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. 656 OF 2022

AGAINST THE JUDGMENT AND DECREE DATED 2.9.2022 IN AS NO.36 OF 2021 OF ADDITIONAL DISTRICT COURT - V, KOTTAYAM ARISING OUT OF THE JUDGMENT AND DECREE DATED 30.4.2021 IN OS NO.106 OF 2015 OF ADDITIONAL SUB COURT, KOTTAYAM

APPELLANTS/APPELLANTS/DEFENDANT NOS.1 & 2:

1 THE METROPOLITAN ARCHBISHOP,
THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC METROPOLITAN'S HOUSE, KOTTAYAM-686 001, THE PRESENT METROPOLITAN ARCHBISHOP IS MOST REV. MAR MATHEW MOOLAKKATT.

2 THE ARCHEPARCHY OF KOTTAYAM,
CATHOLIC METROPOLITAN HOUSE, PB NO.71, KOTTAYAM, KERALA-686 001, REPRESENTED BY THE METROPOLITAN ARCHBISHOP.

BY ADVS.
SHRI.P.B.KRISHNAN (SR.)
SRI.SABU GEORGE
SRI.MANU VYASAN PETER
SHRI.ABRAHAM BABU KALLIVAYALIL
SRI.JACOB E SIMON

RESPONDENTS/RESPONDENTS 1 TO 9 & ADDL.R10 TO R29 IN AS 36/2011, R1-R4 & R7-R11 IN AS 59/21, R1-R4 & R7-R11 IN AS

62/21, R1-R4 & R7-R11 IN AS 65/21, R1-R4 & R7-R10 IN AS 95/21, R1-R4 & R7-R11 IN AS 89/21, R1-R4 & R7-R11 IN AS 6/22, R1-R4 & R7-R11 IN AS 7/22, CROSS OBJECTORS & R3-R8 IN CROSS OBJECTION IN AS 36/21, APPELLANT IN AS 59/21, APPELLANT IN 62/21, APPELLANTS IN 65/21, APPELLANT IN AS 95/21; APPELLANT IN 89/21, APPELLANT IN 6/22 & APPELLANT IN AS 7/22/ PLAINTIFFS & DEFENDANTS 3 TO 7 AND NOT PARTIES TO SUIT:

1 KNANAYA CATHOLIC NAVEEKARANA SAMITHY, VALTHARN BUILDING (NEAR VILLAGE OFFICE), KUMARAKOM P O., KOTTAYAM, PIN – 686563, REP. BY ITS PRESIDENT WHO IS ALSO RESPONDENT NO.2.

2 T.O. JOSEPH
AGED 70, S/O. OUSEPH, THOTTUMKAL HOUSE, KANNANKARA P O., THANNERMUKKAM NORTH VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT, PIN – 688527.

3 LUKOSE MATHEW K.,
AGED 65, S/O.MATHEW, KUNNUMPURATHU HOUSE, KURICHITHANAM P.O., KURICHITHANAM VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN-686635.

4 C.R. PUNNEN,
AGED 68, S/O. KURUVILLA CHIRAYIL HOUSE, ATHIRAMPUZHA P O, KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN – 686562, REP. BY HIS POWER OF ATTORNEY HOLDER V.C. MATHAI.

5 THE MAJOR ARCH BISHOP,
SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH, MOUNT ST. THOMAS, KAKKANAD P O., P.B. NO.3110, KOCHI, THE PRESENT MAJOR ARCHBISHOP IS HIS BEATITUDE MAR GEORGE CARDINAL ALENCHERRY, PIN - 682030.

6 SYNOD OF THE BISHOP OF THE SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH,
MOUNT ST. THOMAS, KAKKANAD P O., P.B. NO. 3110,

KOCHI, REP.BY ITS SECRETARY, PIN - 682030.

7 CONGREGATION FOR THE ORIENTAL CHURCHES VIA DELLA CONCILIAZIONE 34,
00193, ROMA, ITALY, REP.BY ITS PREFECT.

8 CONGREGATION FOR THE DOCTRINE OF FAITH PIAZZA DEL S.UFICIO-II, 00139, ROMA, ITALY, REP.BY ITS PREFECT.

9 KNANAYA CATHOLIC CONGRESS,
KOTTAYAM, REP. BY PRESIDENT STEPHEN GEORGE, S/O. GEORGE, VELIYATH HOUSE, KURUMULLOOR P.O,
ONAMTHURUTHU VILLAGE, KOTTAYAM, PIN - 686632.

10 JOHNY KURUVILLA,
AGED 69, S/O. P.P.KURUVILLA, PADICKAMYALIL HOUSE, KADAPLAMATTAM P.O., KOTTAYAM. NOW RESIDING AT T.C.12/1773/4, MULAVANA, KUNNUKUZHY,
THIRUVANANTHAPURAM DISTRICT, PIN - 695034.

11 DOMINIC SAVIO,
AGED 63, S/O. V.C. KURUVILLA, VACHACHIRAYIL, KUZHIMATTOM P.O., PANACHIKKADU, KOTTAYAM DISTRICT, PIN - 686533.

12 BENNY JACOB,
AGED 56, S/O. E.K.CHACKO, ILLICKAL HOUSE, CHUNKOM KARA, KOLANI P.O., IDUKKI DISTRICT, PIN - 685608.

13 BIJU UTHUP,
AGED 62 YEARS, S/O. UTHUP, RESIDING OF 62, 10TH MAIN, 7TH CROSS, HORAMAVU ROAD, NANDANAM COLONY, BANGALORE-560043.

14 JAMES JOSEPH K,
AGED 62 YEARS, S/O. JOSEPH, KATTUVEETTIL HOUSE, NAGAMPADOM, NATTASSERY KARA, PERUMPAIKADU VILLAGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN-686002.

15 KNANAYA ROYAL COMMUNITY,
REPRESENTED BY ITS MANAGING TRUSTEE JOSE THOMAS,

AGED 54 YEARS, S/O THOMAS, ENNAMPLASSERIL HOUSE, UZHAVOOR PO, UZHAVOOR KARA, UZHAVOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM. PIN - 686634.

16 JOYAN P.SAIMON,
AGED 50 YEARS, S/O. P.J. SAIMON, POWAT, KUMARAKOM P.O, KUMARAKOM VILLAGE, KOTTAYAM -686563.

17 TOBIN GEORGE,
AGED 48 YEARS, S/O. GEORGE JOSEPH, MELUVALLIL HOUSE, KUMARAKOM P.O., KUMARAKOM VILLAGE, KOTTAYAM-686563.

18 PHILU THOMAS,
AGED 47, S/O.THOMAS, HOUSE NO. 145-43, THOMAS LAY OUT (BLOCK), CARMILARAM POST, BANGALORE URBAN DISTRICT, BANGALORE SOUTH TALUK, BANGALORE - 560035.

19 ALEX J VICTOR,
AGED 41 YEARS, D-102, CONCORDE MIDWAY CITY APTS, HOTSA ROAD, BASAPURA VILLAGE, BANGALORE - 560074.

20 SIBY JOSE,
AGED 48 YEARS, #409/5, 20TH D CROSS, EJIPURA MAIN ROAD, VIVEKANANGER POST, BANGALORE, PIN - 560047.

21 SUNNY KURUVILLA,
AGED 65 YEARS, #242, ASHIANA, 6TH MAIN, 7TH CROSS, ST BED KORMANGALA, 4TH BLOCK, BANGALORE-560034.

22 ROBY K KUNJOONJU,
AGED 56 YEARS, 17/A, 12TH MAIN, SECTOR-1, NOBONAGAR, BANGALORE, PIN - 560076.

23 CYRIAC THOMAS,
AGED 47 YEARS, NO. 32, 1ST FLOOR, 6TH CROSS BHAVANINAGAR, S-G PALAYA, DRC POST, BANGALORE. PIN - 560029.

24 REJI C JOSEPH,
AGED 57 YEARS, NO. 24, TRINITY HOME, S G PALAYA,

CV RAMAN NAGAR, BANGALORE, PIN – 560029.

25 CYRIAC JOSEPH,
AGED 52 YEARS, SOBHA DALIYA, OUTER RING ROAD,
BELLANDOOR, BANGALORE, PIN - 560103.

26 JOJI GEORGE,
AGED 40 YEARS, G-201, HOLYHOK APARTMENTS, DADDYS
SOUTH BOURG LAYOUT, HEBBAGODY, BANGALORE -
560099.

27 SANTHOSH SIMON,
AGED 42 YEARS, C-002, DADDY'S DALIYA, DADDYS
SOUTH BOURG LAYOUT, HEBBAGODY, BANGALORE -
560099.

28 SIBIMON JOSE,
AGED 56, THOTTAPLAKKIL HOUSE, LAKE VIEW ENCLAVE
LAYOUT, SEEG HALLI, VIRGNONAGAR, BANGALORE-49.

29 TIBIN THOMAS,
SECRETARY, KNANAYA GLOBAL PARLIAMENT,
CHETTAI.COM, XII/ 203 A, PERUMBAIKKADU VILLAGE,
S.H MOUNT P O, KOTTAYAM. PIN - 686006.

30 THE KNANAYA SAMUDAYA SAMRAKSHANA SAMITHI (KSSS),
REP. BY ITS PRESIDENT, ABRAHAM NADUVATHARA, AGED
72, S/O N.I. ABRAHAM, RESIDING AT NADUVATHARA
HOUSE, PEROOKADA P.O., THIRUVANANTHAPURAM
DISTRICT. PIN - 695005.

31 LAMBOCHAN MATHEW,
AGED ABOUT 61 YEARS, S/O LATE P.C. MATHEW,
PANNIVELIL HOUSE, KADUTHURUTHY KARA, KADUTHURUTHY
VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT. PIN -
686604.

32 JOSE MATHEW,
AGED ABOUT 54 YEARS, S/O LATE P.K MATHAI,
ARUPARAYIL HOUSE, PEROOR P.O., KOTTAYAM DISTRICT,
PIN - 686637.

33 PHILIP CHACKO,

AGED ABOUT 66 YEARS, S/O LATE K.U CHACKO, KUSUMALAYAM HOUSE, KUMARAKOM P.O., KOTTAYAM DISTRICT, PIN - 686563.

34 **KNANAYA CATHOLIC CONGRESS, KOTTAYAM, REP. BY ITS PRESIDENT, THOMAS K.L., AGED 70 YEARS, S/O LUKA, ERUMELIKKARA, PURAPPUZHA, VAZHITHALA P.O., PURAPPUZHA VILLAGE, THODUPUZHA TALUK, IDUKKI DISTRICT, PIN - 685583.**

35 **THOMAS VATTAKKALAM, AGED ABOUT 65 YEARS, S/O CHANDY CHACKO, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT VATTAKKALAM HOUSE, KOLANI P.O., THODUPUZHA, IDUKKI DISTRICT, PIN - 685608.**

36 **JOSE M.J., AGED ABOUT 51 YEARS, S/O JOSEPH, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT A 14/F-1,2, DILSHAD COLONY, JHILMIL H.O., EAST DELHI, DELHI FROM MECHERY HOUSE, VELLANIKKARA P.O., THRISSUR TALUK, THRISSUR DISTRICT, REP, BY POA HOLDER THOMAS VATTAKKALAM, AGED ABOUT 65 YEARS, S.O CHANDY CHACKO, VATTAKKALAM HOUSE, KOLANI P.O., THODUPUZHA, IDUKKI DISTRICT. PIN -685608.**

37 **TOMY THOMAS, AGED 60 YEARS, S/O THOMAS, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 2208 CLUBHOUSE DRIVE, PLANT CITY, FLORIDA, 33566, USA, FROM MYALKARAPURATHU HOUSE, MARIKA P.O., KOOTHATTUKULAM, ERNAKULAM DISTRICT, REP. BY POWER OF ATTORNEY HOLDER, SHAJU JOHN, AGED 58, S/O K.M. JOHN, ANCHAKUNNATH HOUSE, UZHAVOOR P.O., UZHAVOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN - 686634.**

38 **JOY MATHEW, AGED 52 YEARS, S/O CHACKO MATHEW, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 2822, WEST PEBBLE BEACH DRIVE, MISSOURI CITY, TEXAS - 77459, USA, FROM VELLAMTHADATHIL HOUSE, PUTHUVELY P.O., KOTTAYAM DISTRICT, PIN 686636. REP. BY POWER OF ATTORNEY HOLDER SHAJU JOHN, AGED 58, S/O K.M.**

JOHN, ANCHAKUNNATH HOUSE, UZHAVOOR P.O., UZHAVOOR VILLAGE, MEENCHIL TALUK, KOTTAYAM DISTRICT, PIN - 686634.

39 SONNY JOSEPH,
AGED 67, S/O JOSEPH POOZHIKALA, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 2453, TESLA CRES, OAKVILLE ONTARIO, CANADA L6H7T6 FROM POOZHIKALA HOUSE, KIDANGOOR SOUTH P.O., KOTTAYAM, REP. BY POWER OF ATTORNEY HOLDER THOMAS VATTAKKALAM, AGED 64, S/O CHANDY CHACKO, VATTAKKALAM HOUSE, KOLANI P.O., THODUPUZHA, IDUKKI DISTRICT, PIN-685608.

40 JIMMI CHERIAN,
AGED 62, S/O CHERIAN MOZHIKODATHU, MEMBER, HOUSE, KNANAYA GLOBAL FORUM, NOW RESIDING AT 65 KNUTTON CRESCENT, SHEFFIED, S5, (NX, UK FROM MOZHIKODATHU ERAVIMANGALAM P.O., VAIKOM, KOTTAYAM, REPRESENTED BY POWER OF ATTORNEY HOLDER STANLEY KURIAN, AGED 60, S/O KURIAN RESIDING AT KONNANIKKAL HOUSE, MULAKULAM P.O., MULAKKULAM VILLAGE, PERUVA, KOTTAYAM. PIN - 686610.

41 SOBAN THOMAS,
AGED 42, S/O P.A. THOMAS, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 26, MACKELLAR AVENUE, WHEELERS HILL, VIC - 3150, MELBOURNE, AUSTRALIA, FROM POOZHIKUNNEL HOUSE, PERUMPAIKKADU P.O., KOTAYAM, REPRESENTED BY POWER OF ATTORNEY HOLDER, SHAJU JOHN, AGED 58, S/O K.M. JOHN, ANCHAKUNNATH HOUSE, UZHAVOOR P.O., UZHAVOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN - 686634.

42 SHIBU PAUL,
AGED 48 YEARS, S/O M C PAUL, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT VIA GORGONA 48, ROMA, ITALY, FROM MANITHOTTIYIL HOUSE, MEMURY P.O., KURUPPANTHARA, KOTTAYAM DISTRICT, REPRESENTED BY POWER OF ATTORNEY HOLDER STANLEY KURIAN, AGED 60, S/O KURIEN, RESIDING AT KOANICKKAL HOUSE, MULAKULAM P.O., MULAKKULAM VILLAGE, PERUVA, KOTTAYAM. PIN - 686610.

43 FR. BYJU MATHEW ALIAS BYJU MUKALEL,

AGED ABOUT 43 YEARS, S/O M L MATHAI, MSP SEMINARY, S.H MOUNT P.O., KOTTAYAM DISTRICT, PIN - 686006.

44 CHACKO THEKKEDATH JOSEPH,
AGED 71, S/O JOSEPH, RESIDING AT THEKKEDATH HOUSE, MANAKKAD P.O., CHUNGAM KARA, THODUPUZHA VILLAGE, IDUKKI DISTRICT, PIN - 685608.

45 LUKOSE P.U.,
MEMBER, KNANAYA CATHOLIC CONGRESS OF CENTRAL FLORIDA(KCCCF), AGED ABOUT 77 YEARS, S/O ULAHANNAN, RESIDING AT PATTARAPARAMBIL HOUSE, THELLAKOM P.O., ADICHIRA, PERUMBAIKKADU VILLAGE, KOTTAYAM DISTRICT, NOW RESIDING AT 7125, COLONIAL LAKE DRIVE, RIVER VIEW, FLORIDA, 33578, USA.

46 JESTIN JOHN
AGED 31 YEARS
NARAMANGALATH HOUSE, KOTTODY P.O, KASARGOD ,PIN-671 532.

(IMPLEADED AS ADDL.RESPONDENT 46 AS PER ORDER DATED 03.04.2025 IN IA 2/2024)

47 DIASPORA KNANAYA CATHOLIC CONGRESS
A VOLUNTARY ASSOCIATION, REPRESENTED BY ITS PRESIDENT,SABUMON MALEAKKATHARA CHACKO,AGED 55 YEARS,S/O M.T.CHACKO,(HOLDER OF INDIAN PASSPORT NO.L8664226)14 DUTTON ROAD,FY3 8DH,BLACKPOOL,UNITED KINGDOM FROM MALEKKATHARA HOUSE,S H MOUNT P.O,PERUMPAIKADU VILLAGE, NATTASSERY KARA,KOTTAYAM,KERALA,
REPRESENTED BY POWER OF ATTORNEY HOLDER,MR.DOMINIC SAVIO,S/O.SAVIO,AGED 65 YEARS,RESIDING AT VACHACHIRAYIL HOUSE,PALLOM P.O,KOTTAYAM,KOTTAYAM DISTRICT-685 608.

(IMPLEADED AS ADDL.RESPONDENT 47 AS PER ORDER DATED 03.04.2025 IN IA 3/2025)

BY ADVS.

SRI.RENJITH THAMPAN (SR.) FOR R2
SMT.POOJA SUNIL FOR R2
SRI.V.M.KRISHNAKUMAR FOR R2
SRI.N.M.MADHU FOR R3
SMT.C.S.RAJANI FOR R3
SMT.BOBY M.SEKHAR FOR R4
SHRI.AGI JOSEPH FOR R5 & R6
SRI.T.KRISHNANUNNI (SR.) FOR R9
SMT.MEENA.A. FOR R9
SRI.VINOD RAVINDRANATH FOR R9
SRI.K.C.KIRAN FOR R9
SMT.M.R.MINI FOR R9
SRI.M.DEVESH FOR R9
SRI.ASHWIN SATHYANATH FOR R9
SHRI.ANISH ANTONY ANATHAZHATH FOR R9
SHRI.THAREEQ ANVER FOR R9
SRI.SIVAN MADATHIL FOR R10-R12
SMT.MARGARET MAUREEN DROSE FOR R10-R12
SHRI.C.S.MANILAL FOR R13
SRI.S.NIDHEESH FOR R13
SRI.P.THOMAS GEEVERGHESE FOR R16 & 17
SRI.TONY THOMAS (INCHIPARAMBIL) FOR R16 & 17
SRI.E.S.FIROS FOR R16 & 17
SHRI.ANISH LUKOSE FOR R18 - R28
SRI.RAYJITH MARK FOR R18 - R28
SRI.ROSHAN JACOB MUNDACKAL FOR R18 - R28
SRI.MILLU DANDAPANI FOR R29 & R47 (B/O)
SHRI.REJI GEORGE FOR R31
SRI.RAJEEV.P.NAIR FOR R31
SRI.CHACKO SIMONFOR R31
SRI.K.M.FIROZ FOR R43
SMT.M.SHAJNA FOR R43
SHRI.M.H.HANIS FOR R46
SHRI.KALAM PASHA B. FOR R46
SMT.VISHAKHA J. FOR R46
SMT.HASNA ASHRAF T.A FOR R46
SHRI.ANANDU U.R. FOR R46
SHRI.SUNDEEP ABRAHAM FOR R29
SMT.SUMATHY DANDAPANI (SR.) FOR R29 & R47 (B/O)

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 12.03.2026, ALONG WITH RSA.23/2023, 675/2022 & 725/2022, THE

COURT ON 23.03.2026 DELIVERED THE FOLLOWING:

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. 23 OF 2023

AGAINST THE JUDGMENT AND DECREE DATED 2.9.2022 IN AS NOs.36/2021, CROSS OBJECTION IN AS 36/2021, AS NOS.59/2021, 62/2021, 65/2021, 89/2021, 95 OF 2021, 6/2022 & 7/2022 OF ADDITIONAL DISTRICT COURT - V, KOTTAYAM ARISING OUT OF THE JUDGMENT AND DECREE DATED 30.4.2021 IN OS NO.106 OF 2015 OF ADDITIONAL SUB COURT, KOTTAYAM

APPELLANT/APPELLANT IN AS 95/2021, R9 IN AS 36/2021, R11 IN AS NOS.59/2021, 62/2021, 65/2021, 89/2021, 6/2022 & 7/2022/ 7TH DEFENDANT IN THE OS :

**KNANAYA CATHOLIC CONGRESS
KOTTAYAM, REP. BY IT'S PRESENT PRESIDENT THOMAS KL, AGED 70 YEARS, S/O. LUKA, EARUMELIKARA HOUSE, VAZHITHALA P.O, IDUKI DISTRICT, PIN - 685583.**

**BY ADVS.
SRI.JACOB E SIMON
SHRI.SRINATH C.V.
SRI.T.KRISHNANUNNI (SR.)**

RESPONDENTS/R1-R10 IN AS 95/2021, R1-R4, APPELLANTS, R5-R8, ADDL.R10-R29 IN AS 36/2021, CROSS OBJECTORS AND R1-R6 & R8

IN CROSS OBJECTION IN AS 36/2021, R1-R10 IN AS 59/2021, R1-R10 IN AS 62/2021, R1-R10 IN AS 65/2021, R1-R10 IN AS 89/21, R1-R10 IN AS 6/2022, R1-R10 IN AS 7/2022, APPELLANT IN AS 59/2021, APPELLANT IN AS 62/2021, APPELLANTS IN AS 65/2021, APPELLANTS IN AS 89/2021. APPELLANT IN AS 6/2022 AND APPELLANTS INI AS 7/2022/PLAINTIFFS & DEFENDANTS IN THE OS :

1 KNANAYA CATHOLIC NAVEEKARANA SAMITHY,VALTHARN BUILDING (NEAR VILLAGE OFFICE), KUMARAKOM P O., KOTTAYAM, PIN – 686563

2 T.O. JOSEPH
AGED 70 YEARS
T.O. JOSEPH,AGED 70, S/O. OUSEPH, THOTTUMKAL HOUSE, KANNANKARA P O., THANNERMUKKAM NORTH VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT, PIN – 688527.

3 LUKOSE MATHEW K
AGED 65 YEARS
LUKOSE MATHEW K.,AGED 65, S/O.MATHEW KUNNUMPURATHU HOUSE, KURICHITHANAM P.O., KURICHITHANAM VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN-686635.

4 C.R. PUNNEN, AGED 68, S/O. KURUVILLA CHIRAYIL HOUSE, ATHIRAMPUZHA P O., KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN – 686562.
REP. BY HIS POWER OF ATTORNEY HOLDER V.C. MATHAI

5 THE METROPOLITAN ARCHBISHOP
THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC METROPOLITAN'S HOUSE, KOTTAYAM – 686 001, THE PRESENT METROPOLITAN ARCHBISHOP IS MOST REV. MAR MATHEW MOOLAKKATT

6 THE ARCHEPARCHY OF KOTTAYAM
THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC METROPOLITAN HOUSE, P.B, NO. 71, KOTTAYAM, KERALA

- 686001, REPRESENTED BY THE METROPOLITAN ARCHBISHOP

7 THE MAJOR ARCH BISHOP
SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH,MOUNT ST.THOMAS, KAKKANAD P O., P.B. NO.3110, KOCHI, THE PRESENT MAJOR ARCHBISHOP IS HIS BEATITUDE MAR GEORGE CARDINAL ALENCHERRY, PIN – 682030

8 SYNOD OF THE BISHOP OF THE SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH
MOUNT ST.THOMAS, KAKKANAD P O, P.B. NO. 3110, KOCHI, REP.BY ITS SECRETARY. PIN – 682030

9 CONGREGATION FOR THE ORIENTAL CHURCHES
VIA DELLA CONCILIAZIONE 34, 00193, ROMA, ITALY, REP.BY ITS PREFECT.

10 CONGREGATION FOR THE DOCTRINE OF FAITH
PIAZZA DEL S.UFICIO-II, 00139, ROMA, ITALY, REP.BY ITS PREFECT.

11 JOHNY KURUVILLA
AGED 69, S/O. P.P.KURUVILLA, PADICKAMYALIL HOUSE, KADAPLAMATTAM P.O., KOTTAYAM. NOW RESIDING AT T.C.12/1773/4, MULAVANA, KUNNUKUZHY, THIRUVANANTHAPURAM DISTRICT, PIN - 695034

12 DOMINIC SAVIO
AGED 63, S/O. V.C. KURUVILLA, VACHACHIRAYIL, KUZHIMATTOM P.O., PANACHIKKADU, KOTTAYAM DISTRICT. PIN – 686533

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AGED 56, S/O. E.K.CHACKO, ILLICKAL HOUSE, CHUNKOM KARA, KOLANI P.O., IDUKKI DISTRICT, PIN – 685608

14 BIJU UTHUP
AGED 62 YEARS, S/O. UTHUP, RESIDING OF 62, 10TH MAIN, 7TH CROSS, HORAMAVU ROAD, NANDANAM COLONY, BANGALORE – 560043

15 JAMES JOSEPH K

AGED 62 YEARS, S/O. JOSEPH, KATTUVEETTIL HOUSE, NAGAMPADOM, NATTASSERY KARA, PERUMPAIKADU VILLAGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN – 686002

16 KNANAYA ROYAL COMMUNITY
REPRESENTED BY ITS MANAGING TRUSTEE JOSE THOMAS, AGED 54 YEARS, S/O THOMAS, ENNAMPLASSERIL HOUSE, UZHAVOOR P O, UZHAVOOR KARA, UZHAVOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM, PIN - 686634

17 JOYAN P.SAIMON
AGED 50 YEARS, S/O. P.J. SAIMON, POWAT, KUMARAKOM P.O, KUMARAKOM VILLAGE, KOTTAYAM -686563

18 TOBIN GEORGE
AGED 48 YEARS, S/O. GEORGE JOSEPH, MELUVALLIL HOUSE, KUMARAKOM P.O., KUMARAKOM VILLAGE, KOTTAYAM-686563

19 PHILU THOMAS
AGED 47, S/O.THOMAS, HOUSE NO. 145-43, THOMAS LAY OUT (BLOCK), CARMILARAM POST, BANGALORE URBAN DISTRICT, BANGALORE SOUTH TALUK, BANGALORE - 560035

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AGED 41 YEARS, D-102, CONCORDE MIDWAY CITY APTS, HOTSA ROAD, BASAPURA VILLAGE, BANGALORE – 560074.

