

IN THE COURT OF THE SUBORDINATE JUDGE, IRINJALAKUDA

Present:- Anju Meera Birla, Additional Sub Judge

Wednesday the 6th day of April, 2022/ 16th Chaithram 1943 S.E

I.A.6/2020 in OS 476/2010

Petitioner/Defendant :

Peringottukkara Namboodiri Yogakshema Sabha, Anthikkad
Village, Thrissur Taluk rep by present Secretary.

By Adv: Rajesh Thampan

Respondents/ Defendants:

1. Selvin, S/o Olaprath Maniyam Makkal Jose, Pappinivattom Village Amsam Desom, Kodungallur Taluk.
2. Vincy, W/o Olaprath Maniyam Makkal Selvin, Pappinivattom Village Amsam Desom, Kodungallur Taluk.
3. Thankamma, W/o Olaprath Maniyammakkal Jose, Pappinivattom Village desom, Kodungallur Taluk.
4. Moidheen, S/o Puthiyaveettil Hassan, Cherpu Village Desom, Thrissur Taluk.
5. Babu, S/o Parakkal Devassykutty, Vallachira Village Desom, Thrissur Taluk.
6. Nidhi, Olaprath Maniyammakkal Veedu, Mathilakam Desom, Pappinivattom Village, Kodungallur Taluk.
7. Sidhique, S/o Karappamveettil Malikunji, Pappinivattom Village Desom, Kodungallur Taluk.
8. Raveendranathan, S/o Tharayil Velayudhan, Pappinivattom Village Desom, Kodungallur Taluk.
9. Seeniya, aged 46 years, S/o Olaprath Maniyammakkan Jose, Pappinivattom Village Desom, Kodungallur Taluk.
10. Solly, aged 40 years, D/o Olaprath Maniyammakkan Jose, Pappinivattom Village Desom, Kodungallur Taluk.
11. Salam, agd 42 years, S/o Thuruvanpeedikayil Muhammad, Pathazhakkad Desom, Sree Narayanapuram Village, Kodungallur Taluk.

By Adv : V.G.Subhash Chandra Babu

This petition coming on this day for hearing before me the court on the same day passed the following:

ORDER

Petition filed under Order VI Rule 17 of CPC.

2. Petition averments in short are as follows:- The petitioner is the Secretary of the plaintiff Sabha. The suit has been filed for recovery of possession and permanent prohibitory injunction as well as declaration. The property was sold to the Sabha by the wife and children of Olaprath Joseph and then it was cancelled unilaterally and other documents created. The prior deeds and other related documents were with the Sabha. When the encumbrance certificate was taken, it was noticed that the prior owners had executed other documents against the interest of the plaintiff. Hence, the present petition for amendment of the plaint seeing that the defendants have colluded to fabricate false documents to change the nature of the suit.

3. Counter was filed contending as follows:- The petition is not maintainable on facts or on law. The amendment sought to the pleadings is in the background of it being found that the plaint schedule property is in the background of it being found that the plaint schedule property is not identifiable as per the survey sketch. The amendment is an abuse of process of law. When the possession from the pleadings is deleted, it will change the basic pleadings and the nature of the suit. There is already a prayer for recovery of possession on the basis of title. Seeking another relief along the same lines would change the nature of the suit and takes away the admissions in the pleadings. The stated address as on date of suit is to be considered from the pleadings. That would be changed and the character and crux of the matter would be changed as would the market value. Hence, the amendment sought ought to be dismissed.

4. The following points arise for consideration:-

1) Whether amendment is allowed for just disposal of the matter?

2) Order?

5. Heard both sides.

6. **Point No.1:-** Petition averments and counter contentions have already been referred to. The petitioner/plaintiff seeks to amend the plaint. The contention taken by the defendant that it would change the basic nature of the plaint cannot be accepted in the light of the amendment sought. The plaintiff is the master of the suit and is within his rights to carry out amendment especially when the same can be seen to avoid multiplicity of litigation. If the amendments are not allowed, it could result in multiplicity of litigation which was not the requirement under law. Even time barred amendment can be allowed and the amendment being sought being more or less in the earlier pleadings filed, cannot be seen to change the nature and crux of the suit . Hence, this point is found in favour of the petitioner.

7. **Point No.2:-** In the light of the findings above, this point is found in favour of the petitioner.

In the result, petition is allowed. Carry out amendment within 3 days from today.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the open court on this the 06th day of April, 2022.

Anju Meera Birla
Additional Sub Judge.

APPENDIX:NIL

Additional Sub Judge.

Copied :

Compared :