IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY,THE 10TH DAY OF OCTOBER 2018 / 18TH ASWINA, 1940

CRP.No. 132 of 2018

AGAINST THE ORDER/JUDGMENT IN OS 20/2013 of I ADDL.DISTRICT COURT, ERNAKULAM

REVISION PETITIONERS/DEFENDANTS 3 & 5 TO 7 IN O.S.NO.20/2013, 4TH DEFENDANT DIED:

1 K.P.MATHAIKUNJU
S/O PAILIPPILLAI, AGED 63, KEERIKKATTIL HOUSE, VADAVUKODE (P.O) VADAVUKOD VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT PIN 682310.

2 V.V.YACOB
S/O VARKEY, AGED 67, VATTAPPARA HOUSE, PANCODI P.O. VADAVUKOD VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT PIN 682310.

3 FR. M.P JOSE SO M.O POULOSE AGED 62
MOOTHARIL HOUSE, VADAVUKODE (P.O) VADAVUKOD VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT PIN 682310.

4 M.V VARGHESE, S/O VARKEY
AGED 67, MUPLASSERY HOUSE, VADAVUKODE (P.O) VADAVUKOD VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT PIN 682310.

BY ADVS.
SRI.K.RAMAKUMAR (SR.)
SMT.SMITHA GEORGE
SRI.P.J.PHILIP
SRI.P.P.KURIEN

RESPONDENTS/PLAINTIFFS 1 TO 4 – DEFENDANTS 1, 2 & 8 & 9 IN O.S.NO.20/2013:

1 KUKRIACHAN K.K.
S/O LATE SHRI. KURIAKOSE K.P, AGED 69 , KIZHAKKEDATH HOUSE,PINCODE, VADAVUKODE, ERNAKULAM DISTRICT, PIN-682310.

2 NIKHIL JACOB
S/O SHRI JACOB CHERIAN, AGED 29, NELLIKKARA THEKKEDATH, VADAVUKODE, ERNAKULAM DISTRICT, PIN- 682310.

3 MATHEW C.P
S/O LATE SHRI PAULOSE, AGED 66, CHOVATTEL HOUSE, VADAVUKODE, ERNAKULAM DISTRICT, PIN- 682310.

4 PAILY PILLAI. T.P
S/O LATE PAULOSE, AGED 77, THEKKEDATH HOUSE VADAVUKODE ERNAKULAM DISTRICT, PIN- 682310.

5 SOMAN P.PAUL
S/O LATE SHRI PAULOSE, AGED 67, PARANGETH HOUSE, OPPOSITE MAHIMA THEATRE, THIRUVANKULAM, ERNAKULAM DISTRICT, PIN -682305.

6 ST. MARY'S ORTHODOX SYRIAN CHURCH
VADAVUKODE REPRESENTED BY VICAR, REV. FR. O.I.JACOB, PIN- 682310.

7 REV. FR. O.J JACOB VICAR
ST. MARY'S ORTHODOX SYRIAN CHURCH,VADAVUKODE RESIDING AT ONASSEIL HOUSE KADUNGAMANGALAM, THIRUVANKULAM, PIN- 682302.

8 FR KURIAKOSE THANNIKOTTE VICAR
ST. MARY'S ORTHODOX SYRIAN CHURCH,VADAVUCODE, PIN- 682310.

9 AFROTH AGED 22
S/O ABRAHAM, EDAYANAL HOUSE, VADAVUKOD VILLAGE, ERNAKULAM DISTRICT, PIN- 682310.

10 ELDO K.PAUL AGED 22
S/O POULOSE KUTTY, KEERIKATTIL HOUSE,VADAVUKODE VILLAGE, ERNAKULAM DISTRICT, PIN- 682310.

BY ADVS.
SRI.V..PHILIP MATHEW (CAVEATOR)
SRI.PETER K.ALIAS
SRI.K.P.SREEKUMAR
SRI.S.SREEKUMAR (SR.)
SRI.V.PHILIP MATHEW
SRI.V..PHILIP MATHEW CAVEATOR

OTHER PRESENT:
SRI. K.RAMKUMAR- SR ADV,SRI S.SREEKUMAR -SR ADV

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20.7.2018 ALONG WITH CRP.154/2018, CRP.155/2018, THE COURT ON 10.10.2018, PASSED THE FOLLOWING:

O R D E R

C.R.P.132/2018 is filed by the defendants 3 & 5 to 7 on the files of the First Additional District Court, Ernakulam, challenging the order dated 9.3.2017 in O.S.No.20/2013 deciding the issue Nos.1 & additional issue No.8 which relates to maintainability. The said issues are found against the defendants and the suit is found as maintainable.