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AGED 48 YEARS, #409/5, 20TH D CROSS, EJIPURA MAIN ROAD, VIVEKANANGER POST, BANGALORE, PIN – 560047.

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AGED 65 YEARS, #242, ASHIANA, 6TH MAIN, 7TH CROSS, ST BED KORMANGALA, 4TH BLOCK, BANGALORE – 560034.

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AGED 57 YEARS, NO. 24, TRINITY HOME, S G PALAYA, CV RAMAN NAGAR, BANGALORE, PIN – 560029.

26 CYRIAC JOSEPH
CYRIAC JOSEPH, AGED 52 YEARS, SOBHA DALIYA, OUTER RING ROAD, BELLANDOOR, BANGALORE, PIN – 560103.

27 JOJI GEORGE
AGED 40 YEARS, G-201, HOLYHOK APARTMENTS, DADDYS SOUTH BOURG LAYOUT, HEBBAGODY, BANGALORE – 560099.

28 SANTHOSH SIMON
AGED 42 YEARS, C-002, DADDY'S DALIYA, DADDYS SOUTH BOURG LAYOUT, HEBBAGODY, BANGALORE – 560099.

29 SIBIMON JOSE
AGED 56, THOTTAPLAKKIL HOUSE, LAKE VIEW ENCLAVE LAYOUT, SEEG HALLI, VIRGNONAGAR, BANGALORE-560049.

30 TIBIN THOMAS
SECRETARY, KNANAYA GLOBAL PARLIAMENT, CHETTAI.COM, XII/ 203 A, PERUMBAIKKADU VILLAGE, S.H MOUNT P O, KOTTAYAM. PIN – 686006.

31 THE KNANAYA SAMUDAYA SAMRAKSHANA SAMITHI (KSSS)
REP. BY ITS PRESIDENT, ABRAHAM NADUVATHARA, AGED 72, S/O N.I. ABRAHAM, RESIDING AT NADUVATHARA HOUSE, PEROOKADA P.O., THIRUVANANTHAPURAM DISTRICT. PIN – 695005

32 LAMBOCHAN MATHEW
AGED ABOUT 61 YEARS, S/O LATE P.C. MATHEW, PANNIVELIL HOUSE, KADUTHURUTHY KARA, KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT. PIN –

686604.

33 JOSE MATHEW
AGED ABOUT 54 YEARS, S/O LATE P.K MATHAI, ARUPARAYIL HOUSE, PEROOR P.O., KOTTAYAM DISTRICT, PIN – 686637.

34 PHILIP CHACKO
AGED ABOUT 66 YEARS, S/O LATE K.U CHACKO, KUSUMALAYAM HOUSE, KUMARAKOM P.O., KOTTAYAM DISTRICT, PIN – 686563

35 THOMAS VATTAKKALAM
AGED ABOUT 65 YEARS, S/O CHANDY CHACKO, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT VATTAKKALAM HOUSE, KOLANI P.O., THODUPUZHA, IDUKKI DISTRICT, PIN – 685608.

36 JOSE M.J
AGED ABOUT 51 YEARS, S/O JOSEPH, MEMBER,KNANAYA GLOBAL FORUM, NOW RESIDING AT A 14/F-1,2, DILSHAD COLONY, JHILMIL H.O., EAST DELHI,DELHI FROM MECHERY HOUSE, VELLANIKKARA P.O., THRISSUR TALUK, THRISSUR DISTRICT, REP, BY POA HOLDER THOMAS VATTAKKALAM, AGED ABOUT 65 YEARS, S.O CHANDY CHACKO, VATTAKKALAM HOUSE, KOLANI P.O., THODUPUZHA, IDUKKI DISTRICT. PIN -685608

37 TOMY THOMAS
AGED 60 YEARS, S/O THOMAS, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 2208 CLUBHOUSE DRIVE, PLANT CITY, FLORIDA, 33566, USA, FROM MYALKARAPURATHU HOUSE, MARIKA P.O., KOOTHATTUKULAM, ERNAKULAM DISTRICT, REP. BY POWER OF ATTORNEY HOLDER, SHAJU JOHN, AGED 58, S/O K.M. JOHN, ANCHAKUNNATH HOUSE, UZHAVOOR P.O., UZHAVOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN – 686634.

38 JOY MATHEW
AGED 52 YEARS, S/O CHACKO MATHEW, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 2822,WEST PEBBLE BEACH DRIVE, MISSOURI CITY, TEXAS – 77459, USA, FROM VELLAMTHADATHIL HOUSE, PUTHUVELY

P.O.,KOTTAYAM DISTRICT, PIN – 686636. REP. BY POWER OF ATTORNEY HOLDER SHAJU JOHN, AGED 58, S/O K.M. JOHN, ANCHAKUNNATH HOUSE, UZHAVOOR P.O., UZHAVOOR VILLAGE, MEENCHIL TALUK, KOTTAYAM DISTRICT, PIN – 686634

39 SONNY JOSEPH
AGED 67, S/O JOSEPH POOZHIKALA, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 2453, TESLA CRES, OAKVILLE ONTARIO, CANADA – L6H7T6 FROM POOZHIKALA HOUSE, KIDANGOOR SOUTH P.O., KOTTAYAM, REP. BY POWER OF ATTORNEY HOLDER THOMAS VATTAKKALAM, AGED 64, S/O CHANDY CHACKO, VATTAKKALAM HOUSE, KOLANI P.O., THODUPUZHA, IDUKKI DISTRICT, PIN – 685608.

40 JIMMI CHERIAN
AGED 62, S/O CHERIAN MOZHIKODATHU, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 65 KNUTTON CRESCENT, SHEFFIED, S5, (NX, UK FROM MOZHIKODATHU HOUSE, ERAVIMANGALAM P.O., VAIKOM, KOTTAYAM, REPRESENTED BY POWER OF ATTORNEY HOLDER STANLEY KURIAN, AGED 60, S/O KURIAN RESIDING AT KONNANIKKAL HOUSE, MULAKULAM P.O., MULAKKULAM VILLAGE, PERUVA, KOTTAYAM. PIN – 686610.

41 SOBAN THOMAS
AGED 42, S/O P.A. THOMAS, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 26, MACKELLAR AVENUE, WHEELERS HILL, VIC – 3150, MELBOURNE, AUSTRALIA, FROM POOZHIKUNNEL HOUSE, PERUMPAIKKADU P.O., KOTAYAM, REPRESENTED BY POWER OF ATTORNEY HOLDER, SHAJU JOHN, AGED 58, S/O K.M. JOHN, ANCHAKUNNATH HOUSE, UZHAVOOR P.O., UZHAVOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN – 686634.

42 SHIBU PAUL
AGED 48 YEARS, S/O M C PAUL, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT VIA GORGONA 48, ROMA, ITALY, FROM MANITHOTTIYIL HOUSE, MEMURY P.O., KURUPPANTHARA, KOTTAYAM DISTRICT, REPRESENTED BY POWER OF ATTORNEY HOLDER STANLEY KURIAN, AGED 60, S/O KURIEN, RESIDING AT KOANICKKAL HOUSE, MULAKULAM P.O., MULAKKULAM VILLAGE, PERUVA, KOTTAYAM, PIN – 686610

**43 FR. BYJU MATHEW ALIAS BYJU MUKALEL
AGED ABOUT 43 YEARS, S/O M L MATHAI, MSP SEMINARY, S.H MOUNT P.O., KOTTAYAM DISTRICT, PIN – 686006.**

**44 CHACKO THEKKEDATH JOSEPH
AGED 71, S/O JOSEPH, RESIDING AT THEKKEDATH HOUSE, MANAKKAD P.O., CHUNGAM KARA, THODUPUZHA VILLAGE, IDUKKI DISTRICT, PIN – 685608.**

**45 LUKOSE P.U
MEMBER, KNANAYA CATHOLIC CONGRESS OF CENTRAL FLORIDA(KCCCF), AGED ABOUT 77 YEARS, S/O ULAHANNAN, RESIDING AT PATTARAPARAMBIL HOUSE, THELLAKOM P.O., ADICHIRA, PERUMBAIKKADU VILLAGE, KOTTAYAM DISTRICT, NOW RESIDING AT 7125, COLONIAL LAKE DRIVE, RIVER VIEW, FLORIDA, 33578, USA.**

**BY ADVS.
SHRI.SHYAM PADMAN (SR.) FOR R1 & R2
SMT.LAYA MARY JOSEPH FOR R1 & R2
SRI.MANU VYASAN PETER FOR R5 & R6
SRI.P.THOMAS GEEVERGHESE FOR R17 & R18
SRI.CHACKO SIMON FOR R17 & R18
SRI.TONY THOMAS (INCHIPARAMBIL) FOR R17 & R18
SMT.AMRUTHA K.P. FOR R17 & R18
SHRI.SAGAR ROSHAN FOR R17 & R18
SHRI.P.B.KRISHNAN (SR.) FOR R5 & R6
SRI.P.B.SUBRAMANYAN FOR R5 & R6
SRI.SABU GEORGE FOR R5 & R6
SMT.B.ANUSREE FOR R5 & R6
SHRI.C.M.ANDREWS FOR R1 & R1
SMT.ASHWATHI SHYAM FOR R1 & R1
SMT.SWATHY SUDHIR FOR R1 & R1
SHRI.SHIMLEEL IBRAHIM T. FOR R1 & R1
SMT.S.ANUPAMA FOR R1 & R1**

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 12.03.2026, ALONG WITH RSA.656/2022 AND CONNECTED CASES, THE COURT ON 23.03.2026 DELIVERED THE FOLLOWING:

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. 675 OF 2022

AGAINST THE JUDGMENT AND DECREE DATED 2.9.2022 IN AS NO.65 OF 2021 OF ADDITIONAL DISTRICT COURT - V, KOTTAYAM ARISING OUT OF THE JUDGMENT AND DECREE DATED 30.4.2021 IN OS NO.106 OF 2015 OF ADDITIONAL SUB COURT, KOTTAYAM

APPELLANT/APPELLANT NO.1:

SRI.JOSE MATHEW
AGED 54 YEARS
S/O.LATE P.K.MATHAI, ARUPARAYIL HOUSE, PEROOR P.O., KOTTAYAM - 686 637.

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.R.GITHESH
SRI.THOMAS P.KURUVILLA
SHRI.AJAY BEN JOSE
SRI.MANJUNATH MENON
SHRI.SACHIN JACOB AMBAT
SHRI.HARIKRISHNAN S.
SRI.P.MARTIN JOSE

RESPONDENTS/RESPONDENTS & APPELLANT NO.2/PLAINTIFFS 1 TO 4 & DEFENDANTS 1 TO 7:

1 **KNANAYA CATHOLIC NAVEEKARANA SAMITHY**
VAITHARA BUILDING (NEAR VILLAGE OFFICE),

KUMARAKOM P.O., KOTTAYAM - 686 563, REPRESENTED BY ITS PRESIDENT

2 T.O.JOSEPH,
AGED 76 YEARS, S/O.OUSEPH, THOTTUMKAL HOUSE, KANNANKARA P.O., THANNERMUKKAM NORTH VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT, PIN-688 527

3 LUKOSE MATHEW K.,
AGED 71 YEARS, S/O.MATHEW, KUNNUMPURATHU HOUSE, KURICHITHANAM P.O. KURICHITHANAM VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN - 686 634

4 C.K.PUNNEN,
AGED 74 YEARS, S/O.KURUVILLA, CHIRAYIL HOUSE, ATHIRAMPUZHA P.O., KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN-686 562 REPRESENTED BY HIS POWER OF ATTORNEY HOLDER V.C.MATHAI.

5 THE METROPOLITAN ARCHBISHOP,
THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC METROPOLITAN'S HOUSE, KOTTAYAM, KERALA- 686 001. THE PRESENT METROPOLITAN ARCHBISHOP IS MOST REV. MAR MATHEW MOOLAKKATT.

6 THE ARCHEPARCHY OF KOTTAYAM,
CATHOLIC, METROPOLITAN'S HOUSE P.B. NO. 71, KOTTAYAM, KERALA- 686 001, REPRESENTED BY THE METROPOLITAN ARCHBISHOP

7 THE MAJOR ARCHBISHOP,
SYRO MALABAR MAJOR, ARCHIEPISCOPAL CHURCH, MOUNT ST. THOMAS, KAKKANAD P.O, P.B. NO. 3110, KOCHI-682 030. THE PRESENT MAJOR ARCHBISHOP IS HIS BEATITUDE MAR GEORGE CARDINAL ALENCHERY

8 SYNOD OF THE BISHOP OF THE SYRO MALABAR MAJOR, ARCHIEPISCOPAL CHURCH, MOUNT ST. THOMAS, KAKKANAD P.O, P.B. NO. 3110, KOCH- 682 030

9 CONGREGATION FOR THE ORIENTAL CHURCHES
VIA DELLA CONCILIAZIONE 34, 00193 ROMA, ITALY
REPRESENTED BY ITS PREFECT.

**10 CONGREGATION FOR THE DOCTRINE OF FAITH PIAZZA DEL S.UFFICIO-II,
00139 ROMA, ITALY REPRESENTED BY ITS PREFECT.**

**11 KNANAYA CATHOLIC CONGRESS,
KOTTAYAM REPRESENTED BY ITS PRESIDENT STEPHEN GEORGE, S/O GEORGE, VELIYATH HOUSE, KURUMULLOOR P.O, ONAMTHURUTHU VILLAGE, KOTTAYAM-686 632**

**12 MR.PHILIP CHACKO,
AGED 67 YEARS, S/O.LATE K.U.CHACKO, KUSUMALAYAM HOUSE, KUMARAKOM P.O., KOTTAYAM - 686 563.**

**BY ADVS.
SRI.V.M.KRISHNAKUMAR FOR R1 & R2
SMT.MAYA M.FOR R1 & R2
SHRI.AGI JOSEPH FOR R7 & R8
SHRI.P.B.KRISHNAN (SR.) FOR R5 & R6
SRI.P.B.SUBRAMANYAN FOR R5 & R6
SRI.SABU GEORGE FOR R5 & R6
SRI.MANU VYASAN PETER FOR R5 & R6
SMT.B.ANUSREE FOR R5 & R6
SRI.RENJITH THAMPAN (SR.) FOR R1 & R2**

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 12.03.2026, ALONG WITH RSA.656/2022 AND CONNECTED CASES, THE COURT ON 23.03.2026 DELIVERED THE FOLLOWING:

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. 725 OF 2022

AGAINST THE JUDGMENT AND DECREE DATED 2.9.2022 IN AS NO.59 OF 2021 OF ADDITIONAL DISTRICT COURT - V, KOTTAYAM ARISING OUT OF THE JUDGMENT AND DECREE DATED 30.4.2021 IN OS NO.106 OF 2015 OF ADDITIONAL SUB COURT, KOTTAYAM

APPELLANT/APPELLANT (THIRD PARTY):

KNANAYA SAMUDAYA SAMRAKSHANA SAMITHI (KSSS) REPRESENTED BY ITS PRESIDENT, SHIBY KURIAN, SON OF KURIAN, AGED 47 YEARS, RESIDING AT PAZHAYAMPALLIL HOUSE, ETUMANOOR KIZHAKKUMBHAGAM KARA, ETTUMANOOR VILLAGE, ETTUMANOOR PO, KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN - 686631

BY ADVS.
SRI.ANANTHAKRISHNAN A. KARTHA
SRI.ANIL D.KARTHA
SHRI.SURESH G.
SHRI.SHARATH ELDO PHILIP
SHRI.SREEKUMAR G.
SHRI.ANANTHASANKAR A. KARTHA

RESPONDENTS/RESPONDENTS/PLAINTIFFS & DEFENDANTS:

1 **KNANAYA CATHOLIC NAVEEKARANA SAMITHY VAITHARA BUILDING (NEAR VILLAGE OFFICE), KUMARAKOM PO, KOTTAYAM, REPRESENTED BY ITS**

PRESIDENT WHO IS ALSO THE 2ND RESPONDENT, PIN - 686563

2 **T O JOSEPH**
AGED 75 YEARS, SON OF OUSEPH, THOTTUMKAL HOUSE, KANNANKARA PO, THANNERMUKKAM NORTH VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT, PIN - 688527.

3 **LUKOSE MATHEW K**
AGED 70 YEARS, SON OF MATHEW, KUNNUMPURATHU HOUSE, KURICHITHANAM PO, KURICHITHANAM VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT.

4 **C K PUNNEN**
AGED 73 YEARS, SON OF KURUVILLA, CHIRAYIL HOUSE, ATHIRAMPUZHA PO, KOTTAYAM TALUK, KOTTAYAM DISTRICT REPRESENTED BY HIS POWER OF ATTORNEY HOLDER, V C MATHAI.

5 **THE METROPOLITAN ARCH BISHOP**
THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC METROPOLITAN'S HOUSE, KOTTAYAM, KERALA, THE PRESENT METROPOLITAN ARCHBISHOP IS MOST. REV. MAR MATHEW MOOLAKKATT, PIN - 686001

6 **THE ARCHEPARCHY OF KOTTAYAM**
CATHOLIC METROPOLITAN'S HOUSE, PB NO. 71, KOTTAYAM, KERALA REPRESENTED BY THE METROPOLITAN ARCHBISHOP, PIN - 686001

7 **THE MAJOR ARCHBISHOP**
SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH, MOUNT ST. THOMAS, KAKKANAD PO, PB NO. 3110, KOCHI- THE PRESENT MAJOR ARCH BISHOP IS HIS BEATITUDE MAR GEORGE CARDINAL ALENCHERY, PIN - 682030

8 **SYNOD OF THE BISHOP OF THE SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH, MOUNT ST THOMAS, KAKKANAD PO, PB NO. 3110, KOCHI, REPRESENTED BY ITS SECRETARY, PIN - 682030**

9 **CONGREGATION FOR THE ORIENTAL CHURCHES VIA DELLA**

CONCILIAZIONE - 34
00193 ROMAM ITALY REPRESENTED BY ITS PREFECT, PIN - 139.

10 **CONGREGATION FOR THE DOCTRINE OF FAITH PIAZZA DEL S. UFFICIO-II, 00139,ROMA ITALY REPRESENTED BY ITS PREFECT.**

11 **KNANAYA CATHOLIC CONGRESS, KOTTAYAM REPRESENTED BY ITS PRESIDENT, STEPHEN GEORGE, SON OF GEORGE, VELIYATH HOUSE, KURUMULLOOR PO, ONAMTHURUTHU VILLAGE, KOTTAYAM - 686632.**

BY ADVS.
SRI.V.M.KRISHNAKUMAR FOR R1 & R2
SMT.MAYA M. FOR R1 & R2
SHRI.P.B.KRISHNAN (SR.) FOR R5 & R6
SRI.P.B.SUBRAMANYAN FOR R5 & R6
SRI.SABU GEORGE FOR R5 & R6
SMT.B.ANUSREE FOR R5 & R6
SRI.MANU VYASAN PETERFOR R5 & R6
SHRI.AGI JOSEPH FOR R7 & R8
SRI.RENJITH THAMPAN (SR.) FOR R1 & R2

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 12.03.2026, ALONG WITH RSA.656/2022 AND CONNECTED CASES, THE COURT ON 23.03.2026 DELIVERED THE FOLLOWING:

" C.R"

EASWARAN S., J.

RSA Nos.656 of 2022, 675 of 2022, 725 of 2022
&
23 of 2023

Dated this the 23rd day of March, 2026

J U D G M E N T

Validity of the practice of endogamy among the members of the Knanaya Community and the legality of insisting on forceful relinquishment of membership in a parish church on the refusal to follow endogamy are the subject matters of these appeals.

Before this Court starts the Judgment, it wishes to remind itself that the teachings of Christ, the divine law - the Bible, and the provisions of the canon law do not support the practice of endogamy. But still, the appellants insist that as a matter of custom, they are entitled to follow the practice.

Bible (Galatians – 3: 28) proclaims that ***'there is neither Jew nor Greek, slave nor free, male nor female, for you are all one in Christ Jesus'.***

Facts of the Case

1. Defendants 1 & 2 in OS No.106/2015 on the files of the Addl. Sub Court, Kottayam, a suit for declaration and consequential mandatory and

prohibitory injunction, have come up in RSA No.656/2022, aggrieved by the concurrent findings rendered against them by the Additional District Court-V, Kottayam in AS No.36/2021.

1.1 RSA No.23/2023 is filed by the additional 7th defendant in the aforesaid suit aggrieved by the judgment and decree in AS No.95/2021 decided by the Additional District Court-V, Kottayam along with AS No.36/2021. The other connected appeals, RSA Nos.675/2022 and 725/2022, were filed by the 1st appellant in AS No.65/2021 and the appellant in AS No.59/2021, respectively. The appellants in RSA Nos.675/2022 and 725/2022 are not parties to OS No.106/2015, and hence, they obtained leave of the first appellate court to file appeals against the judgment and decree of the Additional Sub Court, Kottayam, dated 30.4.2021 in OS No.106/2015.

2. The 1st plaintiff is a Society registered under the provisions of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 and the 2nd plaintiff is the President of the 1st plaintiff Society. The other plaintiffs are members of the Society. The defendants 1 and 3 are the Heads of the Institutions and 2, 4 to 6 are the Institutions within the Catholic Church. Both the plaintiffs and the defendants believe that the Catholic Church is One, Holy, Apostolic and Universal. According to the

plaintiffs, defendants 1 & 2 are adopting an unholy practice of terminating the membership of those members in the parishes who enter the holy sacrament of marriage with a Catholic of any other Diocese. Thus, according to the plaintiffs, in the year 1991, a Society was formed with an intention to bring back those members of the 2nd defendant whose memberships were terminated by the Diocese for marrying a Catholic from outside the Kottayam Diocese. It is further contended that the law of the Catholic Church dealing with the Holy Sacraments is called the Canon Law. There are separate Canon Laws for Latin Rite and the Oriental Rite in the Catholic Communion. The Canon Law for the Oriental Churches, namely the Code of Canon Law of Oriental Churches [The Codex Canonum Ecclesiarum Orientalaum (CCEO)] was promulgated by the Pontiff on 1.10.1991. It is further pointed out that the Oriental Churches, including the Syro-Malabar Archiepiscopal Church, are governed by the Canon Law. However, freedom is given to all the Eastern Churches enjoying "sui iuris" status to legislate through their senates. It is further alleged that defendants 1 and 2 compel members of the 2nd defendant to marry members within the 2nd defendant only, and if anyone marries a person from any other Catholic Diocese, the membership of the person so marrying from outside the Diocese is terminated from the Diocese. The

practice of enforced endogamy in the Diocese of Kottayam is against the teachings of Jesus and the Catholic Church and thus against the Christian morality and solidarity. According to the plaintiffs, under the Catholic Church, there is no power conferred upon any person, institution or authority other than the Holy Pope to terminate membership of a laity obtained by baptism. The plaintiffs further contended that, going by the Papal Bull issued by Pope St. Pius X creating Kottayam Diocese, there is no stipulation that the 2nd defendant can expel its members from the membership of the Diocese, once they marry outside the Diocese. After stating various contexts under which the Religion of Christianity developed in the Country, the plaintiffs summarized their grievances as follows:

I. The practice followed by the Defendant Nos. l and 2 in terminating membership of members for marrying a catholic from another Diocese is unlawful, in violation of both divine and Canon laws, unconstitutional, inequitable, unethical and inhumane.

II. There was no custom that the Southists married only from among themselves. Such a custom cannot be established. The claim for terminating membership by the Kottayam Diocese is on the basis of the alleged right granted in the Papal Bull of 1911, and which has been demonstrated to be non-existent.

III. The representation submitted by all the three Syro-Malabar Bishops on 1.3.1911 before Pope Pius X did not state that the Defendant No.2, Kottayam Diocese should be created on the basis of any local custom. The Papal Bull of 1911 was intended to divide the Changnassery Diocese for securing peace among two dissident groups of people and not for protecting the alleged custom of endogamy of the Southists.

IV. Bishop Makil in his diary had stated that if creation of Kottayam Diocese was sought on the basis of endogamy, Pope Pius X would not have granted the same. During his tenure as the Bishop of Defendant No.2, Kottayam Diocese, Bishop Makil did not terminate membership of any member for marrying another Catholic. In his 'Book of Decrees', marrying a Catholic from another Diocese was not included as an impediment for marriage or as contrary to a valid custom.

V. If the Bull of 1911 was issued for protecting endogamy of the Southist people then the Defendant No.2 would have been created for the entire Southist community but on the other hand the jurisdiction of Defendant No.2, Kottayam Diocese was confined to two Forane churches in Chenganassery Diocese and a few churches in the Ernakulum Diocese and was not made applicable to the Southists residing outside those territories. Subsequently when Syro Malakara Church was constituted, the Defendant

No.1's request to include all those Knanaya Jacobites in the Defendant No.2 was not accepted by the Holy See.

VI. The Papal Bull creating a Diocese cannot be construed as the law governing the sacrament of marriage in the Catholic Church.

VII. According to the law of interpretation, an order that restricts the right of a person or injures the acquired right of others should receive strict interpretation. It is also the law that if at all a clarification is required, then the author only would have the power to do so.

VIII. The Southist people residing outside the jurisdiction of the Kottayam Diocese are living happily in the communion of the Catholic Church before the year 1911 and thereafter till date following Canon laws of the church without any threat to their community feeling.

IX. The practice of endogamy and terminating membership of a member for not following endogamy are contrary to the Divine law of the Catholic Church.

X. The practice of endogamy and termination of membership are contrary to Canon law both under substantive Canon law provisions and procedural Canon law provisions. When the Canon Law of the Eastern Churches was promulgated by the Pope in 1991 or when the particular law for the sacrament of marriage in the Syro Malabar church was promulgated on 15.7.1997, no such impediment was included nor was any power granted to the Defendant Nos.

l and 2 to terminate membership of members from the Diocese for marrying another Catholic.

XI. Termination of membership of members from the parish and Diocese is a violation of Civil Rights of Citizens as also the fundamental rights guaranteed in the Constitution of India. The Civil Court in India having jurisdiction over the issue of expulsion of a member from a Diocese had an occasion to judicially consider the Bull issued by the Pope in 1911 creating Kottayam Diocese and after proper trial of the case, judicially proclaimed that the said Bull does not authorize the enforced practice of endogamy (Judgment of the Munsiff's Court Kottayam in O.S. No.923/1989 between Biju Uthup Vs. George Manjankal and Ors decided on 24.11.1990). This judgment attained finality and the dictum laid down therein operates as res judicata as the Appeal filed by the Defendant No. 1 against the order was dismissed by the Appellate Court five years ago.

XII. The practice of endogamy and expulsion of members without notice is contrary to several international conventions and human rights and natural justice.

XIII. The Supreme Court of India has categorically held that Christianity does not approve caste system and there is no place for casteism in Christian Churches.

XIV. Membership in Defendant No. 2 acquired by a catholic by baptism cannot be terminated by any authority in the Catholic Church other than the Pontiff.”

Raising the issues and the practices hitherto followed by the 2nd defendant, the plaintiffs issued a legal notice on 28.2.2015 to which a reply notice dated 5.3.2015 was issued by the 1st defendant. In the said reply, what is stated is that the plaintiffs were required to furnish the details of those persons who were expelled or whose memberships were terminated from the Diocese. On 13.3.2015, yet another letter was issued to the 1st defendant by the plaintiff in reply to the letter dated 5.3.2015. On 7.4.2015, the same was replied reiterating the contents of the letter dated 5.3.2015 and hence, the suit was instituted for a declaration that by entering into the sacrament of marriage with another Catholic from any other Diocese, a member of the Archeparchy of Kottayam will not forfeit his/her membership in defendant No.2, and also for permanent prohibitory and mandatory injunctions.

3. The defendants 1 and 2 filed a written statement denying the averments contained in the plaint. It was stated that endogamy is a custom and tradition of the Knanaya Community, and a major part of the Knanaya Community is spread into two churches within the Catholic Church (Syro Malabar and Syro Malankara) and the other part is spread into the Knanaya Syrian Orthodox Church, which is a part of the Malankara Jacobite Syrian Orthodox Church. The Knanaya Community is an ethnic community and has

the right to follow its custom of endogamy. A non-Catholic cannot become a catholic by virtue of a marriage, and therefore, no one can acquire a new religious right in the Catholic Church through a marriage. A person becomes a member of the Catholic Church only if he or she accepts the norms of the Catholic Church and baptism. The practice of endogamy is the culture of the Knanaya Community and therefore, the 1st plaintiff has no cause of action against the defendants. It is further contended that the Archeparchy of Kottayam is not expelling or terminating any members from the archdiocese for the reason of marriage to non-Knananities. It is further pointed out that the Vicariate of Kottayam was erected in 1911 exclusively for 'Southist people' who are also known as 'Knananites', a community keeping their ethnic identity through endogamous marriage. However, there was a clear admission that the defendants 1 and 2 are not forcefully terminating the membership of its members who marry outside the community. As regards the religious rites, it was admitted that there is no difference in the religious rites followed under defendants 1 and 2 and that of defendants 3 and 4.

4. The 7th defendant, who got impleaded itself in the suit, also filed a separate written statement supporting the views of defendants 1 and 2. The 7th defendant, by and large, questioned the right of the 1st plaintiff Society to

enforce an alleged fundamental right of any individual or any individual rights, especially those to which it is not specifically entitled to. It further questioned the maintainability of the civil suit. It was also contended that the plaintiffs have no cause of action against the defendants and thus prayed for dismissal of the suit.

5. The plaintiffs had taken out notice in terms of Order-I Rule-8 of the Code of Civil Procedure, 1908. After hearing both sides, the trial court framed the following issues:

"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?"

6. Later, through IA No.22/2021, the issues were re-settled on 9.4.2021 as follows:

"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 ?"

7. On behalf of the plaintiffs, Exts.A1 to A21 were marked and PW1 was examined and on behalf of the defendants, Exts.B1 to B43 were marked and DW1 and DW2 were examined.

8. The trial court, on appreciation of the oral and documentary evidence, came to the conclusion that the practice of endogamy followed by

the appellants cannot be sustained and that the plaintiffs have established their right to grant mandatory and also prohibitory injunctions. Accordingly, decreed the suit declaring that by entering into the sacrament of marriage with another Catholic from any other Diocese, a member of the Archeparchy of Kottayam will not forfeit his/her membership in defendant No.2 and consequently issued a decree of permanent prohibitory injunction restraining defendants 1 to 3 from terminating the membership of any member of the Archeparchy of Kottayam for marrying a Catholic from any other Diocese and also issued a mandatory injunction directing 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 Catholics from any other Diocese and also to readmit members along with their spouses and children whose memberships were terminated by the defendants 1 and 2 for marrying Catholic.

9. Aggrieved, the defendants 1 and 2 had preferred AS No.36/2021, while the additional 7th defendant preferred AS No.95/2021, before the Additional District Court-V, Kottayam. Other appeals were preferred by third parties, after obtaining leave of the court. All the appeals were considered together and by judgment dated 2.9.2022, the first appellate court dismissed

the appeals. On reappreciation of the contentions of the parties, the first appellate court concluded that the civil court has jurisdiction to determine the question of worship and membership of a Church and the plaintiffs have a cause of action and also found that the suit is not barred by limitation, since there is a continuing cause of action under Section 22 of the Limitation Act, 1963. As regards the custom of endogamy, the court concluded that the custom of endogamy is not proved to be an essential religious practice of the community and thus, it was held that the expulsion/removal of the membership of a Knanaya Catholic member and their family unit permanently from getting the religious services from the Church on the ground of their exercising fundamental rights guaranteed under Article 21 of the Constitution of India, cannot be justified as it violates the fundamental right guaranteed under Article 25 of the Constitution of India. It was further held that neither the community nor the Church is entitled to regulate the membership of the Church for Baptism on the basis of custom of endogamy, overlooking the Canon provisions relating to Baptism. Hence, the present second appeals.

10. This Court on 23.2.2023 had admitted the appeal and framed the following substantial questions of law for consideration in the appeals:

"i) Whether the civil court is competent to struck down a custom which has force of law?

ii) Whether the suit as against plaintiff Nos.2 and 3 is barred by limitation?

iii) Is the issue of paper publication under Order 1 Rule 8 at the appellate stage to give public notice to Knanaya community is legal and proper when the suit was not tried in a representative action binding on the community?

iv) Whether the suit filed against defendants 5 and 6 without complying Section 86(1) of the Code is maintainable?

v) Whether the suit filed by the first plaintiff is hit by Sections (4) and 41 (j) of the Specific Relief Act, 1963?

vi) Whether relief of injunction can be pursued under Order 1 Rule 8 by recognizing a society as a representative of the persons with an alleged common interest?

vii) Whether the publication under order 1 rule 8 is mandatory in order to bind the decree upon the members of defendant No.2?

viii) Whether the right claimed by plaintiffs without challenging Exts.B1 and B4(a) is maintainable?

ix) Whether as per the paper bull the arch bishop of Kottayam has jurisdiction over 'Southiest' or Knanaya Catholics only?

x) Whether the finding of the first appellate court that a wife gets transplanted into the family of the husband and a non-Knanaya girl on marriage to a Knanaya boy becomes a member of Knanaya community is legally sustainable?

xi) Is plea of initiating circumstances like undue influence or coercion rendering a transaction voidable under Section 14 to 18 of the Contract Act, 1872 capable of being agitated as a representative action under Order 1 Rule 8 of the Code of Civil Procedure, 1908?

xii) Whether the membership of a particular Diocese under a Syro Malabar Sabha is an essential religious practice protected as a fundamental right under Article 25 of the Constitution?

xiii) Whether the right of individuals under Article 25 of Constitution is subject to fundamental right of community protected under Article 26 of the Constitution and whether the judgments passed by the courts below is in balance with Articles 25 and 26 of the Constitution of India?

xiv) Does the Archeparchy of Kottayam and/or its Bishops have representative capacity to represent the members of the Knanaya Catholic/Southist Community?

xv) In the absence of any pleading and/or issue on alleged forcible termination of membership of Plaintiff No.2 and 3 and/or any another person by Defendant No.2 is the Lower Appellate Court justified in formulating a point in this regard at the Appellate stage and reaching a conclusion that the membership of plaintiff Nos.2 and 3 had been forcibly terminated?

xvi) Can Defendant No.2 be compelled to perform the sacrament of marriage of non-Knanayas in the churches under Defendant No.2 and the decree so passed is an executable decree?

xvii) Whether marriage can be recognised as religious practice so as to get protection under Article 25(1) of Constitution of India?

xviii) Is membership of a Church under a Diocese an essential practice of religion of the plaintiffs protected under Article 25 of the Constitution of India?

xix) Is not the organizational arrangements in regard to the sacrament of marriage in Defendant No.2 formulated by the Roman Catholic denomination immune from judicial scrutiny on account of Article 26(b) of the Constitution of India?

xx) Is the sacrament of baptism referred to in Canon law in any manner inconsistent with the membership criteria of a particular Diocese under the Syro Malabar Sabha?

xxi) In the absence of statutory law governing marriage of Christians in Travancore-Cochin will not the practice, custom and usage in Defendant No.2 operate as a personal law governing the parties?"

11. These appeals are of the years 2022 and 2023. In a similar case - RSA No.64 of 2017 - this Court had rendered a judgment on 14.3.2018 affirming the judgment and decree of the II Additional District Court, Ernakulam in AS No.244/2004 and that of the Additional Munsiff's Court, Kottayam in OS No.923/1989. The matter reached the Supreme Court in Civil Appeal Nos.10196-10197 of 2018 and by order dated 1.10.2018, the Supreme Court had requested the High Court to hear and decide the appeal afresh on merits. The said appeal is tagged along with these appeals and a request for

hearing was made by all parties. Considering the request, this Court also listed the case on board for final hearing.

12. After a preliminary hearing on 2.3.2026, this Court felt that the substantial questions of law are required to be reframed and accordingly this Court by order dated 2.3.2026, reframed the substantial questions of law with the consent of all parties as follows:

1. Whether the trial court committed irregularity in reframing the issues on 9.4.2021, after the trial and at the stage of reserving the case for judgment, causing prejudice to the appellants?
2. Whether the suit is maintainable in the light of the provisions contained under Section 9 of the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955.
3. Is not the suit barred by limitation under Article 58 of the Limitation Act, 1963 and that, whether the plaintiffs 2 to 4 had disclosed a cause of action to sue for the reliefs?
4. Whether the paper publication ordered under Order-I Rule-8 of the Code of Civil Procedure, 1908 at the appellate stage to give notice to the Knanaya community is legal and proper?
5. Whether the suit is maintainable without consent of the Central Government under Section 86 of the Code of Civil Procedure, against defendants 5 & 6?
6. Does the civil court constituted under the Kerala Civil Courts Act, 1957 has jurisdiction to entertain a suit for the enforcement of fundamental rights guaranteed under Part-III of the Constitution of

India, in view of Article 32(3)?

7. In a case where there is a conflict between a byelaw of an Association with that of any of the fundamental rights guaranteed under Article 25 of the Constitution of India, whether plaintiffs 2 to 4 can enforce such rights against defendants 1 to 4?

8. Is the suit bad for not complying with Order 1 Rule 8 of the Code of Civil Procedure, 1908 to the 2nd defendant and whether the 2nd defendant is properly represented.

9. Whether the suit is hit by Section 4 read with Section 41(g) of the Specific Relief Act, 1963?

10. Whether an executable decree under Section 39 of the Specific Relief Act, 1963 can be passed in the facts and circumstances of the case?

11. Whether the declaratory decree granted in the suit is hit by Section 35 of the Specific Relief Act, 1963.

12. What is the binding nature of the Canon Law? And whether it is enforceable under the law?

13. Is not the decision of the first Appellate Court vitiated on account of non-consideration of material submissions, citations and Written Submissions filed by the Appellants under Order XVIII Rule 2(3A) of the Code?

14. Is there a valid cause of action for the plaintiffs to maintain the suit based on Exts.A14 and A16 notice alone?

15. Whether the suit is bad for want of leave under Section 91 of the Code of Civil Procedure, 1908?

16. Is a Society registered under the Travancore- Cochin Literary,

Scientific and Charitable Societies Registration Act, 1955 entitled to sue as a representative of individuals, invoking Order 1 Rule 8 of the Code of Civil procedure, 1908?

17. Whether the plaintiffs have satisfied the requirements of Order I Rule 8 of the Code of Civil Procedure and Rule 20 of the Civil Rules of Practice while seeking to sue in a representative capacity?

18. Is a plea of vitiating circumstances like undue influence or coercion rendering a transaction voidable under Sections 14 to 18 of the Contract Act, 1872 capable of being agitated as a representative action under Order I Rule 8 of the Code of Civil Procedure, 1908?

19. Does the suit satisfy the ingredients of Order VI Rule 4 of the Code of Civil Procedure, 1908?

20. Have plaintiffs 2 and 3 proved forceful termination of membership or any other person by the 2nd defendant?

21. Is the suit bad for non-joinder of necessary parties such as Knanaya Catholic/ Southist Community?

22. Has the 2nd defendant been properly represented? And whether publication of notice under Order 1 Rule 8 is required to be taken against the 2nd defendant?

23. Does the notification of Ext.B1 Bye law in 2009 resurrect time-barred claims of persons like Plaintiff Nos. 2 and 3?

24. Is the suit framed without challenging Exhibit B4 (a) Papal Bull, Exhibit B8 decree and Exhibit B1 Bye-law maintainable?

25. Does Article 13 of the Constitution apply to a customary law of marriage which operates as a personal law for the parties?

26. Is endogamy an essential religious practice followed by the defendants 1 and 2 so as to take the same out of the purview of judicial scrutiny of the courts.? And In the absence of statutory law governing the marriage of Christians in Travancore, will not the customary law operate as personal law governing the sacrament of marriage?

27. Whether the defendants 1 and 2 have established the existence of the custom of endogamy?

28. Whether the membership of a particular diocese is a fundamental right under Article 25 of the Constitution of India?

29. Whether the defendants 1 and 2 are entitled to the protection of Article 26(b) read with Article 29 of the Constitution of India?

30. Whether a person who refuses to follow the so-called custom of endogamy can be expelled or forced to leave the defendant no.1 church and if does, whether it violates his rights under Article 21 read with Article 25 of the Constitution of India?

31. Can Ext.B9 bye law govern and regulate the persons who are already the members of the 1st defendant church?

32. Does the insistence to follow endogamy violate one's right guaranteed under Article 25 of the Constitution of India?

33. Can a particular mode or custom of marriage determine one's right under Article 25 of the Constitution of India?

34. Whether the rights guaranteed under Article 25 can be enforced through horizontal action?

35. Whether the rights under Article 25 are controlled by the protection guaranteed under Article 26(b) of the Constitution of

India?

36. Whether non-Knanaya spouse and children can aspire for membership in the 1st defendant?"

13. Heard Sri.P.B.Krishnan, the learned Senior Counsel, assisted by Sri.Jacob E.Simon, the learned counsel appearing for the appellants in RSA No.656 of 2022/respondents 5 and 6 in the other appeals; Sri.S.Sreekumar, the learned Senior Counsel assisted by Sri.P.Martin Jose, appearing for the appellant in RSA No.675/2022, Sri.Ananthakrishnan Kartha, the learned counsel appearing for the appellant in RSA No.725/2022, Sri.T.Krishnanunni, the learned Senior Counsel, assisted by Sri.Jacob E.Simon, appearing for the appellant in RSA No.23/2023, who is the 9th respondent in RSA No.656/2022 (addl. 7th defendant in the suit); Sri.Shyam Padman, the learned Senior Counsel, assisted by Smt.Laya Mary Joseph, appearing for respondent Nos.1 & 2 in RSA No.23/2023; Sri.Renjith Thampan, the learned Senior Counsel, assisted by Smt.Pooja Sunil, appearing for respondent Nos.1 & 2 in RSA No.656/2022, Sri.P.Thomas Geevarghese, the learned counsel appearing for respondent Nos.16 & 17 in RSA No.656/2022 and for respondent Nos.17 & 18 in RSA No.23/2023; Smt.Sumathy Dandapani, the learned Senior Counsel appearing for respondent Nos.29 & 47 in RSA No.656/2022; Sri C.S.Manilal and Sri K.M

Firoz, the learned counsel appearing for respondent Nos.13 and 43, respectively, in RSA No.656/2022.

Submissions on behalf of the appellants in RSA No.656/2022

14. Sri.P.B.Krishnan, the learned Senior Counsel appearing for the appellants in RSA No.656/2022, raised the following submissions:

(i) The 1st plaintiff Society has no cause of action in filing the suit. The cause of action projected in the suit is issuance of the lawyer's notice, which cannot be construed as one enabling the Society to file the suit.

(ii) The second plaintiff is a person, who had left the membership of the 2nd defendant Diocese as early as in the year 1977 and therefore, he cannot file the suit in the year 2015 and that the suit as regards his claim is hopelessly barred by limitation.

(iii) The creation of the Diocese of Kottayam, which is especially intended for Southist people, was pursuant to a Papal Bull in the year 1911. Knanaya community is considered as an ethnic community and it was because of their inability to go along with the Northist people, the Pope decided to create a separate Diocese for the Southist people. The custom of endogamy is being followed

for centuries by the community and therefore, the same cannot be questioned by the Society.

(iv) The 1st plaintiff had not produced the list of members for whom the Society had been formed. As far as the plaintiffs 2 and 3 are concerned, they had already left the community and the 4th plaintiff is continuing within the Diocese and therefore, the 4th plaintiff cannot have any cause of action.

(v) The plaintiffs do not challenge the authority of the Pope to issue the Papal Bull. So long as the Papal Bull stands and the creation of a separate Diocese for the Southist people is admitted, the plaintiffs will have to follow the custom.

(vi) No case of coercion is made out, and the members, if any, who intend to marry from outside the community are free to leave the Association voluntarily, and those who have already left the Association are those who left the Association voluntarily.

(vii) The suit is not in a representative character as envisaged under Section 91 of the Code of Civil Procedure, 1908. Though in exceptional circumstances, the suit under Section 91 could be

maintained, the present suit does not fall within the exceptions as provided under Section 91(2).

(viii) Order-I Rule-8 of the Code of Civil Procedure, 1908 stipulates the conditions to institute a suit in a representative character. In fact, the application for taking out notice in terms of Order-I Rule-8 of the Code of Civil Procedure, 1908 shows that for the reliefs 1 & 2 alone the permission was granted to take out notice. Referring to the draft notice produced along with the application under Order-I Rule-8 of the Code of Civil Procedure, it is pointed out that the relief Nos.3 & 4 were not included in such paper publication and therefore, in the absence of any notice under Order-I Rule-8 of the Code of Civil Procedure, the court was not empowered to grant such reliefs.

(ix) As regards the individual rights, it is pointed out that the declaratory relief is governed by Section 4 of the Specific Relief Act, 1963. According to the learned Senior Counsel, a civil suit will lie only for enforcement of individual civil rights and thus the 1st plaintiff cannot maintain a suit of like nature.

(x) As far as the plaintiffs 2 & 3 are concerned, it is pointed out that they had acquiesced to the act of leaving the Diocese voluntarily way back in the years 1977 & 1988, respectively, when they decided to marry a person outside the community. Referring to Section 41(j) of the Specific Relief Act, 1963 it is pointed out that injunction can be refused when a plaintiff has no personal interest in the matter.

(xi) The notice taken out under Order-I Rule-8 of the Code of Civil Procedure, 1908 is not in conformity with Rule 20 of the Civil Rules of Practice (Kerala) and in the absence of the condition under Rule 20(1) being satisfied, the entire framework of the suit itself must fail.

(xii) The plaintiffs, by and large, admit that the custom of endogamy be practiced by the community and that the practice of endogamy must be expanded from the 1st defendant to another Diocese also. In the light of the said contention, since the community at large is not a party, no relief can be granted.

(xiii) The trial court committed serious irregularity in the framing of the issues. IA No.1407/2017 was filed for raising additional issues. On

8.2.2021, the trial was closed. On 18.2.2021, the hearing was started. On 5.3.2021, the 7th defendant filed IA No.22/2021 to frame additional issues based on which the additional issues were framed on 9.4.2021 and the hearing concluded. Thus, when additional issues were framed/issues resettled, no further opportunity was given to the defendants.

(xiv) The first appellate court also misdirected itself to the entire cause. The first appellate court appears to have proceeded to frame points for consideration as (a) to (o), which reveals that a question of violation of the fundamental right was also involved. The question of violation of the fundamental right was not an issue at all before the trial court.

(xv) Referring to Section 9 of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the learned Senior Counsel asserted that the society is not a juristic person. In support of his contention, relied on the decision of the Supreme Court in **Illachi Devi (Dead) By Lrs. and Others** v. **Jain Society, Protection of Orphans India and Others [(2003) 8 SCC 413 : AIR 2003 SC 3397]**, which was followed by this Court in **Alukkal**

Koya v. Marakasutharbiyathul Islamiya and Another [2019(1) KHC 535].

(xvi) The society cannot have a cause of action and, at any rate, the personal right of an individual or a member cannot be the cause of action of the society.

(xv) Since the publication was only for the reliefs 1 & 2, other reliefs in the form of a representative capacity were not maintainable and therefore, the trial court erred in decreeing the suit. The first appellate court did not permit the appellants to raise this question. In support of his contentions, relied on the decision of the Full Bench of this Court in **Narayanan M.V. and Others v. Periyadan Narayanan Nair and Others [2021 (3) KHC 211]**, which followed the decision in **Kamalakshi and Others v. Bahulayan and Others [1972 KLT 285]**.

(xvi) Referring to the decision of the Supreme Court in **S.N.D.P. Sakhayogam v. Kerala Atmavidya Sangham and Others [(2017) 8 SCC 830 : 2017 (4) KLT 866 (SC)]**, the learned Senior Counsel contended that the members of the Society being largely unknown, the Society could not have maintained the suit in the representative

character under Order-I Rule-8 of the Code of Civil Procedure, 1908. It is further pointed out that the conditions prescribed under Order-VII Rule-4 of the Code of Civil Procedure were also violated.

(xvii) Since declaratory reliefs are sought for, the suit is barred by limitation. Referring to Article 58 of the Limitation Act, 1963 it is pointed out that, at any rate, plaintiffs 2 and 3 cannot have any grievance, and even if they had the grievance, the same is hit by the Article. The finding of the trial court that the relief is not barred because they have a continuing cause of action in terms of Section 22 of the Limitation Act is completely misplaced.

(xviii) It is further pointed out that the 2nd defendant is an association of individuals. The membership in the Diocese is only possible once a person satisfies the conditions. Subject to the Rules and Regulations of the Diocese, the membership is being granted. Referring to the decision of this Court in **Major Archbishop, Angamaly-Ernakulam v. Lalan Tharakan [2016 (2) KLT 791],** it is pointed out that the members of a voluntary association must abide by the Rules and Regulations.

(xix) The Canon Law cannot be construed as a customary law, but it is only a codified form of law. Reference is made to the Division Bench decision of this Court in **Msgr.Xavier Chullickal v. Raphael [2017(2) KLT 1072]**.

(xx) It is further pointed out that in **Most Rev. P.M.A.Metropolitan and Others v. Moran Mar Marthoma and Another [AIR 1995 SC 2001**], the existence of the Knanaya community and the congregation is recognised by the Supreme Court. Reference to paragraph Nos.147 to 150 of the judgment is made.

(xxi) The civil court does not have jurisdiction to consider the expulsion of members of a club. Reference is made to the decision of the Supreme Court in **T. P. Daver** v. **Lodge Victoria No.363 SC Belgaum And Others [1962 SCC OnLine SC 47 : AIR 1963 SC 1144]**.

(xxii) The finding of the first appellate court that the right under Article 25 of the Constitution of India is violated, is completely out of place, since it is nobody's case that the plaintiffs have any right under Article 25 of the Constitution of India. At any rate, the right even if

available is circumscribed by the provisions in Article 26(b) of the Constitution of India.

(xxiii) Even assuming that such a right is available, it cannot be enforced through the mechanism of the civil court because the fundamental rights could be enforced only though the machinery provided under Article 32 of the Constitution of India. Referring to sub-Article (3) of Article 32, it is pointed out that the courts, except the Supreme Court, may exercise the powers under Article 32(2) only if the Parliament by law empowers such courts to exercise all or any of the powers. The civil court which is established under the Kerala Civil Courts Act, 1957 is not a law, which is empowered by the Parliament in terms of Article 32(3).

(xxiv) In support of his contention, relied on the decisions of the Supreme Court in ***P.D. Shamdasani*** *v.* ***Central Bank of India Ltd.*** **[1951 SCC OnLine SC 85 : AIR 1952 SC 59]**; ***Vidya Verma through Next Friend R.V.S.Mani*** *v.* ***Shiv Narain Verma*** **[(1955) 2 SCC 513 : AIR 1956 SC 108]** and ***Kaushal Kishor*** *v.* ***State of U.P.*** **[(2023) 4 SCC 1]**.

(xxv) It is further contended that in a non-state action, an individual cannot enforce the fundamental right horizontally. At any rate, when the right to marriage is always restricted, which is not a fundamental right, going by the decision of the Supreme Court in **Supriyo alias Supriya Chakraborty and Another** v. **Union Of India** [2023 SCC OnLine SC 1348], the right to marry outside the Knanaya community cannot be construed as a fundamental right.

(xxvi) The right of excommunication is, by and large, recognised by the Supreme Court in respect of a religious denomination. Reference is made to ***Sardar Syedna Taher Saifuddin Saheb*** *v.* ***State of Bombay*** **[1962 SCC OnLine SC 143 : AIR 1962 SC 853]**.

(xxvii) Referring to Entry-5, List-III, Seventh Schedule of the Constitution of India, it is urged that the law relating to marriages is subject to personal law and that the personal law is untouched under Article 13 of the Constitution of India. Further, it is pointed out that a customary law cannot be nullified by holding that the same is in violation of the fundamental rights guaranteed under the Constitution of India.

(xxviii) Lastly, it is pointed out that even under the Special Marriage Act, a person who marries outside the community is severed from the family itself and, therefore, the custom followed by the community which may lead to a severance from the Church, by itself cannot be construed as illegal. Therefore, in short, it is pointed out that the findings rendered by the courts below cannot be sustained under any circumstances.

