

PETITIONER:
MOST. REV.P.M.A. METROPOLITAN & ORS.ETC.

Vs.

RESPONDENT:
MORAN MAR MARTHOMA MATHEWS & ANR.ETC.

DATE OF JUDGMENT 20/06/1995

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1995 AIR 2001 1995 SCC Supl. (4) 286
JT 1995 (5) 1 1995 SCALE (4)1

ACT:

HEADNOTE:

JUDGMENT:
B.P. JEEVAN REDDY.J.

Leave granted in Special Leave Petitions.

These appeals represent the latest round of litigation between two rival sections in the Malankara Jacobite Syrian JUDGEMENT

Christian Community. A brief reference to the earlier rounds of litigation is necessary for a proper appreciation of the questions arising herein.

St.Thomas, one of the disciples of Jesus Christ came to Malabar in 52 A.D. to spread his message. He died in India.

At the Council held at Nicea in 325 A.D. - First General Council - convened by the Roman Emporer Constantine, four Patriarchates were established spanning the Christendom as it was known then, viz., Rome, Constantinople, Alexandria and Antioch, each headed by a Patriarch. Within the jurisdiction of Patriarch of Antioch was established another office, viz., the great Metropolitan of the East, also known as "Catholicos". The office of Catholicate fell into disuse later and was revived in 628 A.D. Sometime later, it again fell into disuse. All these are matters of faith and are stated merely by way of introduction.

By the 16th century, Christianity had gained a fairly substantial foothold in the area now comprised in Kerala. The dominant faith was of the Syrian Orthodox Church. 16th century saw the rise of Portugese political power on the west Coast of India. The Portugese were Roman Catholics. They compelled the local christians to accept Roman Catholic faith. They succeeded to some extent but not for long. In the year 1654, the Christians of Malabar rebelled against the imposition of an alien faith and affirmed their loyalty to Syrian Orthodox Church headed by the Patriarch by taking an oath en masse at Mattancherry, known as the "Koonan Cross Oath". Since then the Patriarch of Antioch was exercising ecclesiastical supremacy over what may be called the

"Malankara Syrian Christian Church". With the rise of the British power in the Southern India during the 19th century, they in turn pressurised the Malankara Syrian Christian Community to embrace the Protestant faith. They too succeeded in some measure. Disputes arose between the two groups (one that embraced the Protestant faith and the other adhering to the Orthodox faith), which was settled by an award called "Cochin Award" rendered on April 4, 1840. As per this award, the Church properties were divided between the Church Mission Society (Protestants) and the Malankara Jacobite Syrian Church (Orthodox faith). The amount of 3,000 Star Pagodas deposited by Mar Thoma VI (Dionysius the Great) with the East Indian Company at eight percent interest came to be allotted to Malankara Jacobite Syrian Church in this division.

On account of certain disputes and bickerings between the members of Malankara Jacobite Syrian Church, Patriarch Peter III of Antioch came to Malabar in 1876. He called a meeting of the accredited representatives of all Churches in Malabar which is known as the "Mulanthuruthy Synod". At this Synod, Malankara Syrian Christian Association, popularly called the "Malankara Association", was formed to manage the affairs of the Church and the Community. The Malankara Metropolitan was made the ex-officio President of this Association. Each member Church was to send three representatives to the Association. A Managing Committee of twenty four, called the "Standing working Committee of the Association" was also constituted. Until 1876, the entire Malabar was comprised in one Diocese. But thereafter it was divided into seven Dioceses, each Diocese headed by a Metropolitan. One of them was to be designated as Malankara Metropolitan who exercised spiritual and temporal powers over all the Dioceses.

SEMINARY SUIT:

On July 4, 1879 Mar Joseph Dionysius claiming to be the properly consecrated Metropolitan of Malankara Jacobite Syrian Church and as the President of Malankara Association filed O.S.No.439 of 1054 in the Zilla Court of Alleppey against one Mar Thomas Athanasius. The main dispute between them was while the plaintiff asserted the supremacy of Patriarch comprised in consecrating and appointing Metropolitans from time to time to govern and rule over the Malankara Edavagai, in sending Morone (the sanctified oil) for baptismal purposes, in receiving the Ressissa (tribute) from the Community to maintain his dignity and in generally controlling the ecclesiastical and temporal affairs of the Edavagai, the defendants denied any such Patriarchal supremacy. The suit was ultimately disposed of by the judgement of Travancore Royal Court of Final Appeal in the year 1889. The Royal Court found that the ecclesiastical supremacy of the Patriarch of Antioch over Malankara Syrian Christian Church in Travancore had all along been recognised and acknowledged by Jacobite Syrian Christian Community and their Metropolitans; that the exercise of supreme power consisted in ordaining, either directly or through a duly authorised delegates, Metropolitans from time to time to manage the spiritual matters of the local Church, in sending Morone to be used in the Churches for baptismal and other purposes and in general supervision over the spiritual government of the Church. The Royal Court further ruled that the authority of Patriarch never extended to temporal affairs of the Church which in that behalf was an independent Church. It was further declared that the Metropolitan of the Syrian Christian Church in Travancore should be a native of Malabar consecrated by the Patriarch

or by his duly authorised delegate and accepted by the people as their Metropolitan. The Court found that the plaintiff was so consecrated by Patriarch and accepted by the majority of the people and, therefore, entitled to be recognised and declared as the Malankara Metropolitan and as the trustee of the Church properties.

ARTHAT SUIT:

It appears that the Patriarch of Antioch did not relish the judgment of the Royal Court of Travancore insofar as it declared that he had no control over the temporal affairs of the Malankara Church. Some local Christians supported him in that behalf which led to the institution of a suit in 1877 which resulted in the judgment of the Court of Appeal of Cochin dated August 15, 1905, re-affirming the findings of the Travancore Royal Court. The Cochin Court of Appeal declared that while the Patriarch of Antioch is the spiritual head of Malankara Syrian Jacobite Christian Church, the Churches and their properties are subject to the spiritual, temporal and ecclesiastical jurisdiction of the Malankara Metropolitan. In other words, the Patriarch's claim of control over the temporal affairs of the Malankara Church was negated once again.

THE REVIVAL OF CATHOLICATE IN 1912:

The Sultan of Turkey withdrew the recognition given to Abdul Messiah as the Patriarch of Antioch and recognised Abdulla II as the Patriarch. There is a difference of opinion as to the effect of this withdrawal of recognition by the Sultan. While one view is that this recognition resulted in Abdul Messiah ceasing to exercise any and all the powers of Patriarch, the other view is that the said withdrawal did not affect the spiritual authority of Abdul Messiah. Be that as it may, there were now two rival claimants to the Patriarchate of Antioch and as we shall presently indicate it is this dispute between Abdul Messiah and Abdulla II which led to the formation of two groups in the Malankara Church.

In the year 1907, Mar Geevarghese Dionysius was ordained as Metropolitan by the Patriarch Abdulla II at Jerusalem. In 1909, Mar Geevarghese Dionysius became the Malankara Metropolitan on the death of Mar Joseph Dionysius. Because of certain differences arising between Mar Geevarghese Dionysius and Abdulla II, the latter excommunicated the former on March 31, 1911. A few months later, Abdulla II appointed one Paulose Mar Kurilos as the Malankara Metropolitan. Mar Geevarghese Dionysius responded by convening a meeting of the Malankara Syrian Christian Jacobite Church which declared his excommunication as invalid. In the year 1912, Patriarch Abdul Messiah came to Malankara and declared the excommunication of Mar Geevarghese Dionysius by Abdulla II as invalid. In addition to that, Abdul Messiah also purported to revive and reestablish the Catholicate by consecrating one Mar Ivanios as the Catholicos. It is relevant to notice the proceedings relating to the revival of Catholicate.

Two documents are put forward as the Kalpana of Abdul Messiah reviving the Catholicate, namely, Exs.A.13 and A.14. The Patriarch group (who are the appellants before us) dispute Ex.A.13. They say that Ex.A.14 is the only version while Catholicos group (who are respondents before us) say that Ex.A.14 was preceded by Ex.A.13 and that without Ex.A.13 there could not have been Ex.A.14. We may notice the contents of both the documents. Ex.A.13 which is dated September 17, 1912, says inter alia, "by virtue of the order of the office of the Shephard, entrusted to Simon Peter by our Lord Jesus Messiah, we are prompted to perpetuate for

you Catholicos or Mapriyana to serve all spiritual requirements that are necessary for the conduct of the order of the holy true Church in accordance with its faithWith Geevarghese Mar Dionysius Metropolitan, who is the head of the Metropolitans in Malankara and with other Metropolitans, Ascetics, Deacons and a large number of faithfuls, we have ordained in person our spiritually beloved Evanios in the name of Baselius as Mapriyana, i.e., as the Catholicos on the Throne of St.Thomas in the East, i.e., in India and other places at the St.Mary's Church, Niranam on Sunday, 2nd Kanni, 1912 A.D. as per your request" (emphasis added). A.13 then sets out the authority and the jurisdiction of Catholicos so revived in the following words:

"The authority to serve all spiritual elements in public, which are necessary for protecting the tradition of the Holy Church has been given to him (Evanios) by the Holy Ghost as was given to the Holy Apostles by our Lord Jesus Messiah. Authority means the authority to ordain Metropolitans, Episcopas, and to consecrate Holy Morone and to serve all the other spiritual items and also to administer the Kandanadu Diocese as he was earlierYou must respect and love him properly and suitably because he is your head, Shepherd and spiritual father. He who respects him, respects us. He who receives him, receives us. Those who do not accept his right words and those who standing against his opinions which are in accordance with the Canon of the Church, defy him and quarrel with him, will become guilty.....".

Coming to Ex.A.14, which is dated February 19, 1913, the third paragraph starts by saying "After bestowing on you our blessings a second time, we desire to make known to you our true affection that ever since your letters reached our weakness in midiat, we have been deeply grieved at the dissensions sown by Abdulla Effendi among our spiritual children in all our Churches in Malabar". A little later A.14 says:

"Accordingly, we, by the Grace of God, in response to your request, ordained a Maphrian, that is, Catholicos by name Poulouse Basselios and three new Metropolitans, the first being Gheevarghese Gregorius, the second Joachim Evanios and the third, Gheevarghese Philexinos. It appears to us that, unless we do instal a Catholicos, our Church, owing to various causes, is not likely to stand firm, in purity and holiness. And, now, we do realise that by the might of our Lord, it will endure unto Eternity, in purity and holiness, and more than in times past, be confirmed in the loving bond of communion with the Throne of Antioch. The Joy of our Heart is herein realised. Our children, abide ye now in peace. As for ourselves, we

leave you. Rest assured that though we leave you, we shall never be unmindful of you. We shall incessantly lift up our eyes unto heaven and offer our prayers and intercessions for the guileless lambs, redeemed by the previous blood of our Saviour Jesus Christ. Pray ye for us, and for our entire community. Abide ye in love, peace and concord. Pray ye for your enemies, and, for those that revile you without cause. Be not afraid of the uncanonical and unjustifiable interdicts and curses of the usurper. Heed not those who create dissensions. God will reward them for their action, be they good or bad. We commend you into the hands of Jesus Christ, our Lord, the Great Shepherd of the flock. May he keep you. We rest confident that the Catholicos and Metropolitans = your shepherds = will fulfil all your wants. The Catholicos, aided by the Metropolitans, will ordain melpattakkars, in accordance with the Canons of our Holy fathers and consecrate Holy Morone. In your Metropolitans is vested the sanction and authority to instal a Catholicos, when a Catholicos died. No one can resist you in the exercise of this right and, do all things properly, and in conformity with precedents with the advice of the committee, presided over by Dionysius, Metropolitan of Malankara. We beseech your love, and counsel you in the name of our Lord Jesus that Ye faint not in your true faith of Saint Peter, on which is built, the Holy Catholic and Apostolic Church. What we enjoin your true love is that the unlawful conduct of a usurper, may not induce you to sever that communion which is the bond of love connecting you with the Apostolic Throne of Antioch."

