IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 30TH DAY OF JANUARY 2017/10TH MAGHA, 1938

RSA.No. 64 of 2017 (G)

AGAINST THE JUDGMENT & DECREE DATED 20-12-2008 IN AS.244/2004 of II ADDL.DISTRICT COURT,ERNAKULAM

AGAINST THE JUDGMENT & DECREE DATED 24-11-1990 IN O.S.923/1989 of ADDL. MUNSIFF COURT,KOTTAYAM

APPELLANTS IN RSA/APPELLANTS IN A.S.244/2004 & RESPONDENTS 2 & 3 IN A.S.245/2004 & DEFENDANTS 1 & 2 IN O.S.:

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1. FR. GEORGE MANJANKAL, FORMER VICAR, AGED 78 YEARS, KIZHAKKE NATTASSERY HOLY FAMILY CATHOLIC CHURCH NATTASSERY, KOTTAYAM -4
   NOW RESIDING AT NIRMALARAM MOUNT ST.JOSEPH P.O. BANGALORE.

2. RT. REV. KURIAKOSE KUNNASSERY, AGED 81 YEARS, BISHOP OF KNANAYA CATHOLIC DIOCESE, (KOTTAYAM DIOCESE), BISHOP'S HOUSE, CATHEDRAL WARD KOTTAYAM.

BY ADVS.SRI.K.JAYAKUMAR (SENIOR)
SRI.N.AJITH
SRI.M.J.THOMAS

RESPONDENTS RSA/RESPONDENTS IN A.S.NO.244/2004/RESPONDENT & APPELLANT IN A.S.245/2004/PLAINTIFF & ADDL.DEFENDANT IN O.S. :

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1. BIJU UTHUP, S/O.UTHUP, AGED 58 YEARS, EMPLOYED AS PROJECT MANAGER, ADA NATIONAL AERONAUTICAL LABORATORY, BANGALORE, FROM ORAVANKALAYIL HOUSE, ERANJAL, KOTTAYAM-686004.

2. KNANAYA CATHOLIC CONGRESS, KOTTAYAM REPRESENTED BY PRESIDENT, M.C. ABRAHAM, AGED 80 YEARS, MAKKIL HOUSE, CHELLIYOZHUKKAM, KOTTAYAM.

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R1 BY ADVS. SRI.K.C.ELDHO
SRI.JIJO THOMAS
SRI.MALLEENATHAN.M.
SRI.ANEESH JAMES
SRI.KANDAMPULLY VIKRAM
SMT.KRISHNA SANTHOSH

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 30-01-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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K. HARILAL, J.

R.S.A. No. 64 of 2017

Dated this the 30th day of January, 2017

JUDGMENT

The appellants are the defendants in O.S. No.923/1989 on the files of the Additional Munsiff's Court, Kottayam. The first defendant is the Vicar of the Holy Family Parish Church, Nattassery, Kottayam, and the second defendant is the Bishop of the Knanaya Catholic Diocese and the additional 3rd defendant is the Knanaya Catholic Congress, Kottayam, represented by its President and got impleaded in the suit as per order in C.R.P.No.495/90-D of this Court. The aforesaid suit was one for mandatory injunction directing the defendants to issue a 'Vivahakuri' to the plaintiff. The plaint averments, in brief, are as follows: (The parties are referred to as in the Original Suit for convenience.)

2. According to the plaintiff, the plaintiff, his parents

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and other memebrs of the family are members of the Knanaya Catholic Community attached to the Holy Family Parish Church, Nattassery. They were accepted and acknowledged as members of the said Church from 1977 onwards, before that also, they were members of other Parish Church coming under the jurisdiction of the Kottayam Diocese. His parents' marriage was conducted on 22-10-1956 in the Little Flower Knanaya Catholic Church, Othara, a Parish Church, coming under the Kottayam Diocese. He was baptised in the said Church. As per the Canon Law and Rules and Practices governing the Kottayam Diocese and Parish Churches, the plaintiff is entitled to have every religious rites performed and conducted by the Vicar of the said Church. Nobody has any right to deny the said privilege, unless the plaintiff is interdicted from the community or Church by a competent Ecclesiastical Authority. On the above belief, the plaintiff's parents have

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made arrangements for his marriage with Leena, who is a member of St. Mary's Churth, Vithura, coming within the Kottayam Diocese. Issue of 'Vivahakuri' is a condition precedent or the conduct of betrothal and marriage ceremony and the 1st defendant is obliged to issue 'Vivahakuri' to him. When the plaintiff's parents approached the 1st defendant requesting to issue of the same, initially, he agreed to issue 'Vivahakuri''; but, subsequently, refused to grant the same and it is learnt that the subsequent refusal was at the instance of the 2nd defendant. Though the plaintiff's father had appealed to the 2nd defendant on 21-4-1989, no decision has been taken by the 2nd defendant on the said appeal. The plaintiff, under the said circumstance put up a representation on 26-6-1989 before His Holiness the Pope. His father made a representation to the Apostolic Pro-nuncio, New Delhi, and the Apostolic Pro-nuncio, in turn, after due

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consultation with Vatican, has given necessary direction to the 2nd defendant. But, when the plaintiff appraoched again, the 2nd dedfendant, he failed. The petitioner further submits that the conduct of 1st and 2nd defendants is illegal and amounts to denial of the right of the plaintiff as a member of the Kottayam Diocese, Kottayam. The plaintiff, as a member of the Parish Church of Kottayam Diocese, is entitled to get 'Vivahakuri' under the Common Law as well as Canon Law and the Rules and Regulations governing the affiairs of the Church and the denial is highly unjust, unfair, unreasonable and opposed to all canons and the principles of Holy Catholic Church. Hence the suit was filed and prayed that a mandatory injunction be issued directing the defendants to issue 'Vivahakuri' for the conduct of the plaintiff's marriage, invoking equitable and discretionary jurisdiction under Sec. 39 of the Specific Relief Act.

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3. Defendants 1 and 2 jointly set up a defence in the written statement mainly contending that the suit itself is not maintainable as it is not of a civil nature. The question, in controversy, is one relating to community and its custom and thereby, the civil court lacks jurisdiction to try the suit. They denied the claim of the petitioner that he is a member of the Knanaya Catholic Community. Since there is no prayer for declaration that the plaintiff is a member of the Knanaya Catholic Community and that he has a right to get 'Vivahakuri', the suit is not maintainable. The claim of the plaintiff that his parents and other members of the family are members of the Knanaya Catholic Community attached to Holy Family Parish Church of Nattassery, Kottayam Diocese is also not correct and hence denied. According to the defendants, they are not members of the Knanaya Catholic Community. A 'Knanite' is one who is born to 'Knanite' parents and

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who has not married a non-knanite. The plaintiff's father was a Knanite; but his mother was not born to Knanite parents as her mother was not a Knanite. His mother Annamma was born out of a marriage between Knanite father and non-knanite Latin Catholic mother. Even though his father was a Knanite, by the marriage with Annamma, the mother, he also ceased to be a Knanite. In short, the plaintiff's maternal grandmother was not a Knanite and she was a Latin Catholic and thereby, the maternal grandfather also ceased to be a Knanite. Thus, endogamy has been practised in the community for centuries and therefore, the defendants are inclined to conitnue that custrom of retaining their endogamous nature.

