

IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT: SRI. RAJEEV. V, B. Sc, LL.B, MUNSIFF
MONDAY 9th JULY, 2018/18th ASHADA, 1940

Order in I.A. 700/2018 in O.S. 575/2008

Plaintiffs:

1. Radha, D/o Karthyayani, aged 75 years, Mylakunnil Veedu, Near Govt. H.S. Kilimanoor, Pazhayakunnummel Village
2. Sudhambika, D/o Radha, aged 55 years, Mylakunnil Veedu, Near Govt. H.S. Kilimanoor, Pazhayakunnummel Village
3. Sheela, D/o Radha, aged 45 years, Mylakunnil Veedu, Near Govt. H.S. Kilimanoor, Pazhayakunnummel Village
4. Sheeja, D/o Radha, aged 40 years, Mylakunnil Veedu, Near Govt. H.S, Kilimanoor, Pazhayakunnummel Village

By Adv. K.S. Vinod

Defendants:

1. Rugmini, W/o Sudhakaran, Sudhakara Bhavan, Moothala, Pallikkal Village
2. Suresh Babu, S/o Sivasankaran, Mylakunnil Veedu, Near Govt. H.S Kilimanoor, Pazhayakunnummel Village

By Adv. D1 S. Lenin

D2 Exparte

This petition having been finally heard on 04/07/2018 and the court on 09.07.2018 passed the following

ORDER

This is a petition for review filed u/O 47 CPC by petitioner, who is the plaintiff in the suit.

2. The case of the petitioner in brief is as follows:

The review petitioner is the plaintiff in O.S.575/2008. The defendants in the suit have filed IA 397/2018 seeking amendment of their written statement. The IA was heard on 15.02.2018 and the same was allowed on that day itself. The review

petitioner prays to review the order dated 15.02.2018 in IA 397/2018 in O.S.575/2008 on the following grounds.

(i). The review petition was not heard in detail and the order was passed without a detailed hearing.

(ii). The matter sought to be amended was not been specified in the accompanying affidavit and the respondents obtained the order by misleading the Court.

(iii). By allowing the amendment the admission of title made by the defendants in their written statement was permitted to be withdrawn.

(iv). The decision reported in 2018(1)KLJ 463 was not considered while allowing IA 397/2018.

3. Hence, the review petitioner prays to review the order dated 15.02.2018 in IA 397/2018.

4. The first defendant has filed written objection to the review petition contending as follows:

The review petition is not maintainable either on law or on facts. Even before the institution of amendment application defendant has produced relevant records to prove the title and possession of the defendants. Defendants have mentioned about their title and possession over the plaint schedule property in the unamended written statement itself. Defendants have not admitted that the plaintiffs have right over the plaint schedule property. The review petition was

heard and allowed in the presence of counsel for the plaintiff. The review petitioner has no bonafide. Hence, the plaintiff prays to dismiss the review petition.

5. Heard both sides.

6. The counsel for the review petitioner points out that the defendant was given an opportunity to withdraw the admission made by the amendment made, which is not allowable as per law. On the other hand, counsel for the respondent maintains that there was no specific admission by the defendant that the property was owned by the plaintiffs. She points out that the case of the defendant throughout the unamended written statement was that the plaintiff schedule property is in the ownership and possession of the defendant. Learned counsel for the defendant further brings the attention of the Court to the order in IA 397/2018 wherein it was specifically stated that the respondent has no objection.

7. The point that arise for consideration in the review petition is:

1. Whether the prayer of the petitioner to review the order dated 15.02.2018 in IA 397/2018 is allowable?

8. **Point No.1:** One of the grounds for review is that the order is passed without a detailed hearing. But it is to be noted that it is clearly mentioned in the order in IA 397/2018 dated 15.02.2018 that the respondent has no objection. Though it is seen that a written objection was filed on 15.02.2018 that was not mentioned at the time of hearing. If the filing of the written objection was brought

to my notice at the time of hearing, definitely I would have mentioned the same in the order. In this context, it is to be noted that Adv. Gireesh, who appeared on behalf of the review petitioner has fairly conceded that it was submitted during the time of hearing in IA 397/2018 that there was no objection. However, he strongly argues that the order dated 15.02.2018 in IA 397/2018 is one without considering the decision reported as 2018(1) KLJ 363. He further points out that the matter sought to be amended was not specified in the affidavit. But it can be seen on perusing the affidavit filed along with IA 397/2018 that the said allegation has no basis. The main ground on which the petitioner seeks to review the order is that by the amendment the defendant was permitted to withdraw his admission of title and in that context the decision reported as 2018(1) KLJ 363 was not considered.

9. It is to be noted that there was no admission of the right of the plaintiff over the disputed site in the unamended written statement, as alleged by the petitioner. What is stated in the unamended written statement as follows: “

Such a contention cannot be taken as an admission of right of the plaintiff. Unamended written statement has clearly stated that B schedule property was part of the property of the defendant and under the ownership of the defendant. Hence, the argument of the review petitioner that the defendant was permitted to

withdraw from his admission through the amendment, has no legs to stand. In the decision reported as 2018(1) KLT 463 (Khaleel Vs Aranjikkal Jamal Mohammad and Another), the attempt made through an amendment was to withdraw from admissions candidly made by the defendant. But in the instant case there is no attempt to withdraw from any candid admission made by the defendant in his original written statement. Thus, the decision reported as 2018(1) KLJ 363 can be clearly distinguished from the facts of the instant case.

10. Considering the above aspects, I am of the view that there are no grounds to review the order dated 15.02.2018 in I.A. 397/2008. **In the result, the review petition fails and is dismissed.**

Dictated to the C.A, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 9th day of July, 2018 .

Sd/-
RAJEEV. V
MUNSIFF

Appendix: Nil

Id/-
MUNSIFF

//True Copy//

Typed by: Sakkeena Beevi
Compared by:

MUNSIFF

