IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

OP(C).No. 1661 of 2015 (O)

(OS.NO. 400/2011 OF ADDITIONAL MUNSIFF COURT, PALAKKAD)

PETITIONERS:-

1. **SATHYABHAMA,**
   W/O.SREEDHARAN,AGED 59 YEARS,

2. **SREEDHARAN, S/O.LATE CHAMI, AGED 64 YEARS,**

   (PETITIONERS ARE RESIDING AT PARAYANTHODI HOUSE, THENUR P.O., PARLI I VILLAGE, PALAKKAD TALUK, PALAKKAD DISTRICT).

   BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS:-

1. **KAMALAM,**
   W/O.LATE RAMAKRISHNAN,AGED 72 YEARS

2. **HARIPRASAD,**
   S/O.LATE RAMAKRISHNAN, AGED 45 YEARS

3. **SAJAY KUMAR,**
   S/O.LATE RAMAKRISHNAN,AGED 42 YEARS,
   ALL ARE RESIDING AT PARAYANTHODI, THENUR AMSOM, PALAKKAD TALUK, PALAKKAD DISTRICT, PIN - 678 671.

   R1 TO R3 BY ADVS. SRI.SAJAN VARGHEESE K.
   SRI.LIJU. M.P

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP(C).No. 1661 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. **A TRUE COPY OF THE PLAINT IN O.S.NO.400/2011 OF THE COURT OF THE ADDITIONAL MUNSIFF OF PALAKKAD.**

EXHIBIT P2. **A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS IN ORIGINAL SUIT NUMBER 400/2011 OF THE COURT OF THE ADDITIONAL MUNSIFF OF PALAKKAD.**

EXHIBIT P3. **A TRUE COPY OF INTERLOCUTORY APPLICATION NUMBER 1371/2014 IN ORIGINAL SUIT NUMBER 400/2011 OF THE COURT OF THE ADDITIONAL MUNSIFF OF PALAKKAD.**

EXHIBIT P4. **A TRUE COPY OF THE ORDER DATED MAY 26, 2014 IN INTERLOCUTORY APPLICATION NUMBER 1371/2014 IN ORIGINAL SUIT NUMBER 400/2011 OF THE COURT OF THE ADDITIONAL MUNSIFF OF PALAKKAD.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

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B.KEMAL PASHA, J.

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O.P.(C).No.1661 of 2015

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Dated this the 11th day of August, 2015

J U D G M E N T

Exhibit P4 order, by which an application seeking amendment of the written statement has been dismissed by the court below, is under challenge. The suit is one for injunction. Petitioners/defendants resisted the suit by filing a written statement. In the written statement, a right of easement by way of prescription over a pathway passing through the plaint schedule property was claimed. At the same time, a sentence was incorporated in the written statement as *"To the best of the knowledge of these defendants and the knowledge of the persons of the neighbourhood, the plaintiffs have no right, title or possession over the way described in the plaint B schedule property"*. As both the contentions cannot go together, the petitioners wanted to delete the aforesaid sentence from the written

statement, for which Exhibit P3 I.A. was filed. The court below has dismissed the I.A. through Exhibit P4 order on the sole reason that the application was filed after the inclusion of the case in the list and that the petitioners could have preferred the I.A. earlier.

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

3. Much discussion is not required to conclude that the court below ought to have allowed the I.A. and permitted the petitioners to delete the said sentence from the written statement. It cannot be termed as withdrawal of an admission at all. Something has been stated in the written statement that to the knowledge of the petitioners, the plaintiff has no title over the pathway. When the title of the plaintiff over the pathway has been admitted in the written statement, the aforesaid sentence mistakenly incorporated in the written statement, ought to have been permitted to be deleted. Matters being so, Exhibit P4 order is liable to be set aside.

In the result, this Original Petition (Civil) is allowed. Exhibit P4 stands set aside and Exhibit P3 stands allowed.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/11/8/15