

Caveat
Rajeswararaj

Presented on: 27-10-2022

IN THE HIGH COURT OF KERALA AT ERNAKULAM

[Suit for Declaration and Injunction]

R.S.A. No. 656 OF 2022

[Against the Judgement and Decree dated 02.09.2022 passed by the Addl. District Judge's Court -V, Kottayam in A.S No. 36 of 2021, A.S No. 59 of 2021, A.S No. 62 of 2021, A.S No. 65 of 2021, A.S No. 95 of 2021, A.S No. 89 of 2021, A.S No. 6 of 2022 & A.S No. 7 of 2022 in O.S. No. 106 of 2015 on the file of the Sub Court of Kottayam]

**THE METROPOLITAN ARCHBISHOP,
THE ARCHEPARCHY OF KOTTAYAM AND ANOTHER --- APPELLANTS/**

Appellants in A.S. 36 of 2021 and Respondent No. 5 & 6 in
A.S No. 59 of 2021, A.S No. 62 of 2021, A.S No. 65 of 2021,
A.S No. 95 of 2021, A.S No. 89 of 2021, A.S No. 6 of 2022 &
A.S No. 7 of 2022 /Defendants No. 1 & 2 in OS

-Versus-

KNANAYA CATHOLIC NAVEEKARANA SAMITHY AND OTHERS --- RESPONDENTS/

Respondents No. 1 to 9 & Addl. Respondents No. 10 to 29 in
A.S No. 36 of 2021, Respondents No.1 to 4 &
Respondents No.7 to11 in A.S No.59 of 2021,
Respondents No.1 to 4 &Respondents No.7 to11 in A.S No. 62 of 2021,
Respondents No.1 to 4 &Respondents No.7 to11 in A.S No. 65 of 2021,
Respondents No.1 to 4 &Respondents No.7 to10 in A.S No. 95 of 2021,
Respondents No.1 to 4 &Respondents No.7 to11 in A.S No. 89 of 2021,
Respondents No.1 to 4 & Respondents No.7 to11 in A.S No. 6 of 2022,
Respondents No.1 to 4 & Respondents No.7 to11 in A.S No. 7 of 2022,
Cross-objectors and Respondents No. 3 to 8 in Cross-objection in A.S No. 36 of
2021, Appellant in A.S No. 59 of 2021, Appellant in A.S No. 62 of 2021, Appellants in
A.S No. 65 of 2021, Appellant in A.S No. 95 of 2021, Appellants in A.S No. 89 of
2021, Appellant in A.S No. 6 of 2022 and Appellants in A.S No. 7 of 2022 / Plaintiffs,
Defendants No. 3 to 7 and Not parties to suit

MEMORANDUM OF REGULAR SECOND APPEAL
UNDER SECTION 100 AND ORDER XLII RULE 1 OF THE CODE
OF CIVIL PROCEDURE, 1908

Valuation for the purpose of Court-fees (as before the court below)	:	Rs. 10,06,500.00
Court fees paid under Section 27(c) read with S. 52 of the KCF and SV Act (as before the court below)	:	Rs. 98,800.00
One-third court fees payable and paid	:	Rs. 33,000.00
Balance court fees payable	:	Rs. 65,800.00

P.B. KRISHNAN (K-119)
P.B. SUBRAMANYAN (S-2511)
SABU GEORGE (S-1012)
ANUSREE.B (A-1795)
MANU VYASAN PETER (M-1249)
COUNSEL FOR THE APPELLANTS

IN THE HIGH COURT OF KERALA AT ERNAKULAM

R.S.A No. of 2022

The Metropolitan Archbishop,
The Archeparchy of Kottayam and Another ---- Appellants
--Versus--

Knanaya Catholic Naveekarana Samithy and Ors ---- Respondents

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Dated this the 10th day of October, 2022

COUNSEL FOR THE APPELLANTS

IN THE HIGH COURT OF KERALA AT ERNAKULAM

R.S.A No. 656 of 2022

The Metropolitan Archbishop,
The Archeparchy of Kottayam and Another ---- Appellants
--Versus--
Knanaya Catholic Naveekarana Samithy and Ors ---- Respondents

SYNOPSIS

Defendant No.1 and 2 are the Appellants. The suit is laid for Declaration and injunctions, mandatory and prohibitory. The Plaintiffs, a Society and three individuals purporting to sue in a representative capacity on behalf of similarly situate persons, sought a declaration that a member of the Archeparchy of Kottayam will not forfeit his/her membership on entering into the sacrament of marriage with a Catholic from any other Diocese. The Plaintiffs also wanted the marriage of a member of the Archeparchy of Kottayam with a Catholic from any other Diocese to be performed in the Parishes under the Archeparchy of Kottayam. Consequential relief to readmit persons with their families, whose membership had been allegedly terminated on marriage with a Catholic from any other Diocese, was also sought. The basis of the Plaintiff claim was that the practice followed by the Archeparchy of Kottayam was opposed to Divine law, Canon law as also Articles 21 and 25 of the Constitution. The cause of action for the suit was stated to be the Notice/s and Reply Notice/s exchanged by Plaintiff No.1 Society and Defendant No.1 and 2.

The Appellants resisted the suit contending that the 'Knanya' community or 'Southists' are descendants of migrants to Crangannore from Mesopotamia in 345 AD. They are distinct and separate from the St. Thomas Christians who came to India in 52 AD. The members of the community had practiced endogamy for more than 17 centuries. The Archeparchy of Kottayam was created by a Papal Bull dated 29-8-1911, exclusively for the 'Southists'. The custom in regard to marriage is legal and valid. The Bye laws of the Archeparchy of Kottayam consistent with the practice and custom were notified in 2009 *inter alia* limiting membership to persons who are born to a Knanaya father and a Knanaya mother. There was no forceful termination of membership as alleged in the Plaint. The Appellants denied that the contention that the custom and practice violated Divine law, Canon law and/or Articles 21 and 25 of the Constitution and claimed the protection afforded to a religious denomination under Article 26 of the Constitution. The Appellants prayed for the dismissal of the suit.

The Trial Court held that that there is no infirmity in the frame of the suit, that there is no Custom as alleged by the Appellants and that the practice followed by the Archeparchy of Kottayam in the matter is a violation of Divine law, Canon law and Articles 21 and 25 of the Constitution. The community was not a religious denomination entitled to the protection of Article 26 of the Constitution. The Trial Court decreed the suit as prayed for.

Appeals were filed by Defendant No.1 and 2. Separate Appeals were also filed by Defendant No.7 and several other persons with the leave of Court. A paper publication was ordered and persons were permitted to impleaded as parties to the Appeal filed by Defendant No.1

and 2. The Lower Appellate Court held that the Archeparchy of Kottayam is created exclusively for the 'Southists' and a Custom of endogamy in the community is established. The protection afforded to a religious denomination under Article 26 of the Constitution was upheld. It was also held that there is no violation of Article 21 of the Constitution. The findings of the Trial Court were reversed to this extent. However, the Lower Appellate Court held that the practice and custom violates Canon law and Article 25 of the Constitution. The Appeals were dismissed.

The decision of the Lower Appellate Court is illegal, erroneous and unsustainable. Hence this Regular Second Appeal.

LIST OF DATES AND EVENTS

- 52 AD - St. Thomas brings Christianity to India.
- 345 AD - Thomas of Kinai and 400 persons from 72 families drawn from 7 Gotras was sent by the Catholicos of the East to migrate from Southern Mesopotamia to India. They settled at Cranganore and came to be known as the 'Southists' or 'Thekkummbakar'.
- 28-7-1886 - Three territorially limited Apostolic Vicariates were established in Trichur, Ernakulam and Changanacherry.

- 29-8-1911 - Papal Bull separating the Southists parishes and churches and establishing the Apostolic Vicariate of Kottayam for the 'Southist' people.
- 1955 - The jurisdiction of the Eparchy of Kottayam was extended to the territory of the Syro Malabar Church.
- 09.05.2005 - Decree of the Major Archbishop of the Syro Malabar Church elevating the Eparchy of Kottayam to a Metropolitan See.
- 2009 - Bye laws of the Archeparchy of Kottayam is notified *inter alia* specifying that membership is limited to persons who are born to a Knanya father and a Knanaya mother.
- 08.09.2015 - O.S No. 106 of 2015 is filed before the Subordinate Judge's Court, Kottayam.
- 14.03.2018 - R.P. No. 450 of 2017 is disposed of.
- 30.04.2021 - O.S No. 106 of 2015 on the file of the Subordinate Judge's Court, Kottayam is decreed.
- 18.06.2021 - A.S. No. 36 of 2021 is filed before the District Judge's Court, Kottayam.
- 12.01.2022 - The Plaintiffs are ordered to take out public notice as the subject matter in the *lis* is of public importance to the Knanaya community.
- 02.09.2022 - A.S No. 36 of 2021 on the file of the Addl. District Judge's Court -V, Kottayam and connected cases are dismissed.

RELEVANT STATUTORY PROVISIONS

Civil Rules of Practice - Rule 20.

Code of Civil Procedure, 1908 - Section 86, 100, 113, Order I Rule 8
Order VII Rule 4 and Order XLII Rule 1.

Constitution of India - Article 13,19 (1) (c),21,25,26, 29, 32 (3)
and 228.

Limitation Act, 1963- Section 3, 22 and Article 58.

Specific Relief Act, 1963- Section 4, 34, 35, 39, 42.

The Travancore-Cochin Literary, Scientific
and Charitable Societies Registration Act, 1955 - Section 9.

COUNSEL FOR THE APPELLANTS

IN THE HIGH COURT OF KERALA AT ERNAKULAM

R.S.A. No. _____ OF 2022

In the Court of Additional District Judge -V, Kottayam
A.S. No. 36 of 2021

In the Court of Additional Subordinate Judge, Kottayam
O.S. No. 106 of 2015

BETWEEN:

APPELLANTS in R.S.A. – *Appellants in A.S. 36 of 2021 and Respondent No. 5 & 6 in A.S No. 59 of 2021, A.S No. 62 of 2021, A.S No. 65 of 2021, A.S No. 95 of 2021, A.S No. 89 of 2021, A.S No. 6 of 2022 & A.S No. 7 of 2022 / Defendants No. 1 & 2 in Suit*

1. The Metropolitan Archbishop,
The Archeparchy of Kottayam, Catholic Metropolitan's House,
Kottayam – 686 001, the present Metropolitan Archbishop is
Most Rev. Mar Mathew Moolakkatt.
2. The Archeparchy of Kottayam,
Catholic Metropolitan House, P.B, No. 71, Kottayam,
Kerala - 686001, represented by The Metropolitan Archbishop.

AND:

RESPONDENTS in RSA – *Respondents No. 1 to 9 &*

*Addl. Respondents No. 10 to 29 in A.S No. 36 of 2021,
Respondents No.1 to 4 & Respondents No.7 to11 in A.S No.59 of 2021,
Respondents No.1 to 4 & Respondents No.7 to11 in A.S No. 62 of 2021,
Respondents No.1 to 4 & Respondents No.7 to11 in A.S No. 65 of 2021,
Respondents No.1 to 4 & Respondents No.7 to10 in A.S No. 95 of 2021,
Respondents No.1 to 4 & Respondents No.7 to11 in A.S No. 89 of 2021,*

*Respondents No.1 to 4 & Respondents No.7 to11 in A.S No. 6 of 2022,
Respondents No.1 to 4 & Respondents No.7 to11 in A.S No. 7 of 2022,
Cross-objectors and Respondents No. 3 to 8 in Cross-objection in A.S
No. 36 of 2021, Appellant in A.S No. 59 of 2021, Appellant in A.S No.
62 of 2021, Appellants in A.S No. 65 of 2021, Appellant in A.S No. 95
of 2021, Appellants in A.S No. 89 of 2021, Appellant in A.S No. 6 of
2022 and Appellants in A.S No. 7 of 2022 /*

Plaintiffs, Defendants No. 3 to 7 and Not parties to suit

1. ✓ Knanaya Catholic Naveekarana Samithy,
Valtharn Building (Near Village Office), Kumarakom P O.,
Kottayam, Pin – 686563.
rep. by its President who is also Respondent No.2.
2. ✓ T.O. Joseph,
aged 70, S/o. Ouseph, Thottumkal House,
Kannankara P O., Thannermukkam North Village,
Cherthala Taluk, Alappuzha District. Pin – 688527.
3. Lukose Mathew K.,
aged 65, S/o.Mathew Kunnumpurathu House,
Kurichithanam P.O., Kurichithanam Village,
Meenachil Taluk, Kottayam District. Pin-686635.
4. C.R. Punnen,
aged 68, S/o. Kuruvilla Chirayil House, Athirampuzha P O.,
Kottayam Taluk, Kottayam District, Pin – 686562.
rep. by his Power of Attorney Holder V.C. Mathai.
5. The Major Arch Bishop,
Syro Malabar Major Archiepiscopal Church,
Mount St.Thomas, Kakkanad P O., P.B. No.3110, Kochi,
The present Major Archbishop is His Beatitude
Mar George Cardinal Alencherry. Pin – 682030.

*Case No. 104
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6. Synod of the Bishop of the Syro Malabar
Major Archiepiscopal Church, Mount St. Thomas, Kakkanad P.O.,
P.B. No. 3110, Kochi, rep. by its Secretary. Pin – 682030.
7. Congregation for the Oriental Churches
Via Della Conciliazione 34,
00193, Roma, Italy, rep. by its Prefect.
8. Congregation for the Doctrine of Faith Piazza del S. Ufficio-II,
00139, Roma, Italy, rep. by its Prefect.
9. Knanaya Catholic Congress,
Kottayam, rep. by President Stephen George,
S/o. George, Veliyath House, Kurumulloor P.O,
Onamthuruthu Village, Kottayam. Pin – 686632.
10. Johny Kuruvilla,
aged 69, S/o. P.P. Kuruvilla, Padickamyalil house,
Kadaplamattam P.O., Kottayam. Now residing at
T.C.12/1773/4, Mulavana, Kunnukuzhy,
Thiruvananthapuram District, Pin - 695034.
11. Dominic Savio,
aged 63, S/o. V.C. Kuruvilla, Vachachirayil,
Kuzhimattom P.O., Panachikkadu,
Kottayam District. Pin – 686533.
12. Benny Jacob,
aged 56, S/o. E.K. Chacko, Illickal house,
Chunkom Kara, Kolani P.O., Idukki District, Pin – 685608.
13. Biju Uthup,
aged 62 years, S/o. Uthup, Residing of 62, 10th Main,
7th Cross, Horamavu Road, Nandanam Colony,
Bangalore – 560043.

