



2019 INSC 1014

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 7115-7116 OF 2019
(ARISING FROM SLP(C) Nos.20661-20662 OF 2019)**

FR. ISSAC MATTAMMEL COR-EPISCOPA ..APPELLANT(S)

VERSUS

ST. MARY'S ORTHODOX SYRIAN CHURCH & ORS. ..RESPONDENT(S)

ORDER

1. Leave granted.
2. It passes comprehension that how the judge has passed the impugned interim order which runs expressly contrary to the decision of this Court in *K.S. Verghese v. St. Peters & St. Pauls Syrian Orthodox Church & Ors.*, (2017) 15 SCC 333. This Court has passed several judgments and orders to the effect that no such interference can be made by any court after the decision has been rendered by this Court in a representative suit which is binding on all concerned and it is the constitutional duty of all concerned to obey the judgment and order of this Court. As per Article 141 of the Constitution of India, the law declared by this Court is binding on all courts and under Article 144, civil and judicial authorities within the territory of India shall act in aid of Supreme Court. Kerala being Indian Territory all concerned are bound to act accordingly. We have intended peace to come in Church but due to such orders passed in contravention of law laid down by this Court law can never be obeyed. This amount to a violation of judgment and order. The High Court has passed an interim order in violation of the judgments and orders passed by this Court. We

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are not able to understand what kind of judicial discipline is reflected while passing the impugned order, which should not have been passed at all. We restrain all the Civil Courts and the High Court in Kerala not to pass any order in violation of the mandate of this Court's decision in *K.S. Varghese* (supra).

3. The appeal arises out of the suit, pending before the High Court, is disposed of in terms of the decision passed by this Court in *K.S. Varghese* (supra) as there is no scope left for further litigation on the issue. The High Court has no right to tinker with the judgment and order passed by this Court which is binding and the judicial propriety has to be maintained at all costs. There is no scope for further litigation in the matter which we have concluded. We direct the Courts to decide all pending matters following the aforesaid decision which has been affirmed thereafter by umpteen number of times.

4. The binding effect of the representative suit has been considered before this Court in *K.S. Verghese* (supra) thus:

“78. The aforesaid findings and the declaration in the aforesaid decree that was passed in the 1995 judgment⁴ extracted above, in a representative suit, is binding. This Court in *R. Venugopala Naidu v. Venkatarayulu Naidu Charities* 1989 Supp (2) SCC 356 has dealt with the suit under Section 92 and Order 1 Rule 8 CPC and it was held that such a suit is the representative action of a large number of persons who have a common interest. The suit binds not only the parties named in the suit but all those who are interested in the trust. It is for that reason Explanation 6 to Section 11 CPC constructively bars by res judicata the entire body of interested persons from agitating the matters directly in issue in an earlier suit under Section 92 CPC. This Court has laid down thus: (SCC pp. 360-61, para 11)

“11. It is not necessary to go into the finding of the High Court that two of the appellants being Muslims can have no interest in the trust as the other two appellants claim to be the beneficiaries of the trust and their claim has not been negated. Moreover, the trust

has been constituted to perform not only charities of a religious nature but also charities of a secular nature such as providing for drinking water and food for the general public without reference to caste or religion.”

Section 11 read with Explanation 6 is extracted hereunder:

“11. *Res judicata*.—No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

* * *

Explanation VI.—Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

79. Order 1 Rule 8 is an exception to the general rule that all persons interested in the suit are to be made parties thereto. The object for which the provision is enacted is to provide an exception to the ordinary procedure in a case where common rights of community or members of such association or large section are involved. It will be practically difficult to institute the suit under the ordinary procedure by impleading every person in which every individual has to maintain account by a separate suit and to avoid numerous suits being filed for a decision on the common question. Order 1 Rule 8 had been enacted so as to simplify the procedure. In case parties have bona fide litigated the question and there had been no collusion in such a suit, the decision would bind the others. The rule entitles one party to represent many and the action is maintainable without joinder of other parties. Order 1 Rule 8 presupposes that there are numerous persons having the same interest. One or more such persons with permission of the court may sue or be sued or may defend such suit on behalf of the persons so interested. In such a case notice has to be given as per Order 1 Rule 8(2) by way of public advertisement and then any person on whose behalf or whose benefit the suit is instituted or defended has a right to apply to the court to be made a party to such a suit. It is provided in Order 1 Rule 8(6) that the decree in a suit under this rule shall be binding on all the persons on whose behalf or for whose benefit the suit is instituted or defended, as the case may be. As per the mandate of Order 1 Rule 8(6), the finding that was recorded in the earlier suit that was decided in 19587 as well as in 19954 is binding insofar as the questions decided in a representative character. The provision of Explanation 6 to Section 11 applies to such a suit as held in *Kumaravelu Chettiar v. Ramaswami Ayyar*¹. This Court has decided the issue in the 1995 suit to the extent that the parties were

¹ 1933 SCC OnLine PC 33

having the common interest as contemplated in Order 1 Rule 8 and left open issues with respect to temporal matters in the absence of parish churches. To that extent only, we can decide the issues and other issues have to be taken as barred by the principle of res judicata as per Explanation 6 to Section 11 and Order 1 Rule 8 CPC.”

5. This Court *K.S. Verghese* (Supra) has ultimately held as under:

“228. Resultantly, based on the aforesaid findings in the judgment, our main conclusions, inter alia, are as follows:

228.1. Malankara Church is episcopal in character to the extent it is so declared in the 1934 Constitution. The 1934 Constitution fully governs the affairs of the parish churches and shall prevail.

228.2. The decree in the 1995 judgment² is completely in tune with the judgment. There is no conflict between the judgment and the decree.

228.3. The 1995 judgment arising out of the representative suit is binding and operates as res judicata with respect to the matters it has decided, in the wake of the provisions of Order 1 Rule 8 and Explanation 6 to Section 11 CPC. The same binds not only the parties named in the suit but all those who have interest in the Malankara Church. Findings in earlier representative suit i.e. *Samudayam* suit are also binding on parish churches/parishioners to the extent issues have been decided.

228.4. As the 1934 Constitution is valid and binding upon the parish churches, it is not open to any individual Church, to decide to have their new Constitution like that of 2002 in the so-called exercise of right under Articles 25 and 26 of the Constitution of India. It is also not permissible to create a parallel system of management in the Churches under the guise of spiritual supremacy of the Patriarch.

228.5. The Primate of Orthodox Syrian Church of the East is Catholicos. He enjoys spiritual powers as well, as the Malankara Metropolitan. Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual administration of Malankara Church subject to the riders provided in the 1934 Constitution.

228.6. Full effect has to be given to the finding that the spiritual power of the Patriarch has reached to a vanishing point. Consequently, he cannot interfere in the governance of parish churches by appointing Vicar, priests, Deacons, Prelates (High Priests), etc. and thereby cannot create a parallel system of administration. The appointment has to be made as per the power conferred under the 1934 Constitution on the Diocese, Metropolitan, etc. concerned.

228.7. Though it is open to the individual member to leave a Church in exercise of the right not to be a member of any association and as per Article 20 of the Universal Declaration of Human Rights, the Parish Assembly of the Church by majority or otherwise cannot decide to

² *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma*, 1995 Supp (4) SCC 286

move Church out of the Malankara Church. Once a trust is always a trust.

228.8. When the Church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which, its properties have vested. As per the 1934 Constitution, the parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of the 1934 Constitution without the approval of the Church hierarchy.

228.9. The spiritual power of Patriarch has been set up by the appellants clearly in order to violate the mandate of the 1995 judgment of this Court which is binding on the Patriarch, Catholicos and all concerned.

228.10. As per the historical background and the practices which have been noted, the Patriarch is not to exercise the power to appoint Vicar, priests, Deacons, Prelates, etc. Such powers are reserved to other authorities in the Church hierarchy. The Patriarch, thus, cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of Churches as done in 2002 and onwards.

228.11. This Court has held in 1995 that the unilateral exercise of such power by the Patriarch was illegal. The said decision has also been violated. It was only in the alternative this Court held in the 1995 judgment that even if he has such power, he could not have exercised the same unilaterally which we have explained in this judgment.

228.12. It is open to the parishioners to believe in the spiritual supremacy of the Patriarch or apostolic succession but it cannot be used to appoint Vicars, priests, Deacons, Prelates, etc. in contravention of the 1934 Constitution.

228.13. Malankara Church is episcopal to the extent as provided in the 1934 Constitution, and the right is possessed by the Diocese to settle all internal matters and elect their own Bishops in terms of the said Constitution.

228.14. Appointment of Vicar is a secular matter. There is no violation of any of the rights encompassed under Articles 25 and 26 of the Constitution of India, if the appointment of Vicar, priests, Deacons, Prelates (High priests), etc. is made as per the 1934 Constitution. The Patriarch has no power to interfere in such matters under the guise of spiritual supremacy unless the 1934 Constitution is amended in accordance with law. The same is binding on all concerned.

228.15. Udampadies do not provide for appointment of Vicar, priests, Deacons, Prelates, etc. Even otherwise once the 1934 Constitution has been adopted, the appointment of Vicar, priests, Deacons, Prelates (High priests), etc. is to be as per the 1934 Constitution. It is not within the domain of the spiritual right of the Patriarch to appoint Vicar, priests, etc. The spiritual power also vests in the other functionaries of the Malankara Church.

228.16. The functioning of the Church is based upon the division of responsibilities at various levels and cannot be usurped by a single

individual howsoever high he may be. The division of powers under the 1934 Constitution is for the purpose of effective management of the Church and does not militate against the basic character of the Church being episcopal in nature as mandated thereby. The 1934 Constitution cannot be construed to be opposed to the concept of spiritual supremacy of the Patriarch of Antioch. It cannot as well, be said to be an instrument of injustice or vehicle of oppression on the parishioners who believe in the spiritual supremacy of the Patriarch.

228.17. The Church and the cemetery cannot be confiscated by anybody. It has to remain with the parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the parish churches, would remain in trust as it has for time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties.

228.18. The faith of Church is unnecessarily sought to be divided vis-à-vis the office of Catholicos and the Patriarch as the common faith of the Church is in Jesus Christ. In fact an effort is being made to take over the management and other powers by raising such disputes as to supremacy of Patriarch or Catholicos to gain control of temporal matters under the garb of spirituality. There is no good or genuine cause for disputes which have been raised.

228.19. The authority of Patriarch had never extended to the government of temporalities of the Churches. By questioning the action of the Patriarch and his undue interference in the administration of Churches in violation of the 1995 judgment⁴, it cannot be said that the Catholicos faction is guilty of repudiating the spiritual supremacy of the Patriarch. The Patriarch faction is to be blamed for the situation which has been created post 1995 judgment⁴. The property of the Church is to be managed as per the 1934 Constitution. The judgment of 1995⁴ has not been respected by the Patriarch faction which was binding on all concerned. Filing of writ petitions in the High Court by the Catholicos faction was to deter the Patriarch/his representatives to appoint the Vicar, etc. in violation of the 1995 judgment⁴ of this Court.

228.20. The 1934 Constitution is enforceable at present and the plea of its frustration or breach is not available to the Patriarch faction. Once there is Malankara Church, it has to remain as such including the property. No group or denomination by majority or otherwise can take away the management or the property as that would virtually tantamount to illegal interference in the management and illegal usurpation of its properties. It is not open to the beneficiaries even by majority to change the nature of the Church, its property and management. The only method to change management is to amend the Constitution of 1934 in accordance with law. It is not open to the parish churches to even frame bye-laws in violation of the provisions of the 1934 Constitution.

228.21. The Udampadies of 1890 and 1913 are with respect to administration of churches and are not documents of the creation of the trust and are not of utility at present and even otherwise cannot hold the field containing provisions inconsistent with the 1934 Constitution, as per ⁵¹⁵Section 132 thereof. The Udampady also cannot hold the field in view of the authoritative pronouncements made by this Court in the earlier judgments as to the binding nature of the 1934 Constitution.

228.22. The 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future any right, title or interest, whether vested or contingent in the Malankara Church properties and only provides a system of administration and as such is not required to be registered. In any case, the Udampadies for the reasons already cited, cannot supersede the 1934 Constitution only because these are claimed to be registered.

228.23. In otherwise episcopal Church, whatever autonomy is provided in the Constitution for the Churches is for management and necessary expenditure as provided in Section 22, etc.

228.24. The formation of the 2002 Constitution is the result of illegal and void exercise. It cannot be recognised and the parallel system created thereunder for administration of parish churches of Malankara Church cannot hold the field. It has to be administered under the 1934 Constitution.

228.25. It was not necessary, after amendment of the plaint in Mannathoor Church matter, to adopt the procedure once again of representative suit under Order 1 Rule 8 CPC. It remained a representative suit and proper procedure has been followed. It was not necessary to obtain fresh leave.

228.26. The 1934 Constitution is appropriate and adequate for management of the parish churches, as such there is no necessity of framing a scheme under Section 92 CPC.

228.27. The plea that in face of the prevailing dissension between the two factions and the remote possibility of reconciliation, the religious services may be permitted to be conducted by two Vicars of each faith cannot be accepted as that would amount to patronising parallel systems of administration.

228.28. Both the factions, for the sake of the sacred religion they profess and to pre-empt further bickering and unpleasantness precipitating avoidable institutional degeneration, ought to resolve their differences if any, on a common platform if necessary by amending the Constitution further in accordance with law, but by no means, any attempt to create parallel systems of administration of the same Churches resulting in law and order situations leading to even closure of the Churches can be accepted.”

6. It is made clear to all concerned more so, to the Courts that in future the violation of judgment and order to be viewed seriously. Let similar matters which are pending be decided following aforesaid judgment and

order. There can be no further litigation as the decision in representative suit is binding.

7. The impugned order is set aside and the appeal and the suit stand disposed of in terms of the order passed by this Court in K.S. Varghese (supra), which holds the field.

8. Let a copy of the order be circulated to all the Courts in Kerala, and concerned authorities by Registrar General of the High Court of Kerala forthwith. Let Registrar General submit a report to this Court as to how many litigations are pending in the Court as to aforesaid dispute in the various courts. Let the report be submitted within 3 months.

9. The appeals are, accordingly, allowed with aforesaid directions.

10. Pending application(s), if any, shall stand disposed of.

.....J.
[ARUN MISHRA]

.....J.
[M.R. SHAH]

**NEW DELHI;
SEPTEMBER 06, 2019.**