

In the Court of the Munsiff, Ferumbavoor

Present:- Sri.H.K.Kuttikrishnan, B.A.L.L.B., Munsiff

Tuesday the 31st day of <sup>March</sup> April 1998/10th day of Chaitra 1919

A.1646/97 in Os.340/97

Petitioner/Plaintiff:-

Fr. E.P.Zacharia, Echikkottil house, Thiruvankulam,  
Kanyakanoor taluk.

By Adv.Sri.G.Santhoshkumar

Respondents/1st & 2nd defendants:-

1. Dr.Mathews Mar Sevarkious Claiming to be the Metropolitan of Kandanad Diocese, Mar Pachomios Mount, Meenpara.P.O., Puthencruz-682308.
2. Dr.Thomas Mar Athanasius, Metropolitan, Claiming to be Metropolitan of Kandanad Diocese, Bishops house, Muvattupuzha.

R1 by Adv.Sri.B.G.Bhasker & Sri.K.N.Anilkumar

R2 ex-Parte.

This petition coming on for hearing on 30-3-98

in the presence of the above named advocates and having stood over for consideration to this day the court passed the following:

ORDER

Petition is under Order 39 Rule 1 C.P.C.

2. Petition averments are stated as follows:-

The suit is one for a permanent prohibitory injunction. The petitioner/plaintiff is functioning as the vicar of the St. Peter's and St. Paul's Jacobite Syrian Orthodox Church Kolencherry. St. Peter's church is parish church of Kandanad diocesis of Malankara Jacobite Syrian Orthodox church. The Malankara Church is a division of the Syrian Orthodox Church of which the primate of Antioch and all the east, is the

spiritual and superior head. The Patriarch is spiritually superior to the Catholicos.

3. The Malankara Church was divided into two groups and have resulted several litigations. The catholicos group had instituted the suit in 1974 with regard to the mode of administration and conduct of services in 1054 parish churches which ultimately ended by the decision of the Supreme Court of India reported in A.I.R.1995 S.C.2001, followed by orders dated 25-3-96 and 5-2-97 reported in A.I.R. 1996 Supreme Court 3121 and A.I.R.1997 Supreme Court 1035 respectively. The Plaintiff was appointed as the Vicar of St. Peter's Church, 1986, by the then diocesan Metropolitan of Kandanad namely H.H. Paulose Philixinose as successor in office to Dr. John Kalapurackal, the then Vicar of the Plaintiff church. Due to the pendency of the suit OS.19/80 before the Additional District Court, this factum of appointment of the Plaintiff as the Vicar of the Church was brought to the notice and the appointment of the Plaintiff as the Vicar and the appointment was recognised. Now the Plaintiff has been functioning as the Vicar in the Plaintiff church from the date of appointment along with the defendants 3 and 4 who are the other two Priests in the church. Defendants 3 and 4 are conducting services in the church, on alternative dates.

4. OS.19/80 was ultimately dismissed on 27-2-97 due to lack of sanction under sec.92 of C.P.C. The Plaintiff was continuing as Vicar and is continuing as such by virtue of the status quo orders of the Hon'ble Supreme Court of India.

5. The Plaintiff has also satisfied the conditions put forward by order dated 2-97 of the Hon'ble Supreme Court

by declaring that the constitution of the Malankara church is acceptable to him by notice dated 27-4-97. He has accepted and agreed to be bound by the 1934 constitution.

6. The first respondent has sent a letter to the plaintiff seeking explanation for having attended certain meeting of the Patriarch fraction. Plaintiff has replied to the same challenging his authority to do so. The second respondent the metropolitan is taking steps to transfer the plaintiff from St. Peter's Church.

7. The first and second respondents are only rival claimants of the <sup>post</sup> first of Diocesan Metropolitan of Kandanadu Diocese.

None Bishop of the respondents can claim any lawful authority as the Diocesan Bishop of Kandanadu Diocese and hence they are not entitled to alter the present status quo of the conduct of religious services in St. Peter's church by removing the plaintiff. The respondents have no power to appoint or transfer the Vicar or Priests. The petitioner/plaintiff is entitled to continue as the vicar of the St. Peter's Church until a new managing committee is elected and such managing committee has ~~to~~ the legitimate incumbent to the Diocesan metropolitanship of Kandanadu Diocese.

8. Hence it is absolutely to restrain the respondent herein from issuing Kalpana or order purporting to transfer and to take action against the plaintiff for removing or unseating from the vicarship of St. Peter's church and from changing the existing status quo of the conduct of the religious services under the St. Peter's church along with defendants 3 and 4. The petitioner has got prima facie case. If the petition is not allowed the petitioner will be put to irreparable loss and injury. The balance of convenience is also in favour of the petitioner. Hence this petition.

9. First respondent filed counter statement contending as follows:- The suit as well as the petition is not maintainable. There is no church called as St. Peter's and St. Pauls Jacobite Syrian

and there is no Malankara Syrian Orthodox, Church as alled<sup>ed</sup> i<sup>g</sup> plaintiff. The word jacobite is wrong application added by th<sup>e</sup> Parthriarch group instead of the word orthodox which is the pro<sup>pr</sup> name of the church of the Malankara sabha. The patriarch is the Head of the Syrian Orthodox Church and the Catholicos as head of the Malankara church.

10. The supreme Court has up held the actions of the Malankara association including the amendment of the constitution and election as well as the appointment of these successive catholicos. The supreme Court has only made a prospective amendment the constitution for a wider representation. It is incorrect to say that the plaintiff was appointed as Vicar by Paulose Philix<sup>os</sup> Metropolitian. It is incorrect to say that first respondent is metropolitan of the Kandanadu. Even if Paulose Mar Philixinose treated as rival claimant, on his death this respondent became the unrivalled metropolitan. The status quo order of the supreme Court supports the claim of the respondent and there is no need wait for the decision of the managing committee to be elected in this case.

11. The plaintiff is in no way entitled to the benefits the status quo order. Swearing allegiance to the constitution not to be done by any notice published in the church, but before the Metropolitan of the Diocese.

12. Fr. O. I. Paulose is the lawful Vicar of the church having been appointed by the then Kandanadu Metropolitan. The plaintiff was appointed as priest of the church by the first respondent.

Plaintiff is only attempting to continue his illegal activity as a priest in this church. This respondent is entitled to control the activities of the plaintiff and the Kolencherry Church. Any injunction in favour of the plaintiff will be a clear violation of the 1934 constitution which is made applicable to all the churches by the Supreme Court. The plaintiff has no prima facie case. The balance of convenience is also in favour of the respondents. If the injunction is granted the respondents will be put to irreparable loss. Hence the petition has to be dismissed with costs of the respondent.

13. I have heard both counsel. Exts. A1 to A5 were marked on the side of the petitioner and B1 to B4 were marked on the side of the respondents.

14. The only point that arises for consideration is whether the petitioner is entitled to get an interim injunction as claimed in the petition.

15. The points:- The petitioner/plaintiff was appointed as the Vicar of the St. Peter's Church in 1986 by the then Diocesan Metropolitan of Kandanadu Diocese namely His Grace Paulose Mar Philixinos, as successor in office to Dr. John Kalappurakka, the then Vicar of the plaintiff church. There was a suit pending before the First Additional District Court as OS.19/80. The appointment was brought to the notice of the court by the order dated 30-5-86 and 6-6-86 and the appointment of the plaintiff as the Vicar was recognised. The copy of the appointment order of the First Additional District Court dated 6-6-86 as well as 30-5-86 was produced and marked as Ext. A1. As per the Ext. A1 appointment order it is made clear that without prejudice to the contentions of the parties

the Present petitioner is appointed as a priest of the church in the place of the demised father John Kalappurakkal. According to the Plaintiff/petitioner even though the suit was dismissed on 25-2-97 since the suit was not maintainable for lack of sanction under sec. 92. of C.P.C. he was the priest of the church till this date. The certified copy of the judgment of the suit OS.19/80 was produced and marked as Ext.A4. In Ext.A4 the Present plaintiff is D23. He was appointed by that court as priest of the church temporarily. As per the judgment the Hon'ble District Court has terminated the appointment of Advocate Receiver and the Receiver is directed to hand over charge within two weeks to the previous managing committee. The affidavit filed by the 8th defendant stating that they have consented to spare the service of the Plaintiff as the Vicar was produced and marked as Ext.A5. So according to the plaintiff he was serving as Vicar from 1986 onwards and till the final dispute between the two fractions of the community was finalised by the rulings reported in AIR.1995 supreme Court 2001 followed by orders dated 25-3-96 and 5-2-97 reported in A.I.R. 1996 supreme Court 3121 and A.I.R. 1997 supreme Court 1035 he is entitled to the status quo as before. The supreme Court of India has held that the constitution of the Malankara church is valid and binding on all members of the Malankara church.

16. There were disputes between the two groups as to the legitimacy of the holders of the various posts in the Malankara church arising due to appointments made by both the groups after 1-1-71. It was found that the situation in the Malankara church today shall be deemed to be the situation as on 1-1-71 and the both the fractions were directed to join together as one church on the basis of the amendments made to clause 71 and 46 of the 1934

constitution. In the light of the disputes arising out of the appointment made by both the groups after 1-1-71, it was directed by order dated 25-3-96 that status quo as on the date of the judgment shall be continued only a new managing committee of the Malankara diocesan is elected in accordance with the amended clause 71 of the 1934 situation. It is also directed by the Hon'ble Mysr supreme court that the persons claiming any post office in the Malankara church shall abide by and shall swear allegiance to the 1934 constitution. Subsequently the plaintiff has sworn allegiance to the 1934 constitution and a notice to that effect was issued on 27-4-97. That was produced and marked as Ext.A2. According to the plaintiff he has abide by the conditions stated in the Supreme Court judgment.

17. In the meanwhile on 8-5-97 he has received a notice from the first defendant asking him to give explanation for having attended a meeting of the Patriarc fraction of the Malankara church. The notice issued by the first defendant was produced and marked as Ext.A3. According to the plaintiff the first defendant has no right to issue notice like this since he has abide the orders of the Supreme Court and till new managing committee is elected the plaintiff is entitled to act as Vicar of the plaintiff church. On the other hand, the respondent would contend that the plaintiff is not entitled to the benefit of status quo order since he has not complied by the Supreme Court direction. The swearing in allegiance to the constitution is not to be done by a notice published in the church but before the authority who is the metropolitan of the diocese. Further father D.I. Paulose Vicar of the church have not been appointed by the then Kandanadu metropolitan. The plaintiff was appointed as Priest of the church by the Hon'ble First / onal District Court, Ernakulam on

6-6-86 as a temporary measure without prejudice to the cont of the Catholicos group. That suit was dismissed on 27-2-97 ordered the receiver to hand over the church to the previous managing committee. The plaintiff is only attempting to conti his illegal activity as a priest in this church. As metropoli of the Kandanadu, diocese the first respondent has authority to remove the plaintiff from the Kolencherry church. The defendat has also produced the appointment order of the plaintiff and marked as B1. The appointment of 3rd defendant as Vikar was produced and marked as Ext.92. The printed copy of the judgment in OS.137/95 produced and marked as Ext.B4.

18. The learned counsel for the respondent would argued that the petitioner was appointed by the Hon'ble Additional District Court in OS.19/80 on a temporary basis, at the consent of the other parties. That suit was dismissed on 27-2-97 since it was not obtained sanction under sec.92 C.L.O. The advocate Commissioner was appointed as a receiver in that suit. The Rec was directed to hand over charge of the church to the then mana committee. The plaintiff was not a vicar at the time of filing the suit. His appointment was on 6-6-86. The judgment of the Supreme Court in 1995, Supreme Court 2001 followed by the orders dated 25-3-96 and 5-2-97 reported in A.I.R.1995 Supreme Court 3121 and A.I.R.1997 Supreme Court 1077 are not binding to the Plaintiff. He was not a priest appointed as on 1-1-71. The plaintiff has not produced any document to show that he was appointed as on 1-1-71. The plaintiff has not produced any document to show that he was appointed prior to 6-6-86. Further swearing of allegiance to 1934 constitution as stated by the Supreme Court is not done by the Plaintiff properly. He has issued a notice to the church. That is produced and marked as Ext.A2. From A2 is

not clear that, the plaintiff has ~~not~~ sworn in allegiance to the 1934 constitution.

