

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt.Aneesa.A, Munsiff

Monday the 29th day of July 2024/7th Sravana, 1946

IA. 6/2024 in ORIGINAL SUIT.285/2022

(Filed on 09.07.2024)

Petitioner/Plaintiff: K.K.Sudhakaran, aged 74 years,
S/o.Late.Kochuvelumban,
'Sudha' veettil,
Chirakkadavam muri,
Kayamkulam Village.

(By Adv.U.Jabbarkutty)

Respondents/Original Defendants:

1. Hotel Sudheer Pvt.Ltd.
K M C and 32/659A
Near K.S.R.T.C Bus Stand,
Chirakkadavam,
Kayamkulam-690502.
CIN U55101KL1999PTC012956,
Rep. By Managing Director,
Radhamani.T @ Radhamani Thankamma,
Aged 62 years, (Late Sadanandan wife)
Chaprayil veettil, Eruva East muri,
Pathiyoor Village, Kareelakulangara,
Kayamkulam.

2. Ajayakumar, aged 69 years,
S/o.Vasu,
Director Hotel Sudheer Pvt.Ltd.
K M C and 32/659A
Near K.S.R.T.C Bus Stand,
Chirakkadavam,
Kayamkulam-690 502,
CIN U55101KL1999PTC012956,
1/291, Aswathy, Mahadevikadu,
Thrikkunnappuzha P.O,
Alappuzha-690555.

(By Adv.M.R.Salim)

This petition is filed Under Order 6 Rule 17 and Section 151 of the Civil Procedure Code 1908 and coming on for final hearing on 29.07.2024 and the court on the same day passed the following.

OR D E R

This is an order in a petition filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 to amend the plaint.

2. The gist of averments in the petition are as follows:- The petitioner is the plaintiff in the suit. At the time of filing of the suit, the extent and other details of the shop in the plaint schedule item No. 2 property were not included in the plaint due to clerical mistake. For the just disposal of the case, it is necessary to add those facts also. In the 6th page of the plaint, in 14th paragraph, in the 3rd line, after “by

constructing shop room in the plaint item number two property”, it is to be added that “having extent 8.50M x 3.50M (internal) with a setback of 2.00M on east neighbour boundary wall side, south side, west side and 4.00M (Originally 3.00 Meter, but due to a road widening plan, 1.00 meter has to be added, makes it 4.00 meter) in the front side (North Side). So that total area needed for the construction of shop room in the item number 02 property is $14.5 (8.5+4+2) \times 7.5(3.5+2+2)$ ”. In the said paragraph in the last line after “Deed”, it is to be added that “to an extend of 2.71 cents of land (including a set back of 2.00M on east, south and west sides and 3.00 M on front facing the road)”. In the 7th page of the plaint, in relief A portion in the second line, after “by constructing shop room” it is to be added “size 8.50M X06 3.50M(internal) with a setback of 2.00M on east neighbour boundary wall side, south side, west side and 3.00M in the front side”. In the relief B, in the second line, after “and register a Sale Deed”, it is to be added that “to an extend of 2.71 cents of land (including a set back of 2.00M on east, south and west sides and 3.00M on front facing the road)”. So also, plaint item No. 2 schedule attached with the plaint is to be removed and the plaint item No. 2 schedule attached with this petition has to be added. If the petition is allowed, it will not make any change

in the nature of the suit. There is no wilful latches on the part of the petitioner. If the petition is not allowed, it will cause irreparable injury and hardships to the petitioner. Thus, this petition.

3. The 1st defendant/ respondent filed objection contending inter alia as follows:- The petition is not maintainable either in law or on facts. The petitioner filed the petition by incorporating certain false and frivolous allegations and the reliefs sought are unsustainable in law. The pleadings and the reliefs sought to be incorporated in the plaint by amending the plaint are against the document relied on by the plaintiff. So, certain pleadings and reliefs, which lack the support of evidence are sought to be inserted into the plaint by amending the plaint. So, in the event of allowing the amendments as sought for in the present application, the basic nature of the suit will be changed and altered. Such an amendment cannot be made into the plaint by resorting to the benevolent provisions of Order VI Rule 17 of the Code of Civil Procedure. In this case, the plaintiff wants to get his reliefs on the basis of a so called 'agreement' dated 12.07.2004. But, that agreement is with regard to neither the existing plaint item No. 2 property nor the proposed plaint item No. 2 property. No reason to justify the need of amendment is found narrated in the affidavit accompanying the

petition. The amendments sought for in the present application are not at all necessary for the fair and proper disposal of this suit and are not all necessary for the purpose of determining the real controversy between the parties. The proposed relief in the present application is a time barred one and as such it cannot be allowed. Hence the respondent sought to dismiss the petition with the costs of the respondent.

4. The following points are formulated for consideration:-

1. Whether the petitioner is entitled to an order for amending the plaint as sought for ?
2. What shall be the order as to reliefs and costs ?

5. Heard both sides.

6. **Point No. 1:-** The suit is filed on the basis of an agreement dated 12.07.2004. In the said agreement, it is stipulated that the plaintiff handed over the ownership and possession of 11 ares 35 Sq. Metres of property in survey No. 228/110-1 as per sale deed No. 1672/2004 to the present defendants. It is also stipulated in the agreement that in the building to be constructed for the company on the 28 cents of property so given, a shop room having 8.5 metre length and 3.5 metre width on the ground floor on the east-north corner, facing road shall be given to the 3rd party (plaintiff) in his full ownership and possession by the 1st and 2nd parties (defendants). It was also stipulated

that when the third party/ plaintiff pays the construction cost of the shop room in the building to the 1st and 2nd parties (defendants), on the cost of the third party (plaintiff), sale deed with respect to that shop room is to be executed in his favour. Here, the pleadings and relief sought to be incorporated by way of amendment of plaint are against the document relied on by the plaintiff. If the amendment is allowed, it will change the basic nature of the suit. Moreover, the proposed amendment is not necessary for determination of the real controversies in the suit. It will cause prejudice to the other side. It will also defeat the legal right of the opposite party. Hence it is to be dismissed. Thus, point No. 1 is found against the petitioner.

7. **Point No. 2:-** In view of my discussions and findings on point No. 1, the petition is liable to be dismissed.

In the result, the petition stands dismissed. No order as to costs.

(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 29th day of July, 2024.)

Sd/-
ANEESA.A
MUNSIFF

APPENDIX:

Nil.

Sd/- MUNSIFF

// True copy //

Typed by :Shafeek.
Compd by:

MUNSIFF

Order in IA.6/2024
in OS No.285/2022,
Dated.29/07/2024