

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

OP(C).No. 638 of 2015 (O)

OS. NO.747/2011 OF PRINCIPAL SUB COURT, ERNAKULAM.

.....

PETITIONER(S):

1. THE MANAGING DIRECTOR,
FOUR FOODS HOTEL (P) LTD, CC 28/3110,
CHERUPARAMBATH ROAD, KADAVANTHRA,
COCHIN - 682 020, FRANCIS J.PALLAN.
2. FOUR FOODS HOTEL (P) LTD.,
CC 28/3110, CHERUPARAMBATH ROAD,
KADAVANTHRA, COCHIN - 682 020,
REPRESENTED BY ITS MANAGING DIRECTOR
FRANCIS J.PALLAN.

BY ADVS.SRI.M.P.RAMNATH,
SRI.P.RAJESH (KOTTAKKAL),
SEI.M.VARGHESE VARGHESE,
SMT.UMA R.KAMATH,
SMT.S.SANDHYA,
SRI.BEPIN PAUL,
SRI.SHALU VARGHESE.

RESPONDENT(S):

1. HAJI ABDULLA HAJI ADAM SAIT CHARITABLE ENDOWMENT,
MATTANCHERRY, COCHIN - 682 002, REP. BY ITS MANAGING TRUSTEE
H.E. ABDUL RAZAK SAIT, S/O.HAJI ESHAK ABDUL SATHAR SAIT,
81 HARBOUR CREST, KUZHUPALLY ROAD, ERNAKULAM, PIN - 682 015.
2. THE KERALA STATE WAKF BOARD,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,
V.I.P. ROAD, KALOOR, KOCHI - 682 017.

R1 BY ADVS. SRI.R.LAKSHMI NARAYAN,
SMT.R.RANJINI,
SRI.M.ASHOK KINI.

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-12-2015,
ALONG WITH OP(C) NO.641 OF 2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P-1: TRUE PHOTOCOPY OF THE AMENDED PLAINT FILED BY THE PLAINTIFF/1ST RESPONDENT HEREIN IN OS NO.747/2011 BEFORE HON'BLE SUB COURT, ERNAKULAM.
- EXT.P-2: TRUE PHOTOCOPY OF TH WRITTEN STATEMENT FILED BY THE 1ST DEFENDANT/1ST PETITIONER HEREIN IN OS NO.747/2011 BEFORE HON'BLE SUB COURT, ERNAKULAM.
- EXT.P-3: TRUE PHOTOCOPY OF THE WRITTEN STATEMENT FILED BY THE 3RD ADDL. DEFENDANT/2ND PETITIONER HEREIN IN OS.747/2011 BEFORE HON'BLE SUB COURT, ERNAKULAM.
- EXT.P-4: TRUE PHOTOCOPY OF THE PLAINT AMENDMENT APPLICATION IA. NO.878/2015 IN OS NO.747/2011 BEFORE THE HON'BLE SUB COURT, ERNAKULAM.
- EXT.P-5: TRUE PHOTOCOPY OF THE OBJECTIONS FILED BY THE DEFENDANTS 1 AND 3 TO IA NO.878/2015 IN OS NO.747/2011 BEFORE THE SUB COURT, ERNAKULAM.
- EXT.P-6: TRUE PHOTOCOPY OF THE PLAINT AMENDMENT APPLICATION IA. NO.904/2015 IN OS NO.747/2011 HON'BLE SUB COURT, ERNAKULAM.
- EXT.P-7: TRUE PHOTOCOPY OF THE OBJECTIONS FILED BY THE DEFENDANTS 1 AND 3 TO IA NO.904/2015 IN OS NO.747/2011 BEFORE THE HON'BLE SUB COURT, ERNAKULAM.
- EXT.P-8: TRUE PHOTOCOPY OF THE ORDER DATED 27.02.2015 IN IA NO.904/2015 IN OS NO.747/2011 OF THE HON'BLE PRINCIPAL SUB COURT, ERNAKULAM.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K. ABRAHAM MATHEW, J.

O.P.(C)Nos.638 of 2015 & 641 of 2015

Dated this the 22nd day of December, 2015

COMMON JUDGMENT

OP.Nos.638 of 2015 and 641 of 2015 arise from OS.747 of 2011 and 748 of 2011 of Sub Court, Ernakulam respectively. The parties are the same in both suits and the original petitions. One suit is in respect of the ground floor and the other of the first floor of a building. The parties are referred to as plaintiffs and defendants. The plaintiff claimed to be the owner of the plaint schedule building which is said to be a Wakf. It allegedly leased out the building to the first defendant, who is the managing director of the additional third defendant. The suit is for recovery of the building on the allegation that in spite of determination of the lease, the defendants have refused to surrender vacant possession. There is also a prayer for compensation for unauthorised use and occupation of the building. The first and third defendants denied the plaintiff's title to the property. When the suits stood posted for final hearing after the trial, the plaintiff filed an application in each of the suits to amend the plaint. The

amendment sought for is in respect of the survey number of the land on which the building is situated. In the plaint the survey number is shown as 621/1. It is sought to be corrected as 2278. Defendants 1 and 3 objected to it on the ground that the amendment cannot be allowed after the trial has started in view of the provisions in Order 6 Rule 17 CPC. The learned Sub Judge has overruled the objection and allowed the amendment applications. This is questioned in these original petitions.

2. Heard the learned counsel for the petitioners and the respondents.

3. Though defendants 1 and 3 disputed the title of the plaint schedule property. They have admitted that they are lessees of the plaint schedule building. In paragraph 3 of the written statement filed in OS.747 of 2011 it is stated that the building was entrusted to the additional third defendant-company by Abdulla Haji Adam Sait 'as his own property'. The plaintiff is a charitable endowment in the name of Abdulla Haji. In paragraph 5 of the written statement it is stated: "..... the rent fixed for payment was Rs.5250/- (Rupees five thousand two

hundred and fifty only) and it is stated in the plaint that the present amount received is Rs.11,172/- (Rupees eleven thousand one hundred and seventy two only). But the present amount being paid for the first floor is Rs.11,731/- (Rupees eleven thousand seven hundred and thirty one only) from January 2009 onwards".

"..... with malicious intention, the plaintiff refused to receive the amount paid by the Company. Thereafter, the Company sent cheques towards the payment by registered post. These letters also were not received. Therefore the company started account No.043907300000157 in the South Indian Bank, Kadavanthra branch for the sole purpose of depositing the amount payable as rent to the plaintiff. Thereafter at the instance of the plaintiff the rent amount was demanded up to 31.12.2008 intimating that further payment after December 2008 could be accepted and accounted towards damages. This defendant consequently paid the rent up to 31.12.2008 drawing the amount from the rent account itself. Thereafter, the present rent amount of Rs.11,731/- (Rupees eleven thousand seven hundred and thirty one

only) for the first floor building is regularly being paid and being accepted by them also". Identical statements can be found in the written statement in the other suit also. So the lessor- lessee relationship between the plaintiff and defendants 1 and 3 is admitted.

4. There is no dispute with regard to the identity of the building. The number of the building is also given in the description in the plaint schedule. The survey of the land on which the building is situated also is given in the schedule. It is this survey number that is sought to be corrected now. In fact, the survey number of the land is not relevant in the nature of the suits. But the mistake it may give rise to unnecessary controversy in future. The objection of the defendants 1 and 3 is that amendment, if allowed, will violate the provisions in Order 6 Rule 7 CPC which prohibits amendment after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. It is pertinent to note that the amendment, if carried out, will not affect the merits of the case. As the identity of the building, which

alone is the subject matter of the suit, is not in dispute the amendment will not cause any prejudice to the defendants 1 and 3. What is sought to be corrected is an innocent mistake. But that is necessary to avoid miscarriage of justice and future controversy. Order VI Rule 17 CPC does not stand in the way of allowing such amendments. I do not find any illegality or irregularity in the impugned order.

In the result, these OPs are dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge