

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

OP(C).No. 111 of 2015 (O)

O.S.NO.477/2014 OF MUNSIFF COURT, KOTTAYAM

PETITIONER(S) :

1. MOLLY ABRAHAM, AGED 66 YEARS,
W/O.LATE DR.A.ABRHAM, VARIKKATTU HOUSE,
PONKUNNAM KARA, CHIRAKADVU VILLAGE,
KANJIRAPPALLY HOUSE.
2. JACOB ABRAHAM, AGED 36 YEARS,
S/O.LATE DR.A.ABRHAM, VARIKKATTU HOUSE,
PONKUNNAM KARA, CHIRAKADVU VILLAGE,
KANJIRAPPALLY HOUSE.
3. ANDREWS ABRAHAM, AGED 41 YEARS,
S/O.LATE DR.A.ABRHAM, VARIKKATTU HOUSE,
PONKUNNAM KARA, CHIRAKADVU VILLAGE,
KANJIRAPPALLY HOUSE, REPRESENTED BY POWER OF
ATTORNEY HOLDER JACOB ABRAHAM, AGED 36 YEARS,
S/O.LATE DR.A.ABRHAM, VARIKKATTU HOUSE,
PONKUNNAM KARA, CHIRAKADVU VILLAGE,
KANJIRAPPALLY HOUSE.
4. ALEYAMMA ABRAHAM, AGED 37 YEARS,
D/O.LATE DR.A.ABRHAM, VARIKKATTU HOUSE,
PONKUNNAM KARA, CHIRAKADVU VILLAGE,
KANJIRAPPALLY HOUSE.
5. SARAMMA ABRAHAM, AGED 34 YEARS,
W/O.LATE DR.A.ABRHAM, VARIKKATTU HOUSE,
PONKUNNAM KARA, CHIRAKADVU VILLAGE,
KANJIRAPPALLY HOUSE.
6. ABRAHAM ABRAHAM, AGED 32 YEARS,
S/O.LATE DR.A.ABRHAM, VARIKKATTU HOUSE,
PONKUNNAM KARA, CHIRAKADVU VILLAGE,
KANJIRAPPALLY HOUSE, REPRESENTED BY POWER OF
ATTORNEY HOLDER JACOB ABRAHAM, AGED 36 YEARS,
S/O.LATE DR.A.ABRHAM, VARIKKATTU HOUSE,
PONKUNNAM KARA, CHIRAKADVU VILLAGE,
KANJIRAPPALLY HOUSE.

BY ADV. SRI.T.M.ABDUL LATHEEF

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RESPONDENT(S):

PENNAMMA JOSEPH, AGED 72 YEARS,
S/O.JOSEPH, KOCHUPARAMBIL, VELOOR KARA,
VELOOR VILLAGE, KOTTAYAM TALUK- 686 501.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 16-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

OP(C).No. 111 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE PLAINT IN O.S.NO.477/2013 OF THE MUNSIFF COURT, KOTTAYAM.
- EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT DATED 24.02.2014 FILED BEFORE THE MUNSIFF COURT, KOTTAYAM IN O.S.NO.477 OF 2013.
- EXHIBIT P3: TRUE COPY OF THE PLAINT IN O.S.NO.59/2014 OF THE SUB COURT, KOTTAYAM.
- EXHIBIT P4: TRUE COPY OF THE PETITION DATED 17.06.2014 FILED BEFORE THE MUNSIFF COURT, KOTTAYAM IN O.S.NO.477 OF 2013.
- EXHIBIT P5: TRUE COPY OF THE OBJECTION DATED 08.12.2014 FILED BEFORE THE MUNSIFF'S COURT, KOTTAYAM IN O.S.NO.477 OF 2013.
- EXHIBIT P6: TRUE COPY OF THE MEMO DATED 30.05.2014 FILED BEFORE THE SUB COURT, KOTTAYAM IN O.S.NO.59 OF 2014.
- EXHIBIT P7: TRUE COPY OF THE JUDGMENT DATED 14.08.2014 PASSED BY THE SUB COURT, KOTTAYAM IN O.S.NO.59/2014.
- EXHIBIT P8: TRUE COPY OF THE ORDER DATED 01.01.2015 PASSED BY THE MUNSIFF COURT, KOTTAYAM IN I.A.NO.15345/14 IN O.S.NO.477/13.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

P. BHAVADASAN, J.

O.P.(C). No. 111 of 2015

Dated this the 16th day of January, 2015.

JUDGMENT

Aggrieved by the order dated 1.1.2015 in I.A. No. 15354 of 2014 in O.S. No. 477 of 2013, the petitioners before the court below have come up with this Original Petition. Their application for amendment of the written statement was dismissed by the court below.

2. The suit was one for partition of the plaint schedule property and according to the plaintiff, the plaint schedule property originally belonged to Dr.Mariamamma Andrews, who was the sister of the plaintiff and defendants 1 and 2 and defendants 3 to 8 are the wife and children of Dr.A. Abraham, who was the only brother of the deceased. Defendants 9 to 11 are the legal heirs of another sister of

the deceased and the deceased had two more sisters, namely, Thankamma and Achamma Chandapilla. After the plaintiff's evidence was over, and much later, defendants 3 to 8 in the suit moved for amendment of the written statement.

3. It may be worth mention here that while the present suit was pending, it appears that another suit, O.S. 59 of 2014 was filed before Sub Court, Kottayam. The claim in that suit was that the plaint schedule property is liable to be partitioned. When the petitioners moved for joint trial, and it was disallowed, the other suit was withdrawn. It was thereafter that the amendment was sought for.

4. Learned counsel for the petitioners pointed out that it was in the light of the withdrawal of the other suit the amendments had become necessary and the amendment do not introduce any new facts and it is only to explain the already made averments in the written statement. It is contended that no prejudice would be

caused to the respondent by allowing the amendment and it was absolutely necessary for determination of the issues involved in the suit.

5. The court below after an assessment of the materials came to the conclusion that the plea that amendment became necessary due to the withdrawal of the other suit is without any bonafides. The court below has observed that all the facts now stated were within the knowledge of the petitioners and is not a case where they were not aware of them. The court below found that it is not a case where after exercise of due diligence, the persons who sought amendment could not come across the facts which are sought to be brought in by way of amendment.

6. In order to ascertain whether there is any real grievance for the petitioners, this Court went through the petition for amendment. It seeks to introduce as many as more than 10 paragraphs in the place of the earlier written statement. As rightly noticed by the court below, it contains

those facts which are already within the knowledge of the defendants who sought amendment of the written statement. It is also significant to notice that a good portion of the trial is over when the amendment was sought for. There was no justification for the defendants in not having put forward the averments in their earlier written statement.

7. The court below has refused to allow the written statement for good reasons. In the case on hand, all those facts which are stated, as already noticed, were within the knowledge of the defendants and there is no reasonable explanation offered for delay or plea to the effect that even after due diligence, the defendants could not come across the facts with regard to which amendment is sought for. The petitioners seek to incorporate plea of estoppel, waiver etc. It must be remembered that these two contentions are now put forward after the plaintiff had closed his evidence.

8. The court below was therefore perfectly justified in declining to grant the amendment sought for by the defendants.

9. This original petition is without merits and it is only to be dismissed. I do so.

10. The dismissal of this petition will not be a bar for the petitioners to raise legal contentions which they are entitled to raise in law.

11. Learned counsel appearing for the petitioners then prayed that as the defendants are not fully prepared for the trial to be held on 17.01.2015, a short adjournment may be granted.

Considering the above request, it is ordered that the trial scheduled for tomorrow shall stand adjourned for a week.

sb.

P. BHAVADASAN,
JUDGE