

RESERVED ON : 12 ..04..2017

DELIVERED ON : 21..04..2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

A.S.No.672 of 2012

1. Mr. V.J.Chacko (deceased)...(1st Appellant deleted vide order of Court dt.14/3/2017 by NSKJ,made in M.P.1/15 in AS.NO.672/2012)
 2. Mr. P.C.Joseph
 3. Maj. Gen.Jose Joseph Manavalan(Retd)
 4. Mr.Peter K.Manavalan
 5. Mr. George Pius Tharayil
 6. Mr.V. Mathew Antony
 7. Ms. Elizabeth Joseph
 8. Mr.S.Premi George
 9. Mr.T.S.Jose
 - 10.Mr.Paul Antony
 - 11.Mrs. Teresa Sitaraman
 - 12.Mr.T.P. Jolly
 13. Mr.Pauk K Jacob
 14. Mrs.Indra Antony
 15. Mr.Abraham Pius Tharayil .. Appellants/petitioners
- Vs.

St.Thomas Pastoral Centre

Rep.by its Parish priest

No.16, Aynavaram Road

Aynavaram,

Chennai - 600 023.

.. Respondent/2nd defendant

Prayer:- This Appeal suit has been filed under Section 96 of CPC to set aside the judgment and preliminary decree of the Additional District Judge, Fast Track Court No.II, Chennai-I dated 19.04.2011 and made in I.A.No.57 of 2010 in O.S.No.7839 of 2010.

For Appellants : Mr. N.L.Rajah,
Senior Counsel for
M/s. Arun Anbumani

For Respondent : Mr.N.C.Ashok kumar

J U D G M E N T

Aggrieved over the judgment and decree passed by the trial Court rejecting plaint under Order 7 Rule 11 of CPC, the present appeal came to be filed by the plaintiffs.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The brief facts leading to the filing of the appeal are as follows:

The plaintiffs are Roman Catholics and most of them are active members of the Parish Councils, its welfare Association and the Basic Christian Communities. They are also members of the Kerala Catholic Society and the Kerala Catholic Association of Madras comprising numerous Catholics hailing from the ancient Syro-Malabar Rite Church. Known for their deeply-held Catholicism, the plaintiffs have been well integrated into the Metropolitan Catholic community and many of them have held important responsibilities in public life. Catholic Church in India is a communion of Churches. There are 23 individual churches of independent rites like Latin, Syro Malabar, SYro Malankara, Alexandrian, Antiochian etc. All of them are constituent parts of the one, Holy, Catholic and Apostolic Church. In India there are three important sui juris churches, viz., Latin, Syro - Malabar and Syro Malankara and that they are found in Chennai in the Archdiocese of Madras - Mylapore. As per rites set out in Canon Law with regard to Catholic Christians, it has nothing to do with any language. A rite is the liturgical, theological, spiritual and disciplinary culture consequent on circumstances of history of a distinct people, by which its own manner of living the faith is manifested in each Church sui juris. Rite is decided by parentage, marriage or baptism.

3.1. It is stated that during early days, the Syro-Malabar Rite Catholics did not have any facility to have services conducted in their rite. Hence, in the year 1983, the Syro-Malabar synod had entrusted the responsibility of looking after the pastoral care of the Syro-Malabar Catholics in Chennai to the diocese of Irinjalakuda in Kerala. A priest was appointed with the approval and under the control of the Archbishop for this work in the same year itself. A center

under the name "St. Thomas Pastoral Center" was established in the year 1985 on instructions from Rome. However all along till 2005, it was only a Pastoral Centre. Even prior to 2005, more priests were allotted from the diocese or Irinjalakuda to look after the growing spiritual needs.

