

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

OP(C).NO. 1828 OF 2012 (O)

I.A.NO.1466/2012 IN OS 377/2009 OF MUNSIFF COURT, KOTTARAKKARA

PETITIONERS/PETITIONERS/DEFENDANTS:

- 1. SARASWATHY, AGED 47 YEARS
W/O.SASI, SANTHIVILASOM, ANDOOR MURI
VALAKOM VILLAGE, KOTTARAKKARA TALUK, KOLLAM DISTRICT.**
- 2. SARADA, AGED 62 YEARS,
RAMA VILASOM, ANDOOR MURI, VALAKOM VILLAGE,
KOTTARAKKARA , KOLLAM DISTRICT.**

**BY ADVS.SRI.K.V.ANIL KUMAR
SRI.AJITH MURALI**

RESPONDENTS/RESPONDENTS/PLAINTIFFS:

- 1. RADHAMANY,
A.R.BHAVAN, ANDOOR MURI , VALAKOM VILLAGE,
KOTTARAKKARA TALUK, KOLLAM DISTRICT-691 506.**
- 2. JANAKI, PARANGOTTU PUTHEN VEEDU,
ANDOOR MURI, VALAKOM VILLAGE
KOTTARAKKARA TALUK, KOLLAM DISTRICT-691506**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 25-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

APPENDIX

PETITIONER(S) EXHIBITS :

- EXT.P1:- TRUE COPY OF THE PLAINT IN OS 377/2009 ON THE FILE OF THE MUNSIFF'S COURT, KOTTARAKKARA
- EXT.P2:- TRUE COPY OF THE WRITTEN STATEMENT AND COUNTER CLAIM IN OS 377/2009
- EXT.P3:- TRUE COPY OF THE AFFIDAVIT AN PETITION IN IA NO 1466/2012 IN OS 377/2009
- EXT.P4:- A TRUE COPY OF THE ORDER IN IA 1466/2012 IN OS 377/2009 ON THE FILE OF THE MUNSIFF'S COURT, KOTTARAKKARA.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

AS

A.HARIPRASAD, J.

O.P.C.No.1828 of 2012

Dated this the 25th day of May, 2015

J U D G M E N T

Petition under Article 227 of the Constitution of India.

2. The impugned order is Ext.P4. The court below happened to pass the impugned order on Ext.P3 application. The petitioners are the defendants. Averments in Ext.P3 show that the petitioners in their written statement not only opposed the plaint claims but also raised a counter claim. It is clearly mentioned in the affidavit that they omitted to show the names of the parties in the cause title. Therefore, they requested the court below to permit them to amend the cause title to the written statement incorporating the names of parties to the proceedings. The court below by the impugned order rejected the prayer finding that the request made by the petitioners will not fall within Order VI Rule 17 C.P.C.

3. Heard the learned counsel for the petitioners.

4. On a reading of the impugned order, I am of the considered view that the learned trial judge committed a grave legal error in rejecting the prayer in the petition to incorporate the names of the parties to the cause title in the written statement. The view taken by the court below that incorporation of such names in written statement will be outside the scope of Order VI Rule 17 C.P.C. cannot be countenanced. It is rudimentary knowledge that a written statement containing opposition to the plaint claim and also a claim in the nature of a counter claim still remains a written statement, although it can be viewed as a plaint in a cross suit for the purpose of Order VIII Rule 6A C.P.C. Any amendment to the cause title to a written statement will certainly fall within Order VI Rule 17 C.P.C. irrespective of the fact whether the written statement contains a counter claim or not. Therefore, the impugned order is *per se* illegal. Hence, it is hereby set aside.

In the result, Original Petition is allowed. Ext.P4 order is set aside. Court below shall consider Ext.P3 application

on merits and pass an order as expeditiously as possible, at any rate, within a period of 'one month' from the date of receipt of copy of this judgment.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge