

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Presents:

The Honourable Mr. Justice G. Sasidharan

Thursday the 23rd March, 2000/3rd Chaithra, 1922

C.N.A.No. 345/98

(Against the Order dated 21-12-1998 in I.A. 1569/98 in O.S. No. 31/98 of the Court of the 1st Addl. District Judge, Ernakulam

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Appellant/Respondent/Defendant:

**Fr. E. P. Zacharia,
Echikkottil House,
Thiruvankulam,
Kanayannur Taluk.**

**By Advs. Sri. K. M. Joseph, Regi Paul and
John Joseph Vettikal.**

Respondents/Petitioners/Plaintiffs:

- 1. N. U. John,
S/o. Ulahannan,
Njattuthottiyil,
Kolencherry, Aikkaranaad South village,
Kunnathunad Taluk.**
- 2. P. P. Thomas, S/o. Pathrose,
Pookolayil House, Klencherry,
Aikkaranaad South Village,
Kunnathunad Taluk.**

R1 & R2 By Advocate Sri. Biju Abraham.

**This Civil Misc. Appeal having been finally heard on
11-2-2000 the court on 23-3-2000 passed the following:-**

G.Sasidharan, J.

C.M.A.No.345 of 1998

Judgment

Defendant in O.S.No.31 of 1998 on the file of the Ist Additional District Judge, Ernakulam, is the appellant and the appeal is directed against the order in I.A.No.1569 of 1998 granting temporary injunction restraining the appellant from entering into the plaint church and functioning as a priest there.

2. The St.Peter's and St.Paul's Orthodox Syrian Church comes under the Kandanad Diocese and according to the appellant there was only one Diocesan Metropolitan for the Kandanad Diocese and he was Poulouse Philixinose Metropolitan who was later known from 1975 onwards as Baselios Paulose II. The appellant would allege that as on 1-1-1971 there were three priests in the St.Peter's and St.Paul's Orthodox Syrian Church, (1) Fr.John Kalapurackal, (2) Fr.O.I.Paulose and (3) Fr.M.V.Abraham. The church was having an elected managing committee with one trustee (Layman Trustee) and one secretary and other committee members elected on 16-12-1973 by the Parishners from the parish assembly for a period of one year. Clause 24 of the 1934 Constitution of the Malankara Orthodox Syrian Church provides that for every assembly there shall have a parish managing committee. In clause 25 of the Constitution it is stated that the members of the parish managing committee excluding the priests shall be elected by the parish assembly and their term of office shall be one year. According to the appellant, after the election on 16-12-1973 no

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election was conducted and the managing committee elected on 16-12-1973 even now continues in office.

3. O.S.No.19 of 1980 was filed in the District Court, Ernakulam, by one Varkey and three others against the parish managing committee members for removing the defendants in that suit from membership of the managing committee of St.Peter's and St.Paul's Orthodox Syrian Church at Kolencherry and for appointment of new trustee and managing committee members of the church. In the above suit, an Advocate was appointed as Receiver of the church as per order dated 10-8-1984. According to the appellant, when the church was being administered by the Receiver, Vicar Fr.John Kalapurackal became ill and was hospitalised and the Patriarch faction proposed the name of Fr.John Vallikkattil for performing duties of Fr.John Kalapurackal. The Catholicos faction of the church opposed the above proposal made by the Patriarch faction. Thereafter, the District Court directed the Patriarch group to submit a panel of priests. The 8th defendant in that suit filed an affidavit in the District Court requesting to appoint the appellant in the vacancy caused by the demise of Fr.John Kalapurackal. On 6-6-1986, the District Court made an order appointing the appellant as the priest in the church. Ext.A4 is copy of the order of the District Judge appointing the appellant as the priest of the church.

4. Clause 40 of the Constitution of the church provides that the Diocesan Metropolitan has the authority to appoint, remove or transfer the vicar and other priests. Clause 63 of the Constitution says that every Diocese shall have a Diocesan Metropolitan. According to the respondents, Dr. Mathews Mar Sevarios is the Metropolitan of Kandanad Diocese under the 1934 Constitution. The case of the respondents is that Paulose Mar Felixinos of the Patriarch group died on 1-9-1996 and thereafter Dr. Mathews Mar Sevarios was the only Metropolitan of the Diocese. During the life time of Paulose Mar Felixinos, who was the Metropolitan of the Patriarch group also, there was a claim by the other faction that Dr. Mathews Mar Sevarios was the Metropolitan of Kandanad Diocese. Temporary injunction restraining the appellant from entering the plaint church and functioning as priest is sought for by alleging that Dr. Mathews Mar Sevarios being the sole Metropolitan of the Diocese can under clause 40 of the Constitution transfer the vicar and priests and therefore the order passed by him transferring the appellant from the church is valid. It was under kalpana dated 31-3-1998 that the Metropolitan transferred the appellant from Kolencherry church. The appellant received the order of transfer on 6-4-1998.

