



**IN THE COURT OF THE DISTRICT JUDGE, ERNAKULAM**

Present: Sri. V. G. Anilkumar ., B.Sc, LL.B., I Addl. District Judge.

Tuesday the 16<sup>th</sup> day of August 2011/25<sup>th</sup> Sravana 1933

O.S. 43/07



Plaintiffs

1. K.S. Varghese, S/o.Scaria, aged 61, Kavanachottil House, Palackamattom Kara, Aikkaranadu south Village, Kunnathunadu Taluk.
2. V.M.George, S/o.Mathai, aged 40, Vedankulangara House, Mangattoor Kara, Aikkaranadu North Village, Kunnathunadu Taluk.
3. C.K.Thampi, S/o.Kuriakose, aged 42, Chundathadathil House, Vadayampadi Kara, Aikkaranadu South Village, Kunnathunadu Taluk.

By Adv. M/s. N. Sukumaran & . S. Shyam..

Defendants

1. St.Peter's and St.Paul's Syrian Orthodox Church , Kolencherry, represented by its Vicar Fr.Varghese Edumary, Edumary house, aged 58, S/o. Paily, Kolenchery Kara, Aikkaranadu South Village, Kunnathunadu Taluk.
2. Rev.Fr.Varghese Edumary, agd 58. S/o.Paily, Vicar, St.Peter's and St.Paul's Syrian Orthodox Church, Kolenchery Kara, Aikkaranadu South Village, Kunnathunadu Taluk.
3. Rev. Fr. Jacob Kurian, S/o. Kurian, aged 55, Priest, St.Peter's and St.Paul's Syrian Orthodox Church, Kolenchery Kara, Aikkaranadu South Village, Kunnathunadu Taluk.
4. P.M.George, aged 72, S/o.late Sri.Mathulla, Eloor, Pannikuzhiyil House, Elamkulam Kara, Aikkaranadu - South Village, Kunnathunadu Taluk.
5. K.A.Thampi, S/o.Abraham, aged 63, Kunnathukulathukattil House, Kinginimattom Kara, Aikkaranadu South Village, Kunnathunadu Taluk.
6. T.V.Puravathu, S/o.Varkey, aged 85, Thamarachalil House, Elamkulam Kara, Aikkaranadu South village, Kunnathunadu Taluk.



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24/8/5/11

7. C.V. Paily, S/o.Varkey, aged 100, Kochiputhenpurayil ,  
Karukappilly Kara, Aikkaranadu South village, Kunnathunadu Taluk.
  8. P.P.Thomas, aged 68, Pookkolayil House,  
Kolenchery Kara, Aikkaranadu South Village, Kunnathunadu Taluk.
  9. A.V.Pathrose, S/o.Varkey, aged 75, Athikkuzhiyil House, Mangattoor  
Kara, Aikkaranadu North Village, Kunnathunadu Taluk.
  10. Thomas M.Alias, S/o.Alias, aged 35, Mundayil House,  
Peringole Kara, Aikkaranadu North Village, Kolencherry,  
Kunnathunadu Taluk.
  11. Jogi George, aged 33, S/o.C.M.George, Cholattu House,  
Puthencruz Kara, Aikkaranadu North Village, Vadayampady P.O.,  
Kunnathunadu Taluk.
  12. Babu Paul, S/o.Late Sri.P.M.Paily Pilla, aged 52,  
Perumpillil House, Elamkulam Kara, Aikkaranadu South Village,  
Kolenchery P.O., Kunnathunadu Taluk.
- Addl. D13. Mathew Yohannan, S/o. Mathew, Vallikattil,  
Aikkaranadu North, Mangattoor.
- Addl. D14. Sunil Mathew, S/o. Mathew, Njaruthottiyil,  
Elamkulam Kara, Kolenchery.
- Addl. D15. K.M. George, S/o. Mathai, Kodyattu,  
Mazhuvannur village, Ezhupram, South Mazhuvannur.
- Addl. D16. Paul P. Kunnath, S/o. Paulose, Kunnath, Peringodu,  
Aikkaranadu North, Kolenchery.

Addl. Defendants 13 to 16 impleaded as per order in I.A.  
4032/2007 dated 5-9-2007 of I Addl. District Judge, Ernakulam.

