

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

OP(C).No. 1167 of 2015 (O)

I.A.NO.457/2015 IN O.S.NO.50/2011 ON THE FILES OF THE
MUNSIFF'S COURT, TALIPARAMBA

PETITIONERS/RESPONDENTS/DEFENDANTS:

1. K. PADMANABHAN, AGED 70 YEARS,
S/O RAMAN, SREEJA NIVAS, TRICHAMBARAM,
TALIPARAMBA P.O, TALIPARAMBA AMSOM.

2. T. THANKAMANI, AGED 54 YEARS,
W/O PADMANABHAN, TRICHAMBARAM , TALIPARAMBA P.O.,
TALIPARAMBA AMSOM.

BY ADVS.SRI.MATHEW KURIAKOSE
SRI.G.GIREESH

RESPONDENT/PETITIONER/PLAINTIFF:

KANHIRAKANDI NARAYANAN, AGED 66 YEARS,
S/O KANNAN, 'DEEPADARSHANA', TRICHAMBARAM,
TALIPARAMBA P.O, TALIPARAMBA AMSOM, KANNUR DISTRICT,
PIN-670 141

BY ADV. SRI.V.A.SATHEESH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DSV/24/8/15

OP(C).No. 1167 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 COPY OF THE PLAINT IN O.S.NO 50 OF 2011 ON THE FILES
OF THE MUNSIFF'S COURT , TALIPARAMBA.

EXT.P2 COPY OF THE AFFIDAVIT IN I.A.NO.457 OF 2015 IN O.S.NO.
50 OF 2011 ON THE FILES OF THE MUNSIFF'S COURT, TALIPARAMBA.

EXT.P3 COPY OF THE ORDER DATED 23.02.2015 IN I.A.NO.457 OF
2015 IN O.S.NO. 50 OF 2011 ON THE FILES OF THE MUNSIFF'S
COURT, TALIPARAMBA.

RESPONDENT'S EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/24/8/15

B.KEMAL PASHA, J.

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O.P.(C). No.1167 of 2015

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Dated this the 18th day of August, 2015

J U D G M E N T

A suit for injunction was filed claiming right over a pathway. It was not precisely pleaded as to what exactly was the right that was claimed. The fact that, the pathway was being used by the plaintiff and the predecessors in interest of the plaintiff for more than 50 years, had already been pleaded. In order to clarify the nature of the right, an amendment for incorporating the plea of the claim by way of easement by prescription was sought for.

2. Over and above it, the plaintiff has sought for an amendment for incorporating a relief of mandatory injunction for the removal of a portion of the compound wall to a length of 1.8 metres. It seems that the court below has allowed the amendment sought for in Exhibit P2 I.A., through Exhibit P3 order. The said order is under challenge.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

4. The learned counsel for the petitioners has pointed out that the petitioner would be deprived of his valuable right to take shelter under the provisions of the Limitations Act, in case of allowing the amendment for incorporating the relief of mandatory injunction. The learned counsel for the petitioners has pointed out that the said relief has been sought to be incorporated, without seeking the incorporation of any new facts in the plaint. Of course, the present attempt may tell upon the *bona fides* of the plaintiff.

5. The learned counsel for the petitioner has pointed out that earlier an amendment was sought for and in that

amendment application also, the present relief sought for was not incorporated. Going by the decisions in ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda*** [AIR 1957 SC 363] and ***L.J.Leach and Co. Ltd. and Another v. Messrs.Jardine Skinner and Co.*** [AIR 1957 SC 357] followed by ***A.K.Gupta and Sons Ltd. v. Damodar Valley Corporation*** [AIR 1967 SC 96], it has to be noted that even in a case wherein a fresh suit in respect of the relief sought to be incorporated would be barred by limitation as on the date of the amendment, such amendments can be allowed in cases wherein the plaintiff is attempting to make an additional approach based on the existing facts pleaded in the plaint by incorporating a new relief.

6. What has to be looked into is whether new facts are attempted to be pleaded for incorporating the new relief or whether it is only an additional approach by seeking a new relief on the basis of the existing pleadings in the plaint. If it is only an additional approach without bringing any new

facts, even if a fresh suit for the said relief as on date of amendment would be barred by limitation, such an amendment can be allowed, if the same is required to settle the matters in controversy in the suit.

7. Here in this particular case, even though the plaintiff has sought for the incorporation of a relief by way of mandatory injunction through the amendment, it seems that any further new facts have not been pleaded in the plaint. The said relief has been sought to be incorporated based on the then existing pleadings in the plaint and not based on any new facts.

8. Even though the learned counsel for the petitioner has pointed out that paragraph '5A' is sought to be incorporated, which amounts to the bringing of new facts, it seems that paragraph '5A' is nothing but a mere reproduction of the relief sought for itself; yet in another form. Apart from that no new facts have been sought to be incorporated. In such a case, even though a fresh suit for mandatory injunction would be barred by limitation as on the

date of amendment, the amendment sought for cannot be denied, since it is only an additional approach made by the plaintiff on the existing pleadings in the plaint.

9. From all the above, this Court is of the view that there is nothing to interfere with Exhibit P3 order passed by the court below.

In the result, this Original Petition (Civil) is dismissed.

Sd/-

B.KEMAL PASHA
JUDGE