



2026:KER:25095

RSA NO. 64 OF 2017

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 23RD DAY OF MARCH 2026 / 2ND CHAITHRA, 1948

RSA NO. 64 OF 2017

AGAINST THE JUDGMENT AND DECREE DATED 20.12.2008 IN AS
NO.244 OF 2004 OF II ADDITIONAL DISTRICT COURT, ERNAKULAM
ARISING OUT OF THE JUDGMENT AND DECREE DATED 24.11.1990 IN
OS NO.923 OF 1989 OF ADDITIONAL MUNSIF'S COURT, KOTTAYAM.

APPELLANTS IN RSA/APPELLANTS IN AS NO.244/2004 &
RESPONDENTS 2 & 3 IN AS NO.245/2004 /DEFENDANTS 1 & 2 IN

OS:

- 1 FR. GEORGE MANJANKAL, FORMER VICAR, AGED 78
YEARS, KIZHAKKE NATTASSERY HOLY FAMILY, CATHOLIC
CHURCH, NATTASSERY, KOTTAYAM -4, NOW RESIDING AT
NIRMALARAM MOUNT ST.JOSEPH P.O., BANGALORE.
- 2 RT. REV. KURIAKOSE KUNNASSERY, (DIED)
AGED 81 YEARS,
BISHOP OF KNANAYA CATHOLIC DIOCESE, (KOTTAYAM
DIOCESE), BISHOP'S HOUSE, CATHEDRAL WARD,
KOTTAYAM.

BY ADVS.

SRI.K.JAYAKUMAR (SR.)
SRI.JACOB E SIMON
SRI.T.KRISHNANUNNI (SR.)
SRI.S.VINOD BHAT
SRI.R.D.SHENOY (SR.)



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RESPONDENTS IN RSA /RESPONDENTS IN AS NO.244/2004 &
RESPONDENTS & APPELLANT IN AS NO.245/2004/PLAINTIFF & ADDL.
DEFENDANT IN OS:

- 1 BIJU UTHUP, S/O.UTHUP, AGED 58 YEARS,
EMPLOYED AS PROJECT MANAGER, ADA NATIONAL
AERONAUTICAL LABORATORY, BANGALORE, FROM
ORAVANKALAYIL HOUSE, ERANJAL, KOTTAYAM-686004.

- 2 KNANAYA CATHOLIC CONGRESS
KOTTAYAM REPRESENTED BY PRESIDENT, M.C. ABRAHAM,
AGED 80 YEARS, MAKKIL HOUSE, CHELLIYOZHUKKAM,
KOTTAYAM, PIN - 686 001.

BY ADVS.

SHRI.T.SETHUMADHAVAN (SR.) FOR R1
SHRI.C.S.MANILAL FOR R1
SRI.S.NIDHEESH FOR R1
SHRI.AGI JOSEPH FOR R2

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 19.03.2026, THE COURT ON 23RD DAY OF MARCH 2026 DELIVERED
THE FOLLOWING:



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EASWARAN.J

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Dated this the 23rd day of March 2026

JUDGMENT

In diem vivere in lege sunt detestabilis

(Delays in the law are hateful")

This appears to be a classic case where the above maxim finds its application. The sequence of facts that emerge in this case proves how a party can successfully destroy one's valuable right by playing delaying tactics.

2. The appellants are the defendants in O.S. No.923/1989 on the files of the Additional Munsiff's Court, Kottayam. Before delving deep into the facts, it is pertinent to mention that the Regular Second Appeal had been dismissed by the judgment dated 30.1.2017. Thereafter, the appellants filed Review Petition No.450/2017 to review the impugned judgment. The said Review Petition was heard and allowed on 14.3.2018. Consequently, the judgment dated 30.1.2017 was recalled, the R.S.A. was reopened, re-heard and the Judgment was rendered dismissing the appeal. Against the order/judgment in the review petition and the appeal, the appellants preferred



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Civil Appeal Nos.10196-10197/2018 which was ordered on 1-10-2018. The Supreme Court, while retaining the order in the Civil Appeals, interfered with the Judgment in the appeal and restored the appeal and requested this Court to hear the appeal afresh. Thus, the appeal is on board for final hearing. In the meantime, another suit was filed raising the same issue involved in this case, which resulted in the filing of RSA No.656 of 2022 and connected cases, which were heard separately, though were tagged along with this appeal. Before proceeding further, it must be noted that the 2nd appellant died on 14-6-2017, and an application for substitution was filed before the Supreme Court. However, no such petition is seen filed in this appeal. Hence, this Court has no other alternative but to dismiss the appeal as abated against the 2nd appellant.

2.1 Succinctly stated, the facts are as follows:

The suit was one for mandatory injunction directing the defendants to issue a 'Vivahakuri' to the plaintiff. According to the plaintiff, the plaintiff, his parents and other members of the family are members of the Knanaya Catholic Community attached to the Holy Family Parish Church, Nattassery. They were accepted and acknowledged as members of the said Church from 1977 onwards, before that, they were members of other Parish Church



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coming under the jurisdiction of the Kottayam Diocese. His parents' marriage was conducted on 22-10-1956 in the Little Flower Knanaya Catholic Church, Othara, a Parish Church coming under the Kottayam Diocese. He was baptised in the said Church. As per the Canon Law and Rules and Practices governing the Kottayam Diocese and Parish Churches, the plaintiff is entitled to have every religious rites performed and conducted by the Vicar of the said Church. Nobody has any right to deny the said privilege, unless the plaintiff is interdicted from the community or Church by a competent Ecclesiastical Authority. On the above belief, the plaintiff's parents have made arrangements for his marriage with Leena, who is a member of St. Mary's Church, Vithura, coming within the Kottayam Diocese. The issue of 'Vivahakuri' is a condition precedent for the conduct of betrothal and marriage ceremony and the 1st defendant is obliged to issue 'Vivahakuri' to him. When the plaintiff's parents approached the 1st defendant requesting to issue of the same, initially, he agreed to issue 'Vivahakuri'; but, subsequently, refused to grant the same and it is learnt that the subsequent refusal was at the instance of the 2nd defendant. Though the plaintiff's father had appealed to the 2nd defendant on 21-4-1989, no decision has been taken by the 2nd defendant on the said appeal. The plaintiff, under the said



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circumstance gave a request on 26-6-1989 before His Holiness the Pope. His father also made a representation to the Apostolic Pronuncio, New Delhi, and the Apostolic Pronuncio, in turn, after due consultation with Vatican, has given necessary direction to the 2nd defendant. But, when the plaintiff approached the 2nd defendant, he failed. The petitioner further submits that the conduct of the 1st and 2nd defendants is illegal and amounts to denial of the right of the plaintiff as a member of the Kottayam Diocese. The plaintiff, as a member of the Parish Church of Kottayam Diocese, is entitled to get 'Vivahakuri' under the Common Law as well as Canon Law and the Rules and Regulations governing the affairs of the Church and the denial is highly unjust, unfair, unreasonable and opposed to all canons and the principles of Holy Catholic Church. Hence, the suit was filed and prayed that a mandatory injunction be issued directing the defendants to issue 'Vivahakuri' for the conduct of the plaintiff's marriage, invoking equitable and discretionary jurisdiction under Sec. 39 of the Specific Relief Act, 1963.

3. Defendants 1 and 2 resisted the suit, contending that the suit itself is not maintainable as it is not of a civil nature. It was further contended that the question is one relating to the community and its custom and thereby, the civil court lacks jurisdiction to try the suit. They denied the claim of the



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plaintiff that he is a member of the Knanaya Catholic Community. Since there is no prayer for declaration that the plaintiff is a member of the Knanaya Catholic Community and that he has a right to get 'Vivahakuri', the suit is not maintainable. The claim of the plaintiff that his parents and other members of the family are members of the Knanaya Catholic Community attached to Holy Family Parish Church of Nattassery, Kottayam Diocese was denied. According to the defendants, they are not members of the Knanaya Catholic Community. A 'Knanite' is one who is born to 'Knanite' parents and who has not married a non-Knanite. The plaintiff's father was a Knanite; but his mother was not born to Knanite parents as her mother was not a Knanite. His mother Annamma was born out of a marriage between a Knanite father and a non-Knanite (Latin Catholic) mother. Even though his father was a Knanite, by the marriage with Annamma, the mother, he also ceased to be a Knanite. There has been a practice of endogamy in the community for centuries and therefore, the defendants are justified in continuing that custom of retaining their endogamous nature. Though non-knanite Catholics are allowed to participate in the religious and liturgical functions and to receive sacraments in the Knanite Catholic Church, they are not allowed to become members of the Parish Church and a marriage between a Knanite and non-



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knanite is not allowed to be blessed in the Churches coming under the Kottayam Diocese because such a marriage is considered as an offence and insult to the Knanite Catholic Community, its tradition and heritage. There is no merit in the contention that the plaintiff and other members of the family were accepted and acknowledged as members of the Holy Family Parish Church, Nattassery. Even if they were accepted as members of the Parish, it was only under a mistaken notion that they are Knanites. The defendants are not aware of the circumstances under which the marriage of the plaintiff's parents was allowed to be conducted in the Little Flower Knanaya Catholic Church, Othara, on 22-10-1956. The genuineness of the certificates produced by the plaintiff is disputed. Even if the plaintiff was baptised in the Little Flower Knanaya Catholic Church, Othara, he could not have acquired the membership of that Church. All the privileges enjoyed by the plaintiff, till date, as a member of the Parish in the Knanaya Churches, could only have been under a mistaken belief or misrepresentation and therefore, the plaintiff cannot take advantage of that. Since there was a clear admission by the plaintiff's father that the plaintiff's maternal grandmother was a non-knanite, the plaintiff's mother and the plaintiff would become non-knanites. The plaintiff's parents were personally told by the second defendant



regarding his inability to issue a 'Vivahakuri' under the above-mentioned circumstances. If permission is granted by the 2nd defendant to the plaintiff for conducting his marriage in a Knanaya Catholic Church, it would hurt the feelings and religious sentiments of the entire Knanaya Community and the centuries-old tradition would be violated. There is no violation of any Canon Law and therefore, prayed for dismissal of the suit.

4. The 3rd defendant resisted the suit and supported defendants 1 and 2, and mainly contended that the suit was filed without the sanction of the court under Order 1 Rule 8 of the CPC. They also prayed for dismissal of the suit.

5. The trial court framed the issues which are given below:

"1. Whether the suit is maintainable in law?

2. Whether the plaintiff is not a member of the Knanaya community and Holy Family Catholic Church, Nattassery, as contended by the defendants?

Are the defendants estopped from putting forward such contentions?

3. Is the prayer for mandatory injunction allowable?

4. Reliefs and costs.

Additional issues

1. Whether the Kizhakke Nattassery Holy Family Catholic



Church a necessary party and whether the suit is bad for non-joinder of parties?

2. What are the qualification of a person to be a member of the Knanite community?"

6 . After considering the evidence on record, consisting of the oral testimony of PWs.1 to 8, DWs. 1 to 5, Exts.A1 to A19, B1 to B29, X1 to X3(b), the trial court decreed the suit.

7. Aggrieved, the defendants preferred A.S.No.244/2004 before the II Additional District Court, Ernakulam. The first appellate court also confirmed the findings of the trial court and dismissed the suit. The legality of the concurrent findings, whereby the suit stands decreed, and the Appeal Suit stands dismissed are challenged in this Regular Second Appeal.

8. Heard Sri. T.Krishnanunni, learned appearing for the appellant and Sri T.Sethumadhavan, learned Senior Counsel, assisted by Sri. C.S. Manilal for the respondent/plaintiff.

9. Before proceeding with the appeal, this Court must notice that the appellant would point out that the suit itself is liable to be dismissed as infructuous for the reason that no useful purpose will be served with the decree since the plaintiff had married long back and at present he has no grievance at all. Accordingly, the appellant filed IA No. 1 of 2026 to dismiss



the suit as not maintainable.

10. This Court, by a separate order rendered today, has dismissed the said application, stating that in view of certain findings touching upon the civil rights of the plaintiff, the appellant cannot seek for dismissal of the suit on the ground that it has become infructuous.

11. This appeal was heard along with other connected appeals and reserved for Judgment on 12-3-2026. However, it was noticed that the appeal was not admitted to file. In view of the direction of the Supreme Court in CA No.10196-10197 /2018 to hear the appeal on merits, this court felt it expedient to admit the appeal. Accordingly, the matter was listed as spoken to on 19-3-2026 and the appeal was admitted by this court on the following substantial questions of law:

“A. Is the suit as framed is maintainable since the main issue calling to be decided is the manner in which the Knanaya Community has organized itself and mode of acquiring Knanaya Status and continuance of the same which are matters of internal regulation of the community and are not justiciable in a suit filed under the Code of Civil Procedure?



- B. Are not the findings of the courts below on matters relating to the organization and practices of the Knanaya Community without jurisdiction?
- C. Have not the Courts below erred substantially in law in thinking that the erroneous baptism and grant of sacraments and membership of the Church would confer on a person membership of the Knanaya community even when his lineage is not purely Knanite?
- D. Have not the Courts below erred in law in ignoring the material evidence establishing that the custom of endogamy has approved and allowed to be retained by the Pope while forming the Kottayam Diocese?
- E. Have not the courts below gone wrong in law in holding that a person could become a Knanite other than being born to knanite parents, i.e., by acquisition of the status through marriage?
- F. Have not the Courts below erred in law when they decreed the suit on the facts and in the circumstances of the case?"

12. The court enquired with the learned Senior Counsels as to whether they require further time for addressing this court on merits of the



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case. Both the learned Senior Counsel were at unison that the arguments advanced before this court while the appeals were heard from 2-3-2026 to 12-3-2026 serves them well and they do not wish to make further arguments in this case.

13. In the above backdrop, this Court proceeds to consider the case on merits.

The plaintiff and his family members are members of Knanaya Catholic Community and are Parishioners of Holy Family Parish Church, Nattassery, coming under the Kottayam Diocese. The marriage of the plaintiff's parents was solemnized in the Little Flower Knanaya Catholic Church at West Othara in the year 1956 and the same was accepted by the Kottayam Diocese of Knanaya Catholic Community. The plaintiff and other members of his family were baptised in the Knanaya Catholic Churches, coming under the Kottayam Diocese. The marriages of other members of the plaintiff's family were solemnized in the Holy Family Church, Nattassery, and their children were also baptised in the said Church and thereby, the members of the community and the Church accepted them as Parishioners of Holy Family Parish Church at Nattassery, and they were given rights and privileges entitled to a member of the Knanaya Community. Thus, defendants 1 and 2



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were obliged to issue 'Vivahakuri' to the plaintiff and the denial of the same amounts to breach of obligation warranting issue of mandatory injunction by a civil court invoking the equitable and discretionary jurisdiction under Sec.39 of the Specific Relief Act. The defendants failed to prove the practice of endogamy as a valid custom prevailing in the community and endogamy is against the tenets of marriage and matrimony under the Canon Law and Motu Proprio promulgated in 1949 by Pope Pius XII. The plaintiff, his parents and family members were acknowledged and recognized as members of Knanaya Catholic Community and Parishioners of Holy Family Parish Church, Nattassery, and thereby, defendants 1 and 2 are estopped from denying the rights and privileges of Parishioners of the Church to them. The Church was not a necessary party in the suit, as either the plaintiff or any of the members of his family was not expelled from the Community or Church. Therefore it is contented that the absence of a prayer for declaration of the plaintiff's status as a 'knanite' or a member of Holy Family Parish Church, Nattassery, was not fatal.

14. In the nature of the pleadings, this court needs to consider the following points: i) Whether the suit was maintainable, ii) Whether the courts below are justified in finding that the plaintiff and his family members are



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members of the Knanaya Community and Parishioners of Holy Family Parish Church, Nattassery, coming under the Kottayam Diocese and iii) Whether there was a breach of obligation warranting issuance of mandatory injunction invoking the jurisdiction and power under Sec.39 of the Specific Relief Act.

