

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

OP(C).No. 528 of 2015 (O)

AGAINST THE ORDER IN I.A NO.2273/2014 IN O.S NO.97 OF 2012 OF MUNSIF'S COURT, CHALAKUDY.

PETITIONER(S):

1. **BAIJU, AGED 42 YEARS, S/O DEVASSY,
THULAPARAMBAN HOUSE, KORMALA DESOM,
KUTTICHIRA VILLAGE, MUKUNDAPURAM TALUK,
KUTTICHIRA POST, PIN - 680 724.**
2. **RAMAKRISHNAN, AGED 55,
S/O MADHAVAN, KAINIKKARA HOUSE,
RANDUKAI DESOM, KUTTICHIRA VILLAGE,
MUKUNDAPURAM TALUK, KUTTICHIRA POST, PIN - 680 724.**
3. **SHAIJU, AGED 38, S/O PAPPU,
CHAKKIYATHMOODA HOUSE, PONNAMBIYOLI DESOM,
KUTTICHIRA VILLAGE, MUKUNDAPURAM TALUK,
KUTTICHIRA POST, PIN - 680 724.**
4. **KUNJAPPAN, AGED 60, S/O MATHU,
KORMALA DESOM, KUTTICHIRA VILLAGE,
MUKUNDAPURAM TALUK, KUTTICHIRA POST, PIN - 680 724.**
5. **ANTO, AGED 39, S/O PORINJU, KORMALA DESOM,
KUTTICHIRA VILLAGE, MUKUNDAPURAM TALUK,
KUTTICHIRA POST, PIN - 680 724.**

**BY ADVS.SRI.P.N.RAMAKRISHNAN NAIR.
SRI.P.VISWANATHAN.
SRI.SUNIL N.SHENOI.**

RESPONDENT(S):

**OUSEPH, AGED ABOUT 70 YEARS,
S/O MELETH VARKEY, KORMALA DESOM,
KUTTICHIRA VILLAGE,
MUKUNDAPURAM TALUK, KUTTICHIRA POST,
PIN - 680 724.**

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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A.HARIPRASAD, J.

O.P(C) No.528 of 2015

Dated this the 27th day of February, 2015.

J U D G M E N T

Challenging this original petition under Article 227 of the Constitution of India is against the order passed by the learned Munsiff in an application for amendment filed under Order 6 Rule 17 C.P.C. The suit in the lower court is one for permanent prohibitory injunction. Case of the plaintiff is that the property described in the plaint schedule having an extent of 11 5/8 cents is exclusively belonging to the plaintiff and he is in possession. The plaintiff has traced a title in the plaint to substantiate his case. The petitioners (defendants) filed a written statement contending that the plaintiff is bound to establish his right and possession in respect of the property shown in the plaint schedule. That apart, the main contention raised by the defendants/petitioners is that 3 cents of land on the south eastern corner of the plaint schedule property has been given in

possession to members of INTUC union in which the plaintiff and defendants were members. According to the defendants, the attempt of the plaintiff is to grab the property in the possession of the defendants for and on behalf of the trade union members.

2. Heard the learned counsel for the petitioners. I have perused the impugned order Ext.P6.

3. Learned Munsiff considered the contentions of the parties and found that the amendments sought for can be allowed as it is only in respect of extent of the property shown in the plaint schedule property. The contention of the plaintiff is that after the Commissioner submitted a report and plan (Exts.P3 and P3(a)), the plaintiff realised that the extent shown in the plaint schedule property is incorrect. Therefore the amendment is

necessitated. Learned counsel for the petitioners contended that the attempt of the plaintiff is to widen the road situated on the western side and to compensate that the plaintiff is attempting to grab the property in the possession of the defendants. The impugned order, in my opinion, does not suffer from any illegality or perversity. The court below only allowed the amendment of the plaintiff which is based on the showings in the Commissioner's plan and report. If the defendants/petitioners are aggrieved by the facts revealed from the Commissioner's report, they can take steps to rectify the mistake in the Commissioner's report as well as they can file an additional written statement reputing the claims. Considering the entire facts and circumstances of the case, I find no possible prejudice for the

petitioners in allowing the amendment. Court below rightly observed that in order to avoid multiplicity of proceedings, the amendment should be allowed. The impugned order suffers from no infirmity. Hence it has to be confirmed. The petitioners are at liberty to file an additional written statement or they can challenge the Commissioner's report if it is factually incorrect.

With these observations, the original petition is disposed of.

All pending interlocutory applications will stand dismissed.

**A.HARIPRASAD,
JUDGE.**