

IN THE COURT OF THE DISTRICT JUDGE, ERNAKULAM

Present:

Sri Ashok Menon, B.A.,LL.B.,II Addl. District Judge

Saturday, the 20th day of December,2008/29th Agrahayana
1930

A.S.Nos.244 & 245/2004

A.S.No.244/2004

(Against the judgment & decree dated 24.11.90 in OS
923/1989 of Munsiff Court, Kottayam)

Appellants:-

1. Fr.George Manjankal, Former Vicar Kizhakke Nattassery Holy Family Catholic Church, Nattassery, Kottayam-4 now residing at Nirmalaram Mount St. Joseph P.O., Bangalore.
2. Rt Rev. Kuriakose Kunnassery, Bishop of Knanaya Catholic Diocese (Kottayam Diocese), Bishop's House, Cathedral Ward, Kottayam.

(By Adv. Sri M.J.Thomas & K.George)

Respondents:

1. Biju Uthup, S/o Uthup, Employed as Project Manager, A.D.A. National Aero9neutical Laboratory, Bangalore, From oravankalayil House, Eranjal, Kottayam-4.
2. Knanaya Catholic Congres, Kottayam, rep. by Kottayam, M.C.Abraham, Makkil House, Chelliyoughukkam, Kottayam.

R1 by Adv. Sri P.V.Thomas & Francis Thomas

R2 by Adv. Sri Thomas Kachiramattom.

A.S. No.245/2004

(Against the judgment & decree dt. 24.11.90 in OS 923/1989
of Munsiff Court, Kottayam)

Appellant/Addl. 3rd Defendant:-

Knanaya Catholic Congress, Kottayam, rep. by President
M.C.Abraham, Makkil House, Chelliyoughukkam, Kottayam

(By Adv. Sri M.J.Thomas)

Respondents/Plaintiffs & Defendants 1 & 2:-

1. Biju Uthup, S/o Uthup, Employed as Project Manager, A.D.A. National Aero9neutical Laboratory, Bangalore, From oravankalayil House, Eranjal, Kottayam-4.
2. Fr.George Manjankal, Former Vicar Kizhakke Nattassery Holy Family Catholic Church, Nattassery, Kottayam-4 now residing at Nirmalaram Mount St. Joseph P.O., Bangalore.
3. Rt Rev. Kuriakose Kunnassery, Bishop of Knanaya Catholic Diocese (Kottayam Diocese), Bishop's House, Cathedral Ward, Kottayam.

(R1 by Adv. Sri P.V.Thomas)

(R2 No Vakkalath)

(R3 by Adv. Sri M.J.Thomas)

This appeal filed under Order XLI Rule 1 of CPC.

This appeal came up for final hearing before me on 19.12.2008 and the court on this day passed the following:

In the Court of the District Judge, Ernakulam

A.S.Nos. 244 & 245 of 2004

COMMON JUDGMENT

The defendants 1 and 2 in 923/1989 in the file of the Munsiff Court Kottayam are the appellants in A.S.No.244/04 and the third defendant in the suit is the appellant in A.S.245/04.

2. The suit is one for a mandatory injunction. The plaint averments in brief are thus:- The plaintiff is a young man, aged 31 at the time of filing this suit, intended to marry. He and his parents are members of the 'Knanya' Catholic community and from 1977 are parishioners of the Holy Family Parish Church of Nattassery kara coming under the Kottayam Diocese. His parents had got married on 22.10.1956, at the Little Flower Knanaya Church, Othara,

29

also a parish church coming under the same Diocese. After the birth of the plaintiff, he was baptised in the said Church. The plaintiffs parents arranged to get him married to Leena, the daughter of Mrs and Mr. Cherian Immanuel, parishioners of St. Mary's Church, Vithura yet another Church coming under the Kottayam Diocese. The plaintiff and his entire family are devote Catholics coming under the Holy Family Parish Church of Nattassery and the Diocese of Kottayam. According to the canon law and rules prevalent among the members of the community, the plaintiff is entitled to have the religious rites in connection with his betrothal and marriage performed by the Vicar of the parish church of which he is a parishioner, unless he is interdicted by a competent ecclesiastical authority from enjoying the privileges. The first defendant is the Vicar of the Kizhakke Nattassery Holy Family parish Church and the second defendant is the Reverend Bishop of the Knanaya Catholic Diocese of Kottayam under whom the said parish is situated. As required by the custom and the canon rules, the plaintiff's father, Mr. Uthup, approached the first defendant, the Vicar of the Church, to issue the necessary 'Vivahakuri' or the nuptial blessings required from the parish church, for the betrothal, and then solemnize of the wedding. Though the first defendant initially agreed to issue the authorization, he retraced his steps and refused to issue the " Vivahakuri' stating that he has been prevented from doing so under orders of the second defendant, the Bishop. The plaintiff's father's appeal to the Bishop fell on deaf ears. Hence, the plaintiff was constrained to bring the matter to the notice of his Holiness the Pope. Representation was also made to the Apostolic Nunciature in India, New Delhi. On consideration of the plaintiff's grievance the Apostolic Pro-nuncio, after consultation with Vatican addressed the second defendant as thus,

"If Mr. O.M.Uthup's son is successful in establishing his claim to be a member of the Knanaya or Sudhist Catholic community, the Ecclesiastical Authorities concerned will certainly not deny the nuptial blessing he requests; if on the other hand, he is judged to be legally extraneous to that community, he shall be lapso jure' a member of the Syro-Malabar Eparchy of the territory in which he has his domicile or quasi-domicile".

3. Consequent to the aforesaid direction, the plaintiff approached the second defendant again, but he was not even heard. The act of the defendants is illegal and has deeply wounded the religious sentiments of the plaintiff. The act of the defendants will cast a social stigma on him and the members of his family for ever. The act of the defendants is also contrary to the sacred teachings and the mandates of the church. Their act is unchristian and needs to be condemned. Another suit was filed as OS No.1068/1988 against the plaintiff's family to declare that they are not members of the Knanaya Catholic Diocese. The plaintiff therefore, seeks an injunction from the court to direct the defendants to issue the necessary "Vivahakuri" to the plaintiff to conduct his betrothal and marriage in the Holy Family parish church.

4. Defendants 1 and 2 together filed a detailed written statement contending that the suit is not maintainable and is not of civil nature. Subject matter of the suit is not the enforcement of a civil right or obligation. The principal question involved is one relating to the existing custom of endogamy practised by the Knanaya Catholic Community. Hence, this court has no jurisdiction. The prayer is to compel the defendants to perform an act, which cannot be enforced by this court. The defendants dispute the claim

of the plaintiff that he is the member of the Knanite Catholic community. It is pointed out that there is no prayer of declaration in the plaint. The averment that the plaintiff and his parents belonged to Knanaya Catholic community and are Parishioners of the Holy Family Parish Church, Nattassery under the Kottayam Diocese is not correct. A "Knanite" is one who is born to "Knanite" parents. The plaintiff's mother was not born to a Knanite mother and is therefore, a non Knanite. A person belonging to the Knanite community ceases to be a Knanite consequent to his marriage with a non Knanite. Thus, on marriage of the plaintiff's father, admittedly a Knanite, with a non Knanite has resulted in his becoming a non Knanite. And resultantly, all children born to them, including the plaintiff, are non Knanites. The Knanite Christians of Kerala are the descendants of Thomas Cana (Knaï Thomma) and the 72 families who migrated to India from the middle east in 345 A.D. Thomas Cana was a Jewish Christian merchant who arrived at the port of Cranganore along with Mar Joseph, the Bishop of Edessa (Uraha) and a few priests, deacons, and about 400 men, women and children. They belonged to 7 Jewish clans (Illams) from places like Jerusalem, Cana, Judah, Syria, Baghdad, Edessa etc; The migration was with the specific intention of missionary activity. The then King, Cheraman Perumal welcomed them and granted the emigrants 72 privileges of high social status, engraved on copper plates, which made them superior to other communities. They were known as "Southists". The present Knanite Christians in India are all descendants of the aforesaid 72 families and have to this date retained their special customs and privileges. They have special customs relating to marriage, death and birth. So far, the Knanites have remained an endogamous community, having no marital relationship outside the community. Thereby, they have maintained their ethnic identity, integrity

and racial purity. The Knanite Christians are divided into "Knanite Catholics" and "Knanite Jacobites" consequent to the division of the Malabar Church in the 17th Century. The persons who remained in the mother church accepting the supremacy of the Pope were remained "Catholics" and those who accepted the Syro-Antiochian rite were called "Knanite Jacobites". Marriage between these two "Knanites" is permissible Bishop Mathew Makil, Bishop Lousi Pachayapparambil, and Bishop John Menacheril, Vicar Apostolics of Changanasseri, Ernakulam and Thrissur Vicariates respectively, jointly made an application to Pope Pius X and a separate Diocese was exclusively established for "Knanite Catholics" in Kottayam on the 29th of August, 1911. Bishop Mathew Makil was the first Bishop of the new Vicariate of Kottayam. On 29th April, 1955 Pope Pius XII granted a decree to the Bishop of Kottayam to exercise jurisdiction over all the Knanite Catholics of Syro Malabar Territory. Presently, there are 111 parishes, 160 priests, 949 nuns and more than 100 convents in the Diocese. They have several hospitals, schools and seminaries coming within the Diocese. Apart from the difference in ethnic identity and the endogamous character, the Knanite Catholics are no different from the other Catholics in matters relating to their faith, morality and allegiance to the Pope. Though non Knanite Catholics are allowed to participate in the religious and liturgical functions and to receive sacraments in the Knanite Catholic Church, they are not allowed to become members of the Parish Church. A non Knanite may be baptised in a Knanite Catholic Church. A non Knanite may be baptised in a Knanite Catholic Church on request, but will not be accepted as a member of the church. A marriage between a Knanite and the non Knanite is not allowed to be blessed in the churches coming under the Kottayam Diocese because such a marriage is considered as an offence and insult to the

Knanite Catholic community, its tradition and heritage. In case, a Knanite Catholic decides to marry a non Knanite, he is advised to get the marriage conducted in a Catholic church other than those coming under the Kottayam Diocese. There is no merit in the contention that the plaintiff and other members of his family were accepted and acknowledged as the members of the Holy Family Parish Church, Nattassery. Just like any other non Knanite Catholic the plaintiff and his family were also allowed to participate in the religious and liturgical ceremonies and receive sacraments from the churches under the Kottayam Diocese. Even if they were accepted as members of the Parish, it was only under a mistaken notion that they are Knanites. In a letter dated 6.5.1989 addressed to the second defendant, the plaintiff's father has admitted that the plaintiff's maternal grandmother was not a Knanite. The plaintiff's maternal grandmother Lilly was a Latin Catholic and she and her husband Chacko and were members of the St. Joseph Cathedral Parish coming under the Trivandrum Diocese. Thus, the plaintiff's mother was also not a Knanite. However, the defendants are not aware of the circumstances under which the marriage of the plaintiff's parents was allowed to be conducted in the Little Flower Knanaya Catholic Church Othara on 22.10.1956 as alleged. Probably, the fact regarding the plaintiff's mother's identity as a non Knanite was not revealed and the marriage was conducted fraudulently. The maternal uncles and aunts of the plaintiff are also not Knanites. The certificate pertaining to the marriage of the plaintiff's parents is not contemporaneous and was issued on 20.4.1989 and has therefore, little evidentiary value. The certificate was obtained after the filing of OS No.1068/1988 against the plaintiff's family questioning their propriety in continuing as members of the Knanaya Catholic community. Fr. Jacob Chakacheril was in his sick bed in CARithas Hospital and was

not in a physical and mental condition fit to issue a marriage certificate. The genuineness of that certificate is also therefore disputed. There is no evidence that permission was granted by Rt. Rev. Dr. Thomas Tharayil, the then Bishop of Kottayam, and that he had admitted the plaintiff's mother Smt. Annamma as a member of the Little Flower Knanaya Catholic Church Othara, or that any permission was granted by him to conduct the marriage between the plaintiff's parents in that church. Even if the plaintiff was baptised in the Little Flower Knanaya Catholic Church Othara, he could not have acquired the membership of that church. All the privileges enjoyed by the plaintiff till date as a member of the Pansh in the Knanaya Churches could only have been under a mistaken belief or misrepresentation, and therefore, the plaintiff cannot take advantage of that. One Mr. P. M. Chacko had sent a notice to the second defendant alleging that the plaintiff's parents and the other members of the family are non Knanites and therefore, demanded their expulsion from the churches under the Kottayam Diocese. He also filed OS No. 1068/88 before the Munsiff's Court, Kottayam for a declaration that the plaintiff's family should not be allowed to continue as Parishioners in any church coming under the Kottayam Diocese. The plaintiff's parents and other members of the family were also impleaded in that suit. It was during the pendency of that suit, the plaintiff's father requested for granting a "Vivahukuri" to conduct the marriage of the plaintiff in the Holy Family Parish Church, Nattassery. It is also true that the plaintiff's father had sent a petition to the Pope and to the Apostolic Pro-nuncio in India requesting for interference in the matter. The second defendant was directed by the Pro-nuncio to enquire into matter and not to deny the nuptial blessing to the plaintiff in case he establishes that he is the member of the Knanaya or Sudhist Catholic community. It is also said that if he is not

