

**IN THE COURT OF THE ADDITIONAL SUB JUDGE,
KOTTAYAM.**

Present :- Sri. Sudheesh Kumar S, Addl. Sub Judge.

Friday 30th April, 2021
10th Vysakam 1943.

O.S. No.106/2015

Plaintiffs:-

1. Knanaya Catholic Naveekarana Samithy,
Vaithara Building (Near Village Office),
Kumarakom P.O., Kottayam- 686563 represented
by its President who is also the 2nd plaintiff.
2. T.O. Joseph, aged 70 years, S/o. Ouseph,
Thottumkal House, Kannankara P.O.,
Thannermukkam North Village, Cherthala Taluk,
Alappuzha District.
3. Lukose Mathew K., aged 65 years, S/o. Mathew,
Kunnumpurathu (H), Kurichithanam P.O.,
Kurichithanam Village, Meenachil Taluk,
Kottayam District.
4. C.K. Punnen, aged 68 years, S/o. Kuruvilla,
Chirayil house, Athirampuzha P.O.,
Kottayam Taluk, Kottayam District, represented by
his Power of attorney holder V.C. Mathai.

By Adv. Francis Thomas and Adv. George Thomas

Defendants:-

1. The Metropolitan Archbishop,
The Archeparchy of Kottayam,
Catholic Metropolitan's House, Kottayam
Kerala- 686001. The present Metropolitan
Archbishop is Most Rev. Mar Mathew Moolakkatt.
2. The Archeparchy of Kottayam, Catholic
Metropolitan's House, P.B. No. 71, Kottayam,

Kerala-686001, represented by
The Metropolitan Archbishop.

3. The Major Archbishop, Syro Malabar Major
 Archiepiscopal Church, Mount St. Thomas,
 Kakkanad P.O., P.B. No. 3110, Kochi- 682030.
 The present Major Archbishop is His beatitude
 Mar George Cardinal Alenchery.
4. Synod of the Bishop of the Syro Malabar Major
 Archiepiscopal Church, Mount St. Thomas,
 Kakkanad P.O., P.B. No. 3110, Kochi- 682030
 represented by its Secretary.
5. Congregation for the Oriental Churches Via Della Conciliazione 34,
 00193 Roma Italy represented by its Prefect.
6. Congregation for the Doctrine of Faith Piazza del S.
 Ufficio-II, 00139 Roma Italy represented by its Prefect.
- Addl. D7. Knanaya Catholic Congress, Kottayam represented by its
 President Stephen George, S/o. George, Veliyath (H),
 Kurumulloor P.O., Onamthuruthu Village,
 Kottayam- 686632.

Addl.D7 impleaded as per order in I.A. 1941/17 dtd. 05-06-2018.

D1, D2 By Adv. Agi Joseph
 D3, D4 }
 D5, D6 } Exparte
 Addl.D7 By Adv. Jojo Thomas and Adv. Luke J Chirayil

This suit having been finally heard on 29-04-2021 and the
 court on 30-04-2021 delivered the following.

J U D G M E N T

Suit is for declaration and for mandatory & prohibitory

injunction.

2. Plaintiff allegations can be summarized as follows:-

First plaintiff is a society registered under Travancore Cochin Literary Scientific and Charitable Societies Registration Act – 1955 formed to oppose the practice of defendants No.1 & 2 in terminating membership of members marrying Catholics from other Diocese. First plaintiff is represented by second plaintiff. Executive Committee of first plaintiff authorized its President or Secretary to file suit as per its resolution dated 20.04.2015. Second plaintiff being President of first plaintiff is competent to sue, representing members of first plaintiff having same interest over subject matter of suit besides their individual capacity. Plaintiffs are members and the defendants 1 and 3 are the heads of institution and defendants Nos.2, 4 to 6 are institutions, within Catholic Church – a biggest and oldest organization in the planet having 123 Crore members together with documented history of over 2000 years. Both plaintiffs and defendants believe that the Catholic Church is one, Holy, Apostolic and Universal. There is an unholy practice followed by defendants 1 and 2 of terminating membership of those members in parishioners who enter into the holy sacrament of marriage with a Catholic of any other Diocese. Both plaintiffs and defendants believe that marriage is one of the seven sacraments established by Jesus Christ.

The very act of termination of membership from Kottayam Diocese by defendants Nos.1 and 2 for entering into holy sacrament of marriage with another Catholic is unholy, unlawful, illegal, inequitable, unconstitutional, unethical and inhuman. First plaintiff consist of existing members of defendant No.2 who opposes aforesaid unholy and illegal practice and former members of second defendant whose membership terminated by first defendant for marrying Catholics of other Dioceses. The aims and objectives of first plaintiff inter alia are:

- (a) To bring back those members of second defendant whose membership were terminated by the Dioceses for marrying a Catholic from outside the Kottayam Diocese.
- (b) To stop the practice followed by first and second defendants in expelling members for marrying Catholics from other Catholic Dioceses.
- (c) To build up a non - discriminatory and loving society in Kottayam Diocese.
- (d) To adopt programmes and actions to change the defendant No.2 from caste based one and to reform it in the journey towards the salvation of souls.

(e) Denounce endogamy and see that second defendant followed Canon Law and the liturgy of the Syro-Malabar Church without any caste discrimination. First plaintiff has units in most of the parishes under 12 Forane Churches in the defendant No.2. It conducts various programmes to achieve its objectives. Third defendant has supreme jurisdiction on all affairs in Syro-Malabar Archiepiscopal church subject to superintendence of defendants 4 to 6.

Third defendant is equally responsible for the continuance of illegal practice followed by first and second defendants. Defendants 3 to 6 are arrayed in the lists by plaintiffs with deep sorrow. Plaintiffs are keeping great respect for defendants 3 to 6. They believe that they are almost infallible in their actions. However they represent the disciplinary and supervisory hierarchy that oversees defendants No.1 and 2 and are therefore responsible to maintain holiness of Catholic Church. According to plaintiffs, defendants No.3 to 6 failed in their mission and therefore plaintiffs are compelled to bring them in the party array for eradicating unchristian and unlawful practice followed by defendants No.1 and 2.

Members of Catholic Church throughout the world are united under the sole authority of Roman Pontiff. The Holy Pope as Pontiff has supreme jurisdiction over Catholics all over the world. Subject to his jurisdiction congregations established for governing church in the respective areas allotted to them by the Pontiff. The decision of congregation is final and binding on all Catholics. Defendant No.6 being the congregation for the doctrine of faith is the final authority on all matters pertaining to the faith and all customs connected with the faith. Congregation is concerned with the examination of new teachings and promotion of studies concerning such teachings and dealing with censuring of any teaching contrary to the principles of faith. It also deal with examination and censorship of books. Fifth defendant the congregation for Oriental Churches is the final authority dealing with persons and aspects pertaining to the oriental rites, except a matter that fall within the purview of 6th defendant. The plaintiffs and defendants No.1 to 4 belong to Oriental Rite in the Catholic Communion. The Holy Catholic Church is a communion of ecclesiastical traditions. Defendants No.1 to 4 are part of Oriental Church. The Oriental Churches are also known as Eastern Churches. On 16.12.1992 Pontiff elevated Syro-Malabar Church into major Archiepiscopal Church. Third defendant is head of the Church having jurisdiction over members of Syro-Malabar Archiepiscopal Church all over the world. Fourth defendant is

the legislature and the supervisory tribunal and the electoral college of SyroMalabar Archiepiscopal Church. The law of Catholic Church dealing with holy sacraments is called Canon Law. There are separate Canon Law for Latin Rite and the Oriental Rite in the Catholic communion. The Canon Law for Oriental Churches namely the Code of Canon Law of Oriental Churches [The Codex Canonum Ecclesiarum Orientalium (CCEO)] was promulgated by the Pontiff on 01.10.1991. Oriental Churches including Syro-Malabar Archiepiscopal Church are governed by CCEO. But Eastern Churches enjoying status to legislate through their senates, to make changes or modifications in the CCEO in their jurisdictional limits subject to approval by defendants 5 and 6 and the Pontiff. Syro-Malabar Archiepiscopal Church accordingly enacted Particular Law through 4th defendant and promulgated Canon Law concerning the sacrament of marriage on 15.07.1997. 4th defendant promulgated Particular Laws concerning other subjects from time to time and considerable portion of Particular Laws promulgated on 10.01.2002. Meeting of 4th defendant held in November 2003 decided to publish Code of Particular Laws of Syro-Malabar Church following orders of Canons of the CCEO. The CCEO Act Particular Law enacted by 4th defendant are the only laws governing holy sacrament of marriage in 2nd defendant as also in all other Dioceses in the Syro-Malabar Church. Second defendant has

no separate law governing sacrament and is governed only by CCEO and Particular Law passed by 4th defendant mentioned above. There is no Canon Law or any other law enabling defendants No.1 and 2 to terminate membership of any member of Dioceses for the reason of his or her marriage with a Catholic of other Dioceses. The CCEO itself enumerate various impediments for marriage and no new detrimental impediment can be introduced by any Particular Law without reason. Article 150 to 190 of Particular Law of Syro-Malabar Church deal with sacrament of marriage. Neither CCEO nor Particular Law of SyroMalabar Church restrict marriage with a Catholic from another Dioceses. Marriage is one of the seven sacraments established by Jesus Christ to receive the increase of divine grace and blessings to fulfill obligation of life.

The second Vatican Council declared that basic cell unit is family and that cannot be divided further. The understanding of sacrament of marriage is reflected in (CCEO) Canon 776 which reads as follows:-

“By the marriage covenant founded by the creator and ordered by His laws, a man and a woman by irrevocable personal consent established between themselves a partnership of the whole of life; this

covenant is by its very nature ordered to the good of spouses and to the procreation and education of children.

By Christ's institution a valid marriage between baptized persons is by that very fact a sacrament in which the spouse are united by God after the pattern of Christ's indefectible union with the church and are, as it were consecrated.

The essential properties of marriage are unity and indissolubility.

In page No.271 of “*The Book of Decrees of Mar Mathew Makil*” a book authored by Dr. Mathew Moolakkatt reads as follows:

“The Church has always upheld the sacred character of marriage against all tendencies to reduce it to a merely profane reality. Although all people have recognized a secret character in the marriage union, the Church has grown in the explicit awareness of Christian marriage as an effective sharing in the mystery of Christ's union with her, and hence an efficacious sign of grace. By the participation in the Christian mystery which the sacrament confers, the Christian marriage endows the natural bond of marriage with a new dignity and sanctity.

Those who denied the sacrament of marriage between

members of Catholic community which is the most powerful unifying force to nurture inter relationship and thereby strengthen Christianity cannot claim to be the representatives of Christ and upholders of Canon Law. First and second defendants are compelling members of second defendant to marry member within defendant No.2 only. If anyone marries a person from any other Catholic Dioceses membership of person will be terminated from Diocese. The practice of enforced endogamy in the Diocese of Kottayam is against teachings of Jesus Christ and Catholic Church. It is also against the Christian morality and solidarity. It is contrary to Constitution of India and is a violation of basic civil rights and fundamental human rights. There is no caste system in Christianity. It is a fundamental Christian tenet that all persons who are baptized in Christ are brothers and sisters who are equal in the eye of God. There shall not be any discrimination between them on the basis of caste, sect, colour or gender. Defendants Nos.1 and 2 are ex-communicating persons marrying from outside Dioceses, though the act of marriage has been fully accepted by family of concerned persons. The personal and social consequences of these rejections and expulsion are devastating. When the membership is terminated they have no other Church to go. Due to this humiliating and vicious treatment, many members even start to question Christian faith. If the member is lucky and if there is nearby Catholic Parish, it may admit

him provided he or she pay a fee. The spiritually orphaned members even being denied the right for burial in the Tombs where their parents and forefathers are laid to rest. Children adopted by couples are denied membership in the Parish. Even though these children have a right to their parent's properties, they quite inexplicably have no right to belong to and participate in the Parish of parents who adopted them. According to plaintiffs all these unacceptable consequence are defended in the name of faith. Defendant No.6 who should defend Catholic faith stands as a mute spectator to this unchristian practice followed by first and second defendants. There are hundreds of unmarried men above 35 years in second defendant who could not find brides and remain unmarried for fear of termination of membership. Defendants No.1 and 2 are expelling poor helpless members without considering the moral implications or psychological and emotional wounds inflicted upon affected members and their families. The policy followed by defendants 1 to 3 leads to several absurd situations. For instance when the wife who is from any other Dioceses dies, the Knanaya husband will be readmitted to the second defendant. He can marry a member of that Diocese. Consequently his children from the first marriage will belong to another Diocese, while the second wife and children belong to the second defendant, the Kottayam Diocese. Many families of second defendant are faced with this absurd

situation where the members of one family belong to two different Catholic Dioceses at the same time. Well educated professionals like Doctors, Engineers, Lawyers and Teachers in second defendant could not find suitable partners from their own community and they were compelled to marry from outside community. Men from financially and educationally lower class families are not getting brides from second defendant due to the reason that woman folk on obtaining primary education proceed to choose nursing profession and are easily employed in India or abroad. Hundreds of men of poor financial background in Kottayam Diocese either remain unmarried for the fear of termination of membership from Dioceses or marry another catholic and faced consequence of expulsion. The common folk who do not have higher education or the financial power or influence remaining bachelor or spinster or else accept termination of membership from the Dioceses. Termination of membership from Kottayam Diocese break the bond continued for centuries on the ground of entering into holy sacrament of marriage with another Catholic. The sudden dismissal without any sanction of law, consideration or compensation for services and wealth created in the Dioceses by a member and their devotion to faith and institution of Church got smashed. It is very difficult to retain blood purity through the illegal policy adopting by second defendant. A couple adopting artificial method for procreation of

child may use blood of a person not belong to second defendant. Involvement of a serogate mother in the birth of child raises question of maternity. If an illegitimate child is born to a woman member of second defendant it become difficult to decide paternity of child and purity of blood. Under the Catholic Church nobody has the authority except the Pope to terminate membership of laity obtained by baptism. Under Canon Law notice, right of defence, trial and appeal are integral part of justice delivery system. Plaintiff pointed out CANON 24, CANON 669 and CANON 792. All laws of Catholic Church concerning the holy sacraments or otherwise are subject to divine law ie. teaching of Jesus Christ and acts of Apostles. Bible is the Supreme Law for Catholic Church. Divine law take precedents over the Canon Law. The practice of endogamy and expulsion of members from second defendant is in gross violation of divine law. Verses from Bible such as Mathew 15 (7, 9), Mathew 19 (4-6), John 6 (37-40), John 13 (34, 35), John 17(21 – 23), Paul's letter to the Galatians 3 (28) and Paul's letter to the Colossians 3 (11, 13) are relevant in this regard. It reveals that policy of defendants No.1 and 2 are clear violation of divine law of the Catholic Church. Article 25 of Indian Constitution guarantees freedom of religion to its citizens. Defendants No.1 and 2 has no authority to violate fundamental and civil rights of citizens guaranteed under Constitution of India.

Defendants No.1 and 2 are violating basic human rights and fundamental principles of natural justice to its members without affording an opportunity to defend themselves before passing an order of termination. They are violating Universal Declaration of Human Rights (Art. 16, 18, 29(2)), International Covenant on Civil and Political Rights (Art. 17, 18, 23, 27), Declaration on the rights of persons belonging to National or Ethnic Religious and Linguistic Minorities (Art. 2 to 7) and International Convention on the Elimination of all forms of Racial Discrimination (Art. 2 to 6). The reason that is usually advanced by first and second defendants for terminating membership from Kottayam Diocese is that Pope St. Pius X issued a Papal Bull in 1911 instituting the Apostolic Vicariate of Kottayam for the Southists people and that the said Bull allegedly authorizes defendant No.1 and 2 to enforce endogamy and expel members who does not practice endogamy. Such a contention is incorrect and the same is contrary to facts and law. A Bull creating Dioceses will not over ride law relating to sacraments. The governing law relating to the holy sacraments is the Divine Law and the Canon Law. Therefore the law of sacrament of marriage cannot be governed by the Bull issued for creating a new Diocese. The Bull creating Diocese is an administrative decision which will not prescribe law governing sacraments

including marriage. The Papal Bull issued by St.Pius X creating Kottayam Diocese reads as follows:-

“For the future record of the fact. In the office divinely entrusted to us for governing the Universal Christian flock we consider it especially ours to determine for the churches such boundaries which correspond to the good of faithful and to the desires of those who preside over them. For this reason in order to provide better for the faith and piety of the SyroMalabar people we have decreed to constitute a new Apostolic Vicariate in their region.

For this people our predecessor of happy memory Pope Leo XIII by a letter similar to this dated July 28, 1886, established three Apostolic Vicariates, namely of Trichur, Ernakulam and Changanacherry and though it fit to appoint over them three prelates selected from among them.

Now, however, since the three Vicars Apostolic of the same above mentioned Vicariates, after mutual consultation have insistentlly petitioned us by a letter, dated March 1 of this year, that a new Apostolic Vicariate may be erected in the town commonly called Kottayam in order to satisfactorily cater to the spiritual needs of those regions and to reconcile the minds of the dissidents, we having maturely and diligently considered all the important facts of the matter with our venerable brethren the Cardinal of the Holy Roman Church in the Sacred Congregation of propagating the Christian Name for the Affairs

of the Oriental Rite, decided to kindly accept such request and show proof of our benevolence to the aforesaid nation.

Therefore, by motu proprio, with sure knowledge and fullness of our power we separate all the Southist parishes and churches from the two Apostolic Vicariates of Ernakulam and Changanacherry and constitute them into a new Apostolic Vicariate in the town commonly known as "Kottayam" for the Southist people. On that account it shall include all the churches and chapels pertaining to the Kottayam and Kaduthuruthy Foranes in the Apostolic Vicariate of Changanacherry and also the Southist churches of the Apostolic Vicariate of Ernakulam.

We want and command these this, decreeing that this letter shall always exist firm, valid and efficacious, and shall gain and obtain full and integral effect and shall most fully favour in all things and every way lose whom it pertains and shall pertain in the future, and thus it must be judged invalid and void if it happens to be tampered with by any one of whatever authority knowingly or unknowingly.

Notwithstanding our Apostolic Chancery's rule of not removing the acquired right, and whatever other Apostolic constitutions to the contrary. Given at Rome before St. Peter under the fisherman's ring on the 29th day of August 1911, in the ninth year of our pontificate".

