

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 1<sup>ST</sup> DAY OF NOVEMBER 2021 / 10TH KARTHIKA, 1943

OP(C) NO. 1451 OF 2021

OS 306/2015 OF ADDITIONAL SUB COURT, KOTTAYAM

AS 36/2021 OF ADDITIONAL DISTRICT COURT - V, KOTTAYAM

PETITIONER/S:

- 1 KNANAYA CATHOLIC NAVEEKARANA SAMITHY,  
VAITHARA BUILDING, (NEAR VILLAGE OFFICE)  
KUMARAKOM P.O, KOTTAYAM -686563.
- 2 T.O JOSEPH  
AGED 70 YEARS  
S/O. OUSEPH, THOTTUMKAL, KANNANKARA P.O,  
THANNERMUKKAM NORTH VILLAGE, CHERTHALA TALUK,  
ALAPPUZHA DISTRICT.
- 3 C.K. PUNNEN  
S/O. KURUVILLA, CHIRAYIL HOUSE, ATHIRAMPUZHA  
P.O, KOTTAYAM TALUK, KOTTAYAM DISTRICT,  
REPRESENTED BY HIS POWER OF ATTORNEY  
HOLDER.V.C. MATHAI.  
BY ADVS.  
KALEESWARAM RAJ  
VARUN C.VIJAY  
THULASI K. RAJ  
MAITREYI SACHIDANANDA HEGDE

RESPONDENT/S:

- 1 THE METROPOLITAN ARCHBISHOP  
THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC  
METROPOLITANS HOUSE, KOTTAYAM, KERALA - 686001,  
THE PRESENT METROPOLITAN ARCHBISHOP OF MOST  
REV. MAR MATHEW MOOLAKKATT.
- 2 THE ARCHEPARCHY OF KOTTAYAM  
CATHOLIC METROPOLITANS HOUSE, P.B. NO. 71,  
KOTTAYAM, KERALA - 686001, REPRESENTED BY THE  
METROPOLITAN ARCHBISHOP.
- 3 THE MAJOR ARCHIBISHOP  
SYRO MALABAR ARCHIEPISCOPAL CHURCH, MOUNT.  
ST.THOMAS, KAKKANAD P.O, P.B.NO. 3110, KOCHI -  
682030, THE PRESENT MAJOR ARCHBISHOP IS HIS  
BEATITUDE MAR GEORGE CANDINAL ALENCHERY.

- 4 SYNOD OF THE BISHOP OF THE SYRO MALABAR MAJOR  
ARCHIEPISCOPAL CHURCH,  
ST. THOMAS, KAKKANAD P.O, P.B. NO. 3110, KOCHI  
- 682030, REPRESENTED BY ITS SECRETARY.
- 5 CONGREGATION FOR THE ORIENTAL CHURCHES  
VIA DELLA CONCILIAZIONE, 34, 00193 ROMA ITALY,  
REPRESENTED BY ITS PREFECT.
- 6 CONGREGATION FOR THE DOCTRINE OF FAITH PIAZZA  
DEL.S  
UFFICIO-II, 00139, ROMA ITALY, REPRESENTED BY  
ITS PREFECT.
- 7 KNANAYA CATHOLIC CONGRESS,  
KOTTAYAM, REPRESENTED BY ITS PRESIDENT STEPHEN  
GEORGE, S/O. GEORGE, VELIYATH(H), KURUMULLOOR  
P.O, ONAMTHURUTHU VILLAGE, KOTTAYAM -686632,
- 8 LUKOSE MATHEW K.  
AGED 65 YEARS  
S/O. MATHEW, KUNNUMPURATHU (H)., KURICHITHANAM  
P.O, KURICHITHANAM VILLAGE, MEENACHIL TALUK,  
KOTTAYAM DISTRICT.  
BY ADVS.  
P.B.KRISHNAN(K-119), AGI JOSEPH  
JACOB E SIMON  
N.M.MADHU  
S.SREEKUMAR (SR.)  
GEORGE THOMAS  
C.S.RAJANI  
P.MARTIN JOSE  
R.GITESH  
P.PRIJITH  
THOMAS P.KURUVILLA  
AJAY BEN JOSE  
MANJUNATH MENON  
SACHIN JACOB AMBAT  
HARIKRISHNAN S.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON  
13.10.2021, THE COURT ON 01.11.2021 DELIVERED THE  
FOLLOWING:

