

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE-V,
KOTTAYAM

Present:- Sri. Sanu S. Panicker,
Additional District Judge-V, Kottayam

Friday the 2nd day of September 2022
11th day of Bhadra 1944

AS No.36/2021, AS No.59/2021, AS No.62/2021,
AS No.65/2021, AS No.89/2021, AS No.95/2021,
AS No.6/2022, AS No.7/2022 & CROSS OBJECTION IN
AS No.36/2021

(Filed against the judgment & decree in OS.No.106/2015 of
Addl.Sub Court, Kottayam)

A.S.No 36/2021

Appellants/Defendants 1,2:-

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

By Adv. P.B.Krishnan & Adv. Agi Joseph

Respondents/Plaintiffs & Defendants:-

1. Knanaya Catholic Naveekarana Samithy,

Valtharn Building (Near Village Office),
Kumarakom P O., Kottayam, represented 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.
3. Lukose Mathew K., aged 65, S/o.Mathew
Kunnumpurathu House, Kurichithanam P.O.,
Kurichithanam Village, Meenachil Taluk,
Kottayam District.
4. C.R. Punnen, aged 68, S/o. Kuruvilla
Chirayil House, Athirampuzha P O.,
Kottayam Taluk, Kottayam District,
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.
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.
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.

Addl. Respondents

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.
11. Dominic Savio, aged 63,
S/o.V.C. Kuruvilla, Vachachirayil,
Kuzhimattom P.O., Panachikkadu,
Kottayam District.
12. Benny Jacob, aged 56,
S/o. E.K.Chacko, Illickal house,
Chunkom Kara, Kolani P.O.
13. Biju Uthup, aged 62 years,
S/o. Uthup, Residing of 62, 10th Main,
7th Cross, Horamavu Road,
Nandanam Colony, Bangalore.
14. James Joseph K, aged 62 years,
S/o. Joseph, Kattuveetil House,
Nagampadom, Nattassery Kara,
Perumpaikadu Village, Kottayam Taluk.
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.

16. Joyan P.Saimon, aged 50 years,
S/o. P.J.Saimon, Powat, Kumarakom P O,
Kumarakom Village, Kottayam.
17. Tobin George, aged 48 years,
S/o.George Joseph,
Meluvallil House, Kumarakom P O,
Kumarakom Village, Kottayam
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
19. Alex J Victor, aged 41 years,
D-102, Concorde Midway City Apts,
Hotsa Road, Basapura Village,
Bangalooore.
20. Siby Jose, aged 48 years, #409/5,
20th D Cross , Ejipura Main Road,
Vivekananger Post, Bangalore
21. Sunny Kuruvilla, aged 65 years, #242,
Ashiana, 6th Main, 7th Cross, ST
Bed Kormangala, 4th Block, Bangalore
22. Roby K Kunjoonju, aged 56 years,
17/A, 12th main, Sector-1, Nobonagar,
Bangalore
23. Cyriac Thomas, aged 47 years,
No. 32, 1st Floor, 6th Cross
Bhavaninagar, S-G Palaya, DRC Post,
Bangalore
24. Reji C Joseph, aged 57 years,
No. 24, Trinity Home, S G Palaya, CV
Raman Nagar, Bangalore.

25. Cyriac Joseph, aged 52 years,
Sobha Daliya, Outer ring road,
Bellandoor, Bangalore.
26. Joji George, aged 40 years,
G-201, Holyhok Apartments, Daddys South
bourg Layout, Hebbagody, Bangalore.
27. Santhosh Simon, aged 42 years,
C-002, Daddy's Daliya, Daddys South
bourg Layout, Hebbagody, Bangalore
28. Sibimon Jose, aged 56,
Thottaplakkil House, Lake View enclave
Layout, Seeg halli, Virgnonagar,
Bangaloore-49
29. Tibin Thomas, Secretary,
Knanaya Global Parliament,
Chettai.Com, XII/ 203 A,
Perumbaikkadu Village,
S.H Mount P O, Kottayam.

Addl.R10 to R12 impleaded as per order in
IA.6/2021 dated 12.01.2022

Addl.R13 is impleaded as per order in
IA.9/2021 dated 12.01.2022

Addl.R14 is impleaded as per order
in IA.22/22 dated 22.06.2022

Addl.R15 is impleaded as per order
in IA.23/22 dated 22.06.2022

Addl.R16 & R17 impleaded as per order in
IA.24/2022 dated 27.07.2022

Addl.R18 to R28 impleaded as per order in
IA.25/2022 dated 27.07.2022

Addl.R29 impleaded as per order in
IA.29/2022 dated 30.07.2022

R1, R2 & R4 – By Adv. Francis Thomas

R3 – By Adv. Kaleeswaram Raj,
Adv.Thulasi K.Raj & Adv.Avaneesh V.N

R5 & R6 – By Adv. Georgekutty C.A

R7 & R8 – No representation (Notice dispensed)

R9 – By Adv. Jojo Thomas & Adv. P. Vinodji

Addl.R10 to Addl.R12–By Adv. Sivan Madathil
Adv. P.Smithakumari,
Adv.Satheesh Chandran Nair

Addl.R13 – By Adv. Joseph Abraham
Adv. Manu Tom Thomas &
Adv. Hilu Latheef, &
Adv.Arun S.Nair

Addl.R14 – By Adv.Saji Koduvath

Addl.R15 – By Adv.B.Ashok &
Adv.N.K.Narayanan Namboothiri &
Adv. Ahees.S

Addl.R16 & R17– By Adv.Anantha Krishnan A Kartha

Addl.R18 to R28 – By Adv. Anish Lukose

Addl.R29 – By Adv. Sundeep Abraham &
Adv.Johny Jose Nidhiri

CROSS OBJECTION IN AS.36/2021**Appellants/Respondents 1, 2 & 4:-**

1. Knanaya Catholic Naveekarana Samithy, Vaithara Building (Near Village Office), Kumarakom P O., Kottayam, represented by its President who is also plaintiff No.2.
2. T.O. Joseph, aged 70, S/o. Ouseph, Thottumkal House, Kannankara P O., Thannermukkam North Village, Cherthala Taluk, Alappuzha District.
3. C.K. Punnen, aged 68, S/o. Kuruvilla Chirayil House, Athirampuzha P O., Kottayam Taluk, Kottayam District

By Adv. Francis Thomas

Respondents :-

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

3. 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.
4. 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.
5. Congregation for the Oriental Churches Via Della Conciliazione 34, 00193, Roma, Italy, rep.by its Prefect.
6. Congregation for the Doctrine of Faith Piazza del S.Ufficio-II, 00139, Roma, Italy, rep.by its Prefect.
7. Knanaya Catholic Congress, Kottayam, rep. by President Stephen George, S/o. George, Veliyath House, Kurumulloor P.O, Onamthuruthu Village, Kottayam.
8. Lukose Mathew K., aged 65, S/o. Mathew, Kunnumpurathu House, Kurichithanam P.O., Kurichithanam Village, Meenachil Taluk, Kottayam .

R1, R2 – By Adv. P.B. Krishnan &
Adv. Agi Joseph

R3, R4 – By Adv. Georgekutty C.A

(R5 & R6 – Notice dispensed)

R7 – Adv. Jojo Thomas & Adv. P. Vinodji

R8 – Adv. Kaleeshwaram Raj,
Adv. Thulasi K Raj, &
Adv. Avaneesh V.N

A.S 59/2021

Appellants :-

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 Taluk, Thiruvananthapuram District.

By Adv. Anil D. Kartha
Adv. Ananthakrishnan A. Kartha

Respondents :-

1. Knanaya Catholic Naveekarana Samithy, Vaithara Building (Near Village Office), Kumarakom P O, Kottayam, represented by its President who is also the 2nd respondent.
2. T.O. Joseph, aged 75, S/o. Ouseph, Thottumkal House, Kannankara P O., Thannermukkam North Village, Cherthala Taluk, Alappuzha District.
3. Lukose Mathew K., aged 70, S/o. Mathew, Kunnumpurathu House, Kurichithanam P.O., Kurichithanam Village, Meenachil Taluk, Kottayam District.
4. C.K. Punnen, aged 73, S/o. Kuruvilla, Chirayil House, Athirampuzha P O.,

Kottayam Taluk, Kottayam District,
represented by his Power of Attorney
Holder V.C. Mathai.

5. The Metropolitan Archbishop,
The Archeparchy of Kottayam,
Catholic Metropolitan's House,
Kottayam, Kerala, The present
Metropolitan Archbishop is
Most.Rev.Mar Mathew Moolakkatt.
6. The Archeparchy of Kottayam,
Catholic Metropolitan's House,
P.B.No.71, Kottayam, Kerala
represented by the Metropolitan
Archbishop.
7. 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.
8. 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.
9. Congregation for the Oriental Churches
Via Della Conciliazione 34, 00193, Roma,
Italy, represented by its Prefect.
10. Congregation for the Doctrine of Faith
Piazza del, S.Ufficio-II, 00139 Roma,
Italy, represented by its Prefect.
11. Knanaya Catholic Congress, Kottayam,
represented by its President
Stephen George, S/o. George,

Veliyath House, Kurumulloor P.O,
Onamthuruthu Village, Kottayam.

R1 & R2, R4 – By Adv. Francis Thomas

R3 – By Adv. Avaneesh V.N

R5 & R6 – By Adv. Agi Joseph

R7 & R8 – By Adv. Georgekutty C.A

(R9 & R10 – Notice dispensed)

R11 – No vakalath seen filed

A.S.No 62/2021

Appellant: -

Lambochan Mathew, aged 61,
S/o. Late P.C. Mathew, Pannivelil house,
Kaduthuruthy Kara, Kaduthuruthy Village,
Vaikom Taluk, Kottayam District.

By Adv. Rajeev P Nair & Adv. Chacko Simon

Respondents: -

1. Knanaya Catholic Naveekarana Samithy,
Vaithara Building, (Near Village Office),
Kumarakom P O, Kottayam, represented by
its President who is also the 2nd
respondent.
2. T.O. Joseph, aged 70, S/o. Ouseph,
Thottumkal House, Kannankara P O.,
Thanner mukkam North Village,
Cherthala Taluk, Alappuzha District.

3. Lukose Mathew K., aged 65, S/o. Mathew, Kunnumpurathu House, Kurichithanam P.O., Kurichithanam Village, Meenachil Taluk, Kottayam District.
4. C.K. Punnen, aged 68, S/o. Kuruvilla, Chirayil House, Athirampuzha P O., Kottayam Taluk, Kottayam District, represented by his Power of Attorney Holder V.C. Mathai.
5. The Metropolitan Arch Bishop, The Archeparchy of Kottayam, Catholic Metropolitan's House, Kottayam, Kerala, The present Metropolitan Archbishop is Most Rev. Mar Mathew Moolakkatt.
6. The Archeparchy of Kottayam, Catholic Metropolitan's House, P.B.No.71, Kottayam, Kerala represented by the Metropolitan Archbishop.
7. 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.
8. 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.
9. Congregation for the Oriental Churches Via Della Conciliazione 34, 00193, Roma Italy, represented by its Prefect.

10. Congregation for the Doctrine of Faith
Piazza del S. Ufficio-II, 00139, Roma,
Italy, represented by its Prefect.
11. Knanaya Catholic Congress, Kottayam,
rep. by its President, Stephen George,
S/o. George, Veliyath House,
Kurumulloor P.O, Onamthuruthu Village,
Kottayam.

R1 & R2, R4 – By Adv. Francis Thomas

R3 – By Adv. Avaneesh V.N

R5 & R6 – By Adv. Agi Joseph

R7 & R8, R11 – No vakalath seen filed

(R9 & R10 – Notice dispensed)

A.S.No 65/2021

Appellants: -

1. Jose Mathew, aged 54,
S/o. Late P.K. Mathai,
Aruparayil house, Peroor P.O.,
Kottayam.
2. Philip Chacko, aged 66,
S/o. Late K.U Chacko,
Kusumalayam house,
Kumarakom P.O., Kottayam.

By Adv. P. Martin Jose & Adv. Eldho Cherian

Adv. Hani P Nair

Adv. Sachin Jacob Ambat

Adv. Harikrishnan S

(M/s. S.Sreekumar Associates)

Respondents/Plaintiffs 1 to 4 & Defendants 1 to 7:-

1. Knanaya Catholic Naveekarana Samithy, Vaithara Building, (Near Village Office), Kumarakom P O., Kottayam, represented by its President
2. T.O. Joseph, aged 70, S/o. Ouseph, Thottumkal House, Kannankara P O., Thannermukkam North Village, Cherthala Taluk, Alappuzha District.
3. Lukose Mathew K., aged 65, S/o. Mathew, Kunnumpurathu House, Kurichithanam P.O., Kurichithanam Village, Meenachil Taluk, Kottayam District.
4. C.K. Punnen, aged 68, S/o. Kuruvilla, Chirayil House, Athirampuzha P O., Kottayam Taluk, Kottayam District, represented by his Power of Attorney Holder V.C. Mathai.
5. The Metropolitan Archbishop, The Archeparchy of Kottayam, Catholic Metropolitan's House, Kottayam, Kerala. The present Metropolitan Archbishop is Most. Rev. Mar Mathew Moolakkatt.
6. The Archeparchy of Kottayam, Catholic Metropolitan's House, P.B.No. 71, Kottayam, Kerala represented by the Metropolitan Archbishop.
7. 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.

8. Synod of the Bishop of the Syro Malabar Major Archiepiscopal Church, Mount St.Thomas, Kakkanad P O., P.B. No. 3110, Kochi- 682030,
9. Congregation for the Oriental Churches Via Della Conciliazione 34, 00193, Roma, Italy, represented by its Prefect.
10. Congregation for the Doctrine of Faith Piazza del, S.Ufficio-II, 00139 Roma, Italy, represented by its Prefect.
11. Knanaya Catholic Congress, Kottayam, rep. by its President Stephen George, S/o. George, Veliyath House, Kurumulloor P.O, Onamthuruthu Village, Kottayam.

R1 & R2, R4 – By Adv.Francis Thomas

R3 – By Adv.Avaneesh V.N,

R5 & R6 – By Adv.Agi Joseph

R7 & R8 – By Adv. Georgekutty C.A

(R9 & R10 – Notice dispensed)

R11 – No vakalath seen filed

A.S.No 95/2021

Appellant/Defendant No.7:-

Knanaya Catholic Congress, Kottayam, represented by its President, Thomas K.L, aged 69 years, S/o.Luka, Erumelikara house, Purappuzha,

Vazhithala P.O., Purappuzha Village,
Thodupuzha Taluk, Idukki District.

By Adv. Jojo Thomas
Adv. P. Vinodji
Adv. Sachin Sebastian

Respondents/Plaintiffs & Defendants 1 to 6:-

1. Knanaya Catholic Naveekarana Samithy, Vaithara Building, (Near Village Office), Kumarakom P O., Kottayam, represented by its President T.O. Joseph, aged 81, S/o. Ouseph, Thottumkal House, Kannankara P O., Thannermukkam North Village, Cherthala Taluk, Alappuzha District.
2. T.O. Joseph, aged 76, S/o. Ouseph, Thottumkal House, Kannankara P O., Thannermukkam North Village, Cherthala Taluk, Alappuzha District.
3. Lukose Mathew K., aged 71, S/o. Mathew, Kunumpurathu House, Kurichithanam P.O., Kurichithanam Village, Meenachil Taluk, Kottayam District.
4. C.K. Punnen, aged 74, S/o. Kuruvilla, Chirayil House, Athirampuzha P O., Kottayam Taluk, Kottayam District, represented by his Power of Attorney Holder V.C. Mathai.
5. The Metropolitan Archbishop, The Archeprarchy of Kottayam, Catholic Metropolitan's House, Kottayam, The present Metropolitan

Archbishop is Most. Rev. Mar Mathew Moolakkatt.

6. The Archeparchy of Kottayam, Catholic Metropolitan's House, P.B.No. 71, Kottayam, Kerala represented by the Metropolitan Archbishop.
7. 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.
8. Synod of the Bishop of the Syro Malabar Major Archiepiscopal Church, Mount St.Thomas, Kakkanad P O., P.B. No. 3110, Kochi- 682030, represented by its Secretary
9. Congregation for the Oriental Churches Via Della Conciliazione 34, 00193, Roma, Italy, represented by its Prefect.
10. Congregation for the Doctrine of Faith Piazza del, S.Ufficio-II, 00139 Roma, Italy, represented by its Prefect.

R1 & R2, R4 – By Adv.Francis Thomas

R3 – By Adv.Avaneesh V.N,

R5 & R6 – By Adv.Agi Joseph

R7 & R8 – No vakalath seen filed

(R9, R10- Notice dispensed)

A.S.No 89/2021**Appellants :-**

1. Thomas Vattakkalam, aged 64,
S/o.Chandy Chacko, Member,
Knanaya Global Forum, Now residing at
Vattakkalam house, Kolani P.O.,
Thodupuzha, Idukki District, Kerala.
2. Jose M.J., aged 51, 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.,
Vellanikkara Village, Thrissur Taluk,
Thrissur District, rep.by power of
attorney holder Thomas Vattakkalam,
aged 64, S/o. Chandy Chacko,
Vattakkalam House, Kolani P O.,
Thodupuzha, Idukki District, Kerala.
3. Tomy Thomas, aged 59, 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,
Kerala, 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,
Kerala.
4. Joy Mathew, aged 52, 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,

- Kerala, 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, Kerala.
5. 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, Kerala, represented by power of attorney holder Thomas Vattakkalam, aged 64, S/o.Chandy Chacko, Vattakkalam House, Kolani P O., Thodupuzha, Idukki District, Kerala.
 6. Jimmi Cherian, aged 62, S/o. Cherian Mozhikodathu, Member, Knanaya Global Forum, now residing at 65 Knutton Crescent, Sheffied, S5, 9NX, UK from Mozhikodathu House, Eravimangalam P O., Vaikom, Kottayam, represented by power of attorney holder Stanley Kurian, aged 60, S/o. Kurian, residing at Koonanikkal House, Mulakulam P O., Mulakkulam Village, Peruva, Kottayam, Kerala.
 7. 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, Kerala, 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, Kerala.

8. Shibu Paul, aged 48, 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, Kerala, represented by power of attorney holder Stanley Kurian, aged 60, S/o. Kurian, residing at Koonanikkal House, Mulakkulam P O., Mulakkulam Village, Peruva, Kottayam.

By Adv. Jayakrishnan R.

Adv. Abraham Thomas

Adv. Nikshita Annie Thomas &

Adv. Akshai George

Respondents :-

1. Knanaya Catholic Naveekarana Samithy, Vaithara Building, (Near Village Office), Kumarakom P.O, Kottayam, represented by its President who is also the 2nd respondent.
- 2 T.O. Joseph, aged 75, S/o. Ouseph, Thottumkal House, Kannankara P O., Thannermukkam North Village, Cherthala Taluk, Alappuzha District.
3. Lukose Mathew K., aged 70, S/o. Mathew, Kunnumpurathu House, Kurichithanam P.O., Kurichithanam Village, Meenachil Taluk, Kottayam District.

4. C.K. Punnen, aged 73, S/o. Kuruvilla, Chirayil House, Athirampuzha P O., Kottayam Taluk, Kottayam District, represented by his Power of Attorney Holder V.C. Mathai.
5. The Metropolitan Arch Bishop, The Archeparchy of Kottayam, Catholic Metropolitan's House, Kottayam, Kerala, The present Metropolitan Archbishop is Most Rev. Mar Mathew Moolakkatt.
6. The Archeparchy of Kottayam, Catholic Metropolitan's House, P.B.No. 71, Kottayam, Kerala represented by the Metropolitan Archbishop.
7. The Major Arch Bishop, Syro Malabar Major Archiepiscopal Church, Mount St. Thomas, Kakkanad P O., P.B. No. 3110, Kochi 682030. The present Major Archbishop is His Beatitude Mar George Cardinal Alencherry.
8. Synod of the Bishop of the Syro Malabar Major Archiepiscopal Church, Mount St. Thomas, Kakkanad P O., P.B. No. 3110, Kochi, represented by its Secretary.
9. Congregation for the Oriental Churches Via Della Conciliazione 34, 00193, Roma Italy, represented by its Prefect.
10. Congregation for the Doctrine of Faith Piazza del S. Ufficio-II, 00139, Roma, Italy, represented by its Prefect.
11. Knanaya Catholic Congress, Kottayam,

represented by its President,
Stephen George, S/o. George,
Veliyath House, Kurumulloor P.O.
Onamthuruthu Village, Kottayam.

R1 & R2, R4 – By Adv.Francis Thomas

R3 – By Adv.Avaneesh V.N,

R5 & R6 – By Adv. Agi Joseph

R7, R8, R11 – No vakalath seen filed

(R9, R10 – Notice dispensed)

AS No.6/2022

Appellant/Third Party:-

Fr.Byju Mathew Alias Byju Mukalel,
aged 43, S/o. M.L.Mathai, MSP Seminary,
S.H.Mount P.O., Kottayam.

By Adv. K.M.Firoz & Adv. Shybi Alex

Respondents:-

1. Knanaya Catholic Naveekarana Samithy,
Vaithara Building (Near Village Office),
Kumarakom P.O., Kottayam, represented
by its President who is also respondent
No.2.
2. T.O. Joseph, aged 81, S/o. Ouseph,
Thottumkal House, Kannankara P O.,
Thannermukkam North Village,
Cherthala Taluk, Alappuzha District.
3. Lukose Mathew K., aged 71, S/o. Mathew,
Kunnumpurathu House, Kurichithanam P.O.,
Kurichithanam Village, Meenachil Taluk,

Kottayam District.

4. C.K. Punnen, aged 74, S/o. Kuruvilla, Chirayil House, Athirampuzha P.O., Kottayam Taluk, Kottayam District, represented by his Power of Attorney Holder V.C. Mathai.
5. The Metropolitan Archbishop, The Archeparchy of Kottayam, Catholic Metropolitan's House, Kottayam, The present Metropolitan Archbishop is Most.Rev.Mar Mathew Moolakkatt.
6. The Archeparchy of Kottayam, Catholic Metropolitan's House, P.B.No.71, Kottayam, Kerala, represented by the Metropolitan Archbishop.
7. 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 Alenchery.
8. Synod of the Bishop of the Syro Malabar Major Archiepiscopal Church, Mount St. Thomas, Kakkanad P.O, P.B.No.3110, Kochi, represented by its Secretary.
9. Congregation for the Oriental Churches Via Della Conciliazione 34, 00193, Roma, Italy, represented by its Prefect.
10. Congregation for the Doctrine of Faith Piazza del S.Ufficio-II, 00139, Roma, Italy, represented by its Prefect.

11. Knanaya Catholic Congress, Kottayam,
represented by its President
Stephen George, S/o. George,
Veliyath House, Kurumulloor P.O,
Onamthuruthu Village, Kottayam.

R1, R2 & R4 – By Adv. Francis Thomas

R3 – By Adv. Avaneesh V.N

R5, R6 – Adv. Agi Joseph

R7, R8, R11 – No vakalath seen filed

(R9, R10 – Notice dispensed)

AS No.7/2022

Appellants/Third Party:-

1. Chacko Thekkedath Joseph, aged 71,
S/o. Joseph, residing at Thekkedath
house, Manakkad P.O., Chungam Kara,
Thodupuzha Village, Idukki District
2. Lukose P.U, member, Knanaya Catholic
Congress of Central Florida (KCCCF),
aged 77, 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.

By Adv. T.N.Rajesh,
Adv.Sethukumar S &
Adv.Ajin Thomas

Respondents:-

1. Knanaya Catholic Naveekarana Samithy, Vaithara Building (Near Village Office), Kumarakom P.O., Kottayam, represented by its President T.O. Joseph, aged 81, S/o. Ouseph, Thottumkal House, Kannankara P.O, Thannermukkam North Village, Cherthala Taluk, Alappuzha District who is also the 2nd respondent.
2. T.O. Joseph, aged 76, S/o. Ouseph, Thottumkal House, Kannankara P O., Thannermukkam North Village, Cherthala Taluk, Alappuzha District.
3. Lukose Mathew K., aged 71, S/o. Mathew, Kunnumpurathu House, Kurichithanam P.O., Kurichithanam Village, Meenachil Taluk, Kottayam District.
4. C.K. Punnen, aged 74, S/o. Kuruvilla, Chirayil House, Athirampuzha P.O., Kottayam Taluk, Kottayam District, represented by his Power of Attorney Holder V.C. Mathai.
5. The Metropolitan Archbishop, The Archeparchy of Kottayam, Catholic Metropolitan's House, Kottayam, The present Metropolitan Archbishop is Most.Rev.Mar Mathew Moolakkatt.
6. The Archeparchy of Kottayam, Catholic Metropolitan's House, P.B.No.71, Kottayam, Kerala, represented by the Metropolitan Archbishop.

7. 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 Alenchery.
8. Synod of the Bishop of the Syro Malabar Major Archiepiscopal Church, Mount St. Thomas, Kakkanad P.O, P.B.No.3110, Kochi, represented by its Secretary.
9. Congregation for the Oriental Churches Via Della Conciliazione 34, 00193, Roma, Italy, represented by its Prefect.
10. Congregation for the Doctrine of Faith Piazza del S.Ufficio-II, 00139, Roma, Italy, represented by its Prefect.
11. Knanaya Catholic Congress, Kottayam, represented by its President Stephen George, S/o. George, Veliyath House, Kurumulloor P.O, Onamthuruthu Village, Kottayam.

R1, R2 & R4 – By Adv. Francis Thomas

R3 – By Adv. Avaneesh V.N

R5, R6 – Adv. Agi Joseph,

R7, R8, R11 – No vakalath seen filed

(R9, R10 – Notice dispensed)

These petitions coming before me for final hearing on 02.09.2022 and the court on same day passed the following:-

COMMON JUDGMENT

The fruit of faith is love

– Mother Teresa –

Heard both sides

Perused the records.

2. These appeals are directed against the judgment and decree dated 31.10.2018 passed by the Subordinate Judge's Court, Kottayam in O.S No.106/2015. The defendants who lost their case in the court below are in appeals No.36/2021 and 95/2021 under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908, for short, "CPC".

3. The persons, who are not a party to the suit, being aggrieved by the impugned decree and judgment, also preferred separate appeals with a leave of this court challenging the impugned verdict. Likewise, some third party, who themselves got impleaded in the appeal No.36/2021 by showing their legal interest over

the matter, for challenging the impugned decree and judgment.

4. The suit is one for declaration and injunctions, **declaring that a sacrament of marriage with a Catholic from outside diocese of Kottayam would not forfeit the membership in the Kottayam diocese 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 endogomy.**

5. **The Facts in brief:-** The first plaintiff is a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act 1955, stated to have been formed and registered for challenging the practice of endogomy for the membership of the second defendant church, hereinafter referred to as "**the church**".

6. The 2nd, and 3rd plaintiff who were the ex-members of the church, stated to have been expelled

from the membership of the church on the basis of practice of endogamy prevailing in Knanaya community, hereinafter referred to as **“the Community”**. The fourth plaintiff is still in the membership of the said church, challenging the authority of the church to prescribe the practice of endogamy for its membership by instituting the suit under Order 1 Rule 8 of CPC.

7. The pleadings of the plaintiffs would go to show that the Christianity came to India in 52 AD with St.Thomas. According to the plaintiffs, all Christians are equal in Christianity, wherein no cast system is provided. There were two factions in Christianity in India. They are known as “Vadakkumbagakar” or Northiests and “Thekkumbagakar” or Southiest. Both the Northeist and Southiest collectively called St. Thomas Christian, came into communion with the Christian community Known as “Church of the East”. It was further pleaded that the Southiest had a good relation with St. Thomas Christian as they had one church in 4th century, which was increased to five and then to seven half churches in 16th century. Later for the

convenience of administrative set up **Ext.B4(a)** Papal Bull came to be promulgated by its supreme head, Pontiff, for accommodating two distinct factions, namely Changanaseery vicariate for Northiest and Kottayam vicariate for Southiest, wherein no special right of endogomy was given. They further contended that the church has been following the practice of endogomy for the last 100 years and by the said practice, the right of Knanaya catholic to choose a life partner of their own choice is denied, which also affects their religious practices in the church. Therefore, the practice of endogomy not only violates their fundamental right guaranteed under Art 21, but also violates their religious right guaranteed under Art 25 of the Constitution of India. Hence the suit.

8. The defendants No.1, 2, the church authorities and D7, Knanaya Catholic congress, represented by its president, resisted the suit, contenting that the practice of endogmy is a custom, prevailing in the community for centuries, which is the life and existence of the community. Their pleadings would

further go to show that the Christianity originated in India in 52 AD with St. Thomas. Thereafter a leader, named Thomas of Kinai, along with 400 persons from 72 families migrated to India in AD 345 at Kodungallor from Southern Mesopotamia. They settled at Crangannore. There were two settlements of Christians at Crangannore. They are "Vadakkumbagakar" or Northiests and the Southiests or "Thekkumbagakar". The descendants of these 72 families are known as "Knanaya community". Thereafter, there occurred a major rift in the Christian community. The faithful who followed the patriarch of Antioch, came to be known as the "Jacobites". The said split affected the Knanaya Community as well. The Southists was accordingly divided as "Knanaya Catholic" and Knanaya Jacobite". The southiests have practiced endogomy for 17 centuries. Both the Southiests and Northiest were not in good terms in respect of their spiritual matters, culture, and marriage. The Southiest has been following the custom of endogomy strictly. Subsequently, Ext.B3 recommendation was moved to the

Supreme Head, Pontiff, by three Bishops for their segregation, and consequent to which, Ext.B4(a) Papal Bull dated 29/08/1911 was promulgated by its Supreme Authority, Pontiff, by segregating the parishes and churches of the Southiest from the existing vicariate of Ernakulam and Changanaseery and created a new vicariate for the Southiest at Kottayam. The eparchy was later elevated to the rank of Metropolitan as per Ext.B8 decree dated 9/5/2005 by the Major Arch Bishop of Syro-Malabar church, D5 herein. They further pleaded that the community is a separate religion denomination and section in Christian Religion, having a separate ethnic identity and faith. In 1955, the jurisdiction of the Eparchy of Kottayam was extended to the territory of the Syro-Malabar Churches itself. There are 149 churches in Kottayam, Ernakulam, Malabar, and Karnataka for the Southists. They have been practicing endogamy for centuries. They further stated that Civil Court has no jurisdiction to determine the question of religious matters. Further, the suit is also barred by limitation. Further, the

plaintiffs have no authority to institute the representative suit. Therefore, they pray for the dismissal of the suit with costs.

9. The seventh defendant, Knanaya Catholic congress, represented by its president, filed a separate written statement, supporting the contentions of the church. They pleaded that a leader named Thomas of Kinai, who arrived in India, along with 72 families in AD 345 and the arrival of Thomas Kinai led to the division of St.Thomas Christians to Northiest and Southiest factions. The southiest have been practicing endogomy for centuries.

10. The defendants No.3 and 5, even though set ex parte in the trial proceedings, they have appeared before this court through a counsel and adopted the contentions of D1 and D2.

11. The defendants No.5 and 6, Congregation for oriental churches in Italy and Congregation for the doctrine of faith in Italy were also set exparte in the trial proceedings.

12. After the trial, the court below decreed the suit, by holding that the custom of endogamy violates fundamental right of Knanaya Catholic to choose a life partner of their own choice, guaranteed under Art 21 of the Constitution of India. The court below accordingly decreed the suit as prayed for.

13. Since, the defendants No.5 and 6 were set ex parte in the trial proceedings and no reliefs are sought against them and they are stated to have been arrayed only as a formal party to the suit, the issuance of notice to D5 and D6, who are R7 and R8 respectively in AS.No.36/2021 was also dispensed with by this court, as per the petition, I.A No.12/2022 filed by the appellants in A.S No.36/2021, by holding that the matter can be effectively adjudicated even in the absence of the said respondents.

14. Having considered the rival pleadings and rival submissions, the following common points are raised for consideration in these appeals.

- (a) Is the suit maintainable under section 9 of CPC?
- (b) Is not the plaintiffs society entitled to institute the suit ?
- (c) Is the suit barred by limitation?
- (d) Is the suit maintainable against the church without resorting Order 1 R8 of CPC?
- (e) Is the membership of the plaintiffs No.2 and 3 in the church were terminated by the church on the practice of endogomy, prevailing in the community as contended by the plaintiffs?
- (f) Whether the church was carved out exclusively for the community as contended by the appellants?
- (g) Is the custom of endogomy, a valid custom in the community as contended by the appellants?
- (h) Whether the community attached to the church is a religious denomination or a section thereof as envisaged under Art 26 of Indian Constitution? And if so Whether cross-objection filed by the plaintiff is allowable ?

- (i) Whether endogamy is an “essential religion practice” of the community ? If so, Whether the church is entitled to regulate its membership based on the practice of endogamy?
- (j) Is the church bound to conduct a sacrament of marriage of a Knanya catholic with a catholic from outside diocese? if so, Is the Catholic spouse of Knanya Catholic and their children entitled to conduct religious practices in the church?
- (k) Is the suit maintainable in the absence of challenge against Ext.B1 by-law of the second defendant church?
- (l) Is the suit maintainable in the absence of a previous sanction of the Central government as against D5 and D6 under section 86 of CPC ?
- (m) Is the suit maintainable due to non-joiner of the community?
- (n) Whether any interference with the impugned decree and judgment is warranted?
- (o) Relief and costs.

15. The evidence in this case consists of an oral testimony of PW1, the second plaintiff, and the oral testimony of the defendants as DWs 1 and 2, besides admitting Exts.A1 to A21 and Ext.B1 to B43.

Ext.B44 is the gazette Notification issued by the State of Kerala, admitted by this court in evidence in AS No.36/2021 without any objection of the plaintiffs.

16. Having considered the overall assessment of the facts and circumstances of the case, the rival pleadings, the evidence on record and the rival submissions, I am of the perception that there is absolutely no reason to interfere with the substance of the impugned decree and judgment of the court below, except the findings which are reversed by this court in this judgment. The appeals and cross-objection therefore deserve no merits and are liable to be dismissed, for the following reasons.

17. Point No (a):- As regards the jurisdiction of Civil Court to adjudicate the matter in dispute is concerned, it was strenuously contended by the learned counsel appearing for the appellants and the supporting respondents that the Civil Court has no jurisdiction to determine the fundamental rights guaranteed under Articles 21 and 25 of the Constitution of India. It was further contended that

only a constitutional courts are empowered to adjudicate the issues of fundamental right guaranteed under Art 21 and 25 of the Constitution of India and therefore the suit is not maintainable before the Civil Court. On the other hand, the learned counsel appearing for the plaintiffs, and Addl. Respondent No.13, meticulously contended that the Civil Court shall have jurisdiction to adjudicate all the issues involved in the suit as all the issues are of a civil nature, involving civil consequences.

18. It is well settled law that the Civil Court shall have jurisdiction to try all suits of a Civil nature, excepting the suits of which their cognizance is either expressly or implicitly barred. In other words, the jurisdiction of Civil Court to adjudicate civil dispute is unlimited, subject to the limitation imposed by law either expressly or by necessary implication. It is to be noted that in the present suit, the right to worship, right of membership in the church, right to marriage, and the validity of the custom of endogamy etc are involved. Needless to say

that the right to worship is a civil right. Further, when a custom of 'endogamy' determines the religious right of worship, the Civil Courts shall have jurisdiction to determine the validity of the custom. Further the Hon'ble Apex Court has held *in Most.Rev.PMA Metropolitan and others v. Moran Mar Marthoma and another, reported in AIR 1995 SC 2001*, that the Civil Courts shall have jurisdiction to entertain the suits for violation of fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India. Further, the Constitution bench of the Hon'ble Apex court in *Justice K.S Puttaswamy (Rtd) V. Union of India, reported in 2017 KHC 6577* (in Para 397), it was held that it is perfectly possible to recognize both "Common Law rights" and "Fundamental rights" simultaneously, and where a violator is a State, an action would lie in writ courts and where a violator is a non-state actor, an action at Common law would lie in an ordinary courts. In the said circumstances, it is very difficult to accept the contentions of the learned counsel

appearing for the appellants and the supporting respondents that the victim of violation of fundamental rights shall not have any remedy before the Civil Courts. Hence, I am of the perception that Civil Court shall have jurisdiction to adjudicate the question of violation of fundamental rights as a common law remedy unless its cognizance is expressively or implicitly barred under section 9 of CPC, but, certainly it is not the duty of the Civil Court to pronounce the truth and correctness of the religious rites, ceremonies, rituals, and tenets etc. Therefore, the Civil Court is empowered to take cognizance of the present suit, involving the question of worship, question of membership in the church, including the question of violation of fundamental right guaranteed under Art 25 of the Constitution of India, etc, This point is answered accordingly.

19. Point No.(b) :- As regards the authority of the plaintiffs' society to institute the suit is concerned, it was vehemently contended by the learned counsel appearing for the appellants and the

supporting respondents that the society is not a legal person in the eye of law and as such, it has no legal right to institute the suit, that too in a representative capacity. It is to be noted that section 9 of the Societies Registration Act, 1955, permits a society to institute a suit. It is required to be noted that the first Plaintiff is a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act 1955. **Ext.A8** is the Registration certificate of the Society. **Ext.A6** is the by-law of the society and **Ext.A7** is the resolution passed by its executive, authorizing the society to institute the suit. The object of the society is to protect the community by removing the impugned yardstick for the membership of the church and therefore, I am of the view that there is no legal impediment for the plaintiffs society to institute the present suit and also in a representative capacity under Order 1 Rule 8 of CPC. It is further required to be noted that, going by the definition of “**person**” under section 3(42) of General

Clause Act, it can be seen that the person includes any company or association or body of individuals, whether incorporated or not and therefore, it can be seen that an unincorporated body or even association of individuals will also fall under the definition of "person" under section 3(42) of the General clause Act, for the purpose of legal proceedings. Further, the Division bench of the ***Hon'ble High Court in Alukkal Koya V/s Marakasutharbiyathul and Others, reported in 2019 (1) KHC 535***, it was held that a Society registered under Society Registration Act 1955, can sue or be sued in the name of its president, Chairman or Principle Secretary or Trustee and in default, in the name of a person who shall be appointed by the governing body for the said purpose. It is to be noted that the present suit is instituted by the plaintiffs, under Order 1 Rule 8 of CPC, by giving public notice to the similarly interested persons and therefore, I am of the view that the plaintiffs society is certainly entitled to file the

present suit in a representative capacity under Order 1 Rule 8 of CPC. This point is answered accordingly.

20. Point No (c):- As regards the question of limitation is concerned, it was vehemently contended by the learned counsel appearing appellants and the supporting respondents that the plaintiffs No.2 and 3 had voluntarily relinquished their membership of the church in the year 1977 and 1988 respectively, when they entered into a marriage with a catholic from outside diocese and therefore, even if the contention of forceful termination of membership is established, the suit is barred by limitation as it could have been filed within a period of 3 years from the date of their alleged termination of the membership under Art 58 of the limitation Act.

21. It is settled law that when a suit is instituted beyond the period of limitation prescribed under the Indian Limitation Act, the suit is not entertainable in view of section 3 of Indian Limitation Act, irrespective of the fact that a question of limitation has been set up as a defense or

not. It is required to be noted that in the present case, an endogamy is the benchmark for the membership of the church as per Ext.B1 by-law of the church. The relevant portion of the said by-law is extracted hereunder

“AD 345 - ലെ കടിയേറ്റകാലം മുതൽ ക്ലാനായ പൂർവ്വികരിൽനിന്നും തുടങ്ങി തലമുറതലമുറകളായി ക്ലാനായ സ്ത്രീ-പുരുഷൻമാർക്ക് സ്വവംശവിവാഹബന്ധത്തിലൂടെ ജനിച്ചിട്ടുള്ളവരാണ് ക്ലാനായക്കാർ. സമുദായ കൂട്ടായ്മയിൽ അംഗമാവുകയും മാമ്മോദീസ സ്വീകരണം വഴി മാതാപിതാക്കൾ അംഗമായിരിക്കുന്ന സ്വയാധികാരസഭയിലും സഭാഘടകത്തിലും പങ്കാളിത്തം ലഭിക്കുകയും ചെയ്തിട്ടുള്ള ക്ലാനായ കത്തോലിക്കരാണ് കോട്ടയം അതിരൂപതാംഗങ്ങൾ. ക്ലാനായ പുരുഷൻ ക്ലാനായ സ്ത്രീയെ വിവാഹം ചെയ്യണമെന്നതാണ് സ്വീകാര്യമായ പാരമ്പര്യം.

ഈ പാരമ്പര്യം ലംഘിച്ച് ക്ലാനായ പുരുഷനോ സ്ത്രീയോ ഇതര സമുദായത്തിൽ നിന്ന് ജീവിതപങ്കാളിയെ സ്വീകരിച്ചാൽ അപ്രകാരമുണ്ടാകുന്ന കുടുംബം ക്ലാനായ സമുദായത്തിൽ ആയിരിക്കുകയില്ല. ക്ലാനായേതര സഭാസമൂഹത്തിലായിരിക്കും നിലനിൽക്കുക.

സമുദായത്തിൽനിന്നല്ലാതെ ജീവിത പങ്കാളിയെ തെരഞ്ഞെടുക്കാനാഗ്രഹിക്കുന്ന വ്യക്തി ക്ലാനായ അതിരൂപതാധികാരിയിൽ നിന്ന് അനുവാദം വാങ്ങി ക്ലാനായേതര രൂപതയിലും ഇടവകയിലും അംഗമാവുക എന്നതാണ് പ്രായോഗികമായി സ്വീകരിച്ചുപോരുന്ന നടപടിക്രമം. ആ വിവാഹം നിലനിൽക്കുന്നിടത്തോളംകാലം ക്ലാനായേതര ഇടവകയിൽ അംഗമായി തുടരും. മരണം വഴിയോ മറ്റു വിധത്തിലോ ഈ വിവാഹബന്ധം കാനോനികമായി ഇല്ലാതായാൽ ക്ലാനായ വ്യക്തിക്ക്, മറ്റു പ്രതിബന്ധങ്ങൾ ഇല്ലെങ്കിൽ അതിരൂപതാ അദ്ധ്യക്ഷന്റെ അനുവാദത്തോടുകൂടി ക്ലാനായ സമൂഹത്തിൽ വീണ്ടും അംഗമാകാം.”

22. It is required to be noted that going by the aforesaid criteria, it seems that the custom of endogamy is the yardstick for the membership of the church, which is a pre-condition for religious service from the church and if that be so, it cannot be said that the date of alleged termination of the membership of the plaintiffs alone is the cause of action for the suit. It is to be noted that whenever a criteria for membership as stipulated in Ext.B1 by-law of the church is in force, the cause of action will also be in force and therefore, the suit cannot be dismissed by holding that it is barred by limitation. Therefore, I am of the view that the suit is not barred by limitation as contended by the learned counsel for the appellants as the cause of action for the suit is still in force, which is covered by Art 22 of Indian Limitation Act and as such the plaintiffs are also entitled to represent for others in a representative capacity under Order 1 R8 of CPC. This point is accordingly answered.

23. Point No.(d) :- As regards the maintainability of the suit against the church, without resorting Order 1 R8 of CPC is concerned, it was briskly contended by the learned counsel appearing for the appellants and the supporting respondents that the church is an voluntary association, which is an un incorporated body and as such, the suit is not maintainable against the church without arraying them in a representative capacity under Order 1 Rule 8 of CPC. It is well settled law that a suit is not maintainable against an association or an un-incorporated body, without arraying them in a representative capacity under Order 1 Rule 8 of CPC. It is required to be noted that, going by the cause title of the suit, it seems that the first defendant is a Metropolitan Archbishop, who arrayed as his personal capacity and the second defendant is the church, represented by the fist defendant and therefore, I am of the view that the second defendant is sufficiently arrayed as a representative capacity of the church, for its members and therefore, it can

not be contended that the church is not arrayed as a representative capacity in the suit. Further, the church is admittedly a part of Syro-Malabar church, under Roman Catholic Church and the Roman Catholic church is held to be a "juristic person" by the Honb'le High court of Kerala *in Archbishop and Ors V/s PA Lalan Tharakan and Ors reported in 2016(2) KLT 791*. Further, in *Chinnamma V/s Abraham, reported in 1962 KLT 240*, it was held by the Hon'ble High Court that conception of the church or its institution itself being constituted into a legal or juristic person or corporation and its existence as an entity capable of holding property. Therefore, taking note of the above all facts and circumstance of the case and also the legal principles laid down by the Hon'ble High Court in the above referred decision, I am of the perception that, there is no legal impediment in treating the church as a juristic person and therefore, the suit is perfectly maintainable against the church even without resorting order I Rule 8 of CPC. Further, it is required to be noted that the Order I Rule 8 enable

one or two persons to institute a suit or to defend a suit of common interest, without bringing all the similarly interested persons in the party array of the suit. It is also to be noted that Order 1 Rule 8 does not empower the court to dismiss the suit on the ground that all the similarly interested persons are not properly represented by the parties to the suit and if that be so, the ultimate legal consequences is the question of binding nature of the decree that is to be passed in the suit. Further, when the defendants, a juristic person, herein, took the contention that the suit is not maintainable against it without resorting order I Rule 8 of CPC, it is for them to plead and show as to why the proposed decree is not enforceable against them personally without resorting order 1 Rule 8 of CPC. Further, the law allows the defendants to move an application for representing for others having similar/common interest in view of rule 20(3) of Civil Rule of Practice and therefore, I am of the definite view that the suit is perfectly maintainable against the church even in the

absence of public notice under Order 1 R8 of CPC as the church is a juristic person. This point is answered accordingly.

24. Point No (e)- As regards the alleged termination of the membership of the plaintiffs from the church is concerned, it was strenuously contended by the learned counsel appearing for the appellants and the supporting respondents that there is absolutely no evidence available on record to show that the membership of Plaintiffs No.2 and 3 were terminated by the church as contended by the plaintiffs. It was further contended that the plaintiffs had voluntarily relinquished their membership of the church at the time of their marriage with a catholic from outside diocese and therefore there is absolutely no cause of action for the suit and hence the suit is liable to be dismissed on that score alone.

25. It is required to be noted that admittedly the plaintiffs No.2 and 3 were the ex-members of the church. As mentioned above, an endogamy is the

yardstick for determining the membership of the church, as per Ext.B1 by-law of the church. Let me extract the relevant portion of the evidence let in by PW2, to ascertain as to whether the plaintiffs had voluntarily relinquished their membership in the church as contended by the learned counsel for the appellants and the supporting respondents. The evidence let in by PW2 is as follows.

“Endogamy പ്രാക്ടീസ് ചെയ്യാത്തവർ എല്ലാം സഭയിൽ നിന്നും പുറത്തുപോയിട്ടല്ലെ വിവാഹം കഴിച്ചത്? ഞങ്ങളെ നിർബന്ധിക്കും കല്യാണം കഴിക്കണം എന്നുണ്ട് എങ്കിൽ പിരിഞ്ഞുപോകണം എന്നുപറയുന്നതിനാലാണ് പിരിഞ്ഞു പോകുന്നത്. നിങ്ങളുടെ വിവാഹ സമയത്ത് കോട്ടയം രൂപതയിൽപ്പെട്ട ഒരാൾക്ക് അതിൽപ്പെടാത്ത ഒരാളെ വിവാഹം കഴിക്കാൻ അനുവാദം ഇല്ലായിരുന്നു? അത് വിവാഹം കഴിക്കാൻ ചെന്നപ്പോഴാണ് അറിയുന്നത്. അതു മനസ്സിലാക്കിയാണ് നിങ്ങൾ രൂപത മാറാൻ അപേക്ഷ നൽകിയത്? വിവാഹം രണ്ടുദിവസത്തിനകം നടക്കണമായിരുന്നു. വേറെ നിവർത്തി ഇല്ലാതെ വന്നതിൽ അപേക്ഷ കൊടുക്കേണ്ടിവന്നു.