So the contention of first and second defendants that the Papal Bull of 1911 authorizes and enable expulsion of members who marry Catholics outside second defendant is incorrect. Papal Bull dated 29.08.1911 issued

to accommodate two dissident factions to maintain peace namely the Changanacherry Diocese or Northists people and Kottayam Diocese for Southists people. It was an administrative decision and not meant to confirm special right of endogamy on any one section of people. On perusal of Papal Bull dated 29.08.1911 no right or power is conferred on first and second defendants to expel a member from Kottayam Diocese for entering into sacrament of marriage with another Catholic. If such an interpretation as adopted by first and second defendants is taken as correct then Bishop of Changanacherry can also expel a Northists when he or she marry a Southists from second defendant. So the claim of first and second defendants under Papal Bull is the result of misplaced and baseless interpretation. Whenever a new Diocese is created the Papal Bull will state that it is for the development and progress of a section of people. The Papal Bull does not say that Diocese is established for perpetuating a policy of exclusion and discrimination or for maintaining imaginary blood purity. The Papal Bull also does not say that its members must not enter into the sacrament of marriage with members of other Catholic Dioceses or such members marrying so should be expelled etc. Such a misplaced interpretation militates against Christian teachings and is totally alien to the true intentions of Holy Pope who sanctioned the Dioceses. Bishop Makil who was the first and then presiding Bishop of Changanacherry

Diocese and first Bishop of Kottayam Diocese did not expel any member of second defendant for marrying a Catholic from another Catholic Dioceses. Further a Civil Court in India having proper jurisdiction judicially examined relevant Papal Bull and held in OS No.923/1989 that Papal Bull of 1911 does not authorize first defendant to enforce endogamy (Judgment of Munsiff's Court, Kottayam in O.S. No.923/1989 dated 24.11.1990). The wrong interpretation of Papal Bull by Bishop without referring same to the Pope being its author violated even relevant Canons such as Canon Law 1512 (1), 1512(2), 1515. The circumstances which lead to issuance of Papal Bull by Pope St. Pius X are as follows:-

“Original Christianity in India is the result of Apostles of St. Thomas, one of the twelve Apostles of Jesus Christ. As per tradition, St. Thomas arrived in India in AD 52. The Church established by St. Thomas in India was by 4th century much weakened for want of ecclesiastical ministers and due to persecution from outside and dissensions from within. When this sad plight of

Indian Church was made known to Catholicos of the East, Church of East organized the missionary emigration of a Christian Colony to India in order to strengthen and reinvigorate Indian Church. A lay leader named Thomas of Knai was commissioned to organize it. Bishop Uraha Mar Yauseph headed the group of immigrants. Four priests, several deacons and about

400 lay faithful belonging to 72 families of seven septs from southern Mesopotamia made up the colony and they settled in Cranganore on the Malabar Coast. The Knanaya immigrants in Kerala lived in quite harmony with sociocultural practices in Kerala. As they migrated mainly for missionary work they would not have even the vaguest intention of creating an exclusive community reserved only to themselves. They successfully nurtured good relationship with the local people who received them cordially and entered into inter caste marriage with them. The members of this community can no way be distinguished now either by colour, facial features and manner of dress or in any other respect from Keralites. Further historians have of considered opinion that even Thomas of Knai entered into a second marriage with a Hindu woman who had children also from that marriage. There had been mixed marriages between Knanaya and non-Knanaya Catholics down through the centuries even though marriage within the community was encouraged and practice to the extent possible. However even non-Knanaya partners were accepted in the homes of Knanaya families. Both Southists and Northists were called collectively as St. Thomas Christians came into communion with the Christian community known as "*the Church of the East*". Atleast from the 4th century until the end of 16th century Bishop of Church of Malabar was selected and sent by the East

Syrian Church. While the Bishops originally hailing from Persia were placed within Church for their liturgy, the administration of Church being under the control of local Archdeacon who was also the head of local community. The fact that Southists people had very good relationship with other St. Thomas Christians is revealed from the fact that they had one Church in 4th century and this number was increased only to 5 Churches and 7½ Churches in the 16th century, thereby evidencing marriages outside the community and dispersal. The arrival of Portuguese Missionaries in India in the 16th century began an interference with the manner of worships in the local Church with the introduction of Latin customs and Latin manner of ecclesiastical administration and an attempt to sever the East Syrian connection. Later in the Synod of Diamper of 1599, the Portuguese Archbishop, Don Alexis Menezes succeeded in appointing a Latin Bishop to govern the Christian community in Kerala. A protest took place in 1653 which resulted in Coonan Cross Oath under the leadership of Archdeacon

Thomas and the St. Thomas Christians publically took an oath that they did not obey Jesuit Bishops. The Pope was therefore forced to send Carmelites to attempt reconciliation. During reconciliation period majority of Christian community continued to be under the Bishop appointed by Rome. After the split in Church some priests and lay man attempted to

persuade the hierarchy to improve the identity of local Church and for the appointment of Bishop from the local priests. Due to continuous efforts of Christian community in sending various representations to the Pope, Rome had decided to establish Vicariates and a hierarchy for Syro-Malabar Catholics. In 1887 St. Thomas Christians were separated from the rule of Latin Bishop and two

Vicariates namely Kottayam and Thrissur were established for SyroMalabar Christians. Thereafter in 1895 Kottayam Vicariate was renamed as Changanacherry and another Vicariate namely Ernakulam. Mar Mathew Makil – a priest belong to Southists people was appointed as Bishop of Changanacherry. Considering the rivalry among Syro Malabarians as Southists and Northists the then all three Bishops in the Syro-Malabar Church submitted a memorandum to his holiness Pius X on 1st March, 1911 to divide Changanacherry Diocese into two. Mar Mathew Makil expressed his fear that he may not be allowed to govern Dioceses by the Northists. On appreciating circumstances prevailing at that time and considering joint request of all Syro-Malabar Bishops Pontiff decided to divide Changanacherry Diocese. Southists were brought under Kottayam Diocese. This action was to maintain peace and harmony in the community and not for encouraging endogamy. The '*Book of Decrees*' written by Bishop Makil reveal conditions of marriage in Chapter 17. It

does not contain condition that sacrament of matrimony should be administered on racial or exclusivist grounds. But unfortunately Bishop Choolaparambil who succeeded Bishop Makil misinterpreted Papal Bull of 1911 and started to terminate membership of members of second defendant who married Catholics from other Catholic Dioceses. Bishop Thomas Tharayil allowed a marriage between a member of second defendant and a Catholic of non-Knanite origin without losing his membership. Bishop Kuriakose Kunnachery succeeded Bishop Thomas Tharayil and took control of second defendant in 1974. A new line in the administrative level and lay leadership willing to act according to the likes and dislikes of new Bishops took shape. Knanaya identity and an imagined ethnic nationalism developed around the same were given prominence. A march towards alienation from Catholic teaching and racial extremism began. Un-Christian customs and rituals, infructuous and buried in oblivion were dug out and put in to practice terming them as tradition. Knanaya fundamentalism was promoted during the period from Kottayam Diocese was under Bishop Mar Kuriakose Kunnachery. Second defendant become an Island. The 'kna' spirit was taught and propagated in Sunday schools. The members of second defendant were taught imagined purity of Knanaya blood and how the Knanaya race was superior to the rest. Community persecuted who were genuine followers of Jesus who opposed

endogamy. Meetings seminars were organized to brain wash in people to hang on to their false traditions and to maintain them under the control of clergy. Mar Mathew Moolakatt succeeded Mar Kuriakose Kunnachery who took an idle stand that endogamy and faith are to be practiced in the community and Church level respectively and both should not be mixed. However powerful vested interest of old establishment in second defendant conspired together to silence reformist attempt with the result status quo continuous to be maintained by first and second defendants. There is no evidence to prove that endogamy as a rule was practiced among the Southists community. Though there are various ethnic groups in the world both Christian and non Christian, no one maintain their practice of strict endogamy. Though this groups maintained practice in the past changing needs of community and desire for its welfare made them dilute their strict observance. If those members of second defendant want to preserve Knanaya identity they are entitled to do so within their families or close social circles but cannot be permitted to use the Holy Catholic Church as a tool for their vested and illegal interests. Such endogamy cannot be supported through institutional and religious frame work of Holy Catholic Church. Whenever a member approaches defendants for '*vivahakuri*' to perform marriage with a Catholic from another Diocese same is denied on the ground that no member can marry a Catholic from

another Diocese. Parish priest provides a format of application seeking permission to go out from the membership of second defendant and to conduct marriage anywhere else not as a member of second defendant. As there is no way to conduct Christian marriage other than by opting for painful termination of membership from second defendant due to coercion, threat and undue influence exercised by Parish Priest of second defendant. The member signs the format provided by Parish Priest working under first defendant and thus termination of membership from second defendant is completed. If a member of second defendant temporarily shifted outside Kerala and had married a Catholic other than a member of second defendant, when he come back for permanently residing in his own birth place first defendant will not allow membership in his former parish on the ground of ineligibility due to impurity in blood. Defendants No.1 and 2 are driving away the sheep in the form of members violating Canon Law 177(1) and Mathew 18 (12 - 14) by practicing endogamy. Civil Court in India has jurisdiction to entertain, trial and disposal suit filed for violation of civil and constitutional rights of citizens. Canon Law 1504 itself provides for jurisdiction of Civil Court in such matters. Though plaintiff issued legal notice dated 28.02.2015 demanding defendants to stop unholy and illegal practice of terminating membership for marrying Catholic from another Diocese and to readmit those Catholics whose

membership were terminated from Kottayam Diocese within a period of 30 days, defendants No.3 to 6 maintained a deafening silence in the matter and illegal practice of endogamy. First defendant vide letter dated 15.03.2015 replied with false averments that he did not come across within a single instance of expelling a member of Kottayam Diocese for marrying Catholic from another Diocese. Plaintiff replied vide legal notice dated 13.03.2015 that he himself is the instrumental of termination of membership of members for marrying a Catholic from another Diocese. He also pointed out admissions of such practice in the written statement filed by Mar Kuriakose Kunnacherry in O.S.No.923/1989 on the file of Munsiff's Court, Kottayam, statement filed by first defendant in O.S.No.298/2012 and pointing out book authored by Annamma Uthup with name "*Blood Weddings*" published by ORCHART. First defendant is responsible for evil practice. He could not deny evidence and instances notified to him by plaintiff in letter dated 13.03.2015. Plaintiff emphatically denied various allegations in the reply notice issued by first defendant. Plaintiff filed suit under Order I Rule 8 CPC. They pressed to decree suit.

3. *First and second defendants filed written statement.*

The averments in the written statement can be summarized as

follows:-

Suit is not tenable either under law or on facts. No notice can be served to the Apostolic Nuncio for and on behalf of 5th and 6th defendants. Vatican City State is a country recognized by the United Nations and the Apostolic Nuncio is the ambassador of Vatican City State. 5th and 6th defendants are official offices of Vatican City State. No suit shall be instituted against Foreign Rulers, Ambassadors and Envoys without the written consent of Central Government. Hence the suit is not tenable and liable to be dismissed. Suit does not fall within the sweep of Sec.9 of Code of Civil Procedure. The reliefs sought and subject matter raised is an interference with the right of defendants to manage their religious affairs. Archdiocese of Kottayam for the Knanaya Catholic has every right to manage its own affairs of religion which is a fundamental right guaranteed by the Constitution of India. Knanaya Catholic is a denomination formed together as a collection of individuals under the same name; a religious sect or body having common faith and organization designed by a distinct name. They are the part of Catholic Church and a separate section thereof. That is why Catholic Church erected an Archdiocese for the Knanaya Catholics for maintaining their ethnic culture and designed them by a distinct name called '*Knanites*' or

'Thekkumbhagar' or *'Southists'*. Society registered under the Travancore – Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 has no right to enforce individual rights. Suit is not tenable in that score. In addition to that society is defunct owing to non submission of details of annual general body meeting and audit account. Plaintiffs are not members of second defendant Archdiocese. There is no unholy practice of terminating membership of those members in parishes who enter into holy sacrament of marriage with Catholic of any other Dioceses. First and second defendants did not expel or terminate members from Kottayam Archdiocese for the reason of his or her entering into the holy sacrament of marriage with another Catholic. Second defendant is an Archdiocese of Syro – Malabar Church which one of the Churches in Oriental Church and part of Catholic Church, upholding supremacy of Pope as head of Catholic Church and Successor of St. Peter. Second defendant is accepting and upholding CCEO and Particular Law of Syro – Malabar Church. People in second defendant following Syro – Malabar tradition and liturgy of Syro Malabar Church.

People in Archdiocese of Kottayam following Malankara tradition are following Syro – Malankara liturgy. They are not practicing any caste system or practice of discrimination within the Archdiocese of Kottayam or within the Syro – Malabar Church. Endogamy is a custom and tradition

of Knanaya community. Knanaya community is an ethnic community and has right follow its custom of endogamy. Endogamy means the custom of marrying only within a specific ethnic group or tribe or clan. A non Catholic cannot become a Catholic by virtue of marriage. The practice of endogamy is the quintessence culture of Knanaya community. First plaintiff has no unity in the Archdiocese of Kottayam. First and second defendants admitted history and development of Syro - Mabar Christian and Knanaya community enumerated in the plaint except the fact that Knanites entered into inter community marriage. According to defendants, they did not enter into inter community marriage. They established their identity as an endogamous community distinct from other communities around them. Except for such a norm of endogamy, the Knanaya immigrants would not have formed themselves into a distinct community in the first place and continued in existence as such until today especially in the conduct of the structure of Indian society. Hence endogamy is the constitutive principle or *raison d'etre* of Knanaya community and they guard the 16½ centuries old heritage as the pupil of their eye. The custom and tradition of Knanaya community is being followed uninterruptedly till this date. Endogamy is an indispensable custom and tradition of Knanaya community. The migration of Jewish Christians from southern Mesopotamia to the South India Port

Cranganore in AD 345 was under the leadership of Thomas of Knai. The successors of 72 families who are strictly practicing endogamy are called Knanites. They are also called '*Southists*'. The other Christian community in Kerala are called '*Northists*'. Both Northists and Southists are grouped separately in separate parishes and lead by Priests from their respective communities. The arrival of Thomas of Knai lead to the division of St. Thomas

Christians to Northists (Vadakkumbhagar) and Southists factions (Thekkumbhagakkar). The Southists or the Knanites are the direct descendants of 72 families who had migrated under the leadership of Thomas of Knai are following the practice of endogamy in its strict sense. The Northists are the descendants of pre-existing local Christians converted by St. Thomas and the subsequent entrance into Christian community. Both Southists and Northists are collectively called as St. Thomas Christians and came into communion with the Christian community that came to be known as Church of the East. Atleast from 4th century until the end of 16th century the Bishops of Church of Malabar were sent from East Syrian Church. Defendants admitted division among St. Thomas Christians on the arrival of Portuguese missionaries in the 16th century and formation of Syrian Orthodox Thozhiyur and Marthoma. In

consequence of aforesaid split a minority of Knanites followed Antiochian tradition are come under Church for

Knanaya Jacobites. Supreme Court of India in its verdict in *Most Rev.*

PMA Metropolitan and others vs. Moran Mar Marthoma and another (AIR 1995 SC 2001) accepted and approved ethnic identity of Knanaya community. From the period of migration itself they formed a group and maintained separate parishes for the Southists community. Therefore in 1895 the Kottayam Vicariate was renamed as Changanacherry and another Vicariate as Ernakulam was also established. Mar Mathew Makil, a priest from Southists community was appointed as Bishop of Changanacherry. Northists people resisted his appointment as a Bishop of both Southists and Northists. Considering the rivalry among Syro Malabarians the then three Bishop in Syro-Malabar Vicariate made recommendation and memorandum to the Pontiff on 01.03.1911. The endogamy of Knanaya community was dealt with therein. The English translation of relevant portion reads as follows:- *“among the Syro Malabarians, as it is known to the Holy See, there exists two communities or peoples (gentes) drawing their origin from different tribes (stirpes), each distinct and separate from the other, with a name proper and distinctive to each of the sides, namely Northists and Southists. They however though otherwise good Christians, differ between them very much in social and*

domestic life as well as in customs, and are not friendly with each other. For these reasons, for fifteen centuries they live without any bond of consanguinity or affinity nor can they be induced to it, for the reason not of castes, but of people (gentes) or communities (which are) distinct one from the other”.

Fully aware of such endogamous identity of the Knanaya community, the Bishops made the following suggestion to divide Syro Malabar Catholic ecclesiastically on the basis of Knanaya and nonKnanaya communities. “..... *We the three Apostolic vicars, born of these two people (gentes), very well aware of the nature, character and customs of our subject and very much desirous of their grater good and progress in matters temporal and spiritual, after long deliberation and repeated consultation among as for radically removing the perturbations, quarrels and there causes and restoring the ruptured*”. Considering the ethnic character, customs and practice of endogamy, the Holy See of Rome established separate Vicariate of Kottayam exclusively for the Southists community. This Vicariate was established by separating all the parishioners of Southists and the members of Knanaya community from the Vicariates of Ernakulam and Changanacherry. This shows that Kottayam Vicariate is exclusively meant for Knanaya community i.e., for a

person born from both Knanaya parents. In 1923 Kottayam was raised to an eparchy when Syro-Malabar hierarchy was constituted. Further when the territory of Syro-Malabar Church was extended in 1955, the personal jurisdiction of the Bishop of Kottayam was extended to cover the whole proper territory of the Syro-Malabar Church. Jurisdiction of Archdiocese of Kottayam is the personal jurisdiction over Knanites within the proper territorial jurisdiction of the Syro-Malabar Church. The jurisdiction of other Dioceses and Archdiocese coming under the Syro-Malabar Church is on the basis of territorial jurisdiction. It could be seen from a letter dated 27.01.2004 addressed to the then Bishop of Kottayam Diocese by the congregation for the Oriental Churches, Vatican as late as on 23.12.2003 Supreme Pontiff had occasion to take a “*sovereign decision*” that the status quo of eparchy of Kottayam be maintained. The administration, management, membership and worship regarding the sacraments in the Archdiocese of Kottayam are on the basis of Canon Law of the Oriental Churches, Particular Law of Syro-Malabar Church and the Particular Law of Archdiocese of Kottayam. The 72 families of Seven septs, who immigrated to Kodungalloor in AD 345 caused origin of the Knanaya community through their practice of endogamy. Only the children born out of Knanaya father and a Knanaya mother can be members of Knanaya community. Against such tradition if a Knanaya man or a Knanaya

woman takes a life partner from another community, the consequence is that the family thus formed cannot be in the Knanaya community, nor can it be included in the Knanaya ecclesiastical unit. In such cases the traditionally followed practical procedure is that the Knanaya spouse requests permission to live the Knanaya ecclesiastical unit and become a member of the non-Knanaya parish and the eparchy of the family's domicile. If the bond of such marriage ceases to exist by that or by any other canonical reason, the Knanaya spouse of such marriage, having no other encumbrance can again become a member of the Knanaya ecclesiastical unit provided he or she obtained due permission from ecclesiastical authorities concerned. Membership in the Knanaya community or Archdiocese of Kottayam is a birth right that follows from being born to Knanaya parents exclusively. This is the custom, tradition and practice followed by the Knanaya people from AD 345 onwards without any interruption. Knanaya community has a belief in its common descent, customs, memories of colonization and migration. On the basis of this belief and practice the community was formed and continued as an ethnic community. As per the international covenants on civil and political rights, 1966 and declaration of the U.N General Assembly Resolution 47/135 dated 18.12.1992, ethnic communities have the right to enjoy their own culture in private and public failing and without

interference or any form of discrimination. Persons belong to an ethnic community have the right to establish and maintain their ethnic ties with their members. It is the duty of the State to take measure to create favourable conditions to enable persons belonging to an ethnic community to express their characteristic and to develop their culture, tradition and custom. India is a signatory to the above said declaration and no law contrary to this is enacted by the Government of India or the Government of Kerala. Further Article 29 of the Constitution of India provides any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own right to conserve the same. Therefore any interference with the practice of endogamy of the Knanaya community would constitute a violation of fundamental rights of the members of the Knanaya community

guaranteed by Constitution of India. No person has any right to impose another culture on Knanites which would result in dilution of their ethnic identity. In the legal sense an ecclesiastical unit is an association.

Archdiocese of Kottayam is an ecclesiastical unit for the Knanaya Catholics. The declaration on the rights of person belonging to national or ethnic, religious and linguistic minorities grants the right to ethnic community to establish and maintain their own association. Hence the members of Archdiocese of Kottayam or the Knanaya community have

every right to keep and maintain their ethnic identity without giving membership to a non – Knanaya member in their parish or their Dioceses. This right is permitted by Holy See through its Papal Bull “*Pro Gente Suddistica*” dated 29.08.1911, the Government of India through Constitution of India and by signing the resolution 47/135 dated 18.12.1992 and the international covenant on civil and political rights, 1966 of the UN General Assembly. It is the privilege of catholic person born to Knanaya father and Knanaya mother to become a member of parish under the Archdiocese of Kottayam. No person has any right to destroy or weaken the said privilege of those who are following the custom and tradition of Knanites in the strict sense. The only difference between Syro Malabar Dioceses and Archdiocese of Kottayam is that Archdiocese of Kottayam is only for Knanites. Thus the alleged denial of any membership of non Knanite to the Kottayam Archdiocese in no way affects his religious, sacramental, spiritual or other well-being. The Archdiocese of Kottayam was set up for maintaining the ethnic identity of Knanites. The acts, attempts and demands of plaintiff will also be a violation of fundamental rights guaranteed under the Constitution of India, International Covenant on Civil and Political Rights, 1966 and declaration of U.N. General Assembly Resolution 47/135 dated 18.12.1992. The purpose of formation of Archdiocese of Kottayam cannot be allowed to be

destroyed by any person. The identity of Knanaya community is preserved through their endogamous marriage. According to Catholic Church marriage is a sacrament which is purely a religious rite. A matter relating to religion or religious rite is beyond the jurisdiction of a Civil Court. The membership in a particular Church is through a Parish and Parish is under an Archdiocese or Diocese. Archdiocese or Diocese is under a particular Church. The plaintiffs have not stated in the plaint as to which Parish they belong to. They have not produced any document to prove their membership in any of the Parishes belonging to Syro Malabar Church. Plaintiffs are required to be put to strict proof regarding their membership in Syro Malabar Church. The allegation that third defendant has jurisdiction over all the members of Syro Malabar Church over the whole world is not fully correct. Custom is also part of Church Law. A custom contrary to the present Canon Law or one which in part forms Canon Law receives the force of law after it has been observed lawfully for 30 years. The customary practice of endogamy of the Knanaya community has been practiced for almost 17 centuries. Procedure and practice of sacrament only stated in the CCEO. The Archdiocese of Kottayam is erected for Knanaya Catholics. Membership in a Parish and Diocese are subject to the jurisdictional norms of the Church. A member in a Syro

Malabar Church cannot claim as of right to be a member in a particular Parish or

Diocese. In the decree for erection of Archdiocese of Kottayam, Head of Syro Malabar Church clearly stated that Diocese of Kottayam was erected for Knanaya community. First and second defendants are not terminating membership as alleged in the plaint. Marriage between baptized persons or marriages between Catholics as per CCEO 776(2) and CCEO 802(1) are also types of endogamy. Endogamy is not restricted term for the marriage in an ethnic group. There is no restriction in the New Testament against the practice of endogamy. There are references in the New Testament in support of ethnic identity. Rom, 9: 3-5, 1-Peter 2:9, after decision of Jerusalem Synod, a letter written to the public was addressed as '*brothers and brothers from gentiles*' (Acts 15 : 23) this shows that identify a group on the basis of ethnicity was prevailing at the time of Apostles. Ethnic endogamy was the separating character or culture for separating Jewish Christians and Gentiles. Old testament is a secondary source for the Church Law. In the old testament there are several references to promote endogamy (Ezra 9, Nehemiah 9: 2. 10:31, 13:25). These Biblical references shows that practice of endogamy is not against teaching of Jesus Christ or that of Catholic Church. The culture and tradition of practicing endogamy is not against Constitution of India. On the contrary, it is a

fundamental right guaranteed by Constitution of India. Any Knanaya Catholic can marry a non-Knanite. His or her spouse or children cannot be considered as Knanites. A Knanite is a person born to a father and mother who are both Knanites. The 23 independent Eastern Churches and Latin Churches each with independent character on the basis of their tradition, liturgy, theology, spiritual and disciplinary patrimony, culture and circumstances of history of a distinct people. Separation of Knanites into an Archdiocese from other Dioceses or Archdiocese is for keeping their ethnic identity and giving personal jurisdiction to the Archbishop of Kottayam within the territory of Syro Malabar Church. Late Pope Pius XII acknowledged personal jurisdiction. The membership in a particular Church is permanent in nature. Membership in the parish or Diocese is not permanent. Same is subject to territorial or personal jurisdiction. A member in a Syro Malabar Church has the right to become a member of Parish for non-Knanites of Syro Malabar Church in which his or her place of residence is located. And he or she with his or her Knanaya partner can as a family together being members of such Parish of the Syro Malabar Church for non Knanites. If a non Knanaya person marries a Knanaya member knowing that he or she cannot be admitted as a member of Knanaya Parish, the same is a personal decision/choice exercised by him or her and thereby he or she cannot claim membership in the Knanaya

Parish as a matter of right to destroy or weaken right of Knanites to stand as a distinct community. The same is applicable to the decision or choice exercised by Knanaya member while marrying a non Knanaya member knowingly that his non-Knanaya spouse will not be able to become a member of the Knanaya Parish. As per Canon 38 *“a Christian faith of Eastern Churches even if committed to the care of a hierarch or pastor of another Church Suijuris, nevertheless remain entrolled in their own Church”*. As per CCEO 193,

“the Eparchial Bishop is duty bound to provide spiritual needs of those Christian faithful if it is possible through presbyters of the same Church Suijuris as the Christian faithful”. A Knanaya Catholic can become a member in any Diocese of Syro-Malabar Church and thereby in non Knanaya parishes as well with the required permission. A non Knanaya Catholic cannot become a member of the Archdiocese of Kottayam and thereby in a Knanaya Parish, since Archdiocese of Kottayam is erected exclusively for Knanaya Catholics. There is no expulsion as alleged in the plaint. There is no humiliation in the hands of first and second defendants for a member marrying a non Knanaya Catholic. First and second defendants are unable to do anything with regard to a person not finding a suitable partner. That is a personal choice and decision exercised by an individual. But membership in a Parish or Diocese is subjective. Artificial

reproduction, adultery and illegitimate pregnancy, using surrogate mother for the birth of child are against Catholic teachings. A separate Diocese for Knanaya Catholic community was erected by Apostolic decision of Holy Fr. St. Pius X. The decision of Pope cannot be questioned by virtue of Canon Law. Custom followed by Archdiocese of Kottayam is not against the Divine Law of Catholic Church. Some of the communities in Catholic Church in India are separately considered even by the State and Central Governments. Latin Catholics in Kerala are considered as a separate community and included in the list of backward classes. Similarly, there are 35 tribes included in the list of scheduled tribes by the Government of Kerala. In this list, those who follow the Catholic religion are also entitled to get the benefits of scheduled tribes. Nadars are included in the list of backward class, but Nadars who are professing Christian religion are not entitled to get the benefits of reservation. The Church authorities of Syro Malabar Church and Syro Malankara Church have consistently demanded for

their inclusion in the list of eligible communities to be listed as backward classes. Similarly, the entire Catholic Church in India has a consistent demand that the scheduled castes that are practicing Christian faith are also to be included in the list of scheduled castes. Castes are a forum of social stratification characterized by hereditary transmission of life style

which often includes an occupation, ritual, status in a hierarchy etc. Caste is recognized by the Constitution of India. The Knanaya Community is not a caste but a tribe and an ethnic community. Identifying a group on the basis of ethnicity is well accepted and recognized by the United Nation's declarations and the Constitution of India. The averments in paragraphs 26 and 27 of the plaint are not true and are hence, denied. The Defendants 1 and 2 are not compelling anyone to marry a particular man or woman. In the legal sense, Church is a voluntary association. A membership in an association can be acquired only through accepting its norms. No one can compel to give membership according to the norms of its violators. No authority has the right to compel to give membership to a non-Knanite in any of the Parishes of the Archdiocese of Kottayam. Knanites have the right to form their units according to their culture, practice and custom. The International Convention on Civil and Political Rights and Declaration of the Rights of Persons belonging to National Ethnic, Religious and Linguistic Minorities grant permission to follow the cultural rights of ethnic communities. The attempt of the plaintiff in filing this vexatious suit is to destroy the fundamental rights guaranteed to the Defendants and the members of the Knanaya community by the Constitution of India. The defendants 1 and 2 are neither denying any sacrament or prayer to any Catholics on the basis of race nor practicing any discrimination. All

the allegations contrary to these are absolutely false and are hence, denied. The attempts of the plaintiffs are to question the validity of the Papal Bull of 1911 instituting the Apostolic Vicariate of Kottayam for Southists People. They have no right for questioning the same in a Civil Court or before any ecclesiastical authority. The '*Southists people*', referred to in Malayalam as '*Thekkumbhagakkar*', are popularly known as '*Knanites*'. The term Southists people itself shows and identifies them as a distinct community. They are differentiated from other Catholic i.e. Northists people, through the practice of endogamy. The said Papal Bull of 1911 clearly and unambiguously states, “... *and thus it must be judged invalid and void if it happens to be tampered with by any one of whatever authority knowing or unknowingly*”. Therefore, the 1st and 2nd defendants have every right for the non-inclusion of non-Knanites or persons other than Southists people in the Parishes of the 2nd defendant. In any case, a person belonging to the Parish of the 2nd defendant opting to join the Diocese, parish of his/her non-Knanite spouse at the time of marriage cannot, as of right, claim to rejoin his/her original Parish. From the averments in the plaint, it can be seen that the plaintiffs are not aware of a rite or ethnic identity. The Northists people are not claiming that they are an ethnic community. They are the descendants of different caste or class of people. However,

Southists people are the descendants of Jewish inheritance and follow their ethnic identity by endogamous marriage. The Archdiocese of Kottayam has the power to enforce discipline and keep the denomination together as one entity. The purity of the fellowship is secured by removal of persons who have rendered themselves unfit and unsuitable for membership of the sect. The power for declining membership of a non-Knanite for the purpose of ensuring the preservation of the community has therefore, prime significance in the religious and cultural life of every members of the Knanaya community. The term '*endogamy*' means a marriage within a group. The defendants in O.S.No.923/1989 have filed an appeal before the Hon'ble High Court of Kerala. Hence, there is no finality attained by the judgment in O.S.No.923/1989 before the Munsiff's Court, Kottayam. The averments in paragraph 33 of the plaint are not true and are hence, denied. The terminology of "*Southists people*" itself denotes a distinct ethnic community. The head of Syro- Malabar Church in the decree Prot

No.264/2005 clearly interpreted the Papal Bull '*in universi christiani*', on 29th August 1911 for the Knanaya community. The acquired rights as well as privilege granted to the second eparchy by the apostolic see is to be fully preserved and cannot, it is submitted be taken away. The Knanaya community is keeping its identity from the very inception of migration from

AD 345. The allegation that the missionary migrants who came in AD 345 under the leadership of Knai Thoma entered into marriages with people outside the community are absolutely false and hence, denied. There is a history and tradition of almost 17 centuries for the endogamy practiced by Knanites. The Anthropology of human beings is affected by climate, food habits and other features of the place where they are residing. Knanites have inhabited for almost 17 centuries with the culture, climate, food habit, weather condition, etc. of Kerala and with the genes of Jewish origin. There are several resemblances in features, culture, habits, etc. amongst the Knanites. The allegation that Thomas of Kinai entered into a second marriage with a Hindu woman and had children from that marriage is absolutely false and hence, denied. Bishop Francis Ros, SJ, in his report to Rome in 1604, narrated as follows: *“So that already long before the coming of the said Thomas of Cananeo there were St.Thomas Christians in Malavar. However, the descendants of Thomas Cananeo always kept to themselves, without wishing to marry or mix with these other Christian, and so up to the present there were among them two lineages...”*. This report shows that Knanites have been keeping their identity from the very beginning of their migration. The Vicariate of Kottayam was erected in 1911 exclusively for “*Southists people*” who are also known as “*Knanites*”, a community keeping their ethnic identity through endogamous marriage.

In case of a marriage between member of Knanaya Jacobite community and a member of Archdiocese of Kottayam, the member of Knanaya Jacobite community can get membership in the Archdiocese of Kottayam if he or she accepts Catholic faith since both of them have same ethnic identity. The Bishop and Archbishop has every authority to interpret Papal Bull. Bishop Mar Kuriakose Kunnassery continued to follow practice and custom of community prevailing for 17 centuries. The ethnic identity of Knanaya community for Southists people is not a race or caste as alleged in the plaint. It is a culture and identity of the community. There is a doctoral thesis approved by the Theological Study Centre of the Catholic Church, Rome stating that Knanaya community has characteristic of a Sui juris Church as they have a distinct culture from Northists people of Catholic Church. Present Archbishop did not make any attempt to dilute practice of custom and community. Knanites who are successors of 72 families migrated from Edissa who are not children of Knai Thomas practiced the endogamy since time immemorial continued without interruption peacefully, consistently as a matter of fact. Nobody has right to interfere with custom of community. The permission granted by Holy see for bringing together Southists people within a Diocese was for keeping their identity and culture. Defendants 1 and 2 are not compelling anybody to leave Archeparchy of Kottayam. Church has every right to

make their pastoral arrangements for unity, growth in faith and pastoral needs according to the teaching of Church and norms of Archdiocese. The culture and identity of Southists people come within the term '*some other similar quality* ' and '*some other determine factor* ' mentioned in Canon Laws. Defendants pressed to dismiss the suit.

4. 7th additional defendant filed written statement reiterating written statement filed by first and second defendants. Additional 7th defendant contended that Knanaya Catholic is a religious denomination having distinct name (Knanaya Catholic or Southists or Sudhists), having faith (custom) in Jews lineage by maintaining endogamous marriage. In addition to their catholic faith and practicing special para – liturgical prayers in connection with their betrothal, marriage and funeral. This para liturgical prayers are not following “*Northists people*” or any other Christian denominations. This para liturgical prayers are “*Kaipidutham*” (*agreement by giving hand bond between the paternal uncle of Bride and Bride Groom for the fulfillment of marriage*), “*Chantham charthal*” (*ceremonial shaving of the Bride Groom on the eve of marriage*), “*Milanchi Ideel*” (*Smearing of the palms and feet of the Bride on the eve of marriage*), “*Nellum Neerum Vekkal*”, (*ceremonial welcome of the couple by the mother of Bride Groom at the door of the house after their marriage*), “*Nadavili*” (*Ullulation*), “*Vazhu Pidutham*” (*Blessing of the mother of Bride to*

the couple by put her hand on the head of the couple in the style of a cross with a blessing song), Kachathazhukal (blessing of maternal uncle and grandmother by embrace Bride and Bride Groom as an icon to the support of their marital life with a blessing song) etc etc, are special observable fact and para liturgical prayers only in Knanaya Catholic community. These prayers and ceremonial blessings have theological meanings and interpretations. Selection of spouse from Knanaya community is part of their belief and forefathers specifically advised them at the time of their migration to Kerala to keep the endogamous identity. This fact can be seen in the ancient songs of Knanaya community. They are the part of Catholic Church and separate section therein. That is why a Catholic Church erected an Archdiocese for the Knanaya Catholic for maintaining their ethnic culture and designed them by distinct name called “Knanites” or “Thekkumbhagar” or “Southists” at the time of erection of separate Vicariate in 1911, the community named as “Southists” and at the time of elevation of it as an Archdiocese the name is used as ‘Knanaya community’. The Archbishop of Kottayam is the religious head of the Knanaya Catholic community and he has power for enforcing discipline and keeps the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who are rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication or

non accepting a non Knanaya for the purpose of ensuring the preservation of the community has therefore a prime significance in the religious life of every member of Knanaya community. Archbishop of Kottayam has every right to make their pastoral arrangements for unity, growth in faith and pastoral needs according to the teachings and the norms of particular law of Archdiocese of Kottayam. Additional 7th defendant also pressed for dismissal of suit. Other defendants even after receipt of process did not turn up and file written statement, hence they were set exparte.

5. Heard both sides, following issues settled in this case.

- 1) *Is not the suit maintainable ?***
- 2) *Is not the suit properly instituted ?***
- 3) *Is not the suit bad for non joinder of parties ?***
- 4) *Whether the plaintiffs are entitled to the relief of declaration as prayed for ?***
- 5) *Whether plaintiffs are entitled to relief of prohibitory injunction as prayed for ?***
- 6) *Whether plaintiffs are entitled to relief of mandatory injunction as prayed for ?***
- 7) *Reliefs and costs ?***

On hearing all parties, issues resettled as follows on

09.04.2021 (additional issues 5 and 6 framed on 05.03.2021 as per Order in IA No.22/2021).

1.

1. Is suit maintainable against defendants 5 and 6 due to lack of consent from Central Government as per Section 86 of Code of Civil Procedure, 1908 ?

2. Is the subject matter of suit comes under Section 9 of Code of Civil Procedure, 1908 ?

3. Is suit maintainable under Order I Rule 8 CPC ?

4. Are plaintiffs have locus standi to file suit against defendants ?

5. Whether Knanaya Catholics is a religious denomination ?

6. Whether endogamy is established as a custom, practice or tradition having the force of law in the Knanaya Catholic Community or Southists or Thekkumbhagar (Pro Gent Suddistica) ?

7. Whether the plaintiffs are entitled to the relief of declaration as prayed for?

8. Whether plaintiffs are entitled to relief of prohibitory

injunction as prayed for?

9. *Whether plaintiffs are entitled to relief of mandatory injunction as prayed for?*

10. *What is the order as to costs ?*

On the side of plaintiffs, second plaintiff was examined as **PW1**. **Ext A1 to A21** were marked. On the side of defendants, **DW1 and DW2** were examined and **Exts B1 to B43** were marked. Counsel for plaintiffs and defendants 1 and 2 filed argument notes.

6. **Issue No.1:-** Defendants resisted plaint allegations contending that suit is untenable as instituted against 5th and 6th defendants which are offices of Vatican City State. According to defendants, Apostolic Nuncio is the ambassador of Vatican City State. Suit against Foreign Rulers, Ambassadors and Envoys shall be instituted as per Section 86 of Code of Civil Procedure 1908, with the written consent of Central Government. Defendants further contended that no process issued from Court to defendants 5 and 6 as per Order V Rule 1 CPC. Plaintiffs specifically averred in para 7 of plaint that they arrayed defendants No.3 to 6 as they represent disciplinary and supervisory hierarchy that overseas defendants No.1 and 2 and are responsible to maintain holiness of Catholic Church. According to plaintiffs, defendants 3 to 6 failed in the aforesaid mission. According to plaintiffs, defendants 3

to 6 were arrayed for the sole purpose of eradicating compulsive endogamy practicing by defendants 1 and 2. It is quite pertinent to note that plaintiffs did not seek any reliefs against defendants No.5 and 6. Plaint averments revealed the very fact that defendants No.5 and 6 were arrayed in the lis as the religious disciplinary and supervisory hierarchy in Catholic Churches. In the backdrop of aforesaid reason it can be concluded that permission of Central Government under Section 86 of Code of Civil Procedure 1908, to institute suit against foreign rulers and ambassadors is not required in the suit preferred against 5th and 6th defendants. Hence the dictum laid

down in ***Veb Deautfracht Seereederei Rostock (D.S.P.Lines) a Department of the German Democratic Republic, Appellant v. New Central Jute Mills Company Ltd; and Another, Respondents (AIR 1994 SC 516)*** dealing with permission to sue a foreign company (company incorporated under the appropriate laws of West Germany) in which foreign government (Government of West Germany) had interest, will not assist the defendants. Defendants 5 and 6 were not arrayed as foreign rulers or ambassadors in the lis, but offices holding religious hierarchy.

7. Next limb of contention advanced by defendants is that no

process issued to defendants No.5 and 6 as per Order V Rule 1 of Code of Civil Procedure, 1908. Defendants relied on dictum laid down by Hon'ble High Court of Kerala in **FAO No.85/2015 (Indira R. Pillai v. Federal bank and Others)**. It is quite curious to note that defendants 5 and 6 did not turn up to resist exparte order passed against them raising contention that they were not served with process under Order V Rule 1 CPC. How the Court process issued to Apostolic Nuncio for and on behalf of fifth and sixth defendants, defective not explained before Court especially in the backdrop of admission of defendants that Apostolic Nuncio is the ambassador of Vatican City representing Supreme Pontiff in India. How reference regarding difference between the term 'agents' in Order V and Order III of Code of Civil Procedure in Indira R. Pillai's case mentioned above on an entirely different factual matrix applicable to present case not explained before Court. So it can be easily concluded that contention of defendants regarding non issuance of summons under Order V Rule I CPC found untenable, hence discarded. Issue No.1 found in favour of plaintiffs.

8. **Issue No.2:-** Next limb of contention advanced by defendants is that suit filed by plaintiffs not for establishing civil rights envisaged u/s 9 of Code of Civil Procedure. According to them, the reliefs

sought, cause of action and subject matter raised in the plaint interfere with rights of defendants to manage their religious affairs. Suit is against fundamental right guaranteed by Constitution of India in favour of Archdiocese of Kottayam for Knanaya Catholics. They have every right to manage their own affairs of religion. Even if plaintiffs have any grievance they can redress the same through ecclesiastical tribunals. On close analysis of rival contentions it is brought out that plaintiffs filed the suit to resist compulsive endogamy alleged to have practiced among members of Archdiocese of Kottayam contending that same is in violation of Canon Law, Particular Laws, Bible, Indian Constitution, International Covenants on Civil and Political Rights, 1966 and the declaration of U.N. General Assembly Resolution 47/135 dated 18.12.1992. Plaintiffs are resisting forfeiture of membership in Archeparchy of Kottayam Diocese by defendants 1 and 2 owing to the reason of marrying Catholic belong to another Diocese of Catholic Church by member of second defendant. Plaintiffs heavily relying on dictum laid down in ***Abdulla Bin Ali and Others, Appellants v. Galappa and Others, Respondents (AIR 1985 SC 577), Smt. Ganga Bai, Appellant v. Vijay Kumar and Others, Respondents (AIR 1974 Supreme Court 1126), Church of North India v. Lavajibhay***

Retanjibhai and Others (AIR 2005 Supreme Court 2544), PMA Metropolitan v. Moran Mar Marthoma (AIR 1995 SC 2001), Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors (2017 KHC 6577) contended that subject matter of lis is purely civil in nature.

9. Let us go through dictum laid down by Hon'ble Supreme Court in various cases mentioned above to resolve issue No.2 posed before Court. In ***Abdulla Bin Ali and Others, Appellants v. Galappa and Others, Respondents (AIR 1985 SC 577)*** Hon'ble Supreme Court held that the allegation made in the plaint decide the forum and jurisdiction does not depend upon the defence taken by defendants in the written statement. In ***Smt. Ganga Bai, Appellant v. Vijay Kumar and Others, Respondents (AIR 1974 Supreme Court 1126)*** Hon'ble Supreme Court declared that there is inherent right in every person to bring a suit of civil nature unless suit is barred by statute. In

Church of North India v. Lavajibhay Retanjibhai and Others (AIR 2005 Supreme Court 2544) Hon'ble Supreme Court held that plea of bar to jurisdiction of a Civil Court must be considered having regard to the contentions raised in the plaint. For the said purpose averments disclosing cause of action and the reliefs sought for therein must be considered in the entirety.

10. Hon'ble Supreme Court in **PMA Metropolitan v. Moran Mar Marthoma (AIR 1995 SC 2001)** held as follows;

“28.The word 'civil' according to dictionary means, relating to the citizen as an individual; civil rights.' In Black's Legal Dictionary it is defined as, 'relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings.' In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc. were added to it later. But they too pertain to the larger family of 'civil'. There is thus no doubt about the width of the word 'civil'. Its width has been stretched further by using the word 'nature' along with it. That is even those suits are cognizable which are not only civil but are even of civil nature. In Article 133 of the 'Constitution an appeal lies to this Court against any judgment, decree or order in a 'civil proceeding'. The expression came up for construction in S.A.L. Narayan Row v. Iswarlal Bhagawandas, AIR 1965 SC 1818. The Constitution Bench held 'a proceeding for relief against infringement of civil right of a person is a civil proceeding'. In Arbind Kumar Singh v. Nand Kishore Prasad, AIR 1968 SC 1227 'it was held to extend to all proceedings which directly affect civil rights. The dictionary meaning of the word proceedings' is the institution of a legal action, any step taken in a legal action.' In Black's Law Dictionary it is explained as, 'In a general

sense, the form and manner of conducting juridical business before a Court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like'. The word 'nature' has been defined as 'the fundamental qualities of a person or thing; identify or essential character; sort; kind character'. It is thus wider in content. The word 'civil nature' is wider than the word 'civil proceedings'. The Section would, therefore, be available in every case where the dispute has the characteristic of affecting one's right which are not only civil but of civil nature.

“31. Religion is the belief which binds spiritual nature of men to super natural being. It includes worship, belief, faith, devotion etc. and extends to rituals, Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it.

It is civil in nature. The dispute about the religious office is a civil dispute as it involves disputes relating to rights which may be religious in nature but are civil in consequence. Civil wrong is explained by Salmon as a private wrong. He has extracted Blackstone who has described private wrongs as; Infringement or privation of the private or civil rights belonging to individuals, considered as individuals and are there upon frequently termed civil

injuries'. Any infringement with a right as a member of any religious order is violative of civil wrongs. This is the letter and spirit of explanation 1 to Section 9".

34.....The jurisdiction of Courts depends either on statute or on common law. The jurisdiction is always local and in absence of any statutory provision the cognizance of such dispute has to be taken either by a hierarchy of ecclesiastical Courts established in the country where the religious institutions are situated or by a statutory law framed by the Parliament. Admittedly no law in respect of Christian Churches has been framed, therefore, there is no statutory law. Consequently any dispute in respect of religious office in respect of Christians is also cognizable by the Civil Court. The submission that the Christians stand on a different footing than Hindus and Budhists, need not be discussed or elaborated. Suffice it to say that religion of Christians, Hindus, Muslims, Sikhs, Budhs, Jains or Parsee may be different but they are all citizens of one country which provides one and only one forum that is the civil Court for adjudication of their rights, civil or of civil nature'.

35.....More over, after coming into force of the Constitution, Article 25 guarantees as fundamental right to every citizen of his

conscience, faith and belief, irrespective of cast, creed and sex, the infringement of which is enforceable in a Court of law and such Court can be none else except the Civil Courts. It would be travesty of Justice to say that fundamental right guaranteed by the Constitution is incapable of enforcement as there is no Court which can take Cognizance of it. There is yet another aspect of the matters that Section 9, debars only those suits which are expressly or impliedly barred. No such statutory bar could be point out. Therefore, the objection that the suit under Section 9 CPC was not maintainable cannot be accepted.”

76. The conclusions thus reached are,

1(a). The civil courts have jurisdiction to entertain the suits for violation of fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India and suits.

(b). The expression 'civil nature' used in Section 9 of the Civil Procedure Code is wider than even civil proceedings, and thus extends to such religious matters which have civil consequence.

(c). Section 9 is very wide. In absence of any ecclesiastical courts any religious dispute is cognizable, except in very rare cases where the declaration sought may be what constitutes religious rite.”

11. In ***Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors (2017 KHC 6577)*** Hon'ble Supreme Court held as follows;

Para 318: Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.

Para 319: Life and personal liberty are not creation of the Constitution. These rights are recognized by the Constitution as inhering in each individual as and intrinsic and inseparable part of human element which dwells within.

Para 323: Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes the plurality

and diversity of our culture. While the legitimate expectation of privacy may vary from the intimates zone to the private zone and from the private to public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.”

Counsel for plaintiffs asserted that, Hon'ble Supreme Court held that privacy has the nature of being both a common law right as well as a fundamental right. Its content, in both forms is identical. All that differs is the incidence of burden and the forum for enforcement for each form.

Hon'ble Supreme Court asserted that it is perfectly possible for an interest to simultaneously be recognized as a common law right and a fundamental right. Where the interference with a recognized interest is by the State or any other like entity recognized by Art. 12, a claim for the violation of a fundamental right would lie. Where the Author of an incidental interference is a non State actor, an action at common law would lie in an ordinary Court. Hon'ble Supreme Court recognized right to marriage is a fundamental right with remarkable clarity in various judgments. It was done by the Court Apex keeping in view the fact that

our Constitution is a sacred living document and hence susceptible to appropriate interpretation of its provision based on changing needs of “*we the people*” and other well defined parameters.

“ Para 391.. The form of the privacy right.

It was argued for the Union by Mr. K. K. Venugopal, learned Attorney General that right to privacy may at best be a common law right, but not a fundamental right guaranteed by the Constitution. This submission is difficult to accept. In order to properly appreciate the argument and exposition of the first principles concerning the nature and evolution of rights is necessary.”

Counsel for plaintiffs relying on Paragraph No.392, 393, 394, 395, 397, 398 and 547 of verdict in Justice K. S. Puttaswamy's case, vehemently argued that Hon'ble Supreme Court held that privacy with which are concerned eminently qualifies as an inalienable natural right, intimately connected to two values whose protection is a matter of universal moral agreement; the innate dignity and autonomy of man. Hon'ble Supreme Court settled law that when common law rights are horizontal in their operations when they are violated by one's fellow man, he can be named

and proceeded against in an ordinary common law. Hon'ble Supreme Court recognized right to privacy which is having the nature of both common law right as well as fundamental right. If it is interfered by a non-state actor an action at common law would lie in an ordinary Court. According to plaintiffs, subject matter of present lis will fall within the limits of Section 9 of Code of Civil Procedure, 1908.

12. Counsel for defendants vehemently argued that plaintiffs are claiming their reliefs on the basis of Divine Law which is subject to the belief of persons related to religious rites and ceremonies. Court cannot interpret Divine Law. According to them, subject matter of lis is outside the scope of Section 9 of Code of Civil Procedure. Defendants further contended that Bishop of second defendant Diocese enacted Ext B1 – Particular Law of Archdiocese of Kottayam exercising his power under CAN 191. According to defendants, second defendant is a voluntary association and its law cannot be challenged before a Court of law and Court cannot interpret it. According to them, the judgments of Hon'ble Supreme Court in that line reported in *AIR 1995 SC 2001*, *AIR 1963 SC 1144*, *AIR 1949 PC 313*, *2017(2) KLT 1072*, stood as express bar for entertaining civil suit by Civil Courts.

13. It is profitable to go through Section 9 of Code of Civil Procedure, 1908 to resolve the issue No.2, which reads as follows:-

“Courts to try all civil suits unless barred.- The Courts shall (Subject to the provisions herein contained) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation -I- A suit which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation-II – For the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.”

In the light of dictum laid down in various verdicts by Hon'ble Supreme Court and on plain reading of Section 9 of Code of Civil Procedure together with appreciation of entire plaint allegations, cause of action and reliefs sought, it can be easily concluded that the core controversy involved in the lis is whirling around a specific point regarding infringement of right to marriage of members of second defendant by practicing compulsive endogamy in second defendant together with plaintiffs' right to retain

membership in second defendant Diocese and right to get pastoral care in the marriage from second defendant. Right to marriage which is admittedly a civil right find its root in Article 21 of Indian Constitution which forms integral part of right to privacy recognized by Hon'ble Supreme Court in *Justice K. S. Puttaswamy's* case. Right to retain membership in Kottayam Diocese is also a right of civil nature. Right to get pastoral care in the marriage being members of Kottayam Diocese is also civil right in nature. Absence of ecclesiastical Courts created by State in India empowers Civil Courts to try cognizable religious disputes, except in very rare cases where the declaration sought may be what constitutes religious rite.

14. Defendants vehemently contended that Civil Court is powerless to interpret Ext B1 – More Particular Law of Archdiocese of Kottayam enacted by first defendant exercising his power under CCEO 1502 (2) r/w CAN 191 to legislate for the governance of Dioceses relying on dictum laid down in ***AIR 1995 SC 2001***, ***AIR 1963 SC 1144***, ***AIR 1949 PC 313***, ***2017(2) KLT 1072***, ***Gaspery Louis v. Gonsalves (35 MLJ 407)***, ***James Chinnamma v. Joseph Abraham (1962 KLT 240)***, ***Rev. Fr. Pathrose Fernandz and Ors v. Swamiyadian Gnanaprakasam (23 TLJ 928)***, ***O.P. No.5236/81 in K. B Mathai v. State of Kerala and Ors, Major Archbishop Angamaly – Ernakulam***

v. Lalan Tharakan (2016 (2) KLT 791). Specific case of the defendants to resist plaintiff claim is that they, being an ethnic sect, are practicing endogamy as a tradition or custom for last 17 centuries. According to them, divine law and Rome support their practice. Both Constitution and International Covenants protect their practice of endogamy in second defendant. On close perusal of Ext B1 (especially page No.85) it is brought out that same is not prescribing any rule prohibiting marriage between members of second defendant and members of other Diocese under Syro Malabar Church. There is no command regarding expulsion of members from second defendant for violation of endogamy. In addition to that Bishop of second defendant has no authority to enact rules bypassing power of Supreme Pontiff under CAN 669 to approve or define Holy sacraments like sacrament of marriage founded by Jesus Christ. Bishop is also powerless to impose impediments to valid marriage than impediments prescribed under the Canon provisions (CAN 790 to CAN 812). So the contention regarding bar on Civil Court through dictum in *AIR 1995 SC 2001, AIR 1963 SC 1144, AIR 1949 PC 313, 2017(2) KLT 1072, Gaspery Louis v. Gonsalves* (35 MLJ 407), *James Chinnamma v. Joseph Abraham (1962 KLT 240)*, *Rev. Fr. Pathrose Fernandez and Ors v. Swamiyadian Gnanaprakasam (23 TLJ 928)*, *O.P. No.5236/81 in K. B Mathai v. State of Kerala and Ors,*

Major Archbishop Angamaly – Ernakulam v. Lalan Tharakan (2016 (2) KLT 791), to interpret Ext B1 in present lis is untenable, hence discarded. There is no specific averment in the written statement to form an opinion that second defendant is an independent voluntary association. But what is revealed is same is part of Catholic Church with Canon Law as its Constitution. So it can be easily concluded that the subject matter, cause of action and reliefs sought in the plaint squarely fall within the four walls of Section 9 of Code of Civil Procedure. Issue No.2 found in favour of plaintiffs.

15. **Issue No.3:-** The next contention advanced by defendants to resist plaint claim is that suit is untenable under Order I Rule 8 of Code of Civil Procedure, 1908. According to them, second and third plaintiffs are not members of Archeparchy of Kottayam. They have no right to represent members of second defendant under the guise of protecting their civil rights.

16. a) Counsel for defendants contended that specific reliefs prescribed under Specific Relief Act, 1963 cannot be claimed through representative suits under Order I Rule 8 CPC. They projected Section 4 and Section 41(j) of Specific Relief Act, 1963 to reinforce their contentions.

b) They further pointed out that plaintiffs 2 and 3 who are not members of second defendant do not have common interest with fourth plaintiff who

is still retaining membership in second defendant. According to defendants, different interests cannot be clubbed in a representative suit under Order I Rule 8 CPC.

c) Defendants further argued that second defendant which is an unincorporated body was arrayed not in a representative capacity to represent its members in the lis. The effect of aforesaid defect is decision in the present lis will bind all members of second defendant without providing them an opportunity to resist plaintiff claim. They relied on dictum laid down in ***Corporation of Trivandrum v. K. Narayana Pillai (1968 KLT 285)*** to reinforce their contention.

d) Defendants relying on dictum laid down in ***Narayani Kamalakshi and Ors v. Kunchiyan Bahulayan and Ors (AIR 1972 Ker 269)*** argued that plaintiffs ought to have to submit list of persons with their whereabouts, whom they are seeking to represent in a representative suit.

17. Plaintiffs heavily relied on dictum laid down in ***Puttamma and Ors v. Nanju Nbaiah and Ors (Writ Petition No.31334 of 2011 (GM-CPC))***, reported in Manupatra in which Hon'ble High Court of Karnataka quoting Supreme Court Judgments explained settled law regarding provisions of Order I Rule 8 CPC. Counsel for plaintiffs vehemently argued that the condition necessary for application of Order I

Rule 8 CPC is that the persons on whose behalf the suit is being brought must have the same interest or else either an interest must be common or they must have a common grievance which they seek to get redressed. Plaintiffs contended that all plaintiffs including members of first plaintiff having the common grievance against forfeiture of membership in second defendant for violating illegal practice of compulsive endogamy. Counsel for plaintiffs further invited my attention to the dictum laid down by High Court of Bombay in ***Kaira District Co-op. Milk Produces Union Ltd; and Another v. Kishore Shantilal Shah (AIR 1983 Bombay 66)***. In that case on the strength of contention of plaintiff that he too was deceived because of misrepresentation made by defendants together with other persons of Jain community, Court held that his interest in the litigation is common with other members of community and controversy involved in that suit is of common interest for the persons to whom the plaintiff seeks to represent. Plaintiffs further relied on dictum laid down by Hon'ble High Court of Madhya Pradesh in ***Awadesh Ozha and Others v. Ramachandra Mourya and Others (AIR 2009 MP 255)***. In that case plaintiff was permitted to represent devotees of Tomb being one of the devotee as his religious sentiments or emotions are hurt by the act of defendants. Relying on dictum laid down in ***Amarjith Singh and Others v. Darshan Singh Mahoon and Others (AIR 1979 Punjab and***

Haryana 208) plaintiffs contended that there is no requirement as per law to produce list of persons sought to be represented before Court in a representative suit. According to plaintiffs, they have every right to institute suit under Order I Rule 8 CPC.

18. Section 4 of Specific Relief Act, 1963 spells about granting of specific reliefs for the purpose of enforcing individual civil rights. Section 41(j) of Specific Relief Act, 1963 prevent Court from granting injunction reliefs to the plaintiff who is having no interest in the subject matter of suit. Both provisions deal with circumstances in which one person approaches Civil Court to enforce his civil right through specific reliefs prescribed under Specific Relief Act, 1963. Order I Rule 8 of Code of Civil Procedure, 1908 deals with special circumstance in which a group of persons having common interest or common grievance to be redressed through Civil Courts approach Court. Code of Civil Procedure devised a special procedure through Order I Rule 8 CPC for the purpose of avoiding multiplicity of litigations, expenses of litigants and for preserving precious judicial time. There is no conflict between provisions of Specific Relief Act and Order I Rule 8 of Code of Civil Procedure as contended by defendants. So the contentions of defendants challenging maintainability of representative suit under Order I Rule 8 of Code of Civil Procedure is untenable. Contention of defendants relying on dictum laid down in

Premji Ratansey Shah v. Union of India ((1994) 5 SCC 547), Lakshmi Kant Maharana v. State of Orissa and Ors (2012 KHC 2065) to deny relief of injunction owing to the reason of lack of personal right as per Section 41(j) of Specific Relief Act, 1963 is untenable as the dictums rest upon an entirely different factual circumstances.

19. The next limb of contention advanced by defendants is regarding conflict of interest among plaintiffs 2 to 4. Admittedly, plaintiffs 2 and 3 left second defendant for the reason of marrying members from another Diocese under Syro Malabar Church. Fourth plaintiff is still retaining his membership in second defendant. Plaintiffs 2 to 4 are battling against practice of endogamy in second defendant and forfeiture of membership of its members for violating compulsive practice of endogamy. Their interest/grievance in the subject matter of lis is common. If for argument sake it is admitted that second and third plaintiffs have no right to litigate against the practice of endogamy in second defendant being its former members, they have right to challenge a practice alleged to be against Church Laws, being the members of Syro Malabar Church to which second defendant form part. So the contention regarding tenable nature of representative suit on the ground of conflicting interest of plaintiffs 2 to 4 found limbless, hence discarded.

20. Next limb of contention advanced by defendants is that,

plaintiffs arrayed second defendant which is an unincorporated body not in a representative capacity in the lis. They pointed out that the aforesaid defect will create a circumstance in which all members of second defendant will be bound by verdict in the lis without providing them an opportunity to contest the lis. On close analysis of the aforesaid contentions it is brought out that though the contention appears to be very attractive at the first sight it looks otherwise on its close perusal. On launching suit under Order I Rule 8 of Code of Civil Procedure by plaintiffs stating that they are representing numerous persons having same interest in the subject matter of the suit and it is impossible for them to implead all persons as parties to the suit, anybody who are interested to resist plaintiff claim are at liberty to approach Court to be get impleaded on taking notice of publication effected as per Order I Rule 8 (2) of Code of Civil Procedure. Exhausting aforesaid opportunity provided under Order I Rule 8(3) of Code of Civil Procedure, 1908 additional 7th defendant approached Court and Court allowed his impleading petition. How 7th defendant can raise such a contention on getting a favourable order in his impleading petition not explained before me. So the contention regarding defect in arraying second defendant not in representative capacity found untenable, hence discarded. There is no prejudice caused to members of second defendant on arraying it as the

part of religious institution of Catholic Church headed by first defendant. Dictum laid down in ***Corporation of Trivandrum v. K. Narayana Pillai (1968 KLT 285)*** will not assist defendants as it rest upon entirely different fact. In that case Hon'ble High Court of Kerala held that Secretary of a Club or other Association cannot sue alone in respect of a matter in which the Association is interested even if he is authorised so to do by a resolution of the members of the Association. The suit must be brought by all the members of Association or by the Secretary on his on behalf and on behalf of other members under Order I Rule 8. Hon'ble High Court directed Trial Court to consider any application that may be filed by Appellants for impleading the members of voluntary association or for resorting the procedure prescribed in Order I Rule 8 on its merits. There is no dispute between parties to lis regarding the case of a Foot Ball Association which is admittedly an unincorporated body should be sued in the representative capacity. But in the case on hand plaintiffs filed suit in representative capacity and arrayed second defendant as the part of Syro Malabar Church headed by first defendant. There is no hindrance for any member of second defendant to challenge plaint claim instituted under Order I Rule 8 CPC. So the dictum laid down in *Corporation of Trivandrum's* case will not favour defendants. Likewise dictum laid down in *Major Archbishop, Angamaly – Ernakulam v. Lalan Tharakan (2016 (2)*

KLT 791), *James Chinnamma v. Joseph Abraham* (1962 KLT 240), *Noble v. Peter P. Ponnen* (1999 (2) KLT SN 24), will not assist defendants as those precedents held on different factual matrix.

21. Counsel for defendants vehemently argued before me that in a representative suit under Order I Rule 8 of Code of Civil Procedure, plaintiffs are duty bound to produce list of whereabouts of persons whom they are representing. They relied on dictum laid down in *Narayani Kamalakshi and Ors. v. Kunchiyan Bahulayan and Ors.* (AIR 1972 Ker 269). But on going through the dictum laid down by Hon'ble High Court it is brought out that while dealing with procedure to entertain an application for leave under Order I Rule 8 CPC, Hon'ble High Court held that when the persons whose addresses are ascertainable is a matter which the Court must be told. The party who seeks such representation under Order I Rule 8 CPC must necessarily furnish addresses of such persons. In that case plaintiff filed suit for declaration that a family temple is a private trust without arraying many members of family who were not residing locally or whose addresses were not available. In order to meet aforesaid circumstance plaintiff in that case filed application under Order I Rule 8 CPC along with replication filed against written statement of defendants. The facts and circumstance in *Narayani Kamalakshi's* case are entirely different from present lis. So the contention advanced by defendants

regarding lack of list of persons who are represented by plaintiffs appears to be limbless in the eye of law, hence discarded. The contention of defendants that lack of public common right prevent plaintiffs from launching representative suit is also untenable on plain reading of Order I Rule 8 of Code of Civil Procedure.

22. On overall consideration of entire materials including various precedents relied on by both parties, I am of considered opinion that present lis under Order I Rule 8 of Code of Civil Procedure is perfectly maintainable. Issue No.3 found in favour of plaintiffs.

23. **Issue No.4:-** Defendants resisted locus standi of first plaintiff being a charitable society registered under Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 with area of operation within Kottayam district against second defendant has its jurisdictional limits outside Kottayam district, contending that it has no right to institute suit for enforcing individual civil right. But according to plaintiffs, first plaintiff society formed for the purpose of resisting illegalities committing by defendants 1 and 2 towards members of second defendant. Admittedly, there is no legal taboo for a charitable society to launch a civil suit as per its aim and objectives unraveled through Ext A6 bye-law, through its office bearers to protect civil rights of its members.

Area of operation of first plaintiff and second defendant are not relevant aspect to institute suit as per plaint allegation. So the contention regarding locus standi of first plaintiff to institute suit raised by defendants found untenable, hence discarded.

24. According to defendants, Annual General Body Meeting of society did not conduct for last several years. They did not submit details of Annual General Body Meeting and audit account to the Government for last several years. Hence society can be considered as defunct. Though Counsel for defendants vigorously cross-examined PW1 regarding convening of Annual General Body Meeting and submission of audit account to the Government, he specifically deposed before Court that they are performing their obligations as per law strictly relying on Ext A8. Nothing brought out to probabalise version of defendants that first plaintiff become defunct due to non observance of strict mandates of law. According to defendants there is no resolution on 20.04.2015 authorizing second plaintiff to institute suit as alleged in the plaint. But production of resolution dated 20.04.2015 (Ext A7) before Court revealed the very fact of authorization issued in favour of second plaintiff to institute lis. Contention of defendants that second plaintiff being the resident of Alappuzha district is not competent to become President of first plaintiff is not supported by Bye-law of first plaintiff.

25. Defendants vehemently argued that second and third plaintiffs have no locus standi to institute lis as their claim hit by Art.113 & Art. 58 of Limitation Act. According to them, declaratory reliefs in favour of second and third plaintiffs hit by Art. 58 and injunction relief hit by Art. 113 of Limitation Act, 1963. According to defendants, marriages of second and third plaintiffs respectively held on 19.05.1977 and 23.10.1988. So their right to get declaration and injunction is time barred. Present suit instituted under Order I Rule 8 of Code of Civil Procedure on the basis of cause of action described in para 54 of plaint. As per plaint allegation cause of action of the suit has arisen on 28.02.2015 onwards when first plaintiff issued the notice to the defendants and thereafter defendants failed to act on the notice dated 28.02.2015, and on 13.03.2015 and 07.04.2015 when the first defendant issued reply notice to the first plaintiff. So the suit launched by plaintiffs on the strength of Ext A14 to Ext A17 (notices) is not time barred. Plaint averments did not reveal the fact that plaintiffs are relying on cause of action accrued from the date of marriage of second and third plaintiffs. In addition to that it is established through Ext A1 to Ext A4 that plaintiffs 2 and 3 were members of second defendant. Plaintiffs 2 and 3 are admittedly now holding membership in another Diocese under Syro Malabar Church. They have every right to challenge a practice in second

defendant claiming that same is against Church Law prevailing in Syro Malabar Church. So the contention regarding tenable nature of suit relying on marriage of plaintiffs 2 and 3 is untenable, hence discarded. The entire plaint allegation is confined against continuous observance of compulsive endogamy by defendants in Kottayam Archdiocese. As per plaint claim same is a continuous process. Hence being the continuous breach of contract or in case of continuing tort a fresh period of limitation begins to run at every moment of the time during which the breach or the tort as the case may be continuous. So the plaint allegation of practice of compulsive endogamy in second defendant place the matter within the purview of Section 22 of Limitation Act and not under Art. 58 or 113 of Limitation Act. On overall consideration of entire materials it can be concluded that plaintiffs have locus standi to file suit against defendants. Hence issue No.4 found in favour of plaintiffs.

26. Issue No.5:- Whether Knanaya Catholic is a religious denomination ?

Defendants vehemently argued that present lis is an infiltration to their constitutional right being a religious denomination to deal with their religious affairs. They are seeking protection under Art. 25

and 26 of Indian Constitution. So it is very vital to analyse whether Knanaya Catholic is a religious denomination ?

27. The core controversy involved in the lis is whirling around practice of endogamy among members of second defendant – The Archeparchy of Kottayam. According to plaintiffs, compulsive practice of endogamy using Catholic Church as a tool is illegal and unconstitutional. The forfeiture of membership of Archeparchy of Kottayam owing to the reason of entering into sacrament of marriage with another Catholic from any other Diocese and denial of rights and facilities through Parish Priests for the sacrament of marriage to members of Archeparchy of Kottayam who wishes to marry Catholic from any other Diocese are illegal.

28. On the other-hand, first and second defendants together with 7th defendant specifically contended that members of second defendant are practicing endogamy as a custom for last 17 centuries. According to them, they are members of separate ethnic section among Catholic Christians. The members of second defendant are practicing endogamy in tune with verses of Bible, Canon Law, Provisions of Indian Constitution, International Covenants and declaration of U. N. General Assembly. Defendants 1 and 2 are viewing present lis as an intrusion to their religious rights guaranteed under Indian Constitution. Additional 7th defendant contended that Knanaya Catholic is a religious denomination

having distinct name (Knanaya Catholic or Southists or Sudhists), having faith (custom) in Jews lineage by maintaining endogamous marriage. In addition to their Catholic faith and practicing special para – liturgical prayers in connection with their betrothal, marriage and funeral. This para liturgical prayers are not following by “*Northists people*” or any other Christian denominations. According to 7th defendant, this para liturgical prayers are “*Kaipidutham*”(agreement by giving hand bond between the paternal uncle of Bride and Bride Groom) for the fulfillment of marriage. “*Chantham charthal*” (ceremonial shaving of the Bride Groom on the eve of marriage), “*Milanchi Ideel*” (Smearing of the palms and feet of the Bride on the eve of marriage), “*Nellum Neerum Vekkal*” (ceremonial welcome of the couple by the mother of Bride Groom at the door of the house after their marriage), “*Nadavili*” (Ullulation), “*Vazhu Pidutham*” (Blessing of the mother of Bride to the couple by put her hand on the head of the couple in the style of a cross with a blessing song), *Kachathazhukal* (blessing of maternal uncle and grandmother by embrace Bride and Bride Groom as an icon to the support of their marital life with a blessing song) etc etc are special observable fact and para liturgical prayers only in Knanaya Catholic community. These prayers and ceremonial blessings have theological meanings and interpretations. Selection of spouse from Knanaya community is part of their belief and forefathers specifically advised them

at the time of their migration to Kerala to keep the endogamous identity. According to defendants, aforesaid facts can be seen in the ancient songs of Knanaya community.

They are the part of Catholic church and separate section therein. According to defendants, a Catholic Church erected an Archdiocese for the Knanaya Catholic for maintaining their ethnic culture and designed them by distinct name called "*Knanites*" or "*Thekkumbhagar*" or "*Southists*" at the time of erection of separate Vicariate in 1911, the community named as "*Southists*" and at the time of elevation of it as an Archdiocese the name is used as '*Knanaya community*'. The Archbishop of Kottayam is the religious head of the Knanaya Catholic community and he has power for enforcing discipline and keeps the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who are rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication or non accepting a non Knanaya for the purpose of ensuring the preservation of the community has therefore a prime significance in the religious life of every member of Knanaya community. Archbishop of Kottayam has every right to make their pastoral arrangements for unity, growth in faith and pastoral needs according to the teachings and the norms of particular law of Archdiocese of Kottayam.

Defendants concluded that various rites unique for Knanites revealed their religious denomination.

29. There is no quarrel between parties to lis regarding origin of Christianity in India through St. Thomas in AD 52. Both are admitting arrival of Missionary Immigration to strengthen and reinvigorate Indian Churches which were much weakened due to lack of ecclesiastical ministers, persecution from outside and dissension within. The Missionary Immigration of Church Colony to India was organized by a lay leader Thomas of Knai and whole group was headed by Bishop Uraha Mar Yausef as per the decision of Catholicos of the East. Four priests, several deacons and about 400 lay faithful belong to 72 families of 7 septs hailing from Southern Mesopotamia made up the colony and settled at Cranganore on the Malabar Coast. Both parties to lis fairly admitted regarding Portuguese interference in the ecclesiastical administration of Churches in India by introducing Archbishop Don Alexis Menezes and subsequent development of triggering a protest in

1653 ended in Coonan Cross Oath under the leadership of Arch deacon Thomas. Though Pope sent Carmelites to effect reconciliation, split among Indian Christians occurred and majority of Christian community including Knanites within the limits of second defendant continue under the Bishop appointed by Rome. According to defendants, Knanites though formed

part of Catholic Church they retained their ethnicity practicing endogamy. According to defendants, though they form part of Catholic Church, they are retaining their ethnicity by practicing endogamy. Through Ext B21 to Ext B43 and through the depositions of DW1 and DW2, defendants tried to establish before Court that they are separate religious denomination in Catholic Church.

30. Counsel for plaintiffs vehemently argued before Court that Para No.8, 12, 21, 22 and 27 of written statement of defendants 1 and 2 admitted that second defendant is a unit of Syro-Malabar Church which is one of the constituent of Catholic Church governed by Church Laws.

31. Defendants 1, 2 and 7 vehemently argued that Knanaya Catholic community or Southists is a religious denomination envisaged in Art. 26 of Indian Constitution. As per Art. 26(b) of Indian Constitution they have the right to manage their own affairs in matters of religion. Relying on dictum laid down in ***Acharya Jagadishwaranand Avadhuta v. Commissioner of Police, Calcutta (AIR 1984 SC 51)*** defendants contended that Knanaya Catholics is a collection of individuals classed together under the same name and is a religious sect or body having a common faith and organization designated by a distinctive name. Relying on dictum laid down in ***Durgah Committee Ajmer and Anr v. Sayed Hussain Ali and Ors (AIR 1961 SC 1402)***, ***S. P. Mittal etc. v. Union of***

India & Ors (AIR 1983 SC 1) defendants reinforced their contention that Knanaya Catholics satisfied the conditions to be designated as religious denomination. According to defendants, the migrants from Middle East as an identifiable group set up their living in Kerala without mixing with other communities retained a distinct name with a common faith in Christian religion following prophetic sacred words from various texts from the Bible as part of faith by keeping endogamy for the spiritual results offered in the text of Ezra and Tobith (keeping away from unfaithfulness, since it is covenant to their forefathers), for a gift of children and for inheriting land of Israel – heaven. Counsel for defendants pointed out origin and identity of Anglo Indians to whom special recognition offered in Legislative Assembly and Indian Parliament to cement his contention. According to defendants, marriage is a sacrament for the faithful Knanaya Catholic. They firmly believe that identity can be obliterated through marriage from outside

Knanaya community. They also relied on dictum laid down in **Sardar Syedna Taher Saifuddin Saheb v. State of Bombay (AIR 1962 SC 853)** to establish that power of excommunication for the purpose of ensuring preservation of the community recognized by Hon'ble Supreme Court.

32. There is no dispute between parties regarding conditions

to recognize a collection of individuals as a religious denomination through various precedents laid down by Hon'ble Supreme Court. The three conditions are;

[1] it must be a collection of individuals who have a system of believes or doctrines which they regard as conducive to their spiritual well being, that is, a common faith;

[2] common organization; and

[3] designation by a distinctive name.

No doubt Knanaya Catholic community have a common organization and a distinctive name. But it lacks very vital ingredient - system of believes or doctrines which they regard as conducive to their spiritual well being i.e., common faith. Knanaya Catholic believe in Jesus Christ and his gospels as conducive to their spiritual well being like any other member of Syro Malabar Church or Catholic Church. On going through Bible, Canonic Laws and Article of faith it is brought out that Jesus Christ identified the Supreme Cosmos in all human beings. As a result, to him there was no longer any distinction between Gentiles and Jews, circumcised and uncircumcised, barbarians, savages, slaves and free men. He found Christ in everything and in everybody. He identified unconditional love as God. He introduced seven sacraments including marriage to his followers. As Jesus Christ had no discrimination there is no impediment like endogamy

introduced in the Divine Law for sacrament of marriage. Verses of Ezra and Tobith were not recognized by New Testament. Defendants admittedly bound to abide Bible, New Testament and Article of faith being the last words of religion. Divine Law did not recognize practice of endogamy as an essential practice conducive to the religious well being of Christians. Jesus Christ advised his followers to be remain without any discrimination in their mind to accept God in the form of unconditional love. So the discrimination through endogamy cannot be considered as a religious affair of second defendant or Knanaya Catholic. Knanaya community after embracing Christianity cannot retract from Divine Law accepted by Catholic Church. In addition to that Knanaya Community have no spiritual teacher than Jesus Christ. Jesus Christ admittedly stand against verses of Ezra and Tobith who are advocating endogamy. Defendants did not establish the fact that they are observing endogamy as conducive to their spiritual well being. They also did not establish even Jews from whom defendants are claiming lineage were endogamous. Various para liturgical prayers and practices relied on by defendants will not assist Knanaya Catholics to recognize them as religious denomination in Catholic Church. So their contention relying on various verdicts of Hon'ble Supreme Court will not assist them.

33. Dictum laid down by defendants in ***Sardar Syedna Taher Saifuddin Saheb v. State of Bombay (AIR 1962 SC 853)*** will not assist defendants. In that case Hon'ble Supreme Court struck down Bombay Prevention of Excommunication Act (Bombay Act XLII of 1949) on the specific ground that it bars right of Dai – Ul- Mutiaq to excommunicate members of Dawoodi Bohra Community even on religious grounds which is hit by Art. 26(b) of Indian Constitution. That dictum will not anyway assist the defendants. In addition to that in ***Central Board of D.B Community v. State of Maharashtra (AIR 2005 SC 752)*** Hon'ble Supreme Court referred the petition to reconsider decision in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay (AIR 1962 SC 853)* for hearing before a Constitution Bench (of five Judges).

34. Hon'ble Supreme Court in ***Rajagopal v. Arumugam and Others (AIR 1969 SC 101)*** held that Christian religion does not recognize any caste classification. All the Christians are to be treated as equals and there is no distinction between one Christian and another of the type that is recognized between members of different castes belonging to Hindu religion. Infact, caste system prevails only amongst Hindus or possibly in some religions closely allied to the Hindu religion like Sikhism. Christianity is prevalent not only in India but almost all over the World and nowhere does Christianity recognize caste division. The tenets of Christianity

militates against persons professing Christian faith being divided or discriminated on the basis of any such classification as the caste system. Counsel for defendants relying on

G.M. Arumugham v. S. Rajagopal and Others (1976 SCC (1) 863), Principal, Guntur Medical College v. Y. Mohan Rao (AIR 1976 SC 1904), S. Ambalagan v. B. Devarajan and Others (AIR 1984 SC 411), K. P. Manu v. Chairman Scrutiny Committee for verification of community certificate (2015 (2) KHC SN 2 (SC)) vehemently argued that Hon'ble Supreme Court recognized caste system in Christianity. On going through aforesaid precedents it is brought out that Hon'ble Supreme Court only recognized mind set of Indians regarding caste system who were converted from Hinduism to Christianity. In all decisions Hon'ble Supreme Court held that caste system is not recognized by Christian religion. Those precedents dealing with method to find out persons entitled to get reservation/benefits after reconversion to Hinduism. So the contention advanced by defendants relying on various precedents on entirely different factual matrix will not assist them.

35. Counsel for defendants vehemently argued before Court that in ***PMA Metropolitan v. Moran Mar Marthoma (AIR 1995 SC 2001)*** Hon'ble Supreme Court recognized Knanaya Jacobites as an ethnic

community. On going through Para No.148, 149 and 150 of Judgment in ***Most. Rev. P.M.A. Metropolitan and Others etc. etc. Appellants v. Moran Mar Marthoma and Another etc. etc. Respondents***, it is crystal clear that contention of defendants is baseless. Apart from the same, Hon'ble Supreme Court in that case held that the Parishes are the Churches which cannot claim to be separate or autonomous bodies only because their racial and cultural origin was different. Once they were established whether they came from outside or they were local persons it did not make any difference as after the establishment of the Church with the permission of the Government and the Metropolitan and acknowledging the spiritual headship of Patriarch of Antioch which followed apostolic succession, the nature of these churches was episcopal and therefore it was not open to them to claim that they should be treated as autonomous bodies merely because they have their separate bye-laws (Para No.87). On close analysis of rival contentions it can be easily concluded that Knanaya Catholics is not a religious denomination as claimed by defendants. Issue No.5 found in favour of plaintiffs.

36. **Issue No.6:- Whether endogamy is established as a**

custom, practice or tradition having the force of law in Knanaya Catholic community or Southists or Thekkumbhagar (Pro Gent Suddistica) ?

'Custom' is observation of particular conduct uniformly and voluntarily for the good and benefit of a community from time immemorial.

Custom is defined by Salmond as an embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility.

Keeton defined custom as those rules of human actions, established by usage and regarded as legally bind to who the rules are applicable, which are adopted by Courts and applied as a source of law because they are generally followed by the political society as a whole or by some part of it.

37. In order to establish custom one has to prove;

- 1. Antiquity***
- 2. Continuance***
- 3. Peaceable enjoyment***
- 4. Practice as matter of right***
- 5. Certainty***

6. Consistency

7. Conformity with statute laws

Observation of custom shall be from time immemorial together with its steady, peaceful and continuous practice. Reason for observation of particular custom is also to be established before Court. Custom shall be reasonable and shall not be against any statute.

38. How one can establish custom before a Court of law is very clear from Section 13, 32, 48 and 57 of Indian Evidence Act, 1872.

Section 13 of Indian Evidence Act reads as follows;

13]. Facts relevant when right or custom is in question – where the question is as to the existence of any right or custom, the following facts are relevant:-

a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied or which was inconsistent with its existence;

b) particular instances in which right or custom was claimed, recognized or exercised or in which its exercise was disputed, asserted or departed from.

39. Section 32 of Indian Evidence Act, 1872 reads as follows;

Statements, written or verbal, of relevant facts made by

a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstance of the case, appears to the court unreasonable, are themselves relevant facts in the following cases:-

4]. Or gives opinion as to public right or custom or matters of general interest – when the statement gives opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

40. Section 48 of Indian Evidence Act reads as follows:-

Opinion as to existence of right or custom, when relevant – when the Court has to form, an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

41. Section 57 of Indian Evidence Act reads as follows: ***The Court shall take judicial notice of following facts; In all these cases, and also on all matters of public***

history, literature, science or art, the Court may resort or its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact it may refuse to do so, unless and until such person produces any such books or documents as it may consider necessary to enable it do so.

Defendants tried to establish contention regarding custom through opinion evidence (oral evidence of DW1 and DW2), Papal Bull dated 29.08.1911 and books dealing with public history.