4. The Knanite Christians of Kerala are the descendants of Thomas Cana (Knai Thomma) and the 72 families who migrated to India from the Middle East in 345 AD. Thomas Cana was a Jewish

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Christian merchant who arrived at the Port of Crangannore along with about 400 men, women and children with Mar Joseph, the Bishop of Edessa and a few Priests. The present Knanite Christians in India are all the descendants of the aforesaid 72 families. They have special customs related to marriage, death and birth. So far, the Knanites have remained an endogamous community having no marital relationship outside the community and thereby, they have maintained their ethnic identity, integrity and racial purity. The Knanite Christians are divided into 'Knanite Catholics' and 'Knanite Jacobites' and the marriage between them is permissible. On 29th April, 1955, Pope Pius XII granted a decree to the Bishop of Kottayam to exercise jurisdiction over all the Knanite Catholics of Syro Malabar Territory. Though non-knanite Catholics are allowed to participate in the religious and liturgical functions and to receive sacraments in the Knanite Catholic

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Church, they are not allowed to become members of the Parish Church and a marriage between a Knanite and non-knanite is not allowed to be blessed in the Churches coming under the Kottayam Diocese because such a marriage is considered as an offence and insult to the Knanite Catholic Community, its tradition and heritage. There is no merit in the contention that the plaintiff and other members of the family were accepted and acknowledged as members of the Holy Family Parish Church, Nattassery. Even if they were accepted, as members of the Parish, it was only under a mistaken notion that they are Knanites. The defendants are not aware of the circumstances under which the marriage of the plaintiff's parents was allowed to be conducted in the Little Flower Knanaya Catholic Church, Othara, on 22-10-1956. The genuineness of the certificates produced by the plaintiff is disputed. Even if the plaintiff was baptised in the Little Flower

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Knanaya Catholic Church, Othara, he could not have acquired the membership of that Church. All the privileges enjoyed by the plaintiff, till date, as a member of the Parish in the Knanaya Churches, could only have been under a mistaken belief or misrepresentation and therefore, the plaintiff cannot take advantage of that. Since there was a clear admission by the plaintiff's father that the plaintiff's maternal grandmother was a non-knanite, the plaintiff's mother and the plaintiff would become non-knanites. The plaintiff's parents were personally told by the second defendant regarding his inability to issue a 'Vivahakuri' under the abvoe mentioned circumstances. If permission is granted by the 2nd defendant to the plaintiff for conducting his marriage in a Knanaya Catholic Church, it would hurt the feelings and religious sentiments of the entire Knanaya Community and the centuries old tradition will stand violated. There is no violation of any

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Canon Law and therefore, prayed for dismissal of the suit.

5. The Knanaya Catholic Congress, Kottayam, represented by its President, was impleaded as the additional 3rd defendant and they also filed a written statement denying the plaint averments and stood by the endogamy pleaded by the 1st and 2nd defendants. According to them also, the Community is an Endogamus Society permitting marriage only within the community. The marriage of a Knanaya Catholic member with a non-knanite would entile in his or her ceasing to be a member of the Community. The suit was filed without sanction of the court under Order 1 Rule 8 of the CPC. They also prayed for dismissal of the suit.

6. In view of the rival contentions, the trial court framed the issues which are given below:

> "(1). Whether the suit is maintainable in law?
>
> (2). Whether the plaintiff is not a

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member of the Knanaya community and Holy Family Catholic Church, Nattassery, as contended by the defendants?

(3). Is the plaintiff estopped from putting forward such contentions?

(4). Is the prayer for mandatory injunction allowable?

(5). Reliefs and costs.

(6). Whether the Kizhakke Nattassery Holy Family Catholic Church is a necessary party and whether the suit is bad for non-joinder of parties?

(7). What are the qualifications of a person to be a member of a Knanaya community?"

7. On an analysis of the issues, this Court is satisfied that the trial court has rightly understood the matters in issue involved in the suit and properly framed the issues for consideration in the trial. After considering the evidence, on record, consists of the oral testimony of P.Ws.1 to 8, D.Ws. 1 to 5, Exts.A1 to A19, B1 to B29, X1 to X3(b), the trial court found all the aforesaid issues in favour of the plaintiff and

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decreed the suit.

8. Feeling aggrieved, though the defendants preferred A.S.No.244/2004 before the II Additional District Court, Ernakulam, after re-appreciating the evidence on record, the lower appellate court also confirmed the findings of the trial court and dismissed the suit. The legality of the concurrent findings, whereby the suit stands decreed and the Appeal Suit stands dismissed are challenged in this Regular Second Appeal.

9. Heard Sri. K. Jayakumar, the learned senior counsel appearing for the appellants.

10. The learned senior counsel for defendants 1 and 2 contends that the concurrent findings of the courts below that the suit is maintainable, as the matter in dispute, is of civil nature is legally unsustainable. The lower court erred in holding that the questions sought to be raised in the suit are of civil nature, falling within the meaning of Sec.9 of

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the C.P.C. The courts below erred egregiously in failing to see that the special custom of Knanaya Christians whereby a Knanaya ceases to be a Knanaya upon marriage with a non-knanaya is not one which can be decided by a civil court. The matters relating to internal regulations of a community based on 'custom' cannot be subjected to adjudication of a civil court, due to lack of civil nature. The finding of the courts below that the plaintiff, his parents and family members are members of the Knanaya Catholic Community and Holy Family Parish Church, Nattassery is perverse and legally unsustainable for want of evidence. The findings of the courts below, on matters relating to practices constituting custom, are without jurisdiction and liable to be set aside. Since the plaintiff was not a member of Knanaya Catholic Community, defendants 1 and 2 have no obligation to issue 'Vivahakuri' to him. But the courts below

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went wrong by issuing mandatory injunction erroneously invoking the jurisdiction under Section 39 of the Specific Relief Act. The courts below ought to have found that the Knanaya Catholic Community and the Holy Family Parish Church, Nattassery, are different and distinct entities and not synonymous. The suit was bad by non-joinder of Holy Family Parish Church, Nattassery, as a necessary party. Similarly, the absence of a relief seeking declaration that plaintiff is a member of Knanaya Catholic Community and Holy Family Parish Church, Nattassery is fatal and thereby the suit was not maintainable.

