

In the Court of the Additional District Munsif, Padmanabhapuram.

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

Additional District Munsif.

Wednesday the 30<sup>th</sup> day of September 2020

**I.A No.2 of 2019 in O.S No.112 of 2018**

R.Edwin

.. Petitioner/Plaintiff ..

/ Vs. /

R.Bhuvanesh Raja.

..Respondent/Defendant..

This petition is presented before me for final hearing on this day in presence of Thiru.V.N.Biju, learned counsel for the Petitioner and Thiru. D.Dhana Chandra Prakasah, learned counsel for the Respondent. Upon hearing the counsels on both side and on perusal of the records stood over for consideration till this day, this court passed the following

**ORDER**

This petition is filed under Order 6 Rule 17 of Civil Procedure Code seeking the relief of Amendment.

2. The Petitioner states that he is the Plaintiff in the suit and the suit is filed for Injunction to restrain the respondent/defendant from dispossessing him from the suit building by force. The petitioner states that the respondent is the owner and the petitioner is the tenant in the suit property. The petitioner states that this court granted an interim injunction in IA.No.315/2018 to restrain the respondent. Subsequently on 23.04.2019 the respondent filed a memo stating that the suit has been filed to eject the plaintiff as per law. The petitioner states that as per the

memo this court dismissed the interim petition. The petitioner states that no suit for ejectment is filed by the petitioner and on 26.04.2019 the respondent/defendant has broke open the lock of premises dumped all the business articles such as Freezer, Ice cream box etc., and disposed the petitioner from the building. The petitioner states that this dispossession was done without knowledge and consent of the petitioner and deposit of Rs.1,00,000/- still remains with the respondent and it is also stated that the petitioner has incurred a monetary loss of Rs.90,000/-. Hence the petitioner wants to amend the plaint for seeking the remedy of restoration of possession in the suit property.

3. The respondent has filed counter stating that the petitioner has vacated the suit premises voluntarily. It is also stated that if the petitioner was ejected forcefully he would have approached this court on 27.04.2019 itself, but the petitioner has awaited till 29.07.2019 and filed this interim application. The respondent also states that this petition is filed to demand an imaginary loss of Rs.90,000/-. The respondent also states that proposed amendment will change the nature of the suit and such amendment shall not be permitted and this petition has to be dismissed.

4. Now the point for consideration is whether the petition is liable to be allowed or not?

5. The respondent is the landlord and the petitioner is running a shop as a tenant in the premises of the suit property. The suit is initially filed for the grant of injunction restraining the respondent/defendant from disposing the petitioner from the suit property unlawfully. The petitioner has stated that he has been dispossessed off from the suit property on

26.04.2019 and so the petitioner wants to seek an additional relief for recovery of possession. Whereas the respondent states that the petitioner has voluntarily vacated the suit premises and vexatiously filed this petition.

6. In the petition of this nature the court has discretion to grant permission for the party to amend pleading rests on two conditions. No injustice must be done to the other side and subsequent amendment must be necessary for the purpose of determining the real question in controversy between the parties. In this case, there is a subsequent change since the petitioner who is the tenant in the suit property is currently not running his office in the suit property, whether vacated voluntarily or dispossessed of forcefully.

7. In these circumstances, the court finds it is imperative for proper and effective adjudication, petitioner shall be given an opportunity. Further it is also noted that trial has not been commenced in this case and this amendment being pre-trial one does not cause prejudice to the respondent. Further to avoid multiple litigation the amendment sought by the petitioner is allowed.

8. In the result, the following amendment sought by the petitioner is allowed. No costs.

I. After the short cause title, the words 'SUIT FOR INJUNCTION' be deleted and substituted by the words 'SUIT TO RESTORE POSSESSION'.

II. In the same sentence, after the words '**Code of Civil Procedure**' add the following as its continuation "**and section 6 of the Specific**

**Relief Act**".

**III.** After para 10 of the plaint, incorporate , the following as para 10(a)

"On filing the suit, the Honourable Court awarded on order of Interim Injunction in IA.No.315 of 2018 which was being periodically extended. This being so, on 23.04.2019 , when the injunction I.A. again came up for hearing the defendant's counsel filed a Memo stating that a suit to eject the plaintiff has been filed before this Honourable Court on 22.09.2019 as per law. Acting on the MEMO, and believing it to be true, the Honourable Court dismissed the injunction petition. Whereas, the truth is that no suit for ejectment was filed, on the other hand, within a couple of days, ie., on 26.04.2019, in the mid-night , the defendant broke open the lock of the premises, dumped all the plaintiff's articles such as Freezer, Ice cream box etc outside the building and forceully occupied the same. Moreover, in that process, he caused a loss and damages of rupees 90,000/- to the plaintiff. In the circumstances, therefore, this Honourable Court be pleased to award a decree for recovery or restoration of possession of the suit premises from the defendant".

**III(a)** The existing relief for injunction be deleted and substituted by the following:

" It is therefore humbly prayed that this Honourable Court be pleased to pass a decree for Recovery or Restoration of possession of the this suit building from the defendant along with the costs of the suit."

**IV.** In para 12 of the plaint relating to cause of action after the words "**threat of eviction by force**" insert the following;

"and the filing the present suit for injunction, and subsequent

dispossession of the plaintiff on 20.04.2019.”

V. The existing relief be recast as follows:-

It is therefore most humbly prayed the Honourable Court be pleased to pass a decree directing the Defendant to restore possession of the suit premises to the plaintiff and in the event of the defendant failing to do so enabling the plaintiff is recover possession through court along with the cost of the recovery proceeding and also the suit cost.”

VI. In the beginning of para 4, the words “**At the time of** “ is to be deleted and substituted by the words “**Before the**” .

VII. In the same para 4, in the first sentence after the word “**handed over to plaintiff**” the following words, “**for making suitable additions**” are to be inserted.

Dictated to the Steno-Typist, transcribed and typed by her in computer, corrected and pronounced by me in open court, on this 30<sup>th</sup> day of September 2020.

Additional District Munsif,  
Padmanabhapuram.

ADMC Padmanabhapuram.  
IA.No.2/19 in OS.No.112/2018.  
Draft/Fair Order:  
Dt: 30.09.2020.