42. It is worthwhile to go through precedents regarding custom to resolve controversy posed before Court.

In ***Takur Gokal Chand v. Parvin Kumari (AIR 1952 SC 231)*** Hon'ble Supreme Court explained valid ingredients of custom as follows;

“ A custom in order to be binding, must derive its force from the fact that by long usage it has obtained the force of law, but English Rule that “a custom in order that it may be legal and binding,

must have been used so long that the memory of man runneth not to the contrary” should not be strictly applied to the Indian conditions. All that is necessary to prove is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, being submitted to as to established governing rule of a particular locality. See MT. Subhani v. Nawab (AIR 1941 PC 21 at 32)

4]. A custom may be proved by general evidence as to its existence by members of the tribe or family who would naturally be cognizant of its existence and its exercise without controversy, and such evidence may be safely acted on when it is supported by a public record of custom such as the Biwaj -i- am or manual of customary law. See Ahmad Khan v. MT. Channi Bibi (AIR 1925 PC 267 at 271)(Emphasis supplied)”.

In *Odivalu Fathima v. Hassan Ismail* (1997 (2) KLT SN

4 Page 6) Hon'ble High Court of Kerala held as follows:-

“Section 48 of Evidence Act provides that to form an opinion as to the existence of any general custom or right, the opinion of person who would be likely to know of its existence of any general custom or right, the opinion of person who would be likely to know of its existence if it existed, are relevant..... A custom can be proved by opinion of living person who would be likely to know of its existence if it ever existed.”

So what is to be analysed is how far defendants established existence and exercise of endogamy as a custom in Knanaya community and second defendant.

43. Defendants 1, 2 and 7 vehemently argued before Court that members of Knanaya community are practicing endogamy since they migrated from Mesopotamia in the year AD 345. They further contended that Knanaya community continued this practice upto 1911. In 1911 Pope Pius X created second defendant by proclamation of a Bull dated 29.08.1911. According to defendants, Diocese created only for Knanaya Catholics who are practicing endogamy for last 17 centuries. In order to establish long practice of endogamy defendants heavily relied on

recommendation and memorandum dated 01.03.1911 submitted by three Bishops in the Syro Malabar Vikariath (Ext B3) and report of Cardinal Alliardy (Ext B13(a)) which resulted in proclamation of Papal Bull dated 29.08.1911. According to defendants, the Papal Bull dated 29.08.1911, Ext B3 and Ext B13(a) support claim of practice of endogamy by members of second defendant and approval of Pope on their practice. They tried to place Exts B3, B13(a) and Papal Bull dated 29.08.1911 within the limits of Section 13 of Indian Evidence Act, 1872.

44. Plaintiffs emphatically denied aforesaid contentions. According to them, the issue regarding practice of endogamy in the Knanaya Catholic community is not a relevant issue in the lis. What is relevant is whether second defendant being the Diocese of Catholic Church has got the authority to forfeit membership of its members for the reason of violating illegal practice of endogamy. They further contended that there is no evidence to prove the fact that Knanaya community practiced endogamy as a custom. According to them, Ext B3 and Ext B13(a) deals with recommendations to resolve dissension between Southists and Northists touching appointment of Mar Mathew Makil as the Bishop of Changanacherry Diocese. Same do not have anything to do with endogamy claimed by defendants. According to plaintiffs, practice of compulsive endogamy in second defendant is clear violation of Bible, Canon Law,

Article of faith, Particular Laws, Indian Constitution and International Covenants. As the defendants have a specific case that Knanaya community has been practicing endogamy as a custom or tradition from AD 345 being the ethnic sect and they were allotted with a separate Diocese as a token for their ethnicity, the issue regarding practice of endogamy by Knanaya Catholic become very relevant to resolve the controversy posed before Court. It is worthwhile to go through Papal Bull dated 29.08.1911, Ext B3 and Ext B13(a) to resolve the controversy posed before Court.

45. The Bull reproduced by plaintiff in Para No.29 of the plaint not disputed by defendants and it goes in tune with the translation produced by them and marked as Ext B4(b). It reads as follows:-

“For the future record of fact. In the office divinely entrusted to us for governing the universal Christian flock we consider it especially ours to determine for the churches such boundaries which correspondent to the good of faithful and to the desires of though who preside over them. For this reason in order to provide better for the faith and piety of the Syro-Malabar people we have

decreed to constitute a new Apostolic Vicariate in their region.

For this people our predecessor of happy memory Pope Leo XIII by a letter similar to this dated July 28, 1886, established three Apostolic Vicariates, namely of Trichur, Ernakulam and Changanacherry and thought it fit to appoint over them three prelates selected from among them.

Now however since the three Vicars Apostolic of the same above mentioned Vicariates, after mutual consultation have insistently petitioned us by a letter, dated March 1 of this year, that a new Apostolic Vicariate may be erected in the town commonly called Kottayam in order to satisfactorily cater to the spiritual needs of those regions and to reconcile the minds of the dissidents. We having maturely and diligently considered all the important facts of the matter with our venerable brethren the Cardinal of the Holy Roman Church in the Sacred Congregation of propagating the Christian Name for the affairs of the

Oriental Rite, decided to kindly accept such request and show proof of our benevolence to the aforesaid nation.

Therefore by Motu Proprio with sure knowledge and fullness of our power be separate all the Southists Parishes and Churches from the two Apostolic Vicariates of Ernakulam and Changanacherry and constitute them into a new Apostolic Vicariate in the town commonly known as “Kottayam” for the Southists people. On that account it shall include all the churches and chapels pertaining to be Kottayam and Kaduthuruthy Foranes in the Apostolic Vicariate of Changanacherry and also the Southists churches of the Apostolic Vicariate of Ernakulam.

We want and command these this, decreeing that this letter shall always exists firm, valid and efficacious and shall gain and obtain full and integral effect and shall most fully favour in all things and every way lose whom it pertains and shall pertain in the future, and thus it must be judged invalid and void if it happens to be tampered

with by any one of whatever authority knowingly or unknowingly.

Notwithstanding out Apostolic Chancery's Rule of not removing the acquired right, and whatever other Apostolic constitutions to the contrary. Even at Rom before St. Peter under fisherman's ring on the 29th day of August, 1911, in the 9th year of our pontificate”.

46. On close perusal of Papal Bull dated 29.08.1911, it is crystal clear that Kottayam Apostolic Vicariate created in order to cater to the spiritual need of Kottayam region and reconcile minds of Southists and Northists. It was created for Southists people including Churches and Chapels to the Kottayam and Kaduthuruthy Foranes and Southists Churches of Vicariate of Ernakulam. Naturally Changanacherry Diocese become that of Northists. Bishop Mar Mathew Makil was appointed as Bishop of Kottayam Diocese. Counsel for defendants vehemently argued before Court that as Kottayam Vicariate created for Southists same is a token for centuries long practice of endogamy. But it is brought out that Papal Bull dated 29.08.1911 did not recognize endogamous nature of Knanites.

47. Defendants 1 and 2 produced translation of memorandum submitted by Vicars Apostolic before Holy Pontiff to establish their contentions. Same was marked as Ext B3. On going through the memorandum of three Bishops of Syro Malabar Church to Holy Pontiff it is unraveled that it spell about dissension between Northists and Southists and protest against Mar Mathew Makil being the Bishop of Changanacherry Vicariate. They projected rivalry between Northists and Southists to establish their suggestions to keep peace in Changanacherry Diocese.

48. Three Bishops of Syro Malabar Church submitted Ext B3 recommendation to Holy Pontiff describing the issue in Changanacherry Diocese after appointing Mar Mathew Makil as Bishop of that Diocese. They projected two suggestions to resolve issue in Changanacherry Diocese. In order to establish their suggestions they described long lasting rivalry between Northists and Southists. They described even lack of marital relationship between Northists and Southists though both form part of Catholic Church to convince Pontiff regarding depth of rivalry exists between two rival groups. Same fact explained and reiterated by Cardinal Alliardy in his report on July, 1911 to Propaganda Fide, concerned congregation of Roman Curia. So it can be easily concluded that Ext B3 and Ext B13(a) did not spell about practice of endogamy in second

defendant or in Knanaya community. Exts B3, B13(a) and Papal Bull dated 29.08.1911 did not support contention of defendants that Rome created second defendant as a token for practice of endogamy by Southists. On the contrary from the plain readings of aforesaid documents it is unraveled that, establishment of Kottayam Diocese was to arrest dispute between Northists and Southists to keep peace among Catholics together with to keep Bishop Mar Mathew Makil in the position of Vicar Apostolic. No other interpretation is possible on viewing the Papal Bull and other documents in any angle.

49. Counsel for plaintiffs vehemently argued before Court that there was no chance to issue Papal Bull dated 29.08.1911 as a token for practice of endogamy by members of Archeparchy of Kottayam as practice is in conflict with Bible, Canon Laws, Particular Laws and Article of faith. Defendants resisted aforesaid contentions contending that old testament in Bible fully support practice of endogamy and Bible did not prohibit practice of endogamy. According to them, practice of endogamy not restricted by new testament also. So it is worthwhile to go through Bible, Canon Law, Article of faith and Particular Law to analyse whether it support practice of endogamy in Knanaya community and in second defendant.

50. Both parties to lis admitted that second defendant is a

Diocese of Syro Malabar Church governed and controlled by defendant

No.4. Syro Malabar Church is one of the 23 “*Sui iuris*” Churches under the control of Pope as its Supreme Authority. It is also admitted that all

Catholics are governed by Canon Law. Canon Law applicable to Oriental Churches including Syro Malabar Church is CCEO (Ext A9). It is admitted by both parties that primary sources of Divine Law are;

1. Gospel and letters of Apostles (New Testament)

2. Articles of faith of Catholic Church

In order to establish contentions of plaintiffs that Holy Pontiff cannot ratify observance of endogamy in violation of Church Laws, they invited my attention to the verses from Holy Bible which reads as follows; *You hypocrites! How right Isaiah was when he prophesied about you! These people, says God, honour me with their words, but their heart is really far away from me.*

*It is no use for them to worship me, because they teach man-made rules as though they were my laws! **Mathew 15(7,9)***

Jesus answered, “Haven't you read the scripture that says that in the beginning the Creator made people male and female.

And God said, “For this reason a man will leave his father and mother and unite with his wife, and the two will become one”.

So they are no longer two, but one, Man must separate then, what God has joined together. **Matthew 19 (4-6)**

Everyone whom my Father gives me will come to me. I will never turn away anyone who comes to me, because I have come down from heaven to do not my own will but the will of him who sent me.

And it is the will of him who sent me that I should not lose any of all those he has given me, but that I should raise them all to life on the last day.

For what my father wants is that all who see the Son and believe in him should have eternal life. And I will raise them to life on the last day.

John 6 (37-40)

And now I give you a new commandment: love one another. As I have loved you, so you must love one another.

*If you have love for one another, then everyone will know that you are my disciples” **John 13 (34, 35)***

I pray that they may all be one. Father ! May they be in us, just as you are in me and I am in you. May they be one, so that the world will believe that you sent me,

I gave them the same glory you gave me, so that may be one, just as you and I are one.

*I in them and you in me, so that they may be completely one, in order that the world may know that you sent me and that you love them as you love me. **John 17 (21-23)***

*So there is no difference between Jews and Gentiles, between slaves and free men, between men and women; you are all one in union with Christ Jesus. **Paul's letter to the Galatians 3 (28)***

As a result, there is no longer any distinction between Gentiles and Jews, circumcised and uncircumcised, barbarians, savages, slaves, and free men, but Christ is all, Christ is in all

Be tolerant with one another and forgive one another whenever any of you has a complaint against someone else. You must forgive one another just as the Lord has forgiven you.

Paul's letter to the Colossians 3 (11, 13). According to Counsel for plaintiffs, above verses reveal that compulsive practice of endogamy and forfeiture of membership in second defendant is clear violation of Divine Law of Catholic Church. Counsel for defendants vehemently argued that the Biblical references quoted by plaintiffs shall be understood in the contexts in which it was made. But they did not explain under what circumstance aforesaid verses were made and how the aforesaid verses and the circumstances favour their case. Above verses according to them do not resist practice of endogamy by members of first defendant. On going through

above biblical verses it is quite easy to form an opinion that Bible and New Testament did not support compulsive practice of endogamy. It preach regarding existence of almighty in every human beings. Jesus Christ did not recognize any separation among human beings. Nothing pointed out by defendants to establish the fact that above verses support practice of compulsive endogamy.

51. Counsel for the plaintiffs further invited my attention to Gospel quotations. It reads as follows;

In the Gospel of Mathew Chapter 5(1-12) Page 4 of B-5

5 (1) When Jesus saw the crowds, he went up the mountain; and after he sat down, his disciples came to him.

(2) Then he began to speak, and taught them, saying:

(3) "Blessed are the poor in spirit, for there is the kingdom

of heaven

(4) "Blessed are those who mourn, for they will be comforted.

(5) "Blessed are the meek, for they will inherit the earth.

(6) "Blessed are those who hunger and thirst for righteousness, for they will be filled

(7) "Blessed are the merciful, for they will receive mercy

(8) *“Blessed are the pure in heart, for they will see God.*

(9) *“Blessed are the peacemakers, for they will be called children of God*

(10) *“Blessed are those who are persecuted for righteousness” sake, for there is the kingdom of heaven.*

(11) *“Blessed are you when people revile you and persecute you and utter all kinds of evil against you falsely “on my account.*

(12) *Rejoice and be glad, for your reward is great in heaven, for in the same way they persecuted the prophets who were before you.*

In the Gospel, Mathew Chapter 22 (37-40), the Greatest Commandment has been stated thus:(Page 25 of B-5)

22 (37) *He said to him, “You shall love the Lord your God with all your heart, and with all your soul, and with all your mind.’*

(38) *This is the greatest and first commandment.*

(39) *And a second is like it: You shall love your neighbour as yourself:*

(40) *On those two commandments hang all the law and the prophets.*

52. Defendants met aforesaid quotations contending that New Testament did not bar endogamy approved by old testament. They pointed out Rom, 9:3-5, I – Peter 2:9 in support of their contention. According to them after the decision of Jerusalem Synod a letter written to the public was addressed as “*brothers and brothers from gentiles (Act 15:23)*”. According to them identifying groups on the basis of ethnicity was prevailing at the time of Apostles. Defendants vehemently argued that these Biblical references brought out practice of endogamy among Christians which is not against teachings of Jesus Christ. Counsel for plaintiffs resisted aforesaid contentions contending that old testament even according to DW1 is the secondary source of Divine Law. It was written 2000 to 4000 years before where the social customs were entirely different. The activities alleged to have done by Ezra and Nehemiah are not in tune with today's standards even if those activities were justified during their periods. Counsel for plaintiffs invited my attention to Genesis 19 (31-38) on page No.16 of Ext B5 (Bible) to unravel illegal relationship described in old testament between daughters and their father. According to him, old testament will not stand in the way of new testament.

53. Defendants are relying on Ezra 9:1-4, Nehemiah 9:2, Nehemiah 10:30, Nehemiah 13:25, Deuteronomy 7:3, Tobith 4:12-14 from old testament to reinforce their contention that old testament support

practice of endogamy. Admittedly those verses direct people to marry from their own tribe. It also spell about blessings of God in the form of children and land of Israel if they abide direction to marry from their own tribe. Old testaments were written from the time of Moses. Same is dealing with return of Jewish people under Ezra and Nehemiah to Jerusalem. In old testament God is one of wrath and vengeance. But new testament evolved through Jesus Christ, who advocates love. In new testament God is of love and forgiveness. For Jesus Christ there was no difference between Gentiles and Jews, circumcised and uncircumcised, barbarians, savages, slaves and free men. New Testament is the primary source of Divine Law. If there is no difference between Jews and Gentiles, between slaves and free men, between men and women to Jesus Christ how defendants can practice endogamy removing people for marrying Catholic from another Diocese not met and answered before Court. How a Catholic Diocese can expel its members if their teacher had the view *“everyone whom my father gives me will come to me. I will never turn away anyone who comes to me, because I have come down from heaven to do not my own will but the will of him who sent me”* not answered and explained before Court.

54. Counsel for plaintiffs vehemently argued that Article of faith of Catholic Church do not support practice of endogamy in defendant No.2. According to him, Article of faith is included in the daily prayers of

Catholics. They believe in one God as also that the Catholic Church is One, Holy, Apostolic and Universal. He concluded contending that compulsive practice of endogamy in second defendant is against Article of faith. It is quite pertinent to note that DW1 during his crossexamination admitted Article of faith. There is nothing supportive drew by defendants from Article of faith in favour of endogamy in second defendant or in Knanaya community. So it can be easily concluded that Article of faith do not support endogamy in second defendant and Knanaya community.

55. Counsel for plaintiffs further invited my attention to general provisions of Canon Law regarding sacraments to establish their contention that practice of endogamy is in violation of Canon Law of Catholic Church. Plaintiffs segregated the relevant Canon Law in four parts.

1]. General provisions of Canon Law regarding sacraments.

2]. Provisions of Canon Law regarding sacrament of baptism.

3]. Provision regarding sacrament of marriage.

4]. Provision to expel a member.

Plaintiffs invited my attention to provisions of Canon Law i.e., CAN 14, CAN 22, CAN 23, CAN 667 & CAN 669 regarding sacraments.

CAN.14 - All the Christian faithful have the right and obligation

to work so that the divine message of salvation may more and more reach all people of all times and of all the world.

CAN.22 - All the Christian faithful have the right to be free from any kind of coercion in choosing a state in life.

CAN.23 - No one is permitted to harm illegitimately the good reputation which another person enjoys nor violate the right of any person to protect his or her own privacy.

CAN. 667 - Through the sacraments, which the Church is bound to dispense in order to communicate the mysteries of Christ under visible signs, our Lord Jesus Christ sanctifies people by the power of the Holy Spirit, so that they may become in a unique way true worshipers of God the Father and be inserted into Christ and the Church, His Body; therefore, all the Christian faithful, but especially the sacred ministers, are to observe diligently the prescripts of the Church in the conscientious celebration and reception of the sacraments.

CAN.669 - Since the sacraments are the same for the entire Church and belong to the divine deposit, it is for the supreme authority of the Church alone to approve or define those things required for their validity.

56. Counsel for plaintiffs vehemently argued that only the

supreme authority of the Church alone has the power to approve or define sacraments. He pointed out that DW1 and DW2 admitted during their cross-examination that sacraments were founded by Jesus Christ.

Canon Law prescribed means to implement sacraments. Nobody except Pope has the right to interpret sacraments. Only Pope has the Authority to incorporate new sacraments. He confined his arguments to a specific point that a person who is admitted in a parish of Diocese of Catholic Church will remain in parish till his demise and is entitled to receive all sacraments in the same parish. A parish member cannot be expelled except for gross indiscipline to Church rules. He quoted CAN. 675(2) which reads as follows :-

“only by the actual receptions of baptism is a person make capable for other sacraments.” According to plaintiffs, denying sacrament of marriage to plaintiffs is contrary to Canon Law. He invited my attention to CAN 776, 777, 778, 779 and 780 to reiterate his contentions.

57. Counsel for plaintiffs vehemently argued that nobody can introduce new impediments than introduced by Canon Law regarding sacrament of marriage.

The impediments for a valid marriage recognized by Canon Law are given in two parts namely:

a) Diriment Impediments in General (Canon 790 to 799) and

b) Impediments specifically (Canon 800-812)

Admittedly, none of the Canons for the sacrament of marriage stipulate violation of endogamy as an impediment. Further none of the Canons enables, the defendants to deny the sacrament of marriage to those who do not practice endogamy.

As per CAN. 776 (1) - By the marriage covenant, founded by the Creator and ordered by His laws, a man and a woman by irrevocable personal consent establish between themselves a partnership of the whole of life this covenant is by the very nature ordered to the good of the spouses and to the procreation and education of children.

(2) By Christ's institution, a valid marriage between baptized persons is by that very fact a sacrament in which the spouses are united by God after the pattern of Christ's indefectible union with the Church, and are, as it were, consecrated and strengthened by sacramental grace.

(3) The essential properties of marriage are unity and indissolubility, which in the marriage between baptized persons they acquire a special firmness by reason of the sacrament.

CAN.777 - Out of marriage arise equal rights and obligations between the spouse regarding what pertains to the partnership of conjugal life.

CAN.778 - All persons can enter in to marriage who are not prohibited by law.

CAN. 779 - Marriage enjoys the favour of the law; consequently in doubt, the validity of a marriage is to be upheld until the contrary is proven.

