

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. 124 OF 2015 (O)

I.A. NO.2760/2014 IN O.S. NO.77/2011 OF MUNSIF COURT, PAYYANNUR.

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PETITIONERS/PLAINTIFFS:

1. THAYALE VALIYA PURAYIL ABDUL JABBAR, AGED 44 YEARS,
S/O.MOIDEENKUTTY, MATTOOL AMSOM DESOM,
MATTOOL NORTH P.O, KANNUR DISTRICT.
2. PANAKKADAV RAFEEQ, AGED 40 YEARS,
S/O.MUHAMMED KUNHI, MATTOOL AMSOM DESOM,
MATTOOL NORTH P.O., KANNUR DISTRICT.
3. VADAKKE PARAMMAL ABDURAHIMAN, AGED 37 YEARS,
S/O.MAHAMMOOD, MATTOOL AMSOM DESOM,
MATTOOL NORTH P.O., KANNUR DISTRICT.
4. JAMSHEEDA P.K., AGED 38 YEARS,
D/O.ABDUL KHADER, CHIRAKKAL AMSOM DESOM,
CHIRAKKAL P.O., KANNUR DISTRICT.

BY ADVS.SRI.ZUBAIR PULIKKOOL,
SRI.P.S.BINU.

RESPONDENT/DEFENDANT:

M/S. PODUVAL PROPERTIES PRIVATE LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
ACHANVEETIL NARAYANA PODUVAL, 83 YEARS,
ASTROLOGER, PAYYANNUR AMSOM KOKKANISSERY DESOM,
PAYYANNUR P.O., KANNUR DISTRICT- 670 307.

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

rs.

OP(C).NO. 124 OF 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE PLAINT IN O.S. 77/2011.
- EXHIBIT P2 TRUE COPY OF WRITTEN STATEMENT FILED BY RESPONDENT IN O.S. 77/2011.
- EXHIBIT P3 TRUE COPY OF ADDITIONAL WRITTEN STATEMENT FILED BY RESPONDENT IN O.S. 77/2011.
- EXHIBIT P4 TRUE COPY OF THE COMMISSION REPORT AND PLAN FILED IN O.S. 77/2011.
- EXHIBIT P5 TRUE COPY OF THE AFFIDAVIT FILED ALONG WITH THE AMENDMENT PETITION FILED IN I.A. 2760/2014 IN O.S. 77/2011.
- EXHIBIT P6 TRUE COPY OF THE COUNTER FILED BY THE RESPONDENT IN I.A. 2760/2014.
- EXHIBIT P7 CERTIFIED COPY OF THE ORDER IN I.A. 2760/2014 IN O.S. 77/2011 DATED 08-01-2015.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P. BHAVADASAN, J.

O.P.(C). No. 124 of 2015

Dated this the 16th day of January, 2015.

JUDGMENT

Aggrieved by Ext.P7 order whereby the court below declined to allow the application for amendment of the plaint, the petitioners have come up before this Court under Article 227 of the Constitution of India.

2. O.S. 77 of 2011 was a suit for permanent prohibitory injunction and for mandatory injunction. In the suit a commission was taken out and the Commissioner filed his report and plan. The petitioners amended the plaint twice on the ground that there were certain bonafide mistakes committed by him and that needs to be rectified. After his evidence was over, he moved the present application for amendment of the plaint again. The amendment sought for was strongly opposed by the defendants in the suit by contending that the attempt of

the plaintiffs is to get over the difficulties created as a result of the cross-examination of P.W.1. Therefore the respondent pleaded that the petition be dismissed. After considering the materials before it, the court below found that there is substance in the contentions raised by the respondent and dismissed the petition.

3. Learned counsel for the petitioners pointed out that the amendment sought for is absolutely essential to arrive at a just decision in the suit and if the amendment is declined, it will cause irreparable loss and injury to the petitioner.

4. It needs to be noticed that already two amendment applications have been moved by the petitioners and those were allowed. The commission report was filed long ago. In paragraphs 4 and 5 of the order of the court below, one could see the nature of the evidence

adduced by the plaintiffs and the case put forward while P.W.1 was in the box. The court below has found that if the amendment now sought for is allowed, it will be inconsistent with the evidence adduced by P.W.1. The court below has also observed that there is nothing to show that the amendment was necessitated by the discovery of a subsequent fact which the plaintiffs could not discover after due diligence on an earlier point of time.

5. Even though the courts generally view the amendment with leniency, there has to be some restriction put on the claim sought for. The present case is a typical example where long after the filing of the commission report and plan, the plaintiffs came forward with a petition for amendment, which, according to the court below, is totally against the evidence furnished by the petitioners and the court below has observed that it will not only prejudice the

defendant but also demolish the case of the petitioners themselves. This being the state of affairs, the court below was justified in dismissing the petition.

This Original Petition is without merits and it is accordingly dismissed.

sb.

P. BHAVADASAN,
JUDGE