

IN THE COURT OF THE MUNSIFF OF TIRUR

PRESENT: Sri. JANKISH NARAYANAN, B.Com., LL.B., LL.M., MUNSIFF

Wednesday, the 27th day of May, 2020
the 6th day of Jyaishta, 1941

INTERLOCUTORY APPLICATION No. 3 OF 2020
ORIGINAL SUIT NO. 152/1994

Between:

1. Othupalliparambil Abdurahiman's daughter, Amina (died).
 2. Othupalliparambil Amina's daughter, Kadeeja, 42 Years.
Thozhuvanur amsom, desom, Tirur Taluk.
- } Petitioners
Plantiffs

And:-

1. Punnekkatt Vadakkekara Ponnann's children; Krishnan, (died).
 2. Ponnann, (died).
 3. Velayudhan (died).
 4. Narayanan.
 5. Gopalan.
Punnekkatt Vadakkekara Krishnan's children,,
 6. Ponvalli.
 7. Devayani.
 8. Saraswathi.
 9. Manikandan.
 10. Rajan.
 11. Madhavi.
 12. Sanil.
 13. Kumar.
 14. Mohanan.
Punnekkatt Vadakkekara Gopalan's wife,
 15. Karthiayani.
 16. Children; Biju.
 17. Vineesh.
 18. Vishnu.
Thozhuvanur amsom, desom, Tirur Taluk.
Punnekkatt Vadakkekara Ponnann's children;
 19. Anikandan, 57 Years.
 20. Chandran, 55 Years.
 21. Sasidharan, 51 Years.
 22. Santha, 53 Years.
Vadakkekara House, Thozhuvanur amsom, desom,
Tirur Taluk.
- } Respondents
Defendants

- Vadakkekara Velayudhan's children;
- 23.Girija, 50 Years, Palathingal House, Puzhakkattira.
- 24.Pushpalatha, 58 Years, Kuzham parambil House, Chemmalassery.
- 25.Vanaja, 56 Years, Panekkad House, Muthur.
- 26.Shyja, 44 Years, Kalappara House, Muliyakursi, Pattikkad.
- 27.Bindu, 42 Years, Kunnath House, Chemmad, Tirurangadi.
- 28.Shasajumon, 40 Years, Vadakkekara House, Kavumpuram, Valanchery.
- 29.Raveendranathan, 38 Years, Vadakkekara House, Kavumpuram, Valanchery.

Respondents
Defendants

This petition coming on this day for hearing before me in the presence of Sri. M.K.Moosakutty, Advocates for petitioners and of Sri. C. Nandakumar, Advocate for respondents and the court passed the following;

ORDER

The above application is filed under Order VI, Rule 17 of the Code of Civil Procedure to amend the plaint.

2. The petitioner is the plaintiff in the above matter. The suit is one for fixation of boundary. The learned counsel for the petitioner contended that the plaint schedule property belongs to the petitioner and the respondents have no manner of right over the same. It is further contended that when the 4th defendant is examined before the Court on 22-02-2020, he testified that the plaint schedule property is in his possession. Hence, the petitioner is seeking amendment of plaint by incorporating the prayer for recovery of possession as consequential relief. According to the petitioner, plaint schedule property is an agricultural property. He also sought amendment of the plaint to that effect.

3. The respondent No.17/defendant No. 17 opposed the application and filed counter contending that the petition is not maintainable. The suit was instituted in the year 1994. 26 years have been elapsed since then. The petition is highly belated one. The proposed amendment is unwarranted. Moreover, the relief

sought in the petition is barred by limitation. Plaintiff schedule property is a rocky land. It is further contended that in the event of allowing the above application, the same may be allowed by making an order to the effect that the amendment will not relate back to the date of filing the suit.

4. The point for determination:-

1. Whether the petition is to be allowed, as prayed for?

5. Heard both parties. Perused the records.

6. Point No.1:- The suit is one for fixation of boundary. When 4th defendant is examined as DW2, he testified that the plaintiff schedule property is in his possession. Therefore, plaintiff is sought to be amended by incorporating the prayer for recovery of possession as consequential relief. The rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. It is settled that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Merits of the plea sought to be incorporated by way of amendment are not to be adjudged at the stage of considering the merits of the prayer for amendment. Nothing is on record to show that the proposed amendment is not at all necessary for proper and fair disposal of the case on merits.

In the result, the petition is allowed on payment of cost of ₹ 1000/- to the respondent No.17. It is made clear that the amendment comes into effect only from the date of this application. It does not relate back to the date of filing the suit.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court, this the 27th day of May, 2020)

MUNSIFF.

Typed by : T.Sajeesh
Compared by: 1) 2)

*Copy of Fair Order in IA.3/2020
in OS. 152/1994 dated 27-05-2020*
