

In the Court of the I Addl. District Judge, Ernakulam

Present:

Sri. N. Rajendran, I Addl. District Judge
Tuesday 6th January 1998/16th Pousha 1919

O.S. No. 46/1977

Plaintiffs:



1. Rev. Fr. Ouseph,
S/o. Poullose, aged 38, Vicar,
St. Mary's Orthodox Church, Odackali
Thalapunja residing at Patthickal House,
Perumbavoor, Perumbavoor village,
Kunnathunadu

2. Rev. Fr. Jacob, aged 44,
Assistant Vicar, do. do.
residing at Athirampuzhayil house,
Vengoor kara, Vengoor East Village,
Kunnathunadu Taluk

3. Thomas S/o. Thomas, aged 59,
Trustee St. Mary's Syrian Orthodox Church, *Odackali*
Thalapunja kara, residing at
Mannaliyil house, Thalapunja kara,
Asamannoor, via Kunnathunadu Taluk

4. Chacko S/o. Avira aged 26, Trustee,
St. Mary's Syrian Orthodox Church, Odackali
Thalapunja kara, residing at Pomackal House,
Punnayam kara, Assamannoor village,
Kunnathunadu Taluk.

By Adv. Anantha Subash nair
S. Syam ad T. P. Muralidharan

Defendants:

1. Rev. Fr. Poullose Paily, aged about 45,
Asstt. Vicar, Thalackod Syrian Orthodox Church,
residing at Punnackappill house,
Kuttalenji kara, Eramalloor village,
Kothamangalam Taluk.

2. Rev. Fr. Joseph Paily, aged about 60
Vicar, Thalacode Jacobite Syrian Church
residing at Puthukunnath house, Panipra kara,
Kottappady village, Kothamangalam Taluk

3. Rev. Fr. Varghese, S/o. Joseph, aged about 40,
Asstt. Vicar, Hebrone Church, Kottappady
residing at Erumala House, Kuttalenji kara,
Eramalloor village, Kothamangalam Taluk



By Adv. Biju Babu

This suit was originally filed before the Munsiff's Court, Perumbavoor as O.S.315/74 and subsequently transferred to this court and renumbered as O.S.46/77.

This suit having been finally heard in the presence of the above advocates for both sides and stood over for consideration till this day, the court delivered the following:

J u d g m e n t

This Suit O.S.46/77 was originally filed before the Munsiff's Court, Perumbavoor as O.S.No.315 of 1974 and subsequently transferred to this court and renumbered as O.S. No.46 of 1977.

2. Suit is for injunction. Plaintiff averments are as follows: The first plaintiff is the Vicar and 2nd plaintiff is the Asstt.Vicar of St.Mary's Church Odakkali, Thalapunja kara, Assamanoor village, Kunnathunadu Taluk. The plaintiffs 3 and 4 are lay trustees of the said church. The St.Mary's Church and its properties are belonged to the parishioners of the church. Defendants 1 and 2 are Assistant Vicar and Vicar respectively of the Thalacode Jacobite Syrian Church, Kothamangalam Taluk and 3rd defendant is the Vicar of Hebrone Church Kottappady in Kothamangalam Taluk. Moreover all the defendants are parishioners of the Hebrone Church, Kottappady. As per the approved custom and practice of the Syrian Orthodox Church, no priest validly appointed as the Vicar of a particular church perform or interfere with the administration of the religious ceremonies of the parish churches