Submission on behalf of Appellant in RSA No.675 of 2022.

15. Sri.S.Sreekumar, the learned Senior Counsel appearing for the appellant in RSA No.675/2022, adopting the arguments of Sri.P.B.Krishnan, the learned Senior Counsel appearing for the appellants in RSA No.656/2022, raised the additional submissions as follows:

a) The appellant, who had sought leave to challenge the judgment and decree of the trial court, is a member of the Knanaya community, who wants to upkeep the custom of endogamy. The learned Senior Counsel pointed out that there is no factual foundation in the plaint.

b) In fact, the plaintiffs could not point out any instance of endogamy or expulsion from the community. The prescriptions of Article 25

are not met to enable the appellate court to order the enforcement of the said right.

c) Reliefs C) and D) sought for in the suit cannot be granted under any circumstances. The learned Senior Counsel by referring to paragraph 32 of the plaint, submitted that even the Papal Bull itself is challenged without any basis. Referring to the findings rendered by the first appellate court, it is pointed out that the findings are not based on pleadings.

d) The finding of the first appellate court that there exists inconsistency in the pleading in paragraph 42 of the written statement and the bye-laws of the Church has no basis at all. Sections 34 and 35 of the Specific Relief Act, 1963 debar the plaintiffs from enforcing the right. It is further pointed out that the issuance of the lawyer's notice will not obliterate the period of limitation.

Submissions on behalf of Appellant in RSA No.23 of 2023

16. Sri.T.Krishnanunni, the learned Senior Counsel appearing for the appellant in RSA No.23/2023 (9th respondent in RSA No.656/2022), supported the submissions of the learned Senior Counsel for the appellants in the other appeals and raised the following submissions :

1) The plaintiffs should have taken notice to the defendants under Order-I Rule-8 of the Code of Civil Procedure, 1908. The 2nd defendant should also be sued in the representative capacity. Since it is not sued in the representative capacity, any decree passed is not binding on the community at large.

2) Further referring to the provisions of Order-XXI Rule-32 of the Code of Civil Procedure, the learned Senior Counsel pointed out that the reliefs C) and D) cannot be executed through the court. If reliefs C) and D) cannot be enforced through the court, the declaratory relief also cannot be granted.

3) Lastly, it is pointed out that the averments in the plaint read in totality, would generally lead to a presumption that the plaintiffs also accept the practice of endogamy and they want to enforce the same in a different perspective.

Submissions on behalf of the respondents 1 to 4/ plaintiffs

17. Sri.Shyam Padman, the learned Senior Counsel appearing for the 1st and 2nd respondents/plaintiffs in RSA No.23/2023, opened his submissions by raising the following points:

I. The objection relating to the jurisdiction of the civil court in the facts of the present case is completely misplaced.

II. If this Court were to accept the arguments of the appellants, then the plaintiffs will be left with no remedy as there will be no Forum to ventilate the grievance of the plaintiffs.

III. It is beyond doubt that in the nature of the reliefs sought for in the suit, the right claimed is certainly a civil right.

IV. The procedures prescribed in the Code of Civil Procedure, 1908 are one for substantial compliance when a suit is instituted. In terms of Section 9 of the Code of Civil Procedure, all suits, except one which is impliedly or expressly barred, must be held to be maintainable. In support of his contention relied on the decision of the Supreme Court in ***Ganga Bai v. Vijay Kumar & Ors.*** **[(1974) 2 SCC 393 : AIR 1974 SC 1126]**.

V. When a question of excommunication is involved, necessarily the jurisdiction of civil court cannot be ousted in view of the decision of the Supreme Court in **Most Rev. P.M.A.Metropolitan and Others** v. **Moran Mar Marthoma and Another [1995 Supp (4) SCC 286: AIR 1995 SC 2001**].

VI. In the written statement of the defendants 1 and 2, especially in paragraph 25, the defendants 1 and 2 have admitted that there is no distinction in the nature of prayers and other religious ceremonies offered by the Knanaya community with the other Catholics. Therefore, the exclusiveness claimed by the defendants must certainly fail.

VII. The submissions of the appellants that the power of excommunication must be upheld to maintain the religious order cannot hold good because it fails the test of constitutional morality and that the decision of the Supreme Court in ***Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*** **[1962 SCC OnLine SC 143 : AIR 1962 SC 853]** has since been doubted by the Constitution Bench of the Supreme Court in ***Central Board of Dawoodi Bohra Community v. State of Maharashtra*****,** ***[(2023) 4 SCC 541 :AIR 2023 SC 974]***].

VIII. The right of the association, which is claimed by the defendants 1 and 2, must fail from its inception because Ext.B1 bye-law had been introduced only in the year 2008. Referring to paragraph 23 of the written statement, it is pointed out that there is a clear admission

that the membership in the Diocese is derived by birth right. If that be so, it passes one's comprehension as to how, based on a rule or a regulation or a bye-law introduced subsequently, the said right could be divested.

IX. The right under Article 25 of the Constitution of India is only subject to public order, morality and health. It is inconceivable to hold that the right under Article 25 must be controlled by Article 26. There is no warrant for such observations because the right under Article 26(b) is again subject to public order, morality and health. Referring to the decision in ***Central Board of Dawoodi Bohra Community*** *(supra),* it is the specific case of the plaintiffs that the morality stated in Articles 25 and 26 is not the social morality, but the constitutional morality.

X. It is further pointed out that the rule of excommunication is akin to the concept of untouchability, which is prohibited under Article 17 of the Constitution of India. Further, it is pointed out that when the Association itself is formed based on the strength of the collective individual, merely because an association is formed, that by itself will not denude the right of the individual member in the

association. Such an association should certainly yield towards the rights of individual members and not otherwise.

XI. The learned Senior Counsel pointed out that the finding of the first appellate court that the 1st defendant was carved out exclusively for the Southist people and that the custom of endogamy is established, is without any basis. When the defendants themselves admit that the right of membership in the Diocese is derived by birth, merely because of the marriage, the termination cannot take place. Going by the rule of the Canon Law, marriage is one of the seven sacraments.

XII. Referring to the decision of the Supreme Court ***K.S. Puttaswamy (Privacy-9J.) v. Union of India [(2017) 10 SCC 1***], the learned Senior Counsel pointed out that the concept of privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation.

XIII. It is further pointed out that the findings rendered by the first appellate court under points ‘f’ and ‘h’ can be questioned by the plaintiffs without filing a cross objection by placing reliance on the

provisions of Order-XLI Rule-22 of the Code of Civil Procedure, 1908.

XIV. With reference to Chapter III, Rule-1 of Ext.B1 byelaw, it is stated that there is no prohibition for the children born of a person, who leads an immoral life to be baptized to take such children within the fold of the Knanaya community. If that be so, there is no reason as to why the children born out of the marriage between a Knanaya male and a non-Knanaya female should not be taken into the fold of the defendants by baptizing them in accordance with the religious rites and ceremonies.

XV. From the pleadings and the documents on record from the side of the defendants, the plea of endogamy cannot be successfully sustained by them. Even going by Ext.B22, which is the Census Report of Travancore, which has been heavily relied on by the learned Senior Counsel appearing for the appellants, Sri.Shyam Padman pointed out that even Thomas of Cana, who came to Cranganore and was received with all honours, after arrival, he married two wives, one a Christian who belonged to the Colony and another a Hindu.

XVI. With further reference to Ext.B19, it is pointed out that in response to the request of the defendants, the Vatican city on 15.11.2017 pointed out that the concept of endogamy hitherto was not permitted elsewhere and that the practice followed among the community of Southists has been only tolerated *de facto*. The said letter has been issued after filing of the suit, which would clearly indicate that neither at the time of filing of the suit nor at the time of framing of Ext.B1 bye-law, there was any sanction from the religious head regarding the custom of endogamy.

XVII. That apart, it is pointed out that going by paragraph 42 of the written statement, the Southist normally known as the Knanaya Catholic is permitted to marry a Knanaya-Jacobite on condition that he or she is taken into the fold of the Knanaya Catholic. The aforesaid pleadings and the documents would indicate that there is no custom prevailing in the community, which would have a lien in favour of the case of the appellants that the endogamy is practised as a custom.

XVIII. Since the custom of endogamy prevalent in the community has only been tolerated *de facto*, the plea that the existence of the custom would partake the character of the law under Article 13(1) of the

Constitution of India, cannot be sustained. At any rate, to sustain the plea of endogamy, one should establish that the custom was prevalent right from the inception of the community and not otherwise.

XIX. Referring to the decision of the Single Bench of this Court in ***Sreekumaran v. Ardhanareeswara Devaswom*** **[1989 SCC OnLine Ker 8 : (1989) 1 KLJ 163]**, it is pointed out that when a Society is registered with the Registrar, such a registered society enjoys the status of a legal entity apart from the members who constitute it. Therefore, as a legal entity capable of suing and being sued the society represents the cause of the members who constitute it; any judgment or decree or order in a suit or civil proceedings with the legal entity in the party array, will be binding not only on the legal entity but on the members of that entity. If that be so, Order-I Rule-8 has no relevance in a case where the suit or civil proceedings are initiated by or against a legal entity, even though the same may not be an incorporated body.

XX. He further pointed out that the deposition of DW1 specifically shows that the defendants 1 and 2 are bound by the Code of Canon

Law of Eastern Churches, commonly known as Canon Law. DW1 further admitted that it is for the first time on 6.1.2009 that the byelaws were promulgated, before which there were only codified instructions issued by the Vicars, for which no evidence was adduced by them.

XXI. The decision of the Single Bench of this Court in ***Sreekumaran v. Ardhanareeswara Devaswom*** (*supra)* was followed by a learned Single Bench of this Court in **Kerala Hindi Prachar Sabha, Thycaud and Others v. R. Joseph and Others [2010 (4) KHC 591]**, wherein it was held that what is required is that the society has to sue or be sued through its secretary except in the case covered by the proviso to Section 9 of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. Therefore, even if publication under Order-I Rule-8 of the Code of Civil Procedure is not taken, the same is not an irregularity.

XXII. As regards the plea of the appellants that there is an improper description of the 1st plaintiff, it is pointed out that the objections, if any, about the improper framing of the first plaintiff should have been taken before the settlement of the issues, and if not taken, it is deemed to

have been waived. Referring to paragraph 5 of the written statement of the defendants 1 and 2, it is pointed out that no objection regarding the improper arraying of the first plaintiff was taken.

XXIII. Even otherwise, the first appellate court was justified in ordering to take out notice by publication under Order-I Rule-8 because of the power vested on it under Order-XLI Rule-20 of the Code of Civil Procedure. In support of his contention, relied on the decision of the Full Bench of this Court in **Narayanan M. V. and Others** v. **Periyadan Narayanan Nair and Others [2021 (3) KHC 211]**, wherein answering the reference it was held that once a notice under Order-I Rule-8 was published at the trial stage, it is not necessary to take a fresh publication at the appellate stage, though nothing prevents the appellate court from ordering the same.

XXIV. Explanation to Order-I Rule-8 of the Code of Civil Procedure shows that in a suit of representative nature, all the plaintiffs need not have the same cause of action, and if that be so, the objection of the appellants as regards the non-availability of the cause of action to plaintiffs 2 to 4 must necessarily fail.

XXV. When the religious head himself has not approved the custom of endogamy under Ext.B19 letter, the resistance by the appellants to the claim of the plaintiffs with reference to Section 41(g) of the Specific Relief Act, 1963 must necessarily fail. When the defendants 1 and 2 act as trustees of the property of the church, which is in fact a collective body of individual parishioners, they are supposed to act purely in accordance with the trust.

XXVI. Objection regarding the absence of the community in the party array to the suit is not of much consequence, because there is no relief sought against the community. But the reliefs are largely directed against defendants 1 and 2. When the wrongdoing which is complained of is of a continuing nature, then necessarily, the claim of the plaintiffs cannot be non-suited on the ground of limitation.

XXVII. Once Ext.B19 is issued, the offending clause in Ext.B1 byelaw will necessarily pale into insignificance. Thus, concluding the submissions, the learned Senior Counsel for the plaintiffs pointed out that the judgments rendered by the courts below do not suffer from any perversity or illegality, which require this Court to

interfere in the exercise of the powers conferred under Section 100 of the Code of Civil Procedure, 1908.

18. Sri.Renjith Thamban, the learned Senior Counsel appearing along with the learned Senior Counsel Sri.Shyam Padman for the plaintiffs, assisted by Smt.Pooja Sunil, raised the following submissions:

(a) All the members of the first defendant Church are members of the Syro Malabar Church, which is governed by the Canon Law, headed by the 3rd defendant.

(b) The first plaintiff is a registered Society under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. Ext.A6 is the approved bye-law, and Ext.A7 is the resolution passed by the General Body authorizing the Society to file the suit. Since the first plaintiff is a registered society, there is no requirement to take out notice under Order-I Rule-8 of the Code of Civil Procedure.

(c) Even an unregistered association is not required to obtain permission under Order-I Rule-8 of the Code of Civil Procedure. In support of his contention, relied on the decision of

the Supreme Court in ***Illachi Devi (Dead) By Lrs. and Others*** *v.* ***Jain Society, Protection of Orphans India and Others [(2003) 8 SCC 413 : AIR 2003 SC 3397]*** and also the decision of the Lahore High Court in ***Mahashaya Krishna*** *v.* ***Mt. Mayadevi and Others [1947 SCC OnLine Lah 41 : AIR 1948 Lah 54]***.

(d) It is further pointed out that merely because of the registration, it does not cease to be an association of individuals and therefore, the first plaintiff was entitled to maintain the suit for and on behalf of its members. Referring to paragraph No.23 of the written statement filed on behalf of the defendants 1 and 2, it is pointed out that a child born out of the second marriage of a Knanaya male with a Knanaya female will be baptized and will be taken into the fold of the 1st defendant, while a child of a male or a female born out of the first wedlock of a non-Knanaya person will not be recognized. This is because, going by the bye-law, after the death of the first spouse, on a second marriage, the surviving Knanaya person is entitled to marry, and if the said marriage takes place between the persons from the same community, recognition is

afforded. Such an incongruous and dichotomous stand is really discriminatory.

(e) He further pointed out that, going by the tenets of the Canon Law, marriage is one of the seven sacraments and that constitutes an essential religious practice. The refusal to perform marriage by the first defendant would certainly erode the fundamental rights under Part-III of the Constitution of India.

(f) Further, it is pointed out that all spiritual activities are one and the same for the persons belonging to defendants 1 and 2 as well as 3 and 4. This fact is admitted in paragraph 25 of the written statement. If that be so, the claim of a separate religious denomination under Article 26(b) of the Constitution of India goes.

(g) When the Papal Bull was promulgated, pursuant to which the Archdiocese of Kottayam was established, it is not for the ethnic community. Referring to the oral testimony of DW1 contained at pages 113 to 114 of the testimony, it is pointed out that DW1 has

clearly admitted that even a non-Knanaya person can become the spiritual head.

(h) Referring to the letter which led to the issuance of the Papal Bull, the learned Senior Counsel pointed out that there is no indication of any custom of endogamy being followed prior to 1911 or, for that matter, any termination of membership from the Church for not following the said custom. The Papal Bull can only be construed as an administrative order, and therefore, no spiritual rights could be derived out of the same.

(i) In order to establish a custom, there is a heavy burden on the defendants to prove that the same existed time immemorial. Reliance is placed on the decisions of the Division Bench of this Court in ***Kizhakkayi Dasan*** *v.* ***Kuniyil Cheerootty*** **[(2025) 7 KHC 197]**, ***Kandathy and Others*** *v.* ***Kuttymammi*** **[1970 KHC 146]** and of the Supreme Court in ***Ratanlal @ Babulal Chunilal Samsuka*** *v.* ***Sundarabai Govardhandas Samsuka (D.) Th. Lrs. and Others*** **[2017 KHC 6820 (SC) : 2018 (11) SCC 119]**.

In the present case, the defendants 1 and 2 have miserably failed to prove that there existed a valid custom in the form of endogamy.

(j) Referring to the decision of the Supreme Court in ***K.S. Puttaswamy (Privacy-9J.) v. Union of India [(2017) 10 SCC 1]***, the learned Senior Counsel pointed out that the right to get personal care/privacy is also one of the fundamental rights conferred on the citizen. He further pointed out that the right of marriage is one of the integral facets of Article 19 read with Article 21. In support, relied on the decision of the Supreme Court in ***Shakti Vahini*** *v.* ***Union of India*** **[(2018) 7 SCC 192]**.

(k) Non-acceptance of the choice of a citizen would simply mean creating discomfort to the constitutional right, and that if such action is founded on the basis of an illegal act by a non-State actor, certainly the same qualifies as an infringement of the fundamental right. Reliance is placed on the decision of the Supreme Court in ***Shafin Jahan*** *v.* ***Asokan K.M*** **[(2018) 16 SCC 368]**.

(l) In answer to the objection raised by the defendants 1 and 2, that an application under Order-I Rule-8 of the Code of Civil Procedure

has not been taken to the defendants, especially to the 2nd defendant, the learned Senior Counsel pointed out that going by the decision of this Court in ***Major Archbishop, Angamaly-Ernakulam*** *v.* ***Lalan Tharakan [2016 (2) KLT 791]***, the 2nd defendant is held to be a juristic person and therefore, non-compliance of Order-I Rule-8 is not fatal. He further pointed out that this Court had affirmed the view in ***James Chinnamma*** *v.* ***Joseph Abraham [1962 KLT 240]*** in the above decision.

(m) The learned Senior Counsel further pointed out that the declaration was necessitated because there is a cloud on the right of the plaintiffs 2 to 4 to continue with the membership of the second defendant church, and therefore, going by the principles embodied under Section 34 of the Specific Relief Act, 1963, the declaration was a *sine qua non* for sustaining the reliefs in the suit.

Submissions on behalf of the 13th respondent in RSA No.656/2022

19. Sri.C.S.Manilal, the learned counsel appearing for the 13th respondent at whose instance the entire issues were triggered way back in 1989, would point out that as far as enforcement of the fundamental

right is concerned, the party can either choose a remedy before the writ court or before the civil court.

19.1 He further pointed out that the argument of the learned Senior Counsel for the appellants that the law as understood in Entry-5 to List-III of the Seventh Schedule is saved for the enforcement of the fundamental rights cannot be sustained. In support of his contention, relied on the decision of the Supreme Court in ***Shayara Bano Vs Union of India [(2017) 9 SCC 1***] and pointed out that the views of the Bombay High Court in ***The State of Bombay*** *Vs* ***Narasu Appa Mali [AIR 1952 Bom 84]*** no longer stands as a good law in the light of the decision of the Larger Bench of the Supreme Court in ***Sant Ram & Others v. Labh Singh and Another [1964 SCC OnLine SC 230 : AIR 1965 SC 314]***.

19.2 Referring to the decision in ***Kaushal Kishor*** *v.* ***State of U.P.*** **[(2023) 4 SCC 1]**, the learned counsel pointed out that when non-State actors infringe the fundamental right of a citizen, the right of civil action is always protected and, therefore, there is no gainsay in contending that despite such violation by the perpetrators, the remedy of the plaintiffs will be not before the civil court, but before other appropriate courts,

which is not yet specified or made clear. Therefore, he concluded his submissions by supporting the plea of the plaintiffs that the decrees passed by the courts below do not call for any interference in the exercise of the powers under Section 100 of the Code of Civil Procedure.

Submissions in reply for the appellants in RSA No.656/2022

20. The learned Senior Counsel, Sri.P.B.Krishnan, in reply raised the following submissions:

a) In ***Kaushal Kishor*** (supra), the Supreme Court, after charting out the various Articles under which the fundamental rights are encompassed, spelt out the availability of a civil remedy against non-State actors in respect of rights conferred under certain Articles, wherein Article 25 is not available.

b) Even assuming that the civil court gets Jurisdiction to decide any issue arising under the Constitution, that by itself will not clothe the civil court with the power to enforce the fundamental right. Even though the issue regarding the entitlement of the fundamental rights can raise before the court, when it comes to the enforcement, the civil court may lack the authority to enforce such

a right. Though the learned Senior Counsel candidly submitted that the conferment of the power on the civil court to enforce the fundamental right by non-State actors is an evolving jurisprudence, at any rate, he asserted that the right under Article 25 cannot be enforced horizontally.

c) He further reiterated that when it comes to balancing the respective rights of the parties, unlike the constitutional court, the civil court does not have the power to enforce the same. Once the Supreme Court has found that the marriage is not a fundamental right, it is now established that the marriage is not a fundamental right and that apart, a membership in the association is also not a fundamental right and so long as the practice of endogamy is not invalidated by any law, there cannot be any fundamental right under Article 25 of the Constitution of India.

d) The claim of coercion to go out of the church on the pretext of a refusal to perform the holy sacrament of a marriage is not established by the plaintiffs. Therefore, the strict rules of pleadings under Order-VI Rule-4 of the Code of Civil Procedure

are not complied with. Plaintiffs 2 to 4 have not pleaded their individual interest. Therefore, in such circumstances, when the disputed action involves a larger issue of appreciation of evidence, and also in the light of the fact that there is no evidence to prove the forceful termination, no relief can be granted.

e) When a cross objection was preferred against the findings and that the cross objection has ended in a decree, without any challenge to the said decree, the plaintiffs cannot be permitted to raise the plea under Order-XLI Rule-22 of the Code of Civil Procedure, 1908.

f) The question as regards the custom of endogamy and the finding regarding the defendants 1 and 2 constituting a religious denomination are found in favour of the appellants.

g) The issue regarding non-joinder of necessary parties was struck off by the trial court by order dated 9.4.2021. Therefore, in the absence of the community, the defendants 1 and 2 cannot be directed to perform the marriage of a Knanaya member with a non-Knanaya person. The validity of a custom thus cannot be gone into without the community at large in the party array.

h) The finding that the church represents the community cannot be accepted in the light of the decision of the Madras High Court in **Noble** v. **Peter P.Ponnan [1999 (2) KLT SN 24 (C.No.25) Mad.]**

i) The decree, if sustained, will necessarily affect the community. By referring to the decretal portion of the judgment, the learned Senior Counsel asserted that the effect will be drastic and that it will create unrest among the community itself.

j) According to the learned Senior Counsel, the appellate court could not have framed additional issues for consideration and that the only option for the appellate court was to remand the matter under Order-XLI Rule-25 for framing of the issues or decision of the trial court on the additional issues thus framed. Reliance is placed on the decision of the Supreme Court in ***Rama Kt. Barman (Died) Thr Lrs v. Md. Mahim Ali [2024 SCC OnLine SC 4083]***. The learned Senior Counsel pointed out that the option available for this Court is to exercise the powers under Section 107 of the Code of Civil Procedure and remand the matter back for a fresh consideration.

k) Reiterating the submissions on the status of the 2nd defendant, the learned Senior Counsel further pointed out that the 2nd defendant is not a juristic person, as contended by the learned Senior Counsel for the plaintiffs. Referring to Ext.B3 document, the learned Senior Counsel further pointed out that there existed uncodified rules prior to 6.1.2009 when Ext.B1 by-laws were promulgated. It clearly establishes the practice of endogamy among the Knanaya community. It is further pointed out that there is no requirement of written rules to be governed by the association of individuals.

l) Referring to paragraph 8 of the plaint, the learned Senior Counsel further pointed out that the hierarchy of the religious heads is admitted by the plaintiffs. Existence of the Rules of a Diocese is also recognized. Therefore, a certain level of autonomy must be granted to the religious heads.

m) As regards the maintainability of the suit qua defendants 5 and 6, it is pointed out that since permission of the Central Government is not obtained, the suit is unsustainable. Reference is made to the decisions of the Supreme Court in ***Mirza Ali Akbar Kashani v.***

The United Arab Republic And Another [AIR 1966 SC 230] and ***Veb Deutfracht Seereederei Rostock (DSR Lines) A Dept. of the German Democratic Republic v. New Central Jute Mills Co. Ltd. And Another [(1994) 1 SCC 282]***.

Submissions in Reply on behalf of the appellant in RSA No.675/2022

21. Sri.S.Sreekumar, the learned Senior Counsel appearing for the appellant in RSA No.675/2022, raised the following submissions in reply:

a) A suit in the nature of public interest litigation cannot be maintained. Even before 1911, the custom was in existence. There is no dispute regarding this aspect.

b) When Ext.B3 is issued, the existence of a custom of endogamy among the members of the Knanaya community is established. He further reiterated the fact that the 2nd defendant is not properly represented.

c) No notice under Order-I Rule-8 of the Code of Civil Procedure was taken against the 2nd defendant in the appeal as well as in the suit. He further pointed out that in the absence of any notice on all the reliefs, the only remedy possible is to remand the suit. In support of his contention, relied on the decision of the Single Bench of the Orissa

High Court in ***Harihar Jena and Others*** *v.* ***Bhagabat Jena and Others [1987 KHC 2308]***.

Submissions in Reply on behalf of the appellant in RSA No.23/2023

22. Sri.T.Krishnanunni, the learned Senior Counsel appearing for the appellant in RSA No.23/2023 in reply, raised the following submission:-

a) The plaintiffs should have applied for leave to take out notice under Order-I Rule-8 of the Code of Civil Procedure to the community. Referring to the commentaries of Mulla on the Code of Civil Procedure, the learned Senior Counsel relied on the decision of the **London Assn for Protection of Trade v. Greenlands Ltd. [(1916) 2 AC 15]** to contend that it is the obligation of the plaintiffs to take out notice to the defendants also.

23. Extensive arguments were laid by various counsel appearing for the contesting respondents in support of the Appellants in RSA No.656 of 2022. These respondents got impleaded in the appeals before the first appellate court pursuant to the publication taken out under Order 1 Rule 8. Since their submissions are in tune with the submissions of the learned Senior Counsel for the appellants, the same need not be repeated.

CONSIDERATION BY THE COURT

24. Though the findings of the courts below are concurrent in nature, it is clear from the deliberations made across the bar, that the findings rendered by the courts below purely hinges on the consideration of various questions of law. Precisely, why this Court felt it should reframe the questions of law. In the above backdrop, this Court proceeds to consider the various issues that have cropped up in these appeals. The consideration of this Court on these intrinsic questions and the formulation of the answers to be given to the substantial questions of law framed by this Court will determine the fate of these appeals.