26. From the above evidence, it can be seen that PW2 was forced to surrender his membership of the church when he was going to marry a catholic from outside dioceses. In the said circumstances, I am of the opinion that there is sufficient evidence available on record to show that the membership of the

plaintiff No.2 and 3 were removed by the church on the basis of its practice of endogamy, which is still in force. Therefore, this court is not in a position to accept the contention of the appellants and the supporting respondents that there is absolutely no evidence available on record to show that the membership of the plaintiff No.2 and 3 were forcefully terminated by the church as alleged by the plaintiffs. It is to be noted that the process of removal of membership on the basis of endogamy may be a peaceful, but whenever a criteria for membership as per Ext.B1 by-law of the church is in force, the question of forceful termination or peaceful removal of membership are insignificant. Therefore, I am of the view that the contention of the appellants and the supporting respondents that the plaintiffs have failed to establish the forceful termination of membership from the church is not sustainable in the eye of law. This point is answered accordingly.

27. Point No (f) :- Let me next examine as to whether the church was carved out exclusively for the

community as per Ext.B4 (a) Papal Bull dated 29/08/1911. It is argued that St.Thomas, one of the twelve apostle of Jesus Christ, who arrived in India in AD 52, originated Christianity in India and when the church was much weaken by the 4th Century, a leader, named Thomas of Kinani, along with 400 persons from 72 families migrated to India in AD 345. They settled at Crangannore. There were two settlements of Christian at Crangannore. They are known as "Vadakkumbagakar" or Northiests and "Theakkumbagakar" or Southiest and are collectively called St Thomas Christians and came into communion with the Christian community under church of the East. The descendants of the aforesaid 72 families are the Knanaya community. Later there was a split in Christianity and said split also affected the Community and thereby the Southists were divided into "Knanaya Catholic and Knanaya Jacobite". The Northiest is stated to be the descendants of the pre-existing local Christians converted by St.Thomas. There was a dispute between the Southiest and Northiest in respect of their

spiritual matters and in order to settle the said disputes, Ext.B3 recommendation was moved to the Supreme head, Pontiff in Rome by three Bishops and consequent to which, Ext.B4(a) Papal Bull came to be promulgated by segregating the parishes and churches of the Southiest from the existing vicariate of Ernakulam and Changanacherry and constituted a new vicariate as per Ext.B4(a) Papal Bull dated 29/08/1911 by its supreme Authority.

28. At the hearing, it was meticulously contended by the learned counsel appearing for the appellants and supporting respondents that the church was exclusively carved out for the Southeist people as per Ext.B4(a) Papal Bull with a right of endogomy and as such, the church is required to follow the custom of the community. However, the learned counsel appearing for the plaintiffs and the Addl.respondent No.13, strenuously contended that Ext. B4(a) Papal Bull was not intended to carve out a separate church for Southiest people, but it was only an administrative arrangement for convenience. They further contended

that a right of endogamy was not given to the Southiest people as per Ext.B4(a) Papal Bull and they further contended that had they claimed the right of endogamy before the Pontiff, Ext.B3 recommendation would have been rejected.

29. Having gone through the rival pleadings, the evidence on record and the rival submissions, I am of the perception that the church was carved out exclusively for the Southiest people, for the following reasons. **(1)** There is no dispute that Ext.B4(a) Papal Bull came to be promulgated by the Pontiff, in order to settle the dispute between the Southiest and Northeiest factions. **(2)** There is a specific writing in Ext.B4(a) Papal Bull that the church is carved out for the Southiest people **(3)** The plaintiffs have no case that at any point of time the church has admitted any other member other than the members of the community in the church from the date of its establishment as per Ext.B4(a) Papal Bull. **(4)** The pleadings of the church would go to show that the Community is known as Southiest people, but the said

pleading was not seriously controverted by the Plaintiffs. (5) Again, as per Ext.B8 decree dated 09.05.2005, it seems that the church was later elevated to the rank of a Metropolitan, stating that Kottayam dioceses was carved out for the community as per Ext.B4(a) papal Bull. Therefore, taking note of the above all facts and circumstances of the case and the evidence on record, and the rival submissions, I am of the view that the church was carved out exclusively for the community as contended by the learned counsel for the appellants and supporting respondents.

30. Point No (g)- Let me next examine as to whether the custom of endogamy, is a valid custom in the community? It is required to be noted that an "endogamy" means a marriage within the community or a group". It is pleaded by the defendants that the custom of endogamy is being followed by them for centuries. It is also admitted by the plaintiffs that the custom of endogamy is being followed by the church for the last 100 years, however, the court below was

of the opinion that the defendants have failed to prove the custom of endogamy as alleged by them. It is required to be noted that it may not be always possible to adduce direct evidence on the practice of endogamy prior to the year 1900, but when a custom is sufficiently proved to have been practicing, "reasonably a very long period", without any break, the court has to assess the facts and circumstances of the case, rival pleadings and evidence available on record, including subsequent conduct of the followers of the said custom very carefully, before arriving at a finding that the custom is valid or not. It is required to be noted that it is admitted by the plaintiffs that the custom of endogamy is being followed by the church for the last 100 years for determining its membership. Further, if the practice of endogamy is being followed by the community consistently for the last 100 years, without any break as a marriage custom of the community, it can be presumed that probably their predecessor might have practiced it for another long period prior to 1911.

Further, going by Ext.B3 recommendation, it can be seen that the Southiest and Northiest had no unity in respect of their marriage culture. Having assessed the overall facts and circumstances of the case, and the evidence on record and the rival submissions, I am of the perception that the custom of endogomy is being followed by the community, reasonably a very long period without any break, and therefore, there is no justification in holding that the defendants have failed to establish the custom of endogomy. It is to be noted that the Court below has wrongly admitted Ext.A21, an article published by a third party, in evidence to hold that the founder of the community, Thomas Knani, had married a Hindu lady and out of the said wedlock, they had children and therefore, the contention of the appellants about the practice of endogomy for centuries was declined by the court below, but I am in respectful disagreement with the said findings of the court below on the reason that the court below has wrongly relied Ext.A21 article published by a third person, without examining him to

ascertain the truth of its contents. Further, the original book, based on which, Ext.A21 article was published is also not brought on record. In the said circumstances, I am of the view that court below was not justified in relying Ext.A21 article to record a finding, without satisfying at least by a documents having historical evidence or value, that the leader of Knanaya Catholic named Thomas Kinani had married a Hindu lady and out of the said wed lock, he had children too. It is to be noted that as per Ext.A9 Canon Law, canons 6 (2) and 1509, provide that a custom for more than 100 years is liable to be accepted as a valid custom even if, it violates some canon principles. Further, the custom of endogomy does not violate any statutory law relating to the marriage of Christians. It is to be noted that an endogomy is a marriage custom prevailing in the community attached to the church and it does not take away the right of any member of the community attached to the church for choosing a life partner of their own choice, and therefore, the **“right of marriage” “as such”** is not

restrained by the practice of endogamy. It is required to be noted that the section 5 of the Hindu Marriage Act also provides ***only a marriage between two Hindus can be solemnized*** under the Hindu Marriage Act and the marriage of a Hindu with non-Hindu can not be solemnized under the provisions of the Hindu Marriage Act and in fact it is an endogamy in its larger sense and the violation of which invites the consequences mentioned under section 19 and 21 of the said Act. Like wise, the custom of endogomy is a marriage custom prevailing in the community and in the absence of any statutory law, the custom will hold the field under Art 13 of the Constitution of India and therefore, I am of the view that the custom of endogomy never violates the fundamental right of Privacy guaranteed under Art 21 of Indian Constitution as contended by the learned counsel for the appellants and the supporting respondents. Further, the canon law 6(2) and 1509, in fact approve the centenary or immemorial customs, and therefore, a custom, which is found to have been followed for the last 100 years gets

approval even from the canon law itself. It is required to be noted that the custom of endogamy is intended to preserve the culture and purity of the community and as such they have every right to preserve it under Art 29 of the Constitution of India within their community and therefore the custom of endogamy will also get approval under Art 29 of the Constitution of India. It is further to be noted that each and every member of the community will have its own privacy and personal liberty to protect their culture for keeping their separate identity within the community. Further, the plaintiffs have no case that due to endogamy, they could not marry as per their choice, but in fact they got married as per their choice from outside diocese and therefore, I am of the view that the custom of endogamy is a valid custom among the community and it never violates Art 21 of the Constitution of India as contended by the learned counsel for the appellants and the supporting respondents, even though, it affects religious practices guaranteed under Art 25 of the Constitutions

of India. Therefore, I am of the view that the custom of endogamy is a valid custom in the community attached to the church. Therefore, the finding of the court below that the custom of endogamy is in violation of Art 21 of the Constitution of India is not sustainable in the eye of law, which is liable to be reversed. I order accordingly. This point is answered accordingly.

31. Point No. (h) The next question to be decided is as to whether the community attached to the church is a religious denomination or a section thereof under Art 26 of Indian Constitution? And if so, whether the cross-objection filed by the plaintiffs against the finding of the court below that the community has "no distinctive name" is allowable? At the hearing, the learned counsel appearing for the plaintiffs and the Addl. respondent No.13 argued that the Christian religion does not approve any caste system or a system of religious denomination. They further contended that all Christians are equal in Christianity, who are being regulated and controlled

by its Supreme head, Pontiff in Rome and the churches are being governed by Ext.A9 Canon law and Holy Bible, and therefore the church is not entitled to form its own affairs in the matters of religion, overlooking the Christian faithful and sacraments governed by the Canon law and Holy Bible.

32. In emphatic refutation, the learned counsel appearing for the appellants and supporting respondents contended that the community is a separate religious denomination in Christian religion, which is having a separate ethnic identity, faith, rituals and ceremonies. They further contended that the custom of endogamy is being followed by the community for the last thousands of years and considering the same, a separate church was allotted to them, entrusting full administrative control all over the Knanaya Catholic in the world as per Ext.B4(a) Papal Bull, with a liberty to follow the custom of endogamy and therefore, the church and its community are entitled to prescribe their own religious practice in the church.

33. Before going into the question as to whether the community is a "religious denomination or a section thereof", it is necessary to understand what is "religion". It is required to be noted that the word "religion" has not been defined anywhere in the Constitution of India, but it was explained by the Hon'ble Apex court through various judicial pronouncements including **The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt reported in 1954 (1) SCR 1005** and **Nallor Marthandom Vellalar and others V/s Commissioner Hindu Religious and Charitable Endowment and Others 2003 (10) SCC 712** and **S.P Mittal V/s Union of India and Ors, reported in 1983 (1) SCC 51**. Having gone through the above referred cases, it can be seen that religion is a matter of faith with individuals or communities and it is not necessarily theistic. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to

say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

33. In the said context, let me examine as to whether the community attached to the church is a religious denomination or a section thereof under Art 26 of the Constitution of India. That the Hon'ble Apex court has held in **Sri Shirur Mutt case Supra**, that the word "**denomination**" is nothing but a "**collection of individuals classed**", together "**under the same name**", a religious sect or body having a "**common faith**" and **organisation** and, designated by a "**distinctive name**". In **SP Mittal V/s Union of India, Supra**, the Constitution bench of the Hon'ble Apex court has observed that "***We have already said that any freedom or right involving the conscience must naturally receive a wide interpretation and the***

expression Religion and Religious denomination, must, therefore, be interpreted in no narrow, stifling sense, but in a liberal, expansive way. It is required to be noted that Art 26 of Constitution of India deals with the rights of a smaller group in a larger religion eg collection of individual, having separate culture, identity and faith.

