IN THE HON'BLE DISTRICT COURT OF KOTTAYAM

A.S. NO. 36 OF 2021

The Metropolitan Archbishop and Anr …. Appellants

Versus

Knanaya Catholic Naveekarana Samithi & Ors …. Respondents

&

A.S. NO. 95 OF 2021

Knanaya Catholic Congress Vs. Knanaya Catholic Naveekarana Samithi & Ors

Written Submissions of the gist of Oral Arguments made by the Respondent No. 1, 2 and 4 under Order XVIII Rule 2 (3A) of the Code of Civil Procedure, 1908

The Hon'ble Court was pleased on the last date of hearing held on 24.08.2022 to allow the Counsel for the answering Respondents to file a Written Note of the oral submissions made in the Appeal.

1. How does the Civil Court get jurisdiction to adjudicate cases arising from the violation of fundamental right of citizens by private parties?

(a) **K. S. Puttaswamy Vs. UOI - Para 397, 398**

(2017)10 SCC1

(b) **AIR 1995 SC page 2001 P.M.A Metropolitan Vs. Moran More Marthoma**, para 28, 31, 34, 35 and 76

Para 2.7 of page 17-19 of the Written Arguments filed by the Plaintiffs in the Trial Court.

2. Defendants Nos. 3 to 6 (Respondent Nos. 5 to 8 in the Appeal 36/2021) were declared ex-parte in the Trial Court. They are the higher authorities of the Appellant Nos. 1 and 2 in the Catholic Church. The Defendants No. 3 to 6 did not oppose the Suit. In the Appeal, notice to the Defendant Nos. 5 and 6 (Respondent Nos.7 and 8) were dispensed with by the Hon'ble Court on the application of the Appellants. The Defendant Nos. 3 and 4 (Respondent Nos. 5 and 6) did not file any application for setting aside the impugned judgement even though vakalath was filed by them in the Hon'ble Court. The Hon'ble Court was pleased to accept the oral submission of the Ld. Counsel of the Respondent No. 5 and 6 made just before the reply arguments of the Respondents that he is supporting the contentions of the Appellants. The answering Respondents doubt whether the Respondent No. 5 and 6 support the Appellants contention, in view of the fact that till the completion of the arguments from the Appellant's side no statement was made by the Ld. Counsel. The Answering Respondents

prayed to the Court that unless and until an affidavit of the parties is on record, such a contention of the counsel of the Respondent No. 5 and 6 should not be admitted. For taking a decision for supporting or opposing the appeal, the Respondent No.6 should place the matter in the Agenda for the Sinod meeting and discuss and put to vote in the meeting. Nothing of the sort has taken place and there is a genuine apprehension that the statement was made by the Ld. Counsel without the knowledge and consent of Respondent Nos. 5 and 6. In the event of the Respondent Nos. 5 and 6's counsel not filing Written Arguments, by giving any frivolous excuses, his oral submission regarding the contention that Respondent No. 5 and 6 support the Appellant may kindly be not acted upon due to the peculiar facts and circumstances of the case.

3. Subsequent to the filing of the Appeal, the Appellants have filed an Application on 05.01.22 for dispensing with notice to the Respondent Nos.7 and 8 and to remove them from the party array. The grounds taken in the Appeal regarding the consent of Central Government under section 86 of the Civil Procedural Code 1908 of notice not being served properly on the Respondent Nos.7 and 8 etc are irrelevant and infructuous now on account of the application to remove them from party array. These grounds are even otherwise baseless and the reasons are stated in para 2.25 (Page

33-34) of the Written Arguments of the Plaintiffs filed before the Ld. Trial Court.

4. The Ld. Trial Court after considering the pleadings and evidence held that the expulsion of members from the Defendant No. 2 for marrying another Catholic from outside the diocese is a Human Right violation, violation of constitutional guaranteed fundamental rights as also a Civil Right violation

Impugned Judgement paras 80, 81 (Page 142 -143)

5. The finding of the Ld. Trial Court that the expulsion of a member by the Appellant No. 2 is a Human Right violation is not challenged by the Appellants, and is also not argued against by any of the Counsel for the Appellants or the other Appellants before the Hon'ble Court. Therefore the finding of the Ld. Trial Court that the act of expulsion is a human right violation stand unchallenged before the Hon'ble Appellate Court.

Para 78 of the Judgement (Page 140-141)

Para 148-151, 154, 272, 463-465 of the judgment – Indian Young Lawyers Association Vs. State of Kerala

Kindly see page 182 -188 of the Written Argument of the Plaintiff before the Trial Court.

6. The action of Appellant Nos. 1 and 2 in terminating the membership of members from the Church for marrying another Catholic is in violation of the law laid down by the Hon'ble Supreme Court in various judgements. In this regard **K. Puttaswamy & Anr Vs. U. O. I** is referred for the protection of guarantee under Article 21 and **Indian Young Lawyers Association & Ors Vs. State of Kerala and Ors. (2019)11 SCC 1** is cited with reference to Article 25 (1) and the protection of religious practices and with regard to profession of faith for the Plaintiffs and others having similar grievance and also to establish that the Defendants in the Trial Court will not get the protection under Article 26(b) of the Constitution. This action of expulsion is a clear violation of Article 21 and 25(1) of the Constitution of India. The evil consequences and the brutality of the illegal practice and the resultant expulsion is explained in para 16 to 22 and 46 of the Plaint which is not specifically denied in the W. S. by the Appellants.

Dignity and Liberty is denied to the Citizens like the Plaintiffs and those who have similar interest in the case .

Relevant paras in K. Puttaswamy Vs. U. O. I in support of Article 21 of the Constitution are as under:

103, 108, 118, 119, 127, 144, 297, 298, 299, 313, 317-322, 363, 367, 395, 397, 398, 399, 402, 403, 406, 407, 409, 411, 536, 540-553, 557, 558, 566, 578, 604, 613, 625, 652.

7. The act of the expelling members from the Appellant No. 2 is in violation of the fundamental rights guaranteed under Article 25(1) of the Constitution. The member is not allowed to freely profess and practice his religion as he is illegally and unceremoniously removed from the membership of the church.

Impugned Judgement para 76

Relevant para in the Indian Young Lawyers Association case

167, 172, 176, 208

8. The practice of endogamy is akin to untouchability which is prohibited under Article 17 of the Constitution.

The answering Respondent submits that the practice of endogamy is akin to the practice of untouchability prevalent in the Hindu community. The practice of endogamy is liable to be eradicated from our country.

Para 320 -324, 342, 347, 351, 357 of the Indian Young Lawyers Association Case

9. The Appellants are not entitled to protection of Article 26(b) of the constitution. Article 26 is not a stand alone right and has to yield to other fundamental rights. The relevant submissions in this regard are as under:

10. **Morality stipulated under Article 26 (b)**

The morality stipulated under Article 25 and 26 is constitutional morality. What is constitutional morality?

Indian Young Lawyers Association case at Constitutional Morality is explain in the Paras 106 -110, 206, 211, 218

Pre-conditions required for availing protection under Article 26(b) of the Constitution

There are certain pre-condition to get protection under Article 26 of the Constitution. They have been described as under:

11. A **separate section or denomination of the Religion.**

The Appellant has no case before the trail court that they are separate section of the Catholic Church. They claim that they are integral part of the Syro Malabar Church with **one and the same** prayers, beliefs, worships, sacraments, liturgy, pastoral care and all spiritual activities. They claim that they are an "ethnic community".