*D1, D2 and D5 by Adv.Sri .Saji Varghese*

*D1, D3 and D9 by Adv.Sri. S. Sreekumar*

*Addl. D13 to D16 by Adv. Sri. V.P.K. Panicker.*

*D4, D6 to 8, D10 to D12 Exparte.*

This Original suit filed Under order VII Rule 1 and Section 26 and 92 of  
the CPC

*This Original suit came up for hearing on 2-8-2011 in the presence of  
counsels for both sides and having stood over for consideration till this date  
and the court on 16-8-2011 delivered the following:-*

## JUDGMENT

The suit is filed for declaration that the first defendant church and its assets including educational institutions are liable to be administered only in accordance with the terms of the Udampady No.31 dated 13/12/1088 M.E registered at Alkkaranad Sub-Registry office and in the alternative to settle a scheme for the administration of the first defendant church, its assets and institutions, to appoint a Court Receiver to manage the affairs of the first defendant church, its assets and institutions pending disposal of the suit, to conduct election to the managing committee of the first defendant church and to the governing body of its institutions through the Receiver to be appointed after preparing a proper voters list of all the parishioners of the church irrespective of their factional affiliations and to entrust the management to the elected persons and to issue permanent injunction to restrain the 3<sup>rd</sup> defendant and his agents from receiving the key of the church building from the Executive first Class Magistrate, Moovattupuzha.

2. The plaintiffs' contentions are as follows:- The first defendant is a parish church established by the Jacobite Syrian Christian community at Kolanchery several centuries ago as a public trust of religious nature. The plaintiffs as parishioners of the first defendant have interest in the trust. So they filed the suit with leave u/s. 92 of C.P.C.. There were fights and prolonged litigations between the 2 factions by name orthodox faction and patriarch faction among parishioners of the first defendant.

Now the 2 factions are conducting services in the church in turns. The 2<sup>nd</sup> defendant is the present Vicar of the patriarch faction and 3<sup>rd</sup> defendant is the priest of the orthodox faction. Plaintiffs and defendants 2, 5 and 7 belong to patriarch faction and the other defendants belong to catholicos faction. From the very beginning the affairs of the first defendant and its assets were being administered by a committee consisting priests and parishioners. In the year 1908 A.D. an Udampady was executed by the representatives of the first defendant regarding the manner in which its affairs were to be administered. This udampady was superseded by another Udampady dated 13/12/1088 M.E corresponding to the year 1913 A.D. As per that Udampady to which 5 priests and 16 lay trustees were parties, specific provisions for the priests to render services in turns and the trustees to administer the assets of the church were made. The church was being administered all along as per that Udampady. The committee elected as per that Udampady was in administration when factional fights resulting in closure of the church erupted. O.S. 19/1980 was filed by the orthodox faction before this Court against the then committee members as defendants 1 to 18 and an Advocate Receiver was appointed in that case. The suit was dismissed as per judgment dated 27.2.1997. The Court directed the Receiver to hand over possession of the assets to the surviving defendants in that case and they unanimously authorized the first plaintiff in the present suit who was 8<sup>th</sup> defendant in O.S. 19/1980

and Sri.Cheria Pathrose who was the first defendant in OS. 19/1980 (since deceased) to take charge of the assets of the church from the Receiver . Accordingly the Receiver handed over the keys of the church to them. One set of keys of the church is still with the 1<sup>st</sup> plaintiff . The locks are under double locking system and can be opened only with both sets of keys. Fr.E.P Zacharia was performing services on behalf of the patriarch faction, was transferred by the Metropolitan of the orthodox faction. Later law and order problem arose and the church was closed by the Executive First Class Magistrate, Moovattupuzha from 1998 onwards. During that period separate prayer centres were established by the 2 factions . Later, as per the consensus arrived in discussions, the church was kept open by the Revenue Divisional Officer and the services were conducted in turns by priest of both factions. The defendants 10 and 11 filed W.P(C) 20938 of 2005 before the Hon'ble High Court against the action of the Revenue Divisional Officer keeping the church open. As per the judgment dated 9/12/05 ,the Hon'ble High Court directed him to return the key of the church to Fr. M.V. Abraham. In Writ appeal No. 47/06, the Hon'ble High Court directed to keep the key with the Sub Divisional Magistrate for 15 days and thereafter to keep the key in accordance with the orders of Civil Court in a suit to be filed within 15 days by the appellants. The 4<sup>th</sup> defendant who was one of the appellants, did not co-operate with the first plaintiff. The 4<sup>th</sup> defendant stated that he is not willing to join as a plaintiff in the suit. So the first plaintiff along

with others filed this suit. The survivors of the earlier elected committee are the first plaintiff and the defendants 4 to 9. There has been no fresh election of the managing committee of the church for the past several years. There is practically no administration of the assets of the church. The income of the Church is not properly collected, accounted, preserved or utilised. The hundies have not been opened for several years. Sri. Pally Pillal who was officiating as the Manager of the educational institutions, passed away on 1/7/07. A new governing body has to be elected. The 12<sup>th</sup> defendant is advancing a false claim that he is the chairman of the school board and is entitled to be approved as manager of the school. The 1<sup>st</sup> defendant church has around 2500 families and around 10,000 parishioners. An upto date membership register has to be drawn up. The election to the managing committee of the church and to the governing body of the educational institutions also has to be conducted. O.S. 30/97 filed by the orthodox faction was dismissed and it was found in that judgment that there are two sects among the parishioners, one approves 1934 constitution and the other, 2002 constitution and if a general body of the entire parishioners as stated in Ext.B18 in that case is called, the dispute could be settled and managing committee could be elected for administration of the church and the school. The judgment became final. The first defendant church has not accepted 1934 constitution. The church is to be governed as per Udampady of 1088 M.E.

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3. In the plaint, first defendant is shown as St.Peter's and St.Paul Syrian Orthodox Church, Kolenchery represented by its vicar Fr. Varghes Edumuri. Rev. Fr. Varghese Edumuri is also arrayed as second defendant. Even then, a joint written statement is filed for defendants 1, 3 and 9. Another joint written statement is filed for defendants 1,2 and 5. It may be because both factions claimed right over the church, the written statement was filed for first defendant by both sides.

4. The contentions in joint written statement of defendants 1,3 and 9 in brief are as follows:- The first defendant church is a parish church of Malankara Orthodox Syrian Church which was founded centuries ago. Even though the church was administered as per Udampady of 1088 ME, after framing of constitution on 26/12/34 in the meeting of Malankara Association the said Udampady ceased to exist. After promulgation of the 1934 constitution, the church is being administered in accordance with that constitution. Thereafter, dispute arose between the 2 factions which culminated in the decision of the Hon'ble Supreme Court which is reported in 1958 KLT page 731. In pursuance of Kalpana No. 20/59 dated 20/2/59 of the Diocesan Metropolitan, the annual general body meeting of the parish assembly was held on 8/3/59. It was presided over by Augan Mar Thimothiose who was the Diocesan Metropolitan of cathelicos group and resolved to adopt and accept 1934 constitution to the first defendant church. Thereafter, the church and its assets and educational institutions are being

administered under that constitution. The annual general body meeting of a parish assembly held on 16/12/73 elected the trustees and managing committee members of the first defendant church. Since dispute arose again between 2 factions in 1974, some of the parishioners filed OS 19/1980. In O.S 31/98, this court held that the first defendant is a constituent church of Malankara Church and is being administered under 1934 constitution and the Diocesan Metropolitan is competent to transfer a priest. That order was confirmed by the Hon'ble High Court in CMA 345/1998 and by the Hon'ble Supreme Court in SLP (civil) 9141/2000. In PMA metropolitan case (AIR 1995SC 2001) the Hon'ble Supreme court upheld the validity of 1934 constitution and declared that all parish churches of Malankara church are episcopal and are to be governed and administered under 1934 constitution. At the instance of the patriarch faction, the church was kept under receivership from 1984 to 1987 after the dismissal of OS 19/1980. The receiver was discharged and its properties are under management of the trustees elected in accordance with the 1934 constitution till the church was closed by the Sub-Divisional Magistrate on 11/7/05. The annual general body meeting of parish assembly was held on 25/3/2007 as provided under clause 17 of 1934 constitution. In that meeting the trustees, members of managing committee and the members of the school managing board, hospital board and college board were elected. The Diocesan Metropolitan approved decision of the parish assembly by kalpana No. 34/07. The

