

IN THE COURT OF THE SUB JUDGE, CHENGANNUR

Present:- Smt.Veena.V.S, Sub Judge

Saturday, the 7th September, 2024/ 16th Bhadrapadam 1946

IA No. 14/2024 in OS No. 26/2023

(Filed on: 23.08.2024)

Petitioner/Addl.9th Defendant :- Sushama .M.Nair, aged 64 years,
D/o. Late Rugmini Amma,
Sumangali, Kakkethu,
Kuttemperoor.P.O
Mannar Village, Pin: 689 623.

(Adv. Abu.M.H)

Cr.Petitioners/Plaintiffs:-
Defendants (D1 to D8)

1. Sarika.N.Nair, aged 56 years,
D/o. Late Radhamma.M
Resident of Sreevinayaka,
Elakamon Muri,
Ayroor Village, Varkala Taluk
Pin: 695 310.
2. Mallika.N.Nair, aged 65 years,
D/o. Late Radhamma.M
KMC 12/989, Nr.KBC Club,
KBC Junction, Maruthady,
Kavanad.P.O, 691003, Kollam

3. Chandrika.N.Nair, aged 61years,
D/o. Late Radhamma.M
Resident of Sree Janardhanam,
Elakamon Muri,
Ayroor Village,Varkala Taluk
Pin: 695 310.
4. Lathikala.N.Nair,
D/o. Radhamma, aged 58 years,
House wife, Nechattu House,
Madappally.P.O, Thengana
Chenganasseri, Alappuzha.
5. Ajithakumari.N.Nair, aged 54 years,
D/o. Late Radhamma.M
Resident of Sreenandanam,
Karunilakode Muri,
Ayroor Village Varkala Taluk,
Pin: 695 310.
6. Manikuttan Nair, aged 69 years,
S/o. CG Raghavan Nair,
Thriveni
Muttom.P.O, Kanichnalloor Muri,
Cheppad Village
Karthikapally Taluk.

7. Somarajan Nair, aged 66 years,
S/o. CG Raghavan Nair,
Presanthi, Kuttemperoor.P.O,
Mannar Village,
Chengannur Taluk, Pin: 689 623.
8. Rugmini Amma, aged 90 years,
D/o. Madhaviamma, Pensioner
Sreenilayam, Kuttemperoor P.O,
Mannar Village (deceased)
9. Vidyadharan Nair, aged 74 years,
S/o. CG Raghavan Nair, Pensioner
Sreenilayam, Kuttemperoor.P.O
Mannar Village.
10. Jagatheesh Sreenivasan,
S/o. Late Rajamma, 64 years
Krishna Kripa,
Kalady, Trivandrum.
11. Jayakumar Sreenivasan,
aged 60 years
Krishna Kripa,
Kalady, Trivandrum [Exparte]

12. The Branch Manager,
Life Insurance Corporation of India,
Satellite Office (CLIA), Centre Point,
KPM Road, Kayamkulam 690502
(Deleted as per order in IA 12/24
dtd.07.09.24)

13. The Manager,
The Federal Bank Ltd.,
Chennithala.P.O, Chennithala Branch
Mavelikara Taluk (Deleted as per
order in IA 12/24 dtd.07.09.24)

***(Cr.Petitioner 1 to 5- By Adv.Akhil.R.Kurup
Cr.Petitioner 6 to 9 – By Adv. P.G.Daniel***

This petition having been finally heard on 31.08.2024 and the court on 07.09.2024 passed the following.

ORDER

The petition is filed under Order VI Rule 17 r/w Sec.151 of CPC.

Petition averments in brief are as follows:

2. The additional 9th defendant in the above suit filed the amendment petition so as to amend her written statement. The suit is for declaration and partition of the deposits and assets of deceased Padmavathy Amma who died intestate. The plaintiffs are the daughters of Radhamma who is the sister of

Padmavathy Amma. Defendants 1, 2, 4 and the 9th defendant are the children of 3rd defendant who is also the sister of late Padmavathy Amma. Defendants 5 and 6 are the children of another sister Rajamma. Even though 9th defendant filed written statement, she is required to amend her written statement for the ends of justice otherwise she will put to irreparable loss, injury and hardship. When the matter was referred for mediation her siblings brought a will deed executed by 3rd defendant pertaining to the deposits of deceased Padmavathy Amma with LIC and Federal Bank. On enquiry it is found that the will deed is fraudulently created under suspicious circumstances to her rightful share. If the deposits were not in her name, she had no legal claim and she could not legally bequeath them to any one so there is lack of ownership at the time of executing the will deed. Therefore the will deed is invalid in the eye of law. The 7th and 8th defendants and the Federal Bank filed their affidavit confirming the deposits of deceased Padmavathy Amma which comes to Rs. 55,00,000/- (Rupees fifty five lakhs only) and gold ornaments. The 9th defendant is entitled to get 1/4th share over the same. Therefore the amendment petition is filed.

