

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY ,THE 08TH DAY OF MARCH 2019 / 17TH PHALGUNA, 1940

OP(C).No. 537 of 2019

AGAINST THE ORDER/JUDGMENT IN OS 20/2013 of I ADDITIONAL DISTRICT  
COURT, ERNAKULAM

PETITIONERS/PETITIONERS/ADDL.DEFENDANTS 9 & 10:

- 1 AFROTH,  
AGED 24 YEARS  
S/O. ABRAHAM, EDAYANAL HOUSE, VADAVUCODE VILLAGE,  
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.
  - 2 ELDHO K. PAUL,  
AGED 23 YEARS  
S/O. POULSOE KUTTY,  
KEERIKKATTIL HOUSE, VADAVUCODE VILLAGE, KUNNATHUNADU  
TALUK, ERNAKULAM DISTRICT.
- BY ADV. SRI.K.P.SREEKUMAR

RESPONDENTS/RESPONDENTS/PLAINTIFFS:

- 1 KURIACHAN.K.K. ,  
AGED 62 YEARS  
S/O. LATE KURIAKOSE K.P. ,  
KIZHAKKEDATH HOUSE, PANCODE, VADAVUCODE VILLAGE,  
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT - 682 310.
- 2 NIKHIL JACOB,  
AGED 22 YEARS  
S/O. JACOB CHERIAN,  
NELLIKKARA THEKKEDATH,  
VADAVUCODE VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM  
DISTRICT - 682 310.
- 3 MATHEW C.P. , S/O LATE PAULOSE,  
AGED 59 YEARS  
CHOVATTEL HOUSE,  
VADAVUCODE VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM  
DISTRICT - 682 310.
- 4 PAILY PILLAI T.P. , S/O LATE PAULOSE,

AGED 70 YEARS  
THEKKEDATH HOUSE,  
VADAVUCODE VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM  
DISTRICT - 682 310.

5 SOMAN P. PAUL,  
AGED 60 YEARS  
S/O. LATE PAULOSE,  
PARANGETH HOUSE,  
VADAVUCODE VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM  
DISTRICT - 682 310.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08.03.2019, THE  
COURT ON THE SAME DAY PASSED THE FOLLOWING:

## **JUDGMENT**

Ext.P8 common order passed in two interlocutory applications, viz, I.A. No.7268 of 2018 and I.A.No.192 of 2019 in I.A.No.7268 of 2018, preferred in O.S.No. 20 of 2013 on the files of the District Court, Ernakulam, is under challenge in this original petition. Additional defendants 9 and 10 in the suit are the petitioners in the original petition.

2. O.S.No. 20 of 2013 is a suit in respect of the first defendant Church therein. According to the plaintiffs, the first defendant Church being a constituent Church of the Malankara Orthodox Syrian Church (the Church), the same has to be administered in accordance with the 1934 constitution of the Church. The stand of the contesting defendants in the suit, on the other hand, is that the first defendant is a Church of Jacobite Syrian Christians who uphold the spiritual supremacy of the Patriarch of Antioch and therefore, not one to be administered in accordance with the 1934 constitution of the Church. In the course of the proceedings, additional defendants 9 and 10 preferred I.A.No.7268 of 2018 seeking directions to the plaintiffs to produce the original of the 1934 constitution of the Church and other documents on the basis of which amendments were carried out to the 1934 constitution of the Church. I.A.No.7268 of 2018 was opposed by the plaintiffs contending, among others, that the documents, the

production of which is sought, are not relevant for adjudication of the issues arising for consideration in the suit. An identical suit was filed earlier by persons similarly placed like the plaintiffs in respect of another Church as O.S.No.16 of 2004 before the very same court and an identical application like I.A.No.7268 of 2018 was filed by persons similarly placed like defendants 9 and 10 in the suit for production of the very same documents. In the said application, the plaintiffs therein took the stand that the original constitution and the minutes of the meeting in which the same was adopted have deteriorated in quality due to passage of time and are not in a state in which the same could be taken to court. In the light of the stand taken by the plaintiffs in O.S.No.16 of 2004, additional defendants 9 and 10 filed I.A.No.192 of 2019 in I.A.No.7268 of 2018 for appointment of a Senior Advocate as Commissioner with an expert in Archives or Forensic Science, for verification of the original of the 1934 constitution and the original documents, on the basis of which, amendments were carried out to the constitution. As noted, the above interlocutory applications were dismissed by the court below in terms of Ext.P8 order holding that there would be no document like the original to the constitution and only the draft of the constitution circulated in the meeting in which it was adopted and the minutes of the said meeting would be available, if at all available and that the said documents are not relevant in the matter of deciding the issues arising for consideration in the suit. As

noted, additional defendants 9 and 10 are aggrieved by Ext.P8 order.