11. First of all, being a Second Appeal, this Court must remember the limited scope and extent of interference with the concurrent findings of the court below under Sec.100 of the CPC. According to Sec.100 of the CPC, an appeal shall lie in the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court

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is satisfied that the case involves a substantial question of law. The substantial question of law is a question of law which substantially affecting the right of the parties. In other words, the scope of interference is confined to the determination of the substantial question of law only. At this juncture, it is to be borne in mind that the Apex Court has well described the boundary within which the jurisdiction can be exercised under Sec.100 of the CPC by catena of decisions. In *Raruha Singh v. Achal Singh and Others* [AIR 1961 SC 1097], the Apex Court held that the High Court's jurisdiction in Second Appeal is confined to question of law only and if the appellate court recorded the definite findings, it is not open to the High Court to attempt to re-appreciate that evidence. In *Guddappa Rai and others v. Narayana Rai and another* [1999 (3) KLT SN 67), the Apex Court again held that concurrent findings of facts, how so far erroneous, cannot be disturbed by the

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High Court in exercise of power under Sec.100 of the CPC. In ***M.G. Hegde v. Vasude V. Hegde [(2000) 2 SCC 213],*** the Supreme Court held that in Second Appeal, the jurisdiction of the High Court is limited. '*Prima facie* perverse' and 'error apparent on the face of the record' are not a mantra and cannot be employed to permit the High Court to do in Second Appeal what the law enjoins on it not to do. High Court erred in going into the evidence and then arriving at a different conclusion. In *Commissioner, Hindu Religious and Charitable Endowment v. Shanmugham* [2005 (2) KLT SN 31 (SC)] the Supreme Court held that in Second Appeal High Court has no jurisdiction to interfere with the finding of facts recorded by the first appellate court. In *Laxmidevamma v. Ranganath* [(2015) 4 SCC 264], the Supreme Court again cautioned the courts below that concurrent findings of facts cannot be upset by the High Court unless the findings so recorded are

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shown to be perverse. In [AIR 2014 SC 1582], the Apex Court again reminded the courts below that an appeal shall lie to the High Court from the appellate decree, only if High Court is satisfied that the case involved a substantial question of law and the appeal shall be heard on the questions so formulated and the parties are allowed to argue on those questions only. Further, in *Punjab State Power Corporation Ltd., v. Punjab State Electricity Regulatory Commission* [AIR 2015 SC 1190], the Apex Court reiterated that the finding on facts based on evidence cannot be interfered with in the Second Appeal. In *Lisamma Antony v. Karthyayani* [2015 AIR SCW 2824], the Supreme Court again held that merely because on appreciation of evidence another view would have been taken it cannot be said that the High Court assumes jurisdiction by turning such question as a substantial question of law and the questions of law shown in the Memorandum, based

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on new plea without proper foundation, cannot be framed as substantial questions of law to be considered in the Second Appeal. Thus, the legal position fixing the boundary of the jurisdiction and power of this Court under Sec.100 of the CPC stands well settled by plethora of decisions of the Supreme Court.

12. In the above view, it can be concluded that the scope and extent of interference in this Regular Second Appeal is confined to the question of law only. Unless there is any illegality or perversity in the findings which would give rise to a question of law, this Court is inclined to confirm the concurrent findings of the courts below. In the above yardstick, this Court has evaluated the legality of the concurrent findings as given below.

13. The concurrent findings, whereby the courts below decreed the suit and dismissed the appeal can be summarised as follows: The suit is perfectly

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maintainable as the matter in dispute for which the relief sought for, is of civil nature as contemplated under Sec.9 of the CPC. The plaintiff and his family members are members of Knanaya Catholic Community and they are Parishioners of Holy Family Parish Church, Nattassery, coming under the Kottayam Diocese. The marriage of the plaintiff's parents was solemnized in the Little Flower Knanaya Catholic Church at West Othara in the year 1955 and the same was accepted by the Kottayam Diocese of Knanaya Catholic Community. The plaintiff and other members of his family were baptised in the Knanaya Catholic Churches, coming under the Kottayam Diocese. The marriages of other members of the plaintiff's family were solemnized in the Holy Family Church, Nattassery, and their children were also baptised in the said Church and thereby, the members of the community and the Church accepted them as Parishioners of Holy Family Parish Church at

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Nattassery, and they were given rights and privileges entitled to a member of the Knanaya Community. Thus, defendants 1 and 2 were obliged to issue 'Vivahakuri' to the plaintiff and the denial of the same amounts to breach of obligation warranting issue of mandatory injunction by a civil court invoking the equitable and discretionary jurisdiction under Sec.39 of the Specific Relief Act. The defendants failed to prove the practice of endogamy as a valid custom prevailing in the community and endogamy is against the tenets of marriage and matrimony under the Canon Law and Motu Proprio promulgated in 1949 by Pope XII. The plaintiff, his parents and family members were acknowledged and recognized as members of Knanaya Catholic Community and Parishioners of Holy Family Parish Church, Nattassery, and thereby, defendants 1 and 2 are estopped from denying the rights and privileges of Parishioners of the Church to them. The Church

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was not a necessary party in the suit, as either the plaintiff or any of the members of his family was not expelled from the Community or Church. In such circumstance, the absence of a prayer for declaration of the plaintiff's status as a' knanite' or a member of Holy Family Parish Church, Nattassery, was not fatal.

14. In view of the aforesaid findings, firstly, the question to be considered is, whether there is any illegality in the findings that the suit was maintainable, as the matter in dispute is of a civil nature, falling under Sec.9 of the CPC. Secondly, whether the courts below are justified in finding that the petitioner and his family members are members of the Knanaya Community and Parishioners of Holy Family Parish Church, Nattassery, coming under the Kottayam Diocese and whether there was a breach of obligation warranting issuance of mandatory injunction invoking the jurisdiction and power under

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Sec.39 of the Specific Relief Act. Since these questions are interconnected, they can be considered together.

15. According to the plaintiff, the plaintiff and his family members are of Knanaya Catholic Community and Holy Family Parish Church, Nattassery, coming under the Kottayam Diocese and thereby he is entitled to get 'Vivahakuri'. Thus, the cause of action has arisen from the denial of a right having a civil nature and the right and entitlement of 'Vivahakuri' is also having a civil nature as the Parishioner has right to get it, according to the plaintiff. But, defendants 1 and 2 denied the 'Vivahakuri' stating that he is not a Knanite as he was born to non-knanite parents. Though, his father was a Knanite and his father has lost membership in the Knanaya Community and Church as per the custom of endogamy prevailing in the community, when he married his mother, a non-Knanite. In

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short, the plaintiff's father ceased to be a knanite by his marriage with his mother. Thus, the matter in issue involved in the suit is based on a custom, for which the civil court has no jurisdiction due to the lack of civil nature, according to defendants 1 and 2.