(Emphasis added)

The main difference between Ex.A.13 and Ex.A.14 is two fold: Firstly, A.13 speaks of "Catholicos on the Throne of St.Thomas in the East", which words are not to be found in A.14. Secondly, A.14 contains the following words: "in your Metropolitans is vested the sanction and authority to install a catholicos, when a catholicos dies. No one can resist you in the exercise of this right and do all things properly, and in conformity with precedents with the advice of the committee, presided over by Dionysius, Metropolitan of Malankara", which are not found in Ex.A.13. More about these documents later.

Mar Ivanios, who was consecrated as the Catholicos, died on April 16, 1913. Abdul Messiah died on August 30, 1915 and Abdulla II died on November 25, 1915. No one was installed as the Catholicos till 1925, when one Mar Geevarghese Philixinos of Vakathanam was installed as the second Catholicos but without reference to the Patriarch. On the death of Mar Philixinos on December 17, 1928,

Geevarghese Gregorius was installed as the third Catholicos, again without reference to the Patriarch.

VATTIPANAM SUIT:

Dispute arose as to the persons entitled to the interest on 3,000 Star Pagodas aforementioned. In view of the dispute, the Secretary of State for India instituted an interpleader Suit No.O.S.94 of 1088 in the District Court, Trivandrum. It was later converted into a representative suit between two groups, viz., defendants 1 to 3 representing what may be called the Catholicos group (i.e., the group owing allegiance to the Catholicos installed by Patriarch Abdul Messiah) and defendants 4 to 6 representing what may be called the Patriarch group (i.e., the group owing allegiance only to the Patriarch). The first defendant claimed to have been appointed as Malankara Metropolitan by Abdul Messiah and disputed the validity of the Bull of excommunication issued by Abdulla II. On the other hand, defendants 4 to 6 claimed that the first defendant having been ex-communicated by the Patriarch Abdulla II, ceased to be the Malankara Metropolitan and that the fourth defendant has been validly appointed by Abdulla II as the Malankara Metropolitan in the place of the first defendant. Defendants 4 to 6 further contended that by their conduct and declarations, defendants 1 to 3 have become schismatics and hence disqualified to act as the trustees of the Church properties. The fourth defendant died pending the suit and in his place defendant No.42 was impleaded as the Malankara Metropolitan. The learned District Judge held inter alia that the first defendant is the validly appointed Malankara Metropolitan, having been accepted by the community at the installation meeting held in the year 1084. He also held that the withdrawal of recognition by the Sultan of Turkey did not deprive Abdul Messiah of his purely spiritual functions and powers and that the ex-communication of the first defendant by Abdulla II was invalid. With these findings, the learned District Judge upheld the claim of defendants 1 to 3 to the interest amount.

The Patriarch group filed an appeal before the High Court of Travancore (reported in 41 T.L.R.1). A Full Bench of the High Court allowed the appeal and reversed the judgment and decree of the Trial Court and upheld the claim of defendants 4 to 6 as the true and valid trustees entitled to the said interest amount. The findings recorded by the High Court are:

"(a) That Exhibit 18, and not Exhibit A, is the version of the Canon Law that has been recognised and accepted by the Malankara Jacobite Syrian Christian Church as binding on it;

(b) That under Ex.18, the Patriarch of Antioch possessed the power of ordaining and excommunicating Episcopas and Metropolitans by himself, i.e., in his own right and that it is not necessary for him to convene a Synod of Bishops and proceed by way of Synodical action, in order to enable him to exercise these powers; the person ordained should, of course, be a native of Malabar and be accepted by the people;

(c) That there is nothing in the Mulanthuruthy Resolutions, Exhibit EL, which limits the powers possessed by the Patriarch under the Canon Law

in matters of spiritual character, or which imposes restrictions on him in regard to the exercise of such powers; and

(d) That no special forms of procedure are prescribed by Exhibit 18 for observance by Patriarch before he exercises his powers of excommunication."

Thereupon defendants 1 to 3 applied for review of the said judgment. The review petition was admitted subject to the condition that the review petitioners shall not question the following three findings recorded in the judgment under review - the three findings being:

"(1) as to the authenticity of Ex.A.18, the version of Canon Law produced by defendants 5, 6 and 42.

(2) as to the power of Patriarch to ex-communicate without the intervention of the Synod; and

(3) as to the absence of an indirect motive on the part of the Patriarch which induced him to exercise his power of ex-communication."

Accordingly, the appeal was re-heard by another Full Bench which by its judgment pronounced on July 4, 1928 upheld the decision of the learned District Judge and confirmed his decree. Under this judgment, the Full Bench held:

"(i) The excommunication of Mar Geevarghese Dionysius (the first defendant) was invalid because of the breach of the rules of natural justice in that he was not apprised of the charges against him and had not been given a reasonable opportunity to defend himself. In other words, he remains the Malankara Metropolitan;

(ii) That defendants 1 to 3 had not become heretics or aliens or had not set up a new Church by accepting the establishment of the Catholicate by Abdul Messiah with power to the Catholicos for the time being to ordain Metropolitans and to consecrate Morone and thereby reducing the power of the Patriarch over the Malankara Church to a vanishing point;

(iii) That the defendants 4 to 6 had not been validly elected."

It is interesting to notice that in this suit while the Patriarch group was contending that members of the Catholicos group have become aliens to the faith by repudiating the supremacy of Patriarch (by recognising the authority and the power of the Catholicos), the Catholicate group contended that they have not repudiated the Patriarch and that by recognising the Catholicos, they have in no manner denied the ecclesiastical superiority of the Patriarch. It is equally relevant to note that the excommunication which was in question there was the excommunication of the Malankara Metropolitan and not of the Catholicos. The question whether the Patriarch has the power to excommunicate the Catholicos and if so in what manner and on what grounds was not in question in that suit. Another feature to be noted is that it was the Patriarch group which was saying that by espousing the cause of and the revival of

Catholicos, defendants 1 to 3 therein had in effect reduced the power of the Patriarch over the Malankara Church to a vanishing point - which in their view amounted to repudiation of the power and authority of the Patriarch - while the Catholicos group was denying that they have done any such thing or that they had any intention to do so. The excommunication of first defendant (Mar Geevarghese Dionysius, Malankara Metropolitan) was held invalid not on the ground of lack of power in the Patriarch but on the ground that he did not follow the principles of natural justice in excommunicating him. Once the excommunication of first defendant was held to be invalid, it followed logically that the appointment of defendant No.4 as Malankara Metropolitan was invalid. Yet another noticeable feature of this judgment is the following finding recorded by the Court:

"The whole matter resolves itself into a personal dispute between two claimants to the Patriarchate in which it is said, the first defendant deserted the Patriarch who had created him Metropolitan and supported his rival. Such conduct might amount to an ecclesiastical offence for which the offender could be deprived by his ecclesiastical superior but it could not be an offence for which the civil courts could try him or express any opinion as to his guilt.... In the circumstances it cannot be said that the Church to which the defendants 1 to 3 belong is a different Church from that for which the endowment now in dispute was made."

DEVELOPMENTS SUBSEQUENT TO THE FINAL DISPOSAL OF THE VATTIPANAM SUIT:

After the aforesaid judgment, it appears, both the parties tried to strengthen their respective positions. On August 16, 1928 the Managing Committee of the Malankara Association was formed which was authorised to draw a constitution for the Church and the Association. On the very next day, i.e., August 17, 1928, Mar Julius Elias, the delegate of the Patriarch who was then in Malabar, issued an order calling upon Mar Geevarghese Dionysius to execute an Udampadi (submission deed) within two days accepting the authority of the Patriarch and also suspending him for having committed several grave offences against the Holy Throne of Antioch and for having repudiated the authority of the ruling Patriarch. He addressed letters to the Governments of Travancore and Madras to withhold payment of interest to Mar Geevarghese Dionysius in view of his suspension from the office of Malankara Metropolitan.

On August 21, 1928, O.S.2 of 1104 was filed in the District Court of Kottayam by eighteen persons belonging to Patriarch group against Mar Geevarghese Dionysius and two others including the then Catholicos Mar Geevarghese Philixinos. Mar Geevarghese Philixinos died in 1929. Thereupon Moran Mar Basselios was impleaded as a defendant. On January 23, 1931, O.S.2 of 1104 was dismissed for non-compliance with certain orders regarding payment of monies to the Commissioner appointed in the suit. The application for restoration of the suit was dismissed on September 29, 1931, against which order the plaintiffs therein filed Civil Misc. Appeal No.74 of 1107 in the High Court. While the aforesaid C.M.A. was pending in the High Court, certain

developments took place which require to be noticed.

With a view to put an end to the disputes between the two rival groups in the Malankara Church, Patriarch Elias I visited Malabar in 1931 at the instance of Lord Irwin, the then Viceroy of India. Patriarch Elias I, however, died in Malabar before he could effect any settlement. In his place, one Ephraim was elected as the Patriarch of Antioch in the year 1933, but, it is said, without notice to the Malabar Community. For this reason, Mar Geevarghese Dionysius and his supporters did not recognise Ephraim as the duly elected Patriarch.

Mar Geevarghese Dionysius died in February, 1934 with result the trust properties passed into the possession of his co-trustees, Mani Poulse Kathanar and E.J. Joseph. Shortly thereafter, the draft constitution prepared by the Managing Committee of the Malankara Association was published in the shape of a pamphlet. On December 3, 1934 notices were issued convening a meeting of all the Churches to be held on December 26, 1934 at M.D. Seminary at Kottayam for, inter alia, electing the Malankara Metropolitan and adopting the draft constitution. Notices were also published in two leading Malayalam newspapers. The meeting was held on the appointed day (the proceedings whereof were exhibited as Ex.64 in Samudayam suit), at which, the third Catholicos, Mar Basselios Geevarghese II was elected as Malankara Metropolitan. The draft constitution was also adopted at the said meeting.

THE CONSTITUTION ADOPTED BY THE MALANKARA ASSOCIATION HELD ON DECEMBER 26, 1934:

The Constitution which was adopted on December 26, 1934 provides for various aspects concerning the Malankara Church and the Malankara Association. The relevant Articles, as originally approved in 1934, read thus:

"(1) Malankara Church is a division of Orthodox Syrian Church. Primate of the Orthodox Syrian Church is Patriarch.

(2) Malankara Church was founded by St. Thomas, the apostle and supremacy in the Orthodox Syrian Church of the East and the Primate of the Orthodox Syrian Church is with the Catholicos.