34. It is argued that St.Thomas, one of the twelve apostle of Jesus Christ, who arrived in India in AD 52, originated Christianity in India and when the church was much weaken by the 4th Century, a leader, named Thomas of Kinani, along with 400 persons from 72 families migrated to India in AD 345. They settled at Crangannore. There were two settlements of Christian at Crangannore. They are known as "Vadakkumbagakar" or Northiests and "Theakkumbagakar" or Southiest and are collectively called St Thomas Christians and came into communion with the Christian community under church of the East. The descendants of the aforesaid 72 families are the Knanaya community. Later there was a split in Christianity and said split

also affected the Community and thereby the Southists were divided into "Knanaya Catholic and Knanaya Jacobite". The Northiest is stated to be the descendants of the pre-existing local Christians converted by St.Thomas. There was a dispute between the Southiest and Northiest in respect of their spiritual matters and in order to settle the said disputes, Ext.B3 recommendation was moved to the Supreme head, Pontiff in Rome by three Bishops and consequent to which, Ext.B4(a) Papal Bull came to be promulgated by segregating the parishes and churches of the Southiest from the existing vicariate of Ernakulam and Changanacherry and constituted a new vicariate as per Ext.B4(a) Papal Bull dated 29/08/1911 by its supreme Authority. It is to be noted that going by Exts.B3 recommendation and B4(a) Papal Bull, it can be seen that the Southiest people were different in their culture, marriage ceremonies, rituals and system of life. Further, the custom of endogamy is their marriage custom, which is being followed by them for the last 100 years at least. That apart, the community

has got an official recognition from the State of Kerala as per Ext.B44 Gazette Notification. Further in **Most Rev. PMA Metropolitan case supra**, it was held by the Hon'ble Apex court in para 145 and 150 that the Knanaya community is different in its own culture and system of life and it has got separate ethnic identity and separate constitution. It is to be noted that the Hon'ble High court of Kerala has also observed in **W.A Nos 736 and 907 of 2007**, that a certificate issued by the "**parish priest**" is the most reliable material to decide whether a candidate belongs to Knanaya Catholic Community or not. Taking note of the above all facts and circumstances of the case, I am of the view that there is sufficient evidence available on record to show the fact that the Southiest had a common religious tenets peculiar to themselves, so as to claim a separate section in Christian religion, but at the same time, neither the church nor the defendant No.7 have a case that they are independent from its Supreme Ruler, Pontiff in Rome and they are not supposed to follow Ext.A9 Canon law for their religion

activities. Further, they have no case that the Canon law is not a personal law applicable to them. It is required to be noted that if the Canon law is applicable to the church and the community, neither the church nor the members attached to the church can claim any primacy over and above the Canon law, in respect of their religious sacraments. In other words their religious sacraments in the church should be in accordance with the Christian faith as per the Canon law and Holy Bible. Therefore, having analyzed the overall assessment of the facts and circumstances of the case, the rival pleadings, the evidence on record and further taking note of the characteristics of the community, and its particular history, as narrated above, I am of the view that the Knanaya Catholic community attached to the church is a separate section in Christian religion as it has satisfied all the criteria for being a separate section of Christian religion under Art 26 of the Constitution of India, but it does not have any primacy to prescribe religious sacraments over and

above the Canon law as it does not have any independent control and existence apart from its Supreme ruler, or sovereign authority of Christian Religion, Pontiff. It is to be noted that the court below has arrived at a finding that the community has separate and distinctive name, but it lacks a common faith and therefore, it will not come under the definition of religious denomination under Art 26 of the Constitution of India. But, the plaintiffs by way of Cross-objection, challenging the said finding entered by the court below, contending that the community has no separate and distinctive name, but this court is of the opinion that the community is a group of persons, having its own distinctive name, but it is subject to the control of its Supreme authority, Pontiff and Canon law as discussed above. In the said circumstances, I am of the perception that the cross-objection filed by the plaintiffs, challenging the finding of the court below that the community has no distinctive name is not allowable. This point is accordingly answered.

35. Point No (i) :- Let me next examine as to whether the practice of endogomy is an “essential religious practice” of the community attached to the church and if so, whether the church is entitled to regulate its membership on the basis of endogomy ?

36. At the hearing, it was strenuously contended by the learned counsel appearing for the appellants and the supporting respondents that the practice of endogomy was an essential religious practice of the church and also the community attached to the church. It was further contended that the endogomy is the life and the existence of the community and without which, the community and its church have no existence. They further contended that the practice of endogomy is being followed by the community for thousands of years and therefore, it is an essential religion practice of the community. It was further contended that as per Ext.B1 by-law of the church, a child who is born from Knanaya catholic parents alone is eligible to be considered as Knanaya catholic and only the children born to “Knannay parents” are entitled to be admitted

in the church for religious practices. Therefore, the practice of endogamy is an essential religious practice in the community. On the other hand, the learned counsel appearing for the plaintiffs and the Addl. respondent No.13 contended that an endogamy is a marriage custom prevailing in the community attached to the church, which is neither a custom of membership nor a Baptism as per Canon law. They further point out that the church is admitting a child who is born even from an "unwed Knanaya girl" for its Baptism so as to ensure that even an illegitimate child is entitled to be admitted in the Christian faith, through Baptism, even though his/her paternity is unknown to the church. Therefore, the endogamy is not an essential religious practice in the church for its membership and Baptism.

37. It is to be noted that this court has already found that the church is an integral part of the community as the church was established only for the communities. It is to be noted that without the junction of both, neither the community nor the church

has any existence. Further, the jurisdiction of the church is only confined to Knanaya Catholic as per Ext.B4(a) Bull. Therefore the church cannot be segregated from its community, however, having considered the rival pleadings, the evidence on record and rival submissions, I am of the view that the church is not entitled to exclude its member, their Catholic spouse and children from the membership of the church on basis of endogamy, for the following reasons.

38. It is required to be noted that the pleadings of the church in para 42 of the written statement would go to show that the membership of a "Knanaya catholic' will not forfeit on the ground of his marriage with a catholic from outside dioceses, but the church cannot accept a non-Knanaya Catholic and their children, however the learned counsel appearing for the additional respondents No.10 to 12 resisted the said pleadings contending that once a Knanaya catholic marries a Catholic from outside the diocese, he or she is not entitled to be admitted in the church

till their marriage relationship with a Catholic from outside the diocese is continued.

39. Before going into the merits of the aforesaid submission of the learned counsel appearing for the additional respondents No. 10 to 12, let me extract a relevant portion of the evidence let in by DW1 to find out whether an endogomy is an essential criteria for the membership of the church. DW1 in his evidence says that "അരപ്പള്ളികൾ എന്നു പറഞ്ഞാൽ എന്താണ് എന്നറിയാമോ? തെക്കും ഭാഗവും വടക്കും ഭാഗവും ഒരേ പള്ളികളിൽ അവരുടെ വൈദികൻ മുഖാന്തരം ശുശ്രൂഷകൾ ചെയ്തു വന്നിരുന്നതിനാൽ അപ്രകാരം അരപ്പള്ളി എന്നു പറഞ്ഞു. 4-ാം നൂറ്റാണ്ടു മുതൽ 14 നൂറ്റാണ്ടുവരെ ഈ പള്ളികൾ എല്ലാം ഈസ്റ്റ് സിറിയൻ ചർച്ചിൽ നിന്നുള്ള മെത്രാന്മാരുടെ സഭാഭരണത്തിൽ കീഴിലായിരുന്നു? Counsel corrected 16-ാം നൂറ്റാണ്ടിന്റെ അവസാനം വരെ? 15-ാം നൂറ്റാണ്ടിന്റെ അവസാനം വരെ ഈ പറഞ്ഞത് ശരിയാണ്.

40. From the above evidence let in by DW1, it can be seen that both the Southiest and Northiest had a mixed religious practice in a church prior to 1911. It is pertinent to note that the defendants have no case that an endogomy was an essential criteria for membership in " Arappally" or other churches till the

issuance of 1911 Papal Bull, so as to ensure that only a child born to Knanaya parents was being admitted in the church at that point of time. It is to be noted that even if the Southiest had a separate religious practices in the said church under their respective head, it was not so pleaded and proved by the defendants to show that only a child born to Knanaya parents was being admitted in their church till 16th century. It is to be noted that the pleadings of the plaintiffs in Para 36 of the plaint would go to show that the Southiest had a very good relation with St Thomas Christian as they "had one church" in 4th century, which was increased to five and then to seven and half by 16th century and this pleadings was not specifically contravened by the defendants in para 40 of the written statement where they met the pleading of the plaintiff in Para 36 of the plaint and the said pleadings of the plaintiffs is seemed to be relevant to show that once the Southiest and the Northiest had a mixed religious practices in the church, the practice of endogomy was not stated to be followed as

a criteria for the membership in the said churches. This court is aware that it is very difficult to prove the fact that an endogamy was the criteria for the membership in the church during 16th century, but it could have been pleaded by the defendants, especially when the suit subsists on the question of membership criteria in the church. Further, it is to be noted that if an endogamy was the sole criteria for the segregation of the Sothiest from the Northiest, it would have been definitely referred either in **Ext.B3** or in **Ext.B4 (a)** Papal Bull. Again, going by Ext.B1 by-law of the church, it seems that a ***child who is born from unwed Knanaya woman is also entitled to be Baptised before the church*** as contended by the learned counsel for the plaintiffs. This provision is seemed to be a very holy provision so as to allow a child who is born even from an unwed Knanaya girl to be a part of god and also to the church by way of Baptism, so as to ensure that even an illegitimate child is entitled to be baptized in the church even if its paternity is unknown to the church. This provision would probablise

the version of the plaintiffs that an endogamy is not an essential religious practice or an essential criteria for the membership of the church. Further, the aforesaid provision in Ext.B1 by-law seems to be in accordance with other canon provisions, which also allow different persons including, ***aborted fetus, if it is alive, infant, abandoned infants and foundlings, adopted*** and **even a non-catholic** entitled to be Baptized so as to allow them to be a part of god and to the church. Therefore, going by the aforesaid provisions, it can be seen that Christian faithful doesn't reject any one, instead they accept all to be a part of god and also to the church. It was vehemently contended by the learned counsel appearing for the appellants that the provision for admitting a child who is born to an unwed Knanaya girl as per Ext.B1 by-law of the church is not intended to admit the child in the church, but it is in respect of liturgical procedure, because the parents who are living in adultery or otherwise may not have educated their infant in the Catholic church with due regard

and therefore, the admission of such child for Baptism is not for giving membership in the church. It is to be noted that as per the aforesaid provision, the child referred above is entitled to get Baptism, which is an entry to the god and to the church as per Canon law. In the said back ground, it is very difficult to accept the submission of the learned counsel for the appellants that the aforesaid provision in Ext.B1 By-law is not intended to admit the child in the church. Further, if the second defendant church admits a child even whose paternity is unknown to it at the time of Baptism, as stated above, it can be seen that the church is not only admitting the child who is born to Knanaya catholic parents alone, but also admitting the child whose paternity is unknown to the church and in the said circumstances, I am not sure to hold that an endogomy is an essential religious practice of the church and the community as contended by the learned counsel for the appellants and the supporting respondents. It is to be noted that CAN 675 says, in baptism a person through washing with natural water

with **the invocation of the name of God** the Father, Son and Holy Spirit, is freed from sin, **reborn to new life, puts on Christ** and **is incorporated in the Church which is His Body**. CAN 675 (2) says only by the actual reception of baptism, a person is made capable for the other sacraments. CAN 680 says an ***aborted fetus, if it is alive*** and if it can be done, ***should be baptized***. Further, CAN 681 says an ***infant can also to be baptized***. CAN 681 (2) says an ***abandoned infants and foundlings***, and even an adoptive child can also be baptized as per CAN 689 (3). ***“It is to be noted that by way of Baptism, a child enters new life puts on Christ and is incorporated in the church which is Holy Body”*** See CAN 675. In the said circumstances, it can be seen that by way of Baptism, a child enters into a new life puts on Christ and also ascribed into the membership of the church and if that be so, a membership which is allowed by Canon law ie the personal law of the christian religion by way of baptism cannot be defeated by introducing a marriage custom prevailing in a particular community for

membership in the church for defeating the religious rights guaranteed under Art 25 of the Constitution of India. Further, Ext.B4(a) Papal Bull does not empower the church to regulate its membership on the basis of endogomy. Since endogomy was not a custom of membership, the membership of the church cannot be regulated by the practice of endogomy, but by Canon law. It is required to be noted that the Canon law does not restrict an entry to the god and also to the church through Baptism and therefore, any impediments, which restrict Baptism overlooking the Canon law would be in violation of the christian faithful as understood from the Canon laws. Further, the custom of endogomy is only a custom of marriage and not a custom for Baptism. It is highly required to be noted that the second defendant church restricts baptism only to the child who is born to Knanaya parents which is against the canon law referred to above. It is true that the church authority will have a legislative power under CAN 191, but it is within the power assigned to him under the canon law and therefore the

criteria for membership/Baptism as per canon law cannot be overlooked by the church for rejecting a Christian faithful. In the totality of the facts and circumstances of the case, I am of the view that endogamy is nothing but a marriage custom prevailing in the community, which is not an essential religious practice for limiting the membership of the church and as such, I am of the view that the church would not be justified in regulating the membership of the church on the basis of the custom of endogamy prevailing in the community. Further, going by the pleading of the church in para 42 of the written statement, it seems that a membership of Knanaya catholic would not forfeit on the ground of his marriage with a catholic from outside diocese, but going by the membership criteria of the church in Ext.B1 by-law, it seems that

"ക്ലാനായ പുരുഷൻ ക്ലാനായ സ്ത്രീയെ വിവാഹം ചെയ്യണമെന്നതാണ് സീകാര്യമായ പാരമ്പര്യം.