19. Anyway the merits of the case etc. can be considered later. At Present from the available documents it is seen that a plaintiff was appointed as a Vicar of the plaintiff church by the Hon'ble Additional District Court on 6-6-96 temporarily. That suit was dismissed on 27-2-97 and the court has directed the receiver to hand over the charge of the church to the previous managing committee. It is not evident that the plaintiff was a Priest or Vicar in the previous managing committee. The ruling cited by the plaintiff with regard to the disputes of the two factions is not binding to the case of the plaintiff. Hence I find that the plaintiff is not entitled to obtain a status quo order as prevailing till the managing committee is elected. The first defendant has got every right to take action against their Priest and Vicars. The plaintiff has no Prima facie case in this aspect. If the interim injunction order is granted the respondent could not take action against their priests, and Vicars. The balance of convenience is also in favour of the respondent/defendants since they want to maintain discipline in the church and proper administration in accordance with the constitution. Hence I find that the petitioner is not entitled to get an interim order of injunction as claimed in the petition. In the circumstances of the case parties shall bear their respective costs. This point answered in favour of the respondent.

In the result, the petition is dismissed. No order as to costs. The status quo order made by me on 28-6-97 shall stand vacated.

Dictated by Confidential Asst. transcribed and typed

-10-

by him, revised by me and pronounced in open court on this the  
31st day of March, 1998.

sd/-

M.K.Kuttikrishnan  
Munsiff.

Appendix

Petitioners exhibits:-

- A1 6-6-86 & 30-5-86 Copy of the appointment order in OS.19/80 of the  
1st Addl. District Court, Ernakulam.
- A2 27-4-97 Notice issued from St. Peter & Pauls Orthodox Syrian  
Church.
- A3 8-5-97 Notice issued by the 1st defendant.
- A4 27-2-97 Certified copy of Judgment in OS.19/80 of 1st  
Addl. Dist. Court, Ernakulam.
- A5 6-6-86 Affidavit filed by 8th defendant in OS.19/80  
before 1st Addl. Dist. Court, Ernakulam.

Respondents exhibits:-

- B1 6-6-1986 Certified copy of order in Receiver's report  
No.7/86 in OS.19/80 of 1st Addl. Dist. Court,  
Ernakulam.
- B2 26-6-97 Copy of appointment order of the 3rd defendant.
- B3 Notorised copy of order of appointing D1/R1 as  
Metropolitan of Kandanad Dioceses.
- B4 Notorised copy of the order in IA.1235/75 in  
OS.1371/75 of the sub Court, Kottayam.

Court exhibits:- Nil

Witness on both sides:- Nil

sd/-

Munsiff.

Dt/-

ccm.by: 19

//True copy//

Carbon copy issued as Per order in IA.1128/98 dt.1-4-98.

J. M. K. M. K.  
Examiner.

OS 340/92

Carbon copy of order  
in W 1111/92

Memorandum

Application No. 374  
 Name of the Applicant Adv. K. N. Arul Kumar  
 No. & Date of the application 31-3-98  
 Date of Calling for Stamp Papers 2-4-98  
 Date of production of Stamp Papers 3-4-98  
 Date of Calling of addl. Stamp Papers.....  
 Date of production of addl. Stamp Papers.....  
 Date when copy was ready 3-4-98  
 Date notified for appearance to examine the copy 19-5-98  
 Date when copy was delivered 2-4-98

W. K. Maray  
Examiner