15. The thrust of the argument of the plaintiff is that he and his family members are of Knanaya Catholic Community and Holy Family Parish Church, Nattassery, coming under the Kottayam Diocese and thereby he is entitled to get 'Vivahakuri'. The cause of action pleaded is the denial of 'Vivahakuri' which is a civil right. The defendants on the other hand contend that the denial of a “vivahakuri” is due to the reason that the plaintiff’s maternal grandmother is not a Knanaya and that the non Knanaya cannot get membership rights in the church.

16. Essentially the disputes centres around the alleged insistence of the church to follow the practice of endogamy and failure to follow the same can result in excommunication.

17. It must be remembered that both the courts below have concurrently held that the defendants cannot insist the members of the church to follow the practice of endogamy and that it is not an essential practice.



18. However, before going into the validity of such findings, this Court must decide whether a civil suit is maintainable or not. When considering the maintainability of a civil suit under Sec.9 of the CPC, it should be noted that the allegations made in the plaint decide the forum and the jurisdiction does not depend upon the defence taken by the defendants.

19. In **Church of North India v. Lavajibhai Ratanjibhai** [AIR 2005 SC 2544], the Supreme Court held that, Jurisdiction pertains to the nature of the suit shall be determined on the basis of the averments in the plaint and not on the basis of any defence or the result of the suit or the merits of the claim.

20. In **Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma** [AIR 1995 SC 2001] the Supreme Court held as follows.

"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 Salmond 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 thereupon frequently termed civil injuries'. Any infringement with a right as a member of any religious order is



violative of civil wrong. This is the letter and spirit of Explanation I to Section 9."

"34.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 cognisable 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, Buddhists, Jains or Parsees 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."

In paragraph 35, the Supreme Court again held as follows:

"35.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 the fundamental right guaranteed by the Constitution is incapable of enforcement as there is no Court which can take cognisance 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 pointed out. Therefore, the objection that the suit under Section 9 C.P.C. was not maintainable cannot be accepted."

The conclusion reached by the Supreme Court is as follows:



“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.”

21. In Joshua v. Geevarghese Mar Dioscoros [1985 (1) ILR Kerala

1], the suit for a declaration was instituted to declare that two orders passed by Vicars are void and for an injunction restraining the enforcement of those orders. It was held by this court that:

“The civil rights of the plaintiff, particularly in relation to his claim as a member of the Parish Committee, and his right to contest and continue the suits already pending now, are affected by the actions complained of in the present suit. They are clearly matters affecting the Civil rights of the plaintiff for which resort to a Civil Court is fully justified.”

In the light of the above, this court answers the first substantial question of law against the appellant by holding that the Civil Court has jurisdiction to consider the dispute raised in the suit.

22. One of the incidental objections raised by the defendants is that



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the suit is barred by the non-joinder of necessary party. According to them, since the Holy Family Parish Church, Nattassery, is not a party to the suit and the absence of prayer for the declaration of plaintiff's status, as a member of Church, is fatal. The case of the plaintiff is that the plaintiff and his family members are members of the Knanaya Catholic Community and hence he has the right to get 'Vivahakuri'. It is not the case pleaded by the defendants that the church took a decision not to issue the 'Vivahakuri' to the plaintiff and that the decision is based on any authoritative pronouncement. It is further noted that there is no case pleaded and proved by both sides that the Church has taken a decision to expel the plaintiff.

23. It is beyond cavil that members of a Parish Church are entitled to get 'Vivahakuri', unless they are disqualified under any law. It is the duty of the Vicar of the Church to issue 'Vivahakuri' to the members of the Parish Church and the decision of the Church or the Kottayam Diocese is not required for the same. Evidence on record suggests that the vicar was willing to issue the same, but did not issue the same on the basis of instructions issued by the 2nd defendant.

24. A cursory glance at the relief sought for in the plaint will show that no relief is claimed against the church. Going by the provisions of Order



1 Rule 3 of the CPC, the plaintiff needs to implead the person against whom relief is sought. So long as relief is not sought against the church, there is no requirement to implead the church. Hence, the finding of the court below that the suit is not barred by non-joinder of necessary parties does not call for interference. Therefore, the findings rendered without the community are not without Jurisdiction.

25. Further question is whether the absence of a declaratory relief is fatal to the cause projected by the plaintiff. It must be remembered that the consequential relief for declaration is required under Section 34 of the Specific Relief Act, 1963 only if there is any cloud in the title or right of a person. In the present case, it is nobody's case that the plaintiff is not a Knanaya. What is projected is because of the fact that the plaintiff's mother is a non-Knanaya, though the father of the plaintiff is a Knanite. Since the plaintiff's father married a non-Knanaya, the plaintiff also will not get the benefit. But, it must be remembered that the marriage of the plaintiff's father and mother was solemnised in accordance with the religious rites of a Knanaya. Ext.A1 Marriage Certificate of the plaintiff's parents, Ext.X2 Marriage Register, Ext.A2 Certificate issued by the Priest prove the same. Defendants 1 and 2 have no case that the plaintiff or his parents or family



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members were excommunicated from the Knanaya Community or Parish Church. Therefore, it is futile to contend that the plaintiff must seek a declaratory relief in order to sustain the suit. Thus, the findings are not vitiated by any illegality or impropriety.

26. It must be remembered that the plaintiff was successful in proving that the plaintiff and his family members are members of the Knanaya Community and the Holy Family Parish Church coming under the Kottayam Diocese. The case of the plaintiff is built around the assertion that his parents and other members of the family are members of the Knanaya Community and Holy Family Parish Church coming under the Kottayam Diocese. Ext.A1 Marriage Certificate dated 13-8-1986 issued by the Vicar, Little Flower Knanaya Catholic Church, West Othara, shows that the parents of the plaintiff were married in that Church on 22-10-1956. Little Flower Knanaya Catholic Church, West Othara, is a Parish Church coming within the jurisdiction of the Kottayam Diocese. Ext.X2 Marriage Register of the relevant period kept in the Church and Ext.X2(a) the second entry in Ext.X2 Marriage Register pertain to the marriage of the plaintiff's parents. In Ext.X2(a), the plaintiff's father Uthup was shown as the member of the Kumarakam Church and his mother Annamma was shown as a member of



the Othara Parish Church. Therefore, it is proved beyond doubt that the plaintiff's mother Annamma was born to a Knanaya father and Latin Catholic mother, she was admitted as a member of the West Othara Parish Church and on that basis, the marriage ceremony of the plaintiff's parents was conducted in that Church on 22-10-1956. The crucial aspect to be considered is the oral testimony of PW3, who had categorically deposed that the plaintiff's mother was admitted as a member of the Little Flower Knanaya Catholic Church, Othara, before her marriage and that her marriage was conducted there. Therefore, there is a material basis for the contention that the plaintiff's father has not ceased to be a 'Knanite' by the marriage with the plaintiff's mother,

27. In so far as the argument of the appellant that the marriage, so conducted, was a mistake and that the plaintiff's mother was never made a member of the West Othara Parish Church, it must be noted Ext.A2 certificate dated 20-4-1989 certifies that plaintiff's mother was made a member of the Little Flower Knanaya Catholic Church, Othara, before her marriage and that the membership was given on the basis of the permission granted by Rev. Thomas Tharayil, the Bishop of the Kottayam Diocese during that period. This court cannot brush aside the evidentiary value of Ext.A2. Thus, this court is firm in its view that no further deliberation is



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required under what circumstances the said certificate was issued in the absence of any contra evidence.

28. The authenticity of Ext.A2, is further evident from the fact that the same is the reproduction of Ext.X2(a) entry regarding the marriage of plaintiff's parents in Ext.X2 register. Thus, it is evident that the plaintiff's mother was admitted and acknowledged as a member of the community by the Ecclesiastical Authority also.