CAN. 780 (1) - Even if only one party is Catholic, the marriage of Catholics is governed not only by divine law but also by Canon Law, without prejudice to the competence of civil authority concerning the merely civil effects of marriage.

(2) Marriage between a Catholic and a baptized non-Catholic is governed, with due regard for Divine Law, also by:

- 1. the law proper to the Church or ecclesial community to which the non-Catholic belongs, if that community has its own matrimonial law;*
- 2. the law to which the non-Catholic is subject, if the ecclesial community to which the per-son belongs has no matrimonial law of its own.*

58. Counsel for defendants vehemently argued before Court that Canon Law does not bar endogamy. According to him, membership in a Diocese is not permanent and cannot be acquired through marriage. According to defendants, Canon Law and Bible actually support endogamy. According to him, CCEO 803(1) declared that marriage between two baptised persons can only be validly celebrated. According to

him, same is baptism endogamy. Admittedly Canon Law is the Constitution of Syro Malabar Church. A person become Christian only through Baptism. The valid celebration of marriage between two Christian through Canonic provision cannot be ridiculed as 'baptism endogamy'. He further contended that as there is no prohibition against endogamy in Bible and new testament it can be presumed that same is approved. He relied on dictum laid down in ***Narsingh Das v. Mangal Dubey (ILR 5 All 163(FB) (1882))***, ***Raj Narayan Saxena v. Bhimson and Ors (AIR 1966 All 84(FB) & Rajendra Prasad Gupta v. Prakash Chandra Mishra (Civil Appeal No.984/2006)*** to support aforesaid contentions. But CAN 790 to CAN 812 deals with impediments for a valid marriage in Syro Malabar Church. Violation of endogamy do not find a place in that Canonic provisions. As the Bible, Canon Laws and Article of faith stand against compulsive practice of endogamy only irresistible conclusion one can reach is that Church Law do not favour practice of compulsive endogamy. No Canonic provision quoted by defendants to establish the fact that membership in a Diocese can be cancelled for violation of practice of endogamy. Marriage admittedly will not change membership of spouse automatically. But CAN 33 prescribed liberty of spouse to transfer membership in Church to the Church of her husband in the celebration of or during the existence of marriage. Dictum laid down in *Valsamma Paul*

v. Rani George (1995 (1) KLT 336) will not assist defendants as in that case Hon'ble High Court of Kerala held that a Syrian Christian by marriage cannot become a Latin Christian for the purpose of availing benefit of reservation under Rule 14 – 17 of the Kerala State and Subordinate Service Rules. The aforesaid dictum rest upon an entirely different factual matrix will not assist contention of defendants.

59. There is no material apart from verses from old testament introduced by defendants to reinforce their contentions that Bible, particular laws and Article of faith support practice of endogamy in second defendant. So it can be easily concluded that contention of defendants regarding issuance of Papal Bull by Supreme Pontiff Pius X on 01.03.1911 as a token for practice of endogamy by members of second defendant appears to be untenable, hence discarded. Supreme Pontiff cannot issue Papal Bull against Bible and Canon Laws.

60. Counsel for 7th defendant invited my attention to Ext B22 to Ext B29 to establish the fact that Knanaya community practiced endogamy for 17 centuries.

a) Ext B22 is Part- I of report by N. Subhramania Aiyar, Dewan Peishcar – Census Commission of Travancore printed at the Malabar Mail Press, Trivandrum in the year 1903. In Ext B22 the Author recorded

regarding Thomas of Cana and origin of Northists and Southists as follows:- *“Thomas was received with all honor at*

Cranganore. After arrival he married two wives of whom one was a Christian belonging to the colony that come with him and another a Hindu. He had a number of children among whom he divided his immense wealth. To the children of Christian wife he left all his possessions to the south of Cranganore, and to those of the Hindu convert, those lying on the north. Thus came the division of the Syrian Christians into the large endogamous sections, Northists and Southists, with their differences in the customs relating to marriage et. ceters.”

b). Ext B23 is the Part - I report by Mr. Sankara Menon, Superintendent of Census Operations, Cochin State published and printed at Cochin Government Press, Ernakulam. In Ext B23 Author dealt with origin of Northerners and Southerners from Thomas of Knai as follows; [Page No.44, Para 3, line No.10 onwards] *“He is said to have married two Indian ladies, the disputes of succession between whose children appear, according to some writers to have given rise to two names of Northerners and Southerners, a distinction which is still jealously kept up”*. [Page 45, Para 1, line No.2 onwards from top] reads as follows; *“After their dispersion from Cranganore, the Southerners kept up their pride and prestige by refusing to intermarry, while the name of Northerners came to*

be applied to all native Christians other than Southerners. At their wedding feasts, the Southerners sing song commemorating their colonization at Kodungallur their dispersion from and settlement in different places.”

c). In Ext B24 – the Travancore State Manual Vol. I by Sadasyathilaka T. K., Velu Pillai, Advocates, Deputy President, Sreemoolam Assembly, Travancore reported as follows:-

[Page No.665, Line No.9 onwards from top], “It is said that he married two wives one of higher and other of lower caste. Hence the division of the community into Northerners and Southerners [Northists and Southists]. Another theory regarding the division into two Sections is that the Southerners were the new immigrants who were brought in by Thomas Cana and who settled in the South street in Cranganore. While the Northerners were the old indigenous Christians who had the north street for their origin. The cleavage between the two sections is still kept up, as custom does not permit intermarriage between them.”

d). In Ext B25- the Cochin State Manual by C. Achyuta Menon, Superintendent of Census Operations, Cochin State, Formerly, Secretary to the Dewan spell about arrival of Thomas of Cana and origin of Northists and Southists as follows:-

[Page 281, Line No.3 from top onwards], “It is also said that Thomas Cana married two native wives with different castes, and that the

descendants of their offspring are respectively represented by the Northerners (Vadakkumbhagakkar) and Southerners (Thekkumbhagakkar) of the present day. Another theory regarding the division in two sections is that Southerners were the new immigrants who were brought in by Thomas Cana and who settled in the South street in Cranganur, while the Northerners were the old indigenous Christians who had the north street for their domicile. Whatever their origin, the social cleavage between the two sections is still kept up, as custom does not permit intermarriage between them.”

e). Ext B26 - Castes and Tribes of Southern India Volume 6 by Edgar Thurston and K. Rangachari repeated what stated in Ext B22 to Ext B25 regarding origin of Southerners and Northerners together with arrival of Thomas of Cana (Page No.414).

f). Ext B27 by E. M. Philip, Ext B29 by George Nedungatt S. J., Ext B28 by Placid J. Podipara, CMI dealt with formation of Northerners and Southerners together with arrival of Thomas of Cana in same line as the Authors of Ext B22 to Ext B26. They described lack of marital relationship between Northerners and Southerners due to the rivalry originated being children of Thomas of Cana in two wives. Plaintiffs heavily relied on Ext A19 – “*Symposium of Knanites*” - a publication of second defendant to establish their contention that Knai Thoma who lead

Knanites to India in AD 345 married in India. They invited my attention to an article written by Fr. Jacob Kollaparambil who is the priest of second defendant, a historian who published his research works about Knai Thoma relying on various historians such as Fr. Francis Dionisio, S. J., Father Monsrrate in 1579, Fr. Gouvea in 1602 – 1603, Bishop Ros in 1604, Campori in 1604, D.B. Trindad in 16301636 and Sebastiani (1657). Plaintiffs further relied on Ext A21 – a biweekly publication named “*Apna Desh*” published on 21.12.2020. In Ext A21 Fr. Baiju Mukalal another priest of second defendant published an article regarding his research works about marriage of Knai Thomas in India. He also quoted various historians to reach a conclusion regarding marriage of Knai Thoma in India. Plaintiffs concluded that if the only person who is the role model of entire Knanites married from India how Knanaya Catholics can claim for compulsive practice of endogamy in second defendant.

61. On close perusal of Exts B22 to B29, Exts A19 and A21 it is unraveled that those documents support specific contention of plaintiffs that Thomas of Cana married a Hindu convert. The Authors of Exts B22 to B29 projected theory regarding origin of Northists and Southists as children of Thomas of Knai in his two wives. Admittedly those documents spell about deep rivalry between these two groups of

Syrian Christians. All these documents spell about endogamous nature of Northists and Southists. Some books deals with excommunication among Southists in case of violation of endogamy. The endogamous nature of Knanaya community is very clear from Exts B22 to B29. But whether the practice of endogamy among Knanites satisfied all ingredients to constitute a binding custom is not established with convincing materials from Exts B22 to B29. No consistent theory regarding the origin of endogamy in Southists and method by which same was practicing among community members not revealed from Exts B22 to B29.

62. Counsel for defendant No.7 vehemently argued that plaintiffs admitted practice of endogamy in second defendant from the period of Bishop Choolaparambil. According to him, same is an admission of existence of endogamy in second defendant atleast for 100 years. But on going through pleadings it is brought out that specific plaint allegation is regarding compulsive practice of endogamy in second defendant from the period of Bishop Choolamparambil. Same shall not be considered as an admission of practice of endogamy as a custom by defendants 1 and 2.

63. Defendants heavily relied on Ext B19 to reinforce their contention regarding practice of endogamy in second defendant. But on going through Ext B19 it is brought out that same is a response to the

letter dated 29.08.2017 regarding expansion of jurisdiction of Archbishop of Kottayam which is currently limited to the *territorium proprium*. It spell about active consideration of demand to create personal jurisdiction over all members of Knanaya community spread through the world under Archbishop of Kottayam. Ext B19 spell about practice of endogamy as, endogamy has been tolerated defacto in the *territorium proprium*, it is not to be permitted elsewhere by Catholic Church. Ext B19 on its close perusal will not assist the defendants to establish their contention regarding recognition of endogamy in second defendant from Rome. The attempt of defendants to interpret mention regarding endogamy in Ext B19 relying on definition of word, '*toleration*' in Black's Law Dictionary failed miserably. So it can be concluded that Ext B19 and Ext B7 (letter dated 04.08.1989 issued by Apostolic

Nunciatur to solve spiritual problems of son of Mr. O. M. Uthup – Plaintiff in OS No.923/1989 on the file of Munsiff's Court, Kottayam (Ext A11)) will not assist defendants to win the race.

64. Defendants did not resist contention of plaintiffs that Mar Mathew Makil did not expel any member of second defendant during his tenure as Bishop of second defendant for marrying Catholic from another Diocese.

65. DW2 admitted during his cross-examination that seven

hundredm, five hundredm and three hundredm (communities among Latin Catholics) though were endogamous as per Ext B23, on getting separate Diocese stopped the practice of endogamy and began to admit any person who are willing to join in their Diocese. It revealed the fact that Catholic Diocese, though allotted to endogamous communities, they stopped practice of endogamy and came in line with Church laws.

66. DW1 admitted that even after eruption of objections against interpretation regarding Papal Bull dated 29.08.1911, first and second defendants did not approach Holy Pontiff who is the Author of Papal Bull for a clarification regarding intention behind creation of second defendant. According to DW1, they believed that Papal Bull dated 29.08.1911 issued permitting practice of endogamy in second defendant. Same is indigestible to common logic.

67. Ext A11 and Ext A12 which are the certified copies of judgment in OS No.923/1989 on the file of Munsiff's Court, Kottayam and certified copy of judgment in AS No.244 and 245 of 2004 revealed an undisputed fact that grandfather of plaintiff in OS No.923/1989 married a non Knanite. Couple and their progenies were accepted as Knanites by their Church and second defendant. This aspect revealed lack of strict practice of endogamy even after formation of second defendant in the year 1911. Admittedly AS No.64/2017 against verdict in AS No.244 and

245 of 2004 of District Court, Ernakulam is pending before Hon'ble High Court of Kerala. Though the verdict did not attain finality, the admitted fact regarding marriage of grandfather of plaintiff in OS No.923/1989 stand against claim of practice of endogamy in second defendant. There is no question of merger arise in this case as plaintiffs did not rely on Ext A11 and Ext A12, to get decree as prayed in the plaint. But defendants anticipating such a contention vehemently argued regarding merger relying on dictum laid down in ***Philip Ancheril & Others v. Chacko Kunhappan & Others (2012(1) KHC 620)***, ***Maitheen v. Madhavan Nair (2007 (2) KLT SN 57)***, ***Chandi Prasad v. Jagadish Prasad (2004 (3) KLT 654)***, ***Kunhayammed & Ors v. State of Kerala & Anr (2000 (3) KLT 354(SC))***, ***Union of India & Ors v. West Cost Paper Mills Ltd; & Anr ((2004) 2 SCC 747)*** and ***Ass Kaur v. Kartar Singh (AIR 2007 SC 2369)***. Ext A11 and Ext A12 can only be relied on to recognize an undisputed fact regarding marriage of grandfather of plaintiff in OS No.923/1989 with a non Knanite and their acceptance by Knanaya community. Defendants in order to obliterate aforesaid aspect vehemently argued that dictum laid down in ***Varkey v. St. Marys' Catholic Church, Mulakkulam (1997 (2) KLT 192)*** stand against acceptance of aforesaid fact in Biju Uthup's case i.e., a single retraction

from a well established custom will not affect validity of custom established before Court. In that case it was held as follows:- *“In making this approach, the Court below have erred because as observed by the Privy Council in Ekradeshwar Singh v. Janeswari Bahusin (AIR 1914 PC 76) a well established custom cannot be defeated by the fact that in one case custom was not enforced. Therefore, even if it be assumed that instances referred to by the Courts below did come exists, that would not in any manner affect the customary right set up by the plaintiff if they are otherwise able to establish that right. The courts below have therefore committed a substantial error in their approach to the question of deciding whether the plaintiffs have established a customary right of burial as claimed by them.”* But in the case on hand whether defendants established existence of a custom as claimed by them in the Knanaya community and in second defendant is the vital aspect to be adjudged in the issue No.6. If defendants succeeded in establishing practice of endogamy as a custom then only dictum laid down in *Varkey's case* favour defendants. No doubt, the one instance projected through Ext A11 and Ext A12 by plaintiffs stand against allegation of practice of strict endogamy in second defendant.

68. Defendants vehemently argued that practice of endogamy

by Knanaya community and second defendant for last 17 centuries obtained force of law as per CAN 1507. But CAN 1506 bars custom stood against Divine Law. On close analysis of Bible, Canon Law, Particular Laws and Article of Faith, it is crystal clear that Jesus Christ stood for unconditional love without any discrimination among human beings. He had no difference between Jews and Gentiles, between slaves and free men, between men and women. He stood for tolerance and forgiveness. He advised to his followers to consider all human beings without any discrimination. He considered even the persons who pierced his chest without any discrimination and prayed for them. A person who identify himself in another or who identify God in another can only pray in that score. So the Christian religion cannot encourage discrimination as Jesus stand against it. Christian religion is not recognizing caste system due to aforesaid reason. In the backdrop of aforesaid findings, I am of considered opinion that defendants failed to establish the fact that Church Laws supporting practice of endogamy in Knanaya community and in second defendant, Ext B22 to Ext B29 proved practice of endogamy as a custom among Knanaya Catholics, Ext B3, B13(a) and Papal Bull dated 29.08.1911 support practice of endogamy in second defendant.

69. *Whether second defendant represent entire Knanaya Community ?*

Defendants during evidence admitted that Knanites are in Orthodox, Marthoma, CSI and Pentecost Churches. Hence how second defendant can raise a contention that they represent entire Knanaya community not explained properly before Court. So the only conclusion one can reach is second defendant is not representing entire Knanaya community. So it can be easily concluded that defendants failed to establish their specific allegations that second defendant was created permitting members of Knanaya community to practice endogamy arresting Church Laws observing by Catholics.

70. *Whether members of second defendant have been practicing endogamy peacefully ?*

Whether the means to execute endogamy by second defendant is peaceful or not is the core aspect to be analysed to reach a conclusion regarding claim of custom raised by defendants. Whenever a member of second defendant approaches parish priests working under 1st defendant for '*vivahakuri*' – a consent letter required for conducting betrothal ceremony and then to perform marriage with a Catholic from another Diocese, they will provide a format of application (According to DW1 a common format for all purpose to submit application before Church with necessary modifications as per the need) seeking permission to go out from

the membership of second defendant. If there is no other impediments they will permit member of second defendant to join the non Knanaya parish and eparchy of the family's domicile. If the bond of such marriage ceases to exist by death or by any other canonical reasons, the Knanaya spouse of such marriage, having no other encumbrance, can again become a member of the Knanaya ecclesial unit provided he or she obtains due permission from the ecclesiastical authorities concerned. According to defendants, only children born of Knanaya father and a Knanaya mother can be members of the Knanaya community. Against such tradition, if a Knanaya man or a Knanaya women takes a life partner from another community, the consequence is that a family thus formed cannot be in the Knanaya community, nor can it be included in the Knanaya ecclesial unit. On close perusal of practice it is crystal clear that implementation of endogamy in second defendant is not peaceful. It is just like handing over knife to one person and command him to kill himself. The members of second defendant approaching for '*vivahakuri*' to marry a Catholic from another Diocese will be compelled to leave second defendant forfeiting his membership to save a life partner of their own choice.

71. Next aspect to be analysed is ***whether alleged practice of endogamy in second defendant is in violation of any statute***

laws ?

According to defendants 1, 2 and 7, Article 25, 26 & 29 of Indian Constitution support the custom or tradition of practicing endogamy in Archeparchy of Kottayam being Knanaya Catholics an ethnic sect. Present lis according to them is an intrusion or an infiltration to their constitutional rights.

Article 25 of Indian Constitution reads as follows:-

“25. Freedom of conscience and free profession, practice and propagation of religion.

1. Subject to public order, morality and health and to the other provision of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

2. Nothing in this Article shall affect the operation of any existing law or prevent the state from making any law.

a). regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice.

b). providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all

classes and sections of Hindus.

Explanation -I. The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation-II. In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Art. 26 reads as follows;

Freedom to manage religious affairs subject to public order, morality and health, every religious denomination, or any section thereof shall have the right.

a) to establish and maintain institutions for religious and charitable purposes;

b) to manage its own affairs in matter of religion.

c) to own and acquire movables and immovable property;

and

d) to administer such property in accordance with law.

Article 29 of Indian Constitution reads as follows:-

“29. Protection of interest of minorities.

1. Any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have right to conserve the same.

2. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of the other.

Indian citizens have the right to conserve their distinct language, script or culture. Indian citizens have the freedom of conscience, free profession practice and propagation of religion. A religious denomination in India have the right to manage its own affairs in matters of religion. But here the question projected is when a member of 2nd defendant intend to marry a person who is not a member of Knanaya community can be prevented by removing him or her from 2nd defendant ? How this dispute can be placed under the shelter of Article 25, 26 & 29 of Indian Constitution, 1949 not explained before Court. It is quite easy to conclude that present lis not in anyway affect the rights of first and second defendants guaranteed by Article 25, 26 & 29 of Indian Constitution. As Knanaya Catholics are not a religious denomination and practice of endogamy together with forfeiture of membership for violation of endogamy do not

come under religious affairs, they are also not entitled to get protection under Art. 26(b) of Indian Constitution. The present lis cannot be viewed as an intrusion to the constitutional rights of defendants guaranteed by Indian Constitution as contended by defendants.

72. Counsel for plaintiffs vehemently argued before me that Article 21 of Indian Constitution prevents any force depriving life or personal liberty of Indian citizens except through the procedure prescribed by law. Though plaintiffs sought for reliefs to resist defendants from obstructing marriage of second defendant with members of any other Diocese under Syro Malabar Church, the controversy rest upon right to marriage of members of second defendant. Practice of endogamy claimed is projected as a threat to that right. So the enquiry towards violation of right to marriage is very vital to resolve the controversy involved in the lis. It is not possible to adjudge controversy posed before Court without touching aforesaid aspect.

73. Admittedly in ***Shafin Jahan v. Asokan and Others (2018(2) KHC 890*** Hon'ble Supreme Court recognized right to marriage as the integral part of right to life enshrined in Article 21 of Indian Constitution. According to Counsel for

plaintiffs, defendants 1 and 2 have no authority to compel its members to marry members of second defendant only and to terminate membership in second defendant for marrying a Catholic from another Diocese. According to him, same is clear violation of civil rights of citizens.