(5) The approved canon of this church is Hudaya Canon written by Bar Hebreus (the same canon book as one printed in Paris in 1898).

(90) The throne of the Catholicos was re-established in the Orthodox Syrian Church of the East which includes Malankara church in 1088 M.E. (1913) and this institution has been functioning ever since then in the Orthodox Syrian Church of the East.

(91) Catholicos shall have the right to visit all churches in Malankara and that the expenses of such visits shall be borne by the respective parish churches.

(92) Malankara church shall recognise the Patriarch consecrated in co-operation with the episcopal Synod of which the Catholicos is the President and in accordance with the canons.

(93) Whenever Catholicos is to be consecrated, if there be Patriarch recognised as stated above, the

Patriarch should be invited for the consecration and if the Patriarch arrives, he shall as President of the Synod consecrate Catholicos with the co-operation of the Synod.

(101) No one shall have right to alter the faith of the Sabha. In case there is any dispute regarding matters of faith, episcopal synod is vested with power to decide the dispute."

(Emphasis added)

The constitution was amended in 1951 and again in 1967. When the 1951 amendments were made, the judgement of the Travancore High Court dated August 8, 1946 was holding the field whereunder the Catholicos group were declared as strangers to the Malankara Church. For that reason, it appears, none of the members of the Patriarch group participated in effecting the said amendments.

SAMUDAYAM SUIT:

On July 5, 1935 the Metropolitans of the Patriarchal party issued notice summoning a meeting of the church representatives for August 22, 1935 at Karingasseraï to elect the Malankara Metropolitan. The notice stated that none of the persons belonging to Catholicos party should be elected. The meeting was accordingly held on August 22, 1935 whereat Mar Poulouse Athanasius was elected as the Malankara Metropolitan. The meeting purported to remove the trustees elected at the Meeting held on December 26, 1934 (i.e., Mani Poulouse Kathanar and E.J. Joseph, belonging to Catholicos group) and appointed two other persons in their place. Having done this, the Patriarch group (plaintiffs appellants in C.M.A. 74 of 1107 pending in the High Court) allowed the appeal to be dismissed for non-prosecution.

The Patriarch group then instituted, on March 10, 1938, O.S.111 of 1113 in the District Court of Kottayam (hereinafter referred to as 'the samudayam Suit') for a declaration of their title as trustees of the Samudam properties (common properties) of the Malankara Church and for a further declaration that the defendants to that suit (belonging to Catholicos group) were not lawful trustees and for possession of the trust properties. Certain ancillary reliefs were also asked for. The plaintiffs in the said suit based their title on the proceedings of the Karingasseraï meeting aforesaid, whereat the plaintiffs therein were elected as Malankara Metropolitan and co-trustees and the trustees belonging to Catholicos group (defendants to the suit) were removed. The suit was dismissed by the Trial Court on January 18, 1943, against which the plaintiffs therein preferred an appeal to the Travancore High Court being A.S.I of 1119. On August 8, 1946 the appeal was allowed and the suit decreed by a majority of Judges (2:1). The defendants (Catholicos group) thereupon applied for review which was rejected. The matter was carried to this Court in Civil Appeal No.193 of 1952 which was allowed on May 21, 1954. This court directed the High Court to re-hear A.S.I of 1119 on all the points. Accordingly, the High Court took up the appeal for hearing and allowed the same by its judgement dated December 13, 1956. The suit was decreed accordingly. On a certificate being granted by the High Court, the defendants (catholicos group) filed an appeal in this Court which was allowed on September 12, 1958 (reported in A.I.R.1959 S.C.31). It is necessary to notice the relevant findings recorded by this Court:

"(1) The main plea of the plaintiffs that the defendants had

become heretics or aliens or had gone out of church by establishing a new Church because of the specific acts and conduct imputed to them is unacceptable for the reason that the said issue is concluded by the judgement of the High Court of Travancore in O.S.94 of 1088 (vattipanam suit). The charges which were sought to be relied upon as fresh cause of action in the suit (Samudayam Suit) are not covered by the pleadings or the issues on which the parties went to trial. Some of them are pure after-thoughts and cannot therefore be permitted to be raised. The said charges, or at any rate most of them, ought to have been and should have been put forward in the vattipanam suit and the plaintiffs having not done that, cannot now put them forward. They are barred by the rule of res judicata from doing so. It must therefore be held that it is no longer open to the plaintiffs to re-agitate the contention that the first defendant in the said suit had ipso facto become heretic or alien or had gone out of Church and in consequence has lost his status as a member of the Church or his office as a trustee.

(2) The M.D. Seminary meeting held on 26.12.1934 at kottayam was a properly held meeting and the first defendant in the said suit was validly appointed as the Malankara Metropolitan and as such became the ex-officio trustee of the church properties.

(3) The Karingasserai meeting cannot be held to be a properly held meeting of the Malankara Association and therefore the proceedings of the said meeting and the decisions taken therein are not valid.

(4) Since the plaintiffs have failed to prove that they are validly elected trustees, their suit for ejectment must fail for want of title as trustees."

DEVELOPMENTS SUBSEQUENT TO THE JUDGEMENT OF THIS COURT IN MORAN MAR BASSELIOS CATHOLICOS & ORS. V. THUKALAN PAULO AVIRA & ORS. (A.I.R. 1959 S.C.31):

Even while the aforesaid appeal was pending in this Court, the then Patriarch expressed a desire through his Kalpana dated November 30, 1957 (Ex.B.197) to settle outstanding disputes in the Malankara Church. He stated in the Kalpana that he was deeply interested in joining those who were divided and in strengthening the spiritual bond between Malankara and Antioch and that he was opening his heart for peace and unity. It appears that this desire of the Patriarch was reciprocated by the Catholicos group. The judgement of this Court delivered on 12th September, 1958 affirming that the Malankara Church remained a single unified church and rejecting the contention that the defendants in the said suit (Samudayam Suit) had become heretics and had established a separate Church away from the

Jacobite Syrian Church appears to have given an impetus to the drive towards unity between the two groups.

On December 9, 1958, the Patriarch issued a Kalpana dated December 9, 1958 (Ex.A.19) stating inter alia:

"It is no secret that the disputes and dissensions that arose in the Malankara Church prevailing for a period of 50 years have in several ways weakened and deteriorated it. Although right from the beginning several persons who loved the Church and devout of God desired peace and unity putting an end to the dissension, they departed in sorrow without seeing the fulfilment of their desire. We also were longing for peace in the Malankara Church and the unity of the organs of the one body of the Church. We have expressed this desire of ours very clearly in the apostolic proclamation (reference is to the proclamation dated November 11, 1957) we issued to you soon after our ascension on the Throne. This desire of ours gained strength with all vigour day by day without in any way slackened and the Lord God has been pleased to end the dissension through us. Glory be to him. To bring forth the peace in the Malankara Church we hereby accept with pleasure Mar Baselios Gheevarghese as Catholicose. Therefore we send our hearty greetings"

(Emphasis added)

It is significant to mention here that this Kalpana Ex.A.19 was issued by Patriarch Yakub, who was in India during the conduct of Samudayam suit/appeal, attending to the said litigation on behalf of the Patriarch party. He became the Patriarch sometime earlier to his Kalpana dated November 30, 1957.

On December 16, 1958 the Catholicos responded by issuing his Kalpana (Ex.A.20) wherein he described himself as "meek Baselios Catholicos named as Geevarghese II seated on the Throne of the East of Apostle St.Thomas". Having expressed his grief at the dissensions in the Malankara Church and his happiness at the end of discord, the Catholicos stated "we, for the sake of peace, in the Church, are pleased to accept Moran MAR Ignatius Yakub III as Patriarch of Antioch subject to the constitution passed by the Malankara Syrian Christian Association and now in force". (Emphasis added). The Catholicos further stated in the said Kalpana, "we have also pleasure to accept the Metropolitans under him (Patriarch) in Malankara subject to the provisions of the said constitution.....".

On December 22, 1958 the three Metropolitans appointed by Patriarch during the pendency of the Samudayam suit/appeal sent submission deeds Ex.A.37 and Ex.A.154 to the Catholicos. Under these letters of submission, the Metropolitans expressed their joy at the restoration of peace and unity in the Malankara Church and promised to perform their functions under the Catholicos and to follow the canons, the constitution in force and the orders to be issued by the Catholicos. We may quote the last sentence in Ex.A.37 written by Poulose Philixinos, Metropolitan of Kandanad Diocese, (who has indeed been appointed later as

Catholicos by the Patriarch). It reads: "I hereby inform that I shall act always in accordance with the directions issued by you from time to time and also in accordance with the canons of the Church and the constitution now in force."

On December 26, 1958 a meeting of the Malankara Association was held. Ex.A.43(a) is the copy of the minutes of the said meeting. It shows that the meeting was attended by Bishops, Clergy and laity of both the groups and was presided over by the Catholicos. This meeting was held after due notice intimating all concerned that new trustees of the Malankara Association would be elected at the said meeting. The Patriarch's delegate, who was then in India, also attended the meeting by special invitation. At this meeting, new trustees were elected. Ex.A.44, the newspaper report, contains a group photograph of the Metropolitans of both the groups and the delegate of Patriarch. A meeting of the Bishops of both the groups was held on January 12, 1959. Ex.A.153 is a copy of the minutes of the meeting. It was attended by six Metropolitans of Catholicos group and three Metropolitans of Patriarch group. The meeting resolved to unite various rival organisations, youth leagues, students' organisations and womens' organisations under one Association. Committees were formed to devise ways and means of unification. It was decided to implement the Constitution of Malankara Association wherever it was not implemented and to appoint a committee to study the particulars and report at the next meeting. It was also decided to re-allot the dioceses since the total number of Metropolitans of both the groups put together exceeded the number of dioceses.

Accordingly, at the Synod meeting held on February 21, 1959 [Ex.A.153(a)] attended by all the Metropolitans, re-allotment of dioceses was made. It was decided to send the copies of the Constitution to all the Parishioners with a direction to obey the same. Under the re-allotment of the dioceses, three dioceses were allotted to Metropolitans belonging to Patriarch group. The Catholicos issued the Kalpana dated February 25, 1959 (Ex.A.38) affirming the allotment of Dioceses as per Ex.A.153(a). Ex.A.36 is a memorandum submitted by thirty persons of Patriarch group (including D.W.2 in the present suit) on January 12, 1959 to the Catholicos requesting him to inform the community about the Constitution of Malankara. In this memorandum, they requested that fresh elections should be held to the Managing Committee and that the Managing Committee should have members representing both the groups. This document inter alia refers to the peace and unity brought about in Malankara Church on December 16, 1958, complaining at the same time that complete unity has not been achieved as yet.

While the above developments were taking place here, the Patriarch addressed a letter dated April 8, 1959 (Ex.A.23) to the Catholicos, the purport of which is: I have received your two letters. I could not reply soon on account of some inevitable reasons. In your letter you have stated that you accepted me in accordance with the terms of Constitution. But you have not made it clear what is the substance of the terms. The developments in Malankara are contrary to my expectations. Your use of the expression 'holiness' with your name is not right. This expression can be used only by the Patriarchs. Your assertion that you are sitting at the Throne of St.Thomas is unacceptable. No one has ever heard of St.Thomas establishing a Throne. Similarly your assumption that yours is the Church of the East and that you are Catholicos of the East is equally untrue and unwarranted. I have learnt from the newspapers that a new arrangement has been made in respect of dioceses in

Malankara. Before effecting the said arrangement, it was necessary to decide the limits of the relationship between Malankara Church and Patriarchate. The new arrangement of dioceses could have been made only thereafter and that too with my knowledge. You also seem to have assumed the management of Simhasana Churches which are directly under my rule. Without my authority you could not have assumed the administration of the said churches.

On June 8, 1959, the Catholicos replied to the Patriarch (Ex.A.24). In this letter, the Catholicos stated that the letters Ex.A.19 and A.20 were exchanged by him and the representative of the Patriarch, Mar Julius Elias, Metropolitan, on 16th December at the old Seminary before an august gathering consisting of Bishops, Priests and laymen of both the parties. Before the said exchange, there were negotiations between the two parties in which it was made clear that the acceptance of Patriarch shall be subject to the Constitution. It was only after the acceptance of the same by the Patriarch's representative, Mar Julius Elias, that the letters, A.19 and A.20 were exchanged. Protesting against the same after four or five months is not justified. With respect to the use of the expression 'holiness', the Catholicos justified the same saying that it can be used by the Catholicos also and is not confined to Patriarchs only. Regarding the claim of the Throne of St.Thomas, the Catholicos stated in this letter that this expression is used not only by Patriarchs but also by Metropolitans and Bishops alike, as is evident from the Hudaya Canon and other books. As a matter of fact, no apostle had ever established a Throne anywhere. It is only a honorific. Indeed, Ex.A.13 and A.14 reviving the Catholicate refer to the Throne of St.Thomas in India. Therefore, the Throne of St.Thomas is not a new thing. Similarly, the Church of the East and Catholicos of East are well established entities. The judgment of the Supreme Court affirms the Constitution and it is binding upon every one. For these reasons, there can be no ground or reason for entertaining any apprehensions by the Patriarch.

On July 16, 1960, the Patriarch again wrote to the Catholicos reiterating his objections. In this letter, the Patriarch asserted that the provisions of the said Constitution "seem to be destructive of every principle of apostolic and episcopal Churches. So we could not approve your constitution". The letter concluded by saying, "it is reported to us that our people there and the churches remained divided mainly on the scope of your acceptance and the validity of the constitution which you hold more sacred than the holy scriptures, the canons of the church and its traditions. In the circumstances we have no alternative but to recognise those people and churches who hold fast to the original principles of the foundation of their church." The letter called upon the Catholicos to clarify his position immediately within a month failing which it would be taken that the Catholicos has nothing to reply and he could take such further steps as are deemed necessary for the peace of the church and preservation of its faith, order and discipline as a holy and apostolic church.

On August 13, 1960, the Catholicos replied to Patriarch in which he reiterated that when the Samudayam suit was pending in the Courts, the Patriarch himself was in India (at that time, he was not the Patriarch) as the representative of the Patriarch and prosecuting the said suit. He appeared as a witness, produced several documents and was aware of all the developments including the enactment of the Constitution and its acceptance by the

Supreme Court. With reference to the Patriarch's proposal to accept only his followers as members of the true faith, the Catholicos expressed a doubt whether a Patriarch can continue as such once he recognises schismatics into the fold. He closed the letter by saying that he expected full cooperation from and recognition of the Constitution by the Patriarch.

The correspondence went on like this with the language and accusations in each letter becoming more and more shrill with each exchange.

With the above correspondence was going on, following developments took place in Malankara: On September 16, 1959 a meeting of the Malankara Association was held wherein members of both the groups participated [Ex.A.43(a) is the minutes of the meeting]. The strength of the Managing Committee was fixed at ninety, of which seventy four were to be elected and sixteen to be nominated by Malankara Metropolitan. Several other decisions were taken. Ex.A.98 shows that the elected members of the Managing Committee took oath to abide by the Constitution. Pursuant to the decision of the Managing Committee of the Malankara Association, Catholicos invited the Patriarch to come to Malankara. The Patriarch, however, replied on October 27, 1961 [Ex.A.31(a)] that a canonical invitation should be issued which will be placed before the Patriarchal Synod. Accordingly, a canonical invitation Ex.A.32 was sent on January 18, 1962. Since the then Catholicos had become very old, a meeting of the Malankara Association was held on May 12, 1962 for electing his successor. It elected Ougen Mar Timothious, which was approved by the Synod on June 21, 1963. This was conveyed to Patriarch. On January 13, 1964, a letter of invitation was sent by Malankara Episcopal Synod inviting Patriarch to come to India for the installation of the new Catholicos. This letter Ex.A.35 was signed by nine Metropolitans belonging to both the groups. The plaintiffs-respondents say that this invitation was sent as contemplated by Article 114 of their Constitution. Ex.A.41 is the Kalpana dated April 29, 1964 issued by three Metropolitans (including one of the Patriarch group) regarding the proposed installation of Catholicos. The Patriarch arrived in India and the new Catholicos was installed by him on May 22, 1964. A day before the installation of new Catholicos, it may be mentioned, there was a discussion with respect to the demarcation of jurisdiction of Catholicos pursuant to which the Malankara Synod resolved that "hereafter the jurisdiction of the said see shall not be extended to the Arabian countries or Persia and that the see includes only eastern countries situated on the east of them. But H.H., the Patriarch shall agree to continue the present system of sending priests to the Arabian gulf countries from Malankara for ministering to the spiritual needs of the Malayali Parishioners as long as Malayalis stay there".

The address presented to the Patriarch by the Catholicos, Metropolitans, Clergy and the people of Malankara Orthodox Syrian Church on May 22, 1964 affirmed that the Patriarch's 'monumental act of December, 1958' has infused new hopes for a bright future and that the Malankara Church is thankful to the Patriarch for acting with imagination, courage and persistence in handling a difficult situation in the Church. The address further affirmed:

"We beg to assure your holiness that though we have had differences in the past, there was a deep-seated sense of attachment among our people

irrespective of party opinions about our connection with the apostolic see of Antioch. Even in our worst period of controversy, that sense of attachment was not lost to us. The Catholicate was never visualised as a rival to the exalted Throne of Antioch. On the other hand it is the symbol of real cooperation with that Throne while it signifies the Church's right and freedom to carry out God's purposes in the land in the footsteps of the saints and the faith of the Fathers".

Ex.A.48, A.49, A.52, A.178, A.179 and A.189 series show that a new Managing Committee was elected for the Malankara Association and that the Committee was composed of representatives of both the groups and that the newly elected members took oath affirming the 1934 Constitution. More significantly in the year 1970, a meeting of the Malankara Association was held (on December 31, 1970) participated by representatives of both the groups, whereat one Mathew Athanasius was elected as the successor Catholicos to Mar Ougen I. [It may be recalled that Mathew Athanasius was ordained as Metropolitan in 1951 by Basselios Geevarghese II, (first defendant in the Samudayam suit); Mathew Athanasius is the second plaintiff in O.S.4 of 1979, the main suit before us.] It appears that this election was challenged by certain members owing allegiance to Patriarch by way of O.S.3 of 1979 which was dismissed by the Trial Judge. The judgment became final since no appeal was preferred against it. Ex.A.5 shows that the Managing Committee of the Association appointed a Rules Committee in accordance with the Constitution to suggest amendments to the Constitution. The Rules Committee included the representatives of both the groups including D.W.2 in the present suit. The draft amendments suggested by the Rules Committee were approved by the Managing Committee and by the Synod meeting, as would be evident from the documents Ex.A.11 series and Ex.A.162(f).

At this stage, what appears to have triggered the dispute again is the nomination of a delegate to Malankara Sabha by the Patriarch in the year 1972. This nomination implied the exercise of active spiritual supremacy by the Patriarch over Malankara Church which was evidently not relished by the Catholicos and other members. Under a letter dated February 16, 1972 (Ex.A.76) the Catholicos and nine Metropolitans including the members of the erstwhile Patriarch group requested the Patriarch not to send the delegate. They pointed out that sending such delegate will lead to disturbance of peace and to dissensions among the Malankara Church. The Patriarch did not pay heed to this request. On the contrary, he wrote back to the Secretary to the Malankara Association (Ex.A.192 dated July 9, 1973) that he is not aware of any such Sabha or of the Malankara Association. His delegate arrived in Malankara and started ordaining priests and deacons. The Catholicos objected to this activity of the delegate by his letter Ex.A.79 dated August 7, 1973 addressed to the Patriarch. Nothing happened. On September 1, 1973, the Patriarch himself ordained the first defendant in O.S.4 of 1979 (the main suit now before us) as Metropolitan of the Evangelistic Association of the East. Then started a series of correspondence between the Patriarch and the Catholicos each accusing the other of several ecclesiastical violations.

EXCOMMUNICATION OF CATHOLICOS BY PATRIARCH:

On August 7, 1973 the Catholicos sent a telegram to Patriarch to the following effect:

"Local newspapers report your holiness intention to consecrate one of our priests as Bishop. We unequivocally object to such action if contemplated by your Holiness as uncanonical and as a clear violation of 1958 peace agreement. (Letter follows)."

In the confirmatory letter, the Catholicos stated that there was no necessity for the Patriarch to send a delegate to Malankara and added further:

"The Catholicate of the East is an autocephalous which consecrates its own Bishops and its own Morone. This autocephaly is a fact quite independent of the name of our Throne. The autonomy exercised by the Catholicate over Malankara has been well established. It was for no other reason that your Holiness in May, 1964 expressed a desire to delimit the geographical jurisdiction of this heirarchy".

(Emphasis added)

The Catholicos then referred to the re-definition of the geographical jurisdictions of both the Patriarch and the Catholicos prior to installation and to the installation of the new Catholicos by the Patriarch on May 22, 1964. He also referred to the activities of Mar Thimotheos, the delegate of Patriarch whom the Catholicos described as a troublemaker. The Catholicos stated that the activities of the delegate would have constituted a sufficient ground, normally speaking, for him to protest against his actions with the Patriarch but that he has not taken such action only because he considers his link with Patriarchate as valuable. Finally, he protested against any proposal to consecrate Metropolitans for India by Patriarch and stated that any such action would be treated as an uncanonical action.

After receiving the above letter of the Catholicos, the Patriarch communication a list of charges to the Catholicos on January 30, 1974 (Es.A.80). This letter is in the nature of a show-cause notice calling upon the Catholicos to answer the charges levelled against him within one month. It is unnecessary to detail the charges herein. The main grievance of the Patriarch was the attempt of Catholicos to style himself as the head of an independent Church of Malankara and repudiation of the Patriarchal authority. The letter also complained of the "most discourteous and impudent manner which is unbecoming from the Catholicos" in which the letter dated August 7, 1973 was addressed to him.

On March 9, 1974 the Catholicos replied to the Patriarch stating that the Patriarch has no jurisdiction to level any charges against him or to ask for his explanation. He stated that the only authority to do so is the Malankara Episcopal Synod. He stated that the charges communicated by the Patriarch have been forwarded to the said Synod for consideration and appropriate action and that the Synod has assumed jurisdiction in the matter. A similar letter was addressed by the Secretary of the Malankara Synod on March 5, 1974 to the Patriarch. This letter also asked the Patriarch to prove his charges against Catholicos before the Malankara Synod. This exchange went on with the language and tone of each letter becoming more and more discourteous

towards each other. Suffice it to mention that on July 5, 1974 the Malankara Synod met and not only justified the actions of the Catholicos but found the Patriarch guilty of several ecclesiastical violations. A copy of the proceedings was forwarded to the Patriarch.

On January 10, 1975 the Patriarch suspended the Catholicos from his office until further orders. On January 11, 1975 the Patriarch wrote to all the Metropolitans in Malankara inviting them to the Universal Synod convened by him for June 6, 1975 to consider the charges against the Catholicos. The Patriarch also addressed letters on the same day to several Bishops in Malankara condemning the several actions of the Catholicos which according to him were contrary to the faith.

On May 22, 1975, another meeting of Malankara Episcopal Synod was held reiterating the independent nature of Malankara Church and disputing the authority of the Patriarch. All these minutes were duly communicated to the Patriarch including the minutes of the meeting held on June 5, 1975.

On June 16, 1975 the Universal Synod met at Damascus to consider the charges against the Catholicos. The Synod met on several subsequent dates upto December 20, 1975, the proceedings whereof are enclosed to the letter Ex.A.22 dated June 22, 1975 addressed by the Patriarch to Catholicos. The Universal Synod concluded that the Catholicos Ougen I is guilty against the faith and the laws of the Church and has violated the oath taken by him at his consecration as the Catholicos of the East and as the Metropolitan of Malankara and must be considered to have become an apostate to the Syrian Orthodox Church. Accordingly, he was stripped off all the offices, authority and privileges of the said office. The Synod authorised the Patriarch to announce the said decision to whole church and to all concerned. The Patriarch issued a notice to the Catholicos calling upon him to intimate whether he accepts and submits to the resolutions of the Universal Synod within ten days. He was intimated that if he does not so submit, he will be declared as apostate. A Bull of excommunication was issued by the Patriarch excommunicating the Catholicos from the Syrian Orthodox Church.

THE INSTITUTION OF THE PRESENT SUITS:

Eight suits in all were instituted which were later transferred to the High court for disposal. Of these eight suits, two are no longer before us, viz., O.S.347/73 (numbered as O.S.3/79 in the High Court of Kerala) and O.S.35/76 (numbered as O.S.7/79 in the High Court). The other six suits which are now before us are the following. (For the sake of convenience, we shall mention their High Court numbers only):

(1) O.S.2/79, a suit filed by the Catholicos and his group challenging the authority of the Patriarch to ordain Bishops and Metropolitans on the ground that the Bishops and Metropolitans so appointed were interfering with the worship and other functions of the Malankara Churches in Kottayam.

(2) O.S. 6/79 - also filed by the Catholicos and his group. This suit pertains to the ordaining of priests by Patriarch in certain dioceses.

(3) O.S. 4/79 - this is treated as the main suit by the parties (It was

actually instituted in the District Court on 27.6.1974). We shall presently mention the frame of the suit since that would constitute the main-frame of the dispute before us.

(4) O.S. 8/79 - that was instituted by Catholicos Ougen. On his death his successor Catholicos was impleaded as the plaintiff.

(5) O.S. 1/79, instituted by Parishners of Kothamangalam belonging to the Catholicos group against the members of the Patriarch group.

(6) O.S. 5/79, instituted by Metropolitan of the Diocese of Kottayam and certain other members belonging to Catholicos group against the Managing Committee of Simhasana Church at Pompady, Kottayam.

The plaintiff-respondent's case, as put forward in O.S.4/79, is to be following effect:

Until 1912 the Malankara Metropolitan, necessarily a native of Malankara, was invariably exercising administrative powers over temporal and ecclesiastical matters which authority was derived because of his election/approval by the members of the community. The persistent interference by the Patriarch in the affairs of the Church compelled the community to feel the need for re-establishment of Catholicate. Accordingly, it was revived and re-established in 1912. The seat of Catholicate was transferred from Tigris in Persia to Malankara. After the establishment of Catholicate, "Practically no residuary power (was) left with the Patriarch of Antioch over this Episcopal Church". There are about 1,000 Parish Churches comprised in the Malankara Church. They are under the authority of Malankara Metropolitan. The Malankara Church is neither a union nor a federation of congregational autonomous units, but a Church with a unique solidarity derived from apostolic succession. The 1934 Constitution governs and regulates all the affairs of this Church. The Constitution enables the Malankara Metropolitan to hold the office of Catholicos as well. "Thus in the Malankara Metropolitan-cum-Catholicos converge all temporal, spiritual and ecclesiastical powers without mitigating the exalted position and status of the Patriarch, the Primate of the Orthodox Syrian Church". After the judgment of the Supreme Court the Patriarch and his group accepted the Catholicos and the 1934 Constitution. But later they have been acting against the interests of the Church at the instance of Patriarch and others. They also denied the authority of the first plaintiff (Catholicos-Malankara Metropolitan). The defendants are impleaded in their individual capacity and as representing the Patriarchal group. "No person irrespective of his position has any locus standi in the Malankara Church without believing in the holy church, headed by the Catholicos of the East-Cum-Malankara Metropolitan and without affirming and accepting the ecclesiastical authority of the first plaintiff and the administrative set up and heirarchy, the principle being that the lawful Metropolitan is necessary to the very being of the Church". In Para 24 a reference is made to Church properties. The paragraph reads thus: "Defendants and their partisans are trying to intermeddle in the affairs of individual churches and create dissensions and discord therein. They are attempting to make use of the properties of the church in this illegal and

unlawful attempt".

It is relevant to notice the reliefs sought for in the suit. They are :

"A. To declare that the Malankara Church is episcopal in character and is not a union or federation of autonomous church units and is governed in its administration by the constitution of the Malankara Church ;

B. To declare that defendants 1 to 3 are not competent to ordain priests and deacons for Malankara church;

C. To declare that defendants 1 to 3 are not legally consecrated Metropolitans of the Malankara Church and defendants 4 to 8 are not legally ordained priests or deacons of the Malankara Church.

D. To declare that no Metropolitan, priest or deacon unless validly ordained and appointed under the provisions of the Constitution of the Malankara Church can officiate in any of the churches or its institutions in Malankara Church.

E. To declare that any priest who refuses to recognise the authority of the first plaintiff and other Metropolitans under him is not entitled to minister in any of the churches or its institutions in Malankara.

F. To prohibit defendants 1 to 3 by an order or permanent injunction from ordaining priests or deacons or performing any other sacraments, service, etc. for the Malankara church or its institutions.

G. To prohibit defendants 4 onwards from performing any religious service or sacraments whatsoever in or about any of the church of Malankara and for the Malankara church or its constituent churches or institutions.

H. To prohibit the defendants from interfering in any manner with the administration of the Malankara Church."

The defendants in their written statements denied and disputed the several averments, assertions and claims made in the plaint and reiterated the supremacy of the Patriarch in the affairs of the Malankara Church. According to them, the Catholicos and the members of his group have become apostates to the faith on account of their acts and declarations and are not entitled to any of the reliefs prayed for.

A number of issues were framed on the basis of the pleadings. The learned Single Judge dismissed the suits. On appeal, the Division Bench of the Kerala High Court reversed. The Division Bench re-formulated the issues in controversy into 31 issues. Of them issues 1 to 22 and 27 to 31 pertain to the main dispute now under discussion, whereas Issues 23 to 26 pertain to certain individual churches to which we shall advert later. The Division Bench has upheld the claim of the Catholicos group to a large extent. O.S.4/79, the main suit, has been decreed as prayed for against defendants 1 to 17 without costs. It has been

dismissed against defendant No.18 (Evangelical Association of the East). So far as D.19 (Knanaya Samudayam) is concerned, the suit has been decreed but with certain qualifications which we shall mention while dealing with the appeal preferred by D.19. The result of the other suits is consistent with the decree in O.S.4/79 and need not be mentioned separately.

OUR FINDINGS:

The following facts, in our considered view, are of fundamental significance. Once they are kept in view, it would be unnecessary to go into many of the issues agitated before the learned single Judge and the Division Bench of the High Court. The fundamental facts which decide the fate of the main dispute are:

(a) The Patriarch of Antioch was undoubtedly acknowledged and recognised by all the members of the Malankara Church as the supreme head of their Church. In the year 1654, they took the oath known as the 'Koonan Cross Oath' re-affirming their loyalty to the Syrian Orthodox Christian Church headed by the Patriarch. It was the Patriarch who convened the Mulanthuruthy Synod at which the Malankara Syrian Christian Association was formed. However, the authority of the Patriarch extended only to spiritual affairs - the Syrian Christians in Malankara believed in the efficacy of 'Kaivappu' (laying of hands by Patriarch on the head) while consecrating the Metropolitan and considered it essential to a proper ordaining - but not to the temporal affairs of the Malankara Church as declared finally by the Travancore Royal Court of Final Appeal in the year 1889 in the Seminary suit. The Royal Court declared that the authority of the Patriarch never extended to temporal affairs of the Church which in that behalf was an independent Church. The Royal Court further declared that the Metropolitan of the Church in Travancore should be a native of Malabar consecrated by the Patriarch or his duly authorised delegate and accepted by the people as their Mulanthuruthy Synod. This declaration was affirmed by the Cochin Court of Appeal in the Arthat suit in 1905.

(b) The revival of Catholicate in 1912 by Patriarch Abdul Messiah made a qualitative change in the situation. Under Ex.A.14, the Kalpana issued by the Patriarch Abdul Messiah,* (which document was produced in several earlier suits and whose authenticity is not disputed by the Patriarch group before us) and A.13 which precedes A.14, empower the Catholicos to ordain metropolitans and other officials of the Church in accordance with the canons of the Church and also to consecrate holy Morone. A.14 states expressly that the power to instal a Catholicos on the death of the incumbent is vested in the Metropolitans. It is in this manner that the power of ordaining Metropolitans and melpattakars and consecrating holy Morone, which hitherto vested in Patriarch, came to be vested in the Catholicos by the Patriarch himself. Further, the power to instal a Catholicos on the death or disability of the

*"It was conceded on both sides (in vattipanam suit) namely that the Firman issued to Abdul Messiah was withdrawn and that such withdrawal in itself has no effect on the exercise by a Patriarch of purely spiritual functions". (Judgment of Chatfield C.J.). Another learned Judge Parameshwaran Pillai.J., held in the same suit: "The fact that temporal

govt. withdrew his (Abdul Messiah's) recognition cannot affect the spiritual standing and position of Abdul Messiah. It is also pointed out in Para 42 of the judgment under appeal that no plea has been raised in any of the pleading alleging the invalidity of, or the grounds of invalidity of, Abdul Messiah continuing to perform his spiritual functions as the Patriarch. The judgment under appeal also refers to the canonical position when there are two Patriarchs. We agree with their views."

incumbent was also vested in the Metropolitans of Malankara Church and it is in exercise of this power that on the death of the first Catholicos installed by Patriarch Abdul Messiah in 1913, the second Catholicos Basselios Geevarghese I (Mar Geevarghese Philixinos) was installed in the year 1924 by the Malankara Synod without reference to the Patriarch. Again in 1929, Basselios Geevarghese II was elected as the third Catholicos by the Association and was installed as such. In the M.D. Seminary meeting held on December 26, 1934 the third Catholicos was elected as the Malankara Metropolitan, thus combining both the posts in one person. In other words, the spiritual and temporal powers over the Malankara Church came to be concentrated in one person. It may be that by this act of revival of Catholicate and the Kalpanas A.13 and A.14, the Patriarch is not denuded of the powers delegated by him to the Catholicos - assuming that these powers were not already possessed by the Catholicos and that they came to be conferred upon him only under A.13 and A.14 - yet, reasonably speaking, the Patriarch was, and is, expected to exercise those powers thereafter in consultation with the Catholicos and the Malankara Sabha (Association) - and, of course, in accordance with the 1934 Constitution. This was necessary for the reason (i) to avoid creating parallel authorities leading to conflict and confusion and (ii) the acceptance by the local people was a sine qua non for any Metropolitan or melpattakar in Malankara Church as provided in the Mulanthuruthy Synod (convened and presided over by the then Patriarch himself) and given a judicial sanction by the judgment of the Travancore Royal Court of Appeal aforementioned. Without removing the Catholicos in accordance with the canon law and the principles of natural justice, the Patriarch could not have purported to exercise unilaterally the powers delegated by him to the Catholicos under A.14.

