

defendants 1 and 2 who are elected as the trustees of the first defendant church are continuing in office beyond the period of one year prescribed in the 1934 constitution of the Malankara Church and that the fourth defendant who is the Vicar of the first defendant church is not taking steps to convene a parish assembly to elect new office bearers of the church. It was also alleged by the plaintiffs that the accounts of the first defendant church have not been audited and placed before the parish assembly since 1999. The plaintiffs, therefore, claimed a decree declaring that the first defendant church is liable to be administered in accordance with the 1934 constitution of the Malankara Church, a decree of prohibitory injunction restraining defendants 2 and 3 from functioning as the trustees of the first defendant church and a decree directing the fourth defendant to convene the parish assembly of the first defendant church and elect its office bearers in accordance with the 1934 constitution of the Malankara Church.

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3. Defendants 1 to 3 contested the suit by filing a written statement. The contentions raised by the said defendants were mainly that the first defendant church was established in the year 1928 by the people in the locality for religious worship as per the Jacobite faith and tradition; that the first defendant church has not adopted the 1934 constitution of the Malankara Church; that the first defendant church and its parishioners are loyal to the Patriarch of Antioch and that they accept only the hierarchy of priests ordained by or loyal to the Patriarch of Antioch. They also contended that the parish assembly of the first defendant church had adopted the constitution of Yacobaya Suriyani Christian Association on 30.6.2002 and that since the fourth defendant had deviated from the fundamental faith of the church, he was removed from the Vicarship of the first defendant church. Defendants 5 to 10 who got themselves impleaded as additional defendants in the suit also filed a written statement raising contentions similar to

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the contentions raised by defendants 1 to 3.

4. In the course of the trial, the plaint was amended and a prayer for a declaration that only the fourth defendant or any other priest appointed in accordance with 1934 constitution alone is entitled to conduct religious services in the first defendant church was also incorporated.

5. The evidence in the case consists of the oral testimonies of PWs.1 and 2 and Exts.A1 to A24 on the side of the plaintiffs and the oral testimonies of DWs.1 to 3 and Exts.B1 to B29 on the side of the defendants. The documents called for at the instance of the plaintiffs were marked in the proceedings as Exts.X1 to X11.

6. The trial court, relying on the decision of the Apex Court in ***P.M.A. Metropolitan v. Moran Mar Marthoma*** (AIR 1995 SC 2001) found that the first defendant church is to be administered in accordance with the 1934 constitution of the Malankara Church and that only Vicars and Priests appointed under the 1934 constitution can conduct religious

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ceremonies/services in the first defendant church. Despite the said findings, the suit was dismissed by the trial court holding that there are two factions among parishioners of the first defendant church; that the plaintiffs do not recognise the Patriarch of Antioch, the supreme religious head of the Malankara Church on whom many of the parishioners repose faith and that therefore they are not entitled to the discretionary reliefs claimed in the suit. The plaintiffs are aggrieved by the said decision of the trial court and hence this appeal.

7. Heard the learned Senior Counsel Sri.S.Sreekumar for the appellants, Advocate K.J.Kuriachan for respondents 1 to 3 and 5 to 9 and Advocate P.Vijayakumar for the 4th respondent.

8. The learned counsel for the appellants contended that in so far as it was found by the court below that the first defendant church is liable to be administered in accordance with the 1934 constitution of the Malankara

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Church and that the first defendant church is not being administered in accordance with the said Constitution, the trial court ought to have decreed the suit, granting to the plaintiffs the reliefs claimed by them. The learned counsel for the appellants also contended that the acceptance and recognition of the Patriarch of Antioch cannot be treated as part of the faith of the parishioners of the first defendant Malankara Church. The learned counsel for the appellants, however, pointed out that the Patriarch of Antioch is recognized as the supreme spiritual head of the Malankara Church even as per the 1934 constitution of the Malankara Church. According to him, the 1934 Constitution provides that the Patriarch shall be a person canonically consecrated with the cooperation of the Catholicos and the plaintiffs are not recognizing the present incumbent in the office of the Patriarch of Antioch as he is not a person consecrated with the cooperation of the Catholicos. As such, according to the learned counsel, it cannot be contended that the 1934

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constitution of the church do not recognise the Patriarch of Antioch as the supreme religious head of the church. The learned counsel for the appellants further contended that the finding of the court below that the first defendant church is not being administered in accordance with the 1934 constitution is incorrect and unsustainable. According to the learned counsel, Exts.X1 to X4 documents would show that the church was being administered all along in accordance with the 1934 constitution.