16. Going by the impugned judgment, it could be seen that in order to substantiate the non-maintainability of the suit due to the lack of civil nature, defendants 1 and 2 have relied on the decisions in *Vasudev v. Vamnaji andothers [ILR 5 Bombay 80]; Murari v. Suba and Others [ILR 6 Bombay 725] and Jetha Bai Narsey v. Champsey Cooverji [ILR 34 Bombay 467].* It is pertinent to note that all those decisions are held by various High Courts. But, the defendants 1 and 2 have relied on *Abdulla Bin Ali and others v. Galappa and others [AIR 1985 SC 577]; Ugam Singh v. Kesrimal [AIR 1971 SC 2540]; Ganga Bai v. Vijayakumar [AIR 1974 SC 1126] and Most Rev. P.M.A. Metropolitan v.*

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Moran Mar Marthoma [1995 Supp. (4) SCC 286]. The lower appellate court has rendered the impugned judgment confirming the findings of the trial court relying on the aforesaid decisions of the Supreme Court, as regards the maintainability of the suit.

17. The maintainability of the suit centers around Sec.9 of the CPC which reads as follows:

> "9. **Courts to try all civil suits unless barred.-** The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
>
> *Explanation I.-* A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
>
> *Explanation II.-* For the purposes of this section, it is

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> immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

18. It is to be borne in mind that one of the basic principles of law is that every right has a remedy and every civil suit is cognizable unless it is barred. Defendants have no case that the civil suit is barred by any law for the time being in force.

19. When considering the maintainability of a civil suit, in view of the jurisdiction under Sec.9 of the CPC, at first, it is to be borne in mind that the Supreme Court in ***Abdulla Bin Ali & Others v. Galappa and Others*** [AIR 1985 SC 577] held that the allegations made in the plaint decide the forum and the jurisdiction does not depend upon the defence taken by the defendants in the written statement.

20. Further, in ***Church of North India v. Lavajibhai Ratanjibhai*** [AIR 2005 SC 2544], the

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Supreme Court reiterated the aforesaid provision in this way: "Jurisdiction pertains to the nature of the suit shall be determined on the basis of the averments in the plaint and not on the basis of any defence or the result of the suit or the merits of the claim".

21. The question of maintainability of the original suit, which involves religious practices, rituals, rites or customs, under Section 9 of the C.P.C. has become insignificant, in this Regular Second Appeal, by the efflux of long time after the pronouncement of the judgment in the original suit. The original suit was decreed on 24-12-1990 and 26 years have been elapsed after the consideration of this question in the original suit. In the mean time, the Supreme Court has laid down various decisions whereby Section 9 of the C.P.C. has been given a very wide meaning and interpretation, encompassing all disputes that may arise from internal religious

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matters, including religious practices, rituals and custom. Among those decisions, the decision of the Supreme Court in ***Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma [AIR 1995 SC 2001]*** is the landmark decision, wherein the question of maintainability arose in this original suit stands covered positively at present.

22. While considering the maintainability of the civil suits relating to religious matters of Christianity, under Section 9 of the C.P.C., the Supreme Court in ***Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma [AIR 1995 SC 2001]*** held as follows:

> "31. 'Religion is the belief which binds spiritual nature of men to super-natural being.' It includes worship, belief, faith, devotion etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it. It is civil in nature. The dispute about the

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> religious office is a civil dispute as it involves disputes relating to rights which may be religious in nature but are civil in consequence. Civil wrong is explained by Salmond as a private wrong. He has extracted Blackstone who has described private wrongs as,'infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are thereupon frequently termed civil injuries'. Any infringement ith a right as a member of any religious order is violative of civil wrong. This is the letter and spirit of Explanation I to Section 9."

In paragraph 34, the Supreme Court further held as follows:

> "34. ....The jurisdiction is always local and in absence of any statutory provision the cognizance of such dispute has to be taken either by a hierarchy of ecclesiastical Courts established in

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> the country where the religious institutions are situated or by a statutory law framed by the Parliament. Admittedly no law in respect of 'Christian Churches has been framed, therefore, there is no statutory law. Consequently any dispute in respect of religious office in respect of Christians is also cognisable by the Civil Court. The submission that the Christians stand on a different footing than Hindus and Budhists, need not be discussed or elaborated. Suffice it to say that religion of Christians, Hindus, Muslims, Sikhs, Budhs, Jains or Parsee may be different but they are all citizens of one country which provides one and only one forum that is the civil Court for adjudication of their rights, civil or of civil nature."

In paragraph 35, the Supreme Court again held as follows:

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"35. .... More over, after coming into force of the Constitution, Article 25 guarantees as fundamental right to every citizen of his conscience, faith and belief, irrespective of cast, creed and sex, the infringement of which is enforceable in a Court of law and such Court can be none else except the Civil Courts. It would be travesty of Justice to say that the fundamental right guaranteed by the Constitution is incapable of enforcement as there is no Court which can take cognisance of it. There is yet another aspect of the matters that Section 9, debars only those suits which are expressly or impliedly barred. No such statutory bar could be pointed out. Therefore, the objection that the suit under Section 9 C.P.C. was not maintainable cannot be accepted."

"76. The conclusions thus reached are,

1(a). The civil courts have jurisdiction

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to entertain the suits for violation of fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India and suits.

(b) The expression 'civil nature' used in Section 9 of the Civil Procedure Code is widen than even civil proceedings, and thus extends to such religious matters which have civil consequence.

(c). Section 9 is very wide. In absence of any ecclesiastical courts any religious dispute is cognizable, except in very rare cases where the declaration sought may be what constitutes religious rite."

23. In the above context, this Court must remember the decision of the Supreme Court in ***Chunilal Mehta v. Century Spg. and Mfg. Co. Ltd.*** [AIR 1962 SC 1314]; wherein the Supreme Court held that if the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere

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question of applying those principles or that the plea arose is palpably absurd, the question would not be a substantial question of law.

24. It is true that the aforesaid decision was laid down in 1995 and the impugned judgment of the trial court was passed in the year 1990. So, let me examine whether the trial court was justified in finding that the suit was maintainable in view of the legal position as to maintainability of the suit involving religious practices and rituals, at the time of the pronouncement of the judgment by the trial court.

25. In ***Ugam Singh and Mishrimal vs. Kesrimal*** [AIR 1971 SC 2540], the Supreme Court held that a right to worship is a civil right and a dispute in respect of rituals or ceremonies can be adjudicated by a civil court, if they are essentially connected with civil rights of an individual. In other words, the dispute in respect of rituals or ceremonies can be

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adjudicated where it is essentially connected with right to worship. This is the decision whereon the trial court placed reliance in finding that the denial of 'Vivahakuri' is a denial of a civil right, which could be adjudicated by civil court even if it is connected with religious practice or custom and the trial court is justified in placing reliance on this decision.

26. In this connection, it is apposite to refer the decision of this Court in ***Joshua v. His Grace Gee Varghese Mar Discorus*** [ILR 1985 Kerala Vol.I]. There the suit was one for a declaration that two orders passed by Vicars are void and for an injunction restraining the enforcement of those orders while dealing with the question of maintainability, this Court held as follows:

> "The civil rights of the plaintiff, particularly in relation to his claim as a member of the Parish Committee, and his right to contest and continue the suits already pending now, are affected

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> by the actions complained of in the present suit. They are clearly matters affecting the Civil rights of the plaintiff for which resort to a Civil Court is fully justified."

