

IN THE COURT OF THE MUNSIFF, KOCHI

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

Saturday, the 18th day of February, 2017, 29th Magha, 1938

I.A.No.832/2016 in O.S.No.438/2015

Petitioners/Plaintiffs:-

1. M. Hamza, S/o. Mohammed, CC 111/309,
Eraveli Road, Fortkochi Village, Kochi – 682 001.
2. Smt. Nabeeza, W/o. M. Hamza, CC 111/309,
Eraveli Road, Fortkochi Village, Kochi – 682 001

By Adv. O.J. Alfred

Respondents/Defendants:-

1. Mohammed Shakkeer, aged about 45 years,
S/o.Mohammed Kutty, Eraveli Desom, Pulikkal House,
Thamarakulam Road, Amaravathy, Fortkochi Village,
Kochi Taluk.
2. Corporation of Cochin, represented by its Secretary,
Office of the Corporation of Cochin, Ernakulam,
Kochi – 682 011.
3. The Assistant Executive Engineer, Corporation of
Cochin, Fort Kochi Zonal Office, Cochin – 682 001.

R1 By Adv.Hendry Fernandez (Exparte)
R2&3 Exparte

The petition filed under section 151 read with Order 1 Rule 10 and Order III Rule 3 of the code of Civil Procedure to grant leave to incorporate the name of the authorized agent and power of Attorney of the 1st defendant in order to serve summons and to represent the 1st defendant.

The petition having been finally heard on 17.02.2017 and the court on 18.02.2017, passed the following:-

ORDER

Application filed by the plaintiffs in the suit, to amend the cause title of the plaint.

2. The suit is one challenging the defendant's construction of a building in his property on the ground that it violates the building rules. According to the plaintiff, the defendant has entrusted the construction works to one Mohammed and has gone abroad. It is stated that the construction works are now conducted by the said Mohammed, as an agent and the power of attorney of the defendant. Therefore, according to the plaintiff, the summons to the defendant may be served and the other proceedings in the suit be permitted to be continued against the defendant through Mohammed, his agent. The prayer in the petition is to amend the cause title of the plaint, by inserting the expression "represented by the authorized agent and power of attorney, Mohammed" along with the details and name of the 1st defendant.

3. To the application, Mohammed filed a counter affidavit contending that he is not the power of attorney or agent of the 1st defendant and that he is a stranger to the suit. It is stated that he is a mason, doing work for daily wages and one Siraujdeen has entrusted the work of the 1st defendant's house to him. Siraujdeen infact use to pay the wages and that apart, he has no connection whatsoever with the 1st defendant. Therefore, it is contended that he is an

unnecessary party. It is also pointed out in the counter affidavit that the present application has been filed invoking the wrong provision.

4. Heard the plaintiff. There is no representation for the defendants/respondents.

5. While the plaintiff contends that the person sought to be impleaded, Mohammed, is an agent and the power of attorney of the 1st defendant, this contention is specifically challenged by the latter. It is contended that he is only a worker, that too engaged by one Sirajudheen and he has no connection whatsoever directly with the 1st defendant. Plaintiff has not produced any materials to show that the 1st defendant has infact appointed Mohammed as his power of attorney/agent, in the absence of which an amendment as sought for by the plaintiff cannot be allowed. For Mohammed to be added as a party to the suit, the plaintiff must show a cause of action against him. Here, he is neither a necessary party nor a proper party. Therefore, petition is dismissed.

Dictated to the Confdl. Asst; transcribed and typed by her, corrected and pronounced by me in open court on this the 18th day of February, 2017.

Praveen Kumar G.
Principal Munsiff

Appendix: Nil

Principal Munsiff.

sks
compd by: