

**IN THE COURT OF THE ADDL. DISTRICT JUDGE- V,
KOTTAYAM**

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

Monday the 19th day of July, 2021

28th day of Ashadha 1943

I.A No.3/2021 in A.S.No.36/2021

(O.S.106/2015 of the Addl. Subordinate Judge Court, Kottayam)

Petitioners/Appellants:-

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

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

Respondents:-

1. Knanaya Catholic Naveekarana Samithy,
Vaithara building (Near Village Office),
Kumarakom P O., Kottayam,
rep. by its President who is also
Respondent No. 2
2. T. O. Joseph, aged 70, S/o. Ouseph,
Thottumkal House, Kannankara P.O.,
Thannermukkam North Village,
Cherthala Taluk, Alappuzha District.

- 3) Lukose Mathew K., aged 65, S/o. Mathew, Kunnumpurathu House, Kurichithanam P.O., Kurichithanam Village, Meenachil Taluk, Kottayam District.
- 4) C. R. Punnen, aged 68, S/o. Kuruvilla, Chirayil House, Athirampuzha P. O., Kottayam Taluk, Kottayam District, rep. by his Power of Attorney Holder V. C. Mathai.
- 5) The Major Arch Bishop, Syro Malabar Major Archiepiscopal Church, Mount St. Thomas, Kakkanad P O., P B No.3110, Kochi, The present Major Archbishop is His Beatitude Mar George Cardinal Alencherry.
- 6) Synod of the Bishop of the Syro Malabar Major Archiepiscopal Church, Mount St. Thomas, Kakkanad P O., P B No.3110. Kochi, rep. by its Secretary.
- 7) Congregation for the Oriental Churches Via Della Conciliazione 34, 00193, Roma, Italy, rep. by its Prefect.
- 8) Congregation for the Doctrine of Faith Piazza del S Ufficio - II, 00139, Roma, Italy, rep. by its Prefect.
- 9) Knanaya Catholic Congress, Kottayam, rep. by President Stephen George, S/o. George, Veliyath House, Kurumulloor P O., Onamthuruthu Village, Kottayam.

R1, R2, R4 - By Adv. Francis Thomas

R3 - By Adv. Avaneesh V. N.

R9 - By Adv. Jojo Thomas & Adv. Vinodji

R7 & R8 - No appearance

R5, R6 - No vakalath seen filed

This petition is having been heard on 19.07.2021 and the court on the same day passed the following:-

ORDER

I have heard both sides through V.C.

2. This is an application for staying the operation of impugned decree and judgment in OS No.106/2015 on the file of Subordinate Judge Court, Kottayam, filed under rule 5 of Order XLI of CPC.

3. As per order dated 18.05.2021 my Predecessor in Office was pleased to order interim stay of the execution of the impugned decree at the time of the admission of the appeal.

4. By the impugned decree and judgment, the learned Subordinate Judge found that the practice of endogamy allegedly followed by Knananaya Catholic of Christian religion is un-constitutional and the membership of Knananaya

Catholic will not forfeit on the ground that they married a non-Knananaya Catholic from outside diocese. A decree of declaration and injunction were accordingly issued against the appellants.

5. At the hearing Mr P.B Krishnan, the learned counsel appearing for the appellants argued that the “endogamy” is the essence and life of Knanaya community, without which, the community has no existence as they have been following endogamy as a custom of their community from 17th century onwards. He further argued that Knananaya community is a religious institution and it has its own right to manage its affairs of religion in view of clause (b) to Art 26(b) of the Indian Constitution. He further contended that the finding arrived at by the learned trial court that the Knanaya community is not a religious denomination is not sustainable in the eye of law. He further contended that there is absolutely no cause of action for the lis, and further the suit is also hit by limitation. He further point out that the present suit never qualifies to be a representative suit under rule 1 of Order VIII of CPC as the first plaintiff is not entitled to act in a

representative capacity in the eye of law. He relied numerous decisions of the Hon'ble Apex court and the Hon'ble high court to buttress his submissions. He further contended that the Knanaya Community would be put in peril, if the impugned decree is executed, pending appeal and therefore he prays for the stay of the operation of the impugned decree till the appeal is disposed of.

6. Mr. Jojo Thomas, the learned counsel appearing for the 9th respondent has adopted the argument of the appellants. He further contended that if the impugned decree is not stayed pending appeal, the appellants will have to admit non-Knanaya and even non-christian in their parish. He therefore prays for the stay of the operation of the impugned decree till the appeal is disposed of.