27. It is true that defendants 1 and 2 have citied *Shri. Sinha Ramanuja v. Ranga Ramanuja [1961 SC 1720]* wherein the Supreme Court held that suits raising questions of religious rites and ceremonies only are not maintainable in civil court for they do not deal with legal rights of the parties. But it is pertinent to note that in that case certain precedents in religious rites performed in a temple as special honour attached to the office of the plaintiff alone was claimed and in that context the court held that the suit is not maintainable. But, in the instant case the right to get 'Vivahakuri' as a member of the Church is claimed and the denial of that right is connected with custom and in that circumstance the court can look at the custom also and thereby the

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suit will get a civil nature in view of the subsequent decision of the Apex Court in ***Ugam Singh v. Kesrimal [AIR 1971 SC 2540].*** Thus, the courts below are justified in not relaying on ***Shri. Sinha Ramanuja v. Ranga Ramanuja [1961 SC 1720]*** .

28. Thus, this Court finds that in view of the decisions of the Supreme Court, which were prevailing at the time of the pronouncement of the impugned judgments, the courts below are justified in finding that the suit is maintainable as the dispute involved in the suit is of a civil nature.

29. The maintainability has to be considered on an assumption that the plaintiff and his family members are members of the Knanaya Catholic Community and Parishioners of the Holy Family Parish Church, Nattassery. If that be so, the plaintiff has the rights and privileges as the member of the Community as well as the Parishioners of the Church. In the unreported common judgment in A.S.Nos.331

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and 358 of 1980 of this Court (Sabha case), for determining the status of Parish church and rights of Parishioners, this Court relied on Halsbury's Laws of England (Fourth Edition, Volume 14, Page 284), and the trial court is justified in placing reliance on the said paragraph, which reads as follows :

> " 562. **Parishioners' rights:**
> A parishioner has a right to enter his parish church and remain there for the purpose of participating in divine worship so long as there is accommodation available. Subject to certain rights he is entitled to a seat so long as there is a seat available and, although he must obey the reasonable directions of the church wardens, acting as the officers of the Bishop, as to which seat he shall occupy, he cannot be prevented by them from entering and standing if no seat is available. A Parishioner is entitled to receive the ministrations of the church and

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> of the Parish clergy in the parish church and other proper places and to be buried in the church yard or burial ground of or belonging to the parish." Subject to such special condition as are imposed by law parishioners are entitled personally to attend and take part in the meetings, if any of the vestry, the meetings of parishioners for the choosing of churchwardens and all parochial church meetings."

30. In the light of the decisions referred above, it can be held that a parishioner's right to get 'Vivahakuri' to get his marriage ceremony blessed in a parish church is a right akin to that of the right to worship, right to enter into a church and remain there for participating in divine worship, right to receive ministrations of the church and of the parish clergy in the parish church, right to be buried in the churchyard or burial ground of the church, as contemplated in the above decisions. When the

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plaintiff is a member of the Knanaya Catholic Community and a Parishioner of the Church, who has the right to get 'Vivahakuri' from the church, so as to get his marriage ceremony blessed in the Parish church, the denial of that right would give rise to a dispute of civil nature as contemplated under Sec.9 of the C.P.C. Thus, the courts below are justified in finding that the dispute involved in the suit is a dispute of civil nature, falling under section 9 of the C.P.C. and it requires adjudication by a civil court. Further, even if the custom pleaded in the written statement of the defendants is taken into consideration, it will not deter the civil court from entertaining the civil suit or obliterate civil nature of the suit, as the dispute is essentially connected with the plaintiff's civil right to get 'Vivahakuri' , in view of the decision of the Apex Court in ***Ugam Singh and Mishrimal v. Kesrimal*** [AIR 1971 SC 2540].

31. The next question to be considered is,

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whether the courts below are justified in finding that the Original Suit is not barred by non-joinder of the Holy Family Parish Church, Nattassery, as a party to the suit and the absence of prayer for the declaration of plaintiff's status, as a member of Church, is not fatal. It is the case of plaintiff that the plaintiff and his family members are the members of the Knanaya Catholic Community and the Holy Family Parish Church, Nattassery, coming under the Kottayam Diocese and thereby, he has the right to get 'Vivahakuri'. Earlier, though the 1st defendant agreed to issue 'Vivahakuri' to him, subsequently, he refused to issue the same at the instance of the 2nd respondent. Neither the plaintiff nor the defendants have a case that the aforesaid Church has taken a decision to deny 'Vivahakuri' to the plaintiff or the denial was on the basis of the by-law of the Church. Similarly, nobody has a case that the Kottayam Diocese of the Knanaya Community has taken a

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decision to expel the plaintiff or his family members from the Knanaya Community or they are expelled from the Knanaya Community. D.Ws.2 and 5 are working as Priests of the Kottayam Diocese and they admitted that it is duty of the Vicar to issue 'Vivahakuri. Thus, it is understood that the members of a Parish Church are entitled to get 'Vivahakuri', unless they are disqualified by the Canon Law or other Rules relating to the affairs of the Church. It is an admitted fact that it is the duty of the Vicar of the Parish Church to issue 'Vivahakuri' to the members of the Parish Church and the decision of the Church or the Kottayam Diocese is not required for the same. Ext.B23(a) disclosed the fact that the 1st defendant Vicar was willing and ready to issue 'Vivahakuri' to the plaintiff; but the same was not issued on the basis of the specific instructions given by the office of the 2nd defendant, the Bishop. According to Order 1 Rule 1 of the CPC, the person

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against whom the relief sought for in the plaint alone need be impleaded as parties to the suit. It is pertinent to note that the plaintiff does not seek any relief from the Holy Family Parish Church, Nattassery, or the members thereof or the Kottayam Diocese. On the other hand, the reliefs are sought for against defendants 1 and 2 in their capacity as Vicar and Bishop on the allegation that it is their obligation to issue 'Vivahakuri' and the breach of obligation on their part compelled him to approach the court. In the above view, the Church is not a necessary party. There is no illegality in the findings of the courts below in this respect.

32. Going by the pleadings, it appears that the plaintiff's case is built up on the foundation that his parents and other members of the family are the Knanaya Catholic Community attached to the Holy Family Parish Church, Nattassery of Kottayam Diocese and they were accepted and acknowledged

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by the members of the Community as well as the Holy Family Parish Church, Nattassery under the Kottayam Diocese. In order to substantiate the above contention, the plaintiff has produced certain documents such as Ext.A1 Marriage Certificate of his parents, Ext.X2 Marriage Register, Ext.A2 Certificate issued by the Priest etc. Thus, the parties and the reliefs are made in the suit in accordance with the pleadings. Defendants 1 and 2 have no case that the plaintiff or his parents or family members were expelled from the Knanaya Community or Parish Church. In such circumstance, the plaintiff is justified in not seeking a declaration that he is a knanite. It is to be remembered that the plaintiff is the master of the suit and he has an option to choose the parties in accordance with the reliefs sought for.

33. In the above view, the courts below are justified in finding that in the absence of the relief as to the declaration of the plaintiff's status, as member

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of the Knanaya Community or Holy Family Parish Church, is not fatal to the suit. There is no illegality or impropriety in the above finding.

34. The most important question to be considered is, whether there is any illegality or impropriety in the findings that the plaintiff has succeeded in proving that the plaintiff and his family members are members of the Knanaya Community and the Holy Family Parish Church coming under the Kottayam Diocese and thereby the plaintiff is entitled to get 'Vivahakuri' and defendants are estopped from denying Vivahakuri. The case of the plaintiff has been built up on the specific averment that the plaintiff, his parents and other members of the family are members of the Knanaya Community and Holy Family Parish Church coming under the Kottayam Diocese. On the other hand, the defendants contended that the plaintiff's mother was not a 'Knanite' as his maternal grandmother was a

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Latin Catholic and when he married a non-knanite, he ceased to be a 'Knanite'. Therefore, neither the plaintiff nor his parents are members of the Knanaya Community of Kottayam Diocese. In order to prove the claim that the plaintiff, his parents and other members of the family are members of Knanaya Community and Holy Family Parish Church, the plaintiff has produced Ext.A1 Marriage Certificate dated 13-8-1986 issued by the Vicar, Little Flower Knanaya Catholic Church, West Othara, and the said Certificate shows that the parents of the plaintiff were married in that Church on 22-10-1956. It is to be remembered that the Little Flower Knanaya Catholic Church, West Othara, is a Parish Church coming within the jurisdiction of the Kottayam Diocese. P.W.6, the present Vicar of the said Church, had produced Ext.X2 Marriage Register of the relevant period kept in the Church and Ext.X2(a) is the second entry in Ext.X2 Marriage Register

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pertaining to the marriage of the plaintiff's parents. Further, in Ext.X2(a) the plaintiff's father Uthup was shown as the member of the Kumarakam Church and his mother Annamma was shown as member of the Othara Parish Church. Thus, it stands unambiguously proved that though the plaintiff's mother Annamma was born to a Knanaya father and Latin Catholic mother, she was admitted as a member of the West Othara Parish Church and on that basis, the marriage ceremony of the plaintiff's parents were conducted in that Church on 22-10-1956. P.W.6 had deposed that the marriage ceremony between 'Knanite' and non-knanite could not be blessed in a Knanaya Parish Church. P.W.3 had categorically deposed that the plaintiff's mother was admitted as a member of the Little Flower Knanaya Catholic Church, Othara, before her marriage and that her marriage was conducted there. Therefore, it could be reasonably presumed

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that the plaintiff's father was not ceased to be a 'Knanite' by the marriage with the plaintiff's mother, as contended by the defendants. But, the defendants had put forward a case that the marriage, so conducted, was a mistake and the plaintiff's mother was never made a member of the West Othara Parish Church. It is also contended that the plaintiff's parents might have managed to conduct the marriage in that Church without disclosing the fact that plaintiff's mother is not a 'Knanite'. The case of the plaintiff is further fortified by Ext.A2 certificate dated 20-4-1989 issued by Rev. Fr. Chockacheril, who was the Vicar of the Little Flower Knanaya Catholic Church, West Othara, during the time of the plaintiff's parents' marriage. In Ext.A2, Rev. Fr. Chockacheril certifies that plaintiff's mother was made a member of the Little Flower Knanaya Catholic Church, Othara, before her marriage and that the membership was given on the

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basis of the permission granted by Rev. Thomas Tharayil, the Bishop of the Kottayam Diocese during that period. Even though the defendants had made an attempt to lessen the evidenciary value of Ext.A2, the courts below rightly rejected the same when the Vicar, who had solemnized the marriage himself, certified the marriage of the plaintiff's parents. There is no need to make a further enquiry as to the circumstance under which the said certificate was issued in the absence of any evidence contrary to it. The burden is heavy on the defendants to controvert the aforesaid documentary evidence which would prove the marriage of the plaintiff's parents in the Parish Church, Othara. But, they have miserably failed to discharge the burden, though it was contended that the marriage of the plaintiff's parents were solemnized in the Church at Othara mistakenly and fraudulently and the courts below are justified in rejecting the challenge against

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the evidenciary value of the certificate. It is trite law that, where misrepresentation or fraud is pleaded in defence by the defendant, the burden of proof is on the defendant who makes such pleadings. But the defendants have miserably failed to prove such contentions raised to defeat documentary evidence, which are in abundance. The oral account of the circumstance deposed by P.W.3 shows the genuineness of Ext.A2 certificate. It has come out in evidence that the 2nd defendant, who was a Vicar at that time, was well aware of the marriage and acceptance of the plaintiff's parents, as members of the Knanaya Community by the Church, Othara, and its members. There is no reason to suspect the authenticity of Ext.A2, as the same is the reproduction of Ext.X2(a) entry regarding the marriage of plaintiff's parents in Ext.X2 register. It follows that the plaintiff's mother was admitted and acknowledged as a member of the community by the

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Ecclesiastical Authority also.

35. That apart, the documentary evidence is, in abundance, to prove that the family members of the plaintiff were also admitted and acknowledged as members of the Knanaya Community and the Holy Family Parish Church, Nattassery. Ext.A3 baptism certificate issued by the Vicar shows that the plaintiff was baptised at the Little Flower, Knanaya Catholic Church, West Othara. Ext.X3(b) is the entry in relation to the baptism of the plaintiff in Ext.X3 register produced by P.W.6, the present Vicar of Little Flower Knanaya Catholic Church, West Othara. Ext.X3(a) is the entry with regard to the baptism of the plaintiff's brother in the said Church at Othara. The plaintiff's baptism at the Church, Othara, was intimated to the plaintiff's father's Church at Kumarakom and Ext.A4 is the certificate to that effect issued by the Vicar of St. John's Vellara Church, Kumarakom, and the said Vicar was

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examined as P.W.2. The said Vicar has produced Ext.X1 baptism register of that Church and Ext.X1(a) is the entry relating to the plaintiff's baptism at the Little Flower Knanaya Church, Othara. Ext.A5 is the marriage certificate which would show that the plaintiff's brother's marriage was solemnized in a Knanaya Church within the jurisdiction of the Kottayam Diocese. Ext.A6 is the birth certificate of the plaintiff's sister's child issued by St. Xavier's Church, Kannankara. Ext.A7 shows that plaintiff's sister-in-law was admitted as a member of the Holy Family Parish Church, Nattassery, before the marriage. Ext.A8 is the marriage certificate of the plaintiff's brother issued by the Cathedral Administrator of the 2nd defendant Bishop. It is pertinent to note that the marriage of the plaintiff's brother was conducted in the Cathedral Church of Kottayam Diocese on 12-7-1987 and Ext.A9 is the receipt thereof issued by the 1st defendant to the

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plaintiff's brother's wife. Further, it has come out in evidence that special sanction was accorded to the plaintiff's brother's marriage to dispense with the necessity of 'vilichu chollu'. Ext.A15 is the copy of the application filed by the plaintiff's brother's wife for making her as a member of the Parish Church for the purpose of her marriage and it further shows that no special formalities were prescribed for making her as the member of the Church. Exts.A14(a), (b) and (c) are the receipts issued by the 1st defendant to the plaintiff's father in receipt of the contribution of family cemetery. The documentary evidence referred above would abundantly prove beyond doubt that the plaintiff, his parents and other family members of his family were admitted, acknowledged and recognized as members of the 'knanite' community and the Holy Family Parish Church, Nattassery.

