

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

RSA.No. 572 of 2015 ()

**(AGAINST THE JUDGMENT AND DECREE IN AS.NO. 67/2012 OF PRINCIPAL
SUB COURT, ERNAKULAM DATED 19-12-2014)**

**(AGAINST THE JUDGMENT AND DECREE IN OS.NO. 627/2005 OF
IIIRD ADDL.MUNSIFF & RENT CONTROL COURT, ERNAKULAM DATED 11-01-2012)**

APPELLANT/APPELLANT/DEFENDANT:

**A.P.DAISY, D/O.A.J.PAUL,AGED 45 YEARS,
ANJANICKAL HOUSE, CHAMMANI ROAD,
KOCHI-682 017.**

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS:

- 1. BISHOP DR. THOMAS MAR KOORILOSE,
S/O.NINAN KOSHY, BISHOP,AGED 58 YEARS,
MALANKARA CATHOLIC DIOCESE, MUVATTUPUZHA,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER,
REV.FR.KURIEN, VIMALAGIRI BISHOP'S HOUSE, MUDAVOOR P.O.,
MUVATTUPUZHA-686 669.**
- 2. BISHOP DR.ABRAHAM MAR JULIOUS,
S/O.LATE VARGHESE,AGED 64 YEARS,
BISHOP OF MUVATTUPUZHA MALANKARA CATHOLIC DIOCESE,
RESIDING AT: VIMALAGIRI BISHOPS HOUSE,
MUDAVOOR.P.O., MUVATTUPUZHA-686 669**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 07-10-2015, THE COURT ON 27-10-2015 DELIVERED THE
FOLLOWING:**

sts

C.R.

P.B.SURESH KUMAR, J.

R.S.A. No.572 of 2015

Dated 27th October, 2015

J U D G M E N T

The defendant in a suit for eviction is the appellant in this second appeal.

2. The plaint schedule building which was owned by the Thiruvalla Diocese of the Malankara Catholic Church was let out to the defendant on 1.8.1997 by its Bishop. Later, a new Diocese of the church was formed as the Muvattupuzha Diocese by bifurcating the Thiruvalla Diocese of the church. Since the plaint schedule building is situated within the jurisdictional limits of the Muvattupuzha Diocese, the Bishop of the said Diocese instituted the suit when the defendant failed to surrender vacant possession of the building as per the terms of the lease. The defendant resisted the suit. The main contention raised by the defendant was that the suit property

belongs to the Thiruvalla Diocese and the suit instituted by the Bishop of the Muvattupuzha Diocese is, therefore, not maintainable. The trial court rejected the contentions of the defendant including the contention referred to above and decreed the suit. The defendant challenged the decision of the trial court in appeal. The appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. The defendant who is aggrieved by the concurrent decisions of the courts below has thus come up in this Second Appeal.

3. Heard Adv.V.Philip Mathews for the appellant.

4. The only point urged by the learned counsel for the appellant at the time of hearing was that the plaint schedule building being a property owned by the Thiruvalla Diocese of the church, the suit instituted by the Bishop of the Muvattupuzha Diocese is not maintainable. The fact that the Thiruvalla Diocese of the church was bifurcated and the suit property was brought within the jurisdictional limits of the newly formed Muvattupuzha Diocese, as established by the

plaintiff in the suit, is not disputed by the learned counsel. On the other hand, the contention of the learned counsel was that the bifurcation of the Thiruvalla Diocese does not automatically confer ownership of the properties on the newly formed Diocese. In other words, the contention of the learned counsel was that in the absence of any registered instrument transferring the properties to the Muvattupuzha Diocese, the ownership of the properties continues to be with the Thiruvalla Diocese.

5. In **James Chinnamma v. Joseph Abraham** (1962 KLT 240), after referring to a few passages from the book 'Civil Ecclesiastical Law' by Jerome A. Saldanha, this Court held that ecclesiastical properties of the churches in India are vested in the diocese as represented by its Bishop and the diocese is a legal person. Ext.A9 is the title deed of the property in which the plaint schedule building is situated. Ext.A9 indicates that the said property was acquired by the Thiruvalla Diocese of the church, represented by its Bishop. The new diocese formed by carving out a portion of the old diocese

can be considered only as the successor-in-interest of the old diocese in so far as the properties are situated within the jurisdictional limits of the new diocese. It cannot be contended that a successor-in-interest cannot institute a suit in respect of the property. If that be so, the Muvattupuzha Diocese is entitled to institute the present suit for eviction of the tenants in the building situated within its jurisdictional limits. Coming to the authority of the Bishop of Muvattupuzha Diocese to institute the suit, it is to be noted that Christian churches are also religious endowments. In **Jagadindra Nath Roy v. Hemanta Kumari Debi** [ILR Vol.32 Calcutta 129], in the context of considering the authority of the Shebait to Institute a suit on behalf of a religious endowment, the Privy Council took the view that in so far as the Shebait is in possession and management of the endowment, he has every right to bring whatever suits that are necessary for the protection of the properties of the endowment. The relevant passage in the said decision reads thus:

"But assuming the religious dedication to have been of the

strictest character, it still remains that the possession and management of the dedicated property belongs to the sebit. And this carries with it the right to bring whatever suits are necessary for the protection of the property."

The fact that the suit property is presently under the management of the Bishop of Muvattupuzha Diocese is not in dispute. As such, the defendant cannot challenge the authority of the Bishop of Muvattupuzha Diocese to Institute the suit on behalf of the said Diocese. The second appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed *in limine*.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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