
(2015) 08 KL CK 0158

In the High Court Of Kerala

Case No : Regular First Appeal No. 193 of 2014

Mathai Varghese and Others

APPELLANT

Vs

St. Mary's Orthodox Church and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2015) 08 KL CK 0158

Hon'ble Judges : P.B. Suresh Kumar, J

Bench : Single Bench

Advocate : P. Martin Jose, Eldho Cherian, P. Prijith and Thomas P. Kuruvilla, for the Appellant; K.J. Kuriachan, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.B. Suresh Kumar, J—The plaintiffs in a suit instituted under Section 92 of the Code of Civil Procedure are the appellants.

2. The dispute in the suit pertains to the management of the first defendant church namely, St. Mary's Orthodox Church, Varikoli. The first defendant church is a parish church coming under the Kandanadu East Diocese of Malankara Orthodox Syrian Church, hereinafter referred to as "the Malankara Church" for short. The suit was filed by a few parishioners of the first defendant church, alleging that the first defendant church is to be administered in accordance with the constitution of the Malankara Church framed by the Malankara Association in the year 1934; that defendants 1 and 2 who are elected as the trustees of the first defendant church are continuing in office beyond the period of one year prescribed in the 1934 constitution of the Malankara Church and that the fourth defendant who is the Vicar of the first defendant church is not taking steps to convene a parish assembly to elect new office bearers of the church. It was also alleged by the plaintiffs that the accounts of the first defendant church have not been audited and placed before the parish assembly since 1999. The plaintiffs, therefore, claimed a decree declaring that the first defendant church is liable to

be administered in accordance with the 1934 constitution of the Malankara Church, a decree of prohibitory injunction restraining defendants 2 and 3 from functioning as the trustees of the first defendant church and a decree directing the fourth defendant to convene the parish assembly of the first defendant church and elect its office bearers in accordance with the 1934 constitution of the Malankara Church.

3. Defendants 1 to 3 contested the suit by filing a written statement. The contentions raised by the said defendants were mainly that the first defendant church was established in the year 1928 by the people in the locality for religious worship as per the Jacobite faith and tradition; that the first defendant church has not adopted the 1934 constitution of the Malankara Church; that the first defendant church and its parishioners are loyal to the Patriarch of Antioch and that they accept only the hierarchy of priests ordained by or loyal to the Patriarch of Antioch. They also contended that the parish assembly of the first defendant church had adopted the constitution of Yacobaya Suriyani Christian Association on 30.6.2002 and that since the fourth defendant had deviated from the fundamental faith of the church, he was removed from the Vicarship of the first defendant church. Defendants 5 to 10 who got themselves impleaded as additional defendants in the suit also filed a written statement raising contentions similar to the contentions raised by defendants 1 to 3.

4. In the course of the trial, the plaint was amended and a prayer for a declaration that only the fourth defendant or any other priest appointed in accordance with 1934 constitution alone is entitled to conduct religious services in the first defendant church was also incorporated.

5. The evidence in the case consists of the oral testimonies of PWs. 1 and 2 and Exts. A1 to A24 on the side of the plaintiffs and the oral testimonies of DWs. 1 to 3 and Exts. B1 to B29 on the side of the defendants. The documents called for at the instance of the plaintiffs were marked in the proceedings as Exts. X1 to X11.

6. The trial court, relying on the decision of the Apex Court in *Most. Rev. P.M.A. Metropolitan and others, etc. etc. Vs. Moran Mar Marthoma and another etc. etc.*, AIR 1995 SC 2001 : (1995) 5 JT 1 : (1995) 4 SCALE 760 : (1995) 4 SCALE 1 : (1995) 4 SCC 286 Supp : (1995) 4 SCC 286 : (1995) 1 SCR 542 Supp found that the first defendant church is to be administered in accordance with the 1934 constitution of the Malankara Church and that only Vicars and Priests appointed under the 1934 constitution can conduct religious ceremonies/services in the first defendant church. Despite the said findings, the suit was dismissed by the trial court holding that there are two factions among parishioners of the first defendant church; that the plaintiffs do not recognise the Patriarch of Antioch, the supreme religious head of the Malankara Church on whom many of the parishioners repose faith and that therefore they are not entitled to the discretionary reliefs claimed in the suit. The plaintiffs are aggrieved by the said decision of the trial court and hence this appeal.