14. James Joseph K,
aged 62 years, S/o. Joseph, Kattuveetil House,
Nagampadom, Nattassery Kara, Perumpaikadu Village,
Kottayam Taluk, Kottayam District, Pin – 686002.
15. Knanaya Royal Community
Represented by its Managing Trustee Jose Thomas,
aged 54 years, S/o Thomas, Ennamplasseril House,
Uzhavoor P O, Uzhavoor Kara, Uzhavoor Village,
Meenachil Taluk, Kottayam. Pin - 686634.
16. Joyan P.Saimon,
aged 50 years, S/o. P.J. Saimon, Powat,
Kumarakom P.O, Kumarakom Village, Kottayam -686563.
17. Tobin George,
aged 48 years, S/o. George Joseph, Meluvallil House,
Kumarakom P.O., Kumarakom Village, Kottayam-686563.
18. Philu Thomas,
aged 47, S/o.Thomas, House No. 145-43,
Thomas Lay Out (Block), Carmilaram Post,
Bangalore Urban District,
Bangalore South Taluk, Bangalore - 560035.
19. Alex J Victor,
aged 41 years, D-102, Concorde Midway City Apts,
Hotsa Road, Basapura Village, Bangalore - 560074.
20. Siby Jose,
aged 48 years, #409/5, 20th D Cross,
Ejipura Main Road, Vivekananger Post, Bangalore, Pin - 560047.
21. Sunny Kuruvilla,
aged 65 years, #242, Ashiana, 6th Main,
7th Cross, ST Bed Kormangala, 4th Block, Bangalore - 560034.

22. Roby K Kunjoonju, aged 56 years, 17/A, 12th main, Sector-1, Nobonagar, Bangalore, Pin - 560076.
23. Cyriac Thomas,
aged 47 years, No. 32, 1st Floor, 6th Cross Bhavaninagar,
S-G Palaya, DRC Post, Bangalore. Pin – 560029.
24. Reji C Joseph,
aged 57 years, No. 24, Trinity Home, S G Palaya,
CV Raman Nagar, Bangalore. Pin – 560029.
25. Cyriac Joseph,
aged 52 years, Sobha Daliya, Outer ring road,
Bellandoor, Bangalore. Pin – 560103.
26. Joji George,
aged 40 years, G-201, Holyhok Apartments,
Daddys South bourg Layout, Hebbagody, Bangalore - 560099.
27. Santhosh Simon,
aged 42 years, C-002, Daddy's Daliya,
Daddys South bourg Layout, Hebbagody, Bangalore - 560099.
28. Sibimon Jose,
aged 56, Thottaplakkil House, Lake View enclave Layout,
Seeg halli, Virgnonagar, Bangalore-49.
29. Tibin Thomas,
Secretary, Knanaya Global Parliament,
Chettai.Com, XII/ 203 A, Perumbaikkadu Village,
S.H Mount P O, Kottayam. Pin – 686006.
30. The Knanaya Samudaya Samrakshana Samithi (KSSS),
Rep. by its President, Abraham Naduvathara, aged 72,
S/o N.I. Abraham, residing at Naduvathara House,
Perookada P.O., Thiruvananthapuram District. Pin – 695005.

31. Lambochan Mathew,
aged about 61 years, S/o Late P.C. Mathew, Pannivelil House,
Kaduthuruthy Kara, Kaduthuruthy village, Vaikom Taluk,
Kottayam District. Pin – 686604.
32. Jose Mathew,
aged about 54 years, S/o Late P.K Mathai, Aruparayil House,
Peroor P.O., Kottayam District, Pin – 686637.
33. Philip Chacko,
aged about 66 years, S/o Late K.U Chacko, Kusumalayam House,
Kumarakom P.O., Kottayam District. Pin – 686563.
34. Knanaya Catholic Congress, Kottayam,
Rep. by its President, Thomas K.L., aged 70 years,
S/o Luka, Erumelikkara, Purappuzha, Vazhithala P.O.,
Purappuzha village, Thodupuzha Taluk,
Idukki District, Pin – 685583.
35. Thomas Vattakkalam,
aged about 65 years, S/o Chandy Chacko, Member,
Knanaya Global forum, now residing at Vattakkalam House,
Kolani P.O., Thodupuzha, Idukki District, Pin – 685608.
36. Jose M.J.,
aged about 51 years, S/o Joseph, Member,
Knanaya Global Forum, now residing at A 14/F-1,2,
Dilshad Colony, Jhilmil H.O., East Delhi,
Delhi from Mechery House, Vellanikkara P.O., Thrissur Taluk,
Thrissur District, rep, by PoA Holder Thomas Vattakkalam,
aged about 65 years, S.o Chandy Chacko, Vattakkalam house,
Kolani P.O., Thodupuzha, Idukki District. Pin -685608.

37. Tomy Thomas,
aged 60 years, S/o Thomas, Member, Knanaya Global Forum,
now residing at 2208 Clubhouse Drive, Plant City, Florida,
33566, USA, from Myalkarapurathu House, Marika P.O.,
Koothattukulam, Ernakulam District, rep. by Power of Attorney
Holder, Shaju John, aged 58, S/o K.M. John, Anchakunnath
House, Uzhavoor P.O., Uzhavoor village, Meenachil taluk,
Kottayam District, Pin – 686634.
38. Joy Mathew,
aged 52 years, S/o Chacko Mathew, Member,
Knanaya Global Forum, now residing at 2822,
West Pebble Beach Drive, Missouri City, Texas – 77459, USA,
from Vellamthadathil House, Puthuvely P.O.,
Kottayam District, Pin – 686636. Rep. by Power of Attorney
Holder Shaju John, aged 58, S/o K.M. John, Anchakunnath
House, Uzhavoor P.O., Uzhavoor village, Meenchil Taluk,
Kottayam District, Pin – 686634.
39. Sonny Joseph,
aged 67, S/o Joseph Poozhikala, Member,
Knanaya Global Forum, now residing at 2453, Tesla Cres,
Oakville Ontario, Canada – L6H7T6 from Poozhikala House,
Kidangoor South P.O., Kottayam, rep. by Power of Attorney
holder Thomas Vattakkalam, aged 64, S/o Chandy Chacko,
Vattakkalam House, Kolani P.O., Thodupuzha, Idukki District,
Pin – 685608.
40. Jimmi Cherian,
aged 62, S/o Cherian Mozhikodathu, Member,
Knanaya Global Forum, now residing at 65 Knutton Crescent,
Sheffied, S5, (NX, UK from Mozhikodathu House,
Eravimangalam P.O., Vaikom, Kottayam, represented by Power
of Attorney Holder Stanley Kurian, aged 60, S/o Kurian residing
at Konnanikkal House, Mulakulam P.O., Mulakkulam village,
Peruva, Kottayam. Pin – 686610.

41. Soban Thomas,
aged 42, S/o P.A. Thomas, Member, Knanaya Global Forum, now
residing at 26, Mackellar Avenue, Wheelers Hill, VIC – 3150,
Melbourne, Australia, from Poozhikunnel House,
Perumpaikkadu P.O., Kottayam, represented by Power of Attorney
Holder, Shaju John, aged 58, S/o K.M. John,
Anchakunnath House, Uzhavoor P.O., Uzhavoor village,
Meenachil Taluk, Kottayam District, Pin – 686634.
42. Shibu Paul,
aged 48 years, S/o M C Paul, Member, Knanaya Global Forum,
now residing at Via Gorgona 48, Roma, Italy, from Manithottiyil
House, Memury P.O., Kuruppanthara, Kottayam District,
represented by Power of Attorney Holder Stanley Kurian,
aged 60, S/o Kurien, residing at Koanickkal House,
Mulakulam P.O., Mulakkulam village, Peruva,
Kottayam. Pin – 686610.
43. Fr. Byju Mathew alias Byju Mukalel,
aged about 43 years, S/o M L Mathai, MSP Seminary,
S.H Mount P.O., Kottayam District, Pin – 686006.
44. Chacko Thekkedath Joseph,
aged 71, S/o Joseph, residing at Thekkedath House,
Manakkad P.O., Chungam kara, Thodupuzha village,
Idukki District, Pin – 685608.
45. Lukose P.U.,
Member, Knanaya Catholic Congress of Central Florida (KCCCF),
aged about 77 years, S/o Ulahannan, residing at Pattaraparambil
House, Thellakom P.O., Adichira, Perumbaikkadu village,
Kottayam District, now residing at 7125, Colonial lake drive,
River view, Florida, 33578, USA.

**MEMORANDUM OF REGULAR SECOND APPEAL FILED
UNDER SECTION 100 AND ORDER XLII RULE 1 OF THE
CODE OF CIVIL PROCEDURE, 1908**

STATEMENT OF FACTS

1. Defendant No.1 and 2 in O.S No. 106 of 2015 on the file of the Additional Subordinate Judge's Court, Kottayam being the Appellants in A.S No. 36 of 2021 on the file of the Additional District Court-V, Kottayam are the Appellants in this Regular Second Appeal. The Appellants were arrayed as Respondent No.5 and 6 in A.S No. 59 of 2021, A.S No. 62 of 2021, A.S No. 65 of 2021, A.S No. 95 of 2021, A.S No. 89 of 2021, A.S No. 6 of 2022 and A.S No. 7 of 2022. All the First Appeals arose from O.S No. 106 of 2015 and a common judgement was rendered by the Lower Appellate Court. The Appellants herein, being aggrieved by the common judgement are preferring this Regular Second Appeal.
2. The suit is one for declaration and injunctions, mandatory and prohibitory laid by four Plaintiffs, who are arrayed as Respondent No. 1 to 4 herein. Plaintiff No.1 is a society registered under the Travancore Cochin Literary Scientific and Charitable Societies Act, 1955. Plaintiff No.2 to 4 are individuals. The reliefs sought in the suit are as follows:

"... A) Declare that by entering into the sacrament of marriage with another Catholic from any other Diocese, a member of the Archeparchy of Kottayam will not forfeit his/her membership in Defendant No.2, the Archeparchy of Kottayam,

B) Pass a permanent prohibitory injunction against Defendant No.1, 2 and restraining them from terminating the membership of any member of the Archeparchy of Kottayam for marrying a Catholic from any other Diocese,

C) Pass a permanent mandatory injunction directing the Defendant No.1, 2 and 3 to provide equal rights and facilities through the parish priests for the sacrament of marriage to those members of Archeparchy of Kottayam who wishes to marry Catholics from any other Diocese,

D) And also consequential injunctions for solemnizing such marriage at Kottayam diocese and also for re-admitting those who were expelled from the membership on the ground of custom of endogamy.

E) Pass such other and further orders and/or directions in favour of the Plaintiffs and against the Defendants as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case...."

3. The factual background leading to the litigation may be summarized as follows- Christianity came to India in 52 AD with St. Thomas. The Church was much weakened by the 4th Century. A lay leader, Thomas of Kinai and 400 persons from 72 families drawn from 7 Gotras was sent by the Catholicos of the East to migrate from Southern Mesopotamia to India. They settled at Crangannore. The descendants of these 72 families, known as the 'Thekkumbakar'/'Southists', are the Knanaya community. They maintained a distinct identity from the St. Thomas Christians who

were already settled there. Thus, there were two settlements of Christians at Crangannore, the St. Thomas Christians known as the 'Vadakkumbagakar'/'Northists' and the migrants from Southern Mesopotamia, known as the 'Thekkummbakar'/'Southists'.

4. In 1653, the 'Coonan Cross Oath' caused a major rift in the Christian community. The faithful who followed the Patriarch of Antioch came to be known as the Jacobites. This split affected the 'Knanaya' Community as well. The Southists became 'Knanaya Catholic' or 'Knanaya Jacobite'. Roughly, two thirds of the community was 'Knanaya Catholic'.
5. The Roman Catholic Church, in full communion with the Bishop of Rome (the Pope), consists of twenty-three Eastern (Oriental) churches and one Latin Church. The Syro-Malabar Church with over 5 million members is the 2nd largest Eastern Church. The 'Knanaya Catholic' community aforesaid is a section of the Syro Malabar Sabha and the Roman Catholic Church.
6. On 28-7-1886, three territorially limited Apostolic Vicariates were established in Trichur, Ernakulam and Changanacherry by the Roman Catholic Church. There were differences and difficulties in administering the affairs of the Syro Malabar Church on account of the presence of 'Southists' and 'Northists' in the Catholic churches. The 'Southists' have practiced endogamy for 17 centuries and were spread over the State of Kerala and parts of Tamil Nadu and Karnataka. They would not inter mingle or marry the 'Northists'. The Bishops of the three vicariates had to find a solution to the issues that cropped up on account of the differences between the Northists and Southists.