2. CRP 154/2018 and CRP 155/2018 are filed by the additional defendant Nos.9 and 10 who filed an application to reject the plaint as not maintainable and also alleging that there is no cause of action. It can be seen that as this aspect is also intrinsically connected with the question of maintainability, these revision petitions are also heard along with CRP 132/2018.

3. One of the contentions raised by the learned senior counsel is that the suit is barred under Section 47 of CPC. The stand of the defendants is that the relief claimed by the plaintiffs for implementation of 1934 constitution is a question that arises in "execution, discharge and satisfaction" of the decree of the Hon'ble Supreme Court of India as formulated in **Most Rev. P.M.A.**

Metropolitan & Ors. etc. v. Moran Mar Marthoma Mathews & Anr. Etc. [AIR 1997 SC 1035] followed by election of office bearers of the said Church in 2002. What is sought in this suit, is to implement the decision of Hon'ble Apex Court in its decree and thereon the suit is barred under Section 47 of CPC. The second point is that, the suit seeking relief in favour to a third party is not maintainable under Section 92 of CPC.

4. It is the submission that, the suit is not maintainable and in the grounds it is categorically stated that "the only purpose of bringing this suit is to get second defendant declared as Vicar and through him elect new trustees and committee members of the 1st defendant church and to take over control of the church and its properties. This is clear from the averments in the plaint and the reliefs read together and analyzed". As this is the actual purpose of the suit, a suit as now presented, after obtaining sanction under Section 92 of CPC will not lie.

5. After hearing the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondents, the limited point to be considered and decided in this

case is found as that whether the court below committed any illegality in coming to a conclusion that the suit is maintainable. It can be seen that in the opening paragraph itself the court below clearly stated that the suit is filed by the plaintiffs with a prayer that the first defendant church is to be administered in accordance with 1934 constitution and accordingly a declaratory relief is sought for by the plaintiffs. When the suit is for a declaratory relief that also in respect of a church, regarding or touching its administration, then it can be only said that it is a suit perfectly maintainable after obtaining sanction under Section 92 of CPC.

6. In this regard it is relevant to consider some undisputed facts. There was a fight going on for managing the affairs of Malankara Church between the Patriarch faction and the Catholicos faction. It was for the control of spiritual and temporal management affairs of the Parish Church. As the factional fight continued, in the decision in **Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma [AIR 1995 SC 2001]** the Hon'ble Supreme Court recognized the spiritual supremacy of the Patriarch and further held that Malankara church is a part of Orthodox Syrian Church. But at

the very same time, all the effective powers exercised by the Patriarch were now vested in the Catholicos under 1934 Constitution and the Kalpanas issued by the Patriarch Abdul Messiah. It is held that 1934 Constitution of the Malankara Church shall govern them but subject to their own Knanaya Constitution until such time the Knanaya Church Samudayam decides otherwise.

7. Thereafter, the Hon'ble Apex Court in **Varghese v. St. Peter's & Paul's Syrian Orthodox Church [2017 (3) KLT 261 (SC)]** held that Malankara Church is Episcopal in character to the extent it is so declared in the 1934 Constitution. It further held that the 1934 Constitution fully governs the Parish Churches. As the 1934 Constitution is valid and binding, court also held that when the church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which, its properties have been vested. As per the 1934 Constitution, the Parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of 1934 Constitution, without the

approval of the church hierarchy and further it was held that appointment of Vicar is a secular matter. There is no violation of any of the rights encompassed under Article 25 and 26 and of the Constitution of India.

In paragraph No.184 it was concluded as follows:

184. Resultantly, based on the aforesaid findings in the judgment, our main conclusions, inter alia, are as follows :

(i) Malankara Church is Episcopal in character to the extent it is so declared in the 1934 Constitution. The 1934 Constitution fully governs the affairs of the Parish Churches and shall prevail.

(ii) The decree in the 1995 judgment is completely in tune with the judgment. There is no conflict between the judgment and the decree.

(iii) The 1995 judgment arising out of the representative suit is binding and operates as res judicata with respect to the matters it has decided, in the wake of provisions of Order I Rule 8 and Explanation 6 to S.11 CPC. The same binds not only the parties named in the suit but all those who have interest in the Malankara Church. Findings in earlier representative suit, i.e., Samudayam suit are also binding on Parish Churches/Parishioners to the extent issues have been decided.

(iv) As the 1934 Constitution is valid and binding upon the Parish Churches, it is not open to any individual Church, to decide to have their new Constitution like that of 2002 in the so-called exercise of right under Articles 25 and 26 of the Constitution of India. It is also not permissible to create a parallel system of management in the churches under the guise of spiritual supremacy of the Patriarch.

