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Varghese and Another Vs. St.Peter's and St.Paul's Jacobite Syrian

Varghese and Another Vs. St.Peter's and St.Paul's Jacobite Syrian

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Court : Kerala

Decided On : Jul-28-2015

Judge : Honourable Mr. Justice P.B.Suresh Kumar

Appellant : Varghese and Another

Respondent : St.Peter's and St.Paul's Jacobite Syrian

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR TUESDAY,THE28H DAY OF JULY20156TH SRAVANA, 1937 RFA.No. 501 of 2011 ----------

JUDGMENT
DATED2706-2007 IN OS182001 OF DISTRICT COURT, ERNAKULAM ..... APPELLANT(S)/PLAINTIFFS: ---------- 1. VARGHESE, S/O.PAILY, AGED69 MUNDIYATH, VADAYAMPADI P.O., VADAYAMPADI SOUTH VILLAGE, KANAYANNUR TALUK.

2. M.V.UTHUPPU, S/O. VARGHESE, AGED58 MADATHILPARAMBIL HOUSE, PARIYARAM KARA, MEEMPARA P.O. BY ADVS.SRI.S.SREEKUMAR (SR.) SRI.P.MARTIN JOSE SRI.P.PRIJITH RESPONDENT(S)/DEFENDANTS: ---------- 1. ST.PETER'S & ST.PAUL'S JACOBITE SYRIAN CHURCH, KURINJI, MEEMPARA P.O., IYKKARANADU VILLAGE, KUNNATHUNADU, REPRESENTED BY ITS TRUSTEE, PIN-682 308.

2. REV. FR.C.K.JOHN COREPISCOPA, S/O. KORA, AGED67 CHIRAKKADAKUNNEL, KIZHIMURI P.O., RAMAMANGALAM, PIN-686 663.

3. K.M.PETER, S/O. MARKOSE, AGED42 KALAPPATTIL PUTHENPURAYIL (THEAVELLIL) THIRUVANIYOOR KARA, THIRUVANIYOOR VILLAGE, KUNNATHUNADU, PIN-682 308.

4. V.V.UTHUP,S/O. VARGHESE, AGED51 VADATHIPARAPPATHU, MARANGATTULLIL HOUSE, THIRUVANIYOOR ,PIN-682 308.

5. K.P.YOHANNAN, S/O. PAILY,AGED59 KAURVELLIL, MARANGATTULLIL, THIRUVANIYOOR, PIN-682 308. msv/ -2- -2- RFA.No. 501 of 2011 ---------- 6. T.V.VARKEY, S/O. VARKEY, AGED76 THAZHATHU VADASSERIL, B.K.PURAM P.O., PUTHENCRUZ, PULIYARANGU, PIN-682 308.

7. M.P.VARGHESE, S/O. PAILY, AGED68 MADAPPATTU, PULIYARANGU KARA, R.K.PURAM P.O., PUTHENCRUZ (VIA), PIN-682 308.

8. C.C.PAULOSE, S/O.CHACKO, AGED59 KOTTOOR CHAKKALAYIL PARIYARAM, MEEMPARA P.O., PUTHENCRUZ, PIN-682 308.

9. V.K.YOHANNAN, S/O. KURIAKO, AGED51 VALYAKUZHIYIL PARIYARAM, MEEMPARA P.O., PIN-682 308.

10. A.Y.JOSE, S/O. KURIAKO, AGED40 ANJANAVELLI, MARANGATTULLIL KARA, THIRUVANIYOOR P.O., PIN-682 308.

11. RAJAN K.VARGHESE, S/O. KUNJU, AGED54 KALAPPATIYIL HOUSE, THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK, PIN-682 308.

12. ROJI ABRAHAM, S/O. ABRAHAM, AGED42 AKAPATTIL HOUSE, THIRUVANIYOOR P.O., THIRUVANIYOOR VILLAGE, KUNNATHUNADU TALUK, PIN-682 308. * ADDITIONAL R13 & R14 R15 & R16 IMPLEADED.

13. DR.JACOB JOHN, AKAMPALLIL HOUSE, MEENPARA P.O., POOTHRIKA, PUTHENCRUZ - 682 308.

14. THOMAS K.GEORGE, KALAPPURACKAL HOUSE, VADAYAMPADI P.O., PUTHENCRUZ - 682 308. * THE NEWLY ELECTED TRUSTEE DR.JACOB JOHN & THOMAS K.GEORGE ARE IMPLEADED AS THE ADDL. RESPONDENTS13& 14 IN THE APPEAL VIDE

ORDER
DTD.25.11.2014 IN IA.569/2014.