or the religious requirement of the members of the parish church except without the express consent or permission of the Vicar or Vicars or in their absence the Kaikkarans of that particular parish church. So the defendants have no right whatsoever in the plaint church. But against the established practices of the Syrian Orthodox Church, at the instigation of the 12th defendant, the defendants performed the last ceremonies of the mother of Varghese, Parathyvayalil, performed unauthorisedly and without getting the permission or consent of the plaintiffs, who are the Vicar and Asst. Vicar and trustees respectively of the plaint church, thereby causing interfering of the plaintiffs right and causing material loss to the plaint church. The Managing committee of the plaint church condemned the activities of the defendants and decided and authorised plaintiffs 3 and 4, and the plaintiffs informed of the defendants to restrain from the above said and other unauthorised activities and interference in future, and the defendants was informed by plaintiffs numbers 3 and 4 and requested them not to commit such unauthorised activities in future. Even then, the defendants persisted and it is continuing and committing the said unauthorised activities. In April 1974, the first and second defendant performed the 40th day celebration of the deceased Mariam without getting the permission or consent of the plaintiffs. The defendants

are not having any such rights or power and they have caused material loss to the plaint church. In spite of the decision of the Managing committee and its request made through plaintiffs 3 and 4 to the defendants, not to cause their unauthorised activities and interfering in the affairs of the church, the first and second defendant performed the last ceremonies of deceased Parathuvayalil Varkyey on 26th June 1974. Since the defendants persisted in the illegal activities, the managing committee decided to place the said unauthorised activities of the defendants before the general body of the parish. On July 14th 1974 the general body of the parishioners of the plaint church convened and it was decided not to allow or permit any of the defendants or their agents or nominees to enter the plaint church and to take appropriate steps to realise the loss caused to the plaint church by the defendants by their unauthorised activities within the plaint church and within its jurisdiction. The decision of the general body was informed of to the defendants, personally through the 3rd and 4th plaintiff. But on 22.9.74 at the instigation and connivance of second and 7th defendants and against the decision of the general body of the plaint church, the first defendant tried to enter the plaint church and its properties and to obstruct the religious ceremonies of the church. The defendants have no manner of right to interfere the activities of the plaint

church. The plaintiffs believed that the defendants will interfere and obstruct the harmonious activities of the plaintiff church in future also. It is also learnt that the defendants are making hectic preparations to create unfair conditions and disorderly atmosphere in the plaintiff church in violation of the sanctity of the church and religion. In view of the circumstances and unauthorised activities of the defendants, the plaintiffs are entitled to get a permanent prohibitory injunction against the defendants restraining them or their nominees or representatives or supporters or followers to enter into or to cause to enter into or in any manner interfere with or to cause to interfere with the religious ceremonies in the plaintiff church and within its jurisdiction and trespass into the plaintiff church and its properties.

3. The defendants filed a joint written statement contending as follows: The suit is one touching with religion and hence not maintainable before the court. The plaintiff has no right to institute this suit. It is admitted that the plaintiffs numbers 1 and 2 are Vicar and Assistant Vicar respectively of the 'St. Mary's Church Odakkali; but plaintiff numbers 3 and 4 are not legally elected trustees of the church and they are not having the right to function as trustees. They are person who are joined with the group of person, who are doing

activities against the Diocesan Metropolitan and other ecclesiastical dignitaries of the Sabha. The plaint schedule church is a church, which is administered as per the Constitution of Malankara Orthodox Suriyani Sabha and the averments in the plaint that plaint church and its assets are belong to parishioners are denied. The averments in para 2 about the vicarship of defendants are correct. But the ~~allegation~~ allegation contained in para 3 are denied and there is no such procedural authority either in the plaint church or in Malankara Orthodox Sabha. The non-disclosure of the right to appoint Vicars to a parish church is with ulterior motive. It is the Diocesan Metropolitan, who is having authority to appoint and remove Vicars in a parish church. It is the authority of the Diocesan Metropolitan to appoint Assistant Vicars also. The plaint church is a parish church included in the Diocese of Ankamali and it is under the administration of His Grace Philipose Mar Theophilose, who is the Metropolitan of Ankamali Diocese. The plaintiffs 1 and 2 are appointed by the said Metropolitan, Philipose Mar Theophilose. The trustees have no right in the appointment of Vicars or to take any Vicar to plaint church to perform religious function. It is true that on 12.3.1974 the defendants went to the house of deceased Maria, who is the wife of Varkey of Parathuvayalil