In Latha Singh v. State of U.P. and Another (AIR 2006 SC 2522) Hon'ble Supreme Court held as follows;

“This is a free and democratic country, and once a person becomes major he or she can marry whosoever he or she likes. If the parents of the boy or girl do not approve of such inter caste or inter religious marriage the maximum they can do is that they can cut off social relation with the son or daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter caste or inter religious marriage.” (Para No.17)

If the right of parents to interfere with the marriage of citizen of India is as aforesaid by Hon'ble Supreme Court, can a religious institution has any right to restrict such a precious right of its members

recognized by Court Apex, in the name of custom, is the core query posed before me.

74. In ***Shafin Jahan v. Asokan and Others (2018 (2) KHC 890)*** Hon'ble Supreme Court held as follows;

“77. The right to marry a person of one's choice is integral to Art. 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as fundamental right is the ability of each individual to take decision on matters central to the pursuit of happiness. Matters of believe and faith, include whether to believe are at the core of constitutional liberty. The Constitution exist for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may

regulate (subject to the constitutional compliance) the condition of a valid marriage, as it may regulate situations in which marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners.”

If the entire society has no say over the right of individual in choosing a partner in life can second defendant restrict that precious right of its members is the eye of query posed before me.

75. In addition to that in ***Justice K.S. Puttaswamy (Retd.) & Anr v. Union of India & Ors (2017 KHC 6577) Hon'ble Supreme Court*** held as follows;

Para 318: Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.

Para 319: Life and personal liberty are not creation of the Constitution. These rights are recognized by the Constitution as inhering in each individual as an intrinsic and inseparable part of human element which dwells within.

Para 323: Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimates zone to the private zone and from the private to public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.

Hon'ble Supreme Court held that privacy has the nature of being both a common law right as well as a fundamental right. Its content, in both forms is identical. All that differs is the incidence of burden and the forum for enforcement for each form. Hon'ble Supreme Court asserted that it is perfectly possible for an interest to simultaneously be recognized as a common law right and a fundamental right. Where the interference with a recognized interest is by the State or any other like entity recognized by Art. 12, a claim for the violation of a fundamental right would lie. Where the Author of an incidental interference is a non State actor, an action at common law would lie in an ordinary court. Hon'ble Supreme Court recognized right to marriage is a fundamental right with remarkable clarity in various judgments. It was done by the Court Apex keeping in view the fact that our Constitution is a sacred living document and hence susceptible to appropriate interpretation of its provision based on changing needs of “we the people” and other well defined parameters.

76. Hon'ble Supreme Court in *Justice K. S. Puttaswamy (Retd.) and Another v. Union of India and Others* identified sanctity of family life, marriage, procreation, the home and sexual orientation as the core aspects of privacy. Right to marriage is the integral part of natural right belong to human beings. Same is neither creation of law nor creation of

State. Admittedly, right to marriage is an inalienable natural right intimately connected to innate dignity and autonomy of man. In *Puttaswamy's case* Hon'ble Supreme Court held that elements of natural right to privacy began to be received in common law as early as in 1604. Where a natural law right could not have been enforced at law, the common law right is evidently an instrument by which invasions into the valued interest in question by one's fellow man can be addressed. According to Hon'ble Supreme Court, common law rights are horizontal in their operation when they are violated by one's fellow man, he can be named and proceeded against in an ordinary Court of law. According to Hon'ble Supreme Court it is perfectly possible for an interest to simultaneously be recognized as a common law right and the fundamental right. Where the interference with a recognized interest is by the State or any other like entity recognized by Art. 12, a claim for the violation of a fundamental right would lie. Where the Author of an identical interference is a non State actor, an action at common law would lie in an ordinary Court. Hon'ble Supreme Court recognized nature of privacy being both a common law right as well as a fundamental right. Right to marriage forming the integral part of right to privacy also qualifies same test. It is feasible to enforce right to marriage through Civil Courts as the interference done by non State Actor i.e.,

defendants. So in the light of aforesaid precedents it can be easily concluded that right to marriage is the integral part of personal liberty enshrined in right to life guaranteed under Indian Constitution, same shall not be curtailed under the guise of custom by second defendant. It was recognized for long time that freedom to marry is the vital personal right essential to the pursuit of happiness by free men. Even statutes denied the precious right to marry on the strength of racial classifications were struck down by various Secular Courts in the world. So it can be easily concluded that alleged practice of endogamy in second defendant is in violation of right to marriage enshrined in Art. 21 of Indian Constitution which can be simultaneously be recognized as a common law right and a fundamental right. The forfeiture of membership in second defendant for violating endogamy is violation of right guaranteed under Art. 25 of Indian Constitution.

77. Counsel for defendants vehemently argued that plaintiffs did not plead regarding details of common law to be applied in the controversy posed before Court. He relied on dictum laid down in ***Superintendent and Remembrance of Legal Affairs, State of West Bengal v. Corporation of Calcutta (AIR 1967 SC 997)*** to reinforce his contentions. Plaintiffs advanced their contentions simply relying on dictum laid down in *Justice K. S. Puttaswamy's* case. Hon'ble Supreme

Court settled law regarding right to privacy in that case. So the contention of defendants regarding applicability of common law will not lie in the eye of law in the light of dictum laid down in *Justice K. S. Puttaswamy's* case.

78. Both parties do not have any quarrel regarding Art. 51 of Indian Constitution which forms part of the directive principles requires the State to endeavour to foster respect for International Law and treaty obligations in the dealing of organization of people with one another. Both plaintiffs and defendants seek shelter under Art. 16 of Universal Declaration of Human Rights, Art. 23 of International Covenant on Civil and Political Rights 1966, Art. 10 of International Covenant on Economic Social and Cultural Right and Art. 12 of European Covenant on Human Rights. Those Articles deals with right of men and women of full age to marry without limitations due to race, nationality or religion. It commands protection from States to preserve valuable rights of human beings. On close analysis of various International Covenants it is brought out that world recognized right to marry as the prime right of human being. Same shall not be limited in the name of race, religion or even nationality. Defendants relied on Art. 27 of International Covenant on Civil and Political Rights, 1966 dealing with rights of ethnic religious or linguistic minorities to enjoy their culture, profess and practice their religion or use their own language. Defendants also relied on declaration on rights of

persons belonging to national or ethnic, religious and linguistic minorities adopted by General Assembly Resolution 47/135 of 18.12.1992 regarding rights of minorities to enjoy their culture in all States. Those conventions will not assist practice of compulsive endogamy in second defendant. The conventions aforementioned will protect national, ethnic and linguistic right of a human being. It will also protect right to marriage of a human being. Present lis challenging practice of compulsive endogamy and forfeiture of membership in second defendant not in anyway violate any of the International Covenants. Suit cannot be considered as an intrusion or infiltration to the ethnicity of second defendant or Knanaya Catholics.

79. In the light of aforesaid discussions, it can be easily concluded that defendants failed to establish practice of endogamy as a custom or tradition having the force of law satisfying all ingredients to be proved for the purpose of establishing custom. So the dictum in *Varkey v. St. Mary's Catholic Church, Mulakkulam* (1997(2) KLT 192) will not assist defendants. In addition to that dictum laid down in *Kochan Kani v. Kunjiraman Kani* (1971 KLT 458), *Kesavan Sadasivan v. Kesavan Sivanandan* (1956 KLT 195), *Vemachina Koteswara Rao v. District Collector and Ors* (AIR 2007 SC 2368), will not favour defendants as those precedents rest on entirely different factual matrix. In *Kochan Kani v. Kunjiraman Kani*, Hon'ble Supreme Court considered the question whether

Kanikkars Clan was governed by Marumakkathayam Law. Hon'ble Supreme Court held after evaluating entire evidence that Kanikkars Clan not governed by Marumakkathayam Law. In Kesavan Sadasivan v. Kesavan Sivanandan (1956 KLT 195), Full Bench of Hon'ble High Court of Kerala enquired regarding the origin of Pathnibhagom devolution among Misradoyi Ezhava and found that custom is valid. In the case on hand defendants did not prove origin of alleged practice of endogamy by missionary emigrants came to India to convert Indians to Christianity. Hence on overall consideration of entire materials it can be concluded that Issue No.6 can be counted in favour of plaintiffs.

80. **Issues No.7 to 9:-** In the light of my discussion in issues No.1 to 6, I am of considered opinion that plaintiffs established that practice of endogamy in second defendant is against Bible, Canon Laws, Article of faith, Indian Constitution, International Covenants on Civil and Political Rights - 1966 and Declaration of UN General Assembly Resolution 47/135 dated 18.12.1992. Defendants failed miserably to establish the fact that Knanaya community and second defendant have been practicing endogamy as a custom and Knanaya Catholic is a religious denomination. They failed to establish the fact that Catholic Church accepted practice of endogamy through issuing Papal Bull dated 29.08.1911, Ext B7 and Ext

B19. Plaintiffs established their right to get decree of declaration that by entering into sacrament of marriage from another Catholic from any other Diocese, a member of Archeparchy of Kottayam will not forfeit his or her membership in second defendant.

81. Plaintiffs established the fact that second defendant is practicing compulsive endogamy violating Bible, Canon Laws, Particular Laws, Article of faith, Indian Constitution and International Covenants. They also probabilise various evil consequences to be faced by members of second defendant after expulsion. The very act of expulsion, no doubt create fear in the minds of existing members of second defendant and will be repelled from exercising their precious civil rights. Plaintiffs established their right to get decree of perpetual injunction against defendants 1 to 3 to resist them from terminating membership of any member of Archeparchy of Kottayam for marrying a Catholic from any other Diocese.

82. Plaintiffs established their right to get mandatory injunction on satisfying vital ingredients to direct defendants 1 to 3 to provide equal rights and facilities through the parish priests for the sacrament of marriage to those members of Archeparchy of Kottayam who wishes to marry Catholic from any other Diocese.

83. Plaintiffs also established their right to get decree of

mandatory injunction directing defendants 1 and 2 to readmit members along with spouses and children whose membership were terminated by defendants 1 and 2 for marrying Catholic if the former members are qualified in all other respects. Issues No.7 to 9 found in favour of plaintiffs.

In the result, suit decreed as follows;

- 1. It is hereby declared that by entering into the sacrament of marriage with another Catholic from any other Diocese, a member of Archeparchy of Kottayam will not forfeit his/her membership in defendant No.2, the Archeparchy of Kottayam.***
- 2. Defendants No.1 to 3 are hereby restrained by a decree of permanent prohibitory injunction from terminating the membership of any member of the Archeparchy of Kottayam for marrying a Catholic from any other Diocese.***
- 3. Defendants 1 to 3 are hereby directed by way of decree of mandatory injunction to provide equal rights and***

facilities through the parish priests for the sacrament of marriage to those members of Archeparchy of Kottayam who wishes to marry Catholics from any other Diocese.

4. Defendants No.1 and 2 are hereby directed by way of decree of mandatory injunction to readmit members along with their spouses and children whose membership were terminated by defendants 1 and 2 for marrying Catholic if the former members are qualified in all other respects on receipt of proper application.

5. Considering nature of litigations, I am of considered opinion that there is no order as to costs.

Dictated to the Confidential Assistant, typed by him, corrected by me and pronounced in open court on this the 30th day of April, 2021.

Sd/-

**Sudheesh Kumar S,
Additional Sub Judge.**

APPENDIX: -

Exhibits Marked for the Plaintiffs:-

A1

Parish Directory of St.Xavier's Church,
Kannankara.

A1(a)		Page No. 196 of the Parish Directory of St.Xavier's Church, Kannankara.
A2	05-10-2018	Certificate issue by Vicar, Precious Blood Church, Thannermukkam in favour of T.O. Joseph, Thottumkal (H), Kannamkara P.O., Thanneermukkam.
A3		Parish Directory of St. Thomas Church, Kurichithanam
A3(a)		Page No.63 of the Parish Directory of St. Thomas Church, Kurichithanam
A4	24-07-2020	Certificate issued by Vicar, St. Thomas Church, Kurichithanam in favour of Lukose Mathew
A5		Parish Directory of St. Joseph's Knanaya Catholic Church of Kanakkari P.O., Ettumannor
A5(a)		Page No. 140 of Parish Directory of St. Joseph's Knanaya Catholic Church of Kanakkari P.O., Ettumannor
A6	29-07-2015	Bye laws of the Knanaya Catholic Naveekarana Samithy Reg. No. K 150/91
A7	20-04-2015	True copy of Resolution of the Knanaya Catholic Naveekarana Samithy, Kottayam.
A8	20-12-2017	Receipt No. SL. 78 issued by District Registrar (General) Kottayam

A9		Code of Canons of the Eastern Church.
A10		Code of Particular Law of the Syro-Malabar Church
A11	24-11-1990	Certified copy of Judgment in O.S. 923/89 of Additional Munsiff's Court , Kottayam
A12	20-12-2008	Certified copy of Judgment in A.S. 244/04 and A.S. 245/04 of the District Court, Ernakulam
A13	01-10-2018	Certified copy of order in Civil Appeal Nos. 10196-10197 Of 2018 (Arising out of SLP(C) Nos. 25260- 25261/2018) of the Hon'ble Supreme Court of India
A14	28-05-2015	Office copy of Notice issue from Adv. George Thomas
A15	05-03-2015	Copy of reply notice issued from Mar Mathew Moolakatt Metropolitan Archbishop of Kottayam
A16	13-03-2015	Copy of notice issued by Adv. George Thomas.
A17		Copy of reply notice issued by Mar Mathew Moolakkatt, Metropolitan Archbishop of Kottayam
A18		Blood Wedding, A book published by ORCHART, Kottayam.
A19	29-08-1986	Symposium of Knanites A book edited by Dr. Jacob Vellian
A20	23-12-2019	Receipt No. SL. 78 issued by District Registrar (General), Kottayam

A21	20-12-2020	Apnades published by Fr. Saji Kochuparambil on behalf of Jyothi Cultural Society, Kottayam
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Exhibits Marked for the defendant: -

B1		Bye laws of the Archeparchy of Kottayam
B2	25-11-2020	Copy of the decision of Curia of Archdiocese of Kottayam
B3	01-03-1911	Certified copy of the true translation in Malayalam of the request.
B4		Important Roman Documents concerning the Catholic Church in India, A book complied by Paul Pallatu
B4(a)		Page No. 194 of the Important Roman Documents concerning the Catholic Church in India, A book complied by Paul Pallatu
B4(b)		Page No. 198 to 201 of the Important Roman Documents concerning the Catholic Church in India, A book complied by Paul Pallatu
B4(c)		Page No. 226 to 229 of the Important Roman Documents concerning the Catholic Church in India, A book complied by Paul Pallatu
B5		The Holy Bible Page No. 428 of the Bible.
B5(a)		The version 1 to 4 of Chapter 9 of the Text Ezra

B5(b)		Page No. 437 of The Bible- The version 2 of chapter 2 of the Text Nehemiah
B5(c)		Page No. 443 of the Bible. The Version 25 of Chapter 10 of the Text Nehemiah.
B5(d)		Page No. 443 of the Bible. The Version 25 of Chapter 13 of the Text Nehemiah.
B5(e)		The version 3 of chapter of the Text Deuteronomy of the Bible.
B5(f)		Version 15 a chapter 4 of the Text Deuteronomy of the Bible.
B6		Certified copy of Civil Appeal No. 10196-10197 of 2018 dtd. 01-10-18 of the Hon'ble Supreme Court of India.
B7	04-08-1998	Certified copy of letter of Apostolic Pro-Nuncio with regard to the membership issue of Biju Uthup
B8	09-05-2005	Decree of the Syro Malabar Church elevating Kottayam dioeseas Arch Diocese
B9		Bharatha Catholica Sabha Innaleyum Innum Written by Paul Pallatu Translated by Joseph Kollara.
B9(a)		Page No.9 of Bharatha Catholica Sabha Innaleyum Innum Written by Paul Pallatu Translated by Joseph Kollara.

B10		Roopatha Niyamavaly Published by Diocese of Palai
B10(a)		Page No. 69 of Roopatha Niyamavaly Published by Diocese of Palai
B11		The Code of Canon law
B12		Vatican Council II Volume I. A book edited by Austin Flannery
B13		Book named Centenary Symposium of Arch Diocese of Kottayam
B14		Certified copy of plaint O.S. 5/2003 of Munsiff's Court, Kottayam
B15	17-08-2010	Certified copy of Judgment in A.S. 315/05 of the Additional District Court, Kottayam
B16	20-09-2020	Letter issued by Vicar Precious Blood Church, Thannermukkam P.O., Cherthala
B17		Particular law of Arch diocese of Ernakulam
B18		Certified Copy of Annual report for the period of 2015-2016 of Knanaya Catholic Naveekara Samithi.
B18(a)		Certified copy of Annual report for the period of 2016-2017 of Knanaya Catholic Naveekara Samithi.
B18(b)		Certified copy of Annual report for the period of 2017-2018 of Knanaya Catholic Naveekara Samithi.

B18(c)		Certified copy of Annual report for the period 2018-2019 of Knanaya Catholic Naveekara Samithi.
B19	15-11-2017	Letter issued by the Oriental Congregation, Rome
B20		Apnades published by Saji Kochuparambil on behalf of Jyothi Cultural Society.
B21	21-10-2020	Covering letter issued from Directorate of Census, Operation, Kerala, Thiruvananthapuram – 695522
B22		Certified copy of Pages 107 and 115 of Census of India, 1901 report Part I Volume XXVI by Subramhanya Aiyar for Travancore
B23		Certified copy of Para 44, 45 and 60 of report Part I Volume XX of Census of India 1901 by Sankara Menon for Cochin State
B24		Certified copy of The Travancore State Manual Volume I by Sadasyatilaka T.K. Velu Pillai
B25		Certified copy of The Cochin State Manual by C. Achyutha Menon
B26		Castes and Tribes of Southern India Volume 6 by Edgar Thurston, K. Rangachari
B27		The Indian Church of St. Thomas Written by E.M. Philip, Edavazhickal
B28		The Thomas Christians written by Placeel Podipara

- B29 Quest for the historical Thomas
Apostle of India by
George Nedungatt, SJ
- B30 Introduction to Kerala studies
Volume I edited by J.V. Vilanilam,
Antony Palackal, Sunny Luke
- B31 Knanaya Vivaha Acharangal
edited by Fr. Jose Poothrukayil
- B32 Syro- Malabar Aradhanakramam
published by Syro- Malabar
Commission for literacy, Kochi
- B33 Purathanapattukal complied by
P.U.Lukose
- B34 Knanaya Samudaya Charithra
Padanam for Std. I published by
Catechetical Commission,
Archeparchy, Kottayam
- B35 Knanaya Samudaya Charithra
Padanam for Std. II published by
Catechetical Commission,
Archeparchy, Kottayam
- B36 Knanaya Samudaya Charithra
Padanam for Std. III published by
Catechetical Commission,
Archeparchy, Kottayam
- B37 Knanaya Samudaya Charithra
Padanam for Std. IV published by
Catechetical Commission,
Archeparchy, Kottayam

- B38 Knanaya Samudaya Charithra Padanam for Std. V published by Catechetical Commission, Archeparchy, Kottayam
- B39 Knanaya Samudaya Charithra Padanam for Std. VI published by Catechetical Commission, Archeparchy, Kottayam
- B40 Knanaya Samudaya Charithra Padanam for Std. VII published by Catechetical Commission, Archeparchy, Kottayam
- B41 Knanaya Samudaya Charithra Padanam for Std. VIII published by Catechetical Commission, Archeparchy, Kottayam
- B42 Knanaya Samudaya Charithra Padanam for Std. IX published by Catechetical Commission, Archeparchy, Kottayam
- B43 Thanimayil Pularunna Oru Janatha written by Rev. Dr. Jacob Vellian, S. Kurian Vempenny

Court Exhibit Marked :- Nil

Third party Exhibit Marked:- Nil

Witnesses Examined for the Plaintiffs: -

PW1	19-10-2020	}	2020T.O. Joseph
	20-10-2020		
	21-10-		
	27-10-2020		
	28-10-2020		

Witnesses Examined for the Defendants: -

DW1	21-12.2020	}	2021Fr. Joy Stephen
	04-01-2021		
	06-01-2021		
	08-01-2021		
	14-01-		
	15-01-2021		
	16-01-2021		
	19-01-2021	}	2021Stephen George
DW2	06-02-		
	08-02-2021		

Id/

Addl. Sub Judge.

// True Copy//

Copied by:

Sd/-

Compared by:

Sudheesh Kumar S,

Additional Sub Judge.

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Judgment in
O.S No.106/2015
Dated : 30-04-2021
