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IN THE HIGH COURT OF KERALA AT ERNAKULAM  
R.S.A No. 656 OF 2022

The Metropolitan Archbishop,

The Archeparchy of Kottayam & Anr.

- Appellants

Versus

Knanaya Catholic Naveekarana Samithy & Ors.

Respondents

**COUNTER AFFIDAVIT OF T.O. JOSEPH, RESPONDENT NO. 2 FOR HIMSELF**  
**AND ON BEHALF OF RESPONDENT NO.1.**

Adv. Kaleeswaram Raj (Enrolment No.K/404/1989)

Adv.Thulasi K. Raj (Enrolment No.K.814/2015)

Adv. Shilpa Soman (Enrolment No.K.1400/2021)

Kaleeswaram Raj & Associates,  
"Dharma", 69/3277A, Peediyakkal Road,  
Ernakulam, Kochi-18, Kerala State.

Counsel for the Respondents 1 and 2

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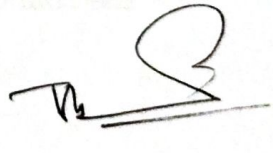
Knanaya Catholic Naveekarana Samithy &amp; Ors.

- Respondents

**COUNTER AFFIDAVIT OF T.O. JOSEPH, RESPONDENT NO. 2 FOR HIMSELF**  
**AND ON BEHALF OF RESPONDENT NO.1.**

I, T.O. Joseph, aged 77 years, S/o. Mr. Ouseph R/o. Thottumkal House, Kannankara P.O, Thannerukkam North Village, Cherthala Taluk, Alappuzha District, Kerala do hereby solemnly affirm and state as follows:

1. I am the Respondent No.2 and the president of Respondent No.1 in the R.S.A and Plaintiff No.2 and Plaintiff No.1 respectively in the Suit before the Trial Court and am aware of the facts of the case and am competent to swear this Affidavit.
2. I submit that the suit filed in the Trial Court was under order 1 Rule 8 to stop the cruel practice of expelling members from the Catholic Archeparchy of Kottayam, Appellant No.2, on the alleged claim of lack of blood purity for

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their spouse and to stop the denial of the holy sacrament of marriage to the members marrying Catholic members of other dioceses. Due to the unlawful and unchristian practice, resulting in expulsion of members, those members who marry Catholics outside the diocese and their family consisting of thousands of women and children are the victims and they are living life like second class citizens without any religious rights and condemned by the clergy.

3. I submit that their life in the villages is without any dignity and liberty guaranteed under the fundamental rights of the Constitution. The clergy refuses sacraments and was not even allow them to participate in prayer meetings and the clergy is also refusing to conduct religious prayer services in their homes.
4. I further submit that another casualty for keeping blood purity is that thousands of middle-aged men who remain unmarried due to lack of brides available in the Appellant No. 2 for fear of expulsion from the Church. Many of the cruel treatments meted out to the expelled members and their family are explained in paragraphs 16 - 22 and 46 of the Plaint filed before the Ld. Trial Court. The Appellants did not specifically deny any of the pleadings in the aforementioned paras of the Plaint, in their Written Statement filed before the Trial Court.

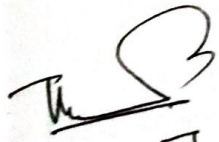
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5. I, further say and submit that on consideration of the pleadings, oral and documentary evidence and the arguments advanced by the parties, the Ld. Trial Judge found the pleadings of the Plaintiff as correct and justified and made inter alia the following findings in a 146 page judgment.

"76. So in the light of aforesaid precedents it can be easily concluded that right to marriage is the integral part of personal liberty enshrined in right to life guaranteed under Indian Constitution, same shall not be curtailed under the guise of custom by second defendant. It was recognized for long time that freedom to marry is the vital personal right essential to the pursuit of happiness by free men. Even statutes denied the precious right to marry on the strength of racial classifications were struck down by various Secular Courts in the world. So it can be easily concluded that alleged practice of endogamy in second defendant is in violation of right to marriage enshrined in Art.21 of Indian Constitution which can be simultaneously be recognized as a common law right and a fundamental right. The forfeiture of membership in second defendant for violating endogamy is violation of right guaranteed under Ar. 25 of Indian Constitution".

"81. plaintiffs established the fact that second defendant is practicing compulsive endogamy violating bible, Canon Laws, Particular laws, Article of faith, Indian Constitution and International Covenants. They also probabalise various evil consequences to be faced by members of second defendant after

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expulsion. The very act of expulsion, no doubt create fear in the minds of existing members of second defendant and will be repelled from exercising their precious civil rights....".

6. The First Appellate Court after hearing the Appeals filed by the Appellants and several interveners supporting them, spanning over a dedicated period of more than a calendar month, concurred with the findings of the Trial Court. Some of the findings of the first Appellate Court are the following:

In para 44

".....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".

"..... 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 Knanaya 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

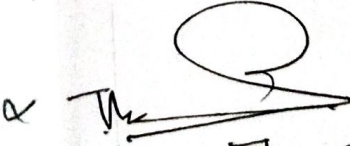
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would be the religious status of the said children? "is their birth, "their mistake so as to segregate them from the community and the church"?

"..... 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 Knanayaa 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 Knanaya catholic and the children born to the said couple should also be admitted in the church for their religious practices....".

"..... 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

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entitled to regulate the membership of the church on the basis of the custom of endogamy”.


In para 45

..... 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....”.

“.... 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**.”

In para 47

“Point No. (k). As regards the argument of the maintainability of the suit in the absence of a challenge of membership criteria

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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 Ar. 25 of the Constitution of India and therefore the criteria for membership in the church stipulated in Ext.B1 by-law, "based on endogamy" 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 endogamy for the membership of the church is sufficient to discard the membership criteria stipulated in Ext.B1 by-law....".

In para 51.

" .....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....".

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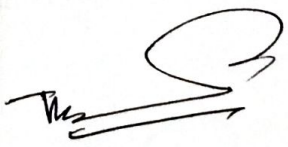
In para 52 (9) "the expulsion/removal of membership of a Knanaya Catholic member and their family unit, permanently from getting religious service from the church, on the ground of their exercising fundamental rights, guaranteed under Art. 21 of the Constitution of India, cannot be justified as it violates fundamental right guaranteed under Art. 25 of the Constitution".

7. I further submit that both the Courts below made concurrent findings and unequivocally held that the practice of endogamy and resultant expulsion of the members from the Appellant No.2 is in violation of the fundamental rights guaranteed to the citizens under the Constitution as also a Human Right violation.
8. It is submitted that by filing the stay application, the Appellants are seeking from the Hon'ble Court continued perpetuation of the violation of the fundamental rights and human rights of the members and former members of the Appellant No.2 and to continue with the prolonged suffering of the people despite Decree passed by the Courts below:
9. I further submit that nowhere in the 125 crores member strong Catholic Church, Endogamy practice is allowed. For that matter no religion in the world allows such cruel practices to be conducted on their own members.

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10. It is also relevant to submit that the Appellant referred to Mr. Biju Uthup Case in para 10 and ground 59 of the R.S.A. Biju Uthup was a member of Appellant No.2 whose sacrament of marriage was denied to him on the ground that his paternal grandmother did not have the purity of blood, even though she was admitted and continued as a member for many many decades and her children and grandchildren are still the members of Appellant No.2. Mr. Biju Uthup filed a suit (No.923) in the Munciffs Court Kottayam, in the year 1989. Both Trial Court and the First Appellate Court decreed the Suit. Then bishop of Appellant No.2 and his parish Priest filed a R.S.A in this Hon'ble Court on 21<sup>st</sup> May, 2009 and the Appeal was returned for curing defects on 29.5.2009. The appeal was refiled only on 28.3.2016 i.e. after a delay of 2478 days (six years and nine months) on the ground that the Advocate's clerk misplaced the file. The appellant filed the delay Condonation Application as CM No.250/2016 and got the delay condoned from this Hon'ble Court and the subsequently the Appeal was numbered as R.S.A No. 64 of 2017. Therefore, there is a genuine apprehension that if stay is granted as prayed for, the Appellants and people supporting them may prolong the argument of R.S.A.

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11. During the pendency of the Appeal, the First Appellate Court, stayed the operation of the judgment and Decree of the Trial Court till disposal of the Appeal. Aggrieved by the order, the Respondents who are the Plaintiffs before the Trial Court filed O.P (C) No.1451/2021 before this Hon'ble Court challenging the order of stay of Execution of the decree in O.S No.106/ 2015 on the ground that the staying of Execution of the Decree will amount to denial of fundamental rights and Human Rights of the citizens.
12. This Hon'ble Court initially stayed the stay order passed by the Ld. First Appellate Court and thereafter on hearing both the parties passed a detailed Order to the effect that the members of the Appellant No.2 should be allowed to marry any member of Catholic Church without his/her losing the membership. In other words endogamy practise was not allowed to be continued in Appellant No.2.
13. I respectfully submit that even during the pendency of the Appeal, this Hon'ble Court did not allow expulsion of the members of appellant No.2 for marrying another catholic from any other dioceses of Catholic church.
14. I further submit that the Appellants and Respondents No.5 to 8 were the only defendants in the suit. However, the Respondent No.9 herein got impleaded

  
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in this suit when Order 1 Rule 8 publication was made on the ground that they are organisation representing the laity in the Appellant No.2. Other Respondents namely Respondents 10 to 45 were not parties in the suit and their Applications/Appeals filed before the 1<sup>st</sup> Appellate court were dismissed on the ground that they had no locus standi to file 1<sup>st</sup> Appeal. By adding other Respondents in this R.S.A, the Appellants are trying to get a back-door entry to those Respondents who are supporting the Appellants.

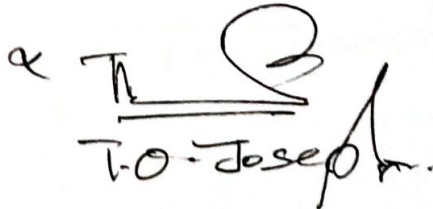
15. In the 1<sup>st</sup> Appellate Court Respondents No. 10 to 45 except No.13 got impleaded as Appellants on the ground that they are members of the Knanaya Community and therefore entitled to get right of impleadment as Appellants. The plaintiffs in the Trial Court opposed the impleadment Applications in the 1<sup>st</sup> Appellate Court on the ground that Plaintiffs are the 'dominus litis' and the suit was not against Knanaya Community, but against Catholic church. In para 45 of the Plaint it was specifically pleaded that the plaintiffs have no objection for the people practising endogamy in their community. It was also contented by the Plaintiffs before the 1<sup>st</sup> Appellate Court that the above said intervenors may not be allowed to challenge the judgment and decree as none of the legal rights of the intervenors are infringed in the suit or in the Decree as also no Decree is passed against the Knanaya Community. Most of the intervenors are not even members of the

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Appellant No.2. Many of them are foreign citizens and members of other Catholic dioceses in their own countries where endogamy practice is not allowed to be practised in the Church. Those foreign citizens are using their resources to deny the fundamental rights and human rights of the poor citizens of India. Ultimately the 1<sup>st</sup> Appellate Court dismissed all those Appeals on the ground of no locus standi for the intervening Appellants. Therefore, those respondents have no locus standi to file Appeal or right of hearing in the R.S.A.

16. The Appellants had admitted during the hearing in the 1<sup>st</sup> Appellate Court that in their Bylaw even the children of an unwed mother who is a member of the Appellant No.2 will be given Baptism which is the only criterion for membership in the Appellant No.2 and such an admission evidences that there is no blood purity or endogamy practise in the Appellant No.2 unlike in the Community. The Baptism that is given to such children by the Appellants is denied to the children of the members who married another catholic.
17. After the concurring judgments of the courts below the former members who are senior citizens expect that their dead body can be buried in the family cemetery built by them and their parents in which their parents and grand parents are laid to rest. Children and grand children can hope for a none discriminatory treatment in the Church.


  
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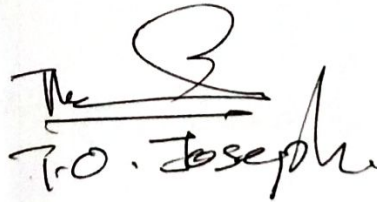


18. In the grounds of the R.S.A the Appellants did not seriously challenge the findings of the Courts below regarding violation of fundamental rights and human rights, some of the paras elicited in para 5 and 6 above.

19. I submit on the basis of advice received that no substantial question of law is raised in the R.S.A. The Appellants have repeated the same grounds raised in the 1<sup>st</sup> Appeal as if the R.S.A is a R.F.A. it is submitted that when fundamental rights of the citizen in the Constitution is violated no substantial question of law can defect such a right.


## 20. PARAWISE REPLY

Contents of paras 1 to 6 of the stay Application are matters of record and need no reply except for para No.3 and 4 last sentence in para 3 is incorrect. Contents of para No.4 are incorrect and are denied. The alleged practice and custom of the Knanaya Community are not affected by the Judgment and Decree. Those in the Knanaya Community who want endogamy can continue to practise endogamy as practised earlier. Knanaya community people merged in the catholic church a few centuries back only and in the church, they did not enjoy endogamy practice. A few decades back only this illegal practice was started. All in the community do not favour this. It is a matter of

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individual choice. Even Otherwise, the Courts below found on evidence that Knanaya Community is spread in different Christian churches as also in other dioceses of catholic church where practice of Endogamy is not allowed in the Church. The suit is against the illegal and unconstitutional expulsion of members from the Church which is also in violation of Church Law and Divine Law. Church law and Community law are different and the same is established from the fact that in the Appellant No.2 the children of unwed Mother is also admitted evidencing that no Endogamy is practised in the Church whereas the Community is claiming Endogamy. The claim that Knanaya Community is practising endogamy for 17 centuries is a superstition for the reason that there is no proof for the same beyond one Century. Community discontentment that too abeted by the Appellant No.2 is not a reason to delay the implementation of the Decrees of the Court. Even otherwise enforcing fundamental rights and human rights of unfortunate citizens by a Decree of the Court is not depend on discontentment of a few people that too most of whom are not members of the Appellant No.2 and many are foreign citizens. Practise of endogamy in the Appellant No.2 is a violation of Church Law, violation of Fundamental Rights as also a grave human right violation as held by the courts below. I say and submit that a Constitutional Court will not tolerate bogie of discontentment of a few people in order to protect the

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fundamental rights of the citizens. During the pendency of the 1<sup>st</sup> Appeal the Hon'ble Court directed the Appellants to allow marriage of the members with other Catholics without losing membership. The people suffering for many decades are to be allowed the fruit of their litigation which is nothing but freedom granted under the fundamental rights in the Constitution that too when both the courts below passed Decree in favour of the Plaintiffs. The contention that the Appellants have a strong prima facie case or they will suffer irreparable injury or balance of convenience in their favour are all incorrect. On the other hand, the plaintiffs have to suffer irreparable injury as any delay in marriage, non-burial of dead bodies of the members and their family members in the family cemetery etc. cannot be compensated if stay is granted to the Appellants.

21. I submit on legal advice that as a Constitutional Court, this Hon'ble Court could have taken suo-moto action against the Appellants for the constitutional violations but for the fact that the violator is a private party. When courts below decreed that the Appellants are indulging in violation of fundamental rights, this Hon'ble Court will enforce the fundamental rights of the citizens against the violators by upholding the Decree.

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22. For the submissions made above, it is prayed that the Application for Interim Stay filed by the Appellants may be dismissed and this Hon'ble Court may be pleased to allow the existing members and expelled members and their wives, children and grandchildren enjoyment of a new dawn where they enjoy freedom and are treated as equal citizens enjoying fundamental rights.

The above facts are true and correct.

Dated this the 21<sup>st</sup> day of November, 2022.

Deponent

x T.O. Joseph 



Solemnly affirmed and signed before me  
by the deponent who is personally known  
to me on the 21<sup>st</sup> day of ~~Nov~~ 2022.  
[office at Ernakulam]