Reference may be made to paras 25 and 45 of the Written Statement. The pleadings of the Plaintiff are not specifically denied by the Appellant in the Trial Court. Reference may also be made to the Chart containing the relevant paras and contents of the plaint and the Reply statement by the Appellants (OVIII Rule 3, 4 and 5 referred) with Annexure A, B and C submitted before the Hon'ble Court during Arguments.

Judgement relied on

Indian Young Lawyers Association Vs. State of Kerala

Paras concerning separate religious denomination – 92-94, 303-311

Also see (i) **1997 (4) SCC 606** para 23, 28

(ii) **Philip K J Vs State of Kerala** , para 8,9

(iii) **1996 (9) SCC 611** para 25, 26

(Sl. No. 4, 6 and 9 of Vol-I of judgements filed by the Respondents).

The protection allowed to the section of the Catholic Church under Article 26 (b) of the Constitution is the essential religious practice of Catholic Church or the Syro Malabar Church, one of the 24 constituents of Catholic Church. No such contention in the Written Statement has been made, no evidence has been produced by the Appellants who set up the contention now. The lowest section in the Catholic Church is the Syro Malabar

Church and any dioceses under it cannot be called a separate section or denomination. In the Written Statement, it is specifically stated this fact by the Appellants in para 8 and 31.

12. **Essential Religious Practice**

The essential practices of the Christian religion are what is stated in the New Testament and the Acts of Apostle's and the canon law in the Catholic Church. This is non-negotiable. This is called the Divine Law. Articles of the faith of Catholic Church are also Divine law. Reference may be made to para 25 of the Plaint and Para 8, 25 and 45 of the Written Statement of the Defendants (Appellants)

Indian Young Lawyers Association Case

(kindly see para 114 -121, 165, 176.6,256)

Also kindly see (i) **(2016)2 SCC 725** para 29-31, 41, 43

(ii) **AIR 2002 3538**

(iii) **2004 (12) SCC 770**

(Sl. No. 5, 7 and 8 of judgements filed by the Respondents in judgements in Vol-I)

The test laid down by the Supreme Court is whether the practice is essential for the religion and if the alleged practice is removed whether the religion itself will be finished. Nobody can say that if such barbarian practice is stopped that will adversely affect the Catholic Religion.

13. **Whether there is separate name for the Appellant No.2 as a religious section**

There is no separate name for Appellant No. 2 as the name of a diocese is associated with name of the place where it is situated. For example Palai diocese, Chenganachery diocese, Kottayam diocese (Appellant No. 2) etc. Reference may be made to the cause title of Appellant No.2. This is the practice in Syro Malabar Church and even in all the diocese of the Catholic Church. The Appellant No.2 is like any other dioceses in Catholic Church. When it is established that the fundamental rights of the Plaintiffs and persons of the same interest in the Suit is violated and the Appellants are not eligible for protection under Article 26 (b) of the constitution, the Appeal may be dismissed.

The alleged practice is in violation of the New Testament, Canon law and Articles of faith and therefore the practice of expulsion from the church is illegal.

14. **Custom of Practice of Endogamy in the Appellant No. 2**

The answering Respondents submit that the alleged custom of the Arch Eparchy of Kottayam is not valid in the Catholic Church. Custom of any of the dioceses is not considered or approved for practice of custom in the Catholic Church. Only those customs which are approved in the Codex Canonum Ecclesiarum Orientalium (CCEO) alone can be practiced by any diocese of any sui juris church. Therefore the alleged custom of Appellants has no validity in the Church law.

It is further submitted that the Appellant itself admits that the practice of endogamy was started by a subsequent Bishop on the interpretation of the Bull of the Pope dated 29.08.1911. A practice started on the basis of the false interpretation of the Papal Bull dated 29.08.1911 cannot be claimed as a customary law. In any event, any custom contrary to Divine Law is invalid in Catholic Church (Canon 1506 (2)). Any custom which is unreasonable cannot be implemented under the canon law (1507). Such a custom which is unreasonable cannot be implemented under Article 13 of the Constitution.

No diocese can make any rules contrary to the Canon Law or Divine Law. The rules regarding membership, marriage or regarding any other holy sacrament can be changed only with the permission of the Pope.

Indian Young Lawyers Association para 384, 386, 394, 395396, 398, Article 13-375
Aleyathammada Vs. Pattackal Cherya Koya – para 23, 24
Bhimashya and Ors Vs. Jamabu Para 23, 24, 25, 30
Ratanlal Vs. Sundrabai para 13, 17

Sl. No. 10,11, 12 of Vol. I of Judgment of the Respondents.

The detailed submission on customs is submitted by the Plaintiffs in page 175 to 182 of the Written Argument filed before the Ld. Trial Judge on 05.04.2021. The same may be read as part of submissions under this heading also.

Para 351, 357 of the **Indian Young Lawyers Association Vs. State of Kerala.**

15. In page XXII of the Written Submissions filed by the Appellants before the Hon'ble Court on 18.07.2022, in para 73 it is stated as under:

"The consequences of intermingling will lead to the same situation that prevailed in the churches before the issue of Papal Bull".

Canon which prescribe that anybody who receive baptism can continue till his death (675(2)).

Any particular diocese of the Catholic Church cannot claim custom. The valid custom of the concerned sui juris church i.e. Syro Malabar church alone could be claimed as valid custom.

16. The finding of the Ld. Trial Judge that the practice of endogamy and the resultant expulsion from the church is a human right violation is not challenged in the Appeal nor argued by any of the Ld. Counsels appearing in support of the Appeal

17. **Cause of Action and Limitation**

For cause of action and limitation, the settled law is that the Plaint including the relief sought alone will be considered by the Hon'ble Court. The contention of the Defendant that the date of marriage of the Plaintiff No. 2 and 3 disclosed through cross examination will decide the limitation is not correct. Reliefs a, b and c claimed is not specifically connected with the plaintiffs No. 2 and 3 or their marriage. This suit is for stopping expulsion of members from the Appellant No.2 which is being done by it and Appellant No. 2 is an integral part of Syro Malabar Church of Catholic Church. So far as the Relief No. D is concerned, it is not prayed that the Plaintiff No. 2 and 3 should be readmitted in the Appellant No. 2 as such. When Relief D (4) is allowed, it is subject to " if the former members are qualified in all other respects on receipt of application". Therefore the marriage date of the Plaintiffs No. 2 and 3 cannot be taken as a relevant

fact which is not in the Plaint for determining Limitation and cause of action in the suit as their return to the Appellant 2 is with conditions.

In the case titled Balakrishna Savalram Pujari Vs. Dhyaneshwar Maharaj Sausthan (A.I.R 1959 SC 798(Sl. No. 9, Vol-II Page No. 111 at para 31, a judgement produced by the Ld. Counsel for the Appellant in A.S. No.6 of 2022 the Hon'ble Supreme Court held as under:

> "It is the very essence of the continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete there is no continuing wrong even though the damages resulting from the act may continue. If, however a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong".