7. It is in this background that the 3 bishops jointly petitioned the Pope on 1-3-1911 of these problems. The practice of strict endogamy practiced by the 'Southists' for centuries is mentioned as the reason for the separate identity maintained by them. A Papal Bull was issued on 29-8-1911 separating the Southists parishes and churches and establishing the Apostolic Vicariate of Kottayam for the 'Southist' people. The other Vicariates of Northists continued to be territorially limited.
8. In 1955, the jurisdiction of the Eparchy of Kottayam was extended to the territory of the Syro Malabar Church itself. There are 149 Churches in Kottayam, Ernakulam, Malabar and Karnataka (including in Bangalore) for the Southists under the Eparchy of Kottayam.
9. The Syro Malabar Church is a *sui iuris* (independent) Church with 35 Dioceses (13 in Kerala, 18 outside Kerala and 4 outside India) with 2790 parishes, 62 Bishops and 10,286 priests. The Kottayam Archdiocese is a constituent Diocese of the Syro-Malabar Church. The Kottayam Archdiocese is therefore a homeland for the 'Thekkumbakar'/'Southists' are the Knanaya community carved out within the Roman Catholic Church.
10. A suit was filed as O.S No. 923 of 1989 by Biju Uthup for a mandatory injunction to issue a 'Vivahakuri'. The suit was decreed. The said decision was confirmed in first Appeal and in R.S.A No. 64 of 2017 by the High Court. There were observations in the Judgement regarding the validity of the custom of endogamy

practiced in the Knanaya community. RP No. 450 of 2017 seeking Review was allowed for making a clarification. All observations against the practice in the community were deleted through the order in review as it was noticed that such findings were made without notice to the Knanaya community. On the same date, a separate judgement was pronounced dismissing the Second Appeal. The Supreme Court set aside the judgement (while confirming the order on Review) and directed the Second Appeal to be heard. The Second Appeal is pending.

11. O.S No.5 of 2003 was yet another case, filed for declaration and injunction for reinstatement of membership of K.T.Joseph. The suit was dismissed *inter alia* finding as a fact that there was no forcible termination of membership. That decision was confirmed in First Appeal. This judgement has become final.

12. The Eparchy of Kottayam was elevated to a Metropolitan See by the Syro Malabar Sabha in 2005. The decree (which is not under challenge in the suit) refers to the erection of the Eparchy through the Papal bull for the Knanaya community. In 2009, the Bye laws of the Archeparchy of Kottayam (which is not under challenge in the suit) was notified *inter alia* limiting membership to persons who are born to a Knanaya father and a Knanaya mother.

13. Biju Uthup, the Plaintiff in O.S No. 923 of 1989, petitioned the higher authorities in the Catholic Church. The Congregation asked the matter to be resolved by the 'Sudhist' or 'Knanaya Catholic

Community' itself in accordance with its traditional statutes and customs.

14. A lawyer notice was issued on behalf of Plaintiff No.1 Society alleging that expulsion of members from the Parish and Diocese is a violation of civil law and fundamental rights of these persons. Defendant No.1 replied that there is no practice of expulsion as alleged and he has not come across a single instance of such expulsion. Plaintiff No.1 Society replied that it can produce hundreds of former members who were coerced to fill the expulsion forms and that the practice of endogamy and expulsion is being actively practiced by the Kottayam Diocese. The request was that members of the Kottayam Diocese may be permitted to marry outside the Diocese without losing membership. Defendant No.1 replied that not a single instance of expulsion is shown and that the Notice/s is without foundation.

15. The suit was filed on 08.09.2015. The Plaint makes some averments in regard to Plaintiff No.1 Society to set out its alleged cause of action to sue. In regard to Plaintiff No.1, a conjoint reading of the Plaint and the documents produced will disclose that the Society was registered in 1991 with area of operation as Kottayam District. The membership of the Society is for males, females and family members of persons who had to leave the Kottayam Diocese on marriage and those parishioners of the Kottayam Diocese who share the ideals of the Society.

16. There are no material facts/details regarding Plaintiff No.2 to 4 in the Plaint. There is not even a statement or assertion in the Plaint that Plaintiff No.2 to 4 are or were members of the Archeparchy of

Kottayam. There is no statement or assertion of any alleged termination of membership of these Plaintiffs.

17. The Plaintiffs stated that they are not objecting to the practice of endogamy by the Knanaya community and that the Knanaya community is a stranger to the suit. Bishop Choolapambil, who succeeded Bishop Makil (in 1914) started the practice of terminating membership by misinterpreting the Papal Bull. The contention was that the Archeparchy of Kottayam, which was a constituent Diocese of the Roman Catholic Church, cannot enforce endogamy as it is against Divine law and Canon law. It was contended that there is a violation of the fundamental rights guaranteed under Article 21 and 25 of the Constitution as also human rights.

18. The suit was filed on the cause of action furnished to Plaintiff No.1 Society through the Notice/s and Reply/ies. There is no mention of any cause of action for Plaintiffs No. 2 to 4. On these averments and the cause of action set out as above the reliefs of declaration and injunction was sought.

19. An application under Order I Rule 8 of the Code was filed as IA No. 1226 of 2015 along with the Plaint seeking to permit the Plaintiffs to be representatives of numerous persons who were allegedly similarly situated. The affidavit filed in support of the Application did not give the details insisted by Form 20 of the Code. On 4-9-2015 (suit was filed on 2-9-2015), the Trial Court passed an order to issue publication subject to objection that may be raised by the Defendants/Respondents on their appearance and to issue Notice. A publication was taken out in Mangalam daily,

Kottayam Edition. On 21-6-2016, the paper publication was produced and I.A No. 1226 of 2015 was closed. There was no order under Order I Rule 8 (1) (b) of the Code and the Plaintiffs were not made the representatives of the similarly situated persons whom they sought to represent though a public notice as aforesaid was taken out. Among them Defendants No. 5 & 6 were not served with summons in the suit.

20. Defendants No. 3 to 6 were set exparte. The contest to the suit came from the Appellants herein, Defendant No. 1 and 2 and a Society, Defendant No.7, which had been permitted to come on record on application under Order 1 Rule 10 (2) of the Code.

21. It was contended that the suit is not maintainable. The suit is filed without securing prior consent from the Central Government under Section 86 of the Code for suing Defendant No. 5 and 6, who are authorities of the Vatican City State. The suit is barred by limitation.

22. There is a practice of endogamy, in vogue for more than 17 centuries, in the Knanaya community. It is a custom having the force of law. It was asserted that the affairs of the Archeparchy of Kottayam are governed under a duly notified Bye law which recognizes and reiterates the custom. In terms thereof, only a person born to a Knanaya father and Knanaya mother can become a member of the Kottayam Diocese.

23. There is no expulsion or termination as alleged in the Plaint. The rights of a religious denomination to administer and manage its affairs in the matter of religion cannot be interfered with by the

Court. Defendant No. 1, 2 and 7 prayed for the dismissal of the suit.

24. On 10-7-2017, Defendant No.1 and 2 suggested 11 draft issues. On the same date, issues were framed. Defendant No.1 and 2 filed I.A No. 1407 of 2017 for framing additional issues contending *inter alia* that no opportunity was given for hearing on the framing of issues. The application was dismissed.
25. The trial of the case was conducted on the basis of issues originally settled. Ext A1 to A21 and Ext B1 to B43 were marked. Plaintiff No.2 was examined as PW1. DW1 was examined on behalf of Defendant No.2 and 4. DW2 was examined on behalf of Defendant No.7.
26. After trial (the cross examination of the last witness, DW2 was concluded on 8-2-2021) the case was posted to 18-2-2021 for hearing. The hearing commenced. Additional issues 5 and 6 were framed on 5-3-2021 as per orders in I.A No. 22 of 2021 filed by Defendant No.7. The issues were recast/resettled on 9-4-2021 and the suit was reserved for judgement on the same day. The judgement was pronounced on 30-4-2021 with reference to the issues as recast and resettled on 9-4-2021.
27. The trial Court decreed the suit as prayed for leading to an Appeal by Defendant No.2 and 4. A separate Appeal was filed by Defendant No.7. Several other Appeals were lodged with leave of the Court.

28. The Lower Appellate Court observed on 12.01.2022 that the case would affect the Knanya community at large and therefore paper publication has to be taken out by the Plaintiffs. Accordingly, paper publication was taken out in Mangalam daily, Kottayam Edition in regard to the Appeal. In pursuance thereto, applications for impleadment were filed and the same was allowed. The Appeals were heard.
29. The Appellants herein addressed oral arguments and filed Written submissions and Additional Written submissions under Order XVII Rule 3A of the Code.
30. It was inter alia contended that a number of crucial issues were not struck for adjudication though certain findings/observations are found in the judgement. There is no issue on non-joinder of the Knanaya community or limitation or on whether the members left voluntarily or whether there was any expulsion/termination of membership or on the qualifications required to be a member of a church under the Kottayam Archeparchy or on whether the Rules/Bye laws framed as Ext B1 can be collaterally set aside/nullified. However, findings on these matters are entered by the trial court. Since one of the contentions raised in the Appeal was in regard to the failure of the Trial Court to frame proper issues for trial and no framing of relevant issues, the Appellants with the permission of the Court placed a list of 33 issues that ought to have been framed and tried.
31. The Lower Appellate Court recognized a few of the issues afore stated as relevant and formulated certain points as (a) to (o) in the Judgement. The points are issues of fact, mixed question of fact and

law as also pure legal issues. Some of these points could not be considered at the first instance at the Appellate stage, since no trial has been conducted thereon. The Judgement has been pronounced with reference to the points so formulated.

32. It was held that the Eparchy of Kottayam was carved out exclusively for the Knanya community by the Papal Bull of 29-8-1911. It was also held that the custom of endogamy in the Knanya community is established. It was also held that the Knanaya community is a section of the religious denomination entitled to the protection of Article 26 of the Constitution. It was also held that the custom and endogamy is protected under Art. 29 of the constitution. It was also held that there is no violation of the fundamental rights of the Plaintiffs guaranteed under Article 21 of the Constitution. All these findings were in favour of the Appellants and in reversal of the observations and findings of the Trial Court.

33. The Lower Appellate Court however held that the suit is maintainable, that it is not time barred, that there is no bar on account of non compliance of Section 86 of the Code and that there is no defect in the representative action. It was held that the Civil Court can enforce fundamental rights guaranteed under Part III of the Constitution. The action of Defendant No.1 and 2 was found to be a violation of the fundamental rights guaranteed under Article 25 of the Constitution and opposed to Canon law. The Appeals were dismissed by a common judgement.

34. The Lower Appellate Court has failed to consider relevant arguments pursued at the hearing and set out in the written

submissions filed under Order XVII Rule 3A of the Code. A number of binding precedents and citations have been ignored. This approach has vitiated the decision making process.

35. The points formulated by the Lower Appellate Court in the Judgement relate to a few of the matters raked up at the hearing. A number of material aspects have been ignored all together. The cardinal aspect that proper issues were not struck for trial and that the recasting of issues after the hearing has occasioned failure of justice has not been considered. This defect in the proceedings before the Trial Court cannot be cured by inviting draft issues at the First Appellate stage and formulating points for decision in the Judgement.

36. The finding on point (a) that the suit is maintainable under Section 9 of the Code is illegal. That finding is reached without considering the contention that the enforcement of fundamental rights guaranteed under Part III of the Constitution is firstly through the Supreme Court under Article 32 (2) of the Constitution. The right to move the Supreme Court in this regard is by itself a fundamental right guaranteed under Article 32 (1) of the Constitution. In terms of Article 32 (3), Parliament may by law empower any other court to enforce fundamental rights. A conjoint reading of Article 32 (3) and 323A and 323B of the Constitution has enabled the constitution of many bodies like service tribunals which would in seniority matters enforce Article 14 (Administrative Tribunal Act, 1985) or environment matters, where right guaranteed under Article 21 is (National Green Tribunal Act, 2010) is enforced.

37. The Civil Court in the present case is one constituted under the Kerala Civil Courts Act, 1957 and not Parliament. Hence, it is not a Court as understood in Article 32 (3) for enforcement of fundamental rights under Article 32 (2). The decision reported in AIR 1964 SC 381 was relied on in this context. Fundamental rights cannot be enforced against non-state actors. When the Supreme Court cannot enforce a right of liberty against a private party it may not be possible for a Civil Court to do so either. The decisions reported in AIR 1952 SC 59, AIR 1956 SC 108 and AIR 1992 Orissa 248 were relied on. The reliance on the observations in the minority judgement of Sahai J in (1995) Suppl 4 SCC 286 that a civil court can enforce a fundamental right is not the law of the land.

38. The jurisdiction of the civil court to strike down a custom has to be viewed with reference to Section 113 of the Code read with Article 13 of the Constitution. The use of the word 'shall' in Section 113 of the Code indicates that a reference is mandatory. Striking down a custom that has the force of law has to be done only by a Constitutional Court. Article 228 is also relevant in this context. It was also pointed out that the enforcement of fundamental rights through the process of law is a matter of utmost importance to be performed by the Courts empowered in that regard by Parliament. One delicate task that has to be performed by such Courts is to balance conflicting claims of fundamental rights. In the present case, claim and counter-claim based on Art. 21, 25, 26 and 29 were raised by the rival contentions. These matters can be dealt with only by a Constitutional Court and not a Civil Court.

39. The finding on point (b) that Plaintiff No.1 society is entitled to institute the suit is illegal. The finding ignores the contention that the suit is not properly filed on behalf of the Society and in the manner contemplated by Section 9 of the Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955. The decisions reported in AIR 2003 SC 3397= 2003 (8) SCC 413 and 2019 KHC 535 were relied on in this context. In the light of Section 4 and 41 (j) of the Specific Relief Act, 1963 and law laid down in 1994 (5) SCC 547, Plaintiff No.1 Society (which has neither any individual civil right nor personal interest in the matter) is not entitled to any relief. The removal or expulsion of any person and/or termination of membership is a matter to be agitated by the concerned individual as a voidable act. If the concerned individual does not sue then it amounts to acceptance/acquiescence on his part. A Society or a third party cannot question the action on behalf of the individual, whose rights are allegedly infringed by the voidable act.