**JUDGMENT**

Dated this the 01<sup>st</sup> day of November, 2021

The original petition is filed challenging the interim order in A.S.No.36 of 2021 of the Additional District Court-V, Kottayam, staying execution of the decree in O.S.No.106 of 2015 of the Additional Sub Court, Kottayam. The petitioners along with the 8<sup>th</sup> respondent herein had filed the suit, seeking to restrain respondents 1 and 2 from expelling members of the Archeparchy of Kottayam, on their marrying a person from outside the diocese. The trial court decreed the suit in the following manner;

*"1. It is hereby declared that by entering into the sacrament of marriage with another Catholic from any other Diocese, a member of Archeparchy of Kottayam will not forfeit his/her membership in defendant No.2, the Archeparchy of Kottayam.*

*2. Defendants No.1 to 3 are hereby restrained by a decree of permanent prohibitory injunction from terminating the membership of any member of the Archeparchy*

*of Kottayam for marrying a Catholic from any other Diocese.*

*3. Defendants 1 to 3 are hereby directed by way of decree of mandatory injunction to provide equal rights and facilities through the parish priests for the sacrament of marriage to those members of Archeparchy of Kottayam who wishes to marry Catholics from any other Diocese.*

*4. Defendants No. 1 and 2 are hereby directed by way of decree of mandatory injunction to readmit members along with their spouses and children whose membership were terminated by defendants 1 and 2 for marrying Catholic if the former members are qualified in all other respects on receipt of proper application.*

*5. Considering nature of litigations, I am of considered opinion that there is no order as to costs."*

2. Respondents 1 and 2 challenged the decree and judgment in appeal. The appellate court stayed the execution of the decree and later, extended that order till the disposal of the appeal.

3. While admitting the original petition, an interim order was issued staying the operation of the order of the appellate court. Respondents 1 and 2 have filed an application for vacating

the interim order. It was decided to dispose of the original petition, rather than considering the application for vacating the interim order.

4. Elaborate arguments were advanced by Adv. Kaleeswaram Raj, learned Counsel appearing for the petitioners, Adv.P.B.Krishnan, learned Counsel appearing for respondents 1 and 2 and Adv.George Thomas, learned Counsel appearing for the 8<sup>th</sup> respondent. Adv.S.Sreekumar, learned Senior Counsel appearing for third parties, who have filed I.A.No.2 of 2021 seeking impleadment in the original petition, was also heard. For the sake of brevity, only the primary contentions put forth by the Counsel are mentioned.

5. Adv.Kaleeswaram Raj contended that the Papal Bull relied on by respondents 1 and 2 does not make any mention about the practice of endogamy. It is contended that forced endogamy violates the fundamental right of a citizen to

marry a person of one's choice. Relying on the decisions of the Honourable Supreme Court and the Apex Courts of countries like Germany, Sri Lanka and Canada, it is contended that it is the duty of Constitutional Courts to determine whether the reach and effect of the basic rights in private law has been correctly ascertained by the regular courts. It is urged that by the decree, the trial court has only restrained the conduct of respondents 1 and 2 in enforcing the practice of endogamy and has not interfered with the faith or belief of the members of the Archeparchy of Kottayam. It is argued that the impugned order is issued without satisfying the requirements of Order XLI Rule 5 of CPC. The courts, particularly the constitutional courts, should strive to uphold the fundamental rights of citizens, is another contention put forth. According to the learned Counsel, balance of convenience is in

favour of continuing the interim order granted by this Court till the appeal is decided.

6. Adv.P.B.Krishnan pointed out the absence of interim order during the pendency of the suit and argued that, no imminent or emergent situation has arisen after the decree, warranting an order by this Court, overturning the order of the appellate court. The contention regarding violation of the fundamental rights of the members of the Archeparchy is answered by pointing out that respondents 1 and 2 are non-state actors. The failure of the court to raise an issue based on violation of fundamental rights is also highlighted. According to the learned Counsel, even if the contention regarding violation of fundamental rights arises for consideration, the court will have to decide upon the rights guaranteed under Articles 19 and 21, as against the right to freedom of religion,

including religious practices, available to respondents 1 and 2 under Articles 25 and 26 of the Constitution of India. It is contended that the practice of endogamy is prevalent in other communities and that, no court in India has struck down or even frowned upon such practice. The first plaintiff being a society, the plaintiffs could not have invoked Order 1 Rule 8 CPC for filing the suit in a representative capacity, is the other major contention advanced. It is emphatically argued that this Court, in exercise of the supervisory power under Article 227 of the Constitution of India, cannot pass orders which will impact the discretion vested with the appellate court. Reliance is placed on a series of decisions to buttress the contentions.

7. Adv.George Thomas supported the contentions advanced by Adv Kaleeswarm Raj and contended that the practice of endogamy, if



allowed to continue, will not only restrain marriage outside the diocese, but will result in division within the families of the faithful. It is contended that neither the Holy Bible nor the Catholic community approves such practice.

8. Adv.S.Sreekumar, learned Senior Counsel appearing for the persons seeking impleadment made submissions supporting the contentions advanced by Adv.P.B.Krishnan. It is argued that the impleading petition is liable to be allowed as the religious rights of the petitioners is adversely affected by the trial court's decree.

9. The erudite and impressive arguments advanced by the learned Counsel calls for authoritative decision on various intriguing legal issues. I refrain from venturing into those contentions and making any observation on the merits of the contentions, since that will have an impact on the appeal. In fact, all learned

Counsel are in unison that the judgment of this Court should not fetter the appellate court's freedom to decide the appeal independently. Being so, the only question to be considered is as to how best equities can be balanced till the appeal is decided. Having mulled over the question, I deem it appropriate to dispose the original petition by modifying the impugned order of stay granted by the appellate court in the following manner;

(i) If any member of a church under the Kottayam Archeparchy wishes to marry a Catholic from another diocese, he/she can make a request to respondents 1 and 2 for issuance of Vivaha Kuri or no objection certificate. On receipt of the request, respondents 1 and 2 shall issue the Vivaha Kury or no objection certificate, without insisting on any letter of relinquishment

of that person's membership with the Kottayam Archeparchy. The question whether the person has forfeited his/her membership in the Kottayam Archeparchy on account of the marriage will depend upon and abide by the judgment in the appeal.

(ii) The direction is issued by way of an interim arrangement and without prejudice to the contentions of the parties, including the contention of respondents 1 and 2 of there being no valid representative action under Order 1 Rule 8 of CPC.

(iii) The appellate court shall take earnest efforts to dispose the appeals within three months of receipt of a copy of this judgment. The appeal shall be decided uninfluenced by the observations in the impugned order of the appellate

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court and the observations in the interim  
order of this Court.

Sd/-

**V.G.ARUN**  
**JUDGE**

Scl/

**APPENDIX OF OP(C) 1451/2021**

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE JUDGMENT DATED 30TH APRIL 2021 IN O.S NO.106/2015.
Exhibit P2	TRUE COPY OF THE ORDER DATED 19.07.2021 IN I.A.NO.3/2021 IN A.S.NO. 36/2021.
Exhibit P3	TRUE COPY OF THE ORDER DATED 18.5.2021 IN IA 3/2021 IN AN NO 36/2021 TOGETHER WITH THE DETAILS OF THE PARTIES