36. It has come out in evidence that the 2nd

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defendant had accorded sanction for the marriage of the plaintiff's brother to conduct his marriage in the Cathedral Church of Kottayam Diocese and the marriage was conducted on 12-7-1987. Therefore, it could be presumed that the 2nd defendant had knowledge about the state of affairs of the plaintiff's family and permission was granted by him for the marriage of the plaintiff's brother as a token of acknowledgment as the member of the Knanaya Community. Ext.A13, a copy of the plaint in O.S. No.1068/1988 on the files of the Munsiff's Court, Kottayam, filed by the third party challenging the status of the plaintiff's family also shows that the plaintiff and the entire family members are treated as members of the said Parish Church.

37. Further, it stands revealed from the pleadings in Ext.A13 that the allegation against defendants 1 and 2 is that they have accepted and recognised the plaintiff and his family members as

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members of the Knanaya Catholic Community under Kottayam Diocese. That apart, the plaintiff in that suit sent a notice requesting to excommunicate the plaintiff's family members from the Knanaya Catholic Community and the 2nd defendant received the same, that despite their request the 2nd defendant granted sanction to conduct the marriage of the plaintiff's brother in a Cathedral Church of Kottayam Diocese. As rightly held by the trial court, the said conduct of the 2nd defendant and his positive attitude towards the plaintiff's family amounts to an acknowledgment on his part that plaintiff and his family members are members of the Holy Family Parish Church, Nattassery. In the above context, the trial court specifically observed that unless and until Ext.A13 is decided on merits, plaintiff is entitled to get all the benefits as a member of Holy Family Parish Church, Nattassery under the Kottayam Diocese. But, going by the Appellate Court

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judgment, it is discernible that even though Ext.A13 suit was filed by one of the Knanites, seeking excommunication of plaintiff's family, that suit had been abandoned and none among the community have come forward to proceed with the suit, though it was a representative suit filed under Order I Rule 8 of the C.P.C. Despite the filing of the suit, the defendants have not taken any action to expel the plaintiff's family from the Church. The defendants failed to bring out any evidence to show that the plaintiff's family members were expelled from the Knanaya Catholic Church. Even though the defendants have contended that they were acknowledged and accepted by fraud and misrepresentation, no evidence has been adduced to substantiate the said contention. Needless to say, the burden was heavy on the defendants in this regard, particularly when the documents referred above would prove that the plaintiff's family

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members are accepted as members of the Holy Family Parish Church, Nattassery. After evaluation of the evidence, on record, the courts below concurrently found that it is unreasonable to think that the plaintiff's parents' marriage in the Knanaya Catholic Church and the plaintiff's baptism in the said Church, were unnoticed by the Ecclesiastical Authorities, including defendants 1 and 2. On the other hand, evidence shows that those ceremonies were acknowledged and recognized by the Ecclesiastical Authorities. No stretch of imagination, can it be considered that the marriage of the plaintiff's father was conducted without knowledge of the Parish Priest of the Kumarakom Church also in view of the fact that the plaintiff's parents continued as members of the Kottayam Diocese, after their marriage, was acknowledged and accepted by the Ecclesiastical Authorities. I do not find any reason to interfere with the aforesaid finding of the court

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below.

38. In the above view, the trial court applied the principles of estoppal against the denial of 'Vivahakuri' by defendants 1 and 2, and the reasons are seen well explained in paragraphs-43 and 44 of the trial court judgment. This Court find that the trial court rightly understood the doctrine of estoppal and applied correctly in the instant case. Therefore, the courts below are justified in finding that defendants 1 and 2 are estopped from denying his membership in the community and his entitlement of 'Vivahakuri' under the membership.

39. The next question to be considered is, whether the courts below are justified in holding that defendants have failed to establish endogamy as a valid custom, having approval of Canon Law and Motu Proprio pronounced by Pope XII. It is seen contended that endogamy is a custom accepted by practice among the members of the Knanaya

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Catholic Community for centuries and the Pope had granted Special Diocese status for the Knanite Catholics as per Exts.B3 and B3(a) in acceptance of the special custom of endogamy. After examining Exts.B3 and B3(a), the courts below concurrently found that Exts.B3 and B3(a) do not mean that the Pope had accepted the custom of endogamy among the Knanites and there is nothing to show that the said custom of endogamy was approved and allowed to be retained by the Pope by forming the Kottayam Diocese. This Court is not inclined to interfere with the said finding as the same is a factual finding only on the basis of evidence. More over, the lower appellate court meticulously considered the evidence of P.W.5, a Doctorate holder in Canon Law and the Professor of Apostolic Seminary, and Ext.A16 Code of Oriental Canon Law and the Law of Marriages and held that the said Code contains the Motu Proprio Crebrae Allatae on the discipline of the

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sacraments of matrimony for the oriental church and the Motu Proprio does not agree with endogamy. The Motu Proprio contains in pages 37 and 38 was proved by P.W.5. The relevant words of Motu Proprio, contains in pages 37 and 38, whereon the lower appellate court placed reliance, reads as follows:-

> "We now promulgate by this Apostolic Letter, given on Our own accord, the above mentioned Canon, bestowing upon them legal force for all the faithful of the oriental church, wherever they made be on earth, and though may be subject to a prelate of a different rite. Forthwith, when in virtue of this Apostolic Letter the mentioned Canons come in force, any statute, whether general or particular or special, even issue by synods which received approved in special form, any prescription and custom hitherto in force, either general or particular, is deprived of its legal force, so that the

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discipline of the sacrament of matrimony shall be ruled only by the same Canons, and particular law too contrary to them shall have no more force, unless and as far as it is conceded by them."

40. At this juncture, the trial court is justified in relying on the decision in *Dr. Kunjamma Alex v. Public Service Commission* [1980 KLT 18] wherein this Court held as follows:

> "4. Latin Catholics and Syrian Catholics cannot be said to belong to two castes in the sense we generally understand the term caste. Both belong to the same faith of the Christian religion. "In matters of faith and morals all Catholics, without distinction of race, nationality or rite are bound by the authoritative pronouncements of the Holy See. There can be but one rule in these matters for all who belong to the Catholic Church". The essential distinction between the Syrian and Latin Churches is founded on the

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difference in the adoption of religious rites. "To maintain the disciplinary laws of the Oriental Rites in their purity and in harmony with their ancient customs, the Holy See has established a special Sacred Congregation of Oriental Rites." (Page 2, Practical Commentary on the Code, by Woywod and Smith). In the State of Kerala the Latin and Syrian Catholic Churches have their followers generally from distinct sections of people. Naturally, because of the different classes of adherents in the two churches marriages between the members of these churches are not the general rule though such marriages take place quite often. There does not appear to be any objection on the ground of prohibited religious practice to marriages between the Latin Catholics and Syrian Catholics. A Syrian Catholic becoming a Latin Catholic cannot be said to be a process of conversion or transformation into a different caste".