FRAMEWORK OF THE SUIT

25. Several issues were raised by both sides touching upon the framework of the suit. It is only appropriate that this Court dissects these issues and considers them individually.

Impact of Section 9 of the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955

25.1 Primary objection raised by the appellants in RSA No.656 of 2022 is that the suit is hit by Section 9 of the Act 12 of 1955. Section 9 reads as under:

> **"Suits by and against societies**.—*Every society may sue or be sued in the name of the president, chairman, or principal, secretary, or trustees, as shall be determined by the rules and regulations of the society and in default of such determination, in the name; of such person as shall be appointed by the governing body for the occasion:*
>
> *Provided that it shall be competent for any person having a claim for demand against the society, to sue the president or chairman, or principal, secretary or the trustees thereof if on application to the governing body, some other officer or person be not nominated to be the defendant."*

According to the learned Senior Counsel Sri.P.B.Krishnan, going by Section 9 of the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955, a Society must sue in the name of the President, Chairman or Principal Secretary or the trustees. Therefore, it is pointed out that the suit instituted by the Society, which is a juristic person, is not maintainable, because only the President, Chairman or the Principal Secretary or the trustee alone can sue on behalf of a Society.

26. Perusal of the cause title of the plaint shows that the first plaintiff is a Society represented by the President. The plaintiffs 2 to 4 are also included in their individual capacity. At the outset, this Court finds that it would be highly improper for this Court to nonsuit the plaintiffs solely on the ground that the President has not sued the defendants on behalf of the Society. The cause title reveals that the first plaintiff is duly represented by the

President and that by itself is substantial compliance of Section 9 of the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955.

27. It is pertinent to mention that the suit was filed pursuant to the resolution passed by the 1st plaintiff society, and the said resolution was made available before the court, and inasmuch as the plaintiffs 2 to 4 are included in their personal capacity, this Court is not prepared to non-suit the plaintiffs solely on the above ground. Moreover, in what manner, the appellants are prejudiced is not made clear. At any rate, even going by the decision of this Court in **Alukkal Koya v. Marakasutharbiyathul Islamiya and Another [2019(1) KHC 535]** if in case, this court finds that the cause title of the suit is defective, the matter requires to be remanded back to the trial court for fresh consideration. However, in the peculiar facts, this Court is of the view that the incorrect description of the 1st plaintiff is not fatal, especially since plaintiffs 2 to 4 are impleaded in their personal capacity and the decision rendered touching upon their rights requires to be considered on merits and merely because of a misdescription of the 1st plaintiff, their cause need not suffer. Hence, this Court holds that the suit is perfectly

maintainable and that the plaintiffs cannot be non-suited by applying the provisions of Section 9 of the Act 12 of 1955.

28. As regards the further contention that the Society has only operation in and around Kottayam and therefore, it cannot sue on behalf of the members of the community, who are not included in the list of members of the society, and that a civil action cannot be maintained and a decision invited *in rem*, this Court finds that the said issue was never at large before the courts below and therefore, it would be inappropriate for this Court to permit the appellants to raise this question for the first time in the second appeal.

Compliance of Order 1 Rule 8 of CPC

29. Extensive arguments were advanced by both sides on this issue. According to the appellants, when a suit is filed in a representative capacity there should be sufficient compliance of Section 91 of the CPC. Moreover, the publication of notice under Order 1 Rule 8 pertains to reliefs 1 and 2 alone and that no notice was issued to the 2nd defendant under Order1 Rule 8 and hence, the decree is unenforceable.

30. The records indicate that the plaintiffs have taken out notice under Order 1 Rule 8 in the trial stage as well as the appellate stage. The 7th

defendant got himself impleaded in the suit after seeing the paper publication during the trial stage. At the appellate stage, several persons got themselves impleaded in the appeals to support the appellants. Therefore, there is no gainsay in contending that the procedure followed was improper.

31. As rightly contended by Sri.Shyam Padman, learned Senior Counsel for the plaintiffs, there is no requirement to take notice under Order 1 Rule 8, going by the decision of the Full Bench in ***Narayanan M.V Vs Periyadan Narayanan Nair and others [2021(3) KHC 211]***. Certainly, the appellate court in its wisdom chose to order notice by publication under Order 1, Rule 8. No procedural irregularity could be attributed towards it. Moreover, going by Order XLI Rule 20, the appellate court is well within its power to order notice to additional parties while considering the appeal.

32. The further contention that the notice under Order 1 Rule 8 was taken out for reliefs 1 and 2 alone and hence the decree granted in respect of reliefs 3 and 4 cannot be sustained does not appear to be sound. Reliefs 3 and 4 are only consequential to the main reliefs 1 and 2, and therefore the appellants cannot be heard to contend otherwise.

33. Insofar as non-issuance of notice under Order 1 Rule 8 to the 2nd defendant, extensive arguments were advanced by Sri. T Krishnanunni,

learned Senior Counsel for the 7th defendant. It passes one's comprehension as to how the 7th defendant could be said to be aggrieved. At any rate, a cursory glance at the written statement of defendants 1 and 2 reveals that no such plea is taken. Therefore, this Court finds no merit in the above contention.

34. Yet another aspect to be noted is that when a society sues on behalf of its members, the requirement of Order 1 Rule 8 does not arise for consideration.

35. In ***Kerala Hindi Prachar Sabha thycaud and others*** *V.* ***R. Joseph and others [2010(4) KHC 591]***, a Single Bench of this court considered this question and held that the provision under Order 1 Rule 8 has no application to a case where a special statute prescribes a special procedure for binding nature of the decision as in Section 9 of the Act 12 of 1955.

36. This court sees no reason to take a different view from that taken in **R.Joseph** (*supra*). Therefore, it is concluded that the suit does not suffer from any infirmity on account of want of proper compliance of Order 1 Rule 8.

Whether plaintiffs have a cause of action for filing the Suit?

37. A cause of action is a bundle of facts which would entitle the plaintiffs to maintain a suit. The attempt made by the appellants is to project

a case that, the first plaintiff did not have the cause of action to maintain the suit. What is pointed out is that, a Society at large cannot institute a civil suit seeking a declaratory relief *in rem*. Suffice it to note that, the non-availability of a cause of action to the first plaintiff to maintain the suit, was never an issue before the trial court. Even the arguments advanced before the trial court, as reflected in the judgment do not reveal that such an argument was ever raised before the court. Even going by the pleadings in the written statement, it is seen that what is contended by the appellants is that a civil suit under Section 9 of the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955 is not maintainable and that the right which is now sought to be enforced is not a civil right. Therefore, this Court is not prepared to go into the said issue at the present stage because it appears to this Court that this question is raised for the first time in the second appeal.

38. At any rate, when plaintiffs 2 to 4 are there in the party array, the suit cannot be rejected on the ground that the first plaintiff did not have any cause of action for filing the suit, even if it is so.

Impact of Section 4 read with Section 41(g) of the Specific Relief Act, 1963

39. Next, it is contended that in the light of the provisions under Section 4 of the Specific Relief Act, 1963 the first plaintiff cannot maintain

the suit. Section 4 provides that a specific relief can be granted only for the purpose of enforcing an individual civil right. As regards the question whether the right now sought to be enforced is a civil right or not, no further deliberation is required, since it is not a case of the appellants that the right which is now sought to be enforced is not a civil right. But what is projected is that the right, which is now sought to be enforced, cannot be done through the first plaintiff. But since plaintiffs 2 to 4 are in the party array, the provisions of Section 4 of the Specific Relief Act, 1963 is clearly attracted.

40. Coming to the applicability of Section 41(g), it must be noted that there is a clear admission in para 42 of the written statement that the defendants 1 and 2 are not forcefully terminating the membership of the members of church who marry non Knanaya spouses. Further, going by Ext.B19 letter dated 15-11-2017 the practice of endogamy is not accepted but only a de facto toleration alone is permitted. Thus, it cannot be said that plaintiffs 2 and 3 have acquiesced their rights. Therefore, this court finds the suit is not hit by the provisions of Section 4 and 41(g) of the Specific relief Act 1963.

Cause of Action for Plaintiffs 2 to 4

41. The learned Senior Counsel for the appellants in RSA No.656/2022 would point out that the cause of action in the present case must be viewed differently from that of the plaintiff No.1 and plaintiffs 2 to 4. It is contended that not only the 1st plaintiff, but plaintiffs 2 and 3 also does not have any cause of action to file the present suit because they had already left the Diocese in the years 1977 and 1988, respectively, and derived benefits under the defendants 3 and 4. In support of the said contention, certain letters issued by the defendants 3 and 4 are relied on. Prima facie, this Court finds that the evidence adduced by the defendants is not sufficient to show that the plaintiffs 2 and 3 had completely waived their right to continue as the members of the defendants 1 and 2.

42. It is true that the plaintiffs 2 and 3 had left the second defendant because of the insistence that if one wants to marry a non Knanaya person, he must relinquish the membership from the church and is further required to take membership in another parish to enable them to marry a non-Knanite.

43. It is beyond cavil that the plaintiffs 2 to 4 derived their right for membership on the church by their birth. This fact is admitted. Under what authority do the defendants 1 and 2 contend, that membership is lost because

of marrying a non Knanaya person is not shown. At any rate, Ext.B1 bye law was issued only on 12.11.2008 (w.e.f. 6.1.2009). The said bye law can never be the determinative factor to decide the fate of membership derived by birth. At any rate, the refusal of the religious hierarchy under Ext.B19 to uphold the practice of endogamy leads to an irresistible conclusion that plaintiffs cannot be non-suited on the plea that they do not possess the requisite cause of action to maintain the suit. Thus, this court finds that the plea of the appellants that the plaintiffs 2 to 4 do not have the cause of action to maintain the suit is untenable and hence rejected.

Whether the suit is hit by Section 91 of CPC?

44. Alternatively, it is contended that the suit does not satisfy the requirement of Section 91 of the Code of Civil Procedure, 1908. At the outset, it must be noted that no such case is pleaded in the written statement. According to the appellants, the suit in a representative capacity can lie only in case of a public nuisance or other wrongful act affecting or likely to affect the public. Thus, according to the appellants, the situation envisaged under Section 91 does not exist to maintain a cause of action.

45. This Court fails to comprehend as to how Section 91 is attracted to the facts of the case. Perhaps, the appellants are attempting to make out a

case that, since the framework of the suit is bad because of the procedural infirmities in complying with Order 1 Rule 8 of CPC and Rule 20(3) of the Civil Rules of Practice, Kerala 1971, still the plaintiffs can sustain the suit only if conditions under Section 91 are satisfied. However, the argument raised by the learned Senior Counsel for the appellants is completely misplaced. This Court has already found that there is no procedural irregularity in the matter of complying with Order 1 Rule 8 of the CPC. Therefore, reference to Section 91 is wholly unwarranted.

46. To conclude on this point, this Court holds that the suit is properly framed and that the findings of the courts below do not suffer from any infirmity.

Whether Knanaya Community should have been made a party to the Suit?

47. One among the multifarious defects in the framework of the suit according to learned Senior Counsel, Sri.P.B.Krishnan, is that Knanaya community at large was not made a party to the suit and the effect of the decree is that it affects the community at large. But the learned Senior Counsel did not address this Court on what capacity the community should be made a party and who should represent the community. Therefore, this Court finds that the contention regarding the non-impleadment of the

community is only raised for an ornamental purpose without stating as to how a suit with the community as a defendant could be proceeded further.

48. That apart, the courts below concluded that the defendants 1 and 2, who is the Church, represents the community at large. The said concurrent finding does not appear to this Court to be vitiated by any perversity requiring interference in exercise of the powers under Section 100 of the Code of Civil Procedure. Therefore, this Court is of the view that the presence of the community was not an issue affecting the maintainability of the suit at large.

49. Even if it is assumed that there is procedural infirmity in not impleading the community at large, the said infirmity is only a curable defect which has been cured by taking out paper publication under Order-I Rule-8 of the Code of Civil Procedure. Several third parties sought impleadment as additional respondents and contested the appeal by supporting the appellants. The contention of the learned Senior Counsel Sri.P.B.Krishnan that, permission to take out notice under Order 1 Rule 8 by the first appellate court, is improper and without any jurisdiction does not appear to be sound to this Court. Admittedly several members of the community impleaded and supported the case of the appellants. In fact, certain persons sought leave to challenge the Judgment and decree of the trial court. It must be remembered

that first appellate court is not powerless to order a remand if it was found that the presence of the Knanaya community was an absolute necessity for deciding the lis. The appellate court, however, did not deem it appropriate to remand the case and to include the Knanaya community as an additional defendant and order retrial. This Court sees no reason to differ from the said view and send back the suit for a fresh consideration with the Knanaya community as an additional defendant. The interest of the community is sufficiently represented through the Church. Therefore, the aforesaid argument is rejected.

Whether the suit is hit by Section 86 of the CPC?

50. It is next contended that since the permission of the Central Government under Section 86 is not obtained, the suit is unsustainable. Reliance is placed to the decisions of the Supreme Court in ***Mirza Ali Akbar Kashani v. The United Arab Republic And Another [AIR 1966 SC 230]*** and ***Veb Deutfracht Seereederei Rostock (DSR Lines) A Dept. of the German Democratic Republic v. New Central Jute Mills Co. Ltd. And Another [(1994) 1 SCC 282 : AIR 1994 SC 516].***

51. Section 86 of Code of Civil Procedure, 1908 reads as under.

Section 86 reads as under:

"**86. Suits against foreign Rulers, Ambassadors and Envoys.**—

(1) *No foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:*

PROVIDED that a person may, as a tenant of immovable property, sue without such consent as aforesaid a foreign State from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the court in which the foreign State may be sued, but it shall not be given, unless it appears to the Central Government that the foreign State—

(a) has instituted a suit in the Court against the person desiring to sue it, or

(b) by itself or another, trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immovable property situate within those limits and is to be sued with reference to such property or for money charged thereon, or

(d) has expressly or impliedly waived the privilege accorded to it by this section.

(3) Except with the consent of the Central Government, certified in writing by a Secretary to that Government, no decree shall be executed against the property of any foreign State.

(4) The preceding provisions of this section shall apply in relation to—

(a) any Ruler of a foreign State;

(aa) any Ambassador or Envoy of a foreign State;

(b) any High Commissioner of a Commonwealth country; and

(c) any such member of the staff of the foreign State or the staff or retinue of the Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf, as they apply in relation to a foreign State.

(5) The following persons shall not be arrested under this Code, namely: —

(a) any Ruler of a foreign State;

(b) any Ambassador or Envoy of a foreign State;

(c) any High Commissioner of a Commonwealth country;

(d) any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf.

> *(6) Where a request is made to the Central Government for the grant of any consent referred to in subsection (1), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard."*

When we look at the status of defendants 5 and 6, it is clear that they are not the foreign state but only the religious head of the foreign state. Moreover, no relief is claimed against them in the suit. Merely because certain representatives of a religious forum were impleaded in the suit, which according to this Court, is wholly unnecessary and not germane to the issue raised in the appeal, by itself is not a ground to non-suit the plaintiffs. Moreover, if for any reason, the court finds that they are not necessary parties, the court can always strike them off from the party array invoking the power under Order 1 Rule 10 of CPC.

52. Yet another aspect to be noted is that the appellants themselves filed a petition before the first appellate court to dispense with the issuance of notice to defendants 5 and 6, who were arrayed as respondents 7 and 8, respectively, in AS No.36/2021 and the said petition was allowed by the first appellate court. Having sought for dispensing notice to the respondents 7 and 8, respectively, in AS No.36/2021, it is not open for the appellants to contend otherwise. Hence the contention to the contrary is rejected.

WHETHER ANY PROCEDURAL IRREGULARITY OCCURRED IN THE TRIAL OF THE SUIT?

Recasting of the Issues

53. The learned Senior Counsel Sri P.B.Krishnan appearing for the appellants in RSA No.656 of 2022, in extenso, submitted that the trial court erred egregiously in recasting the issues. The said contention requires to be deliberated extensively. A cursory glance at the Judgment reveals that initially seven issues were framed. However, as soon as the 7th defendant was impleaded, they filed IA No.22 of 2021 seeking to raise two additional issues. The said application was considered on 9.4.2021, and additional issues 5 and 6 were framed.

54. Going by the provisions of Order-XIV Rule-5 of the Code of Civil Procedure, 1908, the court has got the power to amend the issues or frame additional issues at any time before passing of the decree. Therefore, this Court finds that the contention of the appellants that the recasting of the issues had affected a fair trial cannot be accepted.

55. Moreover, it is pertinent to mention that an application for reframing of the issues was preferred by the appellants as early as in 2017, which was not accepted by the trial court and accordingly, the issues as it stood originally were framed. Curiously enough, the appellants did not deem

it appropriate to challenge the said order and therefore, they are estopped from contending otherwise.

56. It is next contended that the appellate court could not have framed issues for consideration. However, on a perusal of the Judgment of the first appellate court, it shows that the appellate court had merely framed certain points for consideration and proceeded to answer the said points framed for consideration. So long as parties to the suit understood what exactly the real controversy in the suit is, it is immaterial as to whether an issue was framed or not. Hence, this Court is inclined to hold that no procedural irregularity has occurred in this case.

57. Yet another contention raised by the appellants is that the appellate court has not referred to the written submissions filed by them. Reliance is placed on to the provisions of Order XVII Rule 2(3A). True, the appellants might have submitted written submissions on their behalf. However, to contend that the appellate court must refer to each contention and must answer each contention is unacceptable. The appellate court need to consider the issues which are only germane to the case. Hence, contention to the contrary is rejected.

WHETHER THE SUIT IS BARRED BY LIMITATION?

58. Two-fold contentions are raised by the learned Senior Counsel Sri.P.B.Krishnan; (a) suit is barred under Article 58 of the Limitation Act 1963, and (b) the finding of the courts below that there is recurring cause of action is erroneous and is not applicable to declaratory suits.

59. The consideration of this Court is confined to the issue whether the suit is barred under Article 58 of the Limitation Act 1963. Article 58 reads as under:

Article	Description of suit	Period of limitation	Time from which period begins to run
58	To obtain any other declaration	Three years	When the right to sue first accrues.

What is sought to be pointed out is that as regards plaintiffs 2 and 3, the suit is hopelessly barred by limitation since they have left the church voluntarily way back in 1977 and 1988, respectively, and therefore no mandatory injunction can be sought for. At first blush, this argument is appealing. However, on a closer dissection of the above argument leads to an incongruous situation.

60. Admittedly, in para 42 of the written statement defendants 1 and 2 have admitted that, they are not forcibly terminating the membership of

anyone who marries a non Knanaya. That be so, the plaintiffs are entitled to get a decree based on admission as provided under Order XII Rule 6. That apart, going by Ext.B19 document dated 15-11-2017, it is evident that the religious hierarchy has not endorsed the prevailing custom of endogamy and has only accorded a *de facto* toleration.

61. While answering the plea of limitation, the courts below held that there is a recurring cause of action. However, according to Sri.P.B.Krishnan, learned Senior Counsel for the appellants in RSA No.656/2022, Section 22 is not applicable to declaratory suits.

62. This Court is unable to subscribe to the said contention for multiple reasons. Primarily because the plaintiffs were entitled to a decree based on an admission in para 42 of the written statement. Secondly, what complained of, is a wrongdoing which is continuing in nature and has no authority of law. Therefore, so long as the wrongdoing recurs at the hands of defendants 1 and 2, the limitation does not get extinguished.

63. In ***Vinay S/O Ambadas Kaikini and another vs Court Receiver, High Court of Judicature at Bombay [(2010) 6 Mh.L.J 407]***, the Single Bench of the Bombay High Court was called upon to consider whether a suit for evicting a trespasser could be saved under Section 22 of the Limitation

Act 1963. It was held thus "…***Trespass upon the immovable property is unwarrantable entry upon the immovable property of another or any direct and immediate act of interference with the possession of such property. Trespass is a wrongful act done in disturbance of the possession of the property of another or against the person of another against his will. The trespass continues so long as unlawful entry lasts. Thus the right to sue will continue de die in diem till it is removed. The wrongful acts of defendants are of such a character that the injury caused by them is continuous. The acts of defendants constitute a continuing wrong. Trespass being a continuing wrong, having regard to section 22 of the Act, in my opinion, suit is not time barred"***.

64. In ***Debi Prasad Vs Badri Prasad [(1918) ILR 40 All 461]***, it was held that each invasion of right creates a new cause of action and a suit for declaration can be brought within the prescribed period from the date of each invasion.

65. In the present case, it is evident that the plaintiffs 2 and 3 had to relinquish their membership because of the stand of defendants 1 and 2 that those who wants to marry from outside the community must leave the community. The above stand is clear without sanctity of law. The refusal of the defendants 1 and 2 to readmit the plaintiffs 2 and 3 is a continuing wrong and hence the present suit cannot be considered as one barred by limitation.

Based on the above discussions, this Court concludes that the suit in question is not barred by limitation.

NATURE AND SCOPE OF EXT.B1 BYE-LAW AND THE RULES OF ASSOCIATION OF THE 2nd DEFENDANT CHRUCH.

POSITION PRIOR TO EXT.B1 BYE-LAW

66. It is indisputable that the Kottayam Diocese was created only after the promulgation of the Papal Bull in the year 1911. Hitherto, it is nobody's case that the defendants 1 and 2 were governed by codified forms of rules of association. What is projected in these appeals is the ethnicity of the Southist people (Knanaya community), who got separated from the Northists on promulgation of the Papal Bull in the year 1911. The necessity for issuance of the Bull is traced to the letter dated 1.3.1911 (Ext.B3). On a cursory glance through the contents of Ext.B3, it appears that the Knanaya community found it difficult to go along with the members of the other groups, namely the Northists, and this created several difficulties for the religious heads to get along with the religious rites. Two suggestions were thus placed before the Pope, which are reflected from Ext.B3. Though it appears that such a request was given, St.Pius X had issued a Papal Bull *suo motu* in the year 1911 creating the Kottayam Diocese. The Papal Bull is extracted hereunder:

"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 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 letter similar to this dated July 28, 1886, established three Apostolic Vicariates, namely of Trichur, Ernakulum 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 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 chapals pertaining to the Kottayam and Kaduthuruty foranes in the Apostolic Vicariate of Changanacherry and also the Southist churches of the Apostolic Vicariate of Ernakulum.

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."*
>
> (Emphasis supplied)

67. Extensive arguments were addressed on behalf of the appellants contending that the creation of the Kottayam Diocese pursuant to the papal bull itself shows a special status to the Knanaya community and thus they are entitled to preserve their ethnicity. On a conspectus reading of the Papal Bull, it does not appear to this Court that any special status was intended to be created to the Kottayam Diocese. At the best, it can be construed as an administrative exercise. If a contrary intention is to be presumed, then something more should have found a place in the papal bull. Moreover, the so-called special status being accorded to Kottayam Diocese is purely an assumption of defendants 1 and 2 and not supported by any documents. This will be demonstrated in the further discussion by this Court in the later part of this Judgment.

68. What is claimed is that, before the issuance of Ext.B1 Bye law, the Vicars used to issue circulars for the guidance of the parishioners and that, by

virtue of the circulars, the rules of association were formulated. This fact is spoken to by DW1 in his oral testimony. It is further admitted by him that, the byelaws came into effect only on 6.1.2009. The statement of DW1 that the religious circulars used to govern the rules of the association is not supported by any evidence.

69. Core dispute is not whether there were rules of association or not. But it centers around the stand taken by the defendants 1 and 2 that they will not permit a Knanaya male or female to choose a non Knanaya as his/her spouse. Even if they wish to do so, they will be issued with a form in which they will have to sign by expressing their willingness to surrender their membership in the church. Pertinently, at least from 24.11.1990, when the judgment was rendered by the Additional Munsiff's Court, Kottayam in OS No.923/1989 as affirmed in AS No.244 of 2004, the practice of endogamy, if any, ought to have been discontinued.

70. But however, they continued to perpetuate the illegality on the pretext that, they are a voluntary association and hence the members will have to abide by the rules. However, to get over the rigour created by the Judgment of the Additional District Court, Ernakulam in AS No.244 of 2004, the defendants 1 and 2 appear to have taken steps to formulate a bye law and

issued Ext.B1 on 12.11.2008 (with effect from 6.1.2009). The offending clause in the said bye-law reads as under:

> "3. അതിരൂപതാംഗങ്ങൾ
>
> AD 345-ലെ കൂടിയേറ്റകാലം മുതൽ ക്നാനായ പൂർവ്വികരിൽനിന്നും തുടങ്ങി തലമുറതലമുറകളായി ക്നാനായ സ്ത്രീ-പുരുഷന്മാർക്ക് സ്വവംശവിവാഹബന്ധത്തിലൂടെ ജനിച്ചിട്ടുള്ളവരാണ് ക്നാനായക്കാർ. സമുദായ കൂട്ടായ്മയിൽ അംഗമാവുകയും മാമ്മോദീസാ സ്വീകരണം വഴി മാതാപിതാക്കൾ അംഗമായിരിക്കുന്ന സ്വയാധികാരസഭയിലും സഭാഘടകത്തിലും പങ്കാളിത്തം ലഭിക്കുകയും ചെയ്തിട്ടുള്ള ക്നാനായ കത്തോലിക്കരാണ് കോട്ടയം അതിരൂപതാംഗങ്ങൾ. ക്നാനായ പുരുഷൻ ക്നാനായ സ്ത്രീയെ വിവാഹം ചെയ്യണമെന്നതാണ് സ്വീകാര്യമായ പാരമ്പര്യം. ഈ പാരമ്പര്യം ലംഘിച്ച് ക്നാനായ പുരുഷനോ സ്ത്രീയോ ഇതര സമുദായത്തിൽനിന്ന് ജീവിതപങ്കാളിയെ സ്വീകരിച്ചാൽ അപ്രകാരമുണ്ടാകുന്ന കുടുംബം ക്നാനായ സമുദായത്തിൽ ആയിരിക്കുകയില്ല. ക്നാനായേതര സഭാസമൂഹത്തിലായിരിക്കും നിലനിൽക്കുക. സമുദായത്തിൽനിന്നല്ലാതെ ജീവിത പങ്കാളിയെ തെരഞ്ഞെടുക്കാനാഗ്രഹിക്കുന്ന വ്യക്തി ക്നാനായ അതിരൂപതാധികാരിയിൽനിന്ന് അനുവാദം വാങ്ങി ക്നാനയേതര രൂപതയിലും ഇടവകയിലും അംഗമാകുക എന്നതാണ് പ്രായോഗികമായി സ്വീകരിച്ചുപോരുന്ന നടപടിക്രമം. ആ വിവാഹം നിലനിൽക്കുന്നിടത്തോളംകാലം ക്നാനായേതര ഇടവകയിൽ അംഗമായി തുടരും. മരണം വഴിയോ മറ്റു വിധത്തിലോ ഈ വിവാഹബന്ധം കാനോനികമായി ഇല്ലാതായാൽ ക്നാനായ വ്യക്തിക്ക്, മറ്റു പ്രതിബന്ധങ്ങൾ ഇല്ലെങ്കിൽ അതിരൂപതാ അധ്യക്ഷന്റെ അനുവാദത്തോടുകൂടി ക്നാനായ സമൂഹത്തിൽ വീണ്ടും അംഗമാകാം."

71. Both sides are at serious variance as regards the true scope of the byelaw. The plaintiffs' argument is two-fold. The Papal Bull does not authorize the defendants 1 and 2 to include a criterion in the bye-law by which the membership in a parish gets terminated on the refusal to follow endogamy. The rule of endogamy was never the intention of the Pope when the Papal Bull was issued. Merely because the Diocese of Kottayam was created that by itself will not lead to an inference that the endogamy was the rule of law.

Alternatively, it is pointed out that after the promulgation of the Constitution of India, any action which conflicts with the rights guaranteed under the Constitution would, necessarily, fall short of fair play. The appellants, on the other hand, assert before this Court that the Parish is nothing but an association of individuals and, therefore, if one wants to stay within the association, he/she should follow the rules of the association.

72. Before proceeding further, this Court must decide whether the strict rules applicable to membership of an association can be applied in the present case. When the rules of the association run in conflict with the fundamental rights guaranteed under the Constitution of India, what will be the result?

73. In ***Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban)*** **[(2005) 5 SCC 632]**, the Supreme Court was called upon to consider the validity of an expulsion of a member of the Society if he transfers the property to a non-Parsi. Dealing with the intricate issue, the Supreme Court held that no citizen has a fundamental right under Article 19(1)(c) to become a member of a voluntary association or a co-operative society and that his right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory

right only on fulfilling of the conditions. In the aforesaid case, the scheme of the Bombay Co-operative Societies Act, 1925 came up for consideration. The byelaw of the Society further provided that all members shall belong to Parsi community, subject to satisfying all the conditions can aspire for the membership. One of the members of the Society after construction of the residential flat started negotiation with a builders' association in violation of the restriction on the sale of shares or property to a non-Parsi. The constitutional right to hold the property under Article 300A was pitted against the rules of the byelaw, which prohibited sale of the property to a non-Parsi member. The Supreme Court held that a person after choosing to accept the terms and conditions of the byelaw cannot question a condition in the bye-law, because unless and until he subscribes to the said conditions, he cannot have the membership assigned in his name.

74. In **T. P. Daver v. Lodge Victoria No.363 SC Belgaum And Others [1962 SCC OnLine SC 47 : AIR 1963 SC 1144]**, the Supreme Court was called upon to consider the expulsion of a member from the club. It was held as follows:

> *"8. The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion,*

he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra.

xxx xxx xxx

15. Lastly an attempt was made to persuade us to resurvey the entire material to ascertain the correctness or otherwise of the decision of the Lodge. As we have pointed out earlier, civil courts have no jurisdiction to decide on the merits of a decision given by a private association like a Lodge. Both the courts below have held that the Daughter Lodge has acted in good faith in the matter of the complaint against the appellant. That is a concurrent finding of fact; and it is the practice of this Court not to interfere ordinarily with concurrent findings of fact. There are no exceptional circumstances for our departing from the said practice."

75. Placing reliance on the decision of the Division Bench in **Msgr. Xavier Chullickal v. Raphael [2017 (2) KLT 1072]**, the learned Senior Counsel Sri P.B. Krishnan contended that, no sanctity can be attached to

Canon Law, since it cannot be recognized as a customary law after its codification by the Vatican Council in the year 1918. Referring to the decision of the Supreme Court in **Most Rev. P.M.A.Metropolitan and Others v. Moran Mar Marthoma and Another [1995 Supp (4) SCC 286: AIR 1995 SC 2001**], the Division Bench held that the Canon Law is like a Club Rule and when a person becomes a member of the club, he not only subscribes to the existing rules and regulations, but also agrees to accept the rules as they may be changed from time to time.

76. Heavy reliance is placed on the aforesaid decision to contend that the rules of the byelaw will have to be given predominance over the individual rights of its members. The argument now advanced is to the effect that, when a Knanaya member marries a non-Knanaya, though such marriage is not prohibited, but they must get the marriage solemnized under the parish churches under defendants 3 and 4 and the Vicar of the 2nd defendant cannot solemnize such marriage because of the regulations.

77. Two infirmities stare at the face of the above contention. Firstly, unlike in ***Zoroastrian Coop. Housing Society Ltd (supra)*** and ***Lodge Victoria (Supra),*** in the present case, the membership in the 2nd defendant church is not obtained through application but is by birth. The defendants 1 and 2 do

concede to this fact. Once the membership is derived by birth, can defendants 1 and 2 change the rule and contend that, if one wants to sustain his membership, he must adhere to the bye law. This Court has difficulty in accepting the preposterous argument of the appellants. The promulgation of the byelaw must be viewed with circumspection and should be considered as a unilateral imposition of unethical conditions. Therefore, the contention of the learned Senior Counsel Sri.P B Krishnan that to continue the membership, one will have to adhere to the rules of the association is fallacious.

78. Secondly, the defendants 1 and 2 failed to establish any custom under which they are empowered to terminate the membership of parishioners, if they do not marry within the community. Even assuming for argument's sake such a custom was prevalent, the rules of the association cannot be applied in strict sense in a case where, a fundamental right under Article 25 of the Constitution of India is involved.

79. Hence, in the given case where the rules of the association stand in conflict with the fundamental rights of an individual, there cannot be any doubt that the fundamental right must be given predominance.

80. The effect of implementation of clause 3 of Ext.B1 byelaw is in fact an indirect way of excommunicating a Knanaya member from the

community because of his marriage with a non-Knanaya. This fact is undeniable. Whatever be the assertion of the learned Senior Counsel for the appellants and in whichever way, he put up the arguments regarding the niceties of law, it is undeniable that, there is indirect excommunication at the hands of defendants 1 and 2.

81. A further reading of clause 3 of Ext.B1 bye-law would show that a person becomes eligible to have the membership of the parish on his/her birth to a Knanaya male and a Knanaya female. It is a case where the right to become a member of the parish being derived by birth, the child born to a Knanaya couple is required to be baptized for the purpose of deriving membership. The clause proceeds further to create an embargo for a Knanaya male or a female to continue in the community, if he/she decided to choose a non-Knanaya as his/her spouse. They cannot come back to the community unless and until the death of the spouse, subject to the decision of the religious head. On a conspectus reading of the clause, it is an undeniable fact that there is termination of the membership on refusal to follow the practice of endogamy.

82. It may be hitherto true that, to sustain the membership in the second defendant Church, the community at large would have practiced

endogamy. But when a case of irreconcilable conflict between the rights guaranteed under Article 25 of the Constitution of India and clause 3 of Ext.B1 bye-law arises, it is inevitable to hold that the bye-law will have to cede its way to the rights under the Constitution.

WHETHER CUSTOM OF ENDOGAMY IS PROVED? AND WHETHER IT IS AN ESSENTIAL RELIGIOUS PRACTICE?

Whether personal law is taken out of the purview of Article 13(3) of the Constitution of India?

83. Before this Court decides the above issue, it must address the argument of the learned Senior Counsel Sri.P.B. Krishnan that the personal law of marriage is taken out of the purview of Article 13 of the Constitution of India. In support of his argument relied on the decision of the Bombay High Court in ***State of Bombay Vs Narasu Appa Mali [AIR 1952 Bombay 84].*** The learned Senior Counsel further pointed that since the law relating to marriage comes under Entry 5 list III, Seventh Schedule, the law framed is subject to personal law. Moreover, if a custom of marriage is governed by personal law, then the same is taken out from the purview of 'laws in force' stated in Article 13(1). He further pointed out that if such law is taken out of the purview of Article 13, then in a possible case of conflict with fundamental right, the personal law must prevail.

84. On a conspectus reading of the decision of the Bombay High Court shows that, the court concluded that personal law is not included in the expression of "laws in force" under Article 13(1). Does ***Narasu Appa Mali*** (supra) lay down the correct proposition? A discussion on this is necessitated because, the appellants insist that the practice of endogamy falls within the realm of personal law and hence is immune from testing it against the rights guaranteed under Part III of the Constitution of India.

85. The core dispute regarding the interpretation of 'laws in force' and 'existing law' is mentioned in Article 13(3)(a) and Article 13(3)(b). ***H.M.Seervai on Constitutional Law, Fourth Edition Vol 1, Page 677*** observed as follows: "*There is no difference between the existing law and 'laws in force' and consequently, 'personal law' would be existing law and law in force….custom usage and statutory law are so inextricably mixed up in the personal law that it would be difficult to ascertain the residue of the personal law outside them.*"

86. In ***Sant Ram & Others v. Labh Singh and Another [1964 SCC OnLine SC 230 : AIR 1965 SC 314]****, the Supreme Court considered the true purport of the word 'law in force' under Article 13 (3)(b) and held as follows :*

"4. It is hardly ***necessary to go into ancient law to discover the sources of the law of pre-emption whether customary or the result of contract or statute. In so far as statute law is concerned Bhau Ram's case, (1962) Supp SCR 124 : (AIR 1962 SC 1476) decides that law of pre-emption based on vicinage is void. The reasons given by this court to hold statue law void apply equally to a custom. The only question thus is whether custom as such is affected by Part III dealing with fundamental rights and particularly Art. 19 (1) (f). Mr. Misra ingeniously points out in this connection that Art. 13(1) deals with "all laws in force" and custom is not included in the definition of the phrase "laws in force" in clause (3)(b) of Art. 13. It is convenient to read Art. 13 at this stage :***

> ***"13. (1) All laws in force in the territory of India immediately before the commencement of this constitution, in so far as they are inconsistent with the provision of this Part shall, to the extent of such inconsistency, be void.***
>
> ***(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall to the extent of the contravention, be void.***
>
> ***(3) In this article, unless the context otherwise requires –***
>
> ***(a) "Law" includes any Ordinance, order bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;***
>
> ***(b) "law in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and no previously repealed,***

notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

The argument of Mr. Misra is that the definition of "law" in Art. 13(3) (a) cannot be used for purposes of the first clause, because it is intended to define the word "law" in the second clause. According to him, the phrase "laws in force" which is used in clause (1) is defined in (3) (b) and that definition alone governs the first clause, and as that definition takes no account of custom or usage, the law of pre-emption based on custom is unaffected by Article 19 (1) (f). In our judgment, the definition of the term "law" must be read with the first clause. If the definition of the phrase "laws in force" had not been given, it is quite clear that definition of the word "law" would have been read with the first clause. The question is whether by defining the composite phrase "laws in force" the intention is to exclude the first definition. The definition of the phrase "laws in force" is an inclusive definition and is intended to include laws passed or made by a Legislature or other competent authority before the commencement of the Constitution irrespective of the fact that the law or any part thereof was not in operation in particular areas or at all. In other words, laws, which were not in operation, though on the statute book, were included in the phrase "law in force". But the second definition does not in any way restrict the ambit of the word "law" in the first clause as extended by the definition of that word. It merely seeks to amplify it by including

something which, but for the second definition, would not be included by the first definition. There are two compelling reasons why Custom and usage having in the territory of India the force of the law must be held to be contemplated by the expression "all laws in force". Firstly, to hold otherwise, would restrict the operation of the first clause in such ways that none at the things mentioned in the first definition would be affected by the fundamental rights. Secondly, it is to be seen that the second clause speaks of "laws" made by the state and custom or usage is not made by the State. If the first definition governs only clause (2) then the words "Customs or usage" would apply neither to clause (1) nor to clause (2) and this could hardly have been intended. It is obvious that both the definitions control the meaning of the first clause of, the Article. The argument cannot, therefore, be accepted. It follows that respondent No. 1 cannot now sustain the decree in view of the prescriptions of the constitution and the determination of this Court in Bhau Ram's case, (1962) Supp 3 SCR 724 : (AIR 1962 SC 1476). The appeal will be allowed but in the circumstances of the case parties will bear their costs throughout."

87. In ***Gazula Dasaratha Rama Rao Vs State of Andhra Pradesh and others [AIR 1961 SC 564],*** the Supreme Court was called upon to consider whether the customary right recognised with regard to hereditary rights to

village offices, violates the right under Article 19(1) (f) of the Constitution of India. It was held that……. "***Article 13 of the Constitution of India lays down inter-alia that all laws in force in territory of India immediately before the commencement of the Constitution in so far as they are inconsistent with the fundamental rights shall to the extent of inconsistency void. In that Article "law" includes custom or usage having the force of law. Therefore, even if there was a custom which has been recognised by law with regard to a hereditary village office, that custom must yield to a fundamental right."***

88. In ***Shayara Bano Vs Union of India, and others (Ministry of Women and Child Development Secretary and others) [(2017)9 SCC 1]***, the question whether ***Narasu Appa Mali*** (*supra*) lays down the correct proposition of law came up for consideration. The Supreme Court held that in appropriate cases, the decision may require a re-look. But nevertheless it was held that the observation in ***Narasu Appa Mali*** (supra) that 'law' cannot be read into 'law in force' in Article 13(3) stands overruled in ***Sant Ram*** **(**supra).

89. In ***Indian Young Lawyers Association and others (Sabarimala Temple In Re) Vs State of Kerala and others [(2019)11 SCC 1]*** the Supreme Court held that..... *Practices, that perpetuate discrimination on the grounds*

of characteristics that have historically been the basis of discrimination, must not be viewed as part of a seemingly neutral legal background. They have to be used as intrinsic to, and not extraneous to, the interpretive enquiry."

90. Pertinently, in both ***Shayara Bano****(Supra) and* ***Sabarimala Temple In Re*** *(supra)* though the correctness of ***Narasu Appa mali*** (supra) came up for consideration, the Supreme Court did not deem it fit to consider the question and left it to be decided at the appropriate case.

91. What is now projected by the appellants is that the decision in ***Narasu Appa Mali*** *(Supra*) holds good and therefore, the custom of endogamous marriage being the personal law relating to marriage of Knanaya Community, and hence even if a case of infringement of fundamental right is made out, the same cannot sustain because in Article 13(3)(b) 'laws in force' does not include the custom and usage.

92. There is considerable difficulty in accepting the above proposition. Admittedly, there is no statutory personal law as far as the Knanaya community is concerned. Neither is the case that, they have a uncodified personal law. What is projected is that by usage and custom, practice of endogamy has transformed into a personal law relating to marriage.

Does Article 13(3)(b) take in the personal law formed based on the usage or custom. ***Narasu Appa Mali*** (Supra) does not answer the above position.

93. Yet another infirmity in the argument of the learned Senior Counsel Sri P.B. Krishnan is that, i) going by the decision in **Sant Ram** (*supra*), the word 'law' appearing in Article 13(3)(a) cannot be diversified from the definition of 'law in force' appearing in Article 13(3)(b). ii) To sustain the plea that the personal law of marriage is outside the purview of Article 13(3) of the Constitution of India, the appellants must establish that the practice of endogamy is depicted as a personal law which is evident from any authoritative text. What is now projected before this Court is that the practice of endogamy is a custom and therefore partakes the character of a personal law.

94. The question whether the appellants have proved the custom of endogamy is yet another facet of this issue. But in so far as the precedential value of the decision of the Bombay High Court in ***Narasu Appa Mali*** *(Supra)* is concerned, this Court finds that the same is no longer res integra in view of the decision of the Division Bench of this Court in ***Kunhimohammed v. Ayishakutty [2010 (2) KLT 71]****, which* has expressly disagreed with the views

of the Division Bench of the Bombay High Court. Para 42 is extracted for reference.

> "**42. "*Personal Law is also, according to us, 'law'. It is 'existing law' and 'law in force 'as contemplated by the constitutional provisions. Such stipulations in personal law cannot be out of bounds for Art.13 of the Constitution. Any stipulation of personal law which offends the fundamental right to equality and life under Arts.14 and 21 of the Constitution will also have to be declared void under Art.13. According to us, the decision of the Bombay High Court in The State of Bombay v. Narasu Appa (AIR (39) 1952 Bom. 84) does not lay down the law correctly. We respectfully disagree with the learned Judges. The Supreme Court, according to us, has not accepted and endorsed the dictum in Narasu Appa (supra) in Srikrishna Singh v. Mathura Aahir & Ors. ((1981) 3 SCC 639). The Division Bench of this Court in Mathew & Another v. Union of India (1999 (2) KLT 248 =1999 (2) KLJ 824) has not considered the question in depth……"*

The Civil Appeal No.5257 of 2011 carried out from the above decision was dismissed by the Supreme Court as abated on 13-12-2018.

95. In ***Youth welfare federation of India Vs Union of India [(1997) I AP.L.J 159]***, a Full Bench of the Andhra Pradesh High Court considered the question as to whether the words 'law in force' in Article 13(3)(b) has the same meaning 'existing law' in Article 13(3)(a). It was held as follows.

> ***"A combined reading of Article 13, 366(10) and 372 of the Constitution of India reveals the true intention of the use***

of the words in Arts 13 and 372, It would thus be correct to say that the expression "laws in force" or 'law in force in Arts 13 and 372 have the same meaning as "existing law" in Art 366(10) except the words stand extended in Art 13 to also include customs or usages having force of law because Art 13(3)(b) is to be read with Article 13(3) (a)……"

96. The question as to whether a social arrangement within a social group or religious community would come withing the purview of Article 13(3) (b) is another aspect to be considered. This Court is of the considered view that the law referred to in Article 13 must be a public rule or such other nature explicitly stated in Article 13 and does not take any social arrangement within a social group of a religious community. Hence, the claim of the appellants for protection under Article 13(3)(b) is rejected.

<u>Endogamy as a Custom and as essential Religious Practice</u>

97. The question as to whether endogamy is followed as a custom may not have any significance since, custom or usage also must conform to the rights under Part III of the Constitution. However, the appellants may succeed if it is shown that the practice of endogamy falls within the sphere of 'essential religious' practice.

98. The church contends that it is entitled to follow endogamy as a matter of right since it is within its religious domain. Moreover, it is further contended that the practice of endogamy was followed for time immemorial and that since it is followed as a custom, it has the effect of law. But then, the larger question is whether such a custom is established in the present case.

99. In **Varkey** v. **St. Mary's Catholic Church, Mulakkulam [1997 (2) KLT 192]**, this Court held that it is the essence of special usage modifying the ordinary law that they should be ancient and invariable and it is further essential that they should be established to be so by clear and unambiguous evidence. By means of such evidence, the court can be assured of their existence and possess the conditions of antiquity and certainty on which alone their legal title to recognition depends. When the courts are called upon to decide the question of custom, if the law is to be upheld as a right, it should be immemorial in origin, certain and reasonable in nature and continuous in use.

100. In ***Kandathy and others** Vs **Kuttymammi [1970 KLT 799],*** this Court considered the attributes of a custom before it can be elevated into a rule of law. It was held that… "Antiquity is essential for a custom to be obligatory. "But antiquity", as Alien, in an illuminating passage, observes, "is

as relative term and if it were applied as a test without qualification, every custom would necessitate indefinite archaeological research." The arbitrary rule about the age of a custom having to be immemorial, "time whereof the memory of a man runneth not to the contrary" does not apply to India. The custom to be valid must be uniform and continuous, so that the conviction of the members of the community that they are acting in accordance with law, when they obey the custom should be clearly shown."

101. In ***Kizhakkayi Dasan Vs Kuniyil Cheerootty [2025(7) KHC 197],*** a Division Bench of this Court held that if a right is claimed based on a custom, it must be pleaded and proved with meticulous details. Following the decision of Supreme Court in ***Saraswathi Ammal VS Jagadambal and Another*** **[(1953) 1 SCC 362]**, the Division Bench went on to hold that the necessity of rational and solid proof of the existence of a particular custom in the community and locality of the party claiming the existence of the custom is a must.

102. In ***Bimashya and others Vs Janabi (smt) Alias Janawwa [(2006) 13 SCC 627],*** the Apex Court held 'A custom is a particular rule which has existed either actually or presumptively from time immemorial, and has

obtained the force of law in a particular locality although contrary to or not consistent with the general common law of the realm.

103. A custom to be valid must have four essential attributes. Firstly, it must be immemorial: Secondly, it must be reasonable; thirdly it must have been continuing without interruption since its immemorial origin, and fourthly it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and persons who it is alleged to affect. ***{See Halsbury's law 4th Edn Vol 12, para 401, 406}.***

104. In ***Ratanlal @ Babulal Chunilal Samsuka Vs Sundarabai Govardhandas Samsuka (D) Thr. Lrs and others [(2018) 11 SCC 119]*** the Supreme Court held that the Custom on which the appellants are relying, is a matter of proof and cannot be based on a prior reasoning or logical and analogical deductions, as sought to be canvassed. ……"

105. When the appellants assert that, the custom of endogamy, which partakes the character of the rule of law, is *sine qua non* to have the membership in the second defendant Church, it is their burden to establish that not only there is a custom among the Southists, but that custom has been followed for time immemorial.

106. It is beyond cavil that the establishment of the Southist Church was on or after the Papal Bull was issued in the year 1911. When defendants 1 and 2 assert before the Court that, the requirement to follow endogamy unless prohibited by law must be taken as one of the criteria for the membership in the Church, it is their burden to prove that, not only the custom was for time immemorial, but also it is an essential religious practice, because in order to sustain their plea what is claimed is protection under Article 26(b) read with Article 29 of the Constitution of India.

107. The crucial factor, which, according to the learned Senior Counsel, Sri.P.B.Krishnan, will prove the custom of endogamy, is Ext.B7 letter dated 4.8.1998, which refers to the practice of endogamy in the community. It is true that, that in Ext.B7, there is a reference to the practice of endogamy in the community. But then, the question is whether the practice of endogamy partakes the character of an essential religious ceremony or a custom which is accepted among the community.

108. To test the above argument, one needs to see whether the religion of Christianity recognizes any sub-caste so as to enable the appellants to contend that they are entitled to adopt their own religious practice.

109. In ***S.Rajagopal** VS **C.M.Armugam and others [AIR 1969 SC 101],*** it is held by the Supreme Court that the Christian religion does not recognize any caste classifications. All Christians are to be treated as equal and there is no distinction between one Christian and another of the types that is recognised between members of different castes belonging to Hindu religion. In fact, caste systems prevails only among Hindus or possibly in some religion closely allied to the Hindu religion. The tenets of Christianity militate against persons professing Christian faith being divided or discriminated based on such classification as caste system.

Whether the finding of first appellate court that the appellants have established the custom of endogamy can be questioned by the respondents?

110. That takes this Court to decide whether in the absence of a cross objection the plaintiffs can successfully question the finding of the first appellate court. It is true that the first appellate court held that the appellants have established a valid custom of endogamy. However, pertinently when this Court has framed questions of law as to whether the appellants have established the existence of a custom of endogamy, it is imperative for this Court to consider this question.

111. In ***Sahadu Gangaram Bhagade VS Special Deputy Collector, Ahmednagar and Anr. [{1971} 1 SCR 146]***, the Supreme Court observed that

" the right given to a respondent in an appeal to file cross objection is a right given to the same extent as of a right of appeal to lay challenge to the impugned decree if he is said to be aggrieved thereby. Taking any cross objection is the exercise of right of appeal and takes the place of cross- appeal by a person aggrieved by the decree so also a cross objection is preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and need to neither prefer an appeal nor take any cross objection though certain findings may be against him. Appeal and cross objection both are filed against decree and not against the Judgment and certainly not against any finding recorded in a judgment.

112. The above position was in respect of cases governed under pre amendment to the CPC. After the 1976 amendment, Sub Rule (1) of Rule 22 of Order XLI makes it permissible to file an appeal against the finding.

113. In ***Banarsi and ors Vs Ram Phal [(2003) 9 SCC 606],*** the Supreme Court considered the impact of 1976 amendment and held that even after the 1976 amendment, the respondent need not file any cross objection laying challenge to any finding adverse to him in a judgment as the decree is entirely in his favour and he may support the decree without cross objection. Paragraph Nos.10 and 11 of the decision read as under:

"10. The CPC *amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:*

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

***11.** In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent*."

114. Thus, this Court finds no merit in the contention of the appellants that the question of validity of custom cannot be gone into by this Court in appeal. In fact, it is pertinent to note that, it is the appellants who first raised the plea of customary right of the defendants 1 and 2 to practice endogamy which necessitated this Court to frame a substantial questions of law and consider the same.

115. On a conspectus consideration of the material evidence, albeit this Court is satisfied that the appellants have failed to establish the custom of endogamy.

ENDOGAMY AS AN ESSENTIAL RELIGIOUS PRACTICE

116. Another facet of the argument of the appellants is that they being an ethnic community, follow the practice of endogamy to maintain purity in blood. First of all, there is no authoritative materials to support the argument. Be that as it may, to test the above argument, one needs to see whether, any reference is there to endogamy under the Canon law or for that matter, in Divine law.

117. Going by the Code of Canon of Eastern Churches, certain degree of marriages is prohibited.

"Canon 808.1 -*In the direct line of consanguinity, marriage is invalid between all ancestors and descendants.*

808.2. In a collateral line of consanguinity, marriage is invalid and including the fourth degree."

118. Bible (Galatians – 3: 28) proclaims that ***'there is neither Jew nor Greek, slave nor free, male nor female, for you are all one in Christ Jesus.'***

119. Yet another aspect to be noticed is the contents of Ext.B19 letter which is extracted below:

"Your Grace,

I write in reference to your Letter of 29 August 2017 (Prot. No. Abp 118/2017) regarding the jurisdiction of the Archbishop of Kottayam, which is currently limited to the territorium proprium. Let me first observe that your Letter did not reach this Dicastery until mid-October yet a reply could in any case only be appropriately made after the Plenary Session of the Congregation (9-12 October 2017), as the Knanaya community was a theme.

As Your Grace knows, this Dicastery has been studying the situation of the Knanaya community for some time, especially thanks to the work of the Delegate ad referendum, H.E Msgr. Michael Mulhall, Bishop of Pembroke (Canada), who dedicated much time to the question from November 2015 until March 2017. One of the elements underlined by Bishop Mulhall, which I thoroughly endorse, is that your leadership is deserving of praise. You have striven zealously to preserve the community's inner cohesion and vitality, communal memory, and proper traditions within the ecclesiastical framework, a task made especially difficult in times of increased migration. Moreover, you have generously provided an ecclesial home for some members of the Syro-Malankara Knanaya community. Thank you, Your Grace.

While the study of Bishop Mulhall offered hopeful avenues to explore in the years ahead, the basic position of this Congregation remains unchanged. Specifically, while the link, which has developed between the practice of endogamy and ecclesial life, has been ***tolerated de facto*** *(emphasis supplied by court) in the territorium proprium, it is not to be permitted elsewhere Within India, as Your Grace knows, the Holy Father has opened the way to the full restoration of the authority of the Major Archbishop and the Synod of the Syro-Malabar Church over the entire country. In this new context, it would be appropriate that the Synod discuss the question of the Knanaya community in India, in view of the request presented by Your Grace, so as to submit an eventual proposal to this Dicastery.*

Certainly, this Dicastery understands that the Knanaya community spread throughout the world wishes to find a point of unity in one figure, the Archbishop of Kottayam. Nonetheless, these are members of the Syro-Malabar or Syro-Malankara Catholic Churches before all else, and they must look to their local Bishops for unity in matters of faith and morals. Other means must be sought to help Knanaya persons living far from home to retain, where possible, their cultural ties; this can certainly include visits or letters from the Archbishop of Kottayam or his Auxiliary, with the prior accord of the local bishop, provided that any confusion regarding jurisdiction is avoided.

Once again, Your Grace, I thank you for your excellent work and sincere desire to do what is best in difficult circumstances. A copy of this letter has been sent to the Major Archbishops.

With cordial and fraternal best regards, I am

Sincerely,
Leonardo Card, Sandri Prefect

Cyril Vasil, S.I.
Archbishop Secretary"

120. Curiously enough, defendants 1 and 2 admit that, there is no difference in the essential religious rites for a Knanaya catholic and other catholics under defendants 3 and 4. Most importantly, defendants 1 and 2 permits marriage between the Knanaya Catholic and a Jacobite Knanaya and if the said marriage happens, the embargo now attempted to be projected will not be there. The very fact that the defendants 1 and 2 permit a Knanaya Catholic to marry a Jacobite Knanaya shows that, the entire edifice on which the practice of endogamy is sought to be supported fails. Despite this, a strange reasoning is offered in the written statement to the effect that such marriage is permissible because Jacobite Knanaya is also an ethnic group. Suffice to say, the above reasoning defies logic. Therefore, it is concluded that

the defendants have failed to establish that 'Endogamy' is followed as a custom. Consequently, the plea that endogamy is an essential religious practice must also fail.

DOES FORCEFUL RELINQUISHMENT OF MEMBERSHIP UNDER 2ND DEFENDANT CHURCH VIOLATES ARTICLE 25 OF THE CONSTITUTION OF INDIA ?

121. The stand of the appellants seems to be that, since they have the status of a religious denomination, they are entitled to follow a particular custom which according to them forms an essential religious practice. In view of the said contention, it is necessary to decide whether the Knanaya Community is entitled to protection under Article 26(b) read with Article 29 of the Constitution of India. While deciding this point, one must bear in mind that protection claimed under Article 26(b) and Article 29 can sustain only if it is found that the practice of endogamy is an essential religious practice.

EXTENT OF APPLICATION OF ARTICLE 25 OF THE CONSTITUTION OF INDIA

122. The claim of the plaintiffs 2 to 4 that the act complained of infringes their fundamental right is resisted by the appellants by falling back on Articles 26(b) and 29 of the Constitution of India. Before going to the question whether the action of the appellants is protected under Article 26(b), this Court must decide whether the act complained of infringes the fundamental rights of plaintiffs 2 to 4 guaranteed under the Constitution of

India. The relevant articles, Articles 25, 26 and 29 of the Constitution of India read as under:

> "**25. Freedom of conscience and free profession, practice and propagation of religion.**—
>
> (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise 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 activity which may be associated with religious practice;
>
> (b) providing for social welfare and reform or the 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 (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. 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 matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

xxx xxx xxx

29. Protection of interests of minorities.—

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the 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 them."

123. When we look at Article 25(1) of the Constitution of India, all citizens are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion and that right is subject to public order, morality and health and to the other provisions of this Part. No doubt, it could be said that the freedom to profess a religion is subject to other provisions of this Part. What is argued before this Court is whether the freedom under Article

25 is curtailed by the right conferred under Article 26(b) and Article 29 of the Constitution on a religious denomination.

124. Though the learned Senior Counsel appearing for the appellants contended that, the issue of fundamental rights was never at large before the trial court, it is an undeniable fact that the entire gamut of the case revolves around how far the conflict of the right under Article 25 and clause 3 of Ext.B1 bye-law could be reconciled. Both parties knew exactly, what is the actual issue before the court. Therefore, there is no gainsay in contending that the question of applicability of Article 25 was not a question at all before the court below. Therefore, the aforesaid contention is required to be rejected.

125. Article 25 speaks about the right of freedom of conscience and the right to profess, practice and propagate religion, subject to public order, morality and health and to the other provisions of this Part. The question for consideration is whether the operation of Article 25 is hedged by Article 26(b).

126. Article 25(1) says, subject to public order, morality and health and subject to other provisions of this Part, every citizen has right to profess and practice his religion. The appellants can resist a claim under Article 25 only if it is shown that the right to practice endogamy is an essential religious

practice. This Court has already found that the appellants have failed to prove that the practice of endogamy is an essential religious practice or a custom.

127. That leads us to a situation where, it will be sufficient to pronounce upon the rights of plaintiffs 2 to 4 under Article 25 of the Constitution of India.

128. In ***Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj*** *VS* ***State of Gujarat [(1975) 1 SCC 11],*** the Supreme Court held that *"While Article 25, as stated earlier confers the particular rights on all persons, Article 26 is confined to any religious denomination or any section thereof. Article 19(1) confers various rights mentioned in (a) to (g) on all citizens. A religious denomination or a section thereof is not a citizen. In that sense, the fields of the two Articles may be to some extent different. ….."*

129. In **Raja Suriya Pal** Vs **The State of U.P. & Anr. [1952 SCR 1056],** it was held that in exercise of the freedom of religious practice a person would not be allowed to commit an act which is punishable as 'untouchability, under Article 17 of the Constitution.

130. This decision perhaps gives an indication, that right of a religious denomination extends on the premise that it has the right to follow its own religious practice.

131. In ***Gillette Vs U.S. [401. U.S. 437 (1971)],*** *Justice Douglas observed "Conscience and belief are the main ingredients of First Amendment rights. They are the bedrock of free speech as well as the religion. It was further observed. "Conscience is often the Echo of religious faith……It may also be the product of travail, meditation or sudden revelation related to a moral comprehensions of the dimensions of the problem, not to a religion in the ordinary sense."*

132. When the expression 'freedom of conscience' is read in juxtaposition to the words 'right freely to profess, practice and propagate religion', it would appear that the 'freedom of conscience', reference is made to the mental process of belief or non-belief, while profession, practice and propagation refers to the external action in pursuance to the concept of the person.

133. It is worthwhile to mention that the right of a religious community and every member thereof under Articles 25(1) and 26(b) to practice their religion is absolute and cannot be interfered with by the state or any member of any other community. But in the present case, the church itself stands in opposition to its members, especially if one of its members refuses to follow the practice of endogamy.

134. It must be remembered that certain practices, even though regarded as religious, may have stemmed merely on account of superstitious beliefs and, in that sense, be only an extraneous and unessential accretion to the religious belief. Such practices can be abrogated and are not protected under this Article. On the material evidence, it is certainly open for the court to decide whether a particular practice is religious in character or not. Therefore, it is not open for the appellants to contend that the entire issue is not open for judicial scrutiny.

135. More importantly, the essential part means the core beliefs upon which the religion is founded. Essential practices, thus, would mean those practices that are fundamental to follow a religious belief, without which a religion will be no religion.

136. In ***The Commissioner, Hindu Religious Endowments, Madras*** *VS* ***Sri Lakshmindra Thirtha Swamiar of Sri Shirur Matt [AIR 1954 SC 282],*** the Supreme Court held that it is not for the courts to decide whether what constitutes the essential part of a religion and that must be decided according to the tenets of the religion, and no outside authority has any jurisdiction to interfere with their decision in such matters.

137. Based on the above decision, it is the case of the appellants that the issue with regard to endogamy being an essential religious practice, it is not open for judicial scrutiny. Perhaps, this Court might have been persuaded to accept the above argument, provided the appellants were able to show that the practice of endogamy is an essential religious practice. In the present case, disputes stem not only from the insistence by the appellants to follow the practice but also to expel those who do not follow the same. In such a situation, it will be wholly impermissible for the courts to decline jurisdiction on the ground that the same is within the domain of a particular community.

138. In a case like this, when the pleadings on record indicate that failure of a member of a church to follow the practice of endogamy results in excommunication, the consequence is drastic, and it deprives a person of exercising his constitutional rights. In such a situation, it will be difficult for the courts to accept the suggestion that such practice must be upheld, as it is within the tenets of the religion.

139. In ***Shakti Vahini Vs Union of India [(2018) 7 SCC 192]***, the Supreme Court held that ….'Once a fundamental right is inherent in a person, the intolerant groups who subscribe to the view of superiority class complex

or higher clan cannot scuttle the right of a person by leaning on any kind of philosophy, moral or social or self- proclaimed elevation."

140. In ***Shafin Jahan Vs Asokan K.M & Ors. [(2018) 16 SCC 368],*** Supreme Court, while considering the right of a woman to marry a man of her choice, held that …. "Non- acceptance of her choice would simply mean creating discomfort to the constitutional right by a constitutional court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the court is to uphold the right and not abridge the sphere of the right unless there is a valid authority of law".

141. The discussions above will lead the court to adopt an interpretation which will aid the furtherance of a right under the Constitution, rather than to abridge the same. Suffice to say, one cannot dispute the proposition that plaintiffs 2 to 4 certainly are justified in their contention that the act of defendants 1 and 2 certainly infringes their right guaranteed under Article 25 of the Constitution.

EXTENT OF APPLICATION OF ARTICLE 26(b)

142. To deny the claim under Article 25, it is the case of the appellants that such right is subservient to the right of a religious denomination under Article 26(b). Most importantly, when a right is claimed under Article 26(b)

by the appellants to justify excommunication of its members, the crucial question to be considered is whether the right under Article 25 is controlled by Article 26(b). One must not forget the fact that, primarily, the right under Article 26(b) is controlled by public order, morality and health. There cannot be any two views when the court is called upon to decide whether the word 'morality' under Article 26 speaks about constitutional morality or social morality. It is certain that it is 'constitutional morality'.

143. However, one must certainly balance the right under Article 25 and Article 26(b). One cannot remain oblivious of the fact that the right under Article 25 is subject to the entitlement of the State to regulate the right by framing any law under Article 25(2). But when it comes to Article 26, it says that the same is subject to public order, morality and health. In the context of Article 26, this court finds it difficult to hold that Article 26(b) can stand alone by abridging the rights under Article 25. Therefore, a balanced view between the two articles is required. That would necessarily mean that Article 26(b) can operate only subject to the exception stated therein and the law which the State may bring in terms of Article 25(2).

144. As a matter of fact, if the word morality is interpreted in such a manner as not to include constitutional morality, then the operation of Article

25(1) will become meaningless. Suppose in a case like this, there is insistence from the ecclesiastical authorities to follow the practice which has no support from either custom or religious text. It is open to an individual to defy the said order because it erodes into his fundamental right under Article 25. So when it is clear that the insistence of endogamy is against all morals, the courts will have to hold that the right under Article 26(b) cannot be a stand-alone right, impeaching the constitutional morality. Therefore, the interpretation will have to be on a case-by-case basis as laid down by the Supreme Court in ***Sabarimala Temple Re*** (Supra).

145. In ***Navtej Singh Johar & Ors Vs Union of India [(2018) 10 SCC 1]***, the Supreme Court explained the concept of constitutional morality and held that "the concept of constitutional morality would serve as an aid for the court to arrive at a just decision which would be in consonance with the constitutional rights of the citizen, howsoever small that populace may be. The idea of a number in this context is meaningless, like zero on the left side of any number.

146. In ***Indian Young Lawyers Association And Others (Sabarimala Temple, In Re] v. State of Kerala and Others [(2019) 11 SCC 1]*****,** Justice Nariman in para 176.7 stressed the term 'morality' refers to that which is

considered abhorrent to civilized society, given the mores of the time, by reason of harm caused by way, inter alia, of exploitation and degradation.

147. It is interesting to note that in Article 26, the rights of a religious denomination are not made subject to the rights of citizen under other Parts of the Constitution. It is worthwhile to note the concurring Judgment rendered by Justice Dr.D.Y Chandrachud in paragraphs 215 and 216 of the above decision, which is extracted hereunder:

> ***"215.*** *The content of morality is founded on the four precepts which emerge from the Preamble. The first among them is the need to ensure justice in its social, economic and political dimensions. The second is the postulate of individual liberty in matters of thought, expression, belief, faith and worship. The third is equality of status and opportunity amongst all citizens. The fourth is the sense of fraternity amongst all citizens which assures the dignity of human life. Added to these four precepts is the fundamental postulate of secularism which treats all religions on an even platform and allows to each individual the fullest liberty to believe or not to believe. Conscience, it must be remembered, is emphasised by the same provision. The Constitution is meant as much for the agnostic as it is for the worshipper. It values and protects the conscience of the atheist. The founding faith upon which the Constitution is based is the belief that it is in the dignity of each individual that the pursuit of happiness is founded. Individual dignity can be achieved only in a regime which recognises liberty as inhering in each individual as a natural right. Human dignity postulates an equality between persons. Equality necessarily is an equality between sexes and genders. Equality postulates a right to be free from discrimination and to have the protection of the law in the same manner as is available to every citizen. Equality above all is a protective shield against the arbitrariness of any form of authority. These founding principles*

must govern our constitutional notions of morality. Constitutional morality must have a value of permanence which is not subject to the fleeting fancies of every time and age. If the vision which the founders of the Constitution adopted has to survive, constitutional morality must have a content which is firmly rooted in the fundamental postulates of human liberty, equality, fraternity and dignity. These are the means to secure justice in all its dimensions to the individual citizen. Once these postulates are accepted, the necessary consequence is that the freedom of religion and, likewise, the freedom to manage the affairs of a religious denomination is subject to and must yield to these fundamental notions of constitutional morality. In the public law conversations between religion and morality, it is the overarching sense of constitutional morality which has to prevail. While the Constitution recognises religious beliefs and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. Where a conflict arises, the quest for human dignity, liberty and equality must prevail. These, above everything else, are matters on which the Constitution has willed that its values must reign supreme.

216. The expression "subject to" is in the nature of a condition or proviso. Making a provision subject to another may indicate that the former is controlled by or is subordinate to the other. In making clause (1) of Article 25 subject to the other provisions of Part III without introducing a similar limitation in Article 26, the Constitution should not readily be assumed to have intended the same result. Evidently the individual right under Article 25(1) is not only subject to public order, morality and health, but it is also subordinate to the other freedoms that are guaranteed by Part III. In omitting the additional stipulation in Article 26, the Constitution has consciously not used words that would indicate an intent specifically to make Article 26 subordinate to the other freedoms. This textual interpretation of Article 26, in juxtaposition with Article 25 is good as far as it goes. But does that by itself lend credence to the theory that the right of a religious denomination to manage its affairs is a standalone right uncontrolled or unaffected by the other fundamental freedoms? The answer to this must lie in the negative. It is one thing to say that Article 26 is not subordinate

to (not "subject to") other freedoms in Part III. But it is quite another thing to assume that Article 26 has no connect with other freedoms or that the right of religious denominations is unconcerned with them. To say as a matter of interpretation that a provision in law is not subordinate to another is one thing. But the absence of words of subjection does not necessarily attribute to the provision a status independent of a cluster of other entitlements, particularly those based on individual freedoms. Even where one provision is not subject to another there would still be a ground to read both together so that they exist in harmony. Constitutional interpretation is all about bringing a sense of equilibrium, a balance, so that read individually and together the provisions of the Constitution exist in contemporaneous accord. Unless such an effort were to be made, the synchrony between different parts of the Constitution would not be preserved. In interpreting a segment of the Constitution devoted exclusively to fundamental rights one must eschew an approach which would result in asynchrony. Co-existence of freedoms is crucial, in the ultimate analysis, to a constitutional order which guarantees them and seeks to elevate them to a platform on which every individual without distinction can reap their fruit without a bar to access. Thus, the absence of words in Article 26 which would make its provisions subordinate to the other fundamental freedoms neither gives the right conferred upon religious denominations a priority which overrides other freedoms nor does it allow the freedom of a religious denomination to exist in an isolated silo. ***(emphasis supplied by court)*** *In real life it is difficult to replicate the conditions of a controlled experiment in a laboratory. Real life is all about complexities and uncertainties arising out of the assertions of entitlements and conflicts of interests among groups of different hues in society. The freedoms which find an elaboration in Part III are exercised within a society which is networked. The freedoms themselves have linkages which cannot be ignored. There is, therefore, a convincing reason not to allow the provisions of Article 26 to tread in isolation. Article 26 is one among a large cluster of freedoms which the Constitution has envisaged as intrinsic to human liberty and dignity. In locating the freedom under Article 26 within a group—the religious denomination—the text in fact allows us to regard the fundamental*

right recognised in it as one facet of the overall components of liberty in a free society."

148. The above observation is a complete answer to the argument of the appellants that they are entitled to exist as a religious denomination in isolation.

149. Perhaps imbibed by the changing views of the court on the concept of constitutional morality, the Supreme Court in ***Central Board of Dawoodi Bohra Community and ors*** *Vs* ***State of Maharashtra and others [(2023) 4 SCC 541 :AIR 2023 SC 974]***, doubted the decision in ***Sardar Syedna Taher Saifuddin Saheb*** (supra) and referred the matter to a larger bench.

150. Applying the test as laid down above to the facts of the case, it is beyond cavil that the defendants 1 and 2 must establish that the Knanaya community itself will constitute a religious denomination. To consider the rights of a denomination under Article 26(b), one must take the religion of Christianity as a whole. Going by the decision of the Supreme Court in ***Rajagopal*** ***(****supra****),*** the Christian religion does not recognize any caste classifications, and that 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 the Hindu religion. The

tenets of Christianity militate against persons professing Christian faith being divided or discriminated based on any such classification as the caste system. Based on the above, it is concluded that the claim of the defendants 1 and 2 that they are a religious denomination coming under Article 26(b) must fail because they have failed to establish the practice of endogamy as an essential religious practice. Axiomatically, the claim for protection under Article 29 must also fail.

151. Therefore, this Court is inclined to conclude that, the stand of the appellants to deny the rights under Article 25 of the Constitution to the plaintiffs 2 to 4, falling back on Article 26(b) of the Constitution of India, cannot stand scrutiny of law, especially since they failed to prove that endogamy is an essential religious practice.

CIVIL COURTS' JURISDICTION TO ENTERTAIN THE PLEA OF VIOLATION OF FUNDAMENTAL RIGHTS

IMPACT OF ARTICLE 32(3) OF THECONSTITUTION OF INDIA

152. The appellants in RSA No.656/2022 have a further case that the civil court lacks jurisdiction to entertain a civil suit where question regarding the violation of the rights guaranteed under Part-III of the Constitution of India is involved. In support of his contention, heavy reliance is placed on Article 32, which reads as under:

> "**32.** ***Remedies for enforcement of rights conferred by this Part****.—*
> *(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*
> *(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*
> *(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all* or any of the powers exercisable by the Supreme Court under clause (2).
> *(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."*

Article 32 (1) confers the right on the citizen to move before the Supreme Court by appropriate proceedings for the enforcement of the rights conferred under this Part. Article 32(2) deals with the power of the Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari.

153. In ***Prem Chand Garg And Another*** *v.* ***The Excise Commissioner, U.P. And Others*** **[1962 SCC OnLine SC 37 : AIR 1963 SC 996]**, the significance and the importance of the above Article along with its objects, were described thus: "*The fundamental right to move this Court can, therefore be appropriately described as the corner-stone of the democratic edifice*

raised by the Constitution. That is why it is natural that this Court should regard itself "as the protector and guarantor of fundamental rights", and should declare that "it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringements of such rights"... In discharging the duties assigned to it, this Court has to play the role of a "sentinel on the qui vive' and it must always regard it as its solemn duty to protect the said fundamental rights zealously and vigilantly."

154. The sentinel question involved in this issue is whether a citizen has a remedy to move the Supreme Court under Article 32 against a non-state action. What is argued before this Court is that the right of a citizen to enforce a fundamental right can only be either before the High Court under Article 226 or before the Supreme Court under Article 32 of the Constitution of India.

155. A plain reading of Article 32 will show that the Jurisdiction of the Supreme Court can be invoked when the violation is perpetuated by the State or an Authority under Article 12 of the Constitution of India. This is primarily because of the power of the Supreme Court to issue prerogative writ. However, in the recent past, the Supreme Court has expanded its power to issue the writ of Habeus Corpus against private individuals as well. But that

by itself will not stand as a qualification to invoke the Article against a non-state actor.

156. Similarly, the Jurisdiction of this Court under Article 226 is also confined to the actions of the State and its instrumentalities. What is now projected is that unless the Parliament by law empowers a court other than the Supreme Court to exercise its powers under Article 32(1), no court can take cognizance of a case where violation of fundamental right is involved.

157. In ***Kaushal Kishor*** *v.* ***State of U.P.*** **[(2023) 4 SCC 1],** the Supreme Court explained the entitlement of a citizen to enforce the fundamental rights under Part-III as a vertical action as well as a horizontal action. Referring to paragraph Nos.78 and 79, the learned Senior Counsel pointed out that the rights conferred under Article 25 are to be qualified as a horizontal action and therefore, it cannot be enforced against a private person horizontally. In addition to the above, it is contented that, unless the Parliament through law empowers a court to exercise the jurisdiction of all or any of the powers exercisable by the Supreme Court under clause 2, the civil court cannot entertain the civil suit, since the civil court constituted under the Kerala Civil Courts Act, 1957 is not an empowered court under Article 32(3).

158. As stated earlier, it is inconceivable that one cannot invoke Article 226 in a case of the present nature. Even if the right under Article 226 is invoked, the appellants can easily destroy the said right by contending that the jurisdiction of this Court cannot be invoked against a private person, unless he shows that some public functions are attributable to the person infringing the right.

159. In ***Vidya Verma through Next Friend R.V.S.Mani*** *v.* ***Shiv Narain Verma*** **[(1955) 2 SCC 513 : AIR 1956 SC 108]**, the Constitution Bench of the Supreme Court held that when a person's right of personal liberty is infringed by a private individual, he must seek a remedy under the ordinary law and not under Article 32.

160. Therefore, this Court is inclined to conclude that because of operation of Article 32(3), it cannot be said that the jurisdiction of the civil court is restricted in any manner and when infringement of such fundamental right occurs at the hands of a private individual, the right to invoke civil remedy is not obliterated under any circumstances, nor it is hedged by the presence of Article 32(3).

CIVIL RIGHT QUA NON STATE ACTOR

161. Alternatively, it is contended that, even assuming a civil action is possible, the same is not possible against a non-state actor who violates the fundamental right of a citizen, in view of the decision of the Supreme Court in **Kuashal Kishor** (*supra*)**.**

162. In **Kaushal Kishor** *(supra),* the Apex Court explained the nuances regarding the vertical and horizontal action. What is now projected is that when an infringement of a fundamental right is by a non-state actor, the scope of interference is limited. At any rate, it is pointed out that in **Kaushal Kishor** *(supra)*, the Supreme Court limited the civil action against non-state actor to certain Articles alone.

163. At the outset itself, this Court cannot subscribe to the above argument simply because, if accepted, there will be no forum to ventilate the grievances of infringement of fundamental rights by the non-state actors.

164. In ***K.S. Puttaswamy (Privacy-9J.) v. Union of India*** **[(2017) 10 SCC 1],** the Supreme Court reaffirmed the view that when the author of an identical interference is a non-state actor, an action at common law would lie in an ordinary court. Para 397 of the decision reads as under:

> **"*397.*** *Once we have arrived at this understanding of the nature of fundamental rights, we can dismantle a core assumption*

> *of the Union's argument : that a right must either be a common law right or a fundamental right. The only material distinctions between the two classes of right—of which the nature and content may be the same—lie in the incidence of the duty to respect the right and in the forum in which a failure to do so can be redressed. 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. Constitutional and fundamental rights, on the other hand, provide remedy against the violation of a valued interest by the "State", as an abstract entity, whether through legislation or otherwise, as well as by identifiable public officials, being individuals clothed with the powers of the State. It is perfectly possible for an interest to simultaneously be recognised as a common law right and a fundamental right. Where the interference with a recognised interest is by the State or any other like entity recognised by Article 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."*

165. Turning to **Kaushal Kishor** *(supra)*, it is evident that the table provided therein makes it clear that the right under Article 25 is available to a private individual. Merely because instances were carved out and that in the instances quoted under Paras 78 and 79 of the decision, reference to Article 25 does not find a place, ipso facto will not lead to a conclusion that for enforcement of rights under Article 25 on a violation by a non state actor, no civil action will lie.

166. In ***P.D. Shamdasani** v. **Central Bank of India Ltd.*** **[1951 SCC OnLine SC 85 : AIR 1952 SC 59],** the Supreme Court held that violation of

rights of property by a private individual is not within the purview of these Article and therefore, a person whose rights of property are infringed by a private individual must seek his remedy under ordinary law.