new managing committee assumed charge on 1/4/07 . Thereafter, annual general body meeting of the first defendant church was periodically held in 2008, 2009 and 2010. The church is under the management of the trustees and committees so elected. There is proper administration and management of the church. The plaintiffs deviated from the Malankara Orthodox Syrian faith for which the church was established and joined in a new Sabha called Yacobaya Suriyani Christian Association formed in the year 2002 and they have no right or authority in the temporal and ecclesiastical affairs of the first defendant church. The second defendant never officiated as the vicar of the 1<sup>st</sup> defendant church. The averment that one set of keys of the church is still with the first plaintiff, is false. The averment that during the pendency of OS 19/1980 and thereafter, services in the church are being conducted in turn by priests of the 2 factions, is false. It is true. at present priests of 2 factions are conducting services in turn as an interim arrangement. The church is being properly managed and administered by the committee elected as per 1934 constitution . So the suit has to be dismissed..

5. The contentions in brief in the written statement filed by the defendants 1, 2 and 5 are as follows:- The plaintiff church is a public trust of religious and charitable nature established for the benefit of its parishioners for their worship of God according to the faith , doctrine ,practice and discipline of Syrian Orthodox Church in the communion of his holiness the Patriarch and Antioch and all the East. The 2<sup>nd</sup>

defendant is the vicar of the first defendant church and he is competent to represent the first defendant church. The religious services in the plaintiff church can only be conducted by the religious dignitaries who accept supreme spiritual headship of his holiness Patriarch and Antioch and all the East. The ecclesiastical and temporal activities in the church were being conducted in accordance with Udampady No. 31/1088. The formation of 1934 constitution did not affect the activities of the church. The Malankara Orthodox Syrian Church is not prepared to accept the verdict of the Hon'ble Supreme Court to the effect that the patriarch of Antioch is the Supreme spiritual head of Universal orthodox Syrian Churches. That is the stumping block for unity between the 2 groups. The Malankara Orthodox Syrian Church is attempting to annex the first defendant church to their fold by interpreting the judgment of the apex court wrongly. The plaintiff church remained closed for a long time without administration and without proper and effective quantum of religious functions. The assets of the church also remain without proper and effective management.

6. After filing of the suit, additional defendants 13 to 16 were impleaded as per order in I.A. 4032/07. The additional defendants 13 and 15 filed written statement. The contentions in brief are as follows:- The plaintiff church is a public trust of religious and charitable nature established for the benefit of its parishioners for their worship of their God according to the faith, doctrine, practice and discipline of syrian

orthodox church in the communion of his holiness the Patriarch and Antioch and all the East. The religious services in the plaint church can only be conducted by the religious dignitaries who accept the supreme spiritual headship of his holiness of Patriarch and Antioch and all the East. The plaint church was governed by the provisions in Udampady 31/1088. During the pendency of O.S 19/1980, Advocate Sri Babu T.Cherian was appointed as the Receiver of the church. After the dismissal of that suit, Receiver gave one sets of keys of the locker, strong rooms and office rooms to Sri.Cheria Pathrose who was elected to represent the orthodox faction and other sets of keys to Sri.K.S. Varghese who represents the patriarch faction. There are more than 3000 families comprising of above 10,000/- members as parishioners of the church. The disputes revolve around the nature of the governance in the church and the faction head, who is to administer the ecclesiastical necessity of a section of the society. So it is necessary that the plaint church and its assets which belong to the parishioners, have to be governed in accordance with the will, pleasure and faith of the majority of the parishioners. The majority of the parishioners are not interested in factional disputes and they are only interested in conducting religious services in accordance with the original faith. The religious dignitaries who do not accept the spiritual supremacy of Patriarch and Antioch and all the East are not entitled to conduct religious services in the church. So it is necessary to pass preliminary decree to cause a referendum to

ascertain the allegiance of the parishioners of the plaint church on the aspect of that church. Prayers are also made for declaring that the plaint church and its assets are to be governed in accordance with the faith and will professed by the majority of the parishioners and to pass a final decree declaring that the plaint church and its assets are to be administered in accordance with the decisions of the majority of the parishioners and to issue permanent injunction to restrain the 3<sup>rd</sup> defendant, his men or agents and religious dignitaries who are not accepting the spiritual supremacy of the Patriarch of Antioch and all the East. (appears the injunction prayer is incomplete)

7. The defendants 4,6,7,8,10,11 and 12 were set exparte. Later, it is reported that D7 is no more and no legal representatives are impleaded. The additional defendants 14 and 16 filed no written statement. The defendants 1,3 and 9 filed additional written statement after the filing of the alleged counter claim by additional defendants 13 and 15.