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41. It is pertinent to note that the aforesaid Motu Proprio is promulgated by Pope Pius XII on the 22nd day of 1949. The lower appellate court is justified in finding that the Motu Proprio is binding on all Catholics, including Knanaya Catholics and would therefore do away with the system of endogamous marriage, if any, which existed among them. Canon 9 Ext.A16 states that wife who belongs to another rite is at liberty to join the rite of her husband at the time of marriage or during its duration. The lower appellate court rightly analysed the concept of marriage of Christian Community and reiterated as given below:-

> "The essential properties of marriage as indicated in the Code of Canon Law are "Unity and Indissolubility" which obtained a special firmness or stability in Christian marriage by reason of it being a sacrament. The spouses are bounded for life. Pharisees came

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upto Jesus and tested him by asking, "Is it awful to divorce one's wife for any cause?" he answered: "have you not read that He who made them from the beginning made them male and female and said, 'for this reason a man shall leave his father and mother and the two shall before one flesh.' So they are no longer two but one flesh. What therefore, God has joined together, let not man put as under. " (New Testament Mathew 19 (3-6). "This man is the head to which the woman's body is united, just as Christ is the head of the church, He, the savior on whom the safety of his body depends" (The Epistle of the Blessed Apostle Paul to the Ephesians, 5-23.). This is to illustrate the Christian approach to matrimony. There is nothing unnatural or unsavory in assuming that on marriage it is possible for the wives to live as parishioners of the church to which the husband belongs. On

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marriage, "unless a special law rules otherwise, the wife shares in the state of her husband as far as canonical affects are concerned." (Canon 1112 vide page 798 of a Practical Commentary on the Code of Cannon Law). Canon 29 referred to in Ext.A16 explains the circumstance under which local hierarchies can be forbid in a particular case, a marriage in their territory for a just reason. Canon 30 states that a custom which introduces a new impediment or one contrary to the existing impediments shall be rejected".

42. After analysing the tenets of Christianity and sacro sanctity of Christian matrimony, the lower appellate court found that the endogamy among the Knanite Catholic Christians claimed by the defendants is akin to the existence of the caste system and such a caste system is repugnant to the tenets of Christianity and the Motu Proprio promulgated by Pope XII in the year 1949. I do not

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find any kind of illegality or perversity in the aforesaid finding.

43. The above view is fortified by the decision of the Supreme Court of India, in *Rajagopal v. Armugam and others* [1969 SC 101]. In this decision, the Supreme Court held thus:

> "16. We agree with the High Court that, when the appellant embraced Christianity in 1949, he lost the membership of the Adi Dravida Hindu caste. The Christian religion does not recognise any caste classifications. All Christians are treated as equals and there is no distinction between one Christian and another of the type that is recognised between members of different castes belonging to Hindu religion. In fact, caste system prevails only amongst Hindus or possibly in some religions closely allied to the Hindu religion like Sikhism. Christianity is prevalent

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> not only in India, but almost all over the world and nowhere does Christianity recognise caste division. The tenets of Christianity militate against persons professing Christian faith being divided or discriminated on the basis of any such classification as the caste system. It must, therefore, be held that, when the appellant got converted to Christianity in 1949, he ceased to belong to the Adi Dravida caste."

44. The proposition that can be culled out from the above decision is that there cannot be a discrimination on the basis of caste in Christianity and even if there is any custom, that custom will not have any legal force and it goes against the law declared by the Apex Court of India.

45. To sum up, going by the judgments under challenge, it could be seen that the plaintiff has proved that the plaintiff and his family members are the Knanaya Catholics and members of the Holy

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Family Parish Church, Nattassery, and the defendants have acknowledged and recognised them as the Knanaya Catholics. If that be so, the point to be considered is, whether the plaintiff being a parishioner of the Holy Family Parish Church, Nattassery, has the right to claim 'Vivahakuri' and the defendants have the obligation to issue the same to the plaintiff. This Court has already noted that the defendants had admitted that they used to issue 'Vivahakuri' to the parishioners and denied the same to the plaintiff on the reason that he is not a Knanaya born to Knanaya parents. Thus their obligation to issue 'Vivahakuri' to the members of the Knanaya Catholic Community is not disputed. As regards the rights of parishioners, the passages from Halsbury's Laws of England (Fourth Edition, Volume 14, Page 284) referred above, is very relevant and significant.

46. In the above view, the courts below are

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justified in finding that the peitioner, as member of the Knanaya Catholic Church and the Holy Family Parish Church, Nattassery, is entitled to get 'Vivahakuri' to conduct his marriage in the Church.

47. Defendants 1 and 2 have contended that the plaintiff's mother's marriage was conducted in the Knanaya Catholic Church, Othara, by mistake and Ext.A1 Marriage Certificate and Ext.A2 Certificate issued by Priest were issued by misrepresentation. The defendants 1 and 2 failed to prove the said contention. On the other hand Ext.A1 Marriage Certificate is seen supported by Ext.X2 Marriage Register. Defendants 1 and 2 have miserably failed to challenge Ext.A3 Baptism Certificate, Ext.X3(b) entry in the Baptism Register, Ext.X1 Baptism Register, Ext.A6 Birth Certificate of plaintiff's child, Ext.A4 certifiate issued by Vicar, Ext.A15 application of the plaintiff's brother's wife and Ext.A14 series of receipts etc.

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48. In the above view, this Court also finds that when the plaintiff succeeded in proving that the plaintiff, his parents and family members are members of the Knanaya Catholic Community and Holy Family Parish Church coming under the Kottayam Diocese, the plaintiff is entitled to get 'Vivahakuri' and in such circumstance, respondents 1 and 2 have an obligation to issue the same to the plaintiff; but they refused to do so. Therefore, the trial court is justified in passing the decree directing respondents 1 and 2 to issue 'Vivahakuri' to the plaintiff, invoking jurisdiction and power under Section 39 of the Specific Relief Act.

49. The courts below have appreciated the facts, evidence and law in its correct perspective and answered all the legal issues in its correct legal perspective. There is no illegality or impropriety in any of the findnigs of the courts below. No question of law arises for consideration in this Regular Second

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Appeal. There is no reason to interfere with the concurrent findings of the courts below.

Hence, this Regular Second Appeal is dismissed. All pending Interlocutory Applications will also stand closed.

Sd/-
(K. HARILAL, JUDGE)

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