This law is reiterated by the Hon'ble Supreme Court and various Hon'ble High Courts later as shown in page 523-524 of the additional citations filed by the Ld. Counsel for the Appellants.

The Exhibit B-1 document, page 3 and 85, establishes that the Appellants will not allow the members to continue in the church. Reference may also be made to the admissions made by the Appellants before the Ld. Trial Court in paras 38 and 42 as also by the Defendant No. 7 in para 3 (last 7 lines) of the Written Statement.

The action of expulsion is admittedly being done as of date and therefore section 22 of limitation Act will apply as it is a continuing tort.

The Ld. Counsel also produced a judgement of Kerala High Court titled "**Baby Alias Mariamma Paul Vs. Devassy and Ors" (2001 KHC 1005**, Sl. No. 10 of Vol. II wherein the Hon'ble Court relied on the aforesaid Supreme Court Judgement.

Reference in the above regard, may also be made to

(i) Page 15-24, 34 -35 of the Written Arguments of the Plaintiffs before the Trial Court.

(ii) Page 149 – 153, 155-156, 163-165 of the Written Arguments of the Plaintiffs before the Trial Court.

Without prejudice to the aforesaid submission, it is also submitted that the Hon'ble Supreme Court in **Olgatellis Vs. Bombay Muncipal Corporation (A. I. R 1986 S.C 180)** ruled that constitutional law will override Civil Law. When it is established from the pleadings (para 16 to 22 and 46 of the Plaint) as also from evidence that practice of endogamy and resultant expulsion from the church is a fundamental right violation, as guardian of the constitution, the Hon'ble Court will give preference to the abolition of the constitutional violation. It is the legal principle that for every wrong there is remedy.

The Apex Court in the case of Akhil Bharatiya Soshit Karamachari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association etc. Vs. Union of India & Others reported in AIR 1981 SC 298 dealing with the cause of action under the Indian Jurisprudence has held at para 63 by Krishna Iyer J as under:

> "63. XXXXX. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented and envisions access to justice through 'class actions', 'public interest litigation', and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions."

Reference may also be made to page 29 of Written Argument filed by the Plaintiffs before the Trial Court.

It is contented by the Appellants that Order 7 Rule 4 of CPCand section 91 will apply to the facts of the case. The contention is incorrect. There is no need of an advance permission for publication in case under Order1 Rule 8 for filing of the Suit as required under Order 7 Rule 4. The representative Suit under OVII Rule 4 is not the same as suit under Order 1 Rule 8. Similarly section 91 has no application in the subject case and the subject case is governed by Order 1 Rule 8 and section 9 of the Civil Procedure

Code. Ld. Counsel referred to Ram Janma Bhumi Temple case. In that case it was held that the limitation will start from the date of dispossession. That law is not applicable in the subject case.

18. **Every wrong has a remedy**

When it is found that the civil and constitutional rights of the citizens are violated, as guardian of the constitution, the Hon'ble Court will provide justice based on the following maxims.

Procedural law cannot betray substantial law. There is no wrong without a remedy. If no statute bars, the suit is maintainable.

1) **P.M. A Metropolitan Vs. Moram Mar Marthoma** – Para 27
2) **Dhannalal Vs. Kalawatibai & Ors (S. C)**
AIR 2002 SC 2573 - S. No. 11 of Vol.II of the judgements filed by the Respondents – para 20 -23.

19. **Order 1 Rule 8 Application filed by the Plaintiffs**

Two contentions made by the Appellants

(a) Publication ought to have made by the Plaintiffs against Defendant No. 2 as it is not a legal person.

The answering Respondents submits that the suit is filed against the various offices and officers of Catholic Church (Defendant No. 1 to 6 in the Suit). The Catholic Church is a juristic person.

The Appellant No. 2 is a juristic person as also Defendant No. 4, 5 and 6 as they are officers at various levels in the Catholic Church which is a juristic person governed by the constitution called Canon Law.

Reference in this regard may be made to

(a) Para 103 of **K.S. Varghese Vs St. Peters and Paul Syrian Orthodox Church (2017) 15 SCC 330**

(b) **Arch Bishop Vs. P. A. Lalan Tharakan** Para – 15 – Sl. No. 13 of Vol – II judgements

(c) **George Sebastian Vs. Molly Joseph 1994 (2) KLT 387 (F.B)** Para 18, 19- Sl. No. 39 of the judgement filed by the Appellants Vol-2.

In three situations only publication under Order 1 Rule 8 is possible. Two situation by the Plaintiffs and only one by the Defendants. The Plaintiff will make publication for

(i) bringing persons who have the same interest as that of the Plaintiffs.

(ii) Representing the Defendants, if the Defendants in the Suit are numerous and publication may be done for the Defendants by the Plaintiffs. In the subject suit, this situation does not arise.

(iii) If the Defendants consider that they are numerous and seek the permission of the Court to make publication under Order1 Rule 8. This is not the situation in this case. If anybody is a Eeo nominee party whose interest is the same as that of the Plaintiffs interest they can apply to the Court. The judgment will be resjudicata to persons of the same interest as that of the Plaintiffs. None of the other Appellants or intervening Applicants fulfilled this criteria.

Therefore there was no need of publication under Order1 Rule 8 for the Appellant No. 2 as it is a legal person.

However as directed by the Hon'ble Court, the Plaintiffs, in the Trial Court took out a publication in all editions of the daily Mangalam in the Appeal also.

(b) The contention of the Appellants is that the Plaintiff No.1 is not a juristic person. This is also not correct. Under the Societies Registration Act of 1955, the Plaintiff No.1 can sue or be sued. The Bye laws of the Plaintiff No.1 allows it to sue or be sued (Ref. Ext. A-6).

The resolution passed by the Respondent No.1 authorizing the President and or the Secretary to file the Suit is on record (Ext. A-7).

The Supreme Court judgement in Elachi Devi (Sl. No. 4 in the Vol. –II filed by the Respondents) is distinguished in the judgement in Nilagiri Petroleum Co. Vs. Neelgiri diocession Society (Sl. No. 1 in Vol. II of the Respondents .

All what is mentioned in the Supreme Court judgement is that the authorized person can sue on behalf of the Society. In the subject case the society is represented through the president in official capacity as also as Plaintiff No.2 in his personal capacity. It is settled law that the error in the title, even if it is there, can be corrected, by the Appellate Court as no prejudice is caused to the Appellants.

All the contentions raised in the issue of Order1 Rule8 stand answered in the Full Bench judgement of Kerala High Court titled "Narayanan M. V Vs. Periaden Narayanan Nair 2021 (3) KHC (F.B)." It is also held in this judgement in para 38 that "once it is brought under o1 r8, it becomes a representative suit or a class action. **Individuals are relegated to the back ground.** Then it will become representative suit or class action.

(Emphasis supplied)

Relevant paras of judgment – 16, 20, 25-35, 38

Sl. No. 7 of Vol-II of the judgements filed by the Respondents

For other points, reference made to para 2.13 to 2.22 of the Written Argument of the Plaintiffs before the Trial Court (Page 24 to 32 also see page 156-158, 167-171 of the Written Argument)

20. **Specific Relief Act**

It is the settled law by the Supreme Court that in a given case the court can grant reliefs even if the same is not covered under the Specific Relief Act.

Judgements cited in this regard are the following.

