

IN THE COURT OF THE MUNSIFF, HARIPAD.
Present: Smt. Maneesha.K. Bhadrar, Munsiff
Wednesday, 23rd October, 2024/1st Karthika,1946

IA.No.3/2023 in OS. No.356/2019

Filed on 14.11.2023

Plaintiff/ Petitioner:

Hamsakutty, aged 63 years,
S/o Ummer kutty, Thayyil
Kizhakkathil, Arattupuzha Muri,
Arattupuzha Village.

By Adv. T.A. Venugopal

Defendant/ Respondent:

Shahul Hammed, aged 66 years,
S/o Ummerkutty, Vettuparambil,
Arattupuzha Muri,
Arattupuzha Village,

By Adv. Omar Salim

This petition having been finally heard on 09.10.2024 and the court on the 23.10.2024 passed the following:

ORDER

Petition for amendment of plaint.

2. Petition averments in brief are as follows:- Suit is for declaration, fixation of boundary, recovery of possession and injunction both mandatory and prohibitory. Plaintiff is the absolute owner in possession of plaint A schedule property.

Defendant has made plaint C schedule construction trespassing into plaint A schedule property. IA.1/2023 for amendment was allowed. Plaintiff seeks for further amending the plaint with respect to plaint schedule properties. Hence the petition.

3. Copy of the petition is served on the learned counsel for respondent. He stiffly opposed the petition. It is contended that the above petition is not maintainable and petitioner is attempting to protract the matter.

4. The following point arise for consideration.

1) Whether the above petition is liable to be allowed?

5. Heard both sides.

6. **The point:-** Suit is for declaration, fixation of boundary, recovery of possession and injunction both mandatory and prohibitory. Plaint was amended as per order in IA.1/2023 dated 01.06.2023. Plaintiff seeks to further amend the plaint with respect to plaint schedule properties. Learned counsel for respondent stiffly opposed the above petition contenting that it is without any bonafides.

7. Plaintiff averments would show that defendant has trespassed in to plaintiff A schedule property and made plaintiff C schedule constructions. The merits of the amendment need not be tested now and can be decided in trial. Considering the pleadings of the plaintiff and defendant, I am satisfied that the amendment as sought for does not change the nature and character of the suit. Though the suit was filed in 2019, trial has not yet commenced. The possible and probable contentions on the side of defendant can be raised by additional written statement. In **Rajesh Kumar Aggarwal v. K. K. Modi, AIR 2006 SC 1647**, Honorable Supreme Court held as under : - "*As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused*". It is settled by catena of decisions that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

8. In light of the above discussion, I am satisfied that for the fair disposal of the case, the above said amendment should be permitted to be incorporated. I am satisfied that to resolve the real controversy between the parties, the amendment sought for should be allowed. Accordingly the above petition is liable to be allowed.

In the result,

- 1) Petition is allowed.
- 2) Plaintiff is permitted to amend the plaint as prayed. Carry out the amendment within 7 days.
- 3) Considering the facts and circumstance of the case, parties are directed to bear their respective costs.

Dictated to the Confidential Assistant typed by her, corrected and pronounced by me in the open court on this the 22nd day of October, 2024.

Sd/-

Maneesha K Bhadran
Munsiff.

APPENDIX- NIL

Id/-

Munsiff.