15. K.V.PAULOSE, S/O.VARGHESE, KEENELIL HOUSE, MEEMPARA P.O., PUTHENCRUZ, PIN - 682 308. * IS IMPLEADED AS ADDL. RESPONDENT NO.15 IN THE APPEAL VIDE

ORDER
DTD. 27.11.2014 IN IA.2683/2014. Msv/ -3- -3- RFA.No. 501 of 2011 ---------- 16. K.I.PETER, S/O.LATE P.V.ITHAPPIRI, RESIDING AT PALAL, KOZHIPPILLY KARA, KOTHAMANGALAM. * IS IMPLEADED AS ADDL. RESPONDENTS NO.16 IN THE APPEAL VIDE

ORDER
DTD.4.12.2014 IN IA.623/2013. R1 & R8 BY ADVS. SRI.N.SUKUMARAN (SR.) SRI.S.SHYAM R1 & R8 AND R15 BY ADV. SRI.SAJI VARGHESE KAKKATTUMATTATHIL R2 BY ADV. SRI.K.PAUL KURIAKOSE R11 & 12 BY ADVS. SRI.K.V.SREE VINAYAKAN SRI.T.K.VIPINDAS R13 BY ADVS. SRI.S.VINOD BHAT SRI.LEGITH T.KOTTAKKAL R BY ADV. SRI.SREELAL N.WARRIER (ADVOCATE COMMISSIONER) R BY ADV. SRI.A.N.SANTHOSH (ADVOCATE COMMISSIONER THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON2206-2015, THE COURT ON2807-2015, DELIVERED THE FOLLOWING: msv/ RFA.No. 501 of 2011 ---------- APPENDIX PETITIONER(S)' ANNEXURES: IA.NO.1088/2014 IN RFA.No. 501 of 2011 ---------- ANNEXURE I: TRUE COPY OF THE

ORDER
DTD.8.4.2014 IN IA.NO.758/2014 IN RSA.501/2011. ANNEUXRE II: TRUE COPY OF THE

ORDER

DTD.21.1.2011 IN IA.NO.69/2011 IN RFA.625/2010 OF THIS HONOURABLE COURT. ANNEXURE III: TRUE COPY OF THE LETTER ISSUED BY REV. FR.C.K.JOHN COR-EPISCOPA, 5TH RESPONDENT IN ANNEXURE I

ORDER
. ANNEXURE IV: TRUE COPY OF THE LETTER DTD.24.4.2014 ISSUED BY THE PRESENT TRUSTEES MENTIONED IN ANNEXURE I

ORDER
. IA.NO.563/2014 IN IA.1552/2013 IN RFA.No. 501 of 2011 ---------- ANNEXURE A: THE TRUE COPY OF THE ABOVE

ORDER
PASSED BY THIS HONOURABLE COURT DTD.15.2.2013 IN IA.NO.358/2013. ANNEXURE B: THE TRUE COPY OF THE

ORDER
PASSED BY THIS HONOURABLE COURT DTD.7.3.2013 IN IA.NO.482/2013. ANNEXURE C: THE TRUE COPY FO THE ABOVE

ORDER
PASSED BY THIS HONOURABLE COURT DTD.15.3.2013 IN IA.NO.614/2013. ANNEXURE D: THE TRUE COPY OF THE ABOVE

ORDER
PASSED BY THIS HONOURABLE COURT DTD.0.10.2013 IN IA.NO.1552/2013. ANNEXURE E: THE TRUE COPY OF THE ABOVE

ORDER
PASSED BY THIS HONOURABLE COURT DTD.28.10.2013 IN RFA.NO.501/2011. ANNEXURE F: THE TRUE COPY FO THE INTERIM REPORT FILED BY THE ADVOCATE COMMISSIONER, SRI.SREELAL WARRIER. ANNEXURE G: THE TRUE COPY OF THE

ORDER

PASSED BY THIS HONOURABLE COURT DTD.28.11.2013 IN THE INTERIM REPORT FILED BY THE ADVOCATE COMMISSIONER IN IA.NO.1552/2013 IN RFA.NO.501/2011. ANNEXURE H: THE TRUE COPY OF THE REPORT FILED BY THE ADVOCATE COMMISSIONER ALONG WITH THE ANNEXURE. ANNEXURE I: THE TRUE COPY F THE

