

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

OP(C).No. 3047 of 2013 (O)

(O.S.337/2009 OF THE MUNSIF COURT, KODUNGALLUR)

PETITIONER(S)/IST DEFENDANT:

ABDU,
AGED 65 YEARS, S/O. MOIDU, PUTHIYAVEETIL,
CHALIGAD DESOM, KAIPAMANGALAM VILLAGE,
KODUNGALLUR TALUK.

BY ADVS.SRI.LIJI.J.VADAKEDOM
SMT.REXY ELIZABETH THOMAS

RESPONDENT(S)/PLAINTIFFS AND DEFENDANTS 2 AND 3:

1. BEEVATHU,
AGED 67 YEARS, D/O. BEERAVU, THOTTUPARAMBATH,
CHALIGAD DESOM, KAIPAMANGALAM VILLAGE,
KODUNGALLUR TALUK - 680 681.

2. IYSHABI,
AGED 48 YEARS, BEERAVU, THOTTUPARAMBATH,
CHALIGAD DESOM, KAIPAMANGALAM VILLAGE,
KODUNGALLUR TALUK - 680 681.

3. AMINA,
AGED 60 YEARS, W/O. ABDU, PUTHIYAVEETIL,
CHALIGAD DESOM, KAIPAMANGALAM VILLAGE,
KODUNGALLUR TALUK - 680 681.

4. SHAKEELA,
AGED 32 YEARS, D/O. ABDUL AND AMINA, PUTHIYAVEETIL,
CHALIGAD DESOM, KAIPAMANGALAM VILLAGE,
KODUNGALLUR TALUK - 680 681.

R1 & R2 BY ADVS. SRI.K.S.RAJESH
SRI.M.SHAJU PURUSHOTHAMAN
R4 BY ADV. SRI.RAJEEV JYOTHISH GEORGE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 15-09-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

OP(C).No. 3047 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT-P1- TRUE COPY OF THE PLAINT IN O.S NO. 337/2009 BEFORE THE MUNSIF COURT, KODUNGALLUR.
- EXHIBIT-P2- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS IN O.S 337/2009 BEFORE THE MUNSIF COURT, KODUNGALLUR.
- EXHIBIT-P3- TRUE COPY OF THE COMMISSIONER'S REPORTS AND ROUGH PLAN DATED 09/06/2009 IN O.S NO. 337/2009 BEFORE THE MUNSIF COURT, KODUNGALLUR.
- EXHIBIT-P4- TRUE COPY OF THE AMENDMENT APPLICATION IA. 1461/2013 IN O.S 337/2009 BEFORE THE MUNSIF COURT, KODUNGALLUR.
- EXHIBIT-P5- TRUE COPY OF THE OBJECTION FILED BY THE DEFENDANTS IN I.A. 1461/2013 AMENDMENT PETITION IN O.S 337/2009.
- EXHIBIT-P6- TRUE COPY OF THE ORDER DATED 13/08/2013 IN I.A 1461/2013 IN O.S 337/2009 BEFORE THE MUNSIF COURT, KODUNGALLUR.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

PA TO JUDGE

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.(C) No.3047 of 2013

Dated this the 15th day of September, 2015

J U D G M E N T

1. Heard the learned counsel for the parties.
2. The 1st defendant in a suit for perpetual injunction is the petitioner in this application under Article 227 of the Constitution of India. Under challenge is an order by which the plaintiff has been granted leave to amend the plaint. That order is impeached as one taking away the vested plea of bar of limitation and what has been permitted to be incorporated by way of amendment is a plea barred by limitation.
3. Hearing the learned counsel for parties, it appears that the dispute is as to whether there is such a specific plea by the plaintiff through the amendment application contrasting any pleading in the plaint or asserting that a particular act attributed to the defendants was done before the institution of the claim. It is found that certain concrete posts and slabs were laid and common boundary was noted by the parties at

that point of time. Having regard to the nature of the plaint claim and the amendment sought for by the plaintiff, it is absolutely necessary that the court below ought to have considered whether the order granting leave to amend could operate from the date of the application for amendment, namely, I.A.No.1461 of 2013 or from the date of execution of O.S.No.337 of 2009. Obviously, it also needs to be mentioned that at this stage, the lis between the parties is only a suit for injunction. Nothing would stand in the way of the plaintiff seeking further reliefs in accordance with law, even by way of further request for amendment of the plaint, though the impugned order cannot stand without being specified by the court below as to whether that order is operative from the date of the application seeking leave to amend the plaint or from the institution of the suit.

4. To pave way for the aforesaid, the impugned order needs to be vacated, leaving I.A.No.1461 of 2013 for a fresh consideration at the hands of the court below. It will also pave way for any further application by the plaintiff for further amendment of the plaint, if so advised.

5.The impugned order as it stands results in miscarriage of justice and it deflects the course of trial and hence, is liable to be interfered by the concerned authority under Article 227 of the Constitution of India.

In the result, impugned Exhibit P6 order dated 13.8.2013 in I.A.No.1461 of 2013 of the Munsiff's Court, Kodungallur is set aside and that interlocutory application, namely, I.A.No.1461 of 2013 is remitted for re-consideration by the court below in the light of what is stated above and leaving open all the issues. It is clarified that any further orders by the court below shall be issued untrammelled by anything stated in this order on the controversial factual claims. Parties are directed to mark appearance before the court below on 17.11.2015. Original petition ordered accordingly.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG