

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

OP(C).No. 1677 of 2014 (O)

OS. NO.667/2012 OF PRINCIPAL MUNSIF COURT, NEYYATTINKARA.

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PETITIONER:

**PRASANNAKUMARI,
D/O. SARASAMMA, PALLIMANGALATHU VEEDU,
KEEZHAMMAKOM DESOM, CHENKAL VILLAGE,
NEYYATTINKARA.**

BY ADV. SRI.G.SUDHEER.

RESPONDENT:

**SYLAJA DEVI,
D/O.RADHAMMA PILLAI, JAYA HARI BHAVAN,
KEEZHAMMAKOM DESOM, CHENKAL VILLAGE,
NEYYATTINKARA TALUK - 695 121.**

**BY ADVS. SRI.L.MOHANAN,
SMT.LIGEY ANTONY.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 05-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1 : TRUE COPY OF THE PLAINT IN OS NO.667/2012 FILED BY THE RESPONDENT BEFORE THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA DATED 23.07.2012.

EXHIBIT P2 : TRUE COPY OF THE WRITTEN STATEMENT COUNTER CLAIM BY THE PETITIONER IN OS NO.667/2012 DATED 06.08.2012.

EXHIBIT P3 : TRUE COPY OF THE WRITTEN STATEMENT TO COUNTER CLAIM FILED BY THE RESPONDENT IN OS NO.667/2012 DATED NIL .10.2012.

EXHIBIT P4 : TRUE COPY OF THE PLAN WITH COMMISSION REPORT FILED BY THE ADVOCATE COMMISSIONER IN OS NO.667/2012.

EXHIBIT P5 : TRUE COPY OF THE AMENDMENT PETITION FILED BY THE PETITIONER IN COUNTER CLAIM IN OS NO.667/2012 BEFORE THE MUNSIF COURT, NEYYATTINKARA DATED 02.07.2014.

EXHIBIT P6 : TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN AMENDMENT PETITION IN OS. NO.667/2012 BEFORE THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA DATED 04.07.2014.

EXHIBIT P7 : TRUE COPY OF THE ORDER DATED 08.07.2014 IN IA NO.3667/2014 IN OS NO.667/2012 OF THE COURT OF THE PRINCIPAL MUNSIF, NEYYATTINKARA.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

B. KEMAL PASHA, J.

.....
O.P.(C) No.1677 of 2014
.....

Dated this the 5th day of August, 2015

J U D G M E N T

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Ext.P7 order by which a request for the amendment of the written statement has been denied by the court below, is under challenge. The suit is one for injunction against trespass, waste, etc. The property of the defendant is situated at the northern side of the plaint schedule property. The defendant has set up a counter claim in the written statement by claiming a right of easement over written statement C schedule item which is scheduled as a pathway. A relief was sought for in the counter claim for the removal of a gate allegedly put up at the entrance of the written statement C schedule. According to the petitioner, subsequently, the petitioner came to know that it was not the gate that has been obstructing the written statement C schedule; whereas, it was a portion of the

compound wall. Therefore, the relief sought for in the counter claim had to be amended and also some other reliefs had to be sought for, for which Ext.P5 IA was filed. The court below has dismissed Ext.P5 through Ext.P7 order, which is under challenge.

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

3. On hearing either side, it has come out that it is a matter that has to be proved as to whether it is the compound wall or the gate, allegedly blocking the written statement C schedule. It is a matter of evidence and it is for the petitioner to prove his entitlement to the right of easement. There is nothing wrong in permitting the amendment now. The court below ought to have allowed Ext.P5 IA.

In the result, this O.P.(Civil) is allowed and Ext.P7 order is set aside. Ext.P5 stands allowed. The court below shall permit the petitioner to carry out the amendment. An

opportunity shall be given to the plaintiff to file additional answer to the amended counter claim. The suit is of the year 2012. The court below shall take every endeavour to dispose of the suit, as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/05/08

// True Copy //

PA to Judge