7. Heard the learned Senior Counsel Sri. S. Sreekumar for the appellants, Advocate K.J. Kuriachan for respondents 1 to 3 and 5 to 9 and Advocate P. Vijaya kumar for the 4th respondent.

8. The learned counsel for the appellants contended that in so far as it was found by the court below that the first defendant church is liable to be administered in accordance with the 1934 constitution of the Malankara Church and that the first defendant church is not being administered in accordance with the said Constitution, the trial court ought to have decreed the suit, granting to the plaintiffs the reliefs claimed by them. The learned counsel for the appellants also contended that the acceptance and recognition of the Patriarch of Antioch cannot be treated as part of the faith of the parishioners of the first defendant Malankara Church. The learned counsel for the appellants, however, pointed out that the Patriarch of Antioch is recognized as the supreme spiritual head of the Malankara Church even as per the 1934 constitution of the Malankara Church. According to him, the 1934 Constitution provides that the Patriarch shall be a person canonically consecrated with the cooperation of the Catholicos and the plaintiffs are not recognizing the present incumbent in the office of the Patriarch of Antioch as he is not a person consecrated with the cooperation of the Catholicos. As such, according to the learned counsel, it cannot be contended that the 1934 constitution of the church do not recognise the Patriarch of Antioch as the supreme religious head of the church. The learned counsel for the appellants further contended that the finding of the court below that the first defendant church is not being administered in accordance with the 1934 constitution is incorrect and unsustainable. According to the learned counsel, Exts. X1 to X4 documents would show that the church was being administered all along in accordance with the 1934 constitution.

9. The learned counsel for respondents 1 to 3 and 5 to 9, supported the impugned judgment raising various contentions. According to the learned counsel, in the light of the conclusion arrived at by the Apex Court in paragraph 142(4) of the judgment in P.M.A. Metropolitan's case (supra) that the Patriarch of Antioch is spiritually superior to the Catholicos, the administration of a parish church by persons who do not recognise and accept the Patriarch of Antioch as their supreme spiritual head would go against the spirit of the said judgment. He also contended, relying on paragraph 141 of the judgment of the Apex Court in P.M.A. Metropolitan's case (supra), that the Apex Court has not held in the said case that the parish churches are to be governed by the 1934 constitution of the church and that independent decisions in respect of parish churches would not go against the said decision of the Apex Court. The learned counsel further contended that the first defendant church is a church established to uphold the faith that the Patriarch of Antioch is the supreme spiritual head of the church. According to him, the court cannot grant any relief to the plaintiffs which would affect the faith of the church. He relied on paragraph 150 of the decision of the Apex Court in P.M.A. Metropolitan's case (supra) in support of the said contention. The essence of the contentions of the learned counsel for the

contesting respondents is therefore, that the parish churches under the Malankara Churches should be held to be independent.

10. I have scrutinised meticulously the submissions made at the Bar. As noticed above, the court below found that the first defendant church is governed by 1934 constitution of the Malankara Church and that the church is not being administered in accordance with the said Constitution. Despite the said findings, the court below non suited the plaintiffs solely on the ground that they do not recognise the present incumbent in the office of the Patriarch of Antioch. The question to be considered therefore, is whether the court below was justified in non suiting the plaintiffs for the said reason. It is beyond dispute that the first defendant is a constituent parish church of the Malankara Church. It was found by the Apex Court in P.M.A. Metropolitan's case (supra) that the parish churches under the Malankara Church are also to be administered in accordance with the 1934 constitution of the Malankara Church. The relevant extract of the said finding contained in paragraph 141 of the judgment in the said case reads thus:

"In the state of such a pleading, the only observation that can be made herein is that the 1934 constitution shall govern and regulate the affairs of the parish churches too, in so far as the said constitution provides for the same."

A reading of the said passage do not indicate that the Apex Court has made any reservation concerning the parish churches consisting of parishioners owing allegiance to the Patriarch of Antioch. The factional dispute in the church between those who owe allegiance to the Patriarch and those owe allegiance to the Catholicos resulted in the litigation resolved by the Apex Court also. As such, when it is held that the first defendant church is to be administered in accordance with the 1934 constitution and when it is found that the first defendant church is not being administered in accordance with the said constitution, I am of the view that the court below should have decreed the suit as prayed for.

11. Now I shall deal with the contentions advanced by the learned counsel for the contesting respondents in support of the impugned judgment. The main argument of the contesting respondents is that in the light of the conclusion recorded by the Apex Court in paragraph 142(4) of the judgment in P.M.A. Metropolitan's case (supra) that the Patriarch of Antioch is spiritually superior to the catholicos, the administration of the parish church by persons who do not recognise and accept the Patriarch of Antioch as their superior spiritual head would go against the decision of the Apex Court in the said case. Paragraph 142(4) of the judgment reads thus:

"142(4) It may be that by virtue of the revival of Catholicate and by issuing the Kalpana Ex. A. 14 - and also by accepting the Constitution (as to be mentioned presently). - the power of the patriarch may have been reduced to a vanishing point, but all the same he remains the supreme head of the Syrian Church of which the Malankara Church is a division. He is spiritually superior to the

Catholicos though he does not, and indeed never did, enjoy any temporal powers over the Malankara Church or its properties."

Article 101 of the 1934 constitution of the Malankara Church provides that the Malankara Church shall recognise the Patriarch, canonically consecrated with the co-operation of the catholicos. The 1934 constitution was framed by the Malankara Association, constituted by the then Patriarch himself. In P.M.A. Metropolitan's case (supra), the Apex Court examined the various Articles in the 1934 constitution of the Malankara Church and ordered amendment to some of the Articles therein to resolve the factional dispute in the Malankara Church. Paragraph 103 of the said judgment indicates that the Apex Court had taken note of the provision contained in Article 101 of the constitution, which prior to the amendment pursuant to the directions issued in the said case was Article 92. A close reading of the judgment of the Apex Court indicates that the Apex Court had approved the said Article of the constitution, which is evident from paragraph 135(b) of the judgment dealing with the manner in which the Patriarch has to exercise his powers after the 1934 constitution. The relevant portion of the said paragraph reads thus:

"It may be that by this act of revival of Catholicate and the Kalpanas A. 13 and 14, the Patriarch is not denuded of the powers delegated by him to the Catholicos - assuming that these powers were not already possessed by the Catholicos and that they came to be conferred upon him only under A. 13 and A. 14 - yet, reasonably speaking, the Patriarch was, and is, expected to exercise those powers there after in consultation with the Catholicos and the Malankara Sabha (Association) -and, of course, in accordance with the 1934 Constitution. This was necessary for the reasons (i) to avoid creating parallel authorities leading to conflict and confusion and (ii) the acceptance by the local people was a sine qua non for any Metropolitan or melpattakar in Malankara Church as provided in the Mulanthuruthy Synod (convened and presided over by the then Patriarch himself) and given a judicial sanction by the judgment of the Travancore Royal Court of Appeal aforementioned."

The fact that the Apex Court had approved Article 101 of the 1934 constitution is further evident from the conclusion arrived at by the Apex Court as contained in paragraph 142(3) of the said judgment, which reads thus:

"142(3) It may be that by conferring upon the Catholicos the powers of ordaining Metropolitans, consecrating Morone and to exercise other spiritual powers over Malankara Church, the Patriarch may not have denuded himself completely of the said powers which he enjoyed until then. But in view of the fact that he had himself created another center of power in India with the aforesaid powers, it would be reasonable to hold that thereafter the Patriarch cannot exercise those powers unilaterally, i.e., without reference to the Catholicos. He can exercise those powers only in consultation with the Catholicos. Moreover, the person to be appointed as Metropolitan or Malankara Metropolitan has to be accepted by the people as has been affirmed in the judgment in Seminary suit. The Patriarch's

power to ordain the Metropolitans now is subject to the Constitution of 1934."

In the light of the findings recorded by the Apex Court in the said case as referred to above, it cannot be contended that the conclusion arrived at by the Apex Court in paragraph 142(4) of the judgment is unmindful of the fact that the Malankara Church would recognise only the Patriarch canonically consecrated with the co-operation of the catholicos. As such, I have no hesitation to hold that the Patriarch of Antioch referred to in paragraph 142(4) of the judgment of the Apex Court is a Patriarch holding office in accordance with Article 101 of the 1934 constitution of the Malankara Church.