29. Moreover, the plaintiff was successful in adducing evidence to show that his family members were also admitted as members of the Knanaya Community and the Holy Family Parish Church, Nattassery. Ext.A3 baptism certificate issued by the Vicar shows that the plaintiff was baptised at the Little Flower Knanaya Catholic Church, West Othara. Ext.X3(b) is the entry in relation to the baptism of the plaintiff in Ext.X3 register, and Ext.X3(a) is the entry with regard to the baptism of the plaintiff's brother in the said Church at Othara. Ext.A5 marriage certificate shows that plaintiff's brother's marriage was solemnized in a Knanaya Church within the jurisdiction of the Kottayam Diocese. Ext.A6 is the birth certificate of the plaintiff's sister's child issued by St. Xavier's Church, Kannankara. Ext.A7 shows that plaintiff's sister-in-law was admitted as a member of the Holy



Family Parish Church, Nattassery, before the marriage. Ext.A8 is the marriage certificate of the plaintiff's brother issued by the Cathedral Administrator of the 2nd defendant Bishop.

30. Pertinently, the marriage of the plaintiff's brother was conducted in the Cathedral Church of the Kottayam Diocese on 12-7-1987. Further, it has come out in evidence that special sanction was accorded to the plaintiff's brother's marriage to dispense with the necessity of 'vilichu chollu'. Ext.A15 is the copy of the application filed by the plaintiff's brother's wife for making her as a member of the Parish Church for the purpose of her marriage and it further shows that no special formalities were prescribed for making her as the member of the Church. Exts.A14(a), (b) and (c) are the receipts issued by the 1st defendant to the plaintiff's father in receipt of the contribution of the family cemetery. The documentary evidence referred above would prove beyond doubt that the plaintiff, his parents and other family members of his family were admitted, acknowledged and recognised as members of the 'knanite' community and the Holy Family Parish Church, Nattassery.

31. From the evidence on records, once could easily decipher that the 2nd defendant had knowledge about the status of the plaintiff's family, and permission was granted by him for the marriage of the plaintiff's brother.



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It has come out in evidence that a suit, O.S. No.1068/1988 on the files of the Munsiff's Court, Kottayam, was filed by the third party challenging the status of the plaintiff's family. The pleading in Ext.A13 with regard to the allegation against defendants 1 and 2 is that they have accepted and recognised the plaintiff and his family members as members of the Knanaya Catholic Community under Kottayam Diocese. Hence, the third substantial question of law is answered against the appellant holding that there is sufficient evidence in this case to show that the plaintiffs were treated as members of the Knanaya community.

32. The trial court has rightly held that the conduct of the 2nd defendant and his positive attitude towards the plaintiff's family amounts to an acknowledgement on his part that the plaintiff and his family members are members of the Holy Family Parish Church, Nattassery. Moreover, OS No.1068/1988 was filed by one of the Knanites, seeking excommunication of the plaintiff's family. However, the said suit was abandoned, and none among the community has come forward to proceed with the suit, although it was a representative suit filed under Order I Rule 8 of the C.P.C. This court cannot remain oblivious of the fact that despite this, the defendants have not taken any action to expel the plaintiff's family from the Church. Under no



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stretch of imagination, it can be construed that the marriage of the plaintiff's father was conducted without knowledge of the Parish Priest of the Church and the fact that the plaintiff's parents continued as members of the Kottayam Diocese, after their marriage, and accepted by the Ecclesiastical Authorities, and hence, this court finds no grounds to unseat the findings of the courts below on this point.

33. As regards the plea of the appellant that he is entitled to insist on its members to follow endogamy, it must be noted that the courts below have concurrently found against the appellant. Therefore, unless it appears to this Court that the said findings are perverse, the scope of interference is limited. Reliance is placed on Exts.B3 and B3(a) in acceptance of the special custom of endogamy. The courts below concurrently found that Exts.B3 and B3(a) do not indicate that the Pope had accepted the custom of endogamy among the Knanites and there is nothing to show that the said custom of endogamy was approved and allowed to be retained by the Pope while forming the Kottayam Diocese. This Court is not inclined to interfere with the said finding. Therefore, the fourth substantial question of law framed in the appeal is also answered against the appellant.



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34. The first appellate court being the last court on facts considered the evidence of PW5, a Doctorate holder in Canon Law and the Professor of Apostolic Seminary, with reference to Ext.A16 Code of Oriental Canon Law and the Law of Marriages and held that the said Code contains the Motu Proprio Crebrae Allatae on the discipline of the sacraments of matrimony for the oriental church and the Motu Proprio does not agree with endogamy. The relevant passage extracted by the first appellate court reads as under.

