

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

OP(C).No. 1302 of 2014 (O)

PETITIONER :

**KAMALAMMA, AGED 61 YEARS,
D/O. BHAVANI AMMA OF PARAPPATTU VEEDU,
VAZHAMUTTOM MURI, VALLICODE VILLAGE,
KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT PRESENTLY RESIDING AT "KARTHIKA",
KUTTAMATHU, CHERUVATHOOR P.O.,
KASARAGOD DISTRICT PIN 673 313**

BY ADV. SRI.K.SHAJ.

RESPONDENT :

**VIJAYAMMA, AGED 58 YEARS,
W/O.RAJANKUTTY, RESIDING AT KARAMVELIL HOUSE,
KALLELI P.O, PATHANAMTHITTA DISTRICT 689 645.**

**BY ADVS. SRI.PFAZIL.
SRI.M.S.UNNIKRISHNAN.
SMT.JAYASREE MANOJ.
SRI.JITHIN PAUL VARGHESE.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-06-2015, ALONG
WITH OPC. 1306/2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1 : TRUE COPY OF PLAINT IN O.S NO 141/2010 ON THE FILE OF
THE MUNSIFF'S COURT PATHANAMTHITTA.**
- EXHIBIT P2 : TRUE COPY OF I.A NO 817/2014 IN EXHIBIT P1 SUIT FILED BBY
THE PETITIONER.**
- EXHIBIT P3 : TRUE COPY OF OBJECTION IN IA NO 817/2014 IN EXHIBIT P1
SUITY FILED BY THE RESPONDENT.**
- EXHIBIT P4 : TRUE COPY OF ORDER DATED 27/05/2014 IN IA NO 817/2014 IN
O.S NO 141/2010 OF THE MUNSIFF'S COURT,PATHANAMTHITTA**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A TO JUDGE

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A.HARIPRASAD, J.

O.P (C) Nos.1302 & 1306 of 2014

Dated this the 1st day of June, 2015.

COMMON JUDGMENT

As common questions arise in both these original petitions, they have been heard together and disposed by this common judgment.

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

3. Petitioner in both the petitions is the same person. She is the plaintiff in one suit and the defendant in a suit filed by the respondent.

4. The suit filed by the petitioner is one for specific performance of an alleged agreement to assign made orally between the parties. Respondents' suit is one for recovery of possession of the property based on her title. It is worthwhile to note that the parties are sisters. Learned counsel for the respondents contended that the application for amendment of the plaint and the written statement filed by the petitioner in the

respondents' suit are frivolous, vexatious and highly belated. In answer to this argument, learned counsel for the petitioner submitted that it was a bonafide mistake and only a clerical error is now sought to be corrected. Ext.P3 in O.P No.1306/2014 is the plaint filed by the petitioner against the respondent. In paragraph 3, it is mentioned that there was an understanding between the petitioner and the respondent that the former would purchase the share of the latter and the understanding was on 21-04-1984. Total sale consideration was Rs.75,000/-. It is further alleged in the plaint, of course which is stoutly denied by the respondent, that Rs.10,000/- was paid as advance on the date of agreement and later on 26-12-1997, the respondent received a sum of Rs.55,000/-. These contentions are strongly opposed by the respondents. The petitioner now wants to correct a date 26-12-1997 as 26-12-1992. It is the submission of the learned

counsel for the petitioner that same mistake was crept in the written statement as well filed by her in the other suit.

5. It is true that the trial in this case was started long before and both sides have adduced oral evidence. Now, it is posted for hearing. At that time, the petitions for amendment of the plaint and the written statement were filed. Learned counsel for the respondents submitted that the plaintiff/petitioner had amended the plaint and written statement on an earlier occasion. Even at that time she did not seek an amendment as now sought for. Basing on a decision of Division Bench of this Court in ***Sugathan K.R v. Jyothi (2014(3) KHC 229)***, it is contended that this Court has enumerated certain situations, though the enumeration is not exhaustive, indicating the circumstances under which an amendment could be effected. It is settled law that a right accrued to one party cannot be taken out by allowing

an amendment at the request of the other party. The specific contention of the respondents is that the alleged oral agreement to assign is false and the plaintiff is not entitled to get any relief in the suit for specific performance. It is also contended by the respondents' counsel that the alleged agreement to assign is hopelessly bared by limitation. Apprehension of the respondents is that if an amendment is allowed at this belated stage, her accrued right to seek dismissal of suit on the ground of limitation would be jeopardized. I am unable to agree with this contention since the plaintiff is not seeking preponement of the date from 1997 to later years. Actually, what is sought to be amended is postponement of the date from 1997 to 1992. Therefore, the question of limitation, if survives for consideration, will have to be considered on the basis of the evidence available in this case.

6. It is true that the application for amendment is highly belated. Amended provision in Order 6 Rule 17 C.P.C imposes a mandate to see that all amendment applications are filed before starting of the trial. It is settled by pronouncements of apex court that the court has power to allow amendments after the commencement of the trial to meet the ends of justice and for the effective adjudication of the lis.

7. The respondents are entitled to be compensated for the trauma and the trouble in which the petitioner has put them by filing a belated application for amendment. Therefore, I deem it fit to mulct costs on the petitioner in this matter.

In the result, both the petitions are allowed. The impugned order is set aside. The petitioner shall pay a costs of Rs.2,500/- (Rupees two thousand five hundred only) in each case to the respondents within a period of two weeks from

today. Thereafter, the amendments sought by the plaintiff will stand allowed and the plaint and the written statement in the respective suits be amended. Parties, if they feel so, are permitted to adduce evidence in view of the amendments to the pleadings. The court below shall dispose of the case within a period of three months from the date of production of this common judgment.

All pending interlocutory applications will stand dismissed.

Sd/-
A.HARIPRASAD,
JUDGE.

//True copy//

P.A to Judge

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