

In the Court of Additional District Munsif, Padmanabhapuram.

Present: **Selvi.V.Viswatha, B.A.,LL.B.(Hons)LL.M.,**

Additional District Munsif.

Thursday, the 2nd day of September 2021

I.A No.2 of 2021 in O.S No.44 of 2017

The Parish Priest,

Chetticharvilai Parish,

represented by

S. Soosai Michael

.. Petitioner/Plaintiff..

/ Vs. /

P. Ganesan

.. Respondent/ Defendant ..

This petition is presented before me for final hearing, in presence of Mr. V. Balachander, learned counsel for the Petitioner and Mr.K. Madhavan Pillai and Tr. M. Siva Kumar, learned counsels for the Respondent. Upon hearing the counsels on both side and on perusal of the records stood over for consideration till this day, and this court passed the following

ORDER

This petition is filed under Order 1 Rule 10(4) and section 151 of Civil Procedure Code to make amendments in the plaint.

2. Brief of petition facts is as follows:-

The petitioner herein is the plaintiff in the suit and the suit is filed seeking permanent injunction. It is stated that on 10.12.2019, the petitioner has filed the petition under Order 3 Rule 1 of C.P.C in I.A.No.1/19 to permit him to represent the defendant. It is stated that this court passed an Order permitting the defendant to be represented by power agent S. Mohamed Ali. It is stated that it is necessary to carry out the amendments in the plaint with regard to that. Hence this petition.

3. Counter filed by the respondent in brief:-

It is stated that the defendant has given only a limited power of attorney to attend the proceedings before mediation centre at Nagercoil. It is stated that the defendant has filed the written statement and counter in the above suit. It is stated that the power holder has not given any power to prefer any appeal and so it is stated that the power holders name may not be included in the plaint in the representative capacity. It is stated that the petition is an incomplete one. In view of the fact that the petition that does not disclosed the nature of the amendment to be made in the plaint. It is stated that the petition does not disclosed the nature of amendments to be made in the plaint. Therefore, the petition is liable to be dismissed.

4. Heard the counsel on both sides and perused the records stood over for consideration.

5. Now the point for consideration is whether the petition has to be allowed or not?

6. It is to be noted that the petition is filed under Order 1 Rule 10(4) which says that the plaint shall be amended when the defendant is added in the suit. Here no new defendant is added and only the power agent is given authorization to appear on behalf of the defendant. However, when consequential amendment is sort by the petitioner the petition ought to have been filed under order 6 Rule 17 of C.P.C. Procedure are hand maid of justice quoting of wrong provision does not defeat the right of the parties. On that balance that the merits of the petition is perused.

7. The petitioner herein is the plaintiff in the suit and the suit is filed for permanent injunction. It is stated that on 10.12.2019 the respondent/defendant has filed the petition under Order 3 Rule 1 CPC in I.A.No.1/19 to permitting him to be represented by one S. Mohamed Ali. It is stated that the petition was allowed on 11.01.2019 and so it is

necessary to carry out the suitable consequential amendments. Resisting the same the respondents states that the power of attorney to S.Mohamed Ali was given only for a limited purposes to attend the proceedings before the mediation centre at Nagercoil. It is stated that the power holder has not been given any power to prefer to any appeal. It is stated that the power holders name may not be included in the plaint as representing the defendant. It is stated that the petition is an incomplete one. It is stated that the petition does not disclose the nature of amendments to be made in the plaint.

8. On perusal of records it is seen that the respondent/defendant has filed the petition vide I.A.No.1/2019 seeking permission to permit S. Mohamed Ali to represent as power of attorney for the defendant in the suit and the same has been permitted as per order dated 10.01.2020. It is trite in law that when the defendant is represented by power of attorney pending the suit, it is not necessary to amend the plaint in respect of it. Further the power of attorney can be changed any time by the concerned party and the plaintiff cannot be expected to amend the plaint every time. The respondent/defendant has specifically stated that the power holder may not be included in the plaint as representing the defendant. Thus any order or judgment passed will bind the defendants alone and there is no bar for the power of attorney to represent the defendant as per order in I.A.No.1/2019. Further considering the facts and the circumstances of the case this court draws a conclusion that the relief sought by the petitioner is bereft of merits, especially when respondent/defendant itself objects the name of the power holder to be added in the cause title. In the light of the discussion made supra this court is constrained to dismissed this petition.

9. In the result, this petition is dismissed. No costs.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 2nd day of September 2021.

Additional District Munsif,
Padmanabhapuram.

ADMC Padmanabhapuram.
IA.No.2/21 in OS.No.44/2017.
Draft/Fair Order:
Dt: 02.09.2021.