

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE B.KEMAL PASHA**

**WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937**

**OP(C).No. 1882 of 2014 (O)**  
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**I.A.NO.1409 OF 2014 IN O.S.NO.115 OF 2010 OF ADDITIONAL SUB COURT,  
KOLLAM**  
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**PETITIONER(S)/PLAINTIFFS :**  
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- 1. DIPU, AGED 35 YEARS,  
S/O.RAMAKRISHNAN, AMBADY, KACHERI WARD,  
KOLLAM WEST VILLAGE.**
- 2. LALITHAMBIKA, AGED 60 YEARS,  
W/O.RAMAKRISHNAN, AMBADY, KACHERI WARD,  
KOLLAM WEST VILLAGE.**
- 3. DIJU, AGED 39 YEARS,  
S/O.LATE RAMAKRISHNAN, AMBADY, KACHERI WARD,  
KOLLAM WEST VILLAGE.**

**BY ADV. SRI.V.VENUGOPALAN NAIR**

**RESPONDENT(S)/DEFENDANTS :**  
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- 1. RAJESH KHANNA, AGED 44 YEARS,  
S/O.RAVEENDRAN, KANAKALAYAM, PATTATHANAM P.O.,  
KARPURAM CHERRY, VADAKKEVILA VILLAGE.**
- 2. S.REEJA, AGED 31 YEARS,  
W/O.RAJESH KHANNA, KANAKALAYAM, PATTATHANAM P.O.,  
KARPURAM CHERRY, VADAKKEVILA VILLAGE.**

**R2 BY SRI.S.SREEKUMAR (SENIOR ADVOCATE )  
ADV. SRI.LEO GEORGE**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

**OP(C).No. 1882 of 2014 (O)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS :**  
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**EXHIBIT P1 : A TRUE COPY OF THE PLAINT IN O.S.NO.115/2010 OF SUB COURT, KOLLAM.**

**EXHIBIT P2 : A TRUE COPY OF I.A.NO.561/2010 IN O.S.NO.115/2010 OF SUB COURT, KOLLAM.**

**EXHIBIT P3 : A TRUE COPY OF I.A.NO.1409/2014 IN O.S.NO.115/2010 OF SUB COURT, KOLLAM.**

**EXHIBIT P4 : A TRUE COPY OF THE ORDER DATED 08.08.2014 IN I.A.NO.1409/2014 IN O.S.NO.115/2010 OF SUB COURT, KOLLAM.**

**RESPONDENT(S)' EXHIBITS :**  
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**EXHIBIT R1(A): TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS IN O.S.NO.115 OF 2010.**

**EXHIBIT R1(B): TRUE COPY OF THE OBJECTION PREFERRED BY THE RESPONDENTS.**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msd.

**B. KEMAL PASHA, J.**

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O.P.(C) No.1882 of 2014  
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*Dated this the 8<sup>th</sup> day of July, 2015*

**J U D G M E N T**

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Petitioners are the plaintiffs in O.S.No.115/2010 of the Subordinate Judge's Court, Kollam. The suit is one filed for setting aside sale deed No.1615/2008 of the Eravipuram Sub Registry Office and for declaring that the 1<sup>st</sup> plaintiff is the absolute owner of the plaint schedule property and the 2<sup>nd</sup> plaintiff has a right to reside in the house situated in the plaint schedule property. A relief by way of perpetual injunction also has been sought for, for restraining the defendants and their men from trespassing into the plaint schedule property and from obstructing the peaceful use by the plaintiffs. Thereafter, the plaintiffs filed Ext.P3 IA for amending the plaint for incorporating paragraph 14 to the effect that on the next day to the filing of the suit the 1<sup>st</sup> defendant had forcibly occupied one room of the house and the car porch attached thereto situated in the plaint schedule property. A relief by way of mandatory injunction has

been sought to be incorporated through the amendment for directing the 1<sup>st</sup> defendant to vacate the room and car porch attached to it. The same was resisted by the defendants. The court below, through Ext.P4 order, dismissed the IA mainly on the ground that an order allowing the IA would be as good as allowing the plaintiffs to incorporate a relief based on a time barred claim. Ext.P4 order is under challenge.

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

3. Learned counsel for the petitioners has pointed out that the petitioners have incorporated all matters required to claim such a relief in the plaint and that the plaintiffs have never attempted to introduce a new set of facts on a new basis for making a fresh claim. Over and above it, the allegation is that the 1<sup>st</sup> defendant had reduced one room and the car porch to his possession, on the next day to the suit only. Even in the plaint, it has been averred that the 1<sup>st</sup> defendant had earlier, with the permission of the plaintiffs, dumped certain furniture items in the said room.

4. *Per contra*, the learned Senior Counsel has argued that the present amendment sought to be incorporated is contradictory to the existing pleadings in the plaint. It has been pointed out that the plaintiffs had averred that the 1<sup>st</sup> defendant had committed trespass into one of the rooms in the building in the plaint schedule property. It has been averred in paragraph 10 of the plaint that the 1<sup>st</sup> defendant, with the aid of his associates, the 1<sup>st</sup> defendant has installed a separate lock also to the door of the said room. Further, it has been argued that the relief of mandatory injunction as on the date of the filing of the IA was a time barred one