8. My learned predecessor-in-office framed the following issues for consideration:-

1. Whether the suit is maintainable?
2. Whether the declaration sought for is allowable?
3. Whether a scheme has to be settled for the administration of the church as prayed for?
4. Whether the election to the managing committee of the church has to be conducted by a Receiver so appointed after preparing a proper voters list of the

parishioners of the 1<sup>st</sup> defendant church as prayed for?

5. Whether the Injunction prayed for is allowable?
6. Relief and costs.

9. The evidence consists of the oral testimony of PW1, 2 and DW1 to 3 and Exts, A1 to A7 and B1 to B26.

10. Issue No.1:- There is no specific contention in the written statement regarding the non-maintainability of the suit. Evidently, this is a suit for declaration regarding administration of the church and leave u/s. 92 of CPC was obtained. So it is found that the suit is maintainable.

11. Issue No.2:- The second plaintiff is examined as PW1. He filed proof affidavit reiterating the contentions in the plaint. According to him, the first defendant-church was being administered all along as per 1913 Udampady, the copy of it is marked as Ext.A1. He further said that orthodox faction filed O.S. 19/1980 before this court, that the same was dismissed and Ext.A2 is the certified copy of the judgment in that case. He stated that there were fights between the orthodox faction and the patriarch faction among the parishioners of the first defendant church, that the first defendant has not accepted the 1934 constitution and so it has to be administered under the Udampady of the year 1088 M.E. He also stated that after the year 1972, election to the managing committee of the first defendant church and the governing body of its institutions, were not conducted and that voters list already prepared in O.S 19/1980

with suitable modifications can be taken as a basis for the election.

12. The plaintiff examined one witness as PW2 who filed proof affidavit stating that he is a parishioner of the plaint church and that the church is being administered as per Ext. A1 Udampady.

13. The 5<sup>th</sup> defendant is examined as DW1. He filed proof affidavit in support of the contentions of the plaintiff. The 6<sup>th</sup> defendant is examined as DW2 and he filed proof affidavit stating that the church is being administered as per Ext.A1. The 3<sup>rd</sup> defendant is examined as DW3. He filed proof affidavit reiterating the contentions in his written statement. According to him, the church is being administered in accordance with 1934 constitution, copy of it is marked as Ext.B1.

14. Ext.B5(a) is said to be the minutes of the general body meeting of parishioners of the church conducted on 16/12/73. Learned Senior Counsel for the plaintiff pointed out that as per Ext.B5(a), 21 members were elected to the committee and it would show that the said election was not conducted in accordance with the 1934 constitution and so it is evident that 1934 constitution is not accepted by the first defendant church. Learned Senior Counsel for the defendants 3 and 5 pointed out that only 15 members were elected in that meeting and other members are officiating members and nominated members. Learned senior counsel for the defendants 2 and 5 also pointed out that as per the decision of the Hon'ble Supreme Court in the case PMA Metropolitan Vs. Moran Mar Marthoma (AIR 1995 supreme court 2001) it is finally

concluded that 1934 constitution is valid and so the plaintiffs and other defendants are not entitled to contend against it. Learned Senior Counsel for the plaintiffs submitted that the said finding of the Hon'ble Supreme Court is not binding on the first defendant church as it was not a party to the suits considered in that judgment and the first defendant church did not accept that 1934 constitution. It is not pointed out by the senior counsel for the plaintiffs that there is any direction by the Hon'ble Supreme Court that each parish church should accept or not to accept 1934 constitution by convening the general body of the parishioners. In the said judgment, the Hon'ble Supreme Court discussed in detail regarding the history of Jacobite Syrian Church, the dispute between the patriarch faction and orthodox faction in Malankara Church etc and conclusions were made in paragraph 76 of the judgment by his Lordship Justice R.M Sahai . In paragraph 142, conclusions made by his Lordship Justice B.P Jeevan Reddy for himself and on behalf of his lordship Justice S.C Sen are stated. Some of the conclusions are that the constitution framed in 1934 by Malankara Association is valid, the meeting held by patriarch group in 1934 was invalid, both catholicos and patriarch groups continue to be members of Syrian Orthodox Church, the Patriarch of Antioch has no temporal powers over the churches, the effect of creation of catholicate at Malankara and 1934 constitution is that the Patriarch can exercise spiritual powers subject to the constitution, that all churches except those of Evangelistic Association or Simhasana or St.