(i) **Ashok Kumar Srivastava Vs. National Insurance Co. Ltd (A. I. R 1998 SC 2046)**

(ii) **Vemareddi Ramaraghava Reddy and Ors Vs. Konduru Seshu Reddy – A.I.R 1967 SC 436**

The above have been quoted in page 141-142 of the Written Arguments of the Plaintiff before the Trial Court on 08.03.2021.

Impugned judgement para 16, 18

Reference may also be made to the relevant submissions made in the Written Arguments filed in the Trial Court by the Plaintiffs before the Trial

Court as to how the requirement under various provisions of Specific Relief are complied with.

Vol- I , page 140-142, (Vol-11, page -154, 158-161)

21. **What is the consequences of filing Exhibit B-19**

Kindly see page 191 of the Written Arguments of the Plaintiffs. This document is a private communication between the Appellant No. 1 and Respondent No. 8 and the answering Respondents had no knowledge about the contents of the letter. This letter in fact hurting the case of the Appellants.

Kindly also see Sl. No. 24 where in the Appellants state that the children of prostitutes also will be admitted into the membership of the church and thereby, endogamy was not practiced in the church.

22. **Whether the persons in the impleading Applications and other Appeals claiming that they are members of the Knanaya Community and by virtue of that capacity, can they challenge the judgement of the Trial Court under Order 1 Rule 10 of Civil Procedure Code?**

(1) The Plaintiffs case in the Suit is that the Defendant No. 1 and 2 practice endogamy in the church in violation of church law and the

constitutional law. The Plaintiff made this clear in the Plaint in para 45. Kindly see para 44, 65 and 69 of the impugned judgement.

(2) The Plaintiffs are the dominus litis. No 3rd party can insist that they should be allowed to be made a party. If a proper party or necessary party is not impleaded, the suit will not be dismissed (Order 1 Rule 9)

The only exception where a party can be added is that the Hon'ble Court find that those third parties are necessary or proper party.

Question is whether any of the interveners or other Appellants are a necessary party or proper party?

The Hon'ble Supreme Court in **RAMESH HIRACAND KUNDANMAL VS. MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS. (1992) 2 SCC 524** at Paras 5, 6, 8, 14 has held as under:

> "5. It was argued that the Court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse elaimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under Order 1 Rule, 3 to avoid multiplicity of suit and needless expenses all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence

before the Court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit."

"6. Sub-rule (2) of Rule 10 gives a wide discretion to the court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

"8. The case really turns on the true construction of the rule in particular the meaning of the words "whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit". The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions."

"14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is therefore,

> necessary that the person must be directly or legally interested in the action in the answer i.e he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon Vs. Raphael Tuck & Sons Ltd.,* wherein after quoting the observations *of Wynn-parry, J. in* Dollfus Mieget Compagnie S.A Vs. Bank of England, that their true test lies not so much in an analysis of what are the constituents of the applicants rights, but rather in what would be the result on the subject matter of the action if those rights could be established , Devlin, J. has stated:
> "The test is May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights".

A perusal of the above mentioned paras would show that Plaintiff is the dominus litis and infringement of legal right of the third party alone is the ground for impleadment in the Suit.

Other Citations

(i) **AIR 1991 Kerala 221** Para 3-7, 11, 13
Sl. No. 10 and 9 of the Vol – II of the judgements filed by the Respondents

(ii) Also see **(2010) 7 SCC 417 and (2018) 2 SCC 352** in the objections filed by the answering Respondents in Appeals filed by the various other Appellants

Some of the Appellants are foreign citizens and have no nexus to the subject matter of the Suit or a connection or relation to the members of Appellant No. 2. None of their legal rights are infringed. They want to deny

constitutional rights of the Citizens of India while enjoying the comforts of a developed country.

It is further submitted that in view of the rules and regulations contained in the "Kottayam Athiroopatha Niyama Samhita" allowing membership to children of Knanaya woman in the Arch Eparchy born out of her profession, the members of the Appellant No. 2 cannot claim purity of blood and practice of endogamy in the Appellant No. 2 and all the other Appeals and intervention Applications based on the contention that Knanaya Community is affected by the Judgement is incorrect and are liable to be dismissed.

Kindly see Sl. No. 24 -26 below.

All the Appeals and intervention applications may kindly be dismissed as none of their legal rights are affected by the suit or by the impugned judgement. They are allegedly trying to protect the community interest which is not the subject matter of the suit. Exemplarary cost may be imposed on them as a deterrent to filing of such frivolous litigation.

23. **Whether just because the diocese was created for the Southist people by adding all Southist Parishes, can the Appellants practice Endogamy in the diocese on the basis of Bull dated 29.08.1911?**

The only argument of the Appellants to justify the barbarian practice of expulsion of the members by the Appellant No. 2 is the Bull dated 29.08.1911 issued by the Pope. A perusal of the incidents leading to the issue of the bull dated 29.08.1911 and the contents of the Bull would reveal the fact that the bull did not allow practice of endogamy and the resultant expulsion of the members from the Appellant No.2 (Exhibit B3 and the Bull extracted in the Plaint in para 29).

It is contented by the Appellants time and again during the arguments that they were allowed to practice endogamy in the church when the Kottayam diocese was created by the Pope by issuing the Papal Bull dated 29.08.1911.

Such a contention is totally baseless for a variety of reasons. Some of them are submitted in brief here under:

(1) A power of expulsion from any institution should be specifically and categorically stated in the rules and regulations. Reading such a power by inference in the document and expelling people for non-adherence is a grave human right violation and denial of natural justice (Reference para 38, 42 of Written Statement of the

Appellants and para 3 of the Written Statement of the 7th Defendant in the Trial Court).

(2) The purpose for the issue of the Bull dated 29.08.1911 creating Kottayam diocese was to end the strife between two communities namely Southist and Northist. There was no other purpose like practice of endogamy by the Southist in all the previous centuries which prompted the Pope to issue the Bull. There is not even a single piece of evidence before the Hon'ble Court indicating that the alleged practice of endogamy by the Southist was known to Pope when he issued the Bull dated 29.08.1911. Any statement in the Hon'ble Court about history without supporting evidence will be considered as superstition.

(3) The Bull was issued as an administrative order bifurcating the churches in then existing Chenganessery Eparchy between Southist and Northist churches and not segregating the Southist people residing in Kerala. As the churches, where Southist people in majority was a few and not enough to constitute a diocese, a few parishes where southist were in majority in the Ernakulam Eparchy also added to make it as a diocese with required size. Even then the faithful belonging to Southist Community were much less than any other existing dioceses of Syro Malabar people in Kerala. The other

people of Southist origin who were members of Catholic Church were not allowed to become members in the Kottayam diocese. It is emphatically submitted that only churches were segregated and members were not communally segregated when the diocese was bifurcated.

(4) The creation of Kottayam dioceses was an administrative decision. Any administrative decision of the Pope creating a diocese is subject to the constitution of the church i.e. that Canon law. Even above Canon law is the Divine Law which is supreme for any Catholic. The Divine Law of the Catholic Church is the New Testament consisting of the teaching of the Jesus Christ as also the Acts of the Apostles. Another Divine law is the Articles of Faith of the Church (Para 25 of the Plaint.