167. When the decision of the Supreme Court in ***K.S. Puttaswamy (Privacy-9J.)*** (supra) and **Kaushal Kishor** *(supra)* are read in conjunction, it becomes inevitable for this Court to conclude that, a horizontal action is perfectly maintainable, if infringement of fundamental rights occurs at the hands of a non-state actor. This Court sees no reason as to why the principles laid down in the above decisions cannot be made applicable to the facts of this case. Admittedly, the infringement of fundamental rights is at the hands of non-state actors, namely defendants 1 and 2. There is no forum other than civil court to remedy the action. Under these circumstances, it will be wholly impermissible for this Court to conclude that only if the Parliament through law, empowers a court other than the Supreme Court to try the cases for enforcement of fundamental rights, then alone the plaintiffs will have remedy. Hence, this Court concludes that the contention of the appellants that only if the Parliament empowers the court other than the Supreme Court for enforcement of fundamental rights, an action for enforcement can be

maintained, cannot be sustained. A horizontal action is perfectly maintainable if the infringement of fundamental rights is by a non-state actor.

WHETHER DEFENDANTS 1 AND 2 CAN SOLEMNISE THE SACRAMENT OF MARRIAGE BETWEEN A KNANAYA AND A NON-KNANAYA?

168. Once it is held that the civil action is maintainable qua defendants 1 and 2, the next question to be considered is whether the mandatory injunction granted by the trial court is sustainable or not. A different perspective was attempted to be drawn by the learned Senior Counsel, Sri.T Krishnanunni, appearing for the appellant in RSA No.23 of 2023, on this issue. According to the learned Senior Counsel, the direction cannot be enforced through the mechanism under Order XXI Rule 32 because the direction is not one capable of enforcement under Section 39 of the Specific Relief Act, 1963.

169. Before deciding the sustainability of the above argument, it requires to be seen whether there is any bar in such marriage and whether a non Knanaya spouse can seek membership in the 2nd defendant church pursuant to the said marriage.

170. In Ext.A12 Judgment, the II Additional District Court, Ernakulam had occasion to consider this question. A perusal of the Judgment shows that reliance was placed by the II Additional District Court to the Code of Oriental Canon Law, Law of Marriage. Canon 9 reads as under :

> ***'A wife may aggregate herself to the rite of her husband without needing any special permission. This is to be understood as a complete transfer of rite and not as a mere temporal accommodation to different liturgical and regulations'.***

Under the same code, it is made clear that when both parents are Catholics, but of different rites, all children, without distinction of sex, follow the father in his rites. It is of no concern in which rite the parents' marriage was contracted. The Judgment of the II Additional District Court in AS No.244 of 2004 was challenged in RSA No.64 of 2017, and in a separate Judgment rendered today, this Court has affirmed the same. Therefore, this Court sees no reason to conclude otherwise.

171. However, one of the distinctive facets drawn in support of their plea by the appellants is that, when the rule of endogamy is not followed, such a marriage cannot be solemnized at the instance of the 1st defendant. But it is not their case that such a marriage is not at all permissible. In fact, they do permit such marriage, and if such marriage is to be conducted, one will have to seek refuge under defendants 3 and 4.

172. While affirming their stand on endogamy, appellants have conceded to the fact that the prayers, beliefs, worships, sacraments, liturgy, pastoral care and all spiritual activities in the Arch Diocese of Kottayam and

the other dioceses of the Syro Malabar Archdiocese are one and the same. However, when it comes to the Kottayam diocese, it is stated that the same is only for Knananities. What is the legal basis for the said stand? Does it follow from the authority derived from the Papal Bull of 1911? Or does it follow from any written code or custom?

173. When we turn to the Papal Bull, which is extracted in the earlier part of the Judgment, it is evident that a separate Diocese was established for Kottayam. But the contention that the creation of the Diocese will include all spiritual matters and that the appellants can form their own system of governance and worship does not have any legal basis. On a conspectus reading of the Papal Bull, this Court is inclined to think that it was only for administrative purposes that the Diocese for the Southists was created. Had there been any decision to confer them exclusive privilege in the religious matter, it would have been spelt out clearly.

174. Still further, the Code of Canon Law for Eastern Churches (Ext.A9), chapter VII, deals with marriage. Cannon 776 defines marriage thus:

> "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 its 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."*

Canon 777 speaks about equal rights and obligations between the spouses and reads as follows:

> "*Cannon 777 : Out of marriage arise equal rights and obligations between the spouses regarding what pertains to the partnership of conjugal life.".*

Turning to Article IV of Title XVI, Chapter VII, Mixed Marriages are defined and it speaks about prohibition of marriage between two baptized persons, one of whom is catholic and the other whom is a non-catholic. Such a marriage cannot take place without permission of the competent authority.

175. The reference to the Canon law is made by this Court only to indicate that, it does not create a distinction among Catholics. It is beyond doubt that the Code of Canon Law forms the bedrock of the system of governance of the spiritual affairs of the Catholics. Perhaps, why the appellants in their written statement clearly admitted that there is no difference in the religious rites, including the sacrament of marriage.

176. Appellants herein are fully aware of the findings rendered by the II Additional District Court, Ernakulam in Ext.A12. Perhaps, they are entitled to take a stand that since they are not parties to the Judgment, the same does not bind them. However, since this Court has affirmed the findings rendered by the courts below while dismissing RSA No.64 of 2017 by a separate judgment rendered today, it is impermissible to take a different view in these appeals.

177. Based on the discussions above, the conclusion that follows is that there is no legal impediment for the defendants 1 and 2 to conduct the sacrament of marriage between a Knanaya and a non Knanaya. The distinction is an artificial creation of the defendants 1 and 2 that does not have the support of the religious authorities.

178. That leads us to consider the next question, whether a declaratory decree and a consequential mandatory injunction can be granted against defendants 1 and 2. It is surprising to note that the appellants herein, who are defendants 1 and 2, have no such case either pleaded or argued. The question as regards the entitlement to seek a mandatory injunction in terms of Section 39 of the Specific Relief Act, 1963 is raised by the 7th defendant in the suit, who is the appellant in RSA No.23 of 2023. The argument is liable to be

rejected outrightly because, the 7th defendant was additional 3rd defendant in OS No.923 of 1989 before the Additional Munsiff's Court, Kottayam and against the Judgment and decree, they filed AS No.244 of 2004 which was dismissed by Judgment dated 20-12-2008. As against the Judgment, no further appeal has been preferred. In such circumstances, the 7th defendant/ Appellant in RSA No.23/2023 is estopped from contending contrary to the findings in AS No.244 of 2004.

179. At any rate, once this Court has concluded that the refusal of the defendants 1 and 2 to perform the sacrament of marriage is not supported by any authority, consequences must follow. The plaintiffs have certainly made out a case for issuance of a mandatory injunction in terms of Section 39 of the Specific Relief Act, 1963.

WHETHER A NON KNANAYA SPOUSE CAN CLAIM STATUS OF HER HUSBANDS COMMUNITY?

180. That leads the court to consider the remaining issue regarding the entitlement of a non Knanaya spouse and the child born out of a Knanaya and a non Knanaya persons. The issue is only incidental in view of the findings of this Court that the practice of endogamy cannot be claimed as a custom or as an essential practice.

181. In support of their plea, the appellants in RSA No.656/2022 placed reliance on the decision of the Full Bench in ***Valsamma Paul*** *VS* ***Rani George [1995 (1) KLT 336(FB)]*** to contend that a wife on marriage cannot claim the status of her husband's community. The decision in ***Valsamma Paul*** *(supra)* was affirmed by the Supreme Court in ***Valsamma Paul*** *Vs* ***Cochin University [(1996) 3 SCC 545].***

182. It must be remembered that the decision of this Court in ***Valsamma Paul*** *(supra)* arose in the context of claim of reservation to the category of Latin catholic. The Supreme Court held that the benefit of reservation will not be entitled to a person who marries a Latin catholic boy, even if the community accepts her.

183. Recognition by a community, insofar as the marriage is concerned, is a personal right of the spouses, as they are entitled to live after marriage openly to the knowledge of the community and the members of the community. The rule of reservation is entirely different from the context of a claim based on a civil right. There is no denial of the fact that a spouse is taken into the family of her husband after her marriage and that she cannot remain in a suspended animation and continue to hold the status of her community before her marriage. However, when a claim of reservation is

raised, the matter should be viewed differently, and that is precisely the reason why the Apex Court affirmed the views of the Full Bench of this Court. However, it is beyond cavil that when it comes to personal right, the principles laid down in ***Valsamma Paul*** *(supra)* cannot have any application. As far as the baptism of their children is concerned, once this Court has concluded that there is no legal bar for a Knanaya to marry a non Knanaya catholic, all consequences follow.

ANSWERS TO THE SUBSTANTIAL QUESTIONS OF LAW.

184. Based on the discussions above, this Court will proceed to answer the substantial questions formulated by this Court in the following order:

1. Whether the trial court committed irregularity in reframing the issues on 9.4.2021, after the trial and at the stage of reserving the case for judgment, causing prejudice to the appellants?

Ans.- The provisions under Order XIV Rule 5 enable the court to strike out or amend issues if they were wrongly framed at any time before the decree, and hence the question is answered against the appellants.

2. Whether the suit is maintainable in the light of the provisions contained under Section 9 of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955?

Ans- The objection to the maintainability of the suit having not raised by the appellants at appropriate time precludes them from raising it before the second appellate stage. Moreover, the suit has been instituted based on a valid resolution, and no prejudice is shown as to how the appellants are affected by the framework of the suit.

3. Is not the suit barred by limitation under Article 58 of the Limitation Act, 1963 and that, whether the plaintiffs 2 to 4 had disclosed a cause of action to sue for the reliefs?

Ans- The suit is not barred by limitation and the plaintiffs have disclosed a cause of action to sue for the reliefs. Moreover, Ext.B1 byelaw having been introduced in the year 2009 cannot determine the rights of the plaintiffs who got membership in the church by birth. Still further, the entitlement for the plaintiffs flows out from the clear admission made by the defendants 1 and 2 in their written statement.

4. Whether the paper publication ordered under Order-I Rule-8 of the Code of Civil Procedure, 1908 at the appellate stage to give notice to the Knanaya community is legal and proper?

Ans- The procedure contemplated under the Code is to render substantial justice to the parties and cannot be fettered by any reason. Defendants 1 and 2 have not raised any objections as regards the manner in which notice was published in terms of Order 1 Rule 8. Going by the power conferred under Order XLI Rule 20 of the CPC, the appellate court was empowered to order notice under Order 1 Rule 8 at the appellate stage.

5. Whether the suit is maintainable without consent of the Central Government under Section 86 of the Code of Civil Procedure, against defendants 5 & 6?

Ans- The provisions of Section 86 are not applicable to defendants 5 and 6 because they were not sued in the capacity as a foreign state, but as the religious head of the foreign State. Further, in view of sub section (4) to section 86, no permission of the Central Government is required.

6. Does the civil court constituted under the Kerala Civil Courts Act, 1957 has jurisdiction to entertain a suit for the enforcement of fundamental rights guaranteed under Part-III of the Constitution of India, in view of Article 32(3)?

Ans- In the light of the decision of the Supreme Court in ***Kaushal Kishor*** *v.* ***State of U.P.*** **[(2023) 4 SCC 1],** the civil action is maintainable if the infringement of fundamental right is by a non state actor. Moreover, going by the decision of the Supreme Court in **Most Rev. P.M.A.Metropolitan and Others v. Moran Mar Marthoma and Another [1995 Supp (4) SCC 286: AIR 1995 SC 2001**], challenge to excommunication is maintainable in a civil suit.

7. In a case where there is a conflict between a byelaw of an Association with that of any of the fundamental rights guaranteed under Article 25 of the Constitution of India, whether plaintiffs 2 to 4 can enforce such rights against defendants 1 to 4?

Ans- In a case of conflict between bye law of an association with that

of a fundamental right of a citizen and its members, the provisions of bye Law must yield to the fundamental rights. In the present case, the membership in the church is not obtained under the byelaw, but by birth. Hence, if any clause in the byelaw offends the fundamental right and thereby threatens to deprive an individual of his membership in the church, he is entitled to ignore the same.

8. *Is the suit bad for not complying with Order 1 Rule 8 of the Code of Civil Procedure, 1908 to the 2nd defendant and whether the 2nd defendant is properly represented.*

Ans- Suit is not bad for not complying Order 1 Rule 8 to the defendants. 2nd defendant had no case that he was not properly represented in the suit. Hence, the objection cannot be taken for the first time in the second appeal.

9. Whether the suit is hit by Section 4 read with Section 41(g) of the Specific Relief Act, 1963?

Ans. When it is clear from Ext.B19 letter issued by the Vatican city that the practice of endogamy is only *de facto* tolerated and not permitted elsewhere and in the light of the admission by the defendants that they are not terminating the membership forcefully but continues to insist that the person who intends to marry a non Knanaya must leave the church voluntarily, the wrongdoing continues and gives a recurring cause of action.

10. Whether an executable decree under Section 39 of the Specific Relief Act, 1963 can be passed in the facts and circumstances of the case?

Ans- The objection regarding the executability of the decree is not raised by the appellants in RSA No.656/2022 but the 7th defendant/Appellant in RSA No.23 of 2023. Hence, the objection is unfounded. Moreover, when defendants 1 and 2 themselves admit that there is no difference in the religious rites of defendants 1 and 2 and defendants 3 and 4, the plaintiffs are justified in seeking mandatory injunction.

11. Whether the declaratory decree granted in the suit is hit by Section 35 of the Specific Relief Act, 1963?

Ans- Since the objection is raised by a third party who sought leave to file an appeal before the first appellate court, this Court finds the said question is not germane to the dispute and does not arise for consideration since the same does not qualify as a substantial question of law.

12. What is the binding nature of the Canon Law? And whether it is enforceable under the law?

Ans- Though it is argued by the appellants in RSA No.656 of 2022 that Canon law is nothing but a codified form of club rules, it is nobody's case that the same is not binding on them. When it is evident that the action complained of by the plaintiffs offends the provisions of the

Canon law, the act complained of becomes unsustainable. What is now sought to be enforced is not the Canon law but the unethical stand of defendants 1 and 2 to enforce endogamy and excommunication on those who refuse to follow the same. Hence, in the particular facts, this Court holds that enforceability of the Canon law is not an issue to be considered in this case.

13. Is not the decision of the first Appellate Court vitiated on account of non-consideration of material submissions, citations and Written Submissions filed by the Appellants under Order XVIII Rule 2(3A) of the Code?

Ans- Order XVIII Rule 2 (3A) is only an enabling provision which entitles the party to file written submissions after advancing the oral arguments. In the present case, it is not clear whether the oral arguments and the contents of the written submissions were one and the same. If not, then the appellants cannot blame the court. Even otherwise, the written submissions can supplement the oral arguments and cannot supplant the same. Non-consideration of the written submissions cannot form the basis of a substantial question of law inasmuch as the appellate court might not have felt that the arguments in the written submissions are material for deciding the issue before it.

14. Is there a valid cause of action for the plaintiffs to maintain the suit based on Exts.A14 and A16 notice alone?

Ans- Plaintiffs certainly have cause of action to file the suit. The cause of action cannot be pinned down to Exts.A14 and A16 notices. Discussion by this Court on the entirety of the claim of the parties reveals that the wrongdoing alleged is of a continuing nature. The admissions made in the written statement by defendants 1 and 2 would certainly destroy their objection to the maintainability of the suit based on lack of cause of action.

15. Whether the suit is bad for want of leave under Section 91 of the Code of Civil Procedure, 1908?

Ans- Section 91 is not attracted in the present case. Presence of plaintiffs 2 to 4 in their personal capacity does away with the requirement for leave under Section 91, even assuming it is required. At any rate, since the claim is confined to the Knanaya community alone, the provision is not attracted.

16. Is a Society registered under the Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 entitled to sue as a representative of individuals, invoking Order 1 Rule 8 of the Code of Civil Procedure, 1908?

Ans- Going by the decision of this court in ***Sreekumaran Vs Ardhanareeswara Devaswom and others [1989 (1) KLJ 163],*** a

society need not invoke Order 1 Rule 8 for the purpose of suing. Since plaintiffs 2 to 4 were impleaded in the personal capacity and since the relief sought for is for the benefit of similarly situated individuals, there is no embargo to take out notice under Order 1 Rule 8 of CPC.

17. Whether the plaintiffs have satisfied the requirements of Order I Rule 8 of the Code of Civil Procedure and Rule 20 of the Civil Rules of Practice while seeking to sue in a representative capacity?

Ans- The said question cannot be raised by the appellants at the second appellate stage since they did not raise any objection before the trial court as well as before the first appellate court, when the court directed the plaintiffs to take out notice under Order 1 Rule 8 once again, though legally it was not required to do so. Hence, it is held that the said question does not arise for consideration in the present case. It must be remembered that even if a substantial question is framed, the High Court need not answer the same if, on hearing, it finds that the said question does not arise for consideration in the present case. Accordingly, this Court finds that the above question does not arise for consideration.

18. Is a plea of vitiating circumstances like undue influence or coercion rendering a transaction voidable under Sections 14 to 18 of the Contract Act, 1872 capable of being agitated as a representative action under Order I Rule 8 of the Code of Civil Procedure, 1908?

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19. Does the suit satisfy the ingredients of Order VI Rule 4 of the Code of Civil Procedure, 1908?

Ans – For the sake of convenience, the two questions are considered together. What is attempted to be projected is that in a representative action, a plea of fraud and coercion cannot be urged. But it must be noted that the action is not solely based on representative character. Plaintiffs 2 to 4 are arrayed in their personal capacity. Further, going by the admissions of DW1 in the cross examination, it is evident that there is an element of coercion to leave the membership of the church if a Knanaya person wants to marry a non Knanaya spouse. However, in the written statement, the defendants 1 and 2 have taken a stand that they are not terminating the membership forcefully. If a person wants to marry a non Knanaya then the defendants will not issue their no objection certificate unless the membership is relinquished. The above action is nothing but coercion and influence. In such circumstances, it is to be concluded that the ingredients of Order VI Rule 4 is established beyond doubt.

20. Have plaintiffs 2 and 3 proved forceful termination of membership or any other person by the 2nd defendant?

Ans- In the facts and circumstances of the case, this question does not arise for consideration since the same does not qualify as a substantial question of law.

21. Is the suit bad for non-joinder of necessary parties such as Knanaya Catholics / Southist Community?

Ans- The suit is not bad for non-joinder of parties. The church represents the interest of the community. An objection to the effect that the suit is bad for non-joinder of necessary party must be raised at the earliest. Going by Order 1 Rule 13, the objection must be raised at the earliest, at any rate, before the issues are settled or before such settlement. In the present case, no such objection is raised. Hence, the said question cannot be raised.

22. Has the 2nd defendant been properly represented? And whether publication of notice under Order 1 Rule 8 is required to be taken against the 2nd defendant?

Ans- The above question does not qualify itself as a substantial question of law since defendants 1 and 2 had not raised a case before the trial court that 2nd defendant is not properly represented.

23. Does the notification of Ext.B1 Bye law in 2009 resurrect time-barred claims of persons like Plaintiff Nos. 2 and 3?

Ans- While answering the question on the limitation, this Court has held that the wrongdoing complained of is a continuing action. Hence, there is no question of resurrecting a time-barred claim, especially since no portion of the claim has become time-barred.

24. Is the suit framed without challenging Exhibit B4(a) Papal Bull, Exhibit B8 decree and Exhibit B1 Bye-law maintainable?

Ans- Suit framed without challenging Exts.B4(a), B1 and B8 is perfectly maintainable. In view of the finding of this Court that papal bull is akin to an administrative decision and does not endorse endogamy, there is no requirement to challenge the same. Further, when the membership of a Knanaya person is traceable to birth, any subsequent qualification of the membership based on Ext.B1 bye law is void and need not be challenged.

25. Does Article 13 of the Constitution apply to a customary law of marriage which operates as a personal law for the parties?

Ans- In the light of the decision rendered by the Supreme Court in **Sant Ram** (*supra*) and **Gazula Dasarath Rama** (*Supra*), personal law in the form of custom or usage does not get immunity if it violates the fundamental right of a citizen. Moreover, a social arrangement within a social group of a religious community cannot claim protection that

their personal law must be immune from judicial scrutiny.

26. Is endogamy an essential religious practice followed by the defendants 1 and 2 so as to take the same out of the purview of judicial scrutiny of the courts? And

In the absence of statutory law governing the marriage of Christians in Travancore, will not the customary law operate as personal law governing the sacrament of marriage?

&

27. Whether the defendants 1 and 2 have established the existence of the custom of endogamy?

Ans- The above three substantial questions of law can be taken together for consideration. First, the defendants 1 and 2 have not been successful in establishing that there exists a custom of endogamy and that the same is a valid custom. Ext.B19 letter and Ext.A12 Judgment clearly demonstrate that the practice of endogamy has no support of the religious head or the approval of the court. Hence, the question whether the customary law operates as a personal law does not arise for consideration at all. Hence, it is concluded that the defendants have failed to establish that endogamy has been followed as a custom.

28. Whether the membership of a particular diocese is a fundamental right under Article 25 of the Constitution of India?

Ans- Though a membership in a particular diocese is not a

fundamental right, any attempt to deprive the membership obtained by birth on account of refusal of the member to follow the practice of endogamy amounts to deprivation of the rights under Article 25.

29. Whether the defendants 1 and 2 are entitled to the protection of Article 26(b) read with Article 29 of the Constitution of India?

Ans- The defendants 1 and 2 cannot claim protection of Article 26(b) read with Article 29 of the Constitution of India. Defendants 1 and 2, on their own, cannot claim any right exclusively in the strength of Article 26(b) and Article 29 of the Constitution of India, since the defendants 1 and 2 failed to establish a) the custom of endogamy & b) that the practice of endogamy is an essential religious practice. Since the insistence to practice endogamy and failure to follow the same results in excommunication, such an act falls short of constitutional morality, and hence the defendants 1 and 2 cannot claim the benefit of Article 26(b) of the Constitution of India and hence the application of Article 29 does not arise for consideration.

30. Whether a person who refuses to follow the so-called custom of endogamy can be expelled or forced to leave the defendant no.1 church and if does, whether it violates his rights under Article 21 read with Article 25 of the Constitution of India?

Ans- Once it is held that there is no valid custom of endogamy and that

the defendants have no right to expel a member who refuses to follow endogamy, any act of excommunication from the community amounts to violation of Article 21 read with Article 25 of the Constitution of India.

31. Can Ext.B9 bye law govern and regulate the persons who are already members of the 1st defendant church?

Ans- Ext.B9 cannot govern and regulate the persons who are already the members of the 1st defendant church. Even according to Ext.B9 bye law, the membership is regulated by birth. If that be so, no conditions can be imposed so as to control the said membership.

32. Does the insistence to follow endogamy violate one's right guaranteed under Article 25 of the Constitution of India?

Ans- Refusal to follow endogamy violates one's right guaranteed under Article 25 of the Constitution of India, especially when the endogamy is not an approved form of custom nor is a religious practice.

33. Can a particular mode or custom of marriage determine one's right under Article 25 of the Constitution of India?

Ans- A particular mode or custom of marriage cannot determine one's right under Article 25. However, if the custom or mode of marriage forms the essential religious practice then, the right under Article 25

becomes qualified. In this case, however, it is not so.

34. Whether the rights guaranteed under Article 25 can be enforced through horizontal action?

Ans- If the infringement of the rights guaranteed under Article 25 is at the hands of non- state actor, then the horizontal action is possible, going by the decision of the Supreme Court in ***K.S. Puttaswamy (Privacy-9J.) v. Union of India*** **[(2017) 10 SCC 1].**

35. Whether the rights under Article 25 are controlled by the protection guaranteed under Article 26(b) of the Constitution of India?

Ans-The rights under Article 25 are controlled only by public order, morality and health. However, the rights may be subjected to any law made by the state under sub-article (2) of Article 25. Though a claim for enforcement of right under Article 25 may possibly be defended on the strength of protection under Article 26(b), and in instances where the action complained of offends the constitutional morality, then it cannot be said that Article 26(b) controls the right under Article 25. The right under Article 25 can be subjected to Article 26(b) when the act in question falls within the category of essential religious practice of a religious denomination.

36. *Whether non-Knanaya spouse and children can aspire for membership*

in the 1st defendant?

Ans- In view of the decision of the II Additional District Court in Ext.A12 judgment affirmed in RSA No.64 of 2017, it is inevitable to hold that the spouse who marries a Knanaya will take in her husband's rites and that children who are born to them can aspire for membership in the 1st defendant especially since failure to practice endogamy cannot deprive an individual his rights.

CONCLUSION

180. Upon an exhaustive and calibrated reappraisal of the entire record of evidence and the reasoning in the impugned judgments, this Court is of the view that the challenge to the suit, predicated on maintainability, limitation, and procedural irregularity, stands negated. As does the purported existence of a binding custom of endogamy.

180.1 The appellants have conspicuously failed to establish that the practice of endogamy attains the character of an essential religious tenet, or that it confers upon them, any enforceable authority to regulate the personal choices of members through coercive or non-coercive expulsion or excommunication.

180.2. The finding rendered by the first appellate court that the defendants 1 and 2 have established the custom of endogamy is not based on material evidence and the said finding cannot be sustained in view of the contents of Ext.B19 letter. The above finding is interfered with by invoking Order XLI Rule 22 of the CPC, 1908.

180.3 It is declared that while individuals may, out of personal volition, choose to adhere to endogamous preferences, any formulation—direct or implied—that legitimizes institutional endorsement, regulation, or encouragement of such practice, stands impermissible in law.

180.4 The autonomy of the individual in this regard is absolute and admits of no ecclesiastical encroachment. This Court is further constrained to observe that the invocation of religious autonomy cannot be transmuted into a licence to infringe constitutionally guaranteed freedoms, leading up to the excommunication of an individual.

180.5 The principle that the fundamental rights are enforceable even in the interstices of non-state action stands firmly affirmed in the present case, thereby denuding the appellants of any justificatory defence.

180.6 The findings that the appellants are disentitled from receiving solemnization of marriage or administration of sacraments on the basis of

non-adherence to endogamy are unassailable, being firmly anchored in constitutional morality, individual autonomy, and the overarching mandate of equality. Thus, this Court finds no infirmity, either factual or legal, warranting interference with the findings recorded by the courts below. Consequently, the appeals, being bereft of merit and substance, fail and are accordingly dismissed with costs.

Ordered accordingly.

Sd/-
EASWARAN S.
JUDGE

jg