

IN THE COURT OF THE MUNSIF KANJIRAPPALLY.

Present : Smt.Sherin K George, Munsiff

Monday 2nd August 2021

11th Shravan 1943

IA 1/2021 in O.S 132/2009

Petitioners/Plaintiffs:-

- 1) Joseph, S/o Antony,
Cheruvil, Edakkunnam Kara,
Mundakayam Village.
- 2) Lucykutty, Cheruvil,
Edakkunnam Kara,
Mundakayam Village.

By Adv. Sri. George Kurian.

Counter Petitioners/ Plaintiffs

- 1) Lincy Thomas, Panamattathu House,
Edakkunnam Kara, Mundakayam Village.
- 2) Shellin Thomas, Panamattathu House,
Edakkunnam Kara, Mundakayam Village.
- 3) Mary Thomas, Panamattathu House,
Edakkunnam Kara, Mundakayam Village.

By Advocates: Sri Benny Jacob, Sri. K. Karjet

This petition came up for consideration on 02/08/2021 and the Court on the same day passed the following.

ORDER

This is an application filed under Order 6 Rule 17 C.P.C. for amendment of the plaint.

2. Averments in the affidavit filed in support of the I.A, in brief, are as follows:- Suit is one for declaration of title and recovery of possession. In the description of item No.2 schedule property at the time of filing of the suit, the description of portion sought to be recovered is already mentioned. Thereafter filing of the measured plan and report by the commissioner, the exact portion to be recovered were identified and it is highly necessary to be incorporated in the schedule for effective adjudication. The clarity is to be made, in the schedule over prejudice will cause to the petitioner. By amendment, the subject matter of the suit will not be changed. Hence prayer for allowing the application in the interest of justice.

3. The respondents/defendants filed objection contending as follows:- The amendment sought for at this stage cannot be entertained. The very nature of the suit will be changed, if the amendment is allowed. The evidence in this case is completed and is

posted for final hearing. Now the plaintiff is trying to fill up the lacunas caused to him at the time of adducing evidence. There is no explanation whether the petitioner has acted with due diligence. The petitioner is trying to incorporate new sets of property in the schedule and claiming larger relief. Then proposed amendment will bring the very change in the nature of the suit and the defendants will be prejudiced by the amendment and the I.A. is liable to be dismissed.

4. Now the only point that arises for consideration is:-

1. Whether the amendment is allowable ?

5. **Point No.1:-** Suit is one for declaration of title and recovery of possession. According to the plaintiff, certain extent of property has been encroached by the defendants by putting up of boundary fencing on the north and the western side of item No.1 property. The evidence in the case is completed and when the matter is posted for final hearing, the petitioner came up with their application.

6. According to the learned counsel for the plaintiff, in paragraph No.5 of the plaint and in the description of item No.2 schedule sufficient description is given with regard to the portions allegedly encroached by the defendants and the commissioner in Ext.C2 report has identified the encroached portion as per Ext.A6

plan as “h(3), K(3), h(4) and h(3). H(3), G(7), G(6), G(5), K(2), h(1), h(2), h(3). K(1), K(2), G(1), G(4) K(1)” in Ext.C2(a) plan. According to the learned counsel for the plaintiff, if the said plots are not included in item No.2 in the plaint will cause serious prejudice to him and no effective decree could be passed, if any, passed so.

7. According to the learned counsel for the respondents, the attempt of the plaintiff is to set up a total new cause by including several other portions coming in different survey numbers. So it is contended that proposed amendment will cause serious prejudice to the defence and the proposed amendment is not necessary to decide the real question in controversy.

8. I have considered the rival contentions of the parties, the pleadings of the parties and effect of the proposed amendment. I must admit that on perusing paragraph No.5 of the description provided in item No.2 would given an impression that certain extent of property is being encroached by the defendants. However, the said description of the property is not sufficient to identify and in order to identify the portions sought to be recovered requires a specific clarification at the time of disposal of the case.

9. The paramount object of Order 6 Rule 17 is to adjudicate the real question in controversy between the parties. The mistakes or description should not be caused for defeating the real cause or very

adjudicating the real cause. It is true that proviso to O.6 Rule 17 so as to if an application for amendment shall be allowed after the trial has commenced, unless, the court comes to the conclusion that in spite of due diligence, the party could have raised the matter before the commencement of the trial. I must say that in the affidavit filed by the petitioner, there is no such explanation as to the due diligence taken by him or what prevents him from incorporating the exact description of the property sought to be recovered from the defendants. At this juncture, I am relying upon **Eapen Antony and others v. Joseph and others (reported in 2009(1) KHC 865)** in which the Hon'ble High Court has considered a situation of amendment of pleading after the closure of evidence in which the Hon'ble High Court held that trial court lacks jurisdiction to allow amendment after the evidence is closed is not sustainable, if the court comes to a conclusion in favour of the party applied for amendment as provided in the proviso to Rule 17, the jurisdiction to allow the amendment would extend, even to a stage after the commencement of the trial, conclusion of the evidence, commencement of arguments and even conclusion of argument. The power to allow amendment can be exercised at any stage of the proceedings and it means at any stage before the judgment is pronounced. In the said decision, the Hon'ble High Court has relied on **Sajankumar v. Ramakrishnan reported**

in 2005(13) S.C.C.89 and the Hon'ble Supreme Court held that if the proposed amendment was necessary for the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff/appellant succeeding in the suit. In the said case also plaintiff filed an application for amendment of the plaint at the final stage of the suit, wherein the amendment was sought for correction of the description of the suit premises in the plaint.

10. So by relying on the above precedents, I am of the view that there is no impediment in considering an application for amendment at the final stage of the suit in order to avoid complications at the later stage of the suit. Moreover, the case on hand, the petitioner is relying on Ext.C2 series seeking for the recovery of possession based on the portions identified by the commissioner. It is pertinent to note that this court has not finally heard the matter. The relevancy of the commission report is subject to the final disposal of the suit and since there is allegations of fact that certain extent of property is encroached by the defendant, I must held that Proposed amendment will not cause any prejudice to the respondents.

11. The ancillary and important object Order 6 Rule 17 C.P.C. is to avoid multiplicity of proceedings and to decide all dispute in a

duly instituted suit. So, considering the noble object of the amendment of the proceeding by the proposed amendment, I feel that no serious prejudice will be caused to the defence so as to demolish their defence. But at the same time, I am not satisfied with the explanation given by the petitioner for not acting in time. Also there is much inconvenience would be caused to the defendant as they have to file additional written statement to the amended plaint and to adduce further evidence if so, advised. There is considerable delay in preferring the amendment in time. But, this is not a ground to disallow the prayer for amendment. But, the inconvenience of the respondents/defendants is to be compensated in terms of money and considering all these aspects, I feel that a cost of Rs.4,000/- would be adequate and will not be on the higher side.

12. Therefore, the amendment is to be allowed, as it is necessary to decide the real controversy between the parties and to avoid multiplicity of proceedings, but the petitioner is to be a saddle with Rs.4,000/- to the respondents. The plaint is found accordingly..

In view of the findings on the above point, this I.A. is allowed as follows:-

1. The petitioner/plaintiff shall carry out the amendment within 2 days from today and shall produce amended typed plaint on real posting date.

2. Petitioner shall pay Rs.4,000/- as costs of the respondents or to their counsel within 7 days from today.
3. The respondents are at liberty to filed additional written statement, if any, if so advice within 7 days from today
4. The parties shall comply order within the time limits specified.

Directly typewritten into my personal laptop and pronounced by me in the open court on this the 2nd day of August, 2021

Sd/-

1.

SHERIN K. GEORGE

Munsiff.

APPENDIX:- NIL

Id/-
Munsiff

//True copy//

Typed by : Sheeba C.N

Compd. By : Moti C.P.

Copy of Order in I.A 1/2021 in
O.S 132/2009
Dated 02.08.2021