ORDER
OF THIS HONOURABLE COURT DTD.15.1.2014 IN REVIEW PETITION NO.1037/2013. Msv/ -2- -2- RFA.No. 501 of 2011 ---------- IA.NO.758/2014 IN RFA.No. 501 of 2011 ---------- ANNEXURE A1: TRUE COPY OF THE DOCUMENT MARKED AS EXT.A1 IN OS.NO.18 OF 2001 ON THE FILES OF THE1T ADDL. DISTRICT COURT, ERNAKULAM. ANNEXURE A2: TRUE COPY OF THE

ORDER
DTD.15.2.2013 IN IA.NO.358 OF 2013 IN RFA NO.501 OF 2011 OF THIS HONOURABLE COURT. ANNEXURE A3: TRUE COPY OF THE

ORDER
ON IA.NO.482/2013 IIN RFA.NO.501/2011 DTD.7.3.2013 OF THIS HONOURABLE COURT. ANNEXURE A4: TRUE COPY OF THE

ORDER
DTD.15.3.2013 IN IA.NO.614/2013 IN RFA.NO.501/2011 OF THIS HONOURABLE COURT. ANNEXURE A5: TRUE COPY OF THE

ORDER
IN IA.NO.1552/2013 IN RFA.NO.501/2011 DTD.10.10.2013. ANNEXURE A6: TRUE COPY OF THE

ORDER
APPOINTING THE COMMISSIONER SRI.SREELAL WARRIER IN R.F.A. NO.501/2011 DTD.28.10.013 OF THIS HON'BLE COURT. ANNEXURE A7: TRUE COPY OF THE

ORDER
OF THE HONOURABLE HIGH COURT OF KERALA DTD.28.11.2013. ANNEXURE A8: TRUE COPY OF THE

ORDER
OF THE HONOURABLE HIGH COURT OF KERALA IN RP.1037/2013 DTD.15.1.2014. ANNEXURE A9: TRUE COPY OF THE

ORDER
OF THE HONOURABLE SUPREME COURT OF INDIA DTD.7.3.2014 IN SLP NOS.7008 AND 2009 OF2014 ANNEXURE A10: TRUE COPY OF THE CIRCULAR ISUED BY THE TRUSTEES OF THE CHURCH. ANNEXURE A10(a): TRUE COPY OF THE CIRCULAR ISSUED BY THE TRUSTEES OF THE CHURCH. ANNEXURE A10(b): TRUE COPY OF THE CIRCULAR ISSUED BY THE TRUSTEES OF THE CHURCH. RESPONDENT(S)' ANNEXURES: IA.NO.791/2013 IN RFA.No. 501 of 2011 ---------- ANNEXURE R13(a): THE TRUE COPY OF THE MINUTES OF THE MEETING HELD AMONG THE MEMBERS OF MALIAKKEL KALAPPURACKAL PALAL FAMILY ON162.2013. msv/ -3- -3- RFA.No. 501 of 2011 ---------- ANNEXURE R13(b): TRUE COPY OF THE NOTICE SERVED ON THE PETITIONER INTIMATING THE MEETING DTD.7.4.2013 BY THESE RESPONDENTS. ANNEUXRE R13(c): TRUE COPY OF THE MINUTES OF THE FAMILY POTHUYOGAM DTD.7.4.2013. IA.NO.1264/2012 IN RFA.No. 501 of 2011 ---------- ANNEXURE R3(A): TRUE COPY OF THE

ORDER
DTD.9.12.2010 IN IA.NO.4421 OF 2010 IN RFA.NO.624 AND625OF 2010 OF THE HON'BLE HIGH COURT OF KERALA. ANNEXURE R3(B): TRUE COPY OF THE

ORDER

DTD.6.12.2010 IN IA.NO.4421 OF 2010 IN RFA.NO.624 OF 2010 OF THE HON'BLE HIGH COURT OF KERALA. ANNEXURE R3(C): TRUE COPY OF THE

ORDER
DTD.24.9.2010 IN IA.NO.3518 OF 2010 IN RFA.NO. 625 OF 2010 OF THE HON'BLE HIGH COURT OF KERALA. ANNEXURE R3(D):TRUE COPY OF THE

ORDER
DTD.4.4.2009 PASSED BY THE DISTRICT COURT, ERNAKULAM IN IA.109 OF 2009 IN OS.NO.28/2005. ANNEXURE R3(E): TRUE COPY OF THE

ORDER
DTD.6.4.2009 IN IA.2666/2009 IN OS.NO.28 OF 2005 PASSED BY THE DISTRICT COURT, ERNAKULAM. ANNEXURE R3(G): TRUE COPY OF THE