7. Mr Francis Thomas, the learned counsel appearing for the respondents 1, 2 and 4 on the other hand argued that the court below has rightly decided all the issues in its right perspectives. He further contended that the alleged practice of endogamy is found to be un-constitutional by the court

below as it violates the fundamental right of a person to have a choice of marriage. He further contended that there is absolutely no reasons stated in the stay application as to how the appellants sustained substantial loss on account of execution of the impugned decree and therefore, the impugned decree cannot be stayed overlooking the reasons stated in the stay application. He further contended that the act of the appellants is nothing but a re-introduction of untouchability. He therefore prays that the constitutional right of a person to have a choice of marriage can not be restrained by way of an interim order of stay. He accordingly prays for vacating the interim order of stay.

8. Mr.Avanesh.V.N, the learned counsel appearing for the 3rd respondent has adopted the argument of the respondents 1, 2 and 4. He also prays for vacating the interim order of stay.

9. From the facts and circumstances of the case, the rival pleadings and the rival submissions, I am of the view that the following questions (a) whether the “Knanaya Community” is a “religious denomination or a section of religious denomination

so as to manage its own affairs in matters of religion as envisaged under clause (b) to Art 26 of the Indian Constitution, (b) whether the alleged practice of endogamy is a “religious practice or faith” of the Knanaya catholic to get protection under clause (b) to Art 26 of the Indian Constitution, (c) whether the practice of endogamy violates the fundamental right of a catholic of Knanaya Catholic to have a choice of marriage guaranteed under Art 21 of the Indian Constitution and (d) whether a Catholic of Knanaya community can practice religion in the Knanaya church itself even though they married a Catholic other than a Knananaya Catholic are the most questions involved in the appeal.

10. On going by the impugned judgment, it seems that even though the Knanaya community is found to be a non- religious denomination as envisaged under clause (b) to Art 26 of the Indian Constitution, no finding was entered in the judgment as to show that the said community is not ***a section of Christian religion for claiming*** protection under clause (b) to Art 26 of the Indian Constitution. Every ***religious denomination or section thereof*** will have its own

customs, achara, usage, rules, practice, observance, etc and this right of a ***religious denomination or section thereof*** is protected under clause (b) to Art 26 of the Indian constitution itself. The object of clause (b) to Art 26 of the Constitution is not only confined to have an unity of the religious denomination or section thereof, but also to strengthen its denomination or its section. It is very important to note that Art 26 of the Constitution is only subject to public order, morality and health, which is not subject to other provisions of part III of the Indian Constitution, but Art 25 of the Constitution is subject to public order, morality, health and “other provisions of part III of the constitution”. Here the crucial question as to whether ex-communicating or expulsion of a Knananaya Catholic, who does not want to follow endogamy is protected under clause (b) to Art 26 of the Indian Constitution or whether the alleged practice of endogamy violates the fundamental right to have a choice of marriage are the moot questions involved in the appeal. Here, on going through the impugned judgment, it seems that the learned trial court was of the view that the Knananaya community is

not a religious institution as it lacks its “common faith”. It is to be noted that the words “religious denomination” has to be construed both wider as well as in a narrower sense and therefore, the question as to whether Knananaya community falls within the section of Christian religious denomination is also involved in the suit. It is to be noted that clause (b) to Art 26, protects not only to a religious denomination, but also to a **section thereof**. In the Oxford dictionary, the word “denomination” has been defined as “a collection of individuals classed together under the same name, region, sets/body, having a common faith and organization and designated by a distinctive name”. It is to be noted that every such religious denomination or section thereof will have different tradition to be followed, which they have been following for eras. It is to be noted that the Christian religion is a largest group of religion in the world and it has several denominations. It is to be noted that if Knananaya community comes under a **section of religious denomination of Christianity**, as defined under clause (b) to Art 26 of the Constitution of India, they are entitled to follow their own

customs, usage, achara, practice, rules, regulation etc for the betterment or strengthening of their community and if so, whether the practice of endogamy takes away the fundamental right of Knananaya Catholic to choose a life partner other than Knananaya Catholic guaranteed under Art 21 of the Indian Constitution or the practice of endogamy takes away the right of Knananaya catholic to practice religion in their parental church itself, as envisaged under Art 25 of the constitution of India are to be decided in the appeal. Here, the right of marriage of a Knanaya catholic as such is not prohibited and what is prohibited for religious purpose is that, the ceremony of marriage with a person other than Knananaya Catholic. Therefore, I am of the view that unless and until the moot questions which are specifically narrated in Para 7 and 8 of this order are decided in the appeal, no injunction or declaration as sought for by the plaintiffs/respondents can be issued against the appellants. Therefore, I find a sufficient reason to order stay the execution of the impugned decree till the appeal is disposed of. I order accordingly.

In the result, the stay of the execution of the impugned decree will stand extended till the disposal of appeal.

With the above observations, this petition stands disposed of.

Dictated to the Confdl. Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 19th day of July, 2021.

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

A P P E N D I X : N I L

Addl. District Judge - V,
Kottayam.

Typed by:Deepa
Compared by: Praseeda

**COPY OF ORDER in
I A No. 3/2021 in
Appeal No. 36/2021
Dated:19.07.2021**