

KERALA HIGH COURT

Most Rev Mar Poulouse Athanasius

Vs

Moran Mar Bassaelios Catholicos

(K.Sankaran, J.)

03.12.1956

JUDGEMENT

K.Sankaran, J.

(1.) THE longstanding disputes between two sections of the Malankara Jacobite Syrian Christian community relating to the right to the possession and management of certain trust properties endowed for the benefit of the Malankara Jacobite Syrian Church and community, led to the institution of the present suit which has given rise to this appeal.

(2.) PLAINTIFFS 1 to 3, claiming to be properly and legally elected trustees entitled to the possession and management of the trust properties, instituted the suit for recovery of possession of the properties from defendants 1 to 3, on the allegation that they have gone out 2009 KLT INFOTECH VerDIS 2 of the Church and are in wrongful possession of the trust properties. Even apart from the position of the plaintiffs as trustees, they sought to sustain their claim for recovery of the properties as members of the community suing with the sanction of the court under R. 8 of O. I of the Code of Civil Procedure. The suit was instituted in the year 1938 and after an elaborate and protracted trial the first court dismissed the suit in the year 1943. The present appeal is by the plaintiffs against that decision. A Full Bench of the Travancore High Court which heard the appeal allowed it by a majority of 2:1, on the 8th August 1946. That decision is reported in 1946 Travancore Law Reports 683. The defendants-respondents filed a petition on 22nd August 1946 seeking a review of that judgment. A Full Bench of the Travancore-Cochin High Court heard that application and it was dismissed on 21st December 1951. The respondent's application for leave to the Supreme Court was also rejected. But special leave was granted by the Supreme Court and accordingly the respondents preferred an appeal to the Supreme Court against the order dismissing the review petition. Ultimately the Supreme Court allowed that appeal and accepted the review petition and set aside the decree dated 8th August 1946 passed by the Travancore High Court allowing this appeal. The case was remitted to the High Court with the direction that the entire appeal should be re-heard on all the points unless both the parties accept any of the findings recorded in the earlier decision. There has been no such agreement by the parties, but on the other hand they have chosen to argue afresh all the points involved in the appeal. The grounds raised in the appeal memorandum and those raised in the memorandum of objections filed on behalf of the respondents, cover the entire field of controversy in the suit. For

a clear understanding of the important points that arise for decision in this appeal it is necessary to briefly advert to the contentions of the parties. According to the plaintiffs all the properties scheduled to the plaint are trust properties endowed to the Malankara Jacobite Syrian Church and they have to be managed by three trustees of whom one is to be Metropolitan, and the others, a clergyman and a respectable lay member of the Church to be elected by the Church. The Patriarch of Antioch is the ecclesiastical head of the Malankara Jacobite Syrian Church, and only a person duly ordained by the Patriarch or his delegate and accepted by the Malankara Jacobite Syrian community could become the Malankara 2009 KLT INFOTECH VerDIS 2 Metropolitan. This position has all along been accepted by the community and affirmed by the decisions of courts, the earliest of such decisions being the decision of Travancore Royal Court of Final Appeal in S.A. No. 3 of 1061. Copy of the judgment in that case has been produced and marked as Ext. DY. That decision was in favour of Mar Joseph Dionysius who had been ordained and appointed as Malankara Metropolitan by the Patriarch of Antioch and who had been accepted by the community. The trust properties involved in that suit were recovered by him from Mar Thomas Athanasius, who had claimed himself to be the Malankara Metropolitan in defiance of the authority of the Patriarch of Antioch over the Malankara Church. Mar Joseph Dionysius along with two other joint trustees elected by the community continued management of the trust properties. On the demise of Mar Joseph Dionysius, he was succeeded by Mar Geevarghese Dionysius as Malankara Metropolitan who got his ordination from Abdulla II, the ruling Patriarch at the time. The two other joint trustees, who were associating themselves with Mar Geevarghese Dionysius in the management of the trust, were Kora Mathan Kathanar and C.J. Kurien. In the year 1085 Patriarch Abdulla II arrived at Malankara and stayed there for about two years. During this period disputes and misunderstandings arose between himself and Mar Geevarghese Dionysius and matter reached a crisis when Abdulla II passed an order of ex-communication against Mar Geevarghese Dionysius on certain alleged improper acts and misconduct on his part and appointed Mar Kurilos as the Malankara Metropolitan. The validity of the ex-communication order was challenged by Mar Geevarghese Dionysius and his supporters. Since Kora Mathen Kathanar and C.J. Kurien were not prepared to support Mar Geevarghese Dionysius in defiance of the Patriarch's ex-communication order, the party supporting Mar Geevarghese Dionysius elected Mani Poulouse Kathanar and Kora Kochu Korulla as joint trustees. Thus there were two rival sets of trustees. An important item of trust property consisted of an investment of 3000 Star pagodas with the British Government, the interest on which could alone be received from time to time by the trustees. In view of the existence of two rival sets of trustees, the Secretary of State for India instituted an interpleader suit O.S. No. 94 of 1088 in Trivandrum District Court impleading both sets of trustees and seeking a verdict as to which of the rival sets of trustees was entitled to receive the accumulated amount of interest deposited in the suit. Mar Geevarghese Dionysius and his co-trustees Mani Poulouse Kathanar and Lora Kochu Korulla, were defendants 1 to 3, and Mar Kurilos and his co- 2009 KLT INFOTECH VerDIS2 trustees, Kora Mathen Malpan and C.J. Kurien, were defendants 4 to 6 in that suit. Pending decision of the suit, Mar Kurilos died and the present 1st plaintiff who was appointed as Malankara Metropolitan by the Patriarch, was impleaded as additional 42nd defendant. The main point of controversy in that suit was whether the order ex-communicating Mar Geevarghese Dionysius was valid and whether he had lost his status as the Malankara Metropolitan. The District Court answered the question in the negative and held that Mar Geevarghese Dionysius and his co-trustees were legally entitled to draw the interest on the trust