(v) The Primate of Orthodox Syrian Church of the East is Catholicos. He enjoys spiritual powers as well, as the Malankara Metropolitan. Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual administration of Malankara Church subject to the riders provided in the 1934

Constitution.

(vi) Full effect has to be given to the finding that the spiritual power of the Patriarch has reached to a vanishing point. Consequently, he cannot interfere in the governance of Parish Churches by appointing Vicar, Priests, Deacons, Prelates (High Priests) etc. and thereby cannot create a parallel system of administration. The appointment has to be made as per the power conferred under the 1934 Constitution on the concerned Diocese, Metropolitan etc.

(vii) Though it is open to the individual member to leave a Church in exercise of the right not to be a member of any Association and as per Article 20 of the Universal Declaration of Human Rights, the Parish Assembly of the Church by majority or otherwise cannot decide to move church out of the Malankara Church. Once a trust, is always a trust.

(viii) When the Church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which, its properties have vested. As per the 1934 Constitution, the Parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of 1934 Constitution without the approval of the Church hierarchy.

(ix) The spiritual power of Patriarch has been set up by the appellants clearly in order to violate the mandate of the 1995 judgment of this Court which is binding on the Patriarch, Catholicos and all concerned.

(x) As per the historical background and the practices which have been noted, the Patriarch is not to exercise the power to appoint Vicar, Priests, Deacons, Prelates etc. Such powers are reserved to other authorities in the Church hierarchy. The Patriarch, thus, cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of Churches as done in 2002 and onwards.

(xi) This Court has held in 1995 that the unilateral exercise of such power by the Patriarch was illegal. The said decision has also been violated. It was only in the

alternative this Court held in the 1995 judgment that even if he has such power, he could not have exercised the same unilaterally which we have explained in this judgment.

(xii) It is open to the Parishioners to believe in the spiritual supremacy of Patriarch or apostolic succession but it cannot be used to appoint Vicars, Priests, Deacons, Prelates etc., in contravention of the 1934 Constitution.

(xiii) Malankara Church is Episcopal to the extent as provided in the 1934 Constitution, and the right is possessed by the Diocese to settle all internal matters and elect their own Bishops in terms of the said Constitution.

(xiv) Appointment of Vicar is a secular matter. There is no violation of any of the rights encompassed under Articles 25 and 26 of the Constitution of India, if the appointment of Vicar, Priests, Deacons, Prelates (High Priests) etc., is made as per the 1934 Constitution. The Patriarch has no power to interfere in such matters under the guise of spiritual supremacy unless the 1934 Constitution is amended in accordance with law. The same is binding on all concerned.

(xv) Udampadis do not provide for appointment of Vicar, Priests, Deacons, Prelates etc. Even otherwise once the 1934 Constitution has been adopted, the appointment of Vicar, Priests, Deacons, Prelates (high priests) etc., is to be as per the 1934 Constitution. It is not within the domain of the spiritual right of the Patriarch to appoint Vicar, Priests etc. The spiritual power also vests in the other functionaries of Malankara Church.

(xvi) The functioning of the Church is based upon the division of responsibilities at various levels and cannot be usurped by a single individual howsoever high he may be. The division of powers under the 1934 Constitution is for the purpose of effective management of the Church and does not militate against the basic character of the church being Episcopal in nature as mandated thereby. The 1934 Constitution cannot be construed to be opposed to the concept of spiritual supremacy of the Patriarch of Antioch. It cannot as well, be said to be an instrument of injustice or vehicle of oppression on the Parishioners who believe in the spiritual supremacy of the Patriarch.

(xvii) The Church and the Cemetry cannot be confiscated by anybody. It has to remain with the Parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the Parish Churches, would remain in trust as it has for the time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties.

(xviii) The faith of Church is unnecessarily sought to be divided vis-a-vis the office of Catholicos and the Patriarch as the common faith of the Church is in Jesus Christ. In fact an effort is being made to take over the management and other powers by raising such disputes as to supremacy of Patriarch or Catholicos to gain control of temporal matters under the garb of spirituality. There is no good or genuine cause for disputes which have been raised.

(xix) The authority of Patriarch had never extended to the government of temporalities of the Churches. By questioning the action of the Patriarch and his undue interference in the administration of Churches in violation of the 1995 judgment, it cannot be said that the Catholicos faction is guilty of repudiating the spiritualsupremacy of the Patriarch. The Patriarch faction is to be blamed for the situation which has been created post 1995 judgment. The property of the Church is to be managed as per the 1934 Constitution. The judgment of 1995 has not been respected by the Patriarch faction which was binding on all concerned. Filing of Writ Petitions in the High Court by the Catholicos faction was to deter the Patriarch/his representatives to appoint the Vicar etc., in violation of the 1995 judgment of this Court.

