

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

OP(C).No. 1179 of 2013 (O)

I.A.NO.1765/2012 IN AS 124/2011 OF SUB COURT, KOTTARAKKARA

PETITIONER(S)/PETITIONER/APPELLANT:

**GOPINATHAN, AGED 60 YEARS,
S/O.SREEDHRAN, LEKSHMIVILASOM VEEDU,
KARINGANNOOR MURI, VELINNALLOOR VILLAGE,
KOTTARAKARA TALUK, KOLLAM DISTRICT.**

BY ADV. SRI.K.VANIL KUMAR

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

- 1. GIRIJA,
'KOUSHOOPAN', VELINNALLOOR VILLAGE, KOTTARAKKARA TALUK,
KOLLAM DIST-691506.**
- 2. MURALEEDHARAN,
'KOUSHOOPAN', VELINNALLOOR VILLAGE, KOTTARAKKARA TALUK,
KOLLAM DIST-691506.**
- 3. THE DISTRICT COLLECTOR,
COLLECTORATE, KOLLAM.**
- 4. THE DIRECTOR OF SURVEY AND LAND RECORDS, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695001.**

**R1,2 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R3 & 4 BY GOVERNMENT PLEADER**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

OP(C).No. 1179 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:- TRUE COPY OF THE JUDGMENT IN OS 141/2007 OF THE MUNSIFF COURT, KOTTARAKKARA**
- EXT.P2:- TRUE COPY OF THE AFFIDAVIT AND PETITION IN IA NO 1756/2012 IN AS NO 124/2011 OF THE SUB COURT, KOTTARAKKARA**
- EXT.P3:- TRUE COPY OF THE OBJECTION IN IA NO 1756/2012 IN AS NO 124/2011 OF THE SUB COURT, KOTTARAKKARA**
- EXT.P4:- A TRUE COPY OF THE ORDER DTD 14/2/2013 IN IA NO 1765/2012 IN AS NO 124/2011 OF THE SUB COURT, KOTTARAKKARA**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

.....
O.P.(C) No.1179 of 2013
.....

Dated this the 22nd day of July, 2015

J U D G M E N T

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Ext.P4 order passed by the Subordinate Judge's Court, Kottarakkara in IA No.1765/2012 in AS No.124/2011 is under challenge. In the suit, the District Collector, Kollam was impleaded as the 3rd defendant and the Director of Survey and Land Records was impleaded as the 4th defendant. Notice under Section 80 CPC was served prior to the filing of the suit. Ext.A25 is the said notice.

2. According to the petitioner, the petitioner wanted to implead the State of Kerala as the 3rd defendant and that was the reason why the District Collector, Kollam was sued as the 3rd defendant. The mistake has come to the notice of the petitioner when the matter was pending in appeal before the Subordinate Judge's Court, Kottarakkara as AS No.124/2011. Immediately on coming to know about it, the

petitioner has preferred Ext.P2 IA. It seems that Ext.P2 IA was one filed under Order I Rule 10(2) read with Section 151 CPC. The petitioner wanted to incorporate the terms 'State of Kerala represented by' as prefix to the terms 'The District Collector' in the cause title.

3. The court below has dismissed the IA through Ext.P4 order. It seems that instead of seeking an amendment of the plaint under Order VI Rule 17 CPC, even though the amendments were sought for, the provision of law was mistakenly quoted as Order I Rule 10(2) instead of Order VI Rule 17 CPC.

4. On going through the matter involved, it is evident that the District Collector, Kollam was not impleaded in the suit as the 3rd defendant in his personal capacity whereas, the District Collector was impleaded in the official capacity. In order to represent the State, the plaintiff need only implead the District Collector as the officer who is representing the State of Kerala. It is evident that it was an

accidental slip from the part of the plaintiff in not showing the name of the 3rd defendant as 'State of Kerala, represented by the District Collector, Kollam'. Therefore, the court below ought to have considered Ext.P2 IA as one filed under Order VI Rule 17 CPC for the amendment of the cause title of the plaint.

5. Further, it seems that the Survey Superintendent is impleaded as the 4th defendant in the suit in his official capacity. When a public officer is impleaded in his official capacity, the Government should have been joined as a party within the meaning of Order XXVII Rule 5A CPC. When such an amendment was sought for, it is evident that the District Collector was impleaded in the official capacity. When the Survey Superintendent was impleaded as the 4th defendant in the suit, the court below ought to have allowed the said amendment to be carried out in the cause title of the plaint. It has come out that Ext.P4 order has resulted in substantial miscarriage of justice. The court below ought to

have allowed Ext.P2 IA under Order VI Rule 17 as well as Section 152 CPC.

In the result, Ext.P5 order stands set aside. Ext.P2 IA stands allowed under Section 152 CPC as well as Order VI Rue 17 CPC. The court below shall permit the petitioner to carry out the amendment in the plaint.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/22/07

// True Copy //

PA to Judge