40. The finding on point (c) that the suit is not barred by limitation is reached without even referring to the contentions raised by the Appellants on this aspect. In regard to Plaintiff No.2, the averment is that he is the President of Plaintiff No.1. No material averments are made on his individual status. But, the evidence adduced discloses that he was a member of the Kottayam Archeparchy. He married a non Knanaya on 19-05-1977 and became a parishioner of another Catholic Church under the Syro Malabar Sabha at the stage of the betrothal itself. In regard to Plaintiff No.3 also no material averments are made on his individual status. The evidence discloses that he, a member of the Kottayam Archeparchy, married a non

Knanaya on 23-10-1988 and moved to another Church. In regard to Plaintiff No.4 also no material averments are made on his individual status. The evidence discloses that he is still a member of the Kottayam Archeparchy. He is aged 68 years on date of suit and has married a Knanaya lady 40 years ago. He is not stated to have any intention to marry a non Knanaya at this stage. The cause of action is not recurring/continuing as the alleged termination of the membership of Plaintiff No. 2 and 3 (argued but not pleaded) occurred decades ago.

41. The cause of action for the suit is the notice issued by Plaintiff No.1. No suit notice is issued by Plaintiff No. 2 to 4. The details regarding the cause of action of Plaintiff No. 2, 3 and 4 is not pleaded in the Plaint. This is not action in public interest under Section 91 of the Code. There is no pleading as contemplated by Order VII Rule 6 of the Code of any exemption from Limitation. Plaintiff No.1 has no cause of action to sue for the reliefs sought. Section 22 of the Limitation Act, 1963 has no application to declaratory relief. The concept of recurring cause of action has no application when the cause of action is complete and the injury alone is continuing. The membership of Plaintiff No.2 and 3 was illegally terminated according to the arguments advanced by the contesting Respondents in 1977 and 1988. If that be so the cause of action to challenge the alleged illegal termination arose then itself. AIR 1959 SC 798 was cited in this context. Any approach to a Civil Court by way of suit is governed by the law of limitation and Section 3 of the Limitation Act, 1963. There is no exception carved out for suits based on allegations of violation of fundamental rights, assuming without conceding that such a suit is maintainable at all.

42. Plaintiffs No. 2 and 3 have left the church under the Kottayam Archeparchy decades back. The suit is filed in 2015. Their individual rights are hopelessly barred by limitation. A new cause of action would not accrue to any person (whose rights are time barred) because a notice was issued by Plaintiff No.1 Society. There is not even an averment in the Plaint that Plaintiff No.2 to 4 are members of Plaintiff No.1 Society. It can at best be inferred that since Plaintiff No.2 is the President of the Society he is a member. Now the indeterminate members of Plaintiff No.1, whose rights may have been barred under Art 58 of the Limitation Act, 1963, are the alleged beneficiaries of the decree. Plaintiff No.2 and 3 would not be entitled to any relief in their individual capacity but would seek to benefit from the Judgement because they are members of Plaintiff No.1 Society. The applicability of provisions and articles of Limitation Act, 1963 ought to be judged with regard to the relief claimed in the suit. The first relief claimed in the suit is for a declaration against forfeiture of membership. The 4th relief is for mandatory injunction *'to readmit members along with their spouses and children whose membership were terminated.'*

43. If the relief of declaration is denied, then as held in 2022 KHC 6248, (SC) the consequential relief/s will also have to be declined. The declaratory relief, which is normally covered by Section 34 and 35 of the Specific Relief Act, 1963 is sought to be given an extended reach or efficacy by virtue of the representative capacity allegedly vested in the Plaintiffs. The decree is framed as one in favour of persons like Plaintiff No.2 and 3 who were parishioners of the 149 churches under the Kottayam Archeparchy and had moved on to other catholic churches, on their marriage to non

Knanayas. Plaintiff No.2 to 4 do not any individual decree as such but have relief as part of the general relief granted in the suit. Such broad reliefs cannot be granted without considering the different categories of persons who would benefit by the decree. The dictum laid down in (1990) 1 SCC 608 and 2021 KHC 6871 (SC) was cited in this context.

44. The lacunae in the invocation of Order 1 Rule 8 of the Code has been ignored. Point (d) formulated relates to one of the aspects urged on the defects in the representative action. The rest of the contentions in this regard have been ignored. A Roman Catholic Church is a voluntary association. A Church or an Archeparchy is an unincorporated body that cannot be sued without compliance with the rigour of Order 1 Rule 8 of the Code. In any event, a Church or an Archeparchy or a Bishop does not have representative capacity for the parishioners as held in 1999 (2) KLT SN 24 (Case No. 25). In order to bind the parishioners Order 1 Rule 8 of the Code has to be invoked. In the absence of Order I Rule 8 publication, to sue any of the Defendants in a representative capacity, a decree of this nature could not be passed. The order on the Review Petition in *Biju Uthup* in R.P. 450 of 2017 is affirmed by the Supreme Court in Ext B6. In view of this binding authority, which was cited, but is not even referred to, Point (d) ought to have been answered in favour of the Appellants.

45. The contentions on defects in the representative action was pursued vigorously at the hearing but is not even referred to in the Judgement under Appeal. It was argued that a Society cannot be a representative of individuals in an action under Order I Rule 8 of the Code. In terms of Order I Rule 8 read with Order VII Rule 4 of

the Code, a legal entity like a Society cannot be a 'representative'. The representative must have an actual existing interest in the subject matter and must have taken steps to enable the filing of a suit. Plaintiff No.1 is not a representative with an individual right and the decree framed with the members of Plaintiff No.1 in mind has no legal legs to stand on. The word 'he' occurring in Order VII Rule 4 of the Code at best includes a female or more human beings than one in view of Sec. 13 of the General Clauses Act. 'He' would not include an artificial person. 1989 (1) KLJ 163 and 2017 (4) KLT 866 (SC) were cited in this context. It was contended relying on 1972 KLT 285 and 2021 (3) KHC 211 (FB) that the procedure adopted to convert the suit into a representative action was faulty.

46. It was contended that if Plaintiff No.1 does not have a representative capacity in respect of individual rights, then the breadth of the decree will be curtailed. Individual rights have lost relevance in a case a suit is filed by the Society. Only the capacity of the members of the Society is relevant. 2020 (4) KLT 84 (SC), 1983 KLT 63 and 2018 (1) KLT 944 were cited. A plea of undue influence or coercion or like vitiating circumstances will render a transaction voidable and not void. It requires specific pleadings as insisted by Order VI Rule 4 of Code. The question whether any member of a church under the Kottayam Archeparchy has left it voluntarily or on account of any coercion/undue influence or like vitiating circumstances is a matter related to that individual. It is voidable at the instance of that individual if there are any vitiating circumstances. Such a plea cannot be taken in a representative action.

47. The finding on Point (d) has been used to get over the fatal defect of non joinder raised as Point (m). The Knanaya Community is not a party to the suit. None of the Defendants were sought to be arrayed as a representative of the community. No publication under Order I Rule 8 of the Code was carried out in this regard. This defect cannot be cured by ordering publication in Appeal. The judgement of the Trial Court makes 114 references to the Knanya Community. The publication at the first appellate stage taken out in Kottayam District would not cure the lacunae in the proceedings before the trial court.

48. It is the Plaintiff case that the Plaintiffs are not objecting to the practice of endogamy by the Knanaya community. It is stated that the Knanaya community is a stranger to the suit. The question that arises is whether the community and the Church can go in different directions on an issue. There is an umbilical code that links the community and the church. The importance of the Samudayam has been recognized by the Supreme Court in AIR 1995 SC 2001.

49. The finding on Point (e) ignores the contention that no material averments in regard to the alleged termination of membership of Plaintiff No.2 and 3 is made in the Plaintiff. Hence, no enquiry on that aspect is warranted. No evidence on a plea that is not put forward can be looked into either. The framing of a point of this nature in Appeal, without proper pleading and/or evidence on record and/or issue struck for trial, is highly irregular and occasions grave prejudice to the Appellants.

50. It was pointed out to the Lower Appellate Court that Defendant No.1 and 2 in this suit had not terminated membership of any

member in the context of their marriage. In reply to the notice dated 28-05-2015 (Exhibit A14) of Plaintiff No.1, Defendant No. 1 and 2 had given a reply dated 05-03- 2015 (Exhibit A15) inter alia calling upon Plaintiff No.1 to point out at least a single instance of termination of membership in furtherance of marriage by a Knanaya Catholic with a Non-Knanaya Catholic. Again, Plaintiff No.1 issued a notice dated 13-03-2015 (Exhibit A16) without stating any instance of termination of members. To this letter Defendant No.1 and 2 gave another reply which was marked as Exhibit A17 reiterating the stand taken in Exhibit A15. But, the Plaintiffs have not stated a single instance of termination of a member in the Plaint or in their reply. There is no pleading with regard to termination or expulsion of any member as contemplated in Order VI Rule 4 of Code of Civil Procedure, 1908 for the Court to embark on an enquiry into this aspect. No issue was framed by the Trial Court on this aspect either. In the absence of pleading and evidence, the Trial Court came to a conclusion that there was a forcible termination of membership in the Church.

51. The Lower Appellate Court was appraised of the fact that Plaintiff No.2, who was examined as PW1, had voluntarily relinquished his membership in 1977. It was also admitted in evidence that this happened a day or two before his betrothal. This aspect is clearly stated in page No.10 of the cross examination of PW1. He also stated that he had given an application to Vicar and also to the Bishop for the permission for relinquishing his membership and for joining in the present church. Plaintiff No. 3 married in the year 1988 and voluntarily relinquished his membership. This fact is stated in page No. 16 of the cross examination of PW1.

52. The Appellants pointed out at the hearing that the question whether there is forcible termination of membership is a question of fact. O.S No.5 of 2003 was dismissed *inter alia* finding as a fact that there was no forcible termination of membership. That decision was confirmed in First Appeal. This judgement has become final. Hence, any dispute on this aspect was a matter requiring pleading, issue, trial and proof. All these aspects are ignored and reliance is placed on stray sentences in the testimony of PW1 to jump to a conclusion that Defendant No.1 and 2 are forcibly terminating membership of persons who are marrying Catholics from other Dioceses. PW1 admitted that he is aware of Exhibit B1 particular law of Defendant No.2. The Lower Appellate Court has not considered the legal position and consequences that flow from an action of relinquishment of membership from the Church.

53. The finding on Point (i) that endogamy is not an essential religious practice of the community is entered without considering material arguments raised by the Appellants. There is no law or decision of any Court anywhere in the world holding that endogamy is illegal or unconstitutional. On the contrary, the practice of inter marrying within a religion, caste, community or race is recognized. The decisions reported in AIR 1993 SC 477 and (2003) 8 SCC 204 recognise the practice of endogamy in India. Many statutes recognize marriage within religions/faith alone. The Hindu Marriage Act, 1955 (Section 2 and 5) is applicable only to Hindus as defined and contemplates marriage between two Hindus. A marriage as understood in the Parsi Marriage and Divorce Act, 1936 (Section 2 (5) to (9)) is between a Parsi husband and a Parsi wife.

54. The Special Marriage Act, 1954 enables a man and woman, irrespective of faith to marry. However, the consequence of such marriage if one person is a Hindu is severance from his family is specified in Chapter IV- Section 19 to 21A of the Act. Any marriage performed outside the Hindu community may invite consequences of the nature set out in Chapter V of the Special Marriages Act, 1954. That person may be cut off from his own family and even succession to his estate will not be under Hindu law. In short, a marriage in breach of endogamy may virtually ostracize the person from his religion and family.

55. Any marriage that is not in conformity with the law is null and void. In order to qualify as a valid marriage the rigour of the law, statutory or customary as the case may be, has to be observed. The marriage between a Christian and a Hindu performed as per Hindu Rites and registered under Section 8 of the Hindu Marriage Act, 1955 is held to be null and void in AIR 2009 SC 1085.

56. At the hearing the contesting Respondents referred to the provisions of the Christian Marriage Act, 1872 to contend that a Catholic can marry even a non-Catholic and therefore the statute does not contemplate endogamy among Catholics. This contention was met by the Appellants by asserting that the The Christian Marriage Act, 1872 does not apply to Travancore-Cochin. Hence, that Act has no application to the situs of the present *lis*. The personal law alone applies as held in 2019 (4) KLT 1017. In Cochin, the Cochin Christian Marriage Act, applies. In Travancore there is no statute governing Christian marriages as held in 2017 (1) KLT 950.

57. The Christian Marriage Act, 1872 contemplates marriage being performed by any of the 5 persons referred to in Section 5 of the Act. The marriage can either be performed as a sacrament in a Church or as a civil ceremony. The Act is akin to an amalgam of the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 for marriage of Hindus in this regard. In respect of marriages performed as a sacrament under Section 5 (1) of the Act it is specified that as follows *by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister*. The Act therefore recognises the rules and customs of the Church where the marriage is to be solemnised. The Act has no relevance to issues relating to the membership of a Church pre or post marriage. The validity of a marriage solemnised under the Act does not in any manner alter the rules and customs of the Church. It does not compel the Church to accept as members, persons who are not qualified to be its members. Until matters are brought under a Statute the law of the Church will prevail. In this context, the decisions reported in 1994 (2) KLT 387 (FB), 1997 (1) KLT 1 (SC), 2000 (2) KLT SN 96 (Case No. 102) and 2019 (4) KLT 291 were cited.

58. It was contended at the hearing that in the absence of statutory law, the personal law regarding marriage is governed by the customary law of the community. As a custom exists in the community for over 17 centuries the same is liable to be enforced as law. The nature of the civil right put in suit is not violation of statute law. The Plaintiff alleges violation of Canon law, Divine law (Bible), constitutional law and particular laws framed by the Syro Malabar

Sabha. There are inherent difficulties for a Court to accept such claims and enforce such norms. The contention that the qualifications prescribed in Canon law have to be enforced is misconceived. The Canon law cannot be enforced through a civil court as a law (reference to 2017 (2) KLT 1072). Moreover, the Canon law itself recognises the circumstances in which the Custom in a community gets the force of law, the role of the Eparchial Bishop, the framing of particular laws for a Church and various other aspects.