(xx) The 1934 Constitution is enforceable at present and the plea of its frustration or breach is not available to the Patriarch faction. Once there is Malankara Church, it has to remain as such including the property. No group or denomination by majority or otherwise can take away the management or the property as that would virtually tantamount to illegal interference in the management and illegal usurpation

of its properties. It is not open to the beneficiaries even by majority to change the nature of the Church, its property and management. The only method to change management is to amend the Constitution of 1934 in accordance with law. It is not open to the Parish Churches to even frame bye-laws in violation of the provisions of the 1934 Constitution.

(xxi) The Udampadies of 1890 and 1913 are with respect to administration of Churches and are not documents of the creation of the Trust and are not of utility at present and even otherwise cannot hold the field containing provisions inconsistent with the 1934 Constitution, as per S.132 thereof. The Udampady also cannot hold the field in view of the authoritative pronouncements made by this Court in the earlier judgments as to the binding nature of the 1934 Constitution.

(xxii) The 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future any right, title or interest, whether vested or contingent in the Malankara Church properties and only provides a system of administration and as such is not required to be registered. In any case, the Udampadis for the reasons already cited, cannot supersede the 1934 Constitution only because these are claimed to be registered.

(xxiii) In otherwise Episcopal church, whatever autonomy is provided in the Constitution for the Churches is for management and necessary expenditure as provided in S.22 etc.

(xxiv) The formation of 2002 Constitution is the result of illegal and void exercise. It cannot be recognized and the parallel system created thereunder for administration of Parish Churches of Malankara Church cannot hold the field. It has to be administered under the 1934 Constitution.

(xxv) It was not necessary, after amendment of the plaint in Mannathur Church matter, to adopt the procedure once again of representative suit under Order I Rule 8 C.P.C. It remained a representative suit and proper procedure has been followed. It was not necessary to obtain fresh leave.

(xxvi) The 1934 Constitution is appropriate and adequate for management of the Parish Churches, as such there is no necessity of framing a scheme under S.92 of

the C.P.C.

(xxvii) The plea that in face of the prevailing dissension between the two factions and the remote possibility of reconciliation, the religious services may be permitted to be conducted by two Vicars of each faith cannot be accepted as that would amount to patronizing parallel systems of administration.

(xxviii) Both the factions, for the sake of the sacred religion they profess and to preempt further bickering and unpleasantness precipitating avoidable institutional degeneration, ought to resolve their differences if any, on a common platform if necessary by amending the Constitution further in accordance with law, but by no means, any attempt to create parallel systems of administration of the same Churches resulting in law and order situations leading to even closure of the Churches can be accepted.

8. Thus, after going through the above judgment and conclusions arrived at, it can be seen that when a sanction under Section 92 of CPC was obtained and thereon a suit is filed for bringing the church in tune with the above judgment and directions issued by the Hon'ble Apex Court the preliminary objection raised, got no legal existence. There is nothing to interfere with the findings of the court below.

Hence all the above Civil Revision Petitions are dismissed.

Sd/-

K.P.JYOTHINDRANATH

JUDGE

SHG/

APPENDIX

ANNEXURE A1	**TRUE COPY OF PLAINT IN O.S.NO.20/2013 OF THE FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM DATED 16.12.2011**
ANNEXURE A2	**TRUE COPY OF JUDGMENT DATED 8TH NOVEMBER, 2013, OF THIS HONOURABLE COURT IN CRP NO.472 OF 2013**
ANNEXURE A3	**TRUE COPY OF WRITTEN STATEMENT BY DEFENDANTS 3 TO 7 IN O.S.NO.20 OF 2013 OF FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM DATED 4.10.2013**
ANNEXURE A4	**TRUE COPY OF ISSUES RAISED BY FIRST ADDITIONAL DISTRICT COURT, ERNAKULAM DATED 16.2.2015 IN O.S.NO.20 OF 2013**
ANNEXURE A5	**TRUE COPY OF ORDER DATED 2ND JUNE 2015, RAISING ADDITIONAL 8TH ISSUE IN O.S.NO.20/2013**
ANNEXURE A6	**TRUE COPY OF THE WRITTEN SUBMISSION BY PETITIONERS FILED IN TRIAL COURT IN O.S.NO.20/2013 DATED 27.1.2018**