ORDER
DTD.30.10.2009 IN IA.NO.6528/2009 IN OS.NO.28 OF 2005 OF THE DISTRICT COURT, ERNAKULAM. ANNEXURE R3(H): TRUE COPY OF THE CRIME O.519 OF 2012 REGISTERED BY THE PUTHENCRUZ POLICE STATION DTD.21.12.2012. ANNEXURE R3(I): TRUE COPY OF THE

ORDER
OF THE DISTRICT COLLECTOR, ERNAKULAM DTD.29.12.2012. ANNEXURE R3(J): TRUE COPY OF THE3D RESPONDENT CHURCH FOR THE YEAR2010 //TRUE COPY// P.S.TO JUDGE Msv/ P.B.SURESH KUMAR, J.

= = = = = = = = = = = R.F.A.No.501 of 2011 = = = = = = = = = = = Dated this the 28th day of July, 2015.

JUDGMENT

The plaintiffs in O.S.No.18 of 2001 on the file of the District Court, Ernakulam have come up in this appeal challenging the decision in the suit.

2. O.S.No.18 of 2001 is a suit instituted under Section 92 of the Code of Civil Procedure in respect of the first defendant church. The first defendant church is a

parish church of the Malankara Orthodox Syrian Church. The second defendant is the Vicar and defendants 3 and 4 are the trustees of the first defendant church. The suit was a representative action on behalf of the parishioners of the church. The first defendant church was established by a family called 'Maliekkal Kalappurakkal Palal Family' ('Palal family' for short) in a property owned by them. Till 1963, the church was being administered by the Palal family. RFA.No.501/2011. 2 Disputes arose in course of time between the members of the palal family and other parishioners of the church which resulted in the institution of O.S.Nos.149 and 399 of 1960 before the Munsiff Court, Perumbavur. The said suits were settled as per the terms of a compromise arrived at based on Ext.A1 decision taken by the parish assembly of the first defendant church on 7.7.1963 concerning the administration of the church. Thereafter, the church was being administered in accordance with Ext.A1 decision. While so, during the year 2001, steps have been taken by the second defendant for conduct of election to the managing committee of the first defendant church. The suit was filed then alleging that the church being a constituent parish church of Malankara Orthodox Syrian Church, the same has to be administered in accordance with the 1934 constitution of the Malankara Orthodox Syrian Church and the election proposed to the managing committee of the first defendant church in accordance with Ext.A1 decision is contrary to the RFA.No.501/2011. 3 1934 constitution of the church. The reliefs claimed in the suit were mainly a declaration that the election to the managing committee of the first defendant church shall be conducted only in accordance with the 1934 constitution of the Malankara church and a decree of mandatory injunction directing the first defendant to convene a meeting of the parish assembly of the church and conduct election to its managing committee in accordance with the 1934 constitution of the Malankara church.

3. Defendants 8, 9 and 10 contested the suit by filing a written statement. The essence of the contentions raised by them is that the first defendant church is being administered in accordance with Ext.A1 decision and that Ext.A1 decision of the parish assembly of the first defendant church is not against or inconsistent with the 1934 constitution of the church.

4. In the course of the trial, two members of the Palal family got themselves impleaded in the suit as RFA.No.501/2011. 4 additional defendants 11 and 12 and filed a written statement. In the written statement filed by them, it was contended that since the church was established and administered by the Palal family, the participation given to the Palal family for the administration of the church as per Ext.A1 decision does not violate the 1934 constitution of the church.

5. The trial court found that the church belonged to the Palal family; that it was being managed by the said family till Ext.A1 decision and thereafter, the church is being administered in accordance with Ext.A1 decision. The trial court also found that Ext.A1 decision of the parish assembly of the church is not contrary to or inconsistent with the 1934 constitution. Consequent on the said findings, the suit was dismissed. The plaintiffs are aggrieved by the decision of the trial court and hence this appeal.

6. Heard the learned Senior Counsel Sri.S.Sreekumar for the appellants and the learned Senior RFA.No.501/2011. 5 Counsel Sri.N.Sukumaran and Sri.R.D.Shenoy for the respondents.

7. The first defendant church being a parish church of Malankara Orthodox Syrian Church, there cannot be any dispute to the fact that the church has to be administered in accordance with the 1934 constitution. The case of the plaintiffs is that the administration of the church in accordance with Ext.A1 decision is against the 1934 constitution and the case of the contesting defendants is that the provisions in Ext.A1 decision do not go against the 1934 constitution. Ext.A1 is the decision taken by the parish assembly of the first defendant church on 7.7.1963. Ext.A4 is the 1934 constitution of the church. Ext.A1 provides for a managing committee consisting of 56 members for the church, of which 28 members will be permanent members nominated by the Palal Family and the remaining will be elected from among the parishioners. As per Ext.A1 decision, the members elected to the managing committee RFA.No.501/2011. 6 will hold office for a period of three years. Ext.A1 also provides that two lay stewards and one secretary have to be elected from among the managing committee, of which the secretary shall be from the elected representatives of the parishioners. Ext. A1

further provides that the term of office of the lay stewards and Secretary shall be one year. On the other hand, Ext.A4 recites that the managing committee of the parish churches shall have a minimum of 5 and maximum of 15 members excluding the priest. Likewise, as per Ext.A4, the period of office of the managing committee is one year. It is on account of the said differences in the provisions regarding the strength of the managing committee and the term of the office bearers of the church, the plaintiffs are maintaining the stand that Ext.A1 decision is contrary to Ext.A4 constitutional the church. It is seen that Ext.A4 constitution of the church also provides that if the parish assembly requires more than 15 members for its parish managing committee, the parish assembly may, with RFA.No.501/2011. 7 the approval of the Diocesan Metropolitan, elect additional members required. Likewise, Ext.A4 constitution of the church also provides that the period of the managing committee of the church can be extended upto three years with the special permission of the Diocesan of Metropolitan. It is relying on the said provision in the Constitution, the contesting defendants maintain the stand that the provisions in Ext.A1 decision do not go against the provisions of the constitution. The court below, having regard to the fact that the administration of the church in accordance with Ext.A1 decision of the parish assembly till the institution of the suit was not objected to by the Diocesan of Metropolitan or anybody above him in the hierarchy of the church, accepted the stand of the contesting defendants.

8. In so far as it is declared by the Apex Court in P.M.A. Metropolitan v. Moran Mar Thomas (AIR 1995 SC2001 that parish churches of the Malankara Orthodox RFA.No.501/2011. 8 Syrian Church are to be administered in accordance with the 1934 constitution, there cannot be any exception for the said declaration in relation to a particular church and the exception, if any, in favour of a particular church can only be in accordance with the 1934 constitution. Clause 129 of the 1934 constitution of the church provides that the rules which are not contrary to the provisions of the constitution can be adopted by parish churches and such rules can be given effect to after obtaining permission of the managing committee of the Malankara Association. The fact that the first defendant church was being administered till the institution of the suit in accordance with Ext.A1 decision of the at the parish assembly is not in dispute. As noticed above, the dispute is mainly as

regards the participation of the permanent members of the Palal family in the managing committee of the church, the strength of the committee of the church and the term of office of the office bearers of the church. In so far as the 1934 constitution of the church RFA.No.501/2011. 9 enables the parish churches to adopt rules which are not contrary to the constitution with the previous permission of the Malankara association, I am of the view that the appropriate course would be to permit the first defendant church to prepare rules providing for constitution of a managing committee with due participation of the Palal family and submit the same for the approval of the managing committee of the Malankara Association as provided for under clause 129 of the constitution.

9. In the result, the appeal is disposed of as follows : (1) It is declared that future elections to the managing committee of the first defendant church shall only be in accordance with the 1934 constitution of the church and the rules of the church as approved by the managing committee of the Malankara Association as provided for under clause 129 of the 1934 constitution of the church. (2) The first defendant church is permitted to prepare RFA.No.501/2011. 10 rules providing for constitution of a managing committee with the due participation of the Palal family and submit the same for the approval of the managing committee of the Malankara Association in accordance with clause 129 of the 1934 constitution within six months from the date of this judgment and in that event, the existing managing committee elected to the office as per the order passed by this Court in I.A.No.1552 of 2013 will continue till a decision in that regard is taken by the managing committee of the Malankara Association. (3) If rules are not prepared and submitted for the approval of the managing committee of the Malankara Association by the first defendant church as directed in this judgment within the time stipulated, the election to the managing committee shall be conducted after the expiry of the said time limit in accordance with 1934 constitution of the church. (4) If the managing committee of the Malankara RFA.No.501/2011. 11 Association does not take a decision on the rules submitted by the first defendant church for approval within a period of three years from the date of assumption of office by the existing members of the managing committee of the first defendant church, election to the managing committee of the first defendant church shall be conducted thereafter for another period of three years, as directed by this Court in

the order on I.A.No.1552 of 2013. All interlocutory applications in this appeal are closed. Sd/- P.B.SURESH KUMAR, (JUDGE) Kvs/- // true copy // PA TO JUDGE.

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