found to be a Knanite, he shall continue as member of the Syro Malabar Eparchy. Since there was a clear admission by the plaintiff's father that the plaintiff's maternal grandmother was a non Knanite, the plaintiff's mother and the plaintiff also would become non-Knanites. The plaintiff's parents were personally told by the second defendant regarding his inability to issue a "Vivahakuri" under the aforementioned circumstances. If permission is granted by the second defendant to the plaintiff for conducting his marriage in a Knanaya Catholic Church it would hurt the feelings and the religious sentiments of the entire Knanaya community and the centuries old tradition will stand violated. The representative body of the Knanaya Catholic community have also urged the second defendant not permit the plaintiff's marriage in a Knanaya Catholic Church. Upholding the tradition and custom of the community will not amount to any violation of the Canons of Christianity. There is no violation of any Canon law and therefore, it is prayed that the suit may be dismissed.

5. The Knanaya Catholic Congress Kottayam represented by its President was impleaded as the third defendant vide order of the Hon'ble High Court in CRP No.495/90-D. After their appearance they filed written statement supporting the contentions raised by defendants 1 and 2. It is further stated that defendants 1 and 2 are impleaded only in their individual capacity and not as representative of the community as a whole. The suit filed without sanction of the court under Order 1 Rule 8 CPC is therefore, not sustainable. The third defendant association was established in the year 1938 with the preserving its purity and tradition. The community is an endogamous society permitting marriage only within the community. The marriage of a Knanaya Catholic member with a non Knanite

would entail in his or her ceasing to be a member of the community. This tradition has been followed from 345 A.D. onwards. The third defendants also reiterate that the plaintiff is not a Knanite since his mother is a Latin Catholic. Hence, the plaintiff is not entitled to get a "Vivahakuri" issued from the second defendant. It is also contended that in view of the filing of OS No.1068/88, this suit is to be jointly tried with that suit to avoid conflicting decisions.

6. The learned Munsiff framed the following issues for consideration:-

1. Whether the suit is maintainable in law?
2. Whether the plaintiff is not a member of the Knanaya community and Holy Family Catholic Church Nattassery as contended by the defendants?
3. Are the plaintiff estopped from the putting forward such contentions?
4. Is the prayer for mandatory injunction allowable?
5. Reliefs and costs.

Addl. Issues

1. Whether the Kizhakke Nattassery Holy Family Catholic Church is a necessary party and whether the suit is non-joinder of parties?
2. What are the qualifications of a person to be a member of a Knanaya community?

7. PWs 1 to 8 were examined and Exts.A1 to A19 were marked on the side of the plaintiff. On the side of the defendants, DWs1 to 5 were examined and Exts.B1 to B29 were marked. Exts. X1 series X2 series and X3 series were also marked. After appreciation of the entire evidence, the

learned Munsiff found that the plaintiff is entitled to the injunction sought and decreed the suit as prayed for.

8. Aggrieved by the decree, defendants 1 and 2 filed AS No. 14/91 and the third defendant filed AS No.26/91 before the District Court, Kottayam. As per the directions of the Hon'ble High Court of Kerala, in CMC No.42/01 and 43/01 both the appeals were transferred to the District Court, Ernakulam and re-filed respectively as AS No.244 of 2004.

9. The main grounds raised in both the appeals, in brief, are that the court below has not analysed and understood the pleadings properly. The lower court erred in finding that there is no bar in maintaining the suit before the Civil Court. The only objection that is raised about the plaintiff getting married to a girl of his choice is that the marriage cannot be conducted in a Kananaya Catholic Church under the Kottayam Diocese. This objection is based on the proven fact that the Kananaya Catholic Churches are established and organised exclusive for the Kananaya community under a Papal Bull with the sole object of enabling the Knanaya community to maintain its ethnic identity consistent with its custom and tradition. The court below went wrong in holding that a prayer for declaration was not necessary for the determination of the dispute in the suit. The direction to issue a "Vivahakuri" to enable the plaintiff to conduct his betrothal and marriage in a Knanaya church is against the belief, faith and tradition of the Knanaya community which has been existing for the last 16 centuries. The court cannot enforce the decree by getting the order performed by an agency of the court. The appellants reiterate the requirements of a person to be a Knanite. The court below erred in finding that the plaintiff's mother was a member of the Knanaya Parish Church at West Othara. There is no evidence to that effect. Even if the marriage of the

plaintiff's parents was conducted in the Othara Church, it must be under misrepresentation and mistake of fact. The plaintiff's maternal grandfather was originally a Knanaya Jacobite but he ceased to be a member of the community on getting married to a non Knanite lady. Hence, the plaintiff's mother also does not become a Knanite. The court below should have held that the custom pleaded by the defendants has been sufficiently proved. The *motu proprio* contained in Ext.A16 has no bearing in considering the question of custom pleaded in this case. The custom pleaded by the defendants is also not against any Canons in Ext.A16. Hence, it is prayed that the decree passed by the court below may be set aside and the suit dismissed.

10. The learned counsel appearing on both sides were heard in much detail. Lower Court records were called for and perused.

11. The following points arise for consideration:

1. Is the suit maintainable?
2. Was the court below justified in granting the injunction sought?
3. Reliefs and costs?

12. Point No.1:- One of the main objection raised in the appeals is regarding the maintainability of the suit. The court below has considered the issue regarding maintainability in much detail and came to the conclusion that the suit is maintainable. The contention of the defendants is that the subject matter of the suit is not an enforcement of civil right or obligation and that there is no breach of any obligation by the defendants. The court below discussed several decisions relied upon by the defendants. In *Vasudev vs. Vamnaji and others* ILR 5 Bombay 80, it is held

civil right. The learned Munsiff also relied on Joshua vs. His Grace Geevarghese Mar Discorus to hold that orders passed by the religious head affected civil rights of persons can be questioned in court.

14. The learned Munsiff also did not agree with the argument of the defendants that this suit for injunction alone without seeking a declaration is not maintainable. In support of his finding, the learned Munsiff relies on the decision Sathyan vs. Manager IOB 1988 (1) KLT 553.

15. The learned counsel for the appellants has attacked this finding of the learned Munsiff. The learned counsel for the appellants relies on the decision Shri Sinha Ramanuja vs. Ranga Ramanuja AIR 1961 S.C. 1720 to argue that prima facie suits raising questions of religious rites and ceremonies only are not maintainable in a civil court, for they do not deal with legal rights of parties. In the said suit, the plaintiff had claimed that he had certain precedence in the religious rites performed in a temple as special honours attached to his office and the court held that he was not entitled to file a civil suit.

16. One of the basic principles of law is that every right has a remedy and every civil suit is cognisable unless it is barred. In Ganga Bai vs. Vijayakumar AIR 1974 S.C. 1126, it is held that a suit howsoever frivolous the claim, is maintainable before a civil court unless it is barred by statute. In most Re. P.M.A. Metropolitan vs. Moran Mar Marthoma 1995 Supp. (4) S.C.C. 286, it is held as follows:-

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

is civil in nature. The dispute about the religious office is a civil dispute as it involves dispute relating to rights which may be religious in nature but are civil in consequence. Civil wrong is explained by Salmond as a private wrong. He has extracted Blackstone who has described private wrongs as, 'infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are there upon frequently termed civil injuries'. Any infringement with a right as a member of any religious order is violative of civil wrong. This is the letter and spirit of Explanation I to Sec. 9".

18. In *Arabind Kumar Singh vs. Nand Kishor Prasad*, AIR 1968 S.C. 1227, it was held that the civil proceedings extended to all proceedings which directly affected civil rights. The dictionary meaning of the word 'proceedings' is the institution of a legal action 'any step taken in a legal action'. In Black's law dictionary it is explained as "in a general sense, the form and manner of conducting judicial business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like". The word 'nature' has been defined as "the fundamental qualities of a person or thing; identity or essential character; sort; kind character". It is thus wider in content. The word 'civil nature' is wider than the word 'civil proceeding'. The Section would, therefore, be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of civil nature.

18. The dispute that has arisen in the case in hand is whether the plaintiff is a member of the Knanaya Catholic Community entitled to get his marriage solemnized in the church of which he claims to be a parishioner. For the purpose of deciding this, it will first require examination whether the plaintiff is a parishioner of the Holy Family Church, Nattassery coming under the Kottayam Diocese. The allegation of the defendants is that the plaintiff's maternal grandfather married a non Knanite Latin Catholic and hence, his progeny are not members of the Knanaya church. The fact that the plaintiff's father and his maternal grandfather are members of the Knanaya church is admitted. The argument of the defendants is that when a member of a Knanaya Community marries a person not belonging to a different community, he or she ceases to be a member of the Knanaya community. Endogamy has been practiced in the community for centuries and therefore, they are entitled to continue that custom of retaining their endogamous nature. The essential properties of marriage, as indicated by the code of Canon law are 'Unity and indissolubility which obtained a special firmness or stability in Christian marriage by reason of it being a sacrament'. The spouses are bounded for life. Pharisees came upto Jesus and tested him by asking, "is it lawful to divorce one's wife for any cause?" he answered: "have you not read that he who made them from the beginning made them male and female and said, 'for this reason a man shall leave his father and mother and the two shall become one flesh?' So they are no longer two but one flesh. What therefore, God has joined together, let not man put as under"(New Testament Mathew 19(3-6). "This man is the head to which the woman's body is united, just as Christ is the head of the church, He the savior on whom the safety of his body depends" (The Epistle of the Blessed Apostle Paul to the Ephesians, 5-23). This is to illustrate the Christian

approach to matrimony. There is nothing unnatural or unsavory in assuming that on marriage it is possible for the wives to live as parishioners of the church to which the husband belongs. On marriage, "unless a special law rules otherwise, the wife shares in the state of her husband as far as canonical affects are concerned". (Canon 1112 vide page 798 of a Practical Commentary on the code of Cannon law).

19. A domicile is usually acquired by a person by residing in any parish and such residence must necessarily be associated with the intend to become a member of the parish. Coming to the facts of this case, it is seen that the plaintiff's parents were married in a Knanaya church at Othara. Ext.A1 is a certificate issued by the Vicar Rev. Fr. Abraham Paradiyil certifying that Uthup, son of Mathew and Mariam, Oravanakonam of Kumarakam Parish got married to Annamma, daughter of Chacko and Lilly, Valuzhathil (Kodath) of Othara Parish and that their marriage was blessed by Rev. Fr. Basalious on 22nd October, 1956 according to the marriage register of the church. Ext.A2 is the certificate issued by Rev.Fr. Jacob Chakacheril stating that the marriage of the plaintiff's parents was conducted on 22.10.1956 as per permission granted by Rt. Rev. Dr.Thomas Tharayil, the then Bishop of the Kottayam Diocese after Annamma, the plaintiff's mother was made a member of the aforesaid church. There is a contention raised by the defendants that Ext.A2 was obtained late and that the then Bishop Rt. Rev. Dr.Thomas Tharayil was not competent to give permission for the marriage. The competence of the Fr.Jacob Chakacheni to issue A2 marriage certificate is also challenged on the ground that he was at that time, laid up and bed ridden. Ext.X2 is the marriage register of the Little Flower Knanaya Church, Othara and Exts.A1 and A2 certificates are necessarily issued after referring to Ext.X2

register and Ext.X2 (a) the relevant entry pertaining to the marriage. Ext.A3 is the certificate issued by the parish priest of the Little Flower Knanaya Catholic Church, West Othara giving the details of the baptism of the eldest born son of the plaintiff's parents. It was extracted from the Baptism Register Ext.A4 is the certificate of Baptism issued by the parish priest pertaining to the elder brother of the plaintiff. Ext.A5 is the certificate of plaintiff's sister's marriage performed at St. Xavier's Church, Kannangara on 29.12.1985. Ext.A6 is the Baptism certificate issued from that church for the son born to them on 27.12.1987. Ext.A8 is the marriage certificate issued by the Cathedral Administrator of the second defendant's office certifying that the marriage of the plaintiff's brother Byeju was held on the 12th of July, 1987 and was blessed by Rev. Fr. Mathai Chemmarapally and Ext.A10 is the birth certificate of the said brother's daughter indicating that she was baptised in the Holy Family Church, Nattassery on 25.9.1988 by the first defendant as the Vicar. These documents would indicate that the plaintiff and the members of his family were accepted as the members of the Knanaya community and as parishioners of Holy Family Parish Church at Nattassery and were given the privileges entitled to a member. The defendant's have now refused to bless the marriage of the plaintiff in the church of which he was recognised as a member till recently. There is no evidence to show that he was excommunicated, though a suit was filed to do so. It is the civil right of the plaintiff which is under challenge. Hence, he is entitled to maintain a suit for injunction to direct the defendant's to issue the necessary nuptial blessing for conducting his marriage in the church of which he is a member. The learned Munsiff was justified in finding that the suit is maintainable and I find no reason to interfere with that finding. Point No.1 is answered accordingly.

20. Point No.2:- The learned counsel for the appellants argue that the plaintiff proceeds under the premise that he is a member of the Knanaya community and therefore, has the right to get the necessary permissions issued by defendant's 1 and 2 for conducting his marriage in the Knanaya church. One of the important question which arises for consideration is whether the plaintiff and his family are the parish members of the Holy Family Knanaya Church at Nattassery. The point on the basis of which the plaintiff's identity as the Knanaya Catholic stands challenged is that his maternal grandfather, admittedly, a Knanaya Jacobite, had married a lady from the Latin Church and therefore, ceased to be a member of the Knanaya church. It is urged on behalf of the appellants that the plaintiff's father has admitted that the plaintiff's maternal grandmother is not a Knanite. there is no dispute that the plaintiff's parents had got married in a Knanaya Church at Othara in the year 1956, regarding which I have already discussed with reference to the available evidence in the form of Exts.A1,A2 and X2(a). The marriage between the plaintiff's parents is undoubtedly valid and accepted under the Canon La. The fact that the siblings of the plaintiff and he himself was baptised in a Knanaya church, and evidence of his siblings being offered the nuptial blessings which is now denied to the plaintiff indicate that the plaintiff's family was very much part of the Knanaya Church and the Kottayam diocese. As discussed earlier, the plaintiff's mother Annamma, who is a half Knanite since her father is a Knanite, was made a member of the Othara Knanaya church before she got married to the plaintiff's father Uthup. The records which I have referred to earlier indicate that they were both accepted as Parishioners coming under the kottayam Diocese, their children were baptised by the Knanaya church, and the entire family including the plaintiff were enjoying the privileges of the community for the last

23

more than 30 years prior to the filing of the suit. The argument of the defendant's is that the marriage and other consequential ceremonies were all under a mistaken impression regarding the identity of the plaintiff's mother. If it was a mistake, all that was done till date will have to be undone, the persons responsible for misleading the community should have been punished and the entire family of the plaintiff excommunicated. The appellants have no case that such any action was taken to excommunicate the plaintiff's family from the fold. Even though a suit, OS No.1068/88 was filed by one of the Knanites, seeking relief against the plaintiff's family, that suit seems to have been abandoned. It is interesting that the suit was filed in representative capacity under Order 1 Rule 8 CPC and the defendants were parties to that suit. The defendants did not pursue that suit. Being a representative suit any one interested could have continued with the prosecution it, they did not take any action to expel the plaintiff's family from the church. The appellants were also not successful in bringing evidence regarding the expulsion of any Knanite member from the church in consequence to his marrying a non Knanite. The fact that the plaintiff's father continued to remain an active member of the Knanite church, despite having married the plaintiff's mother is indicative of the fact that such a marriage was acceptable. The allegation that the church was mislead and labouring under a mistake regarding the identity of the plaintiff's mother is hard to believe. The plaintiff's maternal grandfather was admittedly known to the Bishop. He was a contractor and involved in construction of the Othara church. Hence, it is difficult to believe that the then Bishop of the Kottayam Diocese had permitted to conduct the marriage of the plaintiff's parents in the Othara church coming under the Diocese. It is pointed out that representation was made to Pope Pius by the Bishops coming

under the Knanaya community for the formation of the separate Kottayam Diocese was formed for the community. It may be true that the Pope had granted special diocesan status for Knanite Catholics as per Exts. B3 and B3(a). But that does not mean that the Pope had accepted the custom of endogamy among Knanites. There is nothing to show that this custom of endogamy was approved and allowed to be retained by the Pope while forming the Kottayam Diocese.

