

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari.A, Munsiff.

Thursday, the 8th day of February, 2024 / 19th Magha, 1945.

I.A.No. 11/2023

in

O.S.No. 74/2017

Petitioner/ 3rd Plaintiff:-

Joshy Varghese, S/o. Varghese, Thelakkadan House,
Malamury, Pulluvazhy, Perumbavoor.

By Adv. Gimmy P. Antony.

Respondents:-

1. St. Mary's Catholic Church, Perumbavoor, represented by Vicar.
2. St. Mary's Catholic Church, Perumbavoor, represented by Kaikkaram Devassy, S/o. Paulose, Puthussery House, Pooppani Road, Perumbavoor.
3. St. Mary's Catholic Church, Perumbavoor, represented by Kaikkaran Varghese, S/o. Porinchu Mekkattumolam House, Rayonpuram P.O., Perumbavoor.
4. St. Mary's Catholic Church, Perumbavoor, represented by Kaikkara P.D. Peter, S/o. Devassy, Palluppetta, Rayonpuram P.O.
5. Sebastian K.K., S/o. Kurian, Koikkara House, BOC Road, Perumbavoor.
6. P.V. Thomas, S/o. P.T. Varkey, Panakkal House, KSRTC Road, Mahatma Nagar, Perumbavoor.

R1 to R4 - By Adv. P.T. Geevarghese.

R5 & R6 - By Adv. M.K. Jayapalan.

This petition having been finally heard before me on 15.1.2024 and the court on 8.2.2024 passed the following:-

O R D E R

1. This is a petition filed seeking for amendment of the plaint.
2. Heard both sides.
3. According to the petitioner, the 3rd plaintiff in the suit, the defendants church is coming under the Ernakulam-Angamaly Diocese and there is a bye-law formulated by the diocese as a guide for the administration of the diocese and the church is coming under it. The construction of individual tombs as well as family tombs are prescribed in the bye-law. It is pleaded in the plaint also. If, the first relief in the suit as prayed for is allowed, the defendant church will demand huge amount for the family tombs. The petitioner is now facing financial difficulty and unable to raise the fund as per the decision of the general body. So, the first relief is to be struck off and the additional relief is to be amended to pass a decree, declaring that, the defendant church is bound to allot family tombs to the 3rd plaintiff as per bye-law of the Archdiocese. First prayer is unnecessary, frivolous as far as the petitioner is concerned. So, the additional prayer is required. Hence, the petition is filed to amend the plaint.
4. The 3rd and 4th respondents had filed the counter statement by denying the petition averments. According to the respondents 3 and 4, the petition is not maintainable. The prayer sought to be incorporated is barred by the law of limitation. The suit is filed in the year of 2017 and now the relief sought to be incorporated is declaration and mandatory injunction. It is not discernible whether

the prayer sought to be incorporated is to be added as an additional prayer or not. There is no reference to the valuation of the court fees sought to be added. There is no reference to the date of cause of action for which the declaratory relief is sought for to be incorporated. The suit is one filed by more than one plaintiffs and one of the plaintiff cannot amend the plaint as prayed for by the petitioner herein. It is stated that, the first prayer is unnecessary, frivolous as far as myself is concerned. But, it is not made clear what is to be done with the 1st prayer. The petition is ambiguous and is barred by the law of limitation. Hence, the petition is to be dismissed.

5. As per the case of the petitioner, the prayer sought to be incorporated is based on a pleading in the plaint. Now, the prayer sought to be incorporated is declaration and mandatory injunction. In the plaint also, the 3rd plaintiff is seeking for a declaration to allot family tombs on the basis of the decision taken in the general body meeting of the church dated 22.05.11. Now, it is required to be amended as the church is bound to allot the family tombs as per the bye-law of the Archdioceses. So, the cause of action for the suit is the denial of allotment of the family tombs. In the original prayer and the prayers sought to be amended is seeking for the allotment of the family tombs, but in different manner. So, as there is a foundation for the amendment in the plaint itself, therefore, I could not find it to be barred by the law of limitation. At the same time, the prayer sought to be incorporated is inconsistent to the manner in which the prayer in the original suit is to be implemented. 3rd plaintiff alone had filed this petition to amend the prayer by incorporating a different prayer inconsistent to that of the original prayer in the suit. It is also stated that, the original prayer in the suit is frivolous and unnecessary. This petition is filed against the original plaintiffs in the suit, by arraying them as the respondents.

When the original plaint filed by the 5th and 6th respondents and the petitioner herein, the petitioner herein alone who is the 3rd plaintiff in the suit cannot amend the plaint unilaterally without the connivance of the other plaintiffs, by incorporating a prayer inconsistent to what is prayed for in the original plaint. Therefore, I could not find the petition to be maintainable. Hence, the petition stands dismissed.

Dictated to the confdl. asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 8th day of February, 2024.

Sd/-
ALSHARI.A,
MUNSIFF.

APPENDIX
NIL

Id/-
Munsiff

(By Order)

// True Copy //

Sd/-
Junior Superintendent.

jpp/-
Compd.by : Maya

Copy of Order in I.A.

No.11/2023

in O.S.No. 74/2017

Dated : 8.2.2024