Mary are under spiritual and temporal control of Malankara Association in accordance with the 1934 constitution. In the judgment of his Lordship Justice B.P Jeevan Reddy it is held that in view of the fact that Patriarch himself created another center of power in India with the powers of ordaining Metropolitans, consecrating Morone and to exercise other spiritual powers over Malankara Church, it would be reasonable to hold that thereafter, Patriarch cannot exercise those powers unilaterally, i.e., without reference to the Catholicose . It is also stated that the persons appointed as Metropolitan or Malankara Metropolitan has to be accepted by the people as has been affirmed in the judgment in Seminary suit, that the Patriarch's power to ordain the Metropolitans now is subject to the constitution of 1934, that the 1934 constitution was approved at a validly convened meeting of Malankara Association , which association was created by the Patriarch himself under the resolutions of Mulanthuruthy Synod and that so the defendants in those cases cannot question the legality and validity of 1934 constitution in view of the acts and conduct of the Patriarch and members of his group subsequent to the judgment of the Hon'ble Supreme Court in AIR 1959 SC 31. It is also held that so far as the declaration of the Malankara Church being episcopal in character is concerned, all that need to be held is that it is episcopal to the extent it is so declared in 1934 constitution and that the said constitution also governs the affairs of the parish churches and shall prevail. But it was also made clear that Patriarch cannot be said to have

lost his spiritual supremacy over the Malankara church. It is also held that common properties (samudayam properties) held by the Malankara Church are vested in the Malankara church and others as declared in the judgment of the Hon'ble Supreme court in AIR 1959 SC 31.

15. In the present suit also the dispute is in between the patriarch faction and orthodox faction. The Hon'ble supreme court resolved the dispute and arrived at certain conclusions. So it cannot be said that the decision of the Hon'ble Supreme court cannot be applied in the present case. Even if first defendant church is not a party to those suits decided by the Supreme court, a decision was rendered in respect of the dispute whether the 1934 Constitution is valid or not which is also a dispute in the present case. The Hon'ble Supreme Court found that 1934 constitution is valid. So I am of the opinion that the plaintiffs even cannot contend that 1934 constitution is not valid and is not applicable to them. During cross examination PW1, DW1 and DW2 stated that they do not accept 1934 constitution. So the plaintiffs are not entitled to get a declaration that the first defendant church is to be governed as per Ext. A1 Udampady which would be against the decision of the Hon'ble Supreme court. So the issue is found against the plaintiffs.,

16. Issue Nos. 3, 4 and 5:- PW1, DW1 and DW2 stated that after the year 1972 election to the managing committee of the first defendant church and to the governing body of its institutions are not conducted. They have also a contention that a scheme has to be formulated and

election has to be conducted after preparing voters list including all parish members. DW3 stated that elections have been conducted regularly in accordance with the 1934 constitution and there is no necessity for formulating scheme or for conducting election by the court. DW3 produced Exts. B17 to 24 to show that elections were being conducted and the same is recognised by the Metropolitan. The basis of the claim for plaintiffs is that the parish church and its committees are to be governed by Udampady on 1088 ME and they do not recognise or accept 1934 constitution. As stated in the above issue such a stand by the plaintiffs or the Patriarch faction cannot be accepted as it is against the finding rendered by the Hon'ble Supreme Court. First of all they have to accept and recognise 1934 constitution and then only their prayer for conducting election to committees can be considered. There is no question at all to frame a scheme when 1934 constitution is in existence and when it is held valid and applicable to the 1<sup>st</sup> defendant-church. PW1 and DW1 answered in cross examination that they do not accept 1934 constitution. Learned counsel for the defendants 13 and 15 submitted that as his clients do not belong to any faction and as they want peace and proper administration in the first defendant church, a scheme has to be formulated and election has to be conducted including all parish members. But he also contended that 1934 constitution is not accepted by the first defendant church. Such a contention will not stand and so his prayer cannot be considered.