"We now promulgate by this Apostolic Letter, given on Our own accord, the above mentioned Canon, bestowing upon them legal force for all the faithful of the oriental church, wherever they made be on earth, and though may be subject to a prelate of a different rite. Forthwith, when in virtue of this Apostolic Letter the mentioned Canons come in force, any statute, whether general or particular or special, even issue by synods which received approved in special form, any prescription and custom hitherto in force, either general or particular, is deprived of its legal force, so that the discipline of the sacrament of matrimony shall be ruled only by the same Canons, and particular law too contrary to them shall have no more force, unless and as far as it is conceded by them."

35. It is pertinent to note that the aforesaid Motu Proprio is promulgated by Pope Pius XII on the 22nd day of February, 1949. It is beyond doubt that the same is binding on all Catholics, including Knanaya



Catholics, and certainly does away with the system of endogamy even if it existed in the community.

36. As regards the finding of the first appellate court that the endogamy among the Knanite Catholic Christians claimed by the defendants is akin to the existence of the caste system and such a caste system is repugnant to the tenets of Christianity, and the Motu Proprio promulgated by Pope XII in the year 1949 does not appear to be perverse by this Court.

37. In **S.Rajagopal v. C.M.Armugam and others [AIR 1968 SCC OnLine SC 261 : 1969 SC 101]**, the Supreme Court held thus:

"16. We agree with the High Court that, when the appellant embraced Christianity in 1949, he lost the membership of the Adi Dravida Hindu caste. The Christian religion does not recognise any caste classifications. All Christians are treated as equals and there is no distinction between one Christian and another of the type that is recognised between members of different castes belonging to Hindu religion. In fact, 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 recognise caste division. The tenets of Christianity militate against persons professing Christian faith being divided or discriminated on the basis of any such classification as the caste system. It must, therefore, be held that, when the appellant got converted to Christianity in 1949, he ceased to belong to the Adi Dravida caste."

38. Applying the ratio decidendi in the above decision, this Court is inclined to think that there is no discrimination on the basis of caste in



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Christianity and even if there is any custom, that custom will not have any legal force, and it goes against the law declared by the Supreme Court. On an overall appreciation of the findings of the courts below, this Court is of the view that the finding of the courts below on matters regarding practices in the Knanaya community is not without jurisdiction. Still further, there is sufficient materials to prove that a non-Knanaya was admitted to the church as a member. Therefore, substantial questions of law No.2 and 5 are answered against the appellant.

39. Yet another facet of the problem faced by the plaintiff is that he was aged 31 years at the time of the hearing. What was sought for by him is issuance of a “vivahakuri”. The plaintiff approached the court in the year 1989. Nearly 47 years have gone by. Still, the plaintiff's family is enduring the ignominy of not being recognised as belonging to “Knanaya Community”. The defendants successfully dodged compliance with the decree under one pretext or another. The appeal itself was filed with a delay in representation of nearly 2478 days. It is true that this Court condoned the said delay on terms. But this Court cannot shut its eyes to the reality and hold otherwise. This Court feels that the time has come to resurrect the damage caused to the plaintiff. No words of solace is sufficient to heal the laceration caused by the



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delay in resolving the dispute. Moreover, the attitude of the appellant falls nothing short of propriety, fairness that is expected of a religious authority. In fact, he has gone to the extent of seeking to declare the civil litigation as infructuous due to efflux of time, unmindful of the fact that there are several findings touching upon the civil rights of the plaintiff's family. This court fervently hopes that wisdom may dawn on the appellant not to venture into a similar type of litigation in future. Before parting with the case, this Court makes it clear that the exercise now undertaken is only because of certain civil rights of the plaintiff and it will be wholly inappropriate for this Court to refrain itself from deciding the respective merits of the case. In the totality of the circumstances, this Court is of the view that it is a fit case where the appeal deserves to be dismissed with costs.

As an upshot of the above findings, this Court finds no reason to interfere with the concurrent findings rendered by the courts below. Accordingly, this Regular Second Appeal is dismissed with costs quantified at Rs.50,000/-.

Sd/-
S.EASWARAN
JUDGE

jg