(5) Any administrative Bull is subject to the Divine Law and Canon Law and the Appellants cannot read endogamy into the Bull alleging that the same can be inferred from the Bull. Such a contention should be rejected for the reason that no such practice of endogamy was allowed in the Bull as also the Pope could not have even thought grant of endogamy to the Southist is the same is inviolation of Canon Law and the Divine Law.

(6) The Bull dated 29.08.1911 was subject to judicial interpretation by the Hon'ble Courts and the Hon'ble Courts reached an irresistible and unequivocal finding in Biju Uthup Case that there is no such power granted in the Bull to the Bishop of Kottayam to practice endogamy or to terminate membership of any member for not keeping blood purity.

(7) Also it came in evidence that while granting a diocese for southist churches vide bull dated 29.08.1911, there was no evidence or even information before the Pope that Southists as a community were practising endogamy. If it was known to the Pope, he would not have granted a diocese on community basis as it is a sin for the Catholic Church, for that matter, even any religion will not allow such a practice. The Hon'ble Court was pleased to direct the Appellants during arguments to provide information as to whether any other dioceses or any institution in the Catholic church where endogamy practice is allowed. The Appellants did not answer this query of the Hon'ble Court. The answering the Respondent may submit that in any other dioceses or the institutions of the Catholic Church the endogamy is not followed.

(8) It is further submitted that the complete evidence resulting in the creation of Kottayam diocese is before the Hon'ble Court in the form

of the representation dated 01.03.1911of all the Bishops of the three Syro Malabar Eparchies. The same is marked as Exhibit B-3. A perusal of the B- 3 document would indicate that the reason for making representation before the Pope was to end the strife between Southist and Northist and not for protecting the endogamy rights of the Southist or for anything else. Similarly the report of the Cardinal Alliardy (Exhibit B-13A) had recommended the representation of the three Bishops to be allowed. Nowhere in the Report it was stated that Southist were practising endogamy or that they should be allowed a separate diocese for practising endogamy. Thereafter the highest authority below the Pope i.e "the Propanganda Fede" made recommendation to the Pope. In the representation of the three Bishops and the report of Cardinal Alliardy and in the recommendation of the Propaganda Fede there were suggestions to end the strife between Southist and Northist in the Chenganachery Eparchy. Suggestions other than granting a separate diocese for Southist were made by them and if any of the other suggestions were accepted by the Pope, the separate diocese for the Southist churches would not have materialised. Therefore, the only aim before the Pope for the issuance of the Papal Bull dated 29.08.1911 was to end the strife between the Southists and the Northists and not the

knowledge that the Southists practising endogamy and not on the basis a separate diocese should be constituted for them with power to enforce endogamy.

(9) It is also crystal clear from the Bull dated 29.08.1911 that the Southists and the Northists were treated equally without giving any special preference to the Southist churches. Whatever is given to the Northist churches were only given to the Southist churches. Endogamy right was not given either to the Southist or the Northist in the Bull.

(10) The practice of endogamy in the church was not allowed by the Bishop Mathew Makil who got the diocese for the Southists. The subsequent bishop by making the wrong interpretation of the bull started endogamy practice and the expulsion of members from the church. Therefore the alleged custom cannot be established.

Such a practice that endogamy rights were conferred on Appellant No. 2 is in violation of Article 13, 21, 25 (1) of the Constitution of India.

(11) Similar dioceses mainly for certain communities were granted in Latin Church in India. It is also an undeniable fact that as India is a

caste ridden society, similar dioceses were allowed by the Pope to endogamous communities namely for Munnuttikar, Anjuttykar and Ezunootykar in the Latin Church, but they stopped practice of endogamy and came in line with church laws.

Para 65 of the impugned judgement

Para 102-103 of Written Arguments filed by the Plaintiffs before the Trial Court.

(12) The aforesaid grounds and other grounds establishing the fact that the Papal Bull dated 29.08.1911 did not confer any (Special) Right to the Appellants to practice endogamy in the Appellant No. 2 are explained in detail in **(chapter 4 of the Written Arguments (page 69-113) filed by the Plaintiffs before the Ld. Trial Judge on 08.03.2021)** and copy of the same was submitted before the Hon'ble Court during Arguments.

24**. Whether the Appellant No. 2 was / is Endogamous?**

It is submitted that whether Knanaya Community is endogamous and whether Appellant No. 2 is endogamous are two different issues.

1) The suit is mainly filed against Defendant No. 1 and 2 for expelling members from the church. In the suit, it is expressly stated in para

45 of the Plaint that the endogamy practice of the Knanaya Community is not the subject matter of the suit. Therefore the subject matter of the suit is the endogamy practice in the church and the resultant expulsion of members of the church.

2) It is an admitted position by the Appellants that before 1911 when Kottayam diocese was instituted there was no endogamy practice by the Knanaya Catholic Community in any of the diocese of the Catholic Church.

It is also the admitted position that none of the Bishops and dioceses established by the Catholic Church except the Appellant No. 2 followed the practice of endogamy and expelled members for marrying Catholic from other dioceses. The answering Respondents had already established the fact that Canon law is the constitution of the Catholic Church and endogamy practice is not allowed anywhere in the universal catholic church. The same is in violation of Divine law also. What is Divine law is already explained in para 25 of the Plaint as also in page 46-47 of the Written Arguments of the Plaintiffs filed in the Trial Court.

It is also submitted that jews, the community which the Appellants allegedly descended from, did not practice strict endogamy. It is also came in evidence that their leader and role model Knai Thomas did not practice

endogamy and married an Indian women and had children from that marriage. The Appellants themselves did not claim that they have any evidence before the year 1900 to support the practice of alleged endogamy.

Subject to the aforesaid submissions the answering Respondent now proceed further to establish as to how the Appellant No. 2 was / is not endogamous.

It is the case of the Appellants before the Hon'ble Court that they have made a particular law applicable to the Appellant No. 2. It is also submitted by them that members in the Arch Eparchy of Kottayam are governed by the Canon Law of Eastern Church (CCEO) as also the particular law of Syro Malabar Church. They further contented that subject to the aforesaid two enactments of the Syro Malabar Church, they can also make particular laws applicable to the entire diocese of Appellant No. 2. Thus, they have claimed that the particular law (B-1) as applicable to Kottayam diocese (Appellant No. 2) was in force from the year 1911 onwords.

The Appellants in the Trial Court had produced "Kottayam Athirupatha Niyama Samgraham" and the same was Exhibited as B1. Before the Hon'ble Court almost all of the Ld. Counsels arguing from the side of Appellant forcefully argued that the Appellant No. 1 is bound by the particular law of Arch Eparchy of Kottayam (B-1).

