

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY.

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

Tuesday, the 02<sup>nd</sup> day of November, 2021/the 11<sup>th</sup> day of Karthikam, 1943.

**I.A No.03/21 in O.S No.111/2016**

Between

- Petitioners/Plaintiffs :-
1. Amruthendra Gupthan,  
Cherukara veedu, Neendakara Muri,  
Neendakara village, Karunagappally taluk
  2. Sreeja, of -do-

By Adv.Smt.R.Maya

And

Respondents/  
Defendants:-

1. Prathap, Mythree Nagar 125,  
Prathibha, Mythri Nagar-125,  
Asramam P.O, Kollam East village,  
Kollam taluk
2. Nirmala Hentry, Nirmala Bhavan,  
Neendakara muri, Neendakara village,  
Karunagappally
3. Rexal George, S/o.George Antony,  
Rani Bhavan, Neendakara muri,  
Neendakara village, Karunagappally
4. Daizy Roy, W/o.Roy, Mathalayam,  
Neendakara muri, Neendakara village,  
Karunagappally

By Adv.Sri.D.Baijukumar

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

This petition having been finally heard on 28.10.21 and on 02.11.2021,  
the court passed the following.

**ORDER**

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

2. The suit is for a decree for declaration that sale deed number 42/2010 of SRO, Chavara, is null and void and consequential declaration of title, recovery of possession and other reliefs. Originally, there was only one defendant, who filed written statement challenging the plaint averments. Subsequently, the second defendant was impleaded. She too has filed her written statement. The trial of the case has not commenced yet.

3. In the affidavit in support of the application, it is alleged that the plaintiffs’ former advocate did not incorporate the necessary particulars in the plaint. The plaint is therefore sought to be amended to the effect that the plaintiff repaid the money borrowed from the first defendant on 12.03.2014 and he failed to reconvey the property as promised. On 15.02.2016, the second plaintiff approached the City Police Commissioner. Though the first defendant agreed to reconvey the property, prayer for reconveyance is omitted. The plaint has to be amended for incorporation of the necessary particulars of the reconveyance.

4. The second defendant filed a statement of objections, contending that though she was added as a party to the suit, no consequential amendment

under order 1 rule 10 (4) CPC is effected. Nowhere in the plaint, the plaintiffs have disclosed the period fixed for the performance and also the date of demand and refusal. By virtue of the amendment, the plaintiffs try to deviate from the original pleadings and to introduce new aspects, which amount to alteration of the nature of the suit. The amendment application has been filed after the second defendant filing an application under Order 7 Rule 11 CPC to reject the plaint on the ground of limitation. The plaintiffs' case itself would show that the jural relationship between the parties is that of a seller and buyer and nothing else. The amendment, therefore, is not allowable.

5. The first defendant has not filed any objections and there is no representation for him even.

6. I heard the learned counsel for the plaintiffs and the learned counsel for the second defendant. Perused the records also.

7. The suit is for a decree of declaration that sale deed number 42/2010 is null and void, and for declaration of the plaintiffs' title over the plaint schedule property. The sum and substance of the plaintiffs case is that the aforesaid document was executed at the instance of the first defendant while some amount was borrowed by him, and he made the plaintiffs believe that the property would be reconveyed once the amount was repaid. By virtue of the amendment, the plaintiffs mainly intend to incorporate relief of reconveyance

and its necessary particulars, which no way alters the foundation of the case pleaded or introduce any new cause of action, putting the defendants to any sort of prejudice. The defect of not effecting a consequential amendment to the plaint after adding the second defendant, does not affect the maintainability of this application. The rest of the aspects pointed out in the statement of objections appear to be merits of the case, which is not germane for consideration as of now. The trial of the case has not commenced yet and on that account also, no prejudice would be caused to the defendants, once the amendment is allowed. I find that the proposed amendment is essential for the resolution of the real controversy. Therefore, it is allowed. Carry out within a week. For additional written statement, if any.

*(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 02<sup>nd</sup> day of November, 2021).*

Sd/-  
Praveen Kumar.G,  
Munsiff.

Appendix:- Nil.

Id/-  
Munsiff.

//True Copy//

MUNSIFF

Copied by : Jyothilekshmy.R  
Compared by :