

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

RPNo. 883 of 2015 ()

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

REVIEW PETITIONER/4TH RESPONDENT:

**REV. FR MATHAI VADAKINEDATH,
VADAKINEDATH HOUSE, EZHAKKARANAD (S).P.O.,
ERNAKULAM.**

**BY SRI.K.RAMAKUMAR,SENIOR ADVOCATE
ADVS. SRI.P.VIJAYAKUMAR
SRI.G.RENJITH**

RESPONDENTS/PETITIONERS AND RESPONDENTS 1 TO 3 IN WP(C):

- 1. MATHAI VARGHESE, S/O. VARGHESE, AGED 65 YEARS,
MUTHIRAKKALAYIL HOUSE, MATTAKUZHI,
VARIKOLI P.O, ERNAKULAM -682 308**
- 2. T.M. PAULOSE, S/O.MATHAI,AGED 63 YEARS,
THELAKKAT HOUSE, VARIKOLI P.O.,
PUTHENCruz VILLAGE -682 308**
- 3. C.E.GEEVARGHESE, AGED 48 YEARS,
S/O. ALIAS, CHENNEKKATTIL HOUSE, MATTAKUZHI,
VARIKOLI P.O, THIRUVANIYOOR VILLAGE- 682 308**
- 4. M.C.PAULSON, AGED 58 YEARS,
S/O. CHACKO, MALAI HOUSE, MATTAKUZHI,
VARIKOLI P.O, THIRUVANIYOOR VILLAGE- 682 308**
- 5. T.T.PAULOSE, AGED 48 YEARS,
S/O. THOMAS, THONNAMATTATHIL HOUSE, MATTAKUZHI,
VARIKOLI P.O, THIRUVANIYOOR VILLAGE -682 308**
- 6. T.V.THOMAS, AGED 54 YEARS,
S/O. VARKEY, THEKKINETH HOUSE, MATTAKUZHI,
VARIKOLI P.O, THIRUVANIYOOR VILLAGE- 682 308**
- 7. M.K POULOSE, AGED 55 YEARS,
S/O.KURIAKOSE, MUNDAKKAL HOUSE, MATTAKUZHI,
VARIKOLI P.O, THIRUVANIYOOR VILLAGE -682 308**

R.P.NO.883/2015

8. BABY JOSEPH, AGED 55 YEARS,
S/O. JOSEPH, PALAKKATTIL HOUSE, MATTAKUZHI,
VARIKOLI P.O, THIRUVANIYOOR VILLAGE -682 308
9. C.C.PHILIP, AGED 55 YEARS,
S/O. CHERIAN, CHAKKYATTIL HOUSE, VARIKOLI P.O.,
PUTHENCROUZ VILLAGE -682 308
10. C.A.VARGHESE ,AGED 60 YEARS,
S/O. ABRAHAM, CHEMMOTH HOUSE, CHEMMANADU,
B.K.PURAM P.O.- 682 308
11. REV. FR. VIJU EALIAS, S/O. T.V.EALIAS,
THANNIKUZHIYIL, VETTICKAL, MULANTHURUTHY P.O,
KANAYANNUR TALUK, ERNAKULAM DISTRICT.
12. ST.MARY'S ORTHODOX CHURCH,VARIKOLI,
VARIKOLI P.O,-682 308 PUTHENCROUZ,
REP BY ITS TRUSTEE.
13. BINOY VARGHESE, AGED 31 YEARS,
S/O. VARGHESE, IKKARAYIL HOUSE, MATTAKUZHI,
VARIKOLI P.O, PIN -682 308
14. V.E.THOMAS, AGED 64 YEARS,
S/O. ITTOOP, VELLOOR HOUSE, MATTAKUZHI,
VARIKOLI P.O, PUTHENCROUZE VILLAGE,
KUNNATHUNADU TALUK,ERNAKULAM DISTRICT -682 308
15. P.A.GEORGE, AGED 61 YEARS,
S/O. ALEXANDER, PADIYIL HOUSE, MATTAKUZHI,
VARIKOLI P.O, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT 682 308
16. K.I.YACOB, AGED 59 YEARS,
S/O. ISAHAC, KIZHIPILLIL HOUSE, MATTAKUZHI,
VARIKOLI P.O, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT -682 308
17. V.V.MATHAI, AGED 54 YEARS, S/O.VARKEY,
VELLOOPUTHENPURAYIL HOUSE, CHOONDY,
VADYAMBADI P.O, AIKKARANAD SOTH VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT -682 308
18. AJOSH GEORGE, AGED 32 YEARS,
S/O. GEORGE, PADIYIL HOUSE, MATTAKUZHI,
VARIKOLI.P.O, PUTHENCROUZ VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT- 682 308