(c) It is significant to notice that the Catholicos-cum-Malankara Metropolitan, Basselios Geevarghese II, was accepted and recognised as the Catholicos by the Patriarch Yakub under his Kalpana Ex.A.19 dated December 9, 1958. Basselios Geevarghese II was elected as Catholicos by the local Metropolitans and installed as such by the local melpattakars without reference to the Patriarch and which Catholicos was all through fighting against the Patriarch group in the Samudayam suit. It is no less significant that Patriarch Yakub, who issued the Kalpana A.19, was, before his installation as the Patriarch, the delegate of the Patriarch in India and was prosecuting the Samudayam suit for a number of years. If so, it is reasonable to infer that when he accepted and recognised the Catholicos as such under Ex.A.19, he did so with the full knowledge that he was thereby recognising the Catholicos as revived by Abdul Messiah in 1912 under A.14 and as described and affirmed in the 1934 Constitution. Moreover, the Kalpanas A.19 and A.20

were not issued in an abrupt fashion - they could not have been - but were preceded by a good amount of discussion and negotiations between members of both the groups. Under his Kalpana Ex.A.20 dated December 16, 1958, from the Catholicos to the Patriarch, the Catholicos accepted the Patriarch subject to the Constitution passed by the Malankara Association and as then in force. The Metropolitans ordained by Patriarch duly accepted the authority of Catholicos and participated in several proceedings. There was reallocation of dioceses among the Metropolitans of both the groups. The members of the erstwhile Patriarch group swore loyalty to the 1934 Constitution. (These events have been detailed hereinabove). After all these developments, and after a lapse of four months after A.20, the Patriarch raised an objection to the use of certain expressions employed in Ex.A.20, viz., the Catholicos claiming to be seated on the Throne of St. Thomas and also to the qualification added by the Catholicos to his acceptance to the Patriarch, viz., "subject to the constitution.....". But even this objection which is reflected in the correspondence which passed between them during the years 1959 to 1962 (referred to supra) must be deemed to have been given up and abandoned by the Patriarch by his acts and declarations in the year 1964. As stated supra, the Patriarch came to India pursuant to a canonical invitation from the Malankara Synod and consecrated and duly installed the new Catholicos (Mar Ougen), who was elected by the Malankara Association in accordance with the 1934 Constitution. Before he did so, the Patriarch took care to see that the respective territorial jurisdictions of the Patriarchate and the Catholicate are duly defined and demarcated. The Middle East which was supposed to be hitherto under the jurisdiction of the Catholicos was excluded from his jurisdiction confining his authority to India and East alone.

Now what do the above facts signify? Do they not show that Patriarch had, by 1964, recognised and accepted the revival of the Catholicate A.13, A.14 and the 1934 Constitution? Do they not show that the Patriarch had also given up his objections to the use of the words "seated on the throne of St. Thomas in the East" and to the "qualification" added by Catholicos in A.20? We think, they do. Once this is so, it is no longer open to the Patriarch or his followers to contend that the revival of Catholicate was not in accordance with the religious tenets and faith of the Syrian Jacobite Christian Church, that the Constitution of 1934 was not duly and validly passed or that the power and authority of the Patriarch as obtaining prior to 1912 remains and continues unaffected and undiminished. In this connection, it is relevant to remind ourselves that it was the contention of the Patriarch group in Vattipanam suit that the Catholicos group had, by espousing the cause of and the revival of Catholicate, reduced the power of the Patriarch to a vanishing point and have thereby become aliens to the faith. The power and authority of the Catholicos under A.13 and A.14 was affirmed, re-enforced and enlarged in the 1934 Constitution (as amended in 1951) and yet under Ex.A.19 the Patriarch accepted with pleasure Mar Basselios Geevarghese as the Catholicos. At the same time, it is equally significant to note that the 1934 Constitution does not repudiate the Patriarch. On the contrary, it re-affirms that he is the primate of the Orthodox Syrian Church of which the Malankara Church is said to be a part - though it is true, all the effective powers exercised by the Patriarch prior to 1912 were vested in the Catholicos under Ex.A.13 and Ex.A.14.

In this view of the matter, the submissions of the Patriarch group that the 1934 Constitution was not put forward by the Catholicos group as one of the bases of their claim in Samudayam suit or that no finding as such was recorded by this Court in the said suit regarding the validity of the Constitution are of little consequence. We are not relying upon the rule of estoppel in this behalf but are only pointing out that having conceded, recognized and affirmed all the above things, the Patriarch group cannot make a legitimate grievance of these very things. They cannot be heard to say so. Nor have they made any effort to explain the said acts and conduct of the Patriarch and of the persons owing allegiance to him. They must be deemed to have given up and abandoned all their objections to the aforesaid events and documents.

THE VALIDITY OF THE EXCOMMUNICATION OF THE CATHOLICOS:

In the Vattipanam suit, the High Court found that of the two versions of Hudaya Canon put forward by the Patriarch group and Catholicos group, the version put forward by the Patriarch group (Ex.18 in that suit) is the correct one. The very same version was put forward by the Patriarch group as the true version in the Seminary suit. Of course, at that time, both the groups concerned herein were comprised in Patriarch group and were fighting against the renegade group of Mar Athanasius. It is really pointless to go into the question whether the judgement in Vattipanam suit operates as res judicata. Even if it is assumed that it does not, yet its value as a precedent - a finding arrived at by the High Court after a full enquiry - cannot be denied. According to the first judgment of the High Court, the Patriarch has the power to excommunicate the Metropolitans. It does not say anything about the power of the Patriarch to excommunicate Catholicos and if so according to what procedure. We have seen supra that while granting the review of the said judgment, the High Court specified that three findings recorded by it in the judgment under review should not be reopened. The three findings inter alia included the finding relating to the authenticity of Ex.18. According to the said version of the Hudaya Canon, the Catholicos "shall act according to the orders of (be subject to) the Patriarch of Antioch. He shall not defy (act against) his superiors". It repeatedly says that the Catholicos is subject to the authority of Patriarch and that the Patriarch is the "head or superior" of the Catholicos. Though the canon does not say so, we shall proceed on the assumption for the purpose of this case - without recording any finding to that effect - that the Patriarch has the power to excommunicate the Catholicos. Yet the question remains whether the grounds on which the excommunication of the Catholicos has been effected are valid and permissible grounds. A perusal of the charges communicated to the Catholicos by the Patriarch in his letter dated January 30, 1974 makes it clear that charges related to the use of the word "Holiness" along with his name by the Catholicos, his assertion of being "seated on the Throne of St. Thomas in the East" and his assertion of "cordial relationship" with the Patriarch instead of admitting his subordinate - all objections which were raised by Patriarch during the years 1959 to 1961 but given up and abandoned in May, 1964, as explained supra. It is also alleged that the Catholicos did not accept the delegate sent by Patriarch to Malankara and has also changed the oath administered to the members of the Church wherein he substituted himself for the Patriarch. The proceedings of the Malankara Association were also cited as one of the charges. Having revived the Catholicos with the

powers under Ex.A.13 and 14 and having accepted (by necessary implication) the Constitution of 1934 under his Kalpana Ex.A.19 and having installed the Catholicos in 1964 notwithstanding his objections raised in his letters written during the years 1959 to 1962, it was not open to the Patriarch to seek to excommunicate the Catholicos on those very grounds. Ex.A.13 speaks of Throne of St.Thomas.Ex.A.13 and Ex.A.14 specifically vest the Catholicos with the power to consecrate Metropolitans and other officials of the Church and to consecrate Morone. A.14 empowers the Metropolitans to elect their own Catholicos. In these circumstances, it is difficult to understand how could the use of the expression "Holiness" or the assertion of being seated at the Throne of St.Thomas in the East or the claim that the Malankara Church is an autocephalus Church can be treated as heresy when the very Constitution by which the Catholicos and his group were swearing affirmed in clear terms that the Patriarch is the supreme head of the Malankara Church. As a matter of fact, some of the charges in the letter dated January 30, 1974 can also be termed as vague. For example, Charge No.9 reads thus:

"The books taught in the Sunday Schools there contain uncanonical and wrong teachings and fallacious historical facts especially with a view to inject wrong ideas into the tender minds regarding the fundamentals and history of the Church."

The letter does not set out or refer to the alleged uncanonical or wrong teachings and fallacious historical facts taught in the books in the Sunday Schools. Similarly, Charge No.8 says that in the ordinations administered by the Catholicos, the heretical two-nature theory propounded by pope Leo is not repudiated. It is not stated under what Canonical Law such an assertion is obligatory. So far as the non-acceptance of the delegate sent by Patriarch is concerned, it can hardly be considered to be a ground for excommunication. After all that has happened between 1912 and 1964, the sending of a delegate over the protestations of all the Metropolitans of Malankara including those belonging to Patriarch group was totally uncalled for. The delegate started ordaining priests here and the Patriarch himself ordained the first defendant in O.S.4/79. All this certainly could not have been done unilaterally. It is one thing to say that the Patriarch could do these things in cooperation with the Catholicos but the ordaining of the priests and Metropolitans by him and his delegate without reference to - indeed over the protestations of the Catholicos - was certainly not the right thing to do since it purported to create a parallel administrative mechanism for the Church in spiritual/temporal matters. We are, therefore, of the opinion that the charges, at any rate the main charges, on which the excommunication is based were not available as grounds of excommunication and could not constitute valid grounds therefor. Accordingly, it is held that the excommunication of Catholicos is not valid and legal.