It is seen from the "Kottayam Athirupatha Niyama Samgraham" (Exhibit B1) that the Arch Eparchial law was amended and modified from time to time, since the year 1911 and it decided to collect and codify it as the particular law of Arch Eparchy of Kottayam. For that purpose a committee of Priests who were experts in Church Laws was constituted. The aforesaid committee prepared a draft consisting of all provisions prevailing in Appellant No. 2 since 1911 and the same was published on 29.08.2007 for the information of the members of the Appellant No.2. Response on the draft was invited and a number of priests and faithfuls in the diocese responded to the draft. Many of the members of the Church forwarded instructions, amendments and modification to the proposed law. Taking into account the aforesaid instructions and reactions of the members and Priests, the latest modified particular law of the Appellant No. 2 was promulgated on 06.01.2009. It was also made clear by the Appellant No.1 that the particular law of Arch Eparchy of Kottayam is subject to the CCEO and the particular law of the Syro Malabar Church (Page II of B1). Thus it can be seen that the particular law of Arch Eparchy of Kottayam is approved with the consent of the members of the Arch Eparchy Kottayam. Even though there was no legal requirement of the consent of the members of the Arch Eparchy of Kottayam as under the Canon Law the authority for making decisions on the executive, judicial and legislative matters are

with the Appellant No. 1, (Canon 191) the Appellant No.1 thought it fit in the fitness of things to take opinions and suggestions from the members before making it the particular law of the Arch Eparchy of Kottayam.

It is stated about the Holy sacrament of Baptism in page 53 (B-1) as under:

> 1. മാമ്മോദീസ
>
> മാമ്മോദീസ സ്വീകരിക്കുമ്പോൾ നമ്മുടെ സകല പാപങ്ങളിലും അവയ്ക്കുള്ള ശിക്ഷകളിലുംനിന്നു നമുക്ക് മോചനം സിദ്ധിക്കുന്നു. മാമ്മോദീസ സ്വീകരിക്കുന്നതിലൂടെ നാം ദൈവത്തിന്റെ മക്കളും തിരുസഭയുടെ അംഗങ്ങളും സ്വർഗ്ഗരാജ്യത്തിന്റെ അവകാശികളുമായി തീരുകയും ചെയ്യുന്നു. ഈ കൂദാശ മറ്റു കുദാശകളിലേക്കുള്ള കവാടവും രക്ഷയ്ക്ക് ആവശ്യമായ ഉപാധിയുമാണ്.

One who receive the Baptism becomes member in that Parish and diocese and his/ hers name is recorded in the Parish Baptism register. There is no other register for membership. The member is entitled to receive all sacraments including marriage in the Parish Church (Article 30 and 675 (2)).

It is another important fact that the qualification of membership of Catholic Church can only be decided by the Pope and not by the Bishops of thousands of Catholic dioceses. Subject to the aforesaid submissions, it is submitted that the particular law Arch Eparchy of Kottayam prescribes two types of membership in Appellant No. 2.

(1) It is stated in page 2 Sl. No. 3 as under:

3. അതിരൂപതാംഗങ്ങൾ

"…….AD 345- ലെ കുടിയേറ്റകാലം മുതൽ ക്നാനായ പുർവികരിൽനിന്നും തുടങ്ങി തലമുറതലമുറകളായി ക്നാനായ സ്ത്രീ - പുരുഷന്മാർക്ക് സ്വവംശ വിവാഹബന്ധത്തിലൂടെ ജനിച്ചിട്ടുള്ളവരാണ് ക്നാനായക്കാർ. സമുദായ കൂട്ടായ്മയിൽ അംഗമാകവുകയും മാമ്മോദിസാ സ്വീകരണം വഴി മാതാപിതാക്കൾ അംഗമായിരിക്കുന്ന സ്വയാധികാരസഭയിലും സഭാഘടകത്തിലും പങ്കാളിത്തം ലഭിക്കുകയും ചെയ്തിട്ടുള്ള ക്നാനായ കാതോലിക്കരാണ് കോട്ടയം അതിരൂപതാ അംഗങ്ങൾ."

(2) It is stated in page 55 as under :

പരസ്യമായി തെറ്റിൽ കഴിയുന്നവരുടെ കുട്ടികൾക്ക് മാമോദീസ

പരസ്യവ്യഭിചാരത്തിലും മറ്റും ജീവിക്കുന്നവരുടെ കുട്ടികളെ മാമ്മോദീസ മുക്കണമെന്നു ആവ്യശ്യപ്പെട്ടാൽ, പരസ്യമായ ഉതപ്പു പരിഹരിക്കുവാൻ സാധ്യമല്ലാത്ത സാഹചര്യങ്ങളിൽ, കുട്ടികളെ ഉത്തമ ക്രൈസ്തവരായി വളർത്തിക്കൊള്ളാമെന്നു ജ്ഞാനസ്നാന മാതാപിതാക്കളാകുന്നവർ ഉറപ്പു നൽകുന്നപക്ഷം, കൂരിയയിൽനിന്നുള്ള അനുവാദം വാങ്ങി മാമ്മോദീസ നൽകാവുന്നതാണ്

It is an admitted fact in page 55 of the particular law of Arch Eparchy of Kottayam quoted above that the door to the church is through receiving Baptism in Appellant No.2. There is no other membership register other than Baptism register to know whether a particular person is a member of that parish. Once a child is admitted as a member of Appellant No. 2 in any of its parishes by any of the two streams mentioned above that child will continue as a member till his / her death and is entitled to receive all Holy Sacraments provided he / she does not go out from the jurisdictional area of the parish and reside elsewhere.

Thus it can be seen that the members of the Arch Eparchy of Kottayam and Appellant No. 1 decided to end the illegal and barbarian practice of endogamy from the Appellant No. 2. Therefore the present and past members of the Appellant No. 2 cannot claim purity of blood as the children of Knanaya women who are in the profession of prostitution arealso admitted in the Appellant No. 2 by Baptism.

Therefore, the practice of endogamy is not followed in the Appellant No. 2 even if the same may be followed in the community. The church and community parted their ways, if at all they were together earlier, and had gone in their own separate ways. The Catholic church is kind and merciful. The Catholic Church is missionary in its nature. In almost all the catholic dioceses in their particular law, it is provided that membership for children of women who are in the profession of prostitution will be allowed as that of provided by the Appellant No. 2 mentioned above. The children of such category of women are innocent and are to be protected by the Community and the Church. That is what is presisly done by the Appellant No. 2 in its particular law as described above.

Since the Appellant No. 2 claims that under its law it admits such children as members of the church through Baptism the contention regarding keeping of endogamy and the purity of blood falls to the ground.

It is submitted that when such a fact is revealed from the particular law of the Appellant No. 2, there is no other ground available to the Appellant to deny the answering Respondents and persons whom they represent from getting entry back into Appellant No. 2 as also not to expel members for marrying another catholic.

The classification made by the Appellant for giving Baptism are also reasonable and justifiable according to the Appellants. It is generally given to the children where both the parents are of Knanaya Origin. The second category of children getting admission to the church are the children of Knanaya mothers alone i.e., children of the Knanaya mother irrespective of whether the father is a Knanaya or any other human being. On the strength of the qualification as the children of the Knanaya women alone membership is provided. The child is admitted as member. The Catholic Church is benevolent and merciful. The Church should protect them as part of the society and the Church. According to the particular law of the Appellant No. 2 nobody other than the aforesaid two class of people can entry into Appellant No. 2 by Baptism. When such children are admitted, the answering Respondents and similarly placed persons children and grand children are also entitled to get the same rights and privileges in the Church but the same is denied to them in violation of church laws. The

expulsion of members by the Appellants is inviolation of Article 14 of the constitution also.