ഈ പാരമ്പര്യം ലംഘിച്ച് ക്ലാനായ പുരുഷനോ സ്ത്രീയോ ഇതര സമുദായത്തിൽ നിന്ന് ജീവിതപങ്കാളിയെ സ്വീകരിച്ചാൽ അപ്രകാരമുണ്ടാകുന്ന കടുമ്പം ക്ലാനായ സമുദായത്തിൽ ആയിരിക്കുകയില്ല. ക്ലാനായേതര സഭാസമൂഹത്തിലായിരിക്കും നിലനിൽക്കുക.

സമുദായത്തിൽനിന്നല്ലാതെ ജീവിത പങ്കാളിയെ തിരഞ്ഞെടുക്കാനാഗ്രഹിക്കുന്ന വ്യക്തി ക്ലാനായ അതിരൂപതാധികാരിയിൽ നിന്ന് അനുവാദം വാങ്ങി ക്ലാനായേതര രൂപതയിലും ഇടവകയിലും അംഗമാവുക എന്നതാണ് പ്രായോഗികമായി സ്വീകരിച്ചുപോരുന്ന നടപടിക്രമം. ആ വിവാഹം

നിലനിൽക്കുന്നിടത്തോളംകാലം ക്ലാനായേതര ഇടവകയിൽ അംഗമായി ഇടരും". This clause in Ext B1 by-law of the church would go to show that the submission made by the learned counsel appearing for the Addl. respondent Nos. 10 to 12 that once a Knanaya catholic marries a catholic from outside the diocese, he/she is not entitled to be admitted in the church until their marriage relationship with non-Knanaya is continued is true and correct, but the church has taken contra stand before the court against its own regulation.

41. Point No (j):- Let me next find out as to whether the church is bound to conduct a sacrament of marriage of a Knanaya catholic with a catholic from outside diocese? if so, Whether the said spouse and their children are entitled to conduct religion practices in the church?

42. At the hearing, it was vehemently contended by the learned counsel appearing for the appellants

and the supporting respondents that the practice of endogamy is an essential religious practice in the church and the community. They further contended that as per Ext.B1 by-law of the church, a child who is born from Knanaya catholic parents alone is eligible to be considered as Knanaya catholic and none other is entitled to be admitted in the church or entitled to get Baptism in the church. It was further contended that the marriage rituals and ceremonies of Knanaya catholic is different from other Christian faithful and it cannot be performed or read when a non-Knanaya Catholic is subject to marriage. On the other hand, the learned counsel appearing for the plaintiffs and the Addl.respondent No.13 contended that a marriage is one of the seven sacraments in Christian faithful. They further contended that a mixed marriage is also permissible under Canon law, subject to conditions. Therefore, the church cannot by-pass the Canon principles and apply their own rules and regulations for fixing the eligibility of marriage. They further submitted that as per CAN 33, a marriage with a non-

kananya catholic is permissible to be solemnized in the church and there is no restriction for solemnizing such marriage before the church under the Canon law. They finally submitted that since the marriage is a divine function, it must be performed as per the Canon law and divine law and no custom would prevail over divine law as per CAN 1506 (2).

43. It is to be noted that the marriage is one of the sacraments in Christian faithful and there is a special provision for marriage under Canon law and Canon law permits even mixed Marriage as per CAN 813, subject to conditions. Further, going by canon 776 (2) **“By Christ’s institution, a valid marriage between baptized persons is a sacrament in which the spouses are united by God after patters of Christ’s indefectible union with the church** and are, as it were, consecrated and strengthened by sacramental grace. CAN 776 (3) says a marriage between the baptized person acquires a special firmness by reason of the sacrament. CAN 780 says ***“even if one party is catholic, the marriage is governed not only by divine***

law, but also by canon law without the prejudice the competence of civil authority concerning the merely civil effects of marriage. CAN 816 provides that even in the case of mixed marriage, local hierarchy and other pastors of soul **are to see** that the **catholic spouses** and the **children born of a mixed marriage need spiritual** help to foster the **unity of partnership in their conjugal and family life**. It is required to be noted that CAN 33 says "*A wife is free to transfer to the Church of the husband in the celebration of or during the marriage*"; when the marriage has ended, she can freely return to the original Church *sui iuris*. Further, CAN 793 in Art II of Chapter VII says that a custom that introduces a **new impediment** or is contrary to existing impediment is re-probated. Therefore, going by the above referred canon principles, it can be seen that the marriage is a sacrament in Christian faithful and mixed marriage is also permitted under the canon law and the wife is allowed to transfer to the Church of the husband in the **celebration of or during the marriage** and any custom that introduces a

new restriction in the sacrament of marriage is reprobated under CAN 793 and this provision is a special provision in respect of a Christian marriage. Further, a custom will not prevail over a divine law under CAN 1506 (2). In the above circumstances, I am of the perception that a new criteria for marriage, that is created by the church as per Ext.B1 by-law, restraining the sacrament of marriage between a Knanaya catholic and a catholic from outside dioceses will amount to violation of CAN 33 and CAN 793.

44. As regards the entitlement of a catholic spouse, of a Knanaya Catholic to be admitted in the church is concerned, it is to be noted that the Hon'ble Apex Court has held in *Valsamma Paul V/s Cochin University and Others*, reported in AIR 1996 SC 1011. that ***“the institution of marriage is one of the social institution to bring harmony and integration in social fabric and the Wife of inter-caste/inter-religion marriage, becomes the member of her husband” family.*** It was further observed that ***be it either under Canon law or the Hindu law, on marriage, the***

wife became an integral part of her husband's marital home entitled to get equal status of husband as a member of the family. Therefore, a lady, by marriage became a member of the husband family, thereby she becomes a *member of the cast to which she moved and she gets herself transplanted to the member of husband family* and to which a recognition from the community concerned is not required as it is the Human right of women, which promotes secularism, a basic feature of the Constitution of India. It was further held that a human rights are derived from dignity and worth inherent in human being. It was further held that no one wish to be born in a particular community or caste or religion. It is the result of biological act of the parents. Further, the full Bench of the Hon'ble Kerala High court has also held in ***George Sebastian V/s Molly Joseph reported in 1994 (2) KLT 387 (FB)*** that a Christian Marriage is not a contract, but a sacrament. From the theological point of view, ***a sacrament is based on the faith that it was instituted by Jesus Christ and entrusted to the church for the purpose of***

contributing to the manifestation of ecclesial communion with Gid (Vide A Text and commentary on the Canon Law by Geoffrey Chapman) All the same, from the practical point of view, a marriage brings a new status to the parties as husband and wife and the new status stands recognized by all concerned. As adjunct to it mutual rights and obligations sprout therefrom and they transcend to the realm of Christian rights.

Therefore, going by a close scrutiny of the principles of law laid down by the Hon'ble Apex court and the Hon'ble High Court in the above cases, I am of the view that when a catholic girl marries a Knanaya Catholic boy, she is presumed to have accepted the Knanaya status of her husband unless she expressed her intention otherwise. In other words, on such marriage, she takes the religious status of her husband and therefore she is also entitled to be granted all the religious services by the church treating her to be a Knanaya Catholic, as she does not belongs to any other religion, but belongs to Christian religion itself, provided she must satisfy all other existing norms of

the church. This view is supported by Art 25 of the Constitution of India as the wording of the said Article reveals that “every person” is equally entitled to “freedom of conscience”. It is pertinent to note that by the above observations and findings, this court does not interfere with the religious status of the said girl and it is always open to her to choose and accept the religious status of her husband as per her wish and this court has entered into the said findings only for ensuring religious practice in the Church, subject to her willingness to accept the said status. Further, going by the membership criteria in Ext.B1 by-law of the church, it can be seen that “ഈ പാരമ്പര്യം ലംഘിച്ച് ക്ലാനായ പുരുഷനോ സ്ത്രീയോ ഇതര സമുദായത്തിൽ നിന്ന് ജീവിതപങ്കാളിയെ സ്വീകരിച്ചാൽ അപ്രകാരമുണ്ടാകുന്ന കുടുംബം ക്ലാനായ സമുദായത്തിൽ ആയിരിക്കുകയില്ല. ക്ലാനായേതര സഭാസമൂഹത്തിലായിരിക്കും നിലനിൽക്കുക.

This clause would go to show that when a marriage of a Knanaya girl or a boy is solemnized with a catholic from outside diocese, such girl or boy is not entitled to continue his/her membership in the church until such marriage has ended as pointed out by the learned

counsel appearing for the Addl. respondent Nos.10 to 12. Further, even if the Knanaya parent is re-admitted in the church on termination of her/his marriage relationship with a catholic from outside dioceses, his/her children are out of their community as the children are not born from Knannaya parents and if so, the said children can be said to have been segregated from the family unit itself. It amounts to deprivation of their human rights and religious freedom guaranteed under Art 25 of the Constitution of India, and also affects their dignity and morality socially and if the said practice is continued, what would be the religious status of the said children? **“Is their birth, “their mistake” so as to segregate them from the community and the church”**? It is to be noted that **CAN 34 says**, “If the parents, or the Catholic spouse in the case of a **mixed marriage**, transfer to another Church *sui iuris*, **children who have not completed fourteen years of age, by the law itself are ascribed to the same Church;** Therefore, going by the provisions of sacrament of marriage under the Canon law, and

taking note of the principle of law laid down by the Hon'ble Apex court in *Valsamma Paul V/s Cochin University and Others, and George Sebastian V/s Molly Joseph reported, Supra*, I am of the perception that the sacrament of marriage between a Knanaya Catholic and a catholic from outside dioceses should be solemnized in the church as per the request of a Knanaya spouse. Like wise, if the said couple wanted to admit their children into the church by adopting the religious status of the Knanaya catholic spouse, by their joint declaration, the said children is liable to be admitted in the church for his/her religious practices as per the existing norms of the church, irrespective of the fact that one of the parent is a non-Knanaya catholic. Further, when the defendant church admits a child born to unwed Knanaya girl, whose paternity is unknown to it, why the church hold down a **catholic spouse of a Knanaya Catholic and their children** from the membership of the church? Therefore, I am of the opinion that the church is under legal obligation to perform a sacrament of

marriage between a Knanaya catholic and a catholic from outside dioceses on the request of a Knannaya catholic and the children born to the said couple should also be admitted in the church for their religious practices. It is pertinent to note that by the above observations and findings, this court does not interfere with the religious status of the child born to the couple of a Knanaya Catholic and a Catholic from outside dioceses and it is always open to the child, when eligible, to choose and accept the religious status of either of their parents by showing, in whose culture they are grown up and what culture they have to adopt it for their religious status as held by the Hon'ble Apex court held in Civil appeal No.654/2012 in ***Remesh Bhai Dwhai Naike v/s State of Gujarat and others***. It is required to be noted that this court has entered into the aforesaid findings only for their religious practice in the Church and not for declaring their religious status. Taking note of the above all facts and circumstance of the case, I am of the conclusion that the plaintiffs

are entitled to get the reliefs as sought for in the suit. Further, all the members who were driven out to the church on the ground of the practice of endogamy are entitled to be re-admitted in the church as per other existing norms of the church. Hence, neither the community nor the church are entitled to regulate the membership of the church on the basis of the custom of endogamy.

45. At the hearing, it was strenuously contended by the learned counsel appearing for the appellants and the supporting respondents by relying the judgment of the Hon'ble Apex court in ***Saifuddin Sahib V/s State of Bombay, AIR 1962 SC 853*** that the Hon'ble Apex court held that a community is entitled to ex-communicate its member for protecting its purity and decency of the community and therefore, whenever an ex-communication is permitted in law as held by the Hon'ble Apex court, it is upon the community to decide as to whether a member to be ex-communicated or not.

46. It is true that the Honb'le Apex court has held ***in Saifuddin Sahib V/s State of Bombay (Dawoodi***

Bohras case) that an ex-communication is permissible for protecting the purity or decency of the community or religious institution, but the facts of the present case is entirely different from the contentions advanced in **Dawoodi Bahra case**. It is to be noted that in Dawoodi Bahra case, it was contended that notwithstanding the provisions of Bombay Prevention of Ex-communication Act, 1949, the religious leader and Dai-Ul-Mutlag of the community is entitled to ex-communicate, its membership of the Dawoodi Bohra community for an offence. It was further contended that the parties enimical to the community writes scurrilous articles, challenging and defaying the head of the community and therefore the Head of Dawoodi Bahra, community is entitled to exclude its member, if it feels that its member is unfit or unsuitable for the community as he commits any offense against the community, or does not accept their headship or openly defame the head of the community or publish an insulting statement against him and only in that context, the law enacted by the state Government

against ex-communication was struck down by the Hon'ble Apex court and therefore, I am of the view that the said decision is not squarely applicable to the facts and circumstances of the present case. It is to be noted that in the present case, the defendants have no case that the plaintiffs No.2 and 3 had committed any wrong to the community or they were subjected to any disciplinary action or they have questioned or challenged the supreme ruler of Christian religion or the head of the community, but what is shown is that they were removed from the church on account of the reason of their exercising fundamental right of privacy guaranteed under Art 21 of the Constitution of India, for choosing their life partner of their own choice in violation of the practice of endogamy prevailing in the community and therefore, I am of the view that no one can be penalized by way of ex-communication from the church and the community for the reason of their exercising fundamental right guaranteed under Part III of the Constitution of India. In the said circumstance, I am

of the view that the removal of the plaintiffs and other persons having similar interest from the membership of the church is in violation of Art 25 of the Constitution of India, unless the said exclusion is otherwise justified as mentioned above. Further, the preamble of our Constitution ensures **FRATERNITY** assuring the “ *dignity of the individual* and the unity and integrity of the nation and it is the duty of every citizens to promote FRATERNITY assuring the “*dignity of the individual*. It is required to be noted that a religious denomination or a section thereof, or a community is a social system, being created by a group of people and as such it is not a statutory body or a constitutional body and it has no vested right under the Constitution, but they obtain *some right*, by satisfying some criteria to become a religious denomination or section thereof and as such, its power to exclude its worshiper from exercising their religious rights guaranteed under Art 25 of the Constitution of Indian is not only in violation of Art 25 of the Constitution of India, but also in violation

of Constitutional morality as envisaged under Art 26 of the Constitution of India, unless the said exclusion is otherwise justified as mentioned above.

47. Point No (k) As regards the argument of the maintainability of the suit in the absence of a challenge of membership criteria stipulated in Ext.B1 by-law of the church is considered, it is to be noted that this court has already found that the criteria for membership in the church is based on the custom of endogamy, which violates the right of worship of the plaintiffs and similarly situated persons, guaranteed under Art 25 of the Constitution of India and therefore the criteria for membership in the church stipulated in Ext.B1 by-law, "***based on endogomy***" a custom, is only liable to be ignored and no further declaration from the court of law is required as the same is inconsistent with fundamental right guaranteed under Art 25 of the Constitution of India and the Constitution of India itself declared the same to be void under its Article 13(1), by saying that customs which are inconsistent with or derogation of the

fundamental right is void and therefore, the challenge against the custom of ***endogomy for the membership of the church*** is sufficient to discard the membership criteria stipulated in Ext.B1 by-law and no separate declaration in respect of the membership criteria in Ext.B1 by-law is required. Therefore the contention of the appellants and the supporting respondents that unless and until the membership criteria stipulated in Ext.B1 by-law is challenged, no suit is maintainable and is only liable to be rejected. I do so.

48. Point No (1):- As regards the maintainability of the suit in the absence of a previous sanction of the central government under section 86 of CPC, as against D5 and D6 is concerned, it was vehemently contended by the learned counsel appearing for the appellants that D5 and D6 are "foreign state" or "ruler of the foreign state" and therefore, no suit is maintainable against them without getting a previous sanction from the central government u/s.86 of CPC. It is true that, no suit is maintainable against the

'foreign state' and the "ruler of the foreign state" without a previous sanction of the central government in view of section 86 of CPC. It is further to be noted that it is for the defendants concerned to establish that they fall in the definition of "foreign state" and "ruler" as defined under section 87-A of CPC and the court is entitled to presume in either way that the said foreign state has or has not been recognized by the Central Government and also that a foreign ruler has or has not been recognized by the central government to be the head of a state in view of sub section (2) to section 87-A of CPC, but, in the absence of any such evidence to show that D5 and D6 are the foreign state and the ruler of the foreign state, which is recognized by the central government to be the head of a state in view of sub section (2) to section 87-A of CPC, I am of the view that the contention of other defendants that D5 and D6 are not a foreign state and ruler of the foreign state is not liable to be accepted even if they are stated to be a foreign state or ruler of the foreign state. That

apart, the pleadings of the plaintiffs would go to show that D5 and D6 are arrayed only as a formal party and no reliefs are sought against them. Further, the issuance of notice to D5 and D6 were also dispensed with by this court on the petition filed by the appellants in AS No.36/2021. In the said circumstances, I am of the view that the suit against other defendants cannot be dismissed even assuming that D5 and D6 are the foreign state and the rulers of the foreign state, recognized by the central government and therefore, the contention advanced by the learned counsel for the appellant in AS No.36/2021 that the suit is not maintainable in the absence of sanction from the central government is not legally sustainable. This point is accordingly answered.

49. Point No (m):- As far as the contention of maintainability of the suit on account of non-joiner of the community is concerned, it is required to be noted that this court has already found that the church and the “community attached to the church” is

an integral part of the community, which cannot be segregated as contended by the learned counsel for the appellants and the supporting respondents. It is to be noted that the church and the members attached to the church are the only subject matter in the suit and not the entire Knanaya catholic community as Knanaya catholic is stated to have been included in other churches as well, wherein there is no practice of endogomy. Further, the community in the present suit means the members of the community attached to second defendant church alone because, the endogomy is being practiced only before the second defendant church. Further, taking note of the pleadings of the church and D7, it can be seen that the interest of the members attached to the church has been sufficiently taken care of by them. That apart, going by the evidence let in by D7 (DW2), it can be seen that he is one of the representative for the community as he got impleaded as the president of Knanaya Catholic congress. Further the second defendant is arrayed as a representative capacity of the members of the church

and the members of the second defendant are none other than the community members. Further, no one have a case that the community have a specific organization or place of residence other than the church for its governance and the church is arrayed as a representative capacity of its members in the suit. Going by the pleadings of the Church and the rival submission, along with the observation of the Hon'ble High Court in **W.A. Nos.736 and 907 of 2007** produced by the appellants, I am of the view that there is sufficient reason to believe that the church or its priest is the religious head of the community, who in fact guides the community and therefore the community cannot go beyond the pleadings and the contention advanced by the church in respect of their religious matters. That apart, there is no sufficient reason has been assigned by any of the impleadings respondents who claimed to be the representative of the community either personally or by a group that the matter deserves to be remanded under Order 41 Rule 23A of CPC as the remand is only on exception for ensuring

absolute justice. In the said circumstances, I am of the view that the members of the second defendant church is substantially represented in the suit as well as in this appeal and in that context, the suit cannot be remanded or dismissed.

50. Point No.(n):- In view of my finding as above, and the reasons stated above, I am of the view that there is absolutely no reason to interfere with the substance of the impugned decree and judgment passed by the court below, except the findings which are reversed by this court in this judgment. The appeals and cross-objection therefore deserve no merits and are liable to be dismissed.

51. Point No.(o) :- In so far as the power of the court to issue directions to the church is concerned, it is to be noted that the church has got a legal obligation to perform sacrament of marriage between a Knanaya catholic and a catholic from outside diocese as per the Canon laws, a personal law of Christians religion. The church cannot claim any

special primacy over the said obligation imposed to it by the Canon laws and divine law as the marriage is one of the sacraments in Christian faithful, governed by Canon and Divine law. Further, the practice of endogamy for the membership of the church is in violation of the religious rights of the plaintiffs No.2 and 3 and the persons of having similar interest, guaranteed under Art 25 of the Constitution of India and as such, the court is entitled to direct the church by way of injunction to perform the sacrament of marriage and Baptism according to Canon laws and also mandatory injunction to re-admit those who were driven out, on account of the membership criteria "endogomy" stipulated in Ext.B1 by-law of the church as the above claims and reliefs are of a civil nature.

52. Therefore, I conclude the following **(1)** The Civil Court has jurisdiction to determine the question of worship, membership of the church and the validity of custom under section 9 of CPC **(2)** The cause of action for the suit is found to be a continuing cause

of action covered under Art 22 of Limitation Act **(3)** The plaintiff society is a society registered under the Society Registration Act 1955 and hence the plaintiffs are entitled to institute the suit under section 9 of the said Act, r/w Order 1 Rule 8 of CPC, in a representative capacity **(4)** Since the church is a juristic person, who is arrayed as a representative capacity of its members, the suit is maintainable against the church even in the absence of Order 1 Rule 8. **(5)** The custom of endogamy is a custom of Marriage prevailing in the community, which is not found to be in violation of fundamental right of privacy, guaranteed under Art 21 of the Constitution of India, but insisting of endogamy for the membership of the church is in violation of the religious rights guaranteed to the plaintiffs and the persons having similar interest under Art 25 of the Constitution of India **(6)** The church is found to be carved out exclusively for the community and the community is found to be a section of Christian religion, however, it does not have any primacy over the Canon law, in

respect of sacraments in christian faithful as discussed in the judgment **(7)** Since the custom of endogamy is not proved to be the custom of Baptism, it cannot be used as a criteria for Baptism. **(8)** Since the custom of endogamy is not proved to be an essential religious practice of the community, it cannot be used as a criteria for religious practice in the church **(9)** The expulsion/removal of membership of a Knannaya catholic member and their family unit, permanently from getting religious service from the church, on the ground of their exercising fundamental rights, guaranteed under Art 21 of the Constitution of India, cannot be justified as it violates fundamental right guaranteed under Art 25 of the Constitution. **(10)** Neither the community nor the church is entitled to regulate the membership of the church for Baptism on the basis of the custom of endogamy, overlooking the Canon provisions relating to Baptism, as the Baptism is an essential religious service in christian faithful **(11)** Since the sacrament of marriage between Knanaya Catholic and non-Knanaya Catholic is a divine

one, it cannot be controlled by a custom or any other regulation by the church as per CAN 1506(2) (12) A Catholic spouse of a Knanaya catholic is entitled to get the religious status of her husband in his church as per CAN 33 and also as per the dictum of law laid down by the Hon'ble Apex court in ***Valsamma Paul V/s Cochin University and Others*** case, (supra) (13) Further, the children born to the couple of Christian marriage are deemed to have been ascribed in the church of his/her father by law itself under CAN 34. (14) The interest of the community attached to the church is sufficiently represented and protected by D1, D2 and D7 and further, no decree is passed against the community.

In the result, the appeals and cross-objection stand dismissed.

No costs.

Dictated to the Confdl. Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 2nd day of September, 2022.

Sd/-
Sanu S. Panicker,
Addl.District Judge -V,
Kottayam.

APPENDIX: -

Exhibits marked for the appellants:-

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Exhibits marked for respondents:- NIL

Court Exhibits:- Nil

Witness examined for both sides:- NIL

Sd/-
Addl.District Judge -V,
Kottayam.

Copied by:
Comp.by:

COPY OF COMMON JUDGMENT IN

**AS No.36/2021, AS No.59/2021,
AS No.62/2021, AS No.65/2021,
AS No.89/2021, AS No.95/2021,
AS No.6/2022, AS No.7/2022 &**

CROSS OBJECTION IN

AS No.36/2021

Dated:02.09.2022