but the rest of the averments contained in that para are denied as false. The defendant as Vicars of Malankara Orthodox Suriyani Sabha have got right to visit the house of a deceased, when any members of the house make a request for the same. The defendants have got right to take part in the prayer, which is being conducted in the house and there is nothing illegal in doing so. There is no need for any sanction from the plaintiffs for the same. There is no prevailing rule in the sabha to desist the defendants from doing so. The defendants have no knowledge about the averments made in para 5 in the plaint. The plaintiff has no right to take any decision as stated in para 5 of the plaint. The defendants have not committed any act, so as to take such a decision. No decision was informed to the defendants as claimed. The averments in para 6 in the plaint are also denied. The defendants have not intended or did any unauthorised act without right. It is true that the second defendant have participated in the prayer done in the house of Maria in connection with the 40th day celebration of her death. But there is no celebration as stated in para 6 of the plaint. No decision of the parishioners of St. Mary's church were informed to the defendants by plaintiffs 3 and 4 or made any demand. It is true that

defendants have participated in the last ceremonies of Varkkey Parathuvayalil and it is done at the request of a member of his family and second defendant took part in the last ceremony in the capacity as Vicar and second defendant have got right for the same. As averred in para 8 in the plaint, he has no right to convene a meeting to take decision abuting the fundamental right of defendants. Even if they have taken as averred in para 8, those are illegal and those decisions are void and not binding on the right of defendants. Nobody has got a right to prevent the defendants from going over to plaint church and to conduct poojas or participate in the prayers. A faithful follower of Orthodox Sabha is entitled to go in any of the church under the Sabha and take part religious functions there. The 1st defendant never gone to plaint church at the instigation of defendants 2 and 3 as alleged in para 9 in the plaint. There is no attempt or even intention on the part of the first defendant to enter the plaint church so as to cause any obstruction to the religious ceremonies there. The first defendant has gone to the plaint church on 22.9.1974 for taking part in the prayer in the church, as he is a member of plaint parish as well as Vicar in profession. But on that day the prayer in the church could not be conducted peacefully because of the obstruction caused by the plaintiffs and their associates. The attempt of the plaintiff and

is to take forcible possession of the assets of the plaintiff church for unfair gain. The defendants have no intention, what so ever to cause any obstruction to the functioning of plaintiff church and they have never attempted to do any act of violation as alleged. The act of attributing such allegations against the defendants are cruel and against truth for defaming them. The plaintiffs are not entitled to get the relief of injunctions as prayed for.

4. From the above pleadings of the parties the following issues were raised and settled for decision by my predecessor then in office. The issues are:

1. Whether the suit is not maintainable ?
 2. Whether the plaintiffs ~~have~~ are to conduct the religious ceremonies in the church and its parishioners ?
 3. Whether the defendants have any right to conduct the religious ceremonies of the parishioners and in the church without the consent of the plaintiffs ?
 4. Whether the injunction prayed for is allowable ?
 5. Reliefs and costs.
5. No oral or documentary evidence was adduced by both sides.

6. Issue Nos. 1 to 4: There is a ^{as} ~~case~~ O.S.No.40 of 1977 in respect of the same church and both sides adduced oral and documentary evidence in that case. That case is one for declaration and permanent injunction, basing on an allegation that as per Kalpana No.117 of 1976 dated,

14th January 1976, issued by His Grace Philipose Mar Theophilose, the Metropolitan of Ankaamali Diocese, transferring the Vicar Fr. Paulose Ouseph, Pathickal house, Perumbavoor, who is the Vicar of the plaint church and Fr. Jacob, Athirampuzha house, Vengoor, who is the Assistant Vicar and appointing Rev. Fr. Tharian, Koerheril house, Kuruppampady as the Vicar in the place of Fr. Paulose Ouseph. In that case, Rev. Fr. Tharian, Koocheril is the first plaintiff and the present plaintiffs 1 and 2 are defendants 1 and 2 respectively. Both sides tried to adduce evidence in OS.No.40 of 1977 for showing their respective rights in this case. This court is not justified to appreciate the evidence adduced in another case, without incorporating the same in this case as part of the evidence or presenting the said evidence in this case legally. The status of plaintiffs 1 and 2 at the time of the suit is admitted by the defendants in their written statement. But they denied the status of plaintiffs 3 and 4. It is also admitted case of both sides that plaint church is a parish church under Malankara church. When it is admitted that the plaint church is a parish church of Malankara church, the decision of the Supreme Court in Sabha case, reported in AIR 1995 SC 2001 will automatically come into operation in the case of the plaint church as well. This is a suit for perpetual injunction. The defendants straightly denied

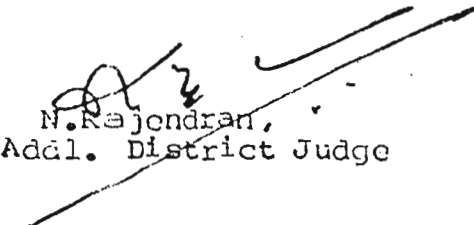
every allegations levelled against them for granting a relief in favour of the plaintiffs. When it is found that Sabha Constitution of 1934 is binding on the plaint church, it is legal to find that clause 40 in the Sabha constitution of 1934 is applicable to plaint church also. Clause 40 deals with the right of appointment, removal and transfer of priest to a parish church. The right is conferred on the Diocesan Metropolitan. If that is so, the Kalpanas of Metropolitan of Ankamali Diocese is binding on plaintiffs and defendants in this case. The learned counsel appearing for the defendants argued before me, that the plaintiffs 1 and 2 were removed from this plaint church by Kalpanas of the Metropolitan of Ankamali Diocese, who is competent to issue that Kalpanas. No evidence, whatsoever produced by the plaintiff to show their authority and to show their allegation of illegal act on the part of the defendants. In the light of the arguments of the learned counsel for defendants, the Status of plaintiffs to maintain the suit at present is in doubt, No legal evidence, whatsoever produced by the plaintiffs to show their right to claim for the relief as prayed for in the suit, Even then, the burden to prove the facts in this case is mainly vested upon the plaintiffs. So, for want of evidence, I hold that the suit is not maintainable and plaintiffs are not entitled to conduct religious ceremonies in the church and its parishioners,

unless power is conferred on them by the Kalpanas of Metropolitan of Ankamali Diocese, which is lacking in this case. Regarding the right of defendants also, it is depending upon the kalpanas of Metropolitan of Ankamali Diocese. Consent of the plaintiffs is not a pre-requisite to defendants for conducting the religious ceremonies to the parishioners of the plaint church, when there is authority from the Metropolitan of Ankamali Diocese. In view of the above facts, I hold that, plaintiffs are not entitled to get the injunction as prayed for. Thus, these issue numbers 1 to 4 are found against the plaintiffs.

7. Issue No.5: In view of my finding on issue Nos. 1 to 4, the plaintiffs are not entitled to get a relief in this case and so the suit is dismissed. By considering the facts and circumstances in this case, I direct both sides to suffer their respective costs also.

In the result, suit is dismissed without costs.

Dictated to the Confd. Asstt., transcribed and typed by him, corrected by me and pronounced in open court on this the 6th day of January, 1998.


N. Rajendran,
I Adl. District Judge

Appellate Delivered in as Adl. Judge

Spaced by
A.C. Desai
1/10/98

AS 6/2/1972

O.S. NO. 46/1972

Judgment

DISTRICT COURT, ERIVARDURAN
Case No. 46/1972
Plaintiff: Adv. Rije Abubakar
Defendant: Adv. Rije Abubakar
Date of filing of plaint: 24-2-78
Date of filing of written statement: 25-2-78
Date of judgment: 4-3-78
Filing of written statement: 4-3-78
Date of judgment: 4-3-78
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