

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

OP(C).No. 1359 of 2015 (O)

(I.A.No.808/2015 & 823/2015 IN OS No.76/2010 on the file of the
Munsiff Court, Haripad)

PETITIONER(S)/PETITIONER/PLAINTIFF:

RADHAMANI AMMA @ RADHAMMA AGED 53 YEARS
KOIPPALLETH VEEDU, VETTUVENI MURI
KARTHIKAPPALLY VILLAGE.

BY ADVS.SRI.S.SANAL KUMAR
SRI.M.T.SURESHKUMAR
SMT.T.J.SEEMA
SMT.BHAVANA VELAYUDHAN
SMT.SMITHA PHILIPOSE

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

1. SEETHALEKSHMI, AGED 58 YEARS
MEMANAYIL, PILAPUZHA MURI, HARIPAD VILLAGE
ALAPPUZHA DISTRICT - 690 514.

2. PADMANABHA PILLAI, AGED 63 YEARS
B/O.SEETHALEKSHMI, MEMANAYIL, PILAPUZHA MURI
HARIPAD VILLAGE, ALAPPUZHA DISTRICT - 690 514.

R1 & 2 BY ADV. SRI.K.SUBASH CHANDRA BOSE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 1359 of 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P-1: TRUE COPY OF THE PLAINT IN O.S.NO.76/2010 SUBMITTED BY
THE PETITIONER BEFORE THE MUNSIF COURT, HARIPAD, DATED 25.2.2010

EXT.P-2: TRUE COPY OF THE I.A.NO.808/2015 SUBMITTED BY THE
PETITIONER BEFORE
THE MUNSIF COURT, HARIPAD, DATED 3.6.2015

EXT.P-3: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN
I.A.NO.808/2015

EXT.P-4: TRUE COPY OF THE I.A.NO.823/2015 SUBMITTED BY THE
PETITIONER BEFORE THE MUNSIF COURT, HARIPAD DATED 5.6.2015

EXT.P-5: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN
I.A.NO.823/2015.

EXT.P-6: TRUE COPY OF THE ORDER IN I.A.NO.808/2015 IN
O.S.NO.76/2015 OF THE MUNSIF COURT, HARIPAD DATED 8.6.2015

EXT.P-7: TRUE COPY OF THE ORDER IN I.A.NO.823/2015 IN
O.S.NO.76/2015 OF THE MUNSIF COURT, HARIPAD DATED 8.6.2015

RESPONDENT(S) ' EXHIBITS

NIL

B. KEMAL PASHA, J.

.....
O.P.(C) No.1359 of 2015
.....

Dated this the 26th day of June, 2015

J U D G M E N T

Ext.P7 order dismissing an application seeking amendment is under challenge. The suit is one for perpetual injunction relating to easement by prescription.

2. According to the petitioner herein, her husband is not heard for the last 16 years and the properties in the name of her husband are also lying adjacent to the properties included in the plaint. Those properties of the husband are also to be included in the plaint and therefore, she wanted some amendments to be carried out in the plaint, for which Ext.P2 IA was filed. Through Ext.P6, the court below has dismissed the IA.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. The learned counsel for the respondents has pointed out that when the suit came up in the list, at that time, on the previous day, the petitioner filed another suit as OS 91/2014, and along with it had filed an application for joint trial of the said suit with the present suit of 2010. Even though the same was stoutly opposed, the court below had allowed the joint trial. Aggrieved by the same, the respondents preferred O.P.(C)No.2541/2014 before this Court. That OP was allowed and the prayer for joint trial was set aside vide order dated 11-12-2014.

5. On 15.12.2014 the respondents filed an application before the court below requesting the court below to include the suit in the list. Consequently, with notice to the other side, the suit was included in the list of 03.06.2015. When the suit came up in the list, the petitioner filed the present IA seeking amendment and another IA

seeking the removal of the case from the list. The said applications were stoutly opposed. The court below, through Ext.P6 order, dismissed the applications.

6. It seems that there is laches on the part of the petitioner in preferring the amendment in time. Even though this Court has passed judgment in OP 2541/2014 dated 11-12-2014, it seems that the petitioner was sleeping over an opportunity to prefer such an amendment application in time. When the suit was included in the list, it seems that wisdom regained, and the present applications were filed. The fact that there is laches from the part of the petitioner is evident. The learned counsel for the petitioner has pointed out that in fact, those things happened not because of the fault of the party at all, and it occurred due to some other reasons, and it was not in the control of the petitioner.

7. It seems that the amendments sought for will not change the nature and character of the suit. Further, it will not involve the question of limitation also. In such case, if

timely application was filed, the court below could have rightly allowed the application. Only thing is that there is latches in preferring the application in time. Considering the said aspect this Court is of the view that the present OP can be allowed on heavy costs.

In the result, this Original Petition is allowed on the following terms:

(1) Petitioner shall pay an amount of ₹5,000/-, as costs to the learned counsel for the respondents, within a week from today. If the cost as ordered is not paid, the present OP would be treated as dismissed.

(2) On payment of such costs, Exts.P2 and P4 IAs will stand allowed. Amendment should be carried out within a week from the date of payment of costs. In such a case, respondents shall be given an opportunity to file their written statement. The parties are not entitled to take any further pre-trial steps in the matter other than filing of witness schedule if any. The court below shall include the suit in the

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list on getting the additional written statement from the respondents and dispose of the suit, without granting further adjournments.

ul/-

Sd/- B.KEMAL PASHA, JUDGE

[True copy]

P.S. to Judge