59. A Bishop of the Archeparchy of Kottayam is obliged to shepherd the 'Southist' people and administer in terms of the Papal bull. Any attempt by the Archbishop or the Archeparchy of Kottayam to admit persons who are not 'Southists' or to provide spiritual guidance to 'Northists' would be a violation of the terms of the Papal bull. Any deviation would invalidate the creation of the Archeparchy of Kottayam itself. The Papal bull is not under challenge in the suit. The Papal bull is the very basis of the existence of the Archeparchy of Kottayam and the conduct of the affairs of the Archeparchy in terms thereof cannot be faulted.

60. In terms of Canon law (Ext A9 Pg 67, 68- Canon 177 to 179), a Bishop is entrusted with certain duties and his powers are ultimately regulated and circumscribed within certain limits for the benefit of the Church or the faithful. The performance of duties of a Bishop in terms of the Papal bull is therefore legal. The extent of Regulation and the limits are prescribed by the hierarchy in the Catholic Church and cannot be redrawn by a civil court.

61. The Knanaya Catholic community is having Jewish origin and has ascribed in the Catholic Church without renouncing the practice of endogamy. As per the belief of the community, the practice of endogamy is a covenant with God and is continuing from immemorial to till this date. If anyone violates this covenant it has to be considered as unfaithfulness to the God. The belief of the community is that those who follow endogamy 'God blessed them with children, and so their descendants will inherit the land of Israel.' This belief is on the basis of the verses (Tobith and Ezra) of Holy Bible and the said texts are part of sacred readings in religious prayers. The practice of endogamy is fundamental to the beliefs of Knanaya Catholic community and if the same is not following by them would result in the change and obliteration of the community itself. The Second Vatican Council categorically stated that the books of Old Testaments are written under divine inspiration and remain permanently valuable. A court of law has no power to interfere or interpret in matters of belief of a community which is based on Holy Bible.

62. The Knanya community as a section of a religious denomination is entitled to preserve its belief and to manage its own affairs in matters of religion. The Catholic Church is a communion of churches and each section in the Catholic Church has every right to preserve and follow their doctrines, faith, religious rights and rituals. The membership in a religion or any section thereof is subject to their doctrines, faith, religious rights and rituals. Therefore, the community attached to the church has every right to regulate its membership on the basis of endogamy. It may be noticed that the Judgement of the Lower Appellate Court rests on a

finding that the actions of Defendant No. 1 and 2 violate the fundamental rights of the Plaintiffs guaranteed under Article 25 of the Constitution. However, no point on the alleged violation of Article 25 is formulated in the Judgement. It may also be noted that the issue as recast by the trial court was on whether endogamy as a custom was established and not on the validity per se of the practice of endogamy.

63. The finding on point (k) is perverse. The membership of a Parish or Church under a Diocese is subject to the jurisdictional norms of the Diocese. In Ext B1, Bye Laws of the Archeparchy of Kottayam framed in 2009, the criteria for membership are clearly set out. The jurisdiction of the Archeparchy of Kottayam was reiterated by the higher authorities in the Catholic Church through Ext B19 letter dated 15-11-2017, even while stating that the practice of endogamy should not be permitted elsewhere. PW1 admitted that he was aware of Ext B1. However, no challenge thereto was laid in the suit. The Lower Appellate has egregiously erred in collaterally nullifying some of its provisions on the footing that the challenge to the custom of endogamy would be sufficient to discard the membership criteria set out in Exhibit B1.

64. The finding on Point (l) that the suit is maintainable even though it is filed without securing prior consent from the Central Government under Section 86 of the Code for suing Defendant No. 5 and 6 is perverse. Defendant No.5 and 6 are authorities of the Vatican City State and they fall within the authorities specified in Section 86 (4) of the Code. Section 86 of the Code is an exception to the rule of

absolute sovereign immunity granted by International law to foreign rulers and their officers/departments. The exception can be relied on only if the pre condition of Consent from the Central Government as insisted by Section 86 (1) of the Code is satisfied. The consent of the Central Government can be secured only if any of the four circumstances set out in Section 86 (2) (a) to (d) of the Code can be satisfied. In matters outside sub clauses (a) to (d) the Central Government itself has no jurisdiction to grant consent.

65. The reasoning of the Trial judge on issue No. 1 appears to be that since Defendant No.5 and 6 are *arrayed in the lis as religious disciplinary and supervisory hierarchy in catholic churches*, consent under Section 86 is not required. There is no distinction based on the nature of functions or role of the foreign ruler or its officer/department in the statutory provision. The decisions reported in AIR 1966 SC 230 and AIR 1994 SC 516 were relied on in this context. The argument that no relief is sought against Defendant No.5 and 6 is not correct. The cause of action for the suit is *inter alia* the alleged inaction of Defendant No.5 and 6 to respond/act on the notice/representation submitted by the Plaintiffs. Moreover, any decision rendered in the suit will have an impact on the legal rights of Defendant No.5 and 6 in the supervisory/disciplinary/religious role in the hierarchy of the Catholic Church.

66. It was contended that the consequences of confirming the Judgement of the Trial Court would be that the circle of endogamy will be enlarged. The circle would be of all Catholics and not Knanaya Catholics. The Knanaya Catholics as a community would cease to exist as a grouping. The Archeparchy of Kottayam,

established in 1911 for the Southists, will cease to exist an entity for the purposes envisaged by the Papal bull. The Papal bull, the decree of the Major Archbishop of the Syro Malabar Sabha and the Bye laws of the Kananya Community will stand collaterally effaced and set aside. Marriage of non Knanyayas will have to solemnized in the Knanaya churches contrary to the customs and particular laws of the Archdiocese. Any number of persons, who have left the Archeparchy of Kottayam over the last several centuries and decades, across generations, will stake claim with their families to join the churches under the Archeparchy of Kottayam. The stand of the religious hierarchy in this matter will stand substituted by a decision of the civil court.

67. It was also pointed out that the members of the Knanaya community will be forced to intermingle with non Southists and virtually follow a path that persons like Plaintiff No.2 and 3 have adopted. The consequences of intermingling will be the chaos that was abated through the Papal bull. Unfortunately, none of these contentions are addressed or even noticed in the Judgement.

68. It is submitted that the conclusion reached by the Lower Appellate Court is untenable and irreconcilable with the findings of fact entered in the Judgement that there is a valid custom of endogamy in the community and the further finding that the Church is established for the Southist people. The decision of the Lower Appellate Court is illegal, erroneous and unsustainable. Hence this Regular Second Appeal.

The Appellants above named beg to present this Memorandum of Regular Second Appeal against the decree and judgment dated 02.09.2022 in A.S No. 36 of 2021 on the file of the Additional District Judge's Court - V, Kottayam, through his Counsel M/s. P. B. Krishnan, P.B.Subramanyan, Sabu George, Anusree B. and Manu Vyasan Peter, Advocates, Geetanjali, Warriam Road, Ernakulam, Kochi-16, under Section 100 and Order XLII Rule 1 of the Code of Civil Procedure, 1908 for the following among other:-

GROUNDS

1. The decision of the Lower Appellate Court is illegal, erroneous and unsustainable.
2. The Lower Appellate Court has made an essentially erroneous approach to the whole case.
3. The Lower Appellate Court has acted illegally and with material irregularity in ignoring material submissions, citations and Written Submissions filed by the Appellants under Order XVII Rule 3 A of the Code.
4. The Lower Appellate Court ought to have held that the suit as framed is not maintainable.
5. The Lower Appellate Court has failed to see that a suit arraying Defendant No.5 and 6 cannot be instituted without the written consent of the Central Government under Section 86 of the Code.
6. The Lower Appellate Court ought to have noted that the capacity in which Defendant No. 5 and 6 are impleaded and/or the pleadings in

the Plaintiff and/or the nature of the reliefs sought are not relevant for judging the applicability of Section 86 of the Code.

7. The Lower Appellate Court ought to have found that the Plaintiffs have no right to send notice to the Apostolic Nuncio in India instead of sending notice to Defendant No.5 and 6.

8. The Lower Appellate Court ought to have noticed that the Apostolic Nuncio in India is functioning under the protection of sovereign immunity and having diplomatic status and is not amenable to the jurisdiction of the civil courts in India, particularly since no consent has been sought or secured from the Central Government under Section 86 of the Code.

9. The Lower Appellate Court ought to have found that the verification and authenticity of Service of notice under due process of law is the duty of the Trial Court and not of another Defendant arrayed in the suit.

10. The Lower Appellate Court ought to have held that since Defendant No. 5 and 6 fall within the category of persons enumerated under Section 84(6) of the Code, prior written consent of the Central Government is a *sine qua non* for the institution of the Suit.

11. The Lower Appellate Court has ignored the proviso to Section 86 (1) of the Code grants exemption from prior sanction only to the tenant of an entity/person enumerated in Section 84 (6) of the Code. The exempted category cannot be expanded by judicial *fiat* to include religious personage or disciplinary hierarchy.

12. The interpretation placed by the Lower Appellate Court on Section 86 and 87A of the Code is contrary to the well accepted norms applicable to interpretation of Statutes.
13. The finding of the Lower Appellate Court that the other defendants have not adduced evidence in regard to the true status of Defendant No. 5 and 6 is illegal, erroneous and unsustainable.
14. The Lower Appellate Court has acted illegally in making a distinction based on whether Defendant No.5 and 6 are arrayed as a formal party or a contesting party. The code makes no such distinction.
15. The Lower Appellate Court has failed to see that Defendant No.5 and 6 are bound by the decree of the Court even though they have not been properly sued or served with summons in the suit. Their directions/orders/communications in the matter will have to yield to decision of the Court.
16. The Lower Appellate Court has egregiously erred in proceeding as though no right of Defendant No.5 and 6 is affected by the decision in the suit.
17. The Lower Appellate Court egregiously erred in thinking that the dispute is of a civil nature as understood in Section 9 of the Code.
18. The Lower Appellate Court has failed to see that matters relating to 'Divine law' which is subject to the belief of a person and/or related to religious rites or ceremonies cannot be the subject matter of adjudication by a Court of law particularly since the Plaintiffs have not pleaded or adduced any evidence for showing what is "Divine Law".
19. The Lower Appellate Court ought to have noted that the questions of religious rites, ceremonies and such other aspects of the sacrament of

marriage is part of personal law and cannot be tried by a Civil Court. The significance of Explanation 1 to Section 9 of the Code has been ignored.

20. The Lower Appellate Court has failed to see that Canon law , cannot be enforced through a Court of law.

21. The Lower Appellate Court has egregiously erred in thinking that an issue of alleged violation of fundamental rights guaranteed under Article 25 of the Constitution can be adjudicated as part of an action seeking a remedy in common law before a Civil Court.

22. The Lower Appellate Court has egregiously erred in proceeding as though fundamental rights guaranteed under Part III of the Constitution can be enforced against non state actors through a Civil Court.

23. The Lower Appellate Court ought to have held that in view of Article 32 (3) read with Articles 13 and 228 of the Constitution, a Civil Court constituted under the Kerala Civil Courts Act, 1957 lacks jurisdiction to entertain a suit for enforcement of fundamental rights guaranteed under Part III of the Constitution.

24. The finding of the Lower Appellate Court the question of worship and membership in a Church including the question of violation of fundamental rights guaranteed under Article 25 of the Constitution can be decided by a Civil Court is illegal, erroneous and unsustainable.

25. The Lower Appellate Court has acted with material irregularity in relying on the minority judgement of Sahai J in (1995) Suppl 4 SCC 286 to hold that the suit is maintainable. That the observation on the

minority judgment cannot be law under Article 141 of the Constitution was highlighted at the hearing but ignored.

26. The Lower Appellate Court has egregiously erred in thinking that a suit for enforcement of fundamental rights guaranteed under Part III of the Constitution is maintainable against non state actors before a civil court as a common law remedy.

27. The Lower Appellate Court ought to have noted that a custom, which is law within the meaning of the term 'law' as understood in Article 13 of the Constitution, cannot be nullified by a Civil Court as being violative of fundamental rights guaranteed under Part III of the Constitution.

28. The Lower Appellate Court ought to have noticed that in the absence of statutory law governing the marriage of Christians in Travancore, the customary law will operate as personal law governing the sacrament of marriage. Such personal law is not law as understood in Article 13 of the Constitution and cannot be nullified as being in violation of the fundamental rights guaranteed under Part III of the Constitution by a Court.

29. The Lower Appellate Court has failed to see the validity of personal law cannot be judged by the Courts.

30. The Lower Appellate Court has failed to see that Civil Court cannot judicially overturn the practices followed by a voluntary association like a Church.

31. The Lower Appellate Court ought to held that the propriety of a rule or a decision or a practice of a voluntary association cannot be challenged in a Civil Court bypassing the hierarchy of authority and

grievance resolution mechanism provided to the members. There is a four tier hierarchical tribunal in the Catholic Church going by Ext-A10 and a provision of Appeal under Canon 997. In such circumstances, the approach to the Civil Court is misconceived.

32. The Lower Appellate Court ought to have noted that Plaintiff No. 1, a Society governed by the Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955 (Act 12 of 1955), can only sue in the name of its office bearer/trustee under Section 9 of the Act. The "Knanaya Catholic Naveekarana Samithy" has not laid a suit in the manner permitted by law for Societies. The alleged grievances of that Society cannot be adjudicated within the frame work of the suit.

33. The Lower Appellate Court has failed to see that Sec.(4) and 41(j) of the Specific Relief Act, 1963 are a bar to a Society seeking the reliefs set out in the Plaint.

34. The Lower Appellate Court has failed to note that a Society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act 1955 is not entitled to sue as a representative of individuals invoking Order 1 Rule 8 of the Code of Civil Procedure, 1908.

35. The Lower Appellate Court has failed to see that reliefs of a personal nature like injunction cannot be pursued under Order 1 Rule 8 of the Code by recognizing a Society (which itself has not brought the suit properly) as a representative of the person/s with an alleged common interest.