3. The 1st plaintiff and defendants 1, 2 and 4 filed objection by contending that the petition is not maintainable either in law or on facts. The above suit is filed by the plaintiffs for declaring their 1/3rd right over the bank deposits of deceased Padmavathy Amma who is the sister of plaintiffs mother Radhamma. Rugmini Amma and her 3 sons entered appearance and filed written statement by

contending that she is the only surviving legal heir. After the death of Rugmini Amma 9th defendant who is the daughter of Rugmini Amma was also impleaded. The 9th defendant filed written statement by admitting that on the death of Padmavathy Amma all assets of late Padmavathy Amma devolved on the legal heirs of 3 sisters and the 9th defendant has no objection in giving 1/3rd share of all assets of deceased Padmavathy Amma. Considering the nature of the suit the court referred the case for mediation. The parties reached a settlement thereby the contesting defendants agreed to pay Rs. 17,00,000/- (Rupees seventeen lakhs only) to the plaintiff as their share and settled the present suit as well as the connected suit OS 28/23 and OS 125/23. The 9th defendant was also present in the meeting. All the plaintiffs and contesting defendants executed the mediation agreement which was filed before the court. The court endorsed the same and posted for verification. At that time the 9th defendant filed this amendment petition by completely altering the pleadings in her written statement. The admissions made by the 9th defendant in the written statement is admissible in evidence. The proposed amendments cannot be considered as an amendment at all as the proposed pleadings are completely changed from the beginning to the end of the earlier written statement in which she admitted the 1/3rd right of the plaintiffs. The alleged will deed executed by the mother of the 9th defendant has no relevancy to adjudicate the real question in controversy between the parties in the present suit. Hence the petition may be dismissed.

4. From the above petition averments and contentions in the objection the following points were raised for consideration.

1. Whether the amendment sought for in the petition is allowable?
2. Reliefs and cost?
5. There is no evidence adduced from either side.
6. Heard both sides. Perused the records.

Points No. 1 and 2

7. The 9th defendant filed amendment petition to amend her written statement by withdrawing the admissions she made in the written statement. OS 26/2023 is not a partition suit as alleged by the petitioner/9th defendant in the petition. OS 26/2023 is the suit filed by the children of late Radhamma for declaring their 1/3rd rights over the deposits of late Padmavathy Amma. When the 9th defendant entered into appearance, she filed written statement by clearly admitting all the plaint averments that the properties of Padmavathy Amma belongs to the children of her late 3 sisters. Further there is a clear admission made by the 9th defendant in her written statement that she has no objection to grant 1/3rd share over the properties of late Padmavathy Amma. Now the 9th defendant filed amendment petition so as to withdraw all the admissions she made earlier in her written statement and to incorporate the pleadings by denying the rights of the plaintiffs over the said property.

8. In **Desh Raj v. Bodh Raj reported in 2008 KHC 4373** it was held that withdrawal of admission made by the defendant in the original written statement by way of amendment is not permissible. In the said case also in the original written statement the defendant has categorically admitted that the plaintiffs are owner in possession of the property and subsequently by filing amendment petition the defendant seeks to resile completely from the stand taken by him earlier. The defendant not only seeks to deny the ownership and possession of the plaintiffs but also seeks to put up a case that the title deed of the plaintiffs are null and void. It was held that the amendment in the written statement had the effect of permitting the defendant to resile from the admissions made by him earlier which is not permissible in law.

9. In **Heeralal v. Kalyan Mal and others reported in AIR 1998 SC 618** the Hon'ble Supreme Court held that withdrawal of the admission by amendment of written statement sought by the defendants on unsustainable ground cannot be allowed. It was further held that when the amendment sought in the written statement was of such a nature as to displaces the plaintiffs case, it could not be allowed. The learned counsel for the petitioner brought the attention of the court into the dictum in **Akshaya Restaurant v. P. Anjanappa reported in 1995 supp (2) SCC 303** in which it was held that even the admissions can be explained and even inconsistent pleas could be taken in the pleading. The authenticity of the dictum was well discussed by Hon'ble Apex Court in Heeralal case (AIR 1998

SC 613) and held that in Akshaya case the defendant did not seek to go behind his admission that there was an agreement in the year 1991 between parties but the nature of the agreement was sought to be explained by him by amending written statement. Further it is observed that in Akshaya case, this court unfortunately omitted to consider the dictum held by three members bench of Hon'ble Supreme Court in **Modi Spinning and Weaving Mills Company Ltd v. Ladha Ram and Company reported in AIR 1977 SC 680** that while granting amendment to written statement, no inconsistent or alternative plea can be allowed which would displace the plaintiff's case and cause him irretrievable prejudice. So the dictum made in Akshaya case is held as per incuriam.

10. Applying the above principles of law to the facts and circumstances of the present case it is evident that the respondent is not seeking a clarification or trying to explain the admissions made by him, but in a complete volte- face is resiling from the categorical admissions made by her. Explaining or offering a clarification regarding an admission stands on one footing whereas resiling from the same would stand on a totally different footing. In view of the law laid down by the Hon'ble Supreme Court such a course is not permissible. Moreover, there is no specific reason stated in the petition for withdrawing the entire admission of plaintiff averments made by the 9th defendant in her original written statement and for incorporating the new pleadings by denying the right of the plaintiff over the plaintiff schedule property. The only reason stated is that she is required to amend

her written statement for the ends of justice otherwise she will be put to irreparable loss, injury and hardship. It cannot be considered as a sound reason to withdraw the entire admissions made by the 9th defendant in her written statement by way of amendment.

11. In the amendment petition the 9th defendant further alleged that her mother executed a will deed for distributing the deposit of deceased Padmavathy Amma among 1, 2 and 4th defendants. As rightly contended by the 1, 2 and 4th defendants, the said fact is not a relevant fact or fact in issue to adjudicate the 1/3rd right of the plaintiffs over the plaint schedule property for which the 9th defendant filed a consent written statement. So incorporation of the said defence in the written statement cannot be considered as a sufficient ground to resile the clear admissions made in the written statement by the 9th defendant by way of amendment.

12. The learned counsel for the 9th defendant argued by relying on the dictum **Benjeena P.J v. C.P Pappachan reported in 2024 (4) KHC 305 (DB)** that the court should take liberal approach in amending the written statement. The defendant is entitled to take a new defence or to take an inconsistent stand. The learned counsel for the 9th defendant further argued that a prayer for the amendment of the plaint and a prayer for the amendment of the written statement stand on different footings. On perusal of the said judgment, I am of view that the decision is not at all applicable in this case because in the said case the question

was whether the defendant can take inconsistent pleas in the written statement by way of amendment. But in the instant case what to be adjudicated is whether a clear admission of the plaintiff averments in the written statement by admitting the 1/3rd right of the plaintiff over the plaintiff schedule property can be withdrawn by way of amendment so as to deny the right of the plaintiff over the plaintiff schedule property. The Hon'ble Supreme Court through a catena of decision settled the legal principle that an inconsistent plea which would displace the plaintiff completely from the admissions made by the defendants in the written statement cannot be allowed. If such amendment are allowed in the written statement the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admissions from the defendant such admissions of the defendants by way of amendment cannot be allowed to withdraw if such amendment would amount to totally displacing the case of the plaintiff and which would cause him prejudice.

13. From the above discussion I hold that the withdrawal of the clear admission of the right of the plaintiffs over the plaintiff schedule property in the written statement of the defendant cannot be withdrawn as such. There is no sufficient ground was made out by the petitioner/9th defendant to that effect except the averment that for the ends of justice. The admissions by way of pleadings are binding on the person who pleaded. So the admissions in the written statement cannot be withdrawn at the whims and fancies of the defendant

without having any sufficient ground to do so. So the prayer in the petition is not at all allowable.

In the result the petition is dismissed. No order as to costs.

Dictated to the confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 7th day of September 2024.

Sd/-
Veena. V.S
Sub Judge

Appendix : NIL

Id/-
Sub Judge

//True Copy//

Sub Judge