21. P.W.5 is Fr.Dr.Joseph Koikudi, who is a Doctorate of Laws in Canon Law and the Professor of Apostolic Seminary at Vadavathoor. Through him, the ingredients of Ext.A16 the Code of Oriental Canon Law and the Law of Marriages translated by Victor J.Pospishin, the Archeparchy of Philadelphia is proved. Pages 37 and 38 of the book contains the Motu Proprio Crebrae Allatae on the discipline of the sacraments of matrimony for the oriental church. The relevant concluding words of the Motu Proprio reads thus:-

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

22. The aforesaid Motu Proprio was promulgated by Pope Pius XII on the 22nd day of February 1949. The argument of the learned counsel for the plaintiff that by virtue of the aforesaid Motu Proprio which has binding effect on all oriental churches as well, even if there was any custom of endogamy prevailing among the Knanite Catholics, it has ceased to exist because it is against the Canon Laws. Canon 9 in Ext.A16 states that a wife who belongs to another rite is at liberty to join the rite of her husband at the time of marriage or during its duration. As I have referred to earlier, Christianity envisages wife as a part of the husband and cannot be different from her husband in existence.

23. Applying these principles to the case in hand, it has to be accepted that the plaintiff's mother was recognised as a member of the Othara Church before she got married to his father. Once they were married in accordance with the rites of the plaintiff's father, it has to be considered that the plaintiff's mother accepted the rite of her husband. Canon 29 referred to in Ext.A16 explains the circumstances under which the local Hierarchs can forbid in a particular cases, a marriage in their territory for a just reason. Canon 30 states that a custom which introduces a new impediment or one contrary to existing impediments shall be rejected.

24. The learned counsel for the appellants argues that as per Ext.B1 letter the Apostolic Pro-Nuncio in India has authorised the second defendant to decide whether PW.1 is the member of the Sudhist Church or not and therefore, it suggests that the second defendant is at liberty to decide that the Knanaya community is still following the custom of endogamy. I cannot agree with the learned counsel for the appellants on this point. Ext.B1 only suggests that the second defendant is to conduct enquiry as to whether the second defendant is the member of the church as claimed by

him. There is overwhelming evidence that the plaintiff and his entire family were till recently accepted and acknowledged as members of the Holy Family Church at Nattassery and enjoyed all privileges attached thereto. He was baptised in the Knanaya church at Othara as evidenced by Ext.X3 (b). Baptism of a person is considered to be his admission to a particular rite and therefore, the plaintiff has to be considered as a member of the Knanaya church coming under the Diocese of Kottayam, till he is excommunicated for valid reasons.

25. There is no caste system among Christians and the Knanite Christians cannot consider themselves as a separate caste. In *Rajagopal vs. Arumugham and Others* AIR 1969 S.C. 101, it is held that the Christian religion does not recognise any caste classifications. All Christians are to be treated as equals and there is no distinction between one Christian and another of the type that is recognised between members of different castes belonging to Hindu religion. In fact, caste system prevails only amongst Hindus or possibly in some religions closely allied to the Hindu religion. The tenets of Christianity militate against persons professing Christian faith being divided or discriminated on the basis of such classification as the caste system.

26. The claim of endogamy among Knanite Christians by the defendants is akin to the existence of the caste system which is against the tenets of the Christianity and the *Motu Proprio* promulgated in 1949 by the Pope which is binding on all Catholics including Knanaya Catholics and would therefore, do away with the system of endogamous marriage if any, which existed among them.

27. The argument of the learned counsel for the appellants that the relief sought by the plaintiff is incapable

of being implemented and enforced is not acceptable to me. The non issuance of the "Vivahakuri" enabling the plainiff to get his marriage blessed in the church where he is a parishioner amounts to breach of an obligation necessitating issuance of an injunction to compel the defendants to perform the requisite act. there is no need for a declaration as argued by the learned counsel for the appellants because the plaintiff has not been expelled from the community. It is not explained by the defendants how and when the plaintiff ceased to be a member of his Parish Church. Under the circumstances, he is at liberty to seek an injunction and the learned Munsiff has perfectly justified in granting the injunction as prayed for. I find no reason to differ from that finding of the learned Munsiff. Point No.2 is answered accordingly.

28. Point No.3:- In view of my finding on point Nos. 1 and 2, the appellants are not entitled to any relief at the hands of this court and the appeals are only to be dismissed with costs.

In the result, the appeals are dismissed with costs.

Dictated to the Confidential Asst. typed by her, corrected and pronounced by me in the open court on this the 20th day of December, 2008.

Sd/-
Ashok Menon
II Addl. District Judge

Appendix-NII

Sd/-
II Addl. District Judge

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