9. The learned counsel for respondents 1 to 3 and 5 to 9, supported the impugned judgment raising various contentions. According to the learned counsel, in the light of the conclusion arrived at by the Apex Court in paragraph 142 (4) of the judgment in **P.M.A. Metropolitan's case** (supra) that the Patriarch of Antioch is spiritually superior to the Catholicos, the administration of a parish church by persons who do not recognise and accept the Patriarch of Antioch as their supreme spiritual head would go against

the spirit of the said judgment. He also contended, relying on paragraph 141 of the judgment of the Apex Court in **P.M.A. Metropolitan's case** (supra), that the Apex Court has not held in the said case that the parish churches are to be governed by the 1934 constitution of the church and that independent decisions in respect of parish churches would not go against the said decision of the Apex Court. The learned counsel further contended that the first defendant church is a church established to uphold the faith that the Patriarch of Antioch is the supreme spiritual head of the church. According to him, the court cannot grant any relief to the plaintiffs which would affect the faith of the church. He relied on paragraph 150 of the decision of the Apex Court in **P.M.A. Metropolitan's case** (supra) in support of the said contention. The essence of the contentions of the learned counsel for the contesting respondents is therefore, that the parish churches under the Malankara Churches should be held to be independent.

10. I have scrutinised meticulously the submissions made at the Bar. As noticed above, the court below found that the first defendant church is governed by 1934 constitution of the Malankara Church and that the church is not being administered in accordance with the said Constitution. Despite the said findings, the court below non suited the plaintiffs solely on the ground that they do not recognise the present incumbent in the office of the Patriarch of Antioch. The question to be considered therefore, is whether the court below was justified in non suiting the plaintiffs for the said reason. It is beyond dispute that the first defendant is a constituent parish church of the Malankara Church. It was found by the Apex Court in **P.M.A. Metropolitan's case** (supra) that the parish churches under the Malankara Church are also to be administered in accordance with the 1934 constitution of the Malankara Church. The relevant extract of the said finding contained in paragraph 141 of the judgment in the

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said case reads thus:

"In the state of such a pleading, the only observation that can be made herein is that the 1934 constitution shall govern and regulate the affairs of the parish churches too, in so far as the said constitution provides for the same."

A reading of the said passage do not indicate that the Apex Court has made any reservation concerning the parish churches consisting of parishioners owing allegiance to the Patriarch of Antioch. The factional dispute in the church between those who owe allegiance to the Patriarch and those owe allegiance to the Catholicos resulted in the litigation resolved by the Apex Court also. As such, when it is held that the first defendant church is to be administered in accordance with the 1934 constitution and when it is found that the first defendant church is not being administered in accordance with the said constitution, I am of the view that the court below should have decreed the suit as prayed for.

11. Now I shall deal with the contentions advanced by the learned counsel for the contesting

respondents in support of the impugned judgment. The main argument of the contesting respondents is that in the light of the conclusion recorded by the Apex Court in paragraph 142(4) of the judgment in **P.M.A. Metropolitan's case** (supra) that the Patriarch of Antioch is spiritually superior to the catholicos, the administration of the parish church by persons who do not recognise and accept the Patriarch of Antioch as their superior spiritual head would go against the decision of the Apex Court in the said case.

Paragraph 142(4) of the judgment reads thus:

"142(4) It may be that by virtue of the revival of Catholicate and by issuing the Kalpana Ex.A. 14 - and also by accepting the Constitution (as to be mentioned presently). - the power of the patriarch may have been reduced to a vanishing point, but all the same he remains the supreme head of the Syrian Church of which the Malankara Church is a division. He is spiritually superior to the Catholicos though he does not, and indeed never did, enjoy any temporal powers over the Malankara Church or its properties."

Article 101 of the 1934 constitution of the Malankara Church provides that the Malankara Church shall recognise the Patriarch, canonically consecrated with the co-operation of the catholicos. The 1934 constitution was framed by the Malankara Association, constituted by the then Patriarch