25. **Children of an unwed mother in the Appellant No.2.**

It is an admitted position that the Appellant No. 2 is governed by the Canon Law (CCEO). Any command given in the canon is binding on the Syro-Malabar church and its Constituent Dioceses including the Appellant No.2. In canon 689 (2) it is stipulated as under:

> '689 (2). If it is a case of a child born of an unwed mother, the name of the mother is to be indicated if her maternity is publicly established or if she requests it on her own in writing or before two witnesses; likewise the name of the father is t be indicated if his paternity is proven with some public document or by his own declaration made before the pastor and two witnesses in other cases the name of the baptized is to be recorded with no indication made of the name of the father or parents'

From the aforesaid provision of the canon law, it is clear that children of an unwed mother, who is the member of the Appellant No.2 are entitled to get membership in Appellant No.2. For various reasons an unwed mother can conceive a child. The grounds need not be explained as it is a matter of privacy for which the unwed mother is entitled under Article 21 of the Constitution of India.

Therefore, along with the children of a women member who may select the profession of Prostitution, the children of unwed mother also are entitled to get admission in the Appellant No.2 by getting baptism.

26. **Membership for adopted children in Appellant No. 2**

As stated above for children of unwed mother under canon 689 (2), the Canon 689 (3) provides for admission of adopted children made by the members of Appellant No.2 in the diocese. Canon 689 (3) is as under:

> "689 (3). If it is a case of an adopted child, the names of the adoptive parents are recorded, and at least if it is done in the civil records of the region, the names of the natural parents, in accord with the norms of1 and 2 and attentive to particular law".

Those adopted children are also entitled to Baptism in the parish were the adopted parents are residing.

Therefore, according to the particular law of Appellant No.1 and under the Canon Law mentioned above, the Appellant No.2 can not practise endogamy in the diocese. Therefore, the argument that the members of the Appellant No.2 practise endogamy in the church is a custom at any point of time is found to be false and such an argument is liable to be dismissed.

27. **The diriment impediment for marriage mentioned in the particular law of Appellant No. 2 (B-1) is inviolation of the Canon Law**

In page 3 of B-1 it is stated as under:

3. അതിരൂപതാംഗങ്ങൾ

.....ക്നാനായ പുരുഷൻ ക്നാനായ സ്ത്രീയെ വിവാഹം ചെയ്യണമെന്നതാണ് സ്വീകാര്യമായ പാരമ്പര്യം. ഈ പാരമ്പര്യം ലംഘിച്ചു ക്നാനായ പുരുഷനോ സ്ത്രീയോ ഇതര സമുദായത്തിൽനിന്നു ജീവിതപങ്കാളിയെ സ്വീകരിച്ചൽ അപ്രകാരമുണ്ടാകുന്ന കുടുംബം ക്നാനായ സമുദായത്തിൽ ആയിരിക്കുകയില്ല. ക്നാനയേതര സഭാസമൂഹത്തിലായിരിക്കും നിലനിൽക്കുക. സമുദായത്തിൽനിന്നല്ലാതെ ജീവിത പങ്കാളിയെ

തെരഞ്ഞെടുക്കാനഗ്രഹിക്കുന്ന വ്യക്തി ക്നാനായ അതിരൂപതാധികാരിയിൽനിന്നു അനുവാദം വാങ്ങി ക്നാനയേതര രുപതയിലും ഇടവകയിലും അംഗമാകുക എന്നതാണ് പ്രായോഗികമായി സ്വീകരിച്ചുപോരുന്ന നടപടിക്രമം. ആ വിവാഹം നിലനിൽക്കുന്നിടത്തോളംകാലം ക്നാനയേതര ഇടവകയിൽ അംഗമായി തുടരും. മരണം വഴിയോ മറ്റു വിധത്തിലോ ഈ വിവാഹബന്ധം കാനോനികമായി ഇല്ലാതായാൽ ക്നാനായ വ്യക്തിക്ക്, മറ്റു പ്രതിബന്ധങ്ങൾ ഇല്ലെങ്കിൽ അതിരൂപതാ അധ്യക്ഷന്റെ അനുവാദത്തോടുകൂടി ക്നാനായ സമൂഹത്തിൽ വീണ്ടും അംഗമാകാം

In page 85 (B-1) it is stated as under:

അതിരൂപതയ്ക്ക് വെളിയിൽനിന്നും വിവാഹം കഴിക്കുമ്പോൾ

അതിരൂപതയ്ക്കു വെളിയിൽ നിന്ന് സമുദായം വിട്ടു വിവാഹം നടത്തുവാൻ ആഗ്രഹിക്കുന്നവർ, അതിരൂപതാദ്ധ്യക്ഷനിൽനിന്നും അനുവാദം വാങ്ങിയിരിക്കണം. കുരിയാപത്രത്തിൽ അപേക്ഷ എഴുതി ബഹു. വികാരിയച്ചന്റെ ശിപാർശയോടെ കൂരിയായിൽ സമർപ്പിക്കണം. അതിരൂപതക്ക് വെളിയിൽനിന്നു വിവാഹം നടത്തുവാൻ ആഗ്രഹിക്കുന്ന വ്യക്തി തന്നെ അപേക്ഷ സമർപ്പിക്കേണ്ടതും വരന്റെയും വധുവിന്റെയും പേര് , വീട്ടുപേര് , മാതാപിതാക്കളുടെ പേര്, ഇടവക, രൂപത, ഇടവക മദ്ധ്യസ്ഥന്റെ പേര് എന്നിവ കൃത്യമായി എഴുതിയിരിക്കേണ്ടതും, ആയതിനുള്ള കാരണങ്ങൾ രേഖപ്പെടുത്തേണ്ടതുമാണ്. സ്ഥിരവാസമോ താൽക്കാലിക വസമെങ്കിലുമോ (quasi domicile) ഉള്ള സ്ഥലത്തെ അജപാലന പരിധിയിലുള്ള ഇടവകയിലേക്കാണ് സാധാരണ ഗതിയിൽ ഇടവക ചേരേണ്ടത്

A combined reading of the aforesaid provisions in the particular law of the Arch Eparchy of Kottayam would reveal that they are diriment impediments of marriage prescribed contrary to the Canon 790-812 which are the only diriment impediments accepted in Canon. According to Canon law even the Syro Malabar Church has no power to add any deriment impediment without consulting the Apostolic see (Pope). Canon 792 reproduced as under:

" CAN. 792 Diriment impediments are not to be established by the particular law of a church sui juris except for a most grave cause, after having consulted with eparchial bishops of other Churches sui juris who have an interest, and after consultation with the Apostolic See; however, no lower authority can establish new diriment impediments"

28. **Some of the Canon Law Provisions relevant in the case**

22. All the Christian faithful have the right to be free from any kind of coercion in choosing a state in life.

23. No one is permitted to harm illegitimately the good reputation which another person enjoys nor violate the right of any person to protect his or her own privacy.

24. The Christian faithful can legitimately vindicate and defend the rights which they have in the church in the competent ecclesiastical forum according to the norm of law.

30. Anyone to be baptised who has completed the fourteenth year of age can freely select any church sui iuris in which he or she then is ascribed by virtue of baptism received in that same church, with due regard for particular law established by the Apostolic See.

