

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

OP(C).No. 4359 of 2013 (O)

AGAINST THE ORDER/JUDGMENT IN I.A.NOS.937/2013 AND 938/2013 IN OS
149/2011 of MUNSIF MAGISTRATE, SULTHAN BATHERI

PETITIONERS:

1. K.P.GOPALANCHETTY AGED 68 YEARS
S/O.CHINNAN CHETTY, NADUVEEIL HOUSE, KOTTOOR
AMBALAVAYAL AMSOM, SULTHAN BATHERY TALUK.

2. MERCY JOY AGED 47 YEARS
W/O. JOY, MUTTATHUKARAN HOUSE, KOTTOOR
AMBALAVAYAL AMSOM, SULTHAN BATHERY TALUK.

BY ADV. SMT.PRIYA ELIZABETH BABU

RESPONDENTS:

1. THE DISTRICT COLLECTOR
COLLECTORATE, KALPETTA NORTH (PO)
WAYANAD DISTRICT-673122.

2. THE SECRETARY
AMBALAVAYAL GRAMA PANCHAYATH, AMBALAVAYAL AMSOM, DESOM
SULTHAN BATHERY TALUK, WAYANAD DISTRICT-673593.

3. TAHSILDAR
TALUK OFFICE, SULTHAN BATHERY AMSOM
SULTHAN BATHERY TALUK-673592.

4. DISTRICT MEDICAL OFFICER
DISTRICT GOVERNMENT HOSPITAL, MANANTHAVADY
MANANTHAVADY TALUK, WAYANAD DISTRICT-670645.

5. NANDAKUMAR, AGED 35 YEARS
S/O. ACHUTHAN NAIR, KILIYATH, VATTA CHOLA
VADUVANCHAL, AMBALAVAYAL
SULTHAN BATHERY TALUK-673593.

R5 BY ADV. SRI.N.NAGARESH

R5 BY ADV. SRI.SHAJI THOMAS

R5 BY ADV. SRI.BINU PAUL

R5 BY ADV. SRI.T.V.VINU

R1 BY ADV. GOVERNMENT PLEADER: ADV.SRI.RAMAPRASAD UNNI

R2 BY ADV. SRI.ABRAHAM P.GEORGE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 31-07-2015, THE COURT
ON 31.08.2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS :

P1:-THE CERTIFIED COPY OF THE COMMON ORDER PASSED IN IA 937/2013 AND IA 938 /2013

P2:-TRUE PHOTOCOPY OF PLAINT IN OS NO 149/2011 OF MUNSIFF-MAGISTRATE COURT, SULTHAN BATHERY

P3:-TRUE PHOTOCOPY OF WRITTEN STATEMENT OF DEFENDANTS/RESPONDENTS 1,3 AND 4 IN OS 149/2011 OF MUNSIFF - MAGISTRATE COURT, SULTHAN BATHERY

P4:-TRUE COPY OF THE AFFIDAVIT OF 5TH RESPONDENT

P5:-TRUE COPY OF THE PETITION FOR AMENDMENT, I.E.IA 937/2013

P6:-TRUE COPY OF THE PETITION TO RECEIVE THE ADDITIONAL DOCUMENT, I E IA 938/2013

RESPONDENT(S)' EXHIBITS:

EXT R5(a): TRUE COPY OF the WRITTEN STATEMENT IN O.S.NO.149/2011 DATED 29.08.2011

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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O.P(C).No.4359 of 2013

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Dated this the 31st day of August, 2015

JUDGMENT

The original petitioners are the plaintiffs in O.S.No.149 of 2011 of the Munsiff-Magistrate Court, Sulthan Bathery, aggrieved by the dismissal of their applications for amendment of the plaint and also for receiving additional documents filed as I.A.Nos.937 of 2013 and 938 of 2013 by common order dated 08.11.2013.

2. The suit was one for declaration and prohibitory injunction with respect to plaint B schedule properties. After the evidence had commenced, the plaintiffs/petitioners filed I.A.No.937 of 2013 to amend the plaint by making a correction in the name of the second plaintiff and also in the details of the plaint item No.5 property. I.A.No.938 of 2013 was filed seeking permission to produce certain documents. The above documents were resisted by the defendants/respondents contending that the amendments sought to be made were not in the nature of mere correction of a clerical mistake, but they were attempted to mislead the Court and also to bring substantial change in the nature of the suit. The court below by Ext.P1 impugned common

order dismissed both applications which are challenged in this original petition.

3. Heard both sides and examined the records.

4. Admittedly, by the amendment application, plaintiffs attempted to correct the name of the second plaintiff as Mercy from Mery. The plaint A schedule item No.5 schedule property was also sought to be amended by changing the extent, title deed number and four boundaries of the property. The crux of explanation as evident from the affidavit in support of the amendment application is that while drafting the plaint, certain clerical errors occurred. Hence, it was contended that it was only a clerical error. The correction sought to be made in the plaint schedule was consequential to the above amendment sought to be made regarding the name of the party. It is true that the affidavit in support of the amendment application lacks several details. It also does not explain as to how the mistake crept in. However, it was submitted by the learned counsel for the petitioners at the time of hearing of the original petition that in fact Mercy and Mery who both were aggrieved persons had agreed to be plaintiffs. However Mercy joined the suit at the time of signing the plaint,

and by a mistake the name alone was changed as Mery though the consequential corrections could not be carried out in the plaint schedule. It was contended that the clerk committed the jumbling. It was noted only at the time of trial and hence, the amendment was sought. The court below by a well considered order rejected all the contentions and concluded that in fact the name Mercy typed written on the plaint but the alphabet 'c' was erased to make it as Mery. The Court even doubted the genuineness of the claim made and rejected both the applications.

5. Evidently, the impugned applications were brought at a belated stage. By the amendment, substantial change is sought to be made with respect to the plaint schedule, its boundaries and even the extent. Virtually, a new property is sought to be replaced.

6. However, the crucial question that arises is whether Mercy who now seeks an amendment of her name from Mery was the same person who joined the suit at the time of its institution. In other words, the crucial question is whether under the guise of the amendment, a new person is sought to be brought in, with a consequential amendment in the plaint schedule.

7. A perusal of the plaint shows that the second plaintiff is Mery Joy, aged 47 years, W/o. Joy, Muttathukaran House, Kottoor, Ambalavayal amsom, Sulthan Bathery Taluk. The name of the person who has sworn to the affidavit is also Mercy Joy. Hence except the adding of one alphabet in the name, the address remains the same without any substantial change. Respondents have no case that the person who has signed the plaint and vakalath as the second plaintiff is not Mercy. Evidently, the person who was in the party array as the second plaintiff continues to be same person even after the amendment, without any change. One alphabet is seen added. In other words, there is no change of identity of the person who is now brought in by way of amendment. The very fact that the plaint was originally typed as Mercy with 'c' erased throughout the plaint, indicates that originally Mercy intended to be in the party array.

8. It is pertinent to note that Exts.A2 and A4 were let in along with the plaint as the title deeds of the second plaintiff. Now, by the amendment of the schedule, the property, title deed, boundaries and extent are sought to be changed. It is contended that the plaint schedule now sought to be incorporated does not

relate to Exts.A2 and A4. The court below has held that Ext.A2 relates to one Mery D/o.Chacko and W/o.Kuttan. The extent of land in her possession was 74 cents of property in Thomattuchal amsom. The boundaries shown are also different. Evidently, new property is sought to be incorporated as the plaint schedule item No.2. Even though a substantial change in the identity of the property is sought and new document which relates to the property of Mercy is to be brought in evidence, in the light of the above specific finding that the second plaintiff remains to be the same person as originally intended, the change in the plaint schedule can only be treated as a correction of consequential mistake committed in mentioning the wrong name. There appears to be no fraud and hence, the jumbling at the time of institution of the suit is evident. This confusion is aggravated by the fact that the exact reason for the mistake is not explained in so many words in the affidavit in support of the application for amendment.

9. Learned counsel for the plaintiffs/original petitioners relying on a recent decision of the Supreme Court in Civil Appeal No.2366 of 2010 dated 14.05.2015 contended that a liberal view is liable to be taken in the case of amendment of this nature. In

paragraph 20 of the judgment, a copy of which was produced before this Court, it is stated that as follows:

“It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.”

10. In the light of the above, I feel that court below did not appreciate facts involved in its correct perspective. The impugned order is hence liable to be set aside, and IAs allowed. Hence, the defendants will also be entitled to file an additional written statement in reply to the amendment made. However, it is made clear that consequent to the amendment proposed to be made, it shall be incumbent on PW1 who has already been examined touching upon the plaint to offer himself for further cross examination. The court below shall recall PW1 for the purpose of confronting with the new recitals in the plaint.

In the result, original petition is allowed. Impugned orders are set aside and I.A.Nos.937 and 938 of 2013 stand allowed. The court below shall proceed with the trial, after amendments are carried after giving reasonable opportunity to the defendants to file an additional written statement. The Court shall order recall PW1 for further examination and cross examination by the parties. No costs.

Sd/-

SUNIL THOMAS
Judge

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