3.2. It is further stated that on 18.01.1989 Archbishop Casimir Gnanadickam had given general delegation to the priest in charge of St. Thomas Pastoral Centre to bless marriages at the centre with certain conditions. Today, besides the Pastoral Centre, there are 13 other churches built and blessed in various parts of Chennai. There are 8 diocesan priests belonging to the diocese of Irinjalakuda, who are fully engaged in looking after the spiritual needs of the Syro-Malabar rite Catholics and through them, there are 4 religious priests and over 75 religious sisters, who are also engaged in the mission work. There are 19 units and 17 prayer groups functioning at present. However, independent Parish had not been established for the Syro Malabar Church since the need of the Syro Malabar Catholics was being looked after very well by the Archdiocese of Madras - Mylapore and the faithful of eastern rites did not desire any segregation.

3.3. According to the plaintiffs, few Syro -Malabar Rite Catholics made several oral representations to the different ecclesiastical authorities requesting a parish for the Syro-Malabar Rite Catholics, within the Archdiocese of Madras - Mylapore for effective administration. However, it was not granted due to various linguistic, social, political and practical reasons raised by a group of Syro-Malabar Catholics themselves including the plaintiffs herein who did not desire segregation from the Latin Rite Catholics offered in Madras-Mylapore Archdiocese. Synod Preparatory Committee, who studied the situation in 2002 / 2003 sought opinions from the faithful. The majority felt that the spiritual needs of the Syro- Malabar and SYRO Malankara Catholics are well looked after by the present arrangement. In March 2003, 370 members participated and voted in Diocesan Synod, in which, by an overwhelming majority, it has been decided to steer clear of the Syro Malabar Church's advances and designs. In fact, majority of the members' intention was that all the Parishes of Madras Mylapore be offered to Syro Malabar Rite Services.

3.4. However, the 1st defendant, without taking into consideration of the majority view, took everyone unawares on 21st December 2008, by passing a decree giving away to them ten parishes from within the limits of the Archdiocese contravening the Synodal determination. Further, after granting of these 10 parishes, separate buildings are being constructed to form these parishes and family cards are being issued to the faithful, who are now being forced to separate

from the Latin rite in the Madras - Mylapore diocese. These 10 parishes have now been brought within jurisdictional and juridical control of the 2nd defendant i.e. St.Thomas Pastoral Center.

3.5. It is the contention of the plaintiffs that the 1st defendant's decree of 2008 is ill considered and its unsettling effects are many. The shifting of people from one rite to another against their will is a coercive process for which the law will not permit. By disorienting them from the Latin rite into which they are fully integrated, the 1st defendant has caused disruption of life, damaging the whole social fabric and destroying the spirit of integration among the people which the custom and practice has striven hard to create and establish.

3.6. The freedom to practice one's religion in a rite into which one has been accepted and conduct one's worship in accordance with the rite of one's choice is a prerogative right which it is a moral offence to interfere with. The 1st defendant has coldly and blatantly tampered with the people's right to faith, belief and worship affecting their freedom of conscience and their practice of religion, which in fact, offends against the Preamble and violates Article 25 of the Constitution of India. Hence, suit has been laid for declaration of decree passed by the 1st defendant on 21st December 2008 creating and allotting 10 parishes to the Syro Malabar Rite as illegal and non-est in law and for permanent injunction.

3.7. During trial, the application has been taken out by the petitioner/2nd defendant to reject the plaint on the ground that the suit itself is barred by Canon law. The suit itself is filed for declaration declaring the decree passed by the 1st defendant as null and void.

3.8. According to the petitioner /original 2nd defendant, as per Canon law, as against the decree passed, the appeal lies only before the Tribunal and the Civil Court has no jurisdiction to entertain the suit. Based on the above application, the trial Court rejected the plaint. Aggrieved over the same, the present appeal came to be filed by the original plaintiffs.