12. Now, I shall deal with the contentions raised by the learned counsel for the contesting respondents as regards the faith of the church. As noticed above, the contention is that the supremacy of the Patriarch of Antioch is one of the articles of faith of the church and that in so far as the parishioners who owe allegiance to the orthodox faction do not recognise the Patriarch of Antioch as the superior spiritual head, grant of reliefs to them would alter the faith of the church. Article 1 of the 1934 constitution of the Malankara Church categorically proclaims that the Malankara Church is a division of the orthodox syrian church and the primate of the orthodox syrian church is the Patriarch of Antioch. In the light of the said provision in the 1934 constitution of the church, it cannot be contended that there is any deviation in the articles of faith of the church. The fact that there are two factions among the parishioners of the first defendant church as found by the trial court and that the plaintiffs are persons who owe allegiance to the orthodox faction are not in dispute. Merely for the reason that the contesting respondents recognises the Patriarch of Antioch holding office otherwise than in accordance with the 1934 constitution, it cannot be contended that if reliefs are granted to the plaintiffs as claimed by them, the same would result in altering the articles of faith of the church.

13. As regards the contention advanced by the learned counsel for the contesting respondents, relying on paragraph 141 of the judgment of the Apex Court in P.M.A. Metropolitan's case (supra), that the Apex Court has not held that the parish churches are to be governed by the 1934 constitution, it is seen that identical contention has been dealt with by a Division Bench of this Court in Secretary of State for Education and Science vs. Metropolitan Borough of Tameside in the, 1976 3 All England Law Reports, 665at 696 in the context of the disputes relating to the administration of another parish church under the Malankara Church namely, St. Peter's and St. Paul's Syrian Orthodox Church, Kolencherry. The relevant portion of paragraph 141 of the judgment of the Apex Court in P.M.A. Metropolitan's case (supra) read thus:

"We are, however, of the opinion that in this suit no declaration can be granted affecting the rights of Parish Churches in their absence nor can it be declared that the properties held by Malankara Parish Churches vest in the Catholicos or the Malankara Metropolitan or the Metropolitan of the concerned diocese, as the case may be. Indeed, no such specific relief has been asked for in the suit and

without impleading the affected parties, no declaration can be claimed by the plaintiffs that their Church is episcopal in nature, if that declaration means that it gives the Catholicos/Malankara Metropolitan/the Metropolitan of the Diocese any title to or any control over the properties held by the Parish Churches. We have pointed out herein before that the only place in the plaint where a reference is made to the properties of the Parish Churches is in Para 24 where all that it is alleged is that the defendants and their partisans are trying to intermeddle in the affairs of individual Churches and are attempting to make use of the properties of the Church to further their illegal and unlawful objects. No list of Parish properties is enclosed nor are the particulars of the alleged intermeddling mentioned in the plaint. In the state of such a pleading, the only observation that can be made herein is that the 1934 Constitution shall govern and regulate the affairs of the Parish Churches too, insofar as the said Constitution provides for the same."

After referring to the judgment of the Apex Court in P.M.A. Metropolitan's case (supra), the Division Bench held that the Parish Churches are constituent units of the Malankara Church and that the 1934 Constitution is valid and binding on the Parish Churches and the Parishioners. It was also held by this Court in the said case that the clarification made by the Apex Court in paragraph 141 relied on by the learned counsel that no declaration can be granted affecting the rights of the Parish Churches in their absence is in the context of considering the question whether properties held by the Parish Churches would vest in the Malankara Metropolitan/the Metropolitan of the concerned diocese, as the case may be, and not in the context of the status of the Parish Churches. The relevant passages dealing with the said aspects read thus:

"The above conclusions will show that Parish Churches are constituent units of the Malankara Church; they have fair degree of autonomy subject to the supervisory powers vesting the Managing Committee of the Malankara Association and the 1934 Constitution is valid and binding on the Malankara Association, Community, Dioceses as well as Parish Churches and Parishioners.

xxx xxx xxx

xxx xxx xxx

The clarification made by the Apex Court in para 141 that no declaration can be granted affecting the rights of Parish Churches, in their absence, is in the context of consideration of a question whether the properties held by the Malankara Parish Churches vest in the Catholicos/the Malankara Metropolitan/the Metropolitan of the concerned diocese, as the case may be. Therefore, the same is in the context of vesting of title of the properties of Parish Churches and not the status. Finally, in the said paragraph, their Lordships held that "the only observation that can be made herein is that the 1934 Constitution shall govern and regulate the affairs of the Parish Churches too, insofar as the said Constitution provides for the same. In that view of the matter, according to us,

the argument of the learned Senior Counsel for the appellants that the decision of the Apex Court in P.M.A. Metropolitan's case (supra) has been wrongly relied upon by the Trial Court, is not correct."