R1 TO R9 BY ADV.SRI.P.MARTIN JOSE
R10 BY ADV.SRI.K.J.KURIACHAN
R11 BY SRI.K.PAUL KURIAKOSE

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 07-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.P.NO.883/2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEX 1 COPY OF THE PLAINT IN OS.NO.47/2015 IN MUNSIFF COURT,
KOLENCHERRY.**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

P.B.SURESH KUMAR, J.

= = = = =

Review Petition No.883 of 2015

in

R.F.A.No.193 of 2014.

= = = = =

Dated this the 7th day of October, 2015.

O R D E R

The fourth respondent in the appeal seeks 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. The fourth defendant was the Vicar of the first defendant church appointed in accordance with the 1934 Constitution at the time of institution of the suit. As such, a decree of mandatory injunction directing the fourth defendant to convene the Parish Assembly of the first defendant church and elect its office bearers in accordance with the said Constitution was also sought in the suit. 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. After hearing the parties at length, I have found that the Parish churches under the Malankara church are to be administered in accordance with the 1934 Constitution and consequently decreed the suit, reversing the decision of the trial court.

3. During the pendency of the appeal, the fourth defendant filed I.A.No.1286 of 2014 seeking an order of temporary injunction restraining the plaintiffs in the suit from obstructing him from conducting religious services in the first defendant church. The said interlocutory application was heard along with the appeal. It was alleged by the fourth defendant in the said application that the plaintiffs are obstructing him from conducting religious services in the first defendant church on the ground that he has switched over his loyalty to the defendants. The

plaintiffs objected to the said application contending that the fourth defendant was removed from the Vicarship of the first defendant church and another Priest was appointed in his place as Vicar of the first defendant church by the Metropolitan of the Kandanadu East Diocese. There was also an application by the person appointed in the place of the fourth respondent as the Vicar to get himself impleaded in the appeal as I.A.No.1431 of 2014. Since it was found *prima facie* that the fourth defendant was removed from the office of the Vicar of the first defendant church, and that the fourth defendant is challenging his removal from the Vicarship of the first defendant church in the said application for injunction, I have dismissed the application for injunction holding that the dispute as to the correctness of the removal of the fourth defendant is a dispute falling beyond the scope of the appeal, without prejudice to the rights, if any, of the fourth defendant to challenge his removal from the Vicarship of the first defendant church in appropriate proceedings. As per the very same order, I have also allowed the impleading petition filed by the Priest who was

appointed in the place of the fourth defendant as Vicar of the first defendant church and impleaded him as the 10th respondent in the appeal. On the same day, the appeal was also disposed of on merits.

4. The grievance highlighted by the fourth defendant in this review petition is that in the meanwhile, based on the observation made by this Court at the time of hearing of I.A.No.1286 of 2014, the fourth defendant filed a suit as O.S.No.47 of 2015 before the Munsiff's Court, Kolenchery with appropriate applications for interim reliefs challenging his removal from the office of the Vicarship of the first defendant church and that the order passed by this Court in I.A.No.1431 of 2014 would prejudicially affect his interests in O.S.No.47 of 2015.

5. There is absolutely no basis for the apprehension raised by the fourth defendant. I have not decided the correctness or otherwise of the decision of the Metropolitan of the Kandanadu East Diocese by which the fourth defendant was removed from the Vicarship of the first defendant church and the 10th respondent was

appointed in his place. The application filed by the 10th respondent for impleading him as a party to the appeal was allowed as the presence of a Vicar appointed under the 1934 Constitution of the Malankara Church was necessary to decide the issues in dispute between the parties in the appeal completely. The decision on I.A.No.1431 of 2014, in the circumstances, will not preclude the Munsiff's Court, Kolenchery in deciding the said suit and the application filed in the said suit for interim reliefs, in accordance with law. The review petition, in the circumstances, is dismissed with the aforesaid observations.

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

Kvs/-

// true copy //

PA TO JUDGE.