4. The learned counsel for the appellants/respondents/plaintiffs, would submit that the freedom to practice in one's religion in a rite into which one has been accepted and conduct one's worship in accordance with the rite of one's choice are prerogative right and the same have been disrupted by the 1st defendant by passing the instant decree. It is submitted that the plaintiffs are all from the Syro Malabar Rite Catholics and in all these days, they have been taken care of very well by the Archdiocese of Madras-Mylapore. It is further submitted that the plaintiffs, who are all along followed the Latin Rite Catholics, have been suddenly segregated by passing decree by the 1st defendant.

Hence it is the contention of the learned counsel that the Civil Court has jurisdiction to decide the validity of the order passed by the 1st defendant.

5. The learned counsel for the appellants/respondents/plaintiffs vehemently contended that the plaintiffs' freedom to practice their religion in a rite, which has been accepted for generation, cannot be taken away by passing some orders by the 1st defendant. It is submitted that, in fact, the order passed by the 1st defendant in violation of Article 25 of the Constitution of India. Hence, it is the contention of the learned counsel for the appellants that the Trial court, without any justification and merely relying upon the judgment of the Division Bench of this Court, has rejected the plaint. Therefore, it is submitted that the judgment and decree of the Trial Court rejecting the appeal is liable to be set aside.

6. In support of his arguments, the learned counsel has placed reliance on the judgments reported in AIR 1977 Kerala 337 (VARKEY AND ANOTHER v. ST. MARY'S CATHOLIC CHURCH AND OTHERS); and 1995 Supp (4) SCC 286 (MOST REV. P.M.AMETROPOLITAN AND OTHERS V. MORAN MAR MARTHOMA AND ANOTHER) and also unreported judgment of this Court dated 15.06.2016 made in CRP.No.1587 of 2016.

7. Per contra, the learned counsel appearing for the respondents/defendants submitted that only on the basis of Canon law, the 1st defendant has passed the decree and hence, the Civil Court has no jurisdiction to decide the same. The learned counsel further submitted that the Canon law provides remedy for the aggrieved person and as per Can.1400, the issue in question has to be decided only by the Superior or by an Administrative Tribunal. Hence, it is the contention of the learned counsel that Civil Court has no jurisdiction to entertain the suit and, therefore, the plaint has been rightly rejected by the trial Court. Thus, the learned counsel prayed for dismissal of the appeal.

8. In support of his contention, the learned counsel has placed reliance on the judgment reported in 2003 (2) CTC 577 (C.S.ROBERT AND ANOTHER V. M.KANAGAPPAN AND 8 OTHERS).

9. In the light of the above submissions, now the points that arise for consideration in this appeal are as follows:

1. Whether the suit is barred by Canon law and if so, the Civil Court has no jurisdiction to entertain the suit?
2. To what relief, the appellants/ plaintiffs are entitled to?

10. Admittedly, the suit has been originally filed by the plaintiffs for declaration to declare the decree passed by the 1st defendant in establishing 10 Parishes separately for the Syro -Malabar Catholics as null and void. In the plaint, it is specifically pleaded by the plaintiffs that they belong to Syro-Malabar Rite Catholics. Since, during earlier days,

they did not have any facility to have services conducted in their rite from 1983, the Syro-Malabar Synod had entrusted the responsibility of looking after the pastoral care of the Syro-Malabar Catholics in Chennai to the diocese of Irinjalakuda in Kerala. Accordingly, a priest was appointed on the same year. Thereafter, a centre under the name "St. Thomas Pastoral Centre" was established in the year 1985 and on 18.1.1989, Archbishop Casmir Gnanadickam had given general delegation to the priest in charge of St. Thomas Pastoral Centre to bless marriages at the centre with certain conditions. Today, besides the Pastoral Centre, there are 13 other churches built and blessed at various places and 8 diocesan priests belonging to the diocese of Irinjalakuda, are also engaged in looking after the spiritual needs of the Syro - Malabar Rite Catholics.