fund. Defendants 5, 6 and 42 filed an appeal against that decision to the Travancore High Court. By the first decision in that appeal the trial court's decree was reversed. Copy of the judgment in that appeal has been marked as Ext. DZ in the present suit. That decision is also reported in 41 Travancore Law Reports 1. Defendants 1 to 3 of that suit applied for a review of that decision. The review was admitted subject to certain conditions and limitations. Finally the application for review was allowed by upholding the applicants' contention that the order ex-communicating Mar Geevarghese Dionysius was bad in law so far as it did not satisfy the rules of natural justice. Accordingly, the earlier decision allowing the appeal was set aside and the trial court's decree upholding the status of defendants 1 to 3 as trustees continuing in office was confirmed. The final decision in that appeal is reported in 45 Travancore Law Reports 116. Copy of the judgment is marked as Ext. CCLVI in the present suit. While defendants 1 to 3 of the said interpleader suit were thus continuing in office as trustees, the third defendant, Kochu Korulla, died in the year 1106. The present third defendant is said to have been elected as the lay trustee in the place of Kochu Korulla. These trustees and their partisans continued to defy the authority of the Patriarch of Antioch as the ecclesiastical head of the Malankara Church. They also maintained that the Catholicate of the East had been re-established in Malankara and that the powers of the Patriarch could be validly exercised by the Catholicos. The creation of the Catholicate in Malankara or the existence of a Catholicos, was not recognised by the Patriarch. In the kalpana issued by the patriarch to his followers it was declared that those who were supporting and following the Catholicos in defiance of the authority of the Patriarch, were aliens to the Malankara Jacobite Church. The members of the Church were also advised not to co-operate with such aliens in matters pertaining to the Church. The split between the two sections had thus become very 2009 KLT INFOTECH VerDIS 2 acute. It was in such a situation that Mar Geevarghese Dionysius died in Kumbhom 1109 (early in 1934). At a meeting held by his partisans on 11.5.1110/26.12.1934, the present first defendant whom they had accepted as the Catholicos, was elected as the Malankara Metropolitan. The validity of this meeting has been challenged by the plaintiffs on several grounds, and it is contended that the resolutions passed at that meeting are not binding on the Malankara Jacobite Syrian Church. The first defendant's eligibility for the Metropolitan's place is also questioned by the plaintiffs on the main ground that he has not been ordained as a Metropolitan by the Patriarch of Antioch. The position claimed by the first defendant as a Catholicos installed in Malankara is also questioned by the plaintiffs who maintain that the Catholicate as an institution never existed in Malankara and that the first defendant has not been ordained as a Catholicos by the Patriarch of Antioch. It is further contended that one and the same individual cannot be the Catholicos and also the Malankara Metropolitan at the same time. It is the faith of the Church that only the Morone or sanctified oil consecrated by the Patriarch can be used in the churches at Malankara for sacraments and other rites and the longstanding custom in that direction has been recognised by decisions of courts. The first defendant's act in consecrating Morone and causing it to be used in the churches under his influence, is alleged to be a flagrant denial of the authority of the Antiochian throne, just as his claim that he possesses the dignity and authority as Catholicos and Malankara Metropolitan even without any ordination by the Patriarch of Antioch. Ressisa, which is a contribution legitimately due from the Malankara Church to the Patriarch of Antioch, is stated to be unlawfully collected and appropriated by the first defendant. On account of such acts and pretensions against the tenets of the true faith, the first defendant is alleged to have ipso facto become a heretic and an alien to the Malankara Jacobite Syrian Church. By supporting the first defendant and co-

operating with him in his heretical acts and pretensions, defendants 2 and 3 have also become heretics and aliens to the Church. Defendants 1 to 3 did not stop with the commission of such acts of heresy. They and their partisans have voluntarily separated themselves from the ancient Jacobite Syrian Church and have constituted for themselves a new Church called Malankara Orthodox Syrian Church and have accepted Ext. AM as the constitution of this new Church, at the meeting held on 11.5.1110/26.12.1934. Defendants 1 to 3 are stated to have thus become disqualified and unfit to be trustees of, or to hold any other position in, or enjoy any benefit from the Jacobite Syrian Church. The plaintiffs claim to be the lawful trustees elected by the representatives of the Church at a meeting held on 6.1.1111/22.8.1935. At this meeting the first plaintiff was elected as the Malankara Metropolitan and plaintiffs 2 and 3 were elected as the clergyman trustee and lay trustee respectively, in place of defendants 2 and 3 who were removed from trusteeship. Even though the plaintiffs are thus fully entitled to sue in their capacity as trustees, they have sought the permission of the court to file the suit in their personal capacity as members of the community. The plaintiffs have sought for a decree declaring that the first plaintiff is the lawful Malankara Metropolitan, that the second plaintiff is the lawful Kathanar trustee and that the third plaintiff is the lawful layman trustee, and that the defendants have no right to retain possession of and administer the properties belonging to the Malankara Jacobite Syrian Church and also for compelling these defendants to surrender possession of the plaintiff schedule properties to the plaintiffs. It is also prayed that the defendants may be compelled to pay mesne profits at the rate specified in the schedule and also the profits accruing from the movable items of properties and that they may be compelled to render accounts of all the profits realised by them from the immovable properties and other assets belonging to the Church and also to restore to the plaintiffs the assets in their possession along with all the documents and accounts. There is also the prayer for the issue of a perpetual injunction restraining the first defendant from doing any act in his professed capacity as Catholicos of the Malankara Jacobite Syrian Church or as the Malankara Metropolitan and defendants 1 to 3 from functioning in their professed capacity as trustees of the said Church. In resisting the suit the first defendant has traversed all the allegations in the plaint. Though defendants 2 and 3 have filed separate written statements, their contentions are the same as those raised by the first defendant. According to defendants 1 to 3, the institution of the Catholicos of the East which existed in the Syrian Church, remained vacant for a few centuries and it was re-established at Malankara in the year 1088 M.E. (1912-13) by Moran Mar Abdul Messiah who was Patriarch of Antioch, with the co-operation of the Metropolitans in Malankara. The institution of the Catholicate and the installation of the Catholicos have been lawfully and canonically performed with the co-operation of Mar Geevarghese Dionysius who was the Malankara Metropolitan at that time. It is further stated that the Malankara Church has submitted to the jurisdiction of the Catholicos from 1088 M.E. (1912-13). It is said that the first defendant's ordination as a Metropolitan was also performed by Abdul Messiah who was the Patriarch of Antioch, with the co-operation of the Metropolitans who were 2009 KLT InFOTECH VerDIS2 at Malankara at that time and that therefore the first defendant's ordination cannot be said to be invalid. He also maintains that he has been installed as Catholicos by the Metropolitans in Malankara with the consent of the Malankara Church. After the death of Mar Geevarghese Dionysius, a meeting of the Malankara Association which is the assembly of the representatives of the Churches in Malankara, was held on 11.5.1110/26.12.1934 at the M.D. Seminary, Kottayam, and at this meeting the first defendant was elected as the Malankara Metropolitan. The objections levelled against this meeting are all stated to be untrue and

