

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

OP(C).No. 3661 of 2013 (O)

AGAINST THE ORDER IN IA NO.954/2013 IN OS NO.84/2009 of MUNSIFF COURT, PONNANI
DATED 05-09-2013

PETITIONER(S):

1. BEEMA BEEGUM
W/O. AMANULLA, RESIDING AT PONNANI NAGARAM AMSOM
PUNNATHIRUTHY DESOM, PONNANI TALUK
MALAPPURAM DISTRICT.
2. SHEJI, D/O. AMANULLA, AGED 46 YEARS
RESIDING AT PONNANI NAGARAM AMSOM
PUNNATHIRUTHY DESOM, PONNANI TALUK
MALAPPURAM DISTRICT.

BY ADV. SRI.M.P.M. ASLAM

RESPONDENT(S):

1. KAITHAMA KALATHIL BALA BHASKARAN,
S/O. GOVINDA MENON, AGED 70 YEARS,
RESIDING AT PONNANI NAGARAM AMSOM
PUNNATHIRUTHY DESOM, PONNANI TALUK
MALAPPURAM DISTRICT.
2. KOZHIKOTTA VEETIL SARASWATHY,
W/O. SOMASEKHARA MENON, AGED 60 YEARS
RESIDING AT PONNANI NAGARAM AMSOM
PUNNATHIRUTHY DESOM, PONNANI TALUK
MALAPPURAM DISTRICT.
3. SANDHYA,
D/O. SARASWATHY, AGED 40 YEARS
RESIDING AT PONNANI NAGARAM AMSOM
PUNNATHIRUTHY DESOM, PONNANI TALUK
MALAPPURAM DISTRICT.
4. GEETHA,
D/O. SARASWATHY, AGED 36,
RESIDING AT PONNANI NAGARAM AMSOM
PUNNATHIRUTHY DESOM, PONNANI TALUK
MALAPPURAM DISTRICT.

5. SANTHOSH,
S/O. SARASWATHY, AGED 34 YEARS
RESIDING AT PONNANI NAGARAM AMSOM
PUNNATHIRUTHY DESOM, PONNANI TALUK
MALAPPURAM DISTRICT.

R1 TO R5 BY ADVS. SRI.C.KHALID
SRI N.A.JOSEPH,
SMT.M.ANILA
SMT.K.S.HASEENA
SMT.P.VANDANA
SRI.K.REEHA KHADER
.SRI.PHIJO PRADEESH PHILIP

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 25-06-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 3661 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE COPY OF THE ORDER OF THE MUNSIFF-MAGISTRATE, PONNANI IN I.A. NO. 954/2013 IN O.S. NO. 84/2009 DATED 9-5-2013.

EXT.P2. TRUE COPY OF THE PLAINT IN O.S. NO. 84/2009 BEFORE THE COURT OF THE MUNSIFF-MAGISTRATE, PONNANI DATED 4-4-2009.

EXT.P3. TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS 1 TO 3 IN O.S. N. 84/2009 BEFORE THE COURT OF THE MUNSIFF-MAGISTRATE PONNANI DATED 8-6-2009.

EXT.P4. TRUE COPY OF THE REPORT SUBMITTED BY ADVOCATE COMMISSIONER IN O.S. NO. 84/2009 BEFORE THE COURT OF THE MUNSIFF-MAGISTRATE PONNANI DATED 17-7-2013.

EXT.P5. TRUE COPY OF THE APPLICATION FOR AMENDMENT OF THE PLAINT FILED BY THE PETITIONERS IN O.S. NO. 84/2009 BEFORE THE COURT OF THE MUNSIFF-MAGISTRATE, PONNANI DATED 29-7-2013.

EXT.P6. TRUE COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENTS IN THE I.A. FOR AMENDMENT IN O.S. NO. 84/2009 BEFORE THE COURT OF THE MUNSIFF-MAGISTRATE, PONNANI DATED 19-8-2013.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C). No.3661 of 2013

Dated this the 25th day of June, 2015

JUDGMENT

An application for amendment of Ext.P2 plaint, in a suit for declaration, fixation of boundary and prohibitory injunction, was dismissed by the learned Munsiff, Ponnani as per Ext.P1 order. Aggrieved by the said order, the plaintiffs have come up in this original petition.

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

3. According to the learned counsel for the petitioners, the reasoning mentioned in the impugned order by the learned Munsiff for dismissing the amendment application is unsustainable. No new case is attempted to be brought out through the amendment. According to the learned counsel for the petitioner, the amendment was only for clarifying certain aspects in the original pleadings as and when a fact is brought out through the commission report and plan. The commissioner has reported that 20 cents of land included in the plaint, which is a pond, is an unassessed land. This fact has to be clarified in the pleading, according to the learned counsel for the petitioner. Per contra, learned counsel for the respondents contended that the amendment, if allowed, will enlarge the

scope of the suit. I am unable to agree with the reasoning adopted by the learned Munsiff for disallowing the amendment. Admittedly the parties have not adduced evidence before the court below and the suit is at an early stage. If an amendment is disallowed on technicalities, it may work out injustice at a later point of time. The respondents (defendants) certainly should be afforded an opportunity to refute the allegations now sought to be incorporated in the plaint by filing an additional written statement. I find no prejudice caused to the respondents, if their right is protected.

In the result, the petition is allowed. Ext.P1 order is set aside and Ext.P5 application for amendment of the plaint is allowed. Respondents/defendants are free to file an additional written statement within a period of one month from the date of amendment of the plaint and the court below shall try to dispose of the case as expeditiously as possible, preferably within a period of one year.

A. HARIPRASAD, JUDGE.

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