As in the instant case, the said case was also a case where no relief was sought in respect of the properties of the Parish Church. Instead, the parties were at issue only on the question as to the administration of the Parish Churches and the application of the 1934 Constitution of the Church. Paragraph 89 of the said judgment reads thus:

"In this case also, in the plaint no relief is sought that the properties of the Church vest in the Parishioners or other bodies. Both sides were at issue on the question of system of administration of Parish, election and on the question whether it is Ext. A1 Udambady or Ext. B1 Constitution that governs the Church. Therefore, it is not a case where the plaintiffs have sought for a relief of declaration specifically with regard to the properties of the Church or about the vesting of the properties of the Church in a particular body. What is clear from the reliefs sought for, is that they are only seeking for enforcement of Ext. A1 Udambady as regards the administration of the Church or in the alternative, to frame a scheme for the administration. In that view of the matter, according to us, there is no error committed by the trial court, by relying upon 1934 Constitution and the finding relying upon the decision of the Apex Court in P.M.A. Metropolitan's case (supra)."

In the light of the said decision of the Division Bench, the contention of the appellants that the decision of the Apex Court in P.M.A. Metropolitan's case (supra) has no application to the Parish Churches under the Malankara Church is only to be rejected.

14. As noticed above, the essence of the contentions of the learned counsel for the contesting respondents is that in so far as the parishioners of the first defendant church are persons who owe allegiance to the Patriarch faction and since the plaintiffs are not recognising and accepting the present incumbent in the office of the Patriarch of Antioch, the parishioners should be permitted to administer the affairs of the first defendant church in accordance with their faith. First of all, there is nothing on record as to the strength of the parishioners who owe allegiance to the Patriarch faction like the contesting respondents. Even otherwise, in so far as the first defendant church is a parish church of the Malankara orthodox syrian church, the Apex Court held that the Parishioners have no right to disassociate from the Malankara Church. The relevant extract of the judgment in P.M.A. Metropolitan's case (supra) reads thus:

"Therefore, once these public charities were found whether before the establishment of catholicate or after it their nature could not change. On the material on record the courts have found them to be so. Therefore, the submission that they are autonomous does not appear to be well founded. Autonomy for what, religious worship or temporal matters. Former cannot be

pleaded as once a Church was found for religious worship it continued to be so. The autonomy in temporal matters as claimed appears to be two-fold one, freedom to disassociate from Malankara Association and second to control and supervise its internal affairs. The first cannot arise. In law it is not open to members of public or public trust to appropriate trust property for themselves. Under Hill on the Law of Trusts and Trustees has explained it thus, "However, the crucial difference surely is that no absolutely entitled members exist if the gift is on trust for future and existing members, always being for the members of the association for the time being. The members for the time being cannot under the association rules appropriate trust property for themselves for there would then be no property held on trust as intended by the testator for those persons who some years later happened to be the members of the association for the time being". None of the Parish Churches claim autonomy in the sense that they have changed their faith and belief. Each of them claims that their spiritual head is Patriarch of Antioch. That is they are the believers and followers of Syrian Church. So are the members of Malankara Association and Catholicate of East. Therefore, the existence or exercise of autonomy for Parishes has no meaning. Similarly the independence or autonomy in temporal matters is not of any consequence. The Parishes are bound by the Constitution framed in 1934."

In the light of the aforesaid findings of the Apex Court, the contention that the parish churches should be held to be independent is only to be rejected.

In the result, the appeal is allowed, the impugned judgment is set aside and the suit O.S. No. 10 of 2003 on the file of the District Court, Ernakulam is decreed declaring that the first defendant church is governed by the 1934 constitution of the Malankara Church and that only Vicars and Priests appointed in accordance with the 1934 Constitution of the Malankara Church are competent to conduct religious services in the first defendant church. A decree of permanent prohibitory injunction is also granted in favour of the plaintiffs, restraining the defendants and their men and supporters from causing obstructions to the conduct of religious services in the first defendant church by Vicars and Priests appointed in accordance with the 1934 constitution of the Malankara Church. The plaintiffs are also given a decree of mandatory injunction directing the 10th respondent who is impleaded in the appeal as the present Vicar of the church, to convene a parish assembly of the first defendant church and elect a managing committee including trustees and Secretary for the first defendant church in accordance with 1934 constitution of the Malankara Church. It is made clear that respondents 2 and 3 can continue as trustees of the first defendant church till new trustees are elected in their place, if they are continuing even now as trustees of the first defendant church. All the interlocutory applications in this case are closed.