untenable. The first defendant, in his turn, has challenged the truth and the validity of the meeting at which the plaintiffs claim to have been elected as trustees. It is contended that if any records evidencing the holding of such a meeting have been created, they could only be fabrications. If any meeting had been held, it was one held by a few partisans of the plaintiffs, claiming to be a meeting of the representatives of the Malankara Church without inviting the representatives of all the churches and at the same time intentionally excluding the large majority of the churches and the people of the Malankara Church from that meeting. The validity of this meeting is attacked on other grounds also and it is stated that the proceedings of that meeting do not bind the Malankara Church or the defendants and that the plaintiffs cannot claim to have been lawfully elected as trustees. They are not entitled to claim recovery of possession of the properties from defendants 1 to 3 who are in possession of the same as lawful trustees. To maintain that the first defendant has in him the dignities of Catholicos and Malankara Metropolitan, does not constitute a defiance of the throne of Antioch. As Catholicos the first defendant is competent to consecrate Morone and to do so cannot amount to a negation of the authority of the Patriarch. There has been no faith or custom that Morone consecrated by the Patriarch alone can be used in the Malankara Church and even if there has been any such faith or custom, the same has ceased to have force after the establishment of the Catholicate. The Patriarch is not entitled to a levy called Ressisa as of right and it has not been customary to pay any such dues. Occasional payments, if any, have been only voluntary contributions. Non-payment of such dues to the Patriarch will not amount to misappropriation. The first defendant is exercising only the powers pertaining to his status as Catholicos and Malankara Metropolitan, and is not doing anything opposed to the faith of the Church. The charge that the first defendant is guilty of having committed several unlawful acts amounting to heresy, is baseless and untrue. It cannot also be said that by virtue of such acts the first defendant has ipso facto become an heretic and alien to the Malankara Syrian 2009 KLT InFOTECH VerDIS2 Church. Defendants 2 and 3 cannot also be said to have become heretics and aliens to the Church by supporting the first defendant and co-operating with him in his alleged acts of heresy. It is further contended that the court is not competent to go into the question of heresy. The allegation that the defendants and their partisans have voluntarily separated from the Malankara Jacobite Syrian Church by establishing a new Church called the Malankara Orthodox Syrian Church is also denied and it is contended that these are not different Churches. The defendants maintain that the new constitution embodied in Ext. AM does not amount to a negation of the authority of the Patriarch of Antioch and that it does not contain anything opposed to the faith and doctrines of the Malankara Jacobite Syrian Church. The defendants have a further contention that the members of the group represented by them have become the sole beneficiaries of the trust to the exclusion of the group supporting the plaintiffs. It is stated that the Malankara Association, the defendants and the large majority of the people of the Malankara Church supporting them believe that the Patriarch of Antioch has no temporal power over the properties belonging to the Malankara Church, Jacobite Syrian Church by establishing a new Church called the Malankara Orthodox Syrian Church is also denied and it is contended that these are not different Churches. The defendants maintain that the new constitution embodied in Ext. AM does not amount to a negation of the authority of the Patriarch of Antioch and that it does not contain anything opposed to the faith and doctrines of the Malankara Jacobite Syrian Church. The defendants have a further contention that the members of the group represented by them have become the sole beneficiaries of the trust to the exclusion of the group supporting the plaintiffs. It is stated that the Malankara Association, the defendants and