36. The Lower Appellate Court ought to have held that the procedure under Order 1 Rule 8 of the Code cannot be invoked on the facts and in the circumstances of the case.

37. The Lower Appellate Court ought to have found that there is no proper pleading for instituting a suit in representative capacity and there is no pleading or cause of action for their actual existing interest in the subject matter of the suit.
38. The Lower Appellate Court has failed to see that the Plaintiffs have not satisfied the requirements of Order I Rule 8 of the Code of Civil Procedure and Rule 20 of the Civil Rules of Practice while seeking to sue in a representative capacity. These aspects are noticed by the lower appellate court in its order dated 12.01.2022 but ignored while rendering judgment in this case.
39. The Lower Appellate Court ought to have noted that the Plaintiffs do not have the same interest as insisted by Order I Rule 8 (1) of the Code of Civil Procedure, 1908 to sue in a representative capacity.
40. The Lower Appellate Court has failed to see that a plea of vitiating circumstances like undue influence or coercion rendering a transaction voidable under Section 14 to 18 of the Contract Act, 1872 is not capable of being agitated as a representative action under Order I Rule 8 of the Code of Civil Procedure, 1908.
41. The Lower Appellate Court has failed to note that the Trial Court had ordered publication but not allowed the application seeking permission under Order I Rule 8 of the Code.
42. The Lower Appellate Court ought to have noted that Plaintiff No. 1 is a Society that is neither properly before the Court nor an entity with a grievance entitling it to relief of a personal nature or in a representative capacity.

43. The Lower Appellate Court has failed to see that Plaintiff No. 2 and 3 have left the Kottayam Diocese long ago. Plaintiff No.4 is a member of Kottayam Diocese. There is no common grievance for the Plaintiffs entitling them to any of the reliefs sought invoking the procedure under order 1 Rule 8 of the Code or otherwise.
44. The Lower Appellate Court ought to have held that the Plaintiffs collectively and/or individually have no cause of action or locus standii to seek the reliefs set out in the plaint, individually or collectively.
45. The Lower Appellate Court ought to have held that there is no valid representative action brought by the Plaintiffs.
46. The Lower Appellate Court ought to have noted that Plaintiff No.2 got married on 19-05-1977. Plaintiff No.3 got married on 23-10-1988. They have made an application to the ecclesiastical authorities and voluntarily taken permission to leave the church. The suit for declaration and injunction at their instance brought to Court on 02-09-2015, without disclosing the relevant facts, is hopelessly barred by limitation.
47. The Lower Appellate Court ought to have found that no fresh cause of action arises on the basis of a notice issued as Petitioner no.1. Parleys between the parties cannot be treated as a substitute for invoking legal remedies and nor can such correspondence enlarge the period of limitation for instituting appropriate legal proceedings.
48. The Lower Appellate Court ought to have found that where an alleged wrongful act (termination of membership) amounts to an ouster, the resulting injury is complete on the date of the ouster itself. A wrong or default as a result of which the injury is complete is not a continuing

wrong or default even though its effect continues to be felt despite its completion.

49. The Lower Appellate Court ought to have found that Section 22 of Limitation Act, 1963 is not applicable in a suit for a relief for declaration, since, the starting point of limitation under Art. 58 of the Act is from "*when the right to sue first accrues*".

50. The Lower Appellate Court has egregiously erred in thinking that the notification of Ext B1 Bye law in 2009 has any relevance to adjudicating the issue of limitation.

51. The Lower Appellate Court has ignored the fact that Ext B1 Bye law is not under challenge in the suit and no part of the cause of action set out in the Plaint is made with reference to it. No reliance had been placed by the Plaintiffs to any clause therein. PW1 stated in cross examination disclaimed Ext B1 and asserted that he is not accepting the contents. The contents of Ext B1 were not put to any defence witness. In effect, it was not the subject matter of trial. Hence, the reference to select clauses of Ext B1 to reach a conclusion against the custom of endogamy is illegal, erroneous and unsustainable.

52. The Lower Appellate Court has failed to see that the time barred claims of Plaintiff No. 2 and 3 cannot be resurrected in view of the notification of Ext B1 Bye law in 2009.

53. The Lower Appellate Court ought to have held that the plaint claim qua Plaintiff No. 2 and 3 is barred by limitation under Article 58 of the Limitation Act, 1963.

54. The Lower Appellate Court ought to have held that the Plaintiffs do not have a recurring cause of action to sue under Section 22 of the Limitation Act, 1963.

55. The Lower Appellate Court has failed to see that the suit is bad for non joinder of the members of the Knanaya community.

56. The Lower Appellate Court has egregiously erred in proceeding as though the defect of non joinder can be cured by treating the Archeparchy of Kottayam and its Bishop as the representatives of the Knanaya Community.

57. The Lower Appellate Court has failed to see that the rights of the Knanaya Community and the validity of the custom prevalent in that community cannot be adjudicated without arraying the community as a Defendant in the suit by appropriate steps under Order I Rule 8 of the Code.

58. The Lower Appellate Court has failed to see that in order to bind the parishioners, Order 1 Rule 8 has to be invoked. In the absence of permission under Order I Rule 8 to sue any of the Defendants in a representative capacity followed by a publication, a decree of this nature could not be passed.

59. The Lower Appellate Court has acted with material irregularity in ignoring the order on the Review Petition in *Biju Uthup* in RP 450 of 2017 which order has been affirmed by the Supreme Court in Ext B6. It is held that the validity of the custom in the community cannot be adjudged without following the procedure under Order I Rule 8 of the code.

60. The Lower Appellate Court ought to have noted that no representative mantle was sought to be cast on any of the Defendants in the suit.

61. The Lower Appellate Court has failed to note that a Church is a voluntary association and not a incorporated body. Hence, even if it is a juristic person, compliance with Order I Rule 8 of the Code is mandatory.

62. The Lower Appellate Court ought to have noted that Defendant No.2 is an incorporated body and compliance with the requirements of Order 1 Rule 8 of the Code is necessary to bind the members of Defendant No.2.

63. The Lower Appellate Court ought to have found that Plaintiff No.2 and 3 voluntarily left the Church before their marriage and took membership in another Church under a different Diocese.

64. The Lower Appellate Court has failed to see that the Plaintiffs have consciously not made any averment regarding the alleged termination of membership of any individual in the Plaint. Such clever drafting will not save the suit from the bar of limitation.

65. The Lower Appellate Court has failed to see that the Plaintiffs have not even pleaded that Plaintiff No.2 and 3 were members of Defendant No.2 at any point of time. The date and/or circumstances under which they left the membership of Defendant No.2 is also not stated in the Plaint.

66. The Lower Appellate Court has failed to see that a plea of Coercion can be said to be raised only when the requisite details on who used threat or force on the individual, the nature of the force/threat used, on

what date/occasion was it done etc...are set out in the Plaintiff as insisted by Order VI Rule 4 of the Code. The ingredients to make out a case of coercion and/or any other vitiating circumstance of the nature understood in Section 14 to 18 of the Contract Act, 1872 is not set out in the Plaintiff. Consequently, no issue is framed on any such aspect of the matter.

67. The Lower Appellate Court has egregiously erred in referring to Ext B1 Bye law notified in 2009 in the context of the alleged termination of membership of Plaintiff No.2 and 3 that occurred decades preceding the Bye law.

68. The Lower Appellate Court has egregiously erred in making an enquiry on the alleged termination of membership of Plaintiff No. 2 and 3 by framing a point at the Appellate stage when such a matter is neither pleaded nor covered by an issue struck for trial. Point (e) ought not to have been formulated at all.

69. The Lower Appellate Court ought to have found that Defendant No. 1 and 2 have not terminated the membership of any member till this date. The Plaintiffs have failed to establish the expulsion of any member even though the above fact is specifically asserted in the reply notice dated 5-3-2015 and 7-4-2015, which are marked as Exhibit A15 and A17.

70. The Lower Appellate Court has egregiously erred in selectively relying on an extract from the testimony of PW2 to conclude that Plaintiff No.2 and 3 were removed from the membership of the Church by force.

71. The Lower Appellate Court has failed to note that the testimony of PW2 is not supported by pleadings. No amount of evidence can be looked into on a plea that is not put forward.

72. The Lower Appellate Court has ignored the testimony of PW2 where he has admitted that he left the membership of the Church voluntarily before his marriage and at the stage of betrothal itself.

73. The Lower Appellate Court has egregiously erred in proceeding as though the testimony of PW2 regarding his alleged termination from membership can be relied on to conclude that Plaintiff No.3 has been terminated from membership by force.

74. The Lower Appellate Court ought to have found that the practices and procedures for marriage are different to different in various Dioceses in the Catholic Church.

75. The Lower Appellate Court has egregiously erred in thinking that Defendant No.2 cannot prescribe religious sacraments over and above Canon law as it has no independent existence from the Pontiff. This observation contradicts the finding that there is custom of marriage in the Community which is immemorial and recognized by Canon law. Moreover, the practice and custom in the Knanaya Community has been considered by the hierarchy of the Catholic Church and allowed to continue as such.

76. The Lower Appellate Court ought to have found that the Bishop, who is obliged to shepherd the community entrusted to him, has legislative authority to make rules for the qualification for a member in Defendant No.2 as per the custom and practice in the Knanaya Catholic community.

77. The Lower Appellate Court ought to have found that Catholic Church is a union of different churches and recognizes unity in diversity. The unity is in the doctrines. There is diversity in Liturgy, theology, spirituality, disciplinary heritage, difference in culture and circumstances of the culture of peoples.

78. The Lower Appellate Court has failed to see that the Canon law is not a law capable of being enforced through a Court of law.

79. The Lower Appellate Court has failed to see that the civil Court can only act to implement the rules framed by the Church to regulate its affairs and not collaterally negate the particular laws of the Diocese.

80. The Lower Appellate Court ought to have found that Defendant No.1 and 2 have no jurisdiction over any Catholic except Southist or Knanaya Catholics in view of the express stipulations and limitation prescribed in Ext B4 (a) Papal bull.

81. The Lower Appellate Court has failed to see that any attempt to act contrary to the terms of the Papal bull will create a conflict on jurisdiction over other Catholic dioceses in the proper territory of the Syro Malabar Church.

82. The Lower Appellate Court ought to have noted that as per the Papal bull the Archbishop of Kottayam has jurisdiction over 'Southist' or 'Knanaya catholics' only. A non Knanaya cannot be admitted in the Archdiocese of Kottayam. A Court of law ought not to compel Defendant No.1 and 2 to violate the terms of the Papal bull and the hierarchy of authority in the Catholic Church and Canon law.

83. The Lower Appellate Court has misunderstood the legal entities specified in Canon law like parish, diocese and sui juris church. A

Catholic can claim permanent membership only in sui juris church (Syro Malabar Sabha or other sui juris churches) and not in a parish or Diocese.

84. The Lower Appellate Court ought to have found that the membership in a parish or Diocese can be granted or continued only subject to the norms of the Diocese and its particular laws.

85. The Lower Appellate Court has egregiously erred in referring to 'Arappally' to conclude that the Southists and the Northists had mixed religious practices till the 16th century and this can be relied on to draw a conclusion that endogamy was not a criteria for membership in the Church. The entire line of reasoning and conclusion is based on special pleadings, in respect of a matter that was not raked up at the trial even. Ext B3 communication of the 3 Bishops dated 1-3-1911 leading to the Papal bull vividly refers to the distinction between the Southists and the Northists on account of their distinct '*Vamshavali*' leading to 2 communities and the custom in regard to marriage (endogamy) strictly followed for 15 centuries. This communication is the very basis of Ext B4 (a) Papal bull.

86. The Lower Appellate Court has egregiously erred in proceeding as though an illegitimate child can be a member of a Church under the Archdiocese of Kottayam. The observations and findings in this regard are based on a misinterpretation of Ext B1 Bye laws and disregard to the membership criteria specifically set out therein. The sacrament of baptism (entry to god) referred to in the Canon law and the custom of marriage in a community and/or membership of a Church under a Diocese of the Syro Malabar Sabha are distinct and separate.

87. The finding of the Lower Appellate Court that membership of the Church cannot be regulated by the practice of endogamy but by Canon law is perverse. The entire line of reasoning and conclusion in regard to baptism and membership is based on special pleadings, in respect of a matter that was not raked up at the trial even.

88. The Lower Appellate Court has failed to see that the Knanaya Community as also the Catholics under the Syro Malabar Sabha are religious denomination or a section thereof entitled to the full protection under Article 26 of the Constitution in regard to all religious and administrative matters in regard to the sacrament of marriage as also regulating membership of a Church under its Dioceses. The finding that the marriage custom in the community is not an essential religious practice for restricting membership in a Church is illegal, erroneous and unsustainable.

89. The Lower Appellate Court ought to have found that the practice followed for the marriage between a Knanaya catholic and non Knanaya Catholic will not be in violation of the fundamental rights of any person under Article 25 of the Constitution of India. The procedure renders assistance for proper pastoral care and unity of his/her family within the umbrella of the Syro Malabar Sabha itself.

90. The Lower Appellate Court has egregiously erred in thinking that the Church has taken a stand contrary to Ext B1 Bye law in the litigation.

91. The Lower Appellate Court has failed to see that the Kottayam Vicariate was created for the Southists for practicing and preserving their ethnic identity. The Old Testament, Canon law and the Articles of faith support the practice of endogamy in the Knanaya Community.

92. The Lower Appellate Court ought to have held that qualifications to be a member in Knanaya Catholic Community or Southists or Thekkumbhagar (Pro Gente Suddistica) is governed by practice and customs in vogue for centuries and is reiterated in Ext B1.

93. The Lower Appellate Court has misinterpreted the Canons in CCEO numbers 669, 790 to 812. Exhibit B1 is not against any provisions of CCEO and the Bishop has right to add any provisions in addition to the provisions in canon law (CCEO).

94. The Lower Appellate Court has acted with material irregularity in attempting to decide the question on whether endogamy is an essential religious practice without first determining the content of the alleged rights of the Plaintiffs under Article 25 of the Constitution

95. The Lower Appellate Court has failed to see that the Archdiocese of Kottayam and other Diocese are giving all assistance for the marriage of a Knanaya catholic with a non Knanaya catholic. Hence, there is no violation of any fundamental right of any person.

96. The Lower Appellate Court ought to have noted that membership of a particular Diocese under the Syro Malabar Sabha is not an essential religious practice protected as a fundamental right under Article 25 of the Constitution. The need to maintain membership in the Sabha to protect religious rights does not extend to insisting on membership in a particular Diocese under the Sabha.

97. The Lower Appellate Court has failed to note that the alleged rights of the individual under Article 25 are subject to the fundamental rights of the community protected under Article 26 of the Constitution.

98. The Lower Appellate Court has failed to see that the ethnic identity of the religious denomination, crystallized centuries ago, has been maintained inter alia by strict adherence to the practice of endogamy. The Defendants have established that endogamy is conducive to their spiritual well being. The right of the members of a religious denomination to hold certain beliefs and to take steps to protect such beliefs is a fundamental right guaranteed by the Constitution. A Court of law would not attempt to adjudicate on whether the belief is rational.

99. The Lower Appellate Court has egregiously erred in granting the decree sanctifying endogamy to marriage among Catholics after holding that the said practice in the Knanaya Community is illegal and erroneous. The reliefs sought and granted is one that merely widens the circle within which endogamy is to be practiced has been ignored by the Lower Appellate Court.

100. The Lower Appellate Court has acted with material irregularity in thinking that a wife gets transplanted into the family of her husband and therefore a Non Knanya girl on marriage to a Knanya boy becomes a member of the Knanaya community.

101. The Lower Appellate Court has egregiously erred in thinking that the children automatically take the membership of their father in a Church.

102. The Lower Appellate Court ought to have held that the decree of declaration granted by the Trial Court is illegal, erroneous and unsustainable. The decree for mandatory and prohibitory injunctions that effectively compel Defendant No.2 to retain members, carry out marriages and readmit members who have left on their volition long ago

is illegal and incapable of enforcement. A Priest/Vicar of a Church cannot be compelled by a decree to perform a marriage. Nor can a Court of law monitor and ensure the performance of such marriages.

103. The Lower Appellate Court ought to have noted that in matters relating to a voluntary association like a Church the civil Court cannot sit in appeal over the vires/fairness of the rules that governs the inter se relationship between the members of the Association and the Church. In any event, the rules are not under challenge in the suit.

104. The Lower Appellate Court has failed to note that the members who seek permission to marry a person from another Diocese do so voluntarily and with a full understanding of the consequences of their action. There is no expulsion or excommunication. If the bond of marriage ceases, those persons can become members of the Knanaya Catholic Community again.

105. The observation of the Lower Appellate Court that the forfeiture of membership of Defendant No.2 is a violation of fundamental right of privacy and/or rights protected under Article 25 of the Constitution of India is illegal, erroneous and unsustainable.

106. The Lower Appellate Court has acted with material irregularity in ignoring the International covenants that support the right of ethnic communities to practice and sustain their customs and practices. The various statutory provisions in vogue and pronouncements of the Supreme Court of India recognize endogamy in various religions, including Christianity.

107. The Lower Appellate Court ought to have, in any event, that relief of declaration and injunction are discretionary reliefs under the Specific Reliefs Act, 1963, the Court would refrain from embarking on the

hazardous task of adjudicating matters of religion for granting discretionary reliefs.

108. The Lower Appellate Court ought to have allowed the Appeals.

On the facts and in the circumstances of the case the following substantial questions of law arise for decision in this Regular Second Appeal-

1. Is not the decision of the Lower Appellate Court vitiated on account non consideration of material submissions, citations and Written Submissions filed by the Appellants under Order XVII Rule 3A of the Code?
2. Has not the improper framing of issues and recasting of issues, after trial and at the stage of reserving the case for Judgement, vitiated the decision making process in the suit and occasioned prejudice to the Appellants?
3. Is the suit, purported to be filed on behalf of the Knanaya Catholic Naveekarana Samithy, in compliance with the requirements of Section 9 of the Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act, 1955?
4. Is Plaintiff No.1 entitled to seek the reliefs sought in the plaint on the cause of action of Exhibits A14 and A16 notices?
5. Have Plaintiff No. 2 to 4 disclosed a cause of action to sue for the reliefs sought in the Plaint?

6. In the absence of leave under Section 91. of the Code of Civil Procedure, 1908 are the Plaintiffs entitled to agitate an alleged wrongful act affecting or likely to affect a section of the public?
7. Is the issue of paper publication under Order I Rule 8 at the Appellate stage to give public notice to the Knanaya Community legal and proper when the suit was not tried as a representative action binding on the Community?
8. Is a suit maintainable as against Defendant No. 5 and 6 without consent of the Central Government under Section 86 of the Code, maintainable?
9. Is the Lower Appellate Court justified in proceeding with the suit without ensuring proper and due service of notice on Defendant No. 5 and 6?
10. In view of Article 32 (3) read with Articles 13 and 228 of the Constitution and Section 113 of the Code, does a Civil Court constituted under the Kerala Civil Courts Act, 1957 have jurisdiction to entertain a suit for enforcement of fundamental rights guaranteed under Part III of the Constitution ?
11. Is a suit for enforcement of fundamental rights guaranteed under Part III of the Constitution maintainable against non state actors before a Civil Court as a common law remedy?
12. Can a custom, which is law within the meaning of the term law as understood in Article 13 of the Constitution, be nullified by a Civil Court as being violative of fundamental rights guaranteed under Part III of the Constitution?

13. In the absence of statutory law governing the marriage of Christians in Travancore will not the customary law operate as personal law governing the sacrament of marriage?
14. Does Article 13 of the Constitution apply to a customary law of marriage which operates as a personal law for the parties?
15. Does the Civil Court have jurisdiction to consider the validity of personal law relating to the practices connected with the sacrament of marriage in the Knanaya Catholic community?
16. Has Plaintiff No.1 disclosed any individual civil right as required by Section 4 of the Specific Relief Act 1963 for seeking the reliefs sought in the plaint?
17. Is a Society registered under the Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act 1955 entitled to sue as a representative of individuals, whose rights are alleged to be infringed by voidable actions of the Defendants, invoking Order 1 Rule 8 of the Code of Civil procedure, 1908?
18. Have the Plaintiffs satisfied the requirements of Order I Rule 8 of the Code of Civil Procedure and Rule 20 of the Civil Rules of Practice while seeking to sue in a representative capacity?
19. Do the Plaintiffs have the same interest as insisted by Order I Rule 8 (1) of the Code of Civil Procedure, 1908 to sue in a representative capacity?
20. Is a plea of vitiating circumstances like undue influence or coercion rendering a transaction voidable under Section 14 to 18 of the Contract Act, 1872 capable of being agitated as a

- representative action under Order I Rule 8 of the Code of Civil Procedure, 1908?
21. Whether on the facts and in the circumstances of the case there is a valid representative action brought by the Plaintiffs?
 22. Is not the plaint claim *qua* Plaintiff No. 2 and 3 barred by limitation under Article 58 of the Limitation Act, 1963?
 23. Do the Plaintiffs have a recurring cause of action to sue under Section 22 of the Limitation Act, 1963?
 24. Can Ext B1 Bye law, which is not under challenge in the suit and when no part of the cause of action set out in the Plaint is made with reference to it, have any relevance to adjudicating the issue of limitation arising in the case?
 25. Does the notification of Ext B1 Bye law in 2009 resurrect time barred claims of persons like Plaintiff No.2 and 3?
 26. Is not the suit bad for the non-joinder of the Knanaya Catholic/ Southist Community?
 27. Does the Archeparchy of Kottayam and/or its Bishop have representative capacity to represent the members of the Knanaya Catholic/ Southist Community?
 28. In the light of the order passed by this Hon'ble Court in RP No. 450 of 2017 is it legal or proper to decide a suit of this nature without compliance of the requirements of Order I Rule 8 of the Code *qua* the Defendants?
 29. Can a suit laid against an unincorporated voluntary association like a Church, which is treated as a juristic person, be maintained

without compliance with the requirements of Order I Rule 8 of the Code?

30. Is the Lower Appellate Court justified in proceeding as though the Defendants ought to have resorted to Rule 20 (3) of the Civil Rules of Practice?

31. Have the Plaintiffs pleaded the material particulars of vitiating circumstances relating to the alleged forceful termination of membership in Defendant No.2 as insisted by Order VI Rule 4 of the Code of Civil Procedure, 1908?

32. In the absence of any pleading and/or issue on alleged forcible termination of membership of Plaintiff No.2 and 3 and/or any another person by Defendant No.2 is the Lower Appellate Court justified in formulating a point in this regard at the Appellate stage and reaching a conclusion that the membership of Plaintiff No.2 and 3 had been forcibly terminated?

33. Is the Lower Appellate Court justified in relying on a selective reference to an extract from the testimony of PW2, unsupported by pleadings, to conclude that membership of Plaintiff No.2 and 3 had been forcefully terminated by the Church?

34. Have the Plaintiffs established any forcible termination of membership of Defendant No.2 on account of marriage of a member with a Catholic of another Diocese?

35. Is the suit framed without challenging Exhibit B4 (a) Papal Bull, Exhibit B8 decree and Exhibit B1 particular law maintainable?

36. Is the practice of endogamy illegal, unconstitutional or violative of the civil rights of any person?

37. In the absence of any relief in respect of the custom or practice of endogamy is the collateral challenge to the practice by seeking the reliefs sought in the Plaint maintainable?
38. Is a person, who is not belonging to the Southist or Knanaya Catholic Community, entitled to claim membership in Defendant No.2 on account of marriage with a member of Defendant No.2?
39. Are the non-Knanaya spouses and/or children of a member of Defendant No.2 born in wedlock with a non - Knanya spouse entitled to seek membership in Defendant No.2?
40. Can Defendant No.2 be compelled to perform the sacrament of marriage of non-Knanayas in the churches under Defendant No.2?
41. Is the right of marriage that can be derived from Article 25 of the Constitution an absolute right or capable of being recognised as an essential part of religious rights?
42. Is membership of a Church under a Diocese an essential practice of religion of the plaintiffs protected under Article 25 of the Constitution of India?
43. In a case of conflict between the fundamental right of an individual guaranteed under Article 25 and of the community under Article 26 in respect of an essential religious practice will not the fundamental rights of the community, which is immune from other Part III rights, prevail?
44. Will not Exhibit B4 (a) Papal Bull, Exhibit B7 and B19 communications and Exhibit B1, B10 and B17 particular laws evidence a scheme or code framed by the Roman Catholic Church

52. Is the Lower Appellate Court justified in proceeding as though the sacrament of baptism is linked with the membership of a Church or particular Diocese?

53. In the absence of statutory law governing marriage of Christians in Travancore-Cochin will not the practice, custom and usage in Defendant No.2 operate as a personal law governing the parties?

54. In the light of the reversal of some material findings entered by the Trial Court and findings of fact entered by the Lower Appellate Court, is the dismissal of the Appeal and confirmation of the decree of the Trial Court legal and proper?

It is therefore humbly prayed that this Hon'ble Court may be pleased to allow this Regular Second Appeal and reversing the decision of the Lower Appellate Court, pass a judgment dismissing the suit, O.S. No. 106 of 2015 on the file of the Addl. Subordinate Judge's Court, Kottayam, as prayed for with costs throughout.

VALUATION AND COURT FEES

Valuation for the purpose of Court-fees (as before the court below)	:	Rs. 10,06,500.00
Court fees paid under Section 27(c) read with S. 52 of the KCF and SV Act (as before the court below)	:	Rs. 98,800.00
One-third court fees payable and paid	:	Rs. 33,000.00
Balance court fees payable	:	Rs. 65,800.00

Dated this the 10th day of October, 2022.

COUNSEL FOR THE APPELLANTS

IN THE HIGH COURT OF KERALA AT ERNAKULAM

I.A No. of 2022

in

R.S.A No. of 2022

The Metropolitan Archbishop,
The Archeparchy of Kottayam and Another ---- Appellants
--Versus--

Knanaya Catholic Naveekarana Samithy and Ors ---- Respondents

AFFIDAVIT

I, Mar Mathew Moolakkatt, aged 69, S/o John, the Metropolitan Archbishop of the Arch eparchy of Kottayam residing at Archbishop's House, Kottayam, do hereby solemnly affirm and state as follows:

1. I am Applicant No.1 in the accompanying Interlocutory Application and Appellant No.1 in the above Regular Second Appeal. I am swearing to this affidavit on behalf of Applicant No.2 also as authorized.

2. The above Regular Second Appeal arises out of the decree and judgment in A.S No. 36 of 2021 and connected cases on the file of the Additional District Judge's Court-V, Kottayam which was preferred against the decision in O.S No. 106 of 2015 on the file of the Additional Subordinate Judge's Court, Kottayam.

3. The suit was one for declaration and injunction, prohibitory and mandatory. The Trial Court decreed the suit and the said decision was confirmed by the Lower Appellate court. The decision of the Lower



+ Mathew Moolakkatt OSB

Appellate Court is illegal, erroneous and unsustainable for the various grounds raised in the memorandum of Regular Second Appeal.

4. The decisions of the courts below seek to overturn and uproot the practice and custom followed in the Knanaya Community for over Seventeen centuries. The decision, if enforced, will destroy the ethnic identity of the community and all those who were permitted on their application to join the parishes of their spouses would have to be taken back by causing great discontentment in the community. If the decree were to be enforced pending Appeal, it would lead to irreparable injury. The Appellants have a strong prima facie case. The balance convenience is in favour of the Appellants. The Respondents are taking hasty steps to enforce the decree of the Court below.

