

**IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),MUVATTUPUZHA**

Present:- Sri. Atheek Rahman, Civil Judge (Senior Division)

Tuesday, the 5<sup>th</sup> day of November, 2024 / 14<sup>th</sup> Karthika 1946

**I.A.No. 21/2024 in O.S No.6/2019**

**Petitioner/ Plaintiff:-**

Jose K.J, aged 59 years, S/o Joseph, C/o P.O. Francis,  
Kannathukuzhi House, Perumbaloor P.O, Maradi, Ernakulam.

By Adv. Sayed M Thangal, Febin Raj T.S & Sruthi Das

**Respondent/Defendant:-**

C.P. Pappachan, aged 67 years, S/o Kochappu, Chakiath House,  
Thundathum Kadavu, Varapuzha P.O, Ernakulam – 683 517,  
Proprietor, Alphonsa Memorial Press, Varapuzha P.O, Ernakulam  
– 683 517

By Adv. Yash Thomas Mannully & Soman P Paul.

This petition is filed under Order VI Rule 17 Read With Section 151 of Civil Procedure Code 1908 for amending the plaint and is coming on for hearing on 05.11.2024 in the presence of the above counsel and the Court on the same day passed the following:-

**ORDER**

This petition is filed by the petitioner/plaintiff under Order VI Rule 17 and Section 151 of the Code of Civil Procedure, 1908 to amend the plaint. The petition is supported by an affidavit sworn by the petitioner.

2. Brief averments in the affidavit in support of the petition are as follows:- Suit is filed for realisation of money. After the evidence of plaintiff, now the case is posted for the evidence of defendant. In the proof affidavit of the plaintiff the address is shown as Jose K.J, aged 59 years, S/o Joseph C/o. P.O. Francis, Kannathukuzhi House, Perumbaloor P.O, Maradi, Eranakulam and in the plaint the address is shown as Jose K.J, aged 45 years, C/o.P.O.Francis, Kannathukuzhi House, Perumbaloor P.O, Maradi, Eranakulam. The name of the father is to be inserted in the address portion of the plaint for more clarity. The age of the plaintiff is stated in the plaint as 45 instead of 54. It is only a typographical mistake and it is to be corrected. The rectification of said things in the plaint is highly essential for the effective adjudication of the *lis*. In the event of allowing the petition, there will not cause any prejudice to the defendant and the nature of the suit will not be changed. Hence, the petition.

3. Brief averments in the objection are as follows:- The petition is filed without disclosing the entire facts. It is filed with malicious intent, aiming to avoid criminal proceedings against the plaintiff for fraud and perjury. The defendant already raised dispute regarding the identity of the plaintiff and the fraud committed by him in the applications

submitted by the defendant numbered as IA 02/21, 03/2021 and 4/2021. The plaintiff filed the suit using false identity. Exts. D1 and D2 marked in evidence in the suit proves that the plaintiff is not a resident of Perumballoor Kara, Maradi village. Furthermore, despite paying the costs ordered in the restoration petition, the petitioner filed a false memo before the court, resulting in the restoration of the suit on the files of the court. Moreover, if the amendment is allowed, it will alter the identity of the plaintiff and the nature of the suit, especially, when the identity dispute is raised in the written statement. That apart, if the amendment is allowed serious prejudice will be caused to the defendant. Hence, the respondent/defendant prayed to dismiss the petition.

4. Both sides were heard.

5. The point raised for consideration is as follows:

1) *Is the amendment sought for necessary to decide the real question in controversy between the parties?*

2) *Has the Court jurisdiction to permit the proposed amendment in view of the proviso to Order VI Rule 17 of CPC?*

6. Point Nos. 1 and 2:- For the sake of convenience and to avoid repetition these points are considered together. The suit is filed for realisation of money based on three dishonoured cheques. The trial has commenced in the suit and the plaintiff adduced his evidence. Thereafter, the defendant was examined as DW1. Now the case is posted for further evidence of the defendant. During this stage, the present petition is filed by the petitioner to correct the age and to insert the name of the father in the address portion of the plaint. It is pertinent to note that, in the written statement, the defendant specifically disputed the identity of the plaintiff. But, plaintiff has not taken any steps to insert the name of the father and to correct the age before the commencement of the trial.

7. The defendant's primary objection is that the plaintiff filed the petition with malicious intent, aiming to avoid criminal proceedings for fraud and perjury, and also to defeat the valid defence of the defendant regarding the plaintiff's identity. Since there is identity dispute raised by the defendant, I am of the view that the petition cannot be allowed. If it is allowed, it will cause prejudice to the defendant, especially since the defendant has disputed the plaintiff's identity in the written statement. Significantly, the plaintiff can establish his identity by adducing

convincing documentary as well as oral evidence, even without any amendment.

8. Yet another aspect to be noted is that the plaintiff has failed to establish the fact that, in spite of due diligence, he could not have raised the matter before the commencement of trial. Hence, I am of the view that the petition is devoid of merit and it is liable to be dismissed. These points are answered accordingly against the petitioner.

In the result, the petition is dismissed. No costs.

Dictated to the Confdl.Asst., typed by her directly into the computer, corrected by me and pronounced in the Open Court on this the 5<sup>th</sup> day of November 2024.

Sd/-  
ATHEEK RAHMAN  
CIVIL JUDGE(SENIOR DIVISION)

**APPENDIX :- Nil**

Sd/-  
CIVIL JUDGE(SENIOR DIVISION)

Typed by : Ss/-  
Compd by :Bmm /-

// True Copy // (By Order)

Sheristadar

**Copy of Order**

**in I.A. 21/2024**

**in O.S. 6/2019**

**Dated: 05.11.2024**