch of Antioch for the spiritual government of the Malankara church and the said power is not controlled by the 1934 Constitution of the Church. The said argument was raised relying on paragraphs 89, 135(a) and 135(b) of the judgment of the Apex Court in **P.M.A.Metropolitan's case** (*supra*) and the decision of the Travancore Royal Court of 1889 as upheld by the Apex Court in the said case. According to the review petitioners, the judgment sought to be reviewed was rendered without understanding the said legal effect of the decision of the Apex Court in **P.M.A.Metropolitan's case** (*supra*). It was contended by the review petitioners that if the judgment of the Apex Court is not understood in the aforesaid fashion, the

Malankara Church would become an autocephalous church. In other words, according to the review petitioners, the Apex Court has not upheld Article 101 of the 1934 Constitution and the declaration of law made by the Apex Court as contained in paragraph 142(4) of the judgment has to be understood independent of Article 101 of the 1934 Constitution.

7. As noticed above, the only issue in the appeal was as to whether the trial court was justified in non-suiting the plaintiff for the reason that the 1934 Constitution of the Malankara Church does not recognize the Patriarch of Antioch and I have decided the said issue in favour of the plaintiffs relying on paragraph 141 of the judgment of the Apex Court in **P.M.A.Metropolitan's case** (*supra*), wherein the Apex Court has categorically held that the 1934 Constitution of the church shall govern and regulate the affairs of the Parish churches too in so far as the said Constitution provides for the same. The issue relating to the spiritual supremacy of the Patriarch of Antioch, according to me, did not arise for consideration at

all in the appeal. Nevertheless, when the review petitioners attempted to support the decision of the trial court relying on paragraph 142(4) of the very same judgment, I have rejected the argument advanced in that connection by reconciling the finding of the Apex Court contained in paragraph 141 of the judgment and the conclusion contained in paragraph 142(4) of the judgment, holding that the Malankara Church do recognize the Patriarch of Antioch as their supreme spiritual head as provided for in the 1934 Constitution. The aforesaid conclusion is my understanding of the decision of the Apex Court in **P.M.A.Metropolitan's case** (*supra*). If the said understanding of mine is incorrect, it cannot be said that the same is an error apparent on the face of the record to invoke the review jurisdiction of this Court. The contention of the review petitioners that the judgment in appeal is to be reviewed on the aforesaid ground is, therefore, unsustainable.

8. The next ground urged by the review petitioners is that since the Apex Court in **P.M.A.Metropolitan's case** (*supra*) declined the relief

asked for by the Catholicos faction that the Malankara Church is not a union of autonomous churches, the observation made in the judgment that the first defendant is a constituent Parish church of Malankara Church is beyond dispute is a misconception. Adv.K.J.Kuriachan argued for the review petitioners, in the appeal. Adv.Kuriachan raised all the arguments on the premise that the first defendant church is a constituent Parish church of Malankara church. The fact that the first defendant church has sent representatives to the Malankara Association as revealed from the records produced in the suit were not disputed by him. The review petitioners, in the circumstances, cannot be heard to contend that the first defendant church is not a constituent Parish church of Malankara Church for the first time in the review petition through another lawyer who instituted the review petition on their behalf.

9. Another ground raised to seek review of the judgment is that while deciding the appeal, the points arising for consideration in the appeal were not formulated and stated in the judgment as provided for under Rule 31 of

Order 41 of the Code of Civil Procedure. To a specific question put to the learned counsel for the review petitioners as to the point which arose for consideration and omitted to be considered in the judgment, the learned counsel was unable to give any answer. In so far as the review petitioners have no case that any point arising for consideration in the appeal has not been considered in the judgment sought to be reviewed, there is no substance in this ground also, for, it is now settled that only substantial compliance of the provisions in Rule 31 of Order 41 is contemplated by law(See **Parimal v. Veena** [(2011) 3 SCC 545]).

10. The next ground on which review of the judgment was sought is that the decisions of the general body of the first defendant church in 1972 rejecting Kalpana/Order by the Malankara Metropolitan/Catholicos of Malankara Church, communicating decisions through registered letter, continuance of spiritual and temporal administration as a Parish church of the Jacobite Church under Patriarch of Antioch without any objection from the

Catholicos faction, non-participation in association meeting convened through the observer appointed by Supreme Court and then sending representatives to the Jacobite Syrian Christian Association after 2002 proved through oral and documentary evidence etc. have not been considered in the judgment sought to be reviewed. There is no substance in the said ground also as the review petitioners have no case that the said documents were relevant in the context of deciding any of the issues arising for consideration in the appeal.

11. At the time of hearing the review petition, the learned counsel for the review petitioners pointed out that if the review petition is dismissed, the present arrangement as regards the conduct of the religious services in the first defendant church shall be directed to be maintained for quite some time to enable the review petitioners to challenge the decision in appeal before the Apex Court. First of all, there is no scope for granting such a relief in this review petition. Further, at the time of disposal of the appeal, the learned counsel who was

appearing for the review petitioners then made a similar request and as per order on I.A.No.1817 of 2015, I have permitted the arrangement concerning the conduct of the religious services at the first defendant church to continue for a further period of 45 days. Later, the review petitioners though sought extension of the order passed on I.A.No.1817 of 2015, the said request was declined as per order on I.A.No.1925 of 2015. In the light of the orders passed on the above interlocutory applications, the review petitioners cannot seek further extension of the arrangement concerning the conduct of religious services.

In the result, the review petition is devoid of merits and the same is accordingly dismissed.

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

Kvs/-

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PA TO JUDGE.