5. There was no interim order of any nature during the pendency of the suit. The Appellants herein had filed a stay petition as I.A.No.3 of 2021 along with A.S. No.36 of 2021 before the Lower Appellate Court. The Lower Appellate Court issued an order of stay on 18-5-2021 at the stage of admission of the Appeal. Thereafter, the stay petition was heard and a final order of stay of execution of the decree of the Trial Court was issued on 19-7-2021.

6. The order in I.A.No.3 of 2021 was challenged in OP (C) No. 1451 of 2021 by Respondent No.1 to 4 herein. An ex-parte interim order of stay was issued by this Hon'ble Court on 7-9-2021. The Appellants herein filed I.A.No.1 of 2021 in OP (C) No. 1451 of 2021 seeking to vacate the ex-parte interim order of stay. OP (C) No. 1451 of 2021 was heard and



* Malkh Nalabhat OSB

judgment was pronounced on 1-11-2021 modifying the order of stay granted by the Lower Appellate Court. The said modified order of stay remained in force during the pendency of the First Appeals.

It is therefore humbly prayed that this Hon'ble Court be pleased to stay the operation of and of all proceedings in execution of the judgment and decree dated 30-04-2021 of the Addl. Subordinate Judge's Court, Kottayam in O.S No. 106 of 2015 as confirmed in A.S No. 36 of 2021 and connected cases on the file of the Addl. District Judge's Court-V, Kottayam pending disposal of the above Regular Second Appeal. Otherwise, it will cause irreparable injury, hardship and loss to the Appellants.

All the facts stated above are true and correct to the best of my knowledge, information and belief.

Dated this the 10th day of October, 2022



DEPONENT:

Solemnly affirmed and signed before me by the deponent on this the 10th day of October, 2022 at my office at Kottayam.

Advocate, Kottayam

IN THE HIGH COURT OF KERALA AT ERNAKULAM

I.A No. _____ of 2022

in

R.S.A No. _____ of 2022

APPLICANTS - *Appellants in R.S.A*

1. The Metropolitan Archbishop,
The Archeparchy of Kottayam, Catholic Metropolitan's House,
Kottayam – 686 001, the present Metropolitan Archbishop is
Most Rev. Mar Mathew Moolakkatt.
2. The Archeparchy of Kottayam,
Catholic Metropolitan House, P.B, No. 71, Kottayam,
Kerala - 686001, represented by The Metropolitan Archbishop.

--versus--

RESPONDENTS - *Respondents in R.S.A*

1. Knanaya Catholic Naveekarana Samithy,
Valtharn Building (Near Village Office), Kumarakom P O.,
Kottayam, Pin – 686563.
rep. by its President who is also Respondent No.2.
2. T.O. Joseph,
aged 70, S/o. Ouseph, Thottumkal House,
Kannankara P O., Thannermukkam North Village,
Cherthala Taluk, Alappuzha District. Pin – 688527.
3. Lukose Mathew K.,
aged 65, S/o.Mathew Kunnumpurathu House,
Kurichithanam P.O., Kurichithanam Village,
Meenachil Taluk, Kottayam District. Pin-686635.

4. C.R. Punnen,
aged 68, S/o. Kuruvilla Chirayil House, Athirampuzha P O.,
Kottayam Taluk, Kottayam District, Pin – 686562.
rep. by his Power of Attorney Holder V.C. Mathai.
5. The Major Arch Bishop,
Syro Malabar Major Archiepiscopal Church,
Mount St.Thomas, Kakkanad P O., P.B. No.3110, Kochi,
The present Major Archbishop is His Beatitude
Mar George Cardinal Alencherry. Pin – 682030.
6. Synod of the Bishop of the Syro Malabar
Major Archiepiscopal Church, Mount St.Thomas, Kakkanad P O.,
P.B. No. 3110, Kochi, rep.by its Secretary. Pin – 682030.
7. Congregation for the Oriental Churches
Via Della Conciliazione 34,
00193, Roma, Italy, rep.by its Prefect.
8. Congregation for the Doctrine of Faith Piazza del S.Ufficio-II,
00139, Roma, Italy, rep.by its Prefect.
9. Knanaya Catholic Congress,
Kottayam, rep. by President Stephen George,
S/o. George, Veliyath House, Kurumulloor P.O,
Onamthuruthu Village, Kottayam. Pin – 686632.
10. Johny Kuruvilla,
aged 69, S/o. P.P.Kuruvilla, Padickamyallil house,
Kadaplamattam P.O., Kottayam. Now residing at
T.C.12/1773/4, Mulavana, Kunnukuzhy,
Thiruvananthapuram District, Pin - 695034.
11. Dominic Savio,
aged 63, S/o. V.C. Kuruvilla, Vachachirayil,
Kuzhimattom P.O., Panachikkadu,
Kottayam District. Pin – 686533.

12. Benny Jacob,
aged 56, S/o. E.K.Chacko, Illickal house,
Chunkom Kara, Kolani P.O., Idukki District, Pin – 685608.
13. Biju Uthup,
aged 62 years, S/o. Uthup, Residing of 62, 10th Main,
7th Cross, Horamavu Road, Nandanam Colony,
Bangalore – 560043.
14. James Joseph K,
aged 62 years, S/o. Joseph, Kattuveetil House,
Nagampadom, Nattassery Kara, Perumpaikadu Village,
Kottayam Taluk, Kottayam District, Pin – 686002.
15. Knanaya Royal Community
Represented by its Managing Trustee Jose Thomas,
aged 54 years, S/o Thomas, Ennamplasseril House,
Uzhavoor P O, Uzhavoor Kara, Uzhavoor Village,
Meenachil Taluk, Kottayam. Pin - 686634.
16. Joyan P.Saimon,
aged 50 years, S/o. P.J. Saimon, Powat,
Kumarakom P.O, Kumarakom Village, Kottayam -686563.
17. Tobin George,
aged 48 years, S/o. George Joseph, Meluvallil House,
Kumarakom P.O., Kumarakom Village, Kottayam-686563.
18. Philu Thomas,
aged 47, S/o.Thomas, House No. 145-43, Thomas Lay Out (Block),
Carmilaram Post, Bangalore Urban District,
Bangalore South Taluk, Bangalore - 560035.
19. Alex J Victor,
aged 41 years, D-102, Concorde Midway City Apts,
Hotsa Road, Basapura Village, Bangalore - 560074.

20. Siby Jose,
aged 48 years, #409/5, 20th D Cross,
Ejipura Main Road, Vivekananger Post, Bangalore, Pin - 560047.
21. Sunny Kuruvilla,
aged 65 years, #242, Ashiana, 6th Main,
7th Cross, ST Bed Kormangala, 4th Block, Bangalore - 560034.
22. Roby K Kunjoonju, aged 56 years, 17/A, 12th main, Sector-1,
Nobonagar, Bangalore, Pin - 560076.
23. Cyriac Thomas,
aged 47 years, No. 32, 1st Floor, 6th Cross Bhavaninagar,
S-G Palaya, DRC Post, Bangalore. Pin - 560029.
24. Reji C Joseph,
aged 57 years, No. 24, Trinity Home, S G Palaya,
CV Raman Nagar, Bangalore. Pin - 560029.
25. Cyriac Joseph,
aged 52 years, Sobha Daliya, Outer ring road,
Bellandoor, Bangalore. Pin - 560103.
26. Joji George,
aged 40 years, G-201, Holyhok Apartments,
Daddys South bourg Layout, Hebbagody, Bangalore - 560099.
27. Santhosh Simon,
aged 42 years, C-002, Daddy's Daliya,
Daddys South bourg Layout, Hebbagody, Bangalore - 560099.
28. Sibimon Jose,
aged 56, Thottaplakkil House, Lake View enclave Layout,
Seeg halli, Virgnonagar, Bangalore-49.

29. Tibin Thomas,
Secretary, Knanaya Global Parliament,
Chettai.Com, XII/ 203 A, Perumbaikkadu Village,
S.H Mount P O, Kottayam. Pin – 686006.
30. The Knanaya Samudaya Samrakshana Samithi (KSSS),
Rep. by its President, Abraham Naduvathara, aged 72,
S/o N.I. Abraham, residing at Naduvathara House,
Perookada P.O., Thiruvananthapuram District. Pin – 695005.
31. Lambochan Mathew,
aged about 61 years, S/o Late P.C. Mathew, Pannivelil House,
Kaduthuruthy Kara, Kaduthuruthy village, Vaikom Taluk,
Kottayam District. Pin – 686604.
32. Jose Mathew,
aged about 54 years, S/o Late P.K. Mathai, Aruparayil House,
Peroor P.O., Kottayam District, Pin – 686637.
33. Philip Chacko,
aged about 66 years, S/o Late K.U Chacko, Kusumalayam House,
Kumarakom P.O., Kottayam District. Pin – 686563.
34. Knanaya Catholic Congress, Kottayam,
Rep. by its President, Thomas K.L., aged 70 years,
S/o Luka, Erumelikkara, Purappuzha, Vazhithala P.O.,
Purappuzha village, Thodupuzha Taluk,
Idukki District, Pin – 685583.
35. Thomas Vattakkalam,
aged about 65 years, S/o Chandy Chacko, Member,
Knanaya Global forum, now residing at Vattakkalam House,
Kolani P.O., Thodupuzha, Idukki District, Pin – 685608.

36. Jose M.J.,
aged about 51 years, S/o Joseph, Member,
Knanaya Global Forum, now residing at A 14/F-1,2,
Dilshad Colony, Jhilmil H.O., East Delhi,
Delhi from Mechery House, Vellanikkara P.O., Thrissur Taluk,
Thrissur District, rep. by PoA Holder Thomas Vattakkalam,
aged about 65 years, S.o Chandy Chacko, Vattakkalam house,
Kolani P.O., Thodupuzha, Idukki District. Pin -685608.
37. Tomy Thomas,
aged 60 years, S/o Thomas, Member, Knanaya Global Forum,
now residing at 2208 Clubhouse Drive, Plant City, Florida,
33566, USA, from Myalkarapurathu House, Marika P.O.,
Koothattukulam, Ernakulam District, rep. by Power of Attorney
Holder, Shaju John, aged 58, S/o K.M. John, Anchakunnath
House, Uzhavoor P.O., Uzhavoor village, Meenachil taluk,
Kottayam District, Pin - 686634.
38. Joy Mathew,
aged 52 years, S/o Chacko Mathew, Member,
Knanaya Global Forum, now residing at 2822,
West Pebble Beach Drive, Missouri City, Texas - 77459, USA,
from Vellamthadathil House, Puthuvvely P.O.,
Kottayam District, Pin - 686636. Rep. by Power of Attorney
Holder Shaju John, aged 58, S/o K.M. John, Anchakunnath
House, Uzhavoor P.O., Uzhavoor village, Meenchil Taluk,
Kottayam District, Pin - 686634.
39. Sonny Joseph,
aged 67, S/o Joseph Poozhikala, Member,
Knanaya Global Forum, now residing at 2453, Tesla Cres,
Oakville Ontario, Canada - L6H7T6 from Poozhikala House,
Kidangoor South P.O., Kottayam, rep. by Power of Attorney
holder Thomas Vattakkalam, aged 64, S/o Chandy Chacko,
Vattakkalam House, Kolani P.O., Thodupuzha, Idukki District,
Pin - 685608.

40. Jimmi Cherian,
aged 62, S/o Cherian Mozhikodathu, Member,
Knanaya Global Forum, now residing at 65 Knutton Crescent,
Sheffied, S5, (NX, UK from Mozhikodathu House,
Eravimangalam P.O., Vaikom, Kottayam, represented by Power
of Attorney Holder Stanley Kurian, aged 60, S/o Kurian residing
at Konnanikkal House, Mulakulam P.O., Mulakkulam village,
Peruva, Kottayam. Pin – 686610.
41. Soban Thomas,
aged 42, S/o P.A. Thomas, Member, Knanaya Global Forum, now
residing at 26, Mackellar Avenue, Wheelers Hill, VIC – 3150,
Melbourne, Australia, from Poozhikunnel House,
Perumpaikkadu P.O., Kottayam, represented by Power of Attorney
Holder, Shaju John, aged 58, S/o K.M. John,
Anchakunnath House, Uzhavoor P.O., Uzhavoor village,
Meenachil Taluk, Kottayam District, Pin – 686634.
42. Shibu Paul,
aged 48 years, S/o M C Paul, Member, Knanaya Global Forum,
now residing at Via Gorgona 48, Roma, Italy, from Manithottiyil
House, Memury P.O., Kuruppanthara, Kottayam District,
represented by Power of Attorney Holder Stanley Kurian,
aged 60, S/o Kurien, residing at Koanickkal House,
Mulakulam P.O., Mulakkulam village, Peruva,
Kottayam. Pin – 686610.
43. Fr. Byju Mathew alias Byju Mukalel,
aged about 43 years, S/o M L Mathai, MSP Seminary,
S.H Mount P.O., Kottayam District, Pin – 686006.
44. Chacko Thekkedath Joseph,
aged 71, S/o Joseph, residing at Thekkedath House,
Manakkad P.O., Chungam kara, Thodupuzha village,
Idukki District, Pin – 685608.

45. Lukose P.U.,
Member, Knanaya Catholic Congress of Central Florida (KCCCF),
aged about 77 years, S/o Ulahannan, residing at Pattaraparambil
House, Thellakom P.O., Adichira, Perumbaikkadu village,
Kottayam District, now residing at 7125, Colonial lake drive,
River view, Florida, 33578, USA.

Application filed by P.B. Krishnan, Advocate, under Order XLI Rule 5
read with Section 151 of the Code of Civil Procedure, 1908

For the reasons stated in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court be pleased to stay the operation of and of all proceedings in execution of the judgment and decree dated 30-04-2021 of the Addl. Subordinate Judge's Court, Kottayam in O.S No. 106 of 2015 as confirmed in A.S No. 36 of 2021 and connected cases on the file of the Addl. District Judge's Court-V, Kottayam pending disposal of the above Regular Second Appeal.

Dated this the 10th day of October, 2022


COUNSEL FOR THE APPLICANTS