PLAINTIFFS CLAIM THAT MALANKARA CHURCH IS EPISCOPAL IN CHARACTER AND NOT A UNION OR FEDERATION OF AUTONOMOUS UNITS:

Though in Para (1) of the Plaint in O.S.4/79 an assertion is made that "the Malankara Orthodox Syrian Church.....is an autocephalous division of the Orthodox Syrian Church which traces its origin to Jesus Christ and his apostles", the relief asked for in the plaint is for a declaration "that the Malankara Church is Episcopal in

character and is not a union or federation of autonomous church units.....".* The expression "Episcopal" appears to have been used in contrast to the expression "congregational". In the absence of any material brought to our notice with respect to the meaning of these expressions, we may refer to Para 66 of the judgment under appeal where the meaning of these expressions has been explained. It reads thus:

"Episcopatism is defined in the New English Dictionary of Historical Principles - By Sir John Murray Vol.III as 'Theory of Church Polity which places the supreme authority in the hands of episcopal or pastoral orders'. The same -----

* It is therefore unnecessary for us to record a finding on the question whether the Malankara Church is an autocephalous church as claimed by the plaintiffs. If it is found necessary to do so, we may indicate that we agree with the finding of the Division Bench recorded in Para 99 of the judgment under appeal. For this reason, it is equally unnecessary to consider the effect and relevance of the resolutions passed by the Malankara Synod in its meeting held on February, 1975 and May 22, 1975 affirming the autocephalous and independent nature of the Malankara Church. It is significant to notice that even after the 1967 amendments to the 1934 Constitution, clause (1) still declares that "(T)he Malankara Church is a division of the Orthodox Syrian Church. The Primate of the Orthodox Syrian Church is the Patriarch of Antioch". It is not brought to our notice that this clause has been amended later so as to repudiate the affirmations contained in it.

dictionary defines the word congregationalism as 'A system of ecclesiastical polity which regards all legislative disciplinary and judicial functions as vested in the individual church or local congregation of believers'. Chambers Dictionary Vol.4 defines congregationalism as 'the doctrine held by churches which put emphasis on the autonomy of the individual congregations'. Congregationalism has for its sign-manual the words of Jesus 'Where two or three are gathered together in my name, there am I in the midst of them'.

(Emphasis in original)

The Division Bench also referred to the judgment of the Kerala High Court in John V. Rev.Thomas Williams (1953 K.L.T.605) on the meaning and content of the expression "congregationalism". The judgment describes "congregationalism" as one of the non-conformist Protestant

denominations. Relying upon the Encyclopaedia of Britannica, it says that the congregationalism is the name given to that type of church organisation in which the autonomy of the local church or body of persons assembling in Christian fellowship is fundamental. It constitutes one of the three main types of ecclesiastical polity, the others being Episcopacy and Presbyterianism. It regards church authority as inherent in each local body of believers, as a miniature realisation of the whole church which can itself have only an ideal corporate being on earth. While in practice it is religious democracy, in theory it claims to be a theocracy since it assumes that God himself rules directly through Christ. It springs from the religious principle that each body of believers in actual Church Fellowship must be free of all external human control, in order the more fully to obey the will of God as conveyed to conscience by His Spirit. The essential Features of congregationalism are stated to be the autonomy or independence of the individual Churches or organisations, though in matters in which the individual charges are interested as a whole and in order to enable the churches to effectively fulfil their responsibilities, they may enter into unions. Congregationalism is stated to be the opposite of Episcopacy which means Government of the Church by the Bishops on the theory of apostolic succession. In other words, the Bishops are supposed to be the successors of the apostles of the Christ. The congregationalism believe that every Christian has the right to perform all functions pertaining to the priestly office and permits the laymen to celebrate sacraments whereas in Episcopal Churches only the ordained priests can celebrate sacraments.

On a consideration of the relevant material placed before it, the Division Bench has held that while the Orthodox Syrian Church including the Malankara Church is Episcopal in spiritual matters, in temporal matters it is not Episcopal. It referred, in our opinion rightly, to the judgment of the Royal Court of Final Appeal of Travancore in Seminary Suit where it is observed: "parties agree that head of Syrian Church in this country or its Metropolitan should be a properly ordained Bishop and that regarding temporal affairs acceptance of Malankara Metropolitan as such by the community is necessary". It was further held in the said judgment that "while the ecclesiastical supremacy of the Patriarch has all along been recognised, authority of Patriarch never extended to Government of temporalities of the Church". The Division Bench at the same time clarified that it does not mean to hold that the Metropolitan has the jurisdiction over the day-to-day management of temporal affairs of Parish Churches. The Division Bench has also referred to the Mulanthuruthy Synod resolutions which say that the Parish Churches have a degree of autonomy with certain supervisory powers alone being vested in the Managing Committee of the Association of Catholicos or the Malankara Metropolitan, as the case may be. The Division Bench has held that "Malankara Church though it has some episocopal charaterstics is not a purely episcopal church. But we are not able to agree that the individual Parish Churches are independent churches or churches with independent status.....The Parish Churches are constituent parts of the Malankara Church and enjoy a degree of autonomy and the administration of the day-to-day affairs vests in the Parish Assembly and committee elected by the Parish Assembly subject to supervisory powers of the Metropolitan - and the provisions of the constitution of the Malankara Sabha do not affect this position".** We are, however, of

the opinion that in this suit no declaration can be granted affecting the rights of Parish Churches in their absence nor can it be declared that the properties held by Malankara Parish Churches vest in the Catholicos or the Malankara Metropolitan or the Metropolitan of the concerned diocese, as the case may be. Indeed, no such specific relief has been asked for in the suit and without impleading the affected parties, no declaration can be claimed by the plaintiffs that their church is

*** The words underlined by us in the above quote introduce certain amount of ambiguity in the finding recorded. May be this is the result of granting a declaration without hearing the affected parties.

episcopal in nature, if that declaration means that if that declaration means that it gives the Catholicos/Malankara Metropolitan/the Metropolitan of the Diocese any title to or any control over the properties held by the Parish Churches. We have pointed out hereinbefore that the only place in the plaint where a reference is made to the properties of the Parish Churches is in Para 24 where all that it is alleged is that the defendants and their partisans are trying to intermeddle in the affairs of individual churches and are attempting to make use of the properties of the church to further their illegal and unlawful objects. No list of Parish properties is enclosed nor are the particulars of the alleged intermeddling mentioned in the plaint. 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, insofar as the said Constitution provides for the same. In this connection, the learned counsel for appellants has brought to our notice the following facts: Inasmuch as the plaintiffs asked for a declaration that Malankara Church is an Episcopal Church and appended a list of more than one thousand Churches to their plaint, several Parish Churches came forward with applications under order I Rule 10(2) of the Civil Procedure Code to implead themselves as defendants to the suit. All the applications were dismissed by the Trial Judge against which a batch of Civil Revision Petitions was filed before the Kerala High Court being C.R.P.Nos. 1029/75 and batch. It was contended by the revision petitioners (Parish Churches who were seeking to be impleaded in the suit) that if the first relief prayed for in O.S.142/74 (O.S.4/79) is granted, it will affect the autonomy and individuality of the individual Parish Churches and, therefore, they should be impleaded as defendants to the suit. This argument was repelled by Khalid, J. (as he then was) in the following words:

"I do not think that this apprehension is well founded. Even under Order I Rule 10 a party does not have any inherent right to get himself impleaded; that lies in the discretion of the Court on being satisfied that the petition is well founded on merits. The counsel for the contesting respondents (plaintiffs) would contend that all that the plaintiffs want is for a declaration of the supervisory and spiritual control over the Church."

(Emphasis supplied)

Accordingly, the revision petitions were dismissed. If the

plaintiffs mean merely spiritual control by saying episcopal, probably there may be no difficulty in holding that Catholicos and the Malankara Metropolitan have spiritual control over the Parish Churches, but if it means control over temporal affairs of, or title to or control over the properties of, the Parish Churches beyond what is provided for in the Constitution, a declaration to that effect can be obtained only after hearing and in the presence of the concerned Parish Churches. It also appears that each of these Parish Churches/Associations has its own constitution, whereunder the general body of the Parishes is declared to be the final authority in temporal matters. All this is mentioned only to emphasise that in the absence of the Parish Churches and proper pleadings and proof, no declaration touching the Parish Churches can be granted in these suits. In Para 103 of its judgment, the Division Bench has held that while the Malankara Metropolitan has supervisory jurisdiction over the Parish properties as provided in the 1934 Constitution, it cannot be said that the administration of the Parish properties vests in him. It held that the administration vests in Parish Assemblies or Parish Churches, subject again to the provisions of the Constitution. In sum, we observe that the 1934 Constitution governs the affairs of the Parish churches too insofar as it does. The power of the Malankara Metropolitan or the Metropolitan in temporal affairs must be understood in these suits too in the same manner as has been declared in Samudayam judgment, i.e., with respect to the common properties of the Malankara Church as such.

The result of the above discussion may be summarised thus:

(1) The Vattipanam judgment has held that the version of Hudaya Canon put forward by Patriarch group as Ex.18 in the suit is the correct version and not the version put forward by the Catholicos group. However, in Samudayam suit, the District Judge (Trial Court) accepted the version of Canon put forward by the Catholicos group as against the version put forward by the Patriarch group. It is suggested by the learned counsel for the respondent that this finding of the District Judge must be deemed to have been restored by this Court in A.I.R.1959 S.C.31. It is really unnecessary for us to go into this question since it has lost all significance in view of the subsequent developments and their effect, as accepted by us.

(2) The Catholicate was revived and re-established by Patriarch Abdul Messiah in the year 1912. The powers and functions of the Catholicos are set out in Ex.A.14. Moreover by virtue of their acts and conduct subsequent to the judgment of this Court (in A.I.R.1959 S.C.31), the defendants in the present suit (i.e., the members of the Patriarch group) cannot now dispute the validity of the revival of the Catholicate or of Ex.A.14.

(3) It may be that by conferring upon the Catholicos the powers of ordaining Metropolitans, consecrating Morone and to exercise other spiritual powers over Malankara Church, the Patriarch may not have denuded himself completely of the said powers which he enjoyed until then. But in view of the fact that he had himself created another centre of power in India with the aforesaid powers, it would be reasonable to hold that thereafter the Patriarch cannot exercise those powers unilaterally, i.e., without reference to the Catholicos. He can exercise those powers only in consultation with the Catholicos. Moreover, the person to be appointed as Metropolitan or Malankara Metropolitan has to be accepted by the people as has been affirmed in the

judgment in Seminary suit. The Patriarch's power to ordain the Metropolitans now is subject to the Constitution of 1934.

(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 1934 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.

(5) The 1934 Constitution was approved at a validly convened meeting of Malankara Association, which Association was created by the Patriarch himself under the Resolutions of Mulanthuruthy Synod. The defendants in the present suits (Patriarch group) cannot question its legality and validity in view of the acts and conduct of the Patriarch and the members of his group subsequent to the judgment of this Court in A.I.R. 1959 S.C.31.

(6) Ex.A.19, Kalpana, was issued by Patriarch Yakub with the full knowledge of revival of Catholicate, Ex.A.14 and the 1934 Constitution and the various claims and contentions of both the parties put forward in Samudayam suit and the decision of this Court in A.I.R.1959 S.C.31. It must, therefore, be held that the Patriarch has thereby accepted the validity of the revival of Catholicate Ex.A.14 and the 1934 Constitution, and abandoned and gave up all or any objections they had in that behalf. Several members of his group including some of the defendants also accepted the Constitution and took oath to abide by it. They cannot now turn round and question the same.

(7) Though the Patriarch raised objections to the honorifics (e.g., use of "Holiness" with the name of the Catholicos and his assertion that he was seated "on the Throne of St. Thomas in the East") and to the qualification added by the Catholicos in his Kalpana Ex.A.20 (i.e., accepting the Patriarch subject to the Constitution), the Patriarch must be deemed to have given up and abandoned all those objections when he came to India, pursuant to a canonical invitation from the Malankara Synod and installed and consecrated the new Catholicos on May 22, 1964. It is also worth noticing that a day before such installation/consecration, the Patriarch took care to have the territorial jurisdiction of Catholicate duly defined and de-limited by excluding certain areas in the Middle East from the jurisdiction of the Catholicos.

(8) So far as the declaration of the the Malankara Church being Episcopal in character is concerned, all we need hold is that it is episcopal to the extent it is so declared in the 1934 Constitution. The said Constitution also governs the affairs of the Parish Churches and shall prevail.

(9) The excommunication of Catholicos by the Patriarch and/or by the Universal Synod is invalid for the reason that the grounds/charges on which the excommunication has been effected are not permissible or relevant grounds. The denial of Patriarch's spiritual authority by the Catholicos and his group and similarly the Patriarch's refusal to recognise the Catholicos or the 1934 Constitution in the correspondence that passed during the years 1972 to 1975 are attributable to the personal differences and the mutual bickering between the two dignitaries and their respective groups. On that basis, it can neither be said that the Catholicos or his followes have become apostates or that they have deviated from the tenets of the faith. Similarly, Patriarch cannot be

said to have lost his spiritual supremacy over the Malankara Church (on account of his accusations and declarations) which he enjoyed prior to the commencement of the said correspondence, i.e., according to the 1934 Constitution.

(10) The common properties (Samudam properties) held by the Malankara Church are vested in Malankara Metropolitan and others as declared in the judgment of this Court in A.I.R.1959 S.C.31.

In view of the above findings, it is unnecessary to go into the other questions urged before us, viz., maintainability of the suit (in view of Section 9 of the Civil Procedure Code), effect of the Places of Worship (Special Provisions) Act, 1991, non-joinder of parties and so on. Indeed, so far as the objection on the basis of Section 9 of the Civil Procedure Code is concerned, it was not urged by the defendants-appellants before the Division Bench and must be deemed to have been abandoned.

The situation resulting from the above summary of the findings is that the situation obtaining on January 1, 1971 (i.e., the day after the election of Mathew Athanasius at the meeting of the Malankara Association held on December 31, 1970, in accordance with the 1934 Constitution) shall be deemed to be the position even today in all respects. It is after January 1, 1971 that there was fresh spurt of quarrel between two groups and between the Patriarch and the Catholicos. Any attempt to bring peace, reconciliation and rapprochement between the two groups must take the said date as the starting point - [This does not, however, mean that installation of Mathew Athanasius, elected as the Catholicos on December 31, 1970, in October, 1975 is to be ignored. Similarly, the election and installation of sixth Catholicos, Mathew II (third respondent in the present appeals) cannot also be ignored. They are accomplished facts and shall remain unquestioned]. It is with reference to the said date that the directions to be mentioned hereinafter are made with the hope that the said measures will succeed in bringing about a reconciliation between the two warring groups and establish peace in Malankara Church which should be the desire of every well meaning member of that Church. Before, however, we set out the bases of reconciliation between the two groups, we may indicate the approach we are adopting in this case.

The resolutions passed by the Mulanthuruthy Synod establish that to prevent mismanagement of the Church affairs and to check the autocracy of the Metropolitans, it was thought necessary that there should be an organisation for the entire community called "Syrian Christian Association", of which Patriarch should be the Patron and the ruling Metropolitan its President. For transacting the business of the Association, a Chief Committee consisting of eight priests and sixteen laymen with the ruling Metropolitan as the President was formed. This Committee was "entrusted with complete responsibility and management of every matter connected with religious and communal affairs of the entire Syrian Community". Neither party before us disputes the validity of these resolutions. In Seminary suit, it was held by the Royal Court of Final Appeal on the basis of the said resolutions and other material placed before it that the Metropolitan of the Syrian Christian Church in Travancore should be a native of Malabar consecrated by Patriarch or his delegate and accepted by the people as their Metropolitan. Indeed, this aspect has been repeatedly stressed before us by the learned counsel for the Catholicos group. We too find this to be a very desirable feature - an instance of infusion of democratic spirit in

religious affairs. It may be mentioned that in the appeal preferred in this Court against the rejection of their review petition in Samudayam suit (judgment reported in A.I.R.1954 S.C. 526), the stand of the Catholicos group was that the said judgment of the Royal Court represents the constitution of the Malankara Church. The subsequent judgments too re-affirm the said position. It is thus clear that the Malankara Association was formed not only to manage the temporal affairs of the Church but also its religious affairs and that the appointment of Metropolitans was subject to acceptance by the people of Malankara. The emphasis is upon the people of Malankara and not upon the individual Churches/Parish Churches. It is true that the 1934 Constitution of the Malankara Association provides that the members of the said Association shall be one priest and two laymen elected by each Parish Yogam (Assembly) (clause 68), yet Clause 4 of the very Constitution declares that "all those men and women who accepted the Holy Baptism and who believe in the Godhead of the Trinity, in the incarnation of the Son and the procession of the Holy Ghost, in the Holy Church, in the performance of the seven sacraments, in the observance of the precepts, in the use of the Nicean creed and who have undertaken the responsibility of performing them are members of this Church". It thus appears that while the membership of the Malankara Association is limited to one priest and two laymen elected by each Parish Assembly, the membership of the Malankara Church as such consists of all men and women, who accept the tenets and the faith mentioned in Clause (4) aforesaid. The learned counsel for the appellants contended that with a view to retain control over the Malankara Association, the Catholicos group have created a large number of Parish Churches though among the individual members of the Church, the majority swears allegiance to Patriarch. His contention is that because in the Malankara Association each Parish Church, whether big or small, is entitled to have three delegates, the Association is not a true representation of the will of the members of the Church as such. He suggests that while some Churches have a large body of believers running into several thousands, there are Churches having as little as fifty members and yet each of them has equal representative in the Malankara Association. On this account, the learned counsel says, the proceedings of the Malankara Association cannot be said to be reflecting the will of the majority of the Malankara Christians truly. It cannot be said that there is no substance in this submission. If the Malankara Association is to be vested with the control over the religious and communal affairs of the entire Malankara Christian community, it must truly and genuinely reflect the will of the said community. For ensuring it, its composition must be so structured as to represent the entire spectrum of the community. A powerful body having control over both spiritual and communal in a reasonable and fair manner. Judged from this angle, clause (68) of the 1934 Constitution cannot be said to be a fair one. [After 1967 amendment, the corresponding clause is Clause (71) which reads, "a priest and two laymen elected by each Parish Assembly (and the members of the existing Managing Committee?) shall be members of the Association"]. It may, therefore, be necessary to substitute Clause (68) (now Clause (71) and other relevant clauses of the Constitution to achieve the aforesaid objective which would also affirm the democratic principle, which appears to be one of the basic tenets of this Church. Accordingly, we direct both the parties as well as the Rule Committee

(mentioned in clause (120) of the Constitution) to place before this Court within three months from today draft amendments to the Constitution. After perusing the same, we shall give appropriate directions. Thereafter, elections to the Malankara Association shall be held on the basis of the amended Constitution. The Association so elected shall be the Association for all purposes within the meaning of and for the purposes of the 1934 Constitution (as amended from time to time).

We hope that the unity and integrity of the Malankara Church will be maintained and continued by the above arrangement which is wholly consistent with and indeed in furtherance of the objectives underlying the Mulanthuruthy Synod resolutions. Elections to the Malankara Association shall have to be held periodically so as to keep its representative character alive and effective.

THE POSITION OF SIMHASANAM CHURCHES, KNANAYA CHURCHES, EVANGELICAL ASSOCIATION OF THE EAST AND ST. ANTHONY'S CHURCH, MANGALORE:

Before we conclude, it is necessary to deal with the position of the above Churches. The Division Bench of the High Court has dealt with them under Points 23, 24, 25 and 26 formulated by it. So far as Simhasanam Churches, Evangelical Association of the East and St. Anthony's Church, Mangalore are concerned, the Division Bench has dismissed the suits, viz., O.S.5/79, O.S.6/79 and O.S.4/79, insofar as they related to the above Churches agreeing with the findings and the decree of the learned Single Judge in that behalf. We see no grounds to depart from the concurrent findings recorded by the learned Single Judge and the Division Bench. We affirm their judgment and decree in this behalf. So far as Knanaya Samudayam is concerned, while the learned Single Judge had dismissed O.S.4/79 with respect to this defendant (D.19) subject to the declaration that Knanaya Sabha is part of Malankara Church, the Division Bench leading members of the Knanaya Community were elected as members of the Managing Committee of the Malankara Association.

The above facts were placed against the following facts appearing in favour of the Knanaya Church, viz.,

- (i) in the plaint, there was no specific prayer with respect to the Knanaya Church. Because Knanaya Churches were also listed in the list of Parish Churches appended to the plaint, the Knanaya Samudayam applied for impleading itself as a defendant to the suit and was impleaded as D.19. Only in response to the averments made in written statement of D.19, did the plaintiffs aver facts on the basis of which they claimed that Knanaya Churches are part of Malankara Association and subject to the 1934 Constitution;
- (ii) the material established that Knanaya Churches had adopted their own Constitution in 1912 (which was brought into force in 1918), that they had indeed constituted a Committee known as "Knanaya Committee" even in 1882, which was later designated as "Knanaya Association" and that throughout these Churches stood by the Patriarch and its Metropolitans were always ordained by Patriarch alone.
- (iii) the proceedings of the Malankara episcopal Synod meetings held during the period January 12, 1959 to June 7, 1960, which indicate certain discussions between the Malankara Church and Knanaya Church with respect to relationship between them. A Committee was appointed to submit a report in that behalf to the Synod.
- (iv) the tradition relating to the origin of Knanaya Committee in India and their zealous concern throughout to maintain and retain their separate ethnic identity and

beliefs.

After hearing the learned counsel for the appellant (D.19) and the respondents and perusing their written submissions, we are of the opinion that the decree of the Division Bench has to be affirmed but with certain modification. The modification is called for for the reason that when a particular people say that they believe in the spiritual superiority of the Patriarch and that it is an article of faith with them, the Court cannot say 'no; your spiritual superior is the Catholicos'. The guarantee of Article 25 of the Constitution has also got to be kept in view. The decree of the Division Bench makes no difference to the Patriarch. It only says that Catholicos is declared to be the spiritual superior of the Knanaya Community. Then it says that in temporal matters, the 1934 Constitution of Malankara Association can be implemented subject to the Knanaya Constitution only until both the Constitutions are reconciled. In all the facts and circumstances of the case, it would be enough to declare that by their acts and conduct, D.19 has accepted that they are an integral unit within the Malankara Church and that, therefore, the 1934 Constitution of the Malankara Church shall govern them but subject to their own Knanaya Constitution until such time the Knanaya Church Samudayam decides otherwise.

The appeals cross-objections and applications are disposed of in the above terms.

List the matters for further orders after three months along with the draft amendments (suggestions), if any, submitted by the parties pursuant to the directions given hereinbefore.