17. It is true in the case PMA Metropolitan Vs. Moran Mar Marthoma Mathews In paragraph 141 the Hon'ble Supreme Court observed as follows" If the plaintiffs mean merely spiritual control by saying episcopal, probably there may be no difficulty in holding that Catholicos and the Malankara Metropolitan have spiritual control over the Parish Churches, but if it means control over temporal affairs of, or title to or control over the properties of, the Parish Churches beyond what is provided in the Constitution, a declaration to that effect can be obtained only after hearing and in the presence of the concerned Parish Churches. It also appears that each of the Parish Churches / Associations has its own constitution, where under the general body of the Parishioners is declared to be the final authority in temporal matters. All this is mentioned only to emphasise that in the absence of Parish Churches and proper pleadings and proof, no declaration touching the Parish Churches can be granted in these suits." However, it is concluded by the Hon'ble Supreme court that 1934 constitution governs the affairs of the parish churches in so far as it does and that the power of the Malankara Metropolitan or the Metropolitan in temporal affairs must be understood in those suits in the same manner as has been declared in Samudayam judgment i. e. with respect to the common properties of the Malankara church as such. So the parish members in the first defendant church has right to decide regarding the administration of the properties and the educational institutions under it. But as stated earlier, only when the

plaintiffs or defendants 13 and 15 or other members in the patriarch faction accept and recognise 1934 constitution, their contention can be entertained. As pointed by the learned Senior Counsel for the defendants 3 and 9, only in a proper suit who recognise or accept the 1934 constitution, such a plea can be considered. So in the present suit it cannot be considered and decided whether election has to be conducted to the managing committee of the first defendant church and to the governing bodies of the educational institutions. So these points are answered against the plaintiffs and defendants 13 and 15.

18. Issue No. 6:- In the light of the finding in Issue No. 2 to 5 the suit and the counter claim by the defendants 13 and 15 have to be dismissed. In this case as per the order in IA 3984/10 it was found that the 3<sup>rd</sup> defendant is entitled to get keys of the first defendant- church. That order has to be confirmed in the light of the finding in the issues. Considering the facts and circumstances of the case, there is no order as to costs.

In the result, the suit and counter claim are dismissed without costs. The order passed in I.A 3984/2010 finding that the 3<sup>rd</sup> defendant is entitled to get keys of the office building, lockers etc. of the first defendant- Church is confirmed.

Dictated to the Confdl. Asst. Transcribed and typed by her, corrected and pronounced by me in the open court on this the 16<sup>th</sup> day of August, 2011.

Sd/-  
V.G. Anilkumar  
I Addl. District Judge.

APPENDIXPlaintiffs' Exhibits:-

- A1 - Certified copy of the Registered Udampady dated 13-12-1088 M.E. Of the Sub Registrars' Office, Aikkaranadu.
- A2 - True copy of the judgment dated 27-2-1997 in O.S. 19/1980 of the 1<sup>st</sup> Addl. District Court, Ernakulam (Certified Copy).
- A3 - True copy of the Resolution of the 1<sup>st</sup> Defendant Church dated 9-3-1997.
- A4 - True copy of the judgment in W.P.(c) No. 20938/2005 (P) dated 9-12-2005 of the Hon'ble High Court of Kerala.
- A5 - Certified copy of judgment dated 8-12-2006 in W.A. No. 47 of 2006 (E) of the Hon'ble High Court of Kerala.
- A6 - True copy of the constitution of the school scene belonging to the 1<sup>st</sup> defendant church passed on 23-10-1963.
- A7 - True copy of the judgment dated 14-6-2005 in O.S. 30/1997 of the 1<sup>st</sup> Addl. District Court, Ernakulam.

Defendants' Exhibits:-

- B1 - 1934 constitution.
- B2 - Certified copy of the Pothuyogam diary of 1<sup>st</sup> defendant church.
- B2(a)- Certified copy of Edavaka pothuyogam diary No.1.
- B3 - Managing committee diary of the 1<sup>st</sup> defendant church for the period from 15-3-1959 to 22-9-1964.
- B4 - Pothuyogam diary of the 1<sup>st</sup> Defendant church for the period from 29-10-1961 to 19-12-1971.
- B5 - Pothuyogam diary of the 1<sup>st</sup> Defendant church for the period from 30-1-1972 to 4-8-1974.
- B5(a)- Page Nos. 23 & 24 of Pothuyogam diary of the 1<sup>st</sup> Defendant church Dated 16-12-1973.
- B5(b)- Page Nos. 33 & 34 of Pothuyogam diary of the 1<sup>st</sup> Defendant church Dated 5-5-1974.