31. No one is to presume to induce in any way the Christian faithful to transfer to another church sui iuris.

32. No one can validity transfer to another church sui iuris without the consent of the Apostolic see.

In the case of Christian faithful of an eparchy of a certain church sui iuris who petition to transfer to another church sui iuris which has its own eparchy in the same territory, this consent of the Apostolic see is presumed, provided that the eparchial bishop of both eparchies consent to the transfer in writing..

33. 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.

1464. In addition to the cases already foreseen by law a person who, by act or omission, has misused power, an office a ministry or another function in the church is to be punished with an appropriate penalty, not excluding their privation, unless another penalty has been established by law or precept for such an abuse.

1465. A person who ascribed to any church sui iuris including the Latin Church and exercising an office, a ministry or another function in the church has presumed to induce any member of the Christian faithful whatsoever to transfer to another church sui iuris contrary to can 31, is to be punished with an appropriate penalty.

1504. Civil law to which the law of the church yields is to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.

1506 (2). No custom can in any way derogate from divine law.

1507. only that custom can have the force of law which is reasonable introduced by way of a continuous and uncontested practice by a community at least capable of receiving law, and which has been prescribed for the time established by law.

A custom which is expressly reprobated by law is not a reasonable one.

A custom contrary to the canon law now in force or one beyond a canonical law obtains the force of law only if it has been legitimately observed for thirty continuous and complete years. Only a centenary or immemorial custom, however can prevail against a canonical law which contains a clause prohibiting future customs.

Even before that time, a competent legislator can approve a custom as legitimate by his consent, at least tacit.

The only diriment impediments for marriage are Canon 790 -812. If any new impediment is to be added, the same could be done only by the Syro Malabar Church in consultation with the Pope.

Penal sanctions and imposing of penalties. For expelling members from the church Canon 1401-1467 should be followed

Procedure for imposing penalties is stipulated in Canon 1468 -1487

If at all the Appellants wanted to expel the members for marrying another catholic, they ought to have followed procedural and substantive law prescribed in the CCEO.

29. **Cross Objections**

The Respondent No. 1, 2 and 4 have filed Cross Objections. The contents may be seen. Kindly allow the cross objections filed by these Respondents and set aside the findings of the Ld. Trial Judge made in sub issue No. 2 and 3 in Issue No.5.

30. **Queries by the Hon'ble Court**

On the penultimate day of the arguments, the Hon'ble Court was pleased to make the following queries to the Ld. Counsel for the Appellants. The Ld. Counsel could not answer any of the queries raised by the Hon'ble Court. The response of the Respondents are as under:

1) Is the second Appellant a religious denomination?

Respondent's response -
Kindly see the Written Statement para 24,35, 43, 44 . No such claim. Claim is that they are an ethnic community and not a religious denomination.

2) How a community custom can be followed by the church unless it is allowed by Canon law ?

Respondent's response
None of the community customs of any diocese is approved in the Canon Law. Only custom of the Syro Malabar Church can be followed, that too subject to conditions.
Canon 793, 794, 6(2), 1506, 1507

3) Whether endogamy is a custom of the church?

Respondent's response
No

4) Whether Catholic church is episcopal?

Respondent's response
Yes
(i) Para 103 of **K.S. Varghese Vs St. Peters and Paul Syrian Orthodox Church (2017) 15 SCC 330**
(ii) **Arch Bishop Vs. P. A. Lalan Tharakan** Para – 15 – Sl. No. 13 of Vol – II judgements
(iii) **George Sebastian Vs. Molly Joseph**
1994 (2) KLT 387 (F.B) Para 18, 19- Sl. No. 39 of the judgement filed by the Appellants Vol-2.

5) Is there any religious institution or section other than the Knanaya Community allowed to follow endogamy in the Church?

Respondent's response - None

6) Whether the custom valid under Indian Christian Marriage Act?

1504

Respondent's response
Not applicable – It is part of personal law which is the Canon Law
Reference may be made to
George Sebastian Vs. Molly Joseph as referred above.

7) What is the law relating to adoption in Appellant No. 2?
Respondent's response
Kindly see canon 689(3), Cross exam of DW1 Question 113

8) Marriage with a non-catholic is permitted under some canons –

Canon 780, 781 (2)

9) Is not canon 22 applicable to Appellant No. 2?

Respondent's response - Yes, applicable

10) What is the Canon allowing you (Appellants) to expel members from the church?

Respondent's response - None

There is no canon law provisions applicable to any particular diocese within a sui juris Church. The "community" mentioned in the canon law

is the “Christian Community”. No custom other than the practice of custom of the Sui Juris Churches is approved in Canon law.

31. Most of the findings of the Trial Court are not challenged in the Appeal. Those findings are also not referred to during the arguments of the Ld. Counsels for the Appellants. Whatever arguments made by the Appellants can be found answered in the Written Arguments filed by the Plaintiffs during arguments before the Trial Court in two volumes.

Vol-I page 1 to 144 and

Vol-II page 145 to 192.

Some portions of the Written Arguments are referred herein above. Other portions in the Written Arguments also may be considered.

32. Mr. Kaleeswaram Raj, Ld. Counsel on the instructions of Mr. V.M. Avneesh, Ld. Counsel for Respondent No.3 (Plaintiff No.3) had also made submissions before the Hon’ble Court on 19.08.2022. Mr. Kaleeswaram Raj, Ld. Counsel, also filed Written Submissions containing 30 pages. The aforesaid Written Submissions also may be treated as part of the submissions on the side of Respondents before the Hon’ble Court (Plaintiffs 1 to 4 in the suit before the Trial Court).

33. Conclusions and Prayer

According to the particular law of the Appellant No. 2 from the Constitution of the diocese in the year 1911, the children of Knanaya women whose paternity is not known are regularly admitted into the Appellant No. 2. The facts leading to the Constitutional Law violations and the Church Law violations are explained in the plaint especially in paras 16 to 22 and 46 which are not seriously denied by the Appellants before the Trial Court or before this Hon'ble Court. The expelled members and their children and grand children, are suffering this fundamental right violation and are living without any dignity like refuges in their villages. Through the Trial Court judgement members of the Appellant No. 2 started getting brides and are hoping to enjoy a family life without expulsion from the Appellant No. 2. Thousands of people are waiting for a new dawn to enjoy the fundamental rights guaranteed to them under the Trial Court judgement dated 30th April 2021.

It is prayed that the Hon'ble Court may reject the hyper technical arguments of the Appellants regarding Cause of Action and Limitation in view of the admitted fundamental right violations and human right violations happening in Appellant No.2. The demand of the Appellants to set aside the impugned judgement will result in putting back the pendulum

of the clock 100 years back, when human sacrifice, Sathi and untouchability were ruling the roost.

The answering Respondent respectfully submits that in the overall assessment the impugned judgement has no serious lacuna and deserves to be upheld to uphold the constitutional rights as the judiciary is the guardian of the Constitution.

The answering Respondents are grateful for the patient and dedicated hearing granted to their Counsel and for more than 15 counsels representing various parties spaning over more than a calendar month.

For the above made submissions, the Respondents humbly pray that the Hon'ble Court may be pleased to uphold the Trial Court judgement and dismiss the Appeals filed by the Appellant and intervening applicants and those Appeals of other Appellants.

For the Respondent No. 1, 2 and 4

Francis Thomas
Counsel

Place : Kottayam
Date :29.08.2022