the large majority of the people of the Malankara Church supporting them believe that the Patriarch of Antioch has no temporal power over the properties belonging to the Malankara Church, that the Patriarch, Catholicos and Metropolitan may according to the Canons consecrate Morone, that the canon of the church is one written by Bar Hebreus and marked as Ext. A in O.S. No. 94/1088 of the Trivandrum District Court and that the canons embodied in it constitute the law and ordinances of the Malankara Church and that in accordance with the above belief they have decided to deal with and are dealing with the properties belonging to the Malankara Church. The Malankara Association, the defendants and the large majority in the Malankara Church supporting them, believing that the Catholicate 2009 KLT InFOTECH VerDIS 2 re-established in the Malankara Church in 1088 has been properly and canonically instituted, owe allegiance and are subject to the Catholicos. It is alleged that the object of the foundation of the Malankara Church and the nature of the trust relating to its properties, have become subject to the laws and ordinances already referred to and to the Catholicate and that whatever may have been the object of the foundation and the nature of the trust, the defendants and others have believed from 1085 onwards that the object of the foundation and the nature of the trust are as contended for by them and the properties of the Church are being administered accordingly. This contention is further amplified by stating that the properties of the Church have therefore become subject to a trust as mentioned above and even if the terms of the trust prior to 1085 were otherwise, the trust has subsequently become altered and the properties of the Church are not to be used for purposes contrary to such trust as altered. It is also asserted that the defendants have been administering and utilising the properties of the Church included in the schedule and conducting the worship in the churches, solely in accordance with such belief, treating the defendants and their supporters as the sole beneficiaries of the properties of the Church and treating the plaintiffs and their supporters as non-beneficiaries of the Church properties from the year 1088 onwards. It is accordingly contended that the plaintiffs and their partisans have lost, by limitation and adverse enjoyment, their rights, if they had any, over the properties of the Church. The plaintiffs are also accused of being guilty of heresy insofar as they have been contending from the year 1085 onwards that the Patriarch has temporal power over the properties of the Malankara Church, that only the Patriarch can consecrate Morone, that the canon of the Church is the book marked as Ext. XVIII in O.S. No. 94 of 1088 of the Trivandrum District Court and that the Catholicate had not been validly instituted in the Malankara Church. The plaintiffs and their partisans have been non-co-operating with the Malankara Metropolitan and his supporters, and have been acting against the trust and contrary to the object of the foundation of the Malankara Church and have thus voluntarily separated themselves from the Church and have ceased to be members of the Malankara Church and to be beneficiaries of its properties. The Patriarchs who are supporting the plaintiffs and their partisans, are also alleged to have become aliens to the Church. The defendants have also contended that the plaintiffs' suit is out of time and that S. 92 of the Code of Civil Procedure is also a bar to the suit. The dismissal of the earlier suit, O.S. No. 2 of 1104, on the file of the Kottayam District Court instituted by some of the 2009 KLT InFOTECH VerDIS2 partisans of the plaintiffs, is also stated to be a bar to the present suit. The plaint averment that all the items scheduled to the plaint are trust properties, has also been denied by these defendants. A separate statement has been appended to the first defendant's written statement and the particulars of the properties admitted to be trust properties are given in that statement. These trust properties are classified into two categories. It is stated that only the properties covered by the Cochin

Arbitration Award of the year 1840 and those acquired with the income of such properties from the joint trust are to be administered by the three trustees as per the terms of the Cochin Award. It is contended that other items of properties belonging to the Church or the community are to be in the sole possession and control of the Malankara Metropolitan and to be administered by him as the sole trustee.

(3.) AS already stated, the plaintiffs wanted to sustain the present suit in their individual capacity as members of the Malankara Church. By a separate application they moved the court for sanction under R. 8 of O. I of the Code of Civil Procedure permitting the plaintiffs to maintain the suit on behalf of the Malankara Syrian Christian Community. The court caused the notice of the institution of such a suit to be published in the Government Gazette. AS a consequence of such notification, defendants 4 to 7 got themselves impleaded as additional parties to suit. Defendants 4 and 5 did not file any separate written statement. But on their behalf a statement was filed to the effect that they adopt the contentions of defendants 1 to 3 and that they have no additional contentions to be raised. The 7th defendant filed a written statement almost on the lines of the written statement of defendants 1 to 3. The sixth defendant also adopted the contentions of these defendants and raised certain special claims in respect of items 16 and 17 of the B schedule in the plaint and contended that these items do not form part of the common trust properties belonging to the Malankara Jacobite Syrian Community as a whole. The plaintiffs filed a replication controverting the several points raised in the defendant's written statements. It was also pleaded by the plaintiffs that the defendants are barred by reason of res judicata from raising contentions against the findings in the final decision in O.S. No. 94 of 1088 and in the judgment of the Royal Court of Final Appeal, concerning the faith and practices of the Malankara Church, the powers of the Patriarch over it and the canons governing it. 2009 KLT INFOTECH VerDIS2 ;