- B6 - Certified photocopy of judgment in As 304/97 dated 9-1-2001 of the Hon'ble High Court of Kerala.
- B7 - Declaration letter dated 12-3-97 of Fr. E.P. Zacharia given to H.G. Dr. Mathews Mar Severios, Metropolitan, Diocese of Kandanad.
- B8 - Declaration letter of Cheria Pathrose & K.S. Varghese dated 9-3-97 given to H.G. Dr. Mathews Mar Severios, Metropolitan, Diocese of Kandanad, Mar Pachomios Mount Aramana, Meempara.
- B9 - Kalpana dated 31-3-98 No. 18/98.
- B9(a) - -do- -do-
- B10 - Certified photocopy of order in LA 1569/98 in OS 31/98 dated 21-12-98 of the 1<sup>st</sup> Addl. District Court, Emakulam.
- B11 - -do- in CMA 345/98 dated 23-3-2000 of the Hon'ble High Court of Kerala.
- B12 - Certified photocopy of Order in SLP No. 9141/2000 dated 12-7-2000 of the Hon'ble Supreme Court of India.
- B13 - Photocopy of attendance Register of Malankara Syrian Christian Association held on 20-3-2002 Parumala.
- B14 - Kalpana of the Catholicose appointing Dr. Mathews Savarious as the Diocesan Metropolitan of Kandanadu Diocese West.
- B14(a) Kalpana No. 149(b)2002 of Catholic Malankara Metropolitan appointing
- B15 - Pothuyogam minutes Book of the 1<sup>st</sup> Defendant Church for the period from 25-3-2007 to 1-4-2011.
- B16 - True copy of Kalpana No. 34/2007 of Diocesan Metropolitan approving the election to the Managing committee held on 25-3-2007.
- B16(a) Kalpana No. 34/2007 dated 20-4-2007.
- B17 - True copy of minutes of the annual General body meeting of the 1<sup>st</sup> Defendant church held on 16-3-2008 (page No. 63)
- B18 - True copy of Kalpana No. 25/2008 of Diocesan Metropolitan approving the election to the Managing committee held on 16-3-2008.

- B18(a) Kalpana No. 25/2008 dated 13-3-2008.
- B19 - Pothuyogam minutes book (Page No. 120) - Annual General body meeting held on 29-3-2009.
- B20 - True copy of Kalpana No. 48/2009 of Diocesan Metropolitan approving the election to the Managing committee held on 29-3-2009.
- B20(a) Kalpana No. 48/2009 dated 16-4-2009.
- B21 - Page Nos. 33 & 34 of Pothuyogam minutes book dated 23-3-10.
- B22 - True copy of Kalpana No. 25/2010 of Diocesan Metropolitan approving the election to the Managing committee held on 21-3-2010.
- B22(a) Kalpana No. 25/2010 dated 24-4-2010.
- B23 - Page Nos. 3 to 5 of Pothuyogam minutes book of 1<sup>st</sup> defendant Church dated 20-3-2011.
- B24 - Page Nos. 6 to 13 of -do- -do- dated 10-4-2011.
- B25 - True copy of Kalpana No. 2/2000 dated 10-1-2000.
- B25(a) -do- -do- (Original)
- B26 - Kalpana No. 96/2005 dated 28-9-2005 (Original).

Plaintiffs' Witnesses:-

- PW1 - V.M. George - 14-7-2011.
- PW2 - Abraham @ Thampi 19-7-2011.

Defendants' Witnesses:-

- DW1 - K.A. Thampi - 19-7-2011.
- DW2 - George - 22-7-2011.
- DW3 - Fr. Jacob Kurian - 26-7-2011.

Vj/  
com.by:-



// True Copy //  
(By Order)

Charleston

19/-  
I Addl. District Judge,

cc issued as per order  
DIA. 4012/11 dt. 18.8.2011.

*[Handwritten signature]*

Judgment in O.S. 43/07  
Dated: 16/08/2011

DISTRICT COURT, ERNAKULAM

Year & No: O.S. 43/2007

Name of the applicant: Adv. S. Sreekumar

No & Date of the application: 3325/16/8/2011

Stamp paper called on: 18

Stamp paper produced on: 18

addl. Papers called on: |

Addl. Papers produced on: |

Copy ready on: 18

No. filed for appeal: 22

Copy drawn on: 18