3. Heard the learned counsel for the petitioners and the learned counsel for the contesting respondents.

4. A party to a suit or proceedings is duty bound to lead the best evidence which would throw light on the issue in dispute and in case such evidence is withheld, the court may presume that the said evidence, if produced, would be unfavourable to the person who withholds it. This is what illustration (g) to Section 114 of the Indian Evidence Act, 1872 provides for. It is, however, open to a party to refrain from producing an evidence in his possession which he considers irrelevant. If the opposite party is dissatisfied, it is for him to apply for production of the same. Non-production of a document admittedly available with a party would give rise to an adverse inference against him that the said document, if produced, would be unfavourable to him. The maxim *omnia praesumuntur contra spoliatorem* (if a man wrongfully withholds evidence, every presumption to his disadvantage consistent with the facts admitted or proved will be adopted) is the principle behind it. But it has to be kept in mind that adverse inference shall not be drawn by the court merely because it is lawful to do so. In the matter of drawing adverse inference, the court shall consider the question whether the document withheld, has any relevance in the context of the dispute. The court cannot also lose sight of the burden of proof. In other words,

presumption or adverse inference for non-production of a document is always optional and to be drawn having regard to the totality of the facts and circumstances of the case. In a case where one party has asked the court to direct the other to produce a document which is in his possession and the other party failed to comply with the court's order, the court may be justified in drawing adverse inference, if it is found later that the document sought to be produced was relevant in the matter of resolving the issues in dispute between the parties.

5. Coming to the case on hand, the stand taken by the respondents in the applications is that the documents sought to be produced by the respondents are irrelevant. As indicated above, a party to a suit or proceedings is certainly entitled to take such a stand in an application for production of documents to justify the non-production. According to me, in such cases, the court is not obliged to go in search of the documents sought to be produced. Instead, after the conclusion of the evidence, having regard to the facts and circumstances of the case, if the court finds that the documents sought to be produced are relevant in the context of issues to be adjudicated in the suit and the documents are available with the party, the court is empowered to make an adverse inference. The practice of adjudicating the relevancy of the documents sought to be produced at the interlocutory stage of the suit or proceeding may not be warranted in every case, for such adjudication, if made at that stage

would delay the proceedings, as the aggrieved party is likely to take up the matter further and that process would continue indefinitely upto the highest forum. Needless to say, according to me, the court below should have disposed of the interlocutory applications directing the respondents to produce the documents sought to be produced, or in the alternative, to file an affidavit indicating the reasons for non-production, so as to enable the court to take a decision as to whether an adverse inference should be made on the facts of the case at a later stage of the proceedings.

In the result, the original petition is disposed of modifying the impugned order as indicated in paragraph 5 above.

sd/-

**P . B . SURESH KUMAR**

**JUDGE**

SKS

**APPENDIX****PETITIONER'S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE MALANKARA ORTHODOX SURIANI SABHA BHARANAKHADANA PRINTED AT THE CATHOLICATE PRESS IN 1976 AND PUBLISHED IN THE WEBSITE OF THE ORTHODOX FACTION (WWW.OVSONLINE.IN) .
- EXHIBIT P2 TRUE COPY OF THE BOOKLET OF THE 1934 CONSTITUTION PRINTED IN 2012 WITH CHANGES AS ALLEGED BY THE PETITIONERS HEREIN.
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 26.10.2018 IN RP NO.879/2018 IN CRP NO.155/2018 PASSED BY THIS HON'BLE COURT.
- EXHIBIT P4 TRUE COPY OF THE ORDER PASSED BY THIS HON'BLE COURT DATED 22.11.2018 IN RP NO.884/2018 IN CRP NO.154/2018.
- EXHIBIT P5 TRUE COPY OF THE ORDER IN I.A.NO.6733/2018 DATED 21.12.2018.
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 16.01.2019 IN O.P. (C)NO.118/2019.
- EXHIBIT P7 TRUE COPY OF THE IA NO.192/2019 DATED 11.01.2019 OF THE ADDL. DISTRICT COURT, ERNAKULAM.
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 31.01.2019 IN I.A.NOS.7268/2018 AND 192/2019 OF THE ADDL. DISTRICT COURT, ERNAKULAM.

RESPONDENT'S EXHIBITS : NIL