5. O.S.No.340 of 1997 was filed by the present appellant against the Bishop for an injunction restraining the Bishop from transferring him from the church. I.A.No.1646 of 1997 was filed

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in the above suit by the present appellant for an interim injunction restraining the Bishop from transferring him from the church. That interlocutory application was dismissed on 31-3-1998. C.M.A.No.24 of 1998 was filed in the Additional District Court, Paravur, and that appeal is stated to be pending.

6. There were three priests in the church when O.S.No.19 of 1980 was pending and the appellant was appointed as the priest by Ext.A4 order. O.S.No.19 of 1980 was dismissed and A.S.No.304 of 1998 was filed by the present appellant and that appeal is stated to be pending. The case of the appellant is that Dr.Mathews Mar Sevarios has no authority to transfer the appellant and to post another priest in his place. Ext.A2 is the kalpana dated 31-3-1998 issued by Dr.Mathews Mar Sevarios transferring the appellant from the church. The learned District Judge on observing that Dr.Mathews Mar Sevarios is the Metropolitan of the Diocese found that as per Ext.A2 order the appellant was transferred from the church and hence the respondent is entitled to get the injunction prayed for. The learned District Judge also took into account the fact that I.A.No.1646 of 1997 in O.S.No.340 of 1997 filed by the present appellant was dismissed by the Munsiff.

7. Ext.A5 is the order by which Dr.Mathews Mar Sevarios was appointed as the Metropolitan of Kandanad Diocese. In Ext.A5 dated 22-9-1993, there is mention that Dr.Mathews Mar Sevarios was elected by the Malankara association, he executed Salmoosa and that the appointment was with the approval of the syned.

8. The appellant has a case that he was appointed as the vicar of the church by Fr.Philixinose in 1986. But what is seen from Ext.A4 order of the District Judge is that the appellant was appointed as the priest of the church. Even though there is a case for the appellant that he was subsequently appointed as the vicar of the church, appellant has not produced any order made by Fr.Phelixinose appointing the appellant as the vicar of the church. Ext.B9 is the order passed by the court in which the appellant is mentioned as the vicar. That was an order by which the present appellant was impleaded in O.S.No.19 of 1980 in the place of the 19th defendant. It cannot be said on the basis of Ext.B9 order that it would go to show that the appellant is the vicar of the church.

9. In the decision in P.M.A.Metropolitan v. Moran Mar Marthoma (AIR 1995 SC 2001), it was held by the Supreme Court that the administration of Malankara Orthodox Syrian Church shall be made in accordance with the 1934 Constitution and shall be vested with the Malankara Association elected from among the representatives of the parish church. On finding that the provisions in the Constitution regarding election to the Malankara Association are not in accordance with the democratic principles, the Supreme Court directed the amendment of the Constitution. In the meanwhile, a controversy arose as regards the legitimate incumbent of various posts in the Malankara church since there

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were appointments made by both the factions to various posts. In the light of the above fact, the Supreme Court in the decision in P.M.A. Metropolitan v. Moran Mar Marthoma Mathews (AIR 1996 SC 3121), observed that in respect of certain posts appointments have been made by both the groups with the result that in respect of certain offices/posts, there are more than one claimant and it is not possible to give any specific direction as to who among the two contenders is the legitimate incumbent. On observing as stated above, the Supreme Court directed that the status quo as on the date of the judgment shall continue until a new managing committee is elected and that the managing committee so elected can decide the dispute if and when necessary.

10. Dr. Mathews Mar Sevarios is the Metropolitan of the diocese and hence the appellant cannot contend that he has no authority to transfer the priest. There is specific provision in the Constitution of 1934 which says that the Metropolitan is the authority who can effect transfer of priests. That being the position, it cannot be said that the learned District Judge committed any error in granting the temporary injunction prayed for. There is no merit in this appeal and it is liable to be dismissed.

In the result, this appeal is dismissed on confirming the order of the learned District Judge.

March 23, 2000.

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True Copy,

A. Maminathan

EXAMINER

-Sd-
G. Sasidharan, Judge.

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HIGH COURT OF KERALA, ERNAKULAM.

1. The year and number of suit *CMA. 345/98*
or other proceedings
2. Name of the Court *KHC*
3. The name of applicant *ADV. Biju Abraham*
4. Number and date of application *5994/2000 23/3/2000*
5. Date of calling for Stamp papers *24/3/2000*
6. Date of production of papers *24/3/2000*
7. Date of calling additional papers
8. Date of production of additional papers
9. Date when copy was ready *24/3/2000*
10. Date notified for appearance to
receive the copy *31/3/2000*
11. Date when copy was delivered *24. 3. 2000*

N. Yamini

Examiner.