

IN THE COURT OF THE MUNSIFF KOLENCHERY

Present:- **Smt. Sirsha.N.A, Munsiff.**

Tuesday, the 8th day of October, 2024 / 16th Aswina, 1946

IA No. 6 / 2024 in OS No. 29 / 2018

Petitioner / Plaintiff :-

Gopi S/o Kuttan Ramakrishnan, aged 56 years, Parakkunnathu House,
Venkida Kara, Thiruvaniyoor Village, Kunnathunadu Taluk.

By Adv. M.Y.Saju

Respondent / Defendant :-

1. Kuriako, aged 80 years, Chethikkottil House, Venkida Kara,
Thiruvaniyoor Village, Kunnathunadu Taluk.
2. Alias S/o Kuriako, aged 45 years, Chethikkottil House, Venkida Kara,
Thiruvaniyoor Village, Kunnathunadu Taluk.

By Adv. V.K.Joy

This petition came up for hearing before me on 03/10/2024 in the
presence of the above said counsels and the Court on 08/10/2024 passed the
following :-

ORDER

This is a petition filed under Order 6 Rule 1 and section 17 and section 151 of the Code of Civil Procedure.

2. The averments in the petition are as follows : The suit is filed for fixation of boundary and consequential injunction. When the suit was filed the relief was with respect to fixation of boundary as per survey records and title deeds. But later it was revealed that there is no title deed as such with respect to B schedule property. Hence it is necessary to amend the plaint in such a way to incorporate necessary amendment in the plaint with respect to the same, otherwise irreparable injury will be caused to the plaintiff.

3. The contentions in the objection filed by the respondent are as follows: The trial of the case has started and now the case has stands posted for defendant's evidence. Being a highly belated petition filed with sole motive to delay the trial, the petition is liable to be dismissed.

4. Heard the learned counsel for all the parties.

5. The sole point to be considered is,

Whether the proposed amendment shall be allowed?

6. **The point:** The suit is for fixation of boundaries and consequential injunction. From the averments in the petition it is seen that the plaintiff has sought to determine the boundaries on the basis of title deed and as per the survey records. But later it was revealed that the plaint B schedule property has no title deed as such. That mistake is now sought to be corrected. The respondent submitted that the petition is highly belated. Thus the respondent alleges that the present amendment application is made only with the intention of delaying the proceedings of the case. Further, in this case the amendment petition is filed after the evidence stage which cannot be allowed and if it is at all it is allowed it will definitely prejudice the defendant and hence it shall not be allowed.

7. The main objection raised on the side of the respondent is that the trial of the case has been commenced and at this stage the amendment can not be allowed. With regard to this point as held by our Apex Court in **Baldev Singh v. Manohar Singh reported in AIR 2006 SC 2832** *“Before we part with this order, we may also notice that proviso to O.6, R.17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary*

evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial Court. That apart, commencement of trial as used in the proviso to O.6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted herein before, parties yet to file their documents, we do not find any reason to reject the application of the written statement in view of proviso to O.6 R.17, CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings.”

8. There is no doubt that the present application is highly belated as the suit is in the list. The learned counsel for the petitioner argued that the necessary amendments are not allowed, it will definitely affect the case of the plaintiff. As the suit is for fixation of boundary, it is necessary that the plaint schedule property be described in correct extent. If the amendment is disallowed, the petitioner will suffer the injury for want of necessary pleadings and reliefs. On the other hand, the respondent would not be caused much prejudice and further, if there is any prejudice that could be overcome by an opportunity to file additional written statement.

9. In the light of the above discussions, this court finds that it is necessary to allow the proposed amendment of the plaint for finality of adjudication of the dispute between the parties. Thus the point is answered in favour of the petitioner.

In the result, the I.A. is allowed. There is 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 8th day of October, 2024)

Sd/-
Sirsha N A
Munsiff

Appendix:- Nil

Id/-
Munsiff

//True Copy//

Munsiff

Typed by : SAA
Comp.by : TPN

Order in
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in
OS No. 29 / 2018
Dated : 08/10/2024