11. It is the case of the plaintiffs that the Syro-Malabar Catholics has been looked after very well by the Archdiocese of Madras - Mylapore and the faithful of eastern rights did not desire any segregation. They have been followed Latin Rite Catholics offered in Madras - Mylapore Archdiocese from the very beginning. Even in the Synod meeting, the majority of the members have given consent to follow the Latin Rite Catholics. But the 1st defendant, without taking into consideration all these facts, has passed the decree establishing separate parishes under different Rites. The crux of the issue pleaded in the plaint is that the plaintiffs, in fact, are not willing for any segregation from the Latin Rite Catholics offered in Madras-Mylapore Archdiocese.

12. It is the grievance of the plaintiffs that, in view of the establishment of separate parishes, the plaintiffs were forced to separate from Latin Rite in the Madras - Mylapore diocese. Hence, it is the contention of the learned counsel for the plaintiffs that the freedom to practice in one's religion in a rite into which one has been accepted and conduct one's worship in accordance with the rite of one's choice are prerogative right and the same have been interfered with by the order of the 1st defendant and in fact, which is in violation of Article 25 of the Constitution of India and also against the preamble. The entire pleadings of the plaint would clearly show that since the plaintiffs' right to perform religious practice has been encroached upon by the first defendant by passing the aforesaid decree, the plaintiffs have filed the civil suit.

13. In this regard, it is useful to refer the judgment of the Hon'ble Apex Court in MOST REV.P.M.A.METROPOLITAN AND OTHERS V. MORAN MAR MARTHOMA AND ANOTHER (cited supra), wherein the Hon'ble Apex Court, while deciding the dispute between two rival groups of Malankar Syrian Orthodox Church, i.e., Patriarch of Antioch and Catholics with regard to spiritual and temporal powers, has dealt with the jurisdiction of the Civil Court to entertain the such dispute. In

paragraphs 41 to 43, it has been held as follows:

"... .. 41. Even the argument that the declaration that the Church was autocephalous or episcopal is cognizable only in the ecclesiastical jurisdiction and the civil courts could not embark on such an enquiry does not appear to be well-founded. A civil court may be precluded from deciding what rites are necessary to impart religious character. For instance, whether kaivapu, that is placing of the hand by the spiritual head for ordination is necessary or Morone, that is the oil of see must be there may be a matter for the Synod. But who has a right to perform it or whether it has been performed as provided in the religious book and whether a church has become autocephalous due to adoption of Constitution by a Synod are matters which can surely and certainly be decided by the courts."

42. The submissions do not appear to stand the test in light of what has been stated earlier. The relevant passage from Halbury's Laws of England have already been extracted to demonstrate that the ecclesiastical law of England does not apply to colonies. There was no statute framed even during British regime which had adopted the statutory or common law to the churches in India. The mere fact that the churches in England are governed by ecclesiastical law could by no stretch of imagination furnish foundation for the submission that the churches in India would also be governed by ecclesiastical law. The jurisdiction of courts depends either on statute or on common law. The jurisdiction is always local and in absence of any statutory provision the cognizance of such dispute has to be taken either by a hierarchy of ecclesiastical courts established in the country where the religious institutions are situated or by a statutory law framed by parliament. Admittedly no law in respect of Christian churches has been framed, therefore, there is no statutory law. Consequently any dispute in respect of religious office in respect of Christians is also cognizable by the civil court. The submission that the Christians stand on a different footing than Hindus and Buddhists, need not be discussed or elaborated. Suffice it to say that religion of Christians, Hindus, Muslims, Sikhs, Buddhists, Jains or Parsees may be different but they are all citizens of one country which provides one

and only one forum that is the civil court for adjudication of their rights, civil or of civil nature.

