

IN THE COURT OF MUNSIF, WADAKANCHERY

Present:- Sri. Yahya. T.K., Munsiff

Tuesday, the 1st day of July, 2025/ 10th Ashadam 1947 SE

I.A. 05/2025 IN OS 52/2021

Petitioners/ Plaintiffs:

- 1 Fr. Mathew Jacob, aged 60 years, S/o Yacob, Puthussery House, Enkapuzha, Puthupadi Post, Kozhikode, Pin Code: 673586.
- 2 St. Mary's Church, Elanad, Rep. By Trustee: Wilson. K. V., aged 56 years, S/o Varkey, Kunnumpurath House, Elanad Post and Village, Pin Code: 680 586, Talappilly Taluk, Thrissur District.

By Adv. Sunil Konnanath.

Respondents/ Defendants:

1. Fr. Jaison. K. John, aged 45 years, S/o John, Kochupadinjarekkara House, Kallur, Alangad Post, Muttithadi, Thrissur.
2. Jino George, aged 36 years, S/o George, Karikkott Puthenpurayil, Elanad Village, Talappilly Taluk, Thrissur District.
3. Basil Joseph, aged 32 years, S/o Joseph, Kuttikkattil House, Elanad Post, Thrissur District.
4. Varghese, aged 60 years, S/o Varkey, Kadamkulangara House, Vennur Post, Thrissur.

By Adv. Pradeep Kattalath

This petition is coming on this day for hearing, the Court passed the following:

ORDER

This is an application filed by plaintiff in the above suit for striking off issue No.3 framed in the suit.

2. **Summary of the application** ; The petitioner is the plaintiff in the suit which is one for injunction simplicitor. The Court has framed an issue regarding the possession of plaintiff which is not relevant for the proper adjudication of the suit in view of the decision of Hon'ble Supreme Court in **K.S.Varghese and others v. St.Peter's & Paul's Syrian Orthodox Church and others KLT 2017(3)261**. Hence it is prayed that issue No.3 may be struck off.

3. **Respondent/defendant filed counter statement as follows** ; Issue No.3 is absolutely necessary for the proper adjudication of the suit. Defendants are in possession of the suit. Hence issue No.3 may be kept in tact.

4. Heard both sides.

5. The following points arose for consideration :

i) Whether issue No.3 was framed based on the denial of material proposition of fact or Law ?

ii) Whether issue No.3 is necessary for the proper adjudication of the suit ?

6. **Both Points** : The suit is one for injunction simplicitor. There are 2 plaintiffs. 1st plaintiff claims to be the Vicar of the 2nd plaintiff which according to the plaintiffs is a Church to be governed by the 1934 constitution of Malankara Orthodox Syrian Church in view of the decision

K.S.Varghese (supra). The plaintiff says that issue No.3 does not germinate for consideration as question of possession is out of consideration in view of the decision of Hon'ble Supreme Court in **K.S.Varghese and others v. St.Peter's & Paul's Syrian Orthodox Church and others KLT 2017(3)261.**

7. The defendants objected saying that there is a substantial change in the position of Law subsequent to the decision of Hon'ble Supreme Court in **K.S.Varghese and others v. St.Peter's & Paul's Syrian Orthodox Church and others KLT 2017(3)261** and therefore retention of issue No.3 is necessary for the proper adjudication of the suit.

8. I have gone through the material of record. Issue No.3 was framed primarily on the ground for questioning of position is a matter to be looked into while considering a suit for injunction simplicitor. True that there are exceptions. It is equally true that the dictum laid by decision of Hon'ble Supreme Court in **K.S.Varghese and others v. St.Peter's & Paul's Syrian Orthodox Church and others KLT 2017(3) 261** has a direct bearing on the issues at hand. If it is found under issue No.5 that the facts of the case is already covered by the issues in **K.S.Varghese and others v. St.Peter's & Paul's Syrian Orthodox Church and others KLT 2017(3)261** perhaps issue No.3 looked out of consideration but those facts are to be decided at

the trial. Moreover, it was submitted by learned counsel for the plaintiff that the decision as to striking off issue No.3 can be kept in abeyance till necessary facts are come out at the trial. As a matter of Law the Court has ample power to strike off issue at any time before the judgment is pronounced. Hence this application is closed recording the submission made by the learned counsel for the plaintiff and also reserving the right of the Court to strike off the issue at any later stage if the issue is found unnecessary for proper adjudication of the suit.

With the above observations I.A closed.

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 1st day of July, 2025)

Sd/-
YAHYA. T. K.
MUNSIFF

Appendix:Nil

Id/-
MUNSIFF