

IN THE COURT OF THE MUNSIF, KARUNAGAPPALLY.

Present:- Sri.Praveen Kumar.G, BA.L, LL.B, Munsiff.

Tuesday, the 03rd day of August, 2021/the 12th day of Sravanam, 1943.

I.A No.01/21 in O.S No.03/2016

Between

Petitioner/Plaintiff:-

Aji kumar, aged 44 years,
S/o.Ramakrishna Pillai,
Vallolil Pulimoottil, Cherusseribhagom Muri,
Chavara village, Karunagappally taluk

By Advs. Sri.Rajeev Rajadhani

And

Counter petitioners/
Respondents:-

1. Government of Kerala represented by District Collector, Kollam
2. Tahasildar, Taluk Office, Karunagappally
3. Village Officer, Village Office, Chavara
4. Director, Directorate of College Education, Vikas Bhavan, Thiruvananthapuram
5. Govt College, Chavara, represented by Principal

By Adv.Sri.P.S.Sunil

This petition filed under order 6 Rule 17 of CPC for amendment of the plaint.

This petition coming on for final hearing before me on 29.07.2021 and stood have consideration to this day the court passed the following.

ORDER

Application filed by the plaintiff in the suit, for amendment of the plaint. Respondents in the application are the defendants in the suit. Parties are referred to as the “plaintiff” and the “defendants”, as in the suit.

2. The suit is for a declaration that the plaintiff acquired a right of adverse possession over the plaintiff B schedule pathway and consequential perpetual injunction. The B schedule way is said to be a public pathway and the defendants are said to have attempted to obstruct the plaintiff's user of the same. By virtue of the proposed amendment, the plaintiff intends to incorporate a claim of prescriptive easement right over the B schedule in place of adverse possession.

3. The defendants jointly filed a statement of objections contending *inter alia* that the amendment, if allowed, would alter the very foundation of the case pleaded by the plaintiff and hence, it is not allowable.

4. In the suit, the defendants filed their written statement refuting the plaintiff averments. Issues have also been framed. The trial of the case has not commenced yet. The application has been filed at this stage.

5. Heard both sides and perused the records.

6. The suit, as it stands now, is for a declaration that the plaintiff acquired a right of adverse possession over the B schedule way and perpetual injunction against causing obstruction to it. While contending that the B schedule is a public way, the plaintiff now wants to raise a claim of prescriptive easement right over it. Both these claims are totally distinct and different in its very nature and characteristics. The plaintiff is debarred

from raising a claim of public way and prescriptive easement right together. It is not sure whether the present claims of adverse possession and public way will lie together even. The amendment, if allowed, it would change the very nature of the case pleaded. The application is totally misconceived and it is dismissed with costs of the defendants.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 3rd day of August, 2021.

Sd/-
Praveen Kumar.G,
Munsiff.

Appendix :- Nil

Id/-
Munsiff.

//True Copy//

MUNSIFF

Copied by : Jyothilekshmy.R
Compared by :

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