43. In reading Section 9 widely and construing it expansively the jurisdiction to entertain a suit for declaration whether the church was episcopal or congregational and whether the appellants could have been ordained by the Patriarch when it was contrary to the earlier decision given by this Court that the ordination was required to be approved by Synod, the Court is not being asked to adjudicate on faith but whether the exercise of right in respect of faith was valid. The Grace no doubt comes from Patriarch and on that there is no dispute but whether the Grace came in accordance with the Canon or the Constitution is certainly a matter which would fall within Section 9 CPC. Status and office are no doubt different but what was challenged is not the status or faith in Patriarch but the exercise of right by Patriarch which interfered with the Office of Catholico held validly. Apart from it, as stated earlier, after coming into force of the Constitution, Article 25 guarantees a fundamental right to every citizen of his conscience, faith and belief, irrespective of caste, creed and sex, the infringement of which is enforceable in a court of law and such court can be none else except the civil courts. It would be travesty of justice to say that the fundamental right guaranteed by the Constitution is incapable of enforcement as there is no court which can take cognizance of it. There is yet another aspect of the matter that Section 9 debars only those suits which are expressly or impliedly barred. No such statutory bar could be pointed out. Therefore, the objection that the suit under Section 9 CPC was not maintainable cannot be accepted. ... "

On reading of the entire judgment of the Hon`ble Apex Court, more particularly, in paragraphs 41 to 43, it is clear that, after coming into force of the Constitution, Article 25 guarantees a fundamental right to every citizen of his conscience, faith and belief, irrespective of caste, creed and sex, the infringement of which is enforceable in a court of law and such court can be none else except the civil courts. It would be travesty of justice to say that the fundamental right guaranteed by the constitution is incapable of enforcement as there is no court which can take cognizance of it. Similarly, it is held that Section 9 of the CPC debars

only those suits which are expressly or impliedly barred. It is further held that Civil Court jurisdiction cannot be ousted.

14. In the unreported judgment dated 15.06.2016 in PASTOR /CHAIRMAN V. ARON AULSAMI (C.R.P.(PD) No.1587 of 2016), this Court, relying upon the aforesaid judgment of the Hon`ble Apex Court, has held that Civil Court has jurisdiction to decide the dispute regarding rites.

15. Similarly, in VARKEY AND ANOTHER V. ST.MARY'S CATHOLIC CHURCH AND OTHER (cited supra), it has been held as follows:

"That in suits relating to ritual or religious observance only the Civil Courts in this Country have no jurisdiction is undeniable. On the other hand, it is equally clear that Courts of Justice are bound to enquire into questions of religion or ritual which are material for the determination of civil rights in dispute between the parties.

When the matter is a mixed spiritual and temporal character, the question will depend upon the nature of the connection between the facts and will be, infact, whether the spiritual question is so intimately connected with the temporal as to be inseparable from it. If such is the case, it would be the duty of the Courts in trying the civil disputes to enquire into the spiritual matter thus intimately related. "

16. In C.S.ROBERT AND ANOTHER V. M.KANAGAPPAN AND 8 OTHERS (cited supra), the Division Bench of this Court, by relying upon various provisions in the Canon law with regard to the affairs of the church, has held that the plaintiffs cannot claim absolute right of administration of church. Therefore, it has been held that the plaintiffs therein cannot succeed in seeking declaration that the church properties belonged to the entire Catholic public of Vakkampatti village. Only applying the Canon law, the Division Bench of this Court has held that Church is the property of Bishop and other church authorities as soon as it is consecrated irrespective of fact that particular worshipper contributed for construction of church. Only relying upon the various Canon law, this Court has come to the conclusion that the individual cannot claim any absolute right over the Church properties. Therefore, the said judgment cited by the learned counsel for the respondents/defendants will not in any way helpful to decide the jurisdiction of the Civil Court.

17. In the case on hand, the entire pleadings of the plaint would clearly show that the plaintiffs' freedom to follow the Latin Rites and that their constitutional right to practice religion in a Rite, which has been accepted by them and followed by them for generations, have been disrupted.

The pleadings would further show that the right guaranteed under Constitution of India has also been violated. Hence, the plaintiffs have approached the Civil Court to establish the fact that their rights have been violated. Merely because declaration is sought as against the order passed by the 1st defendant establishing 10 Parishes separately, which, in fact, infringed the practice of the plaintiffs' Rite, it cannot be stated that the suit is barred by Canon law.

18. In this context, it is useful to extract the following codes prescribed in the Code of Canon law.

Can 1400: The objects of a trial are:

1.
2.

Disputes arising from an act of administrative power, however, can be referred only to the Superior or to an administrative tribunal.

Can 1401. The Church has its own and exclusive right to judge:

1. cases which refer to matters which are spiritual or linked with the spiritual"
2.

Can. 1405 - In the cases mentioned in Can.1401, the Roman Pontiff alone has the right to judge:

1. Heads of STATE;
2. Cardinals;
3. Legates of the Apostolic see and, in penal cases, Bishops;
-

Can. 1406 1. 2.

In the cases mentioned in Can 1405, the non - competence of other judges is absolute.

Can.1419: 1. In each diocese and for all cases which are not expressly excepted in law, the judge of first instance is the diocesan Bishop. He can exercise his judicial power either personally or through others, in accordance with the following canons.

2. If the case concerns the right or temporal goods of a juridical person represented by the Bishop, the appeal tribunal is to judge in first instance.

Can.1438 Without prejudice to the provision
of Ca.1444

1 an appeal from the tribunal of a suffragan
Bishop is to the tribunal of the Metropolitan,
without prejudice to the provisions of Can
1439;

2.
.

Can 1442: The Roman Pontiff is the supreme
judge for the whole catholic world. He gives
judgment either personally, or through the
ordinary tribunals of the Apostolic SEE, or
through judges whom he delegates."

19. But the fact remains that the plaintiffs have filed a
suit to establish the fact that the freedom of choice to
follow the Latin Rite has been disrupted and that, they have
opposed only segregation from the Latin Rite Catholics offered
in Madras, since such segregation amounts to denial of right
of practice to one's religion in a particular Rite, which also
offends Article 25 of the Constitution of India. Therefore,
this Court is of the view that it cannot be stated that the
Civil Court has no jurisdiction to entertain the suit to
decide the lis between the parties.

20. Only at the time of trial, it could be established
whether the 1st defendant has absolute right under the so
called Canon law to pass such a decree, despite the majority
of opinion expressed that the Syro-Malabar Catholics not to
segregate themselves from the Catholic Rite. Further, all
these facts are the matter of evidence and only after proper
evidence let in before the Civil Court, the lis could be
decided. Therefore, this Court is of the view that the suit
filed by the plaintiffs seeking declaratory relief cannot be
rejected at threshold, merely on the basis of the principles
enunciated under Canon law.

21. That apart, the Hon'ble Apex Court, in the judgment,
as extracted above, has held that ouster of Civil Court
jurisdiction cannot be interfered without specific bar. In the
aforesaid judgment, the Hon'ble Apex Court has also considered
the places of worship (Special Provision Act, 1991).

22. Taking into consideration of the above judgment and
also taking into consideration the nature of relief sought in
the suit and the fact that the entire pleadings of the plaint
show that the constitutional rights of the plaintiffs have
been violated, this Court is of the view the Civil Court has
jurisdiction to decide the issue. Accordingly, these points
are answered.

In the result, the appeal is allowed. The decree and judgment dated 19.4.2011 passed by the Additional District Judge, Fast Track Court II, Chennai, rejecting the plaint is hereby set aside. The trial Court shall proceed with the suit and dispose of the same, as expeditiously as possible, after affording opportunity to the defendants to file written statement. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Additional District Judge,
Fast Track Court II, Chennai

2.The Section officer,VR Section, High court, madras.

+1cc to Mr.E.Jayasankar,Advocate sr.24259

+1cc to Mr.T.V.Krishnamachar,Advocate sr.24437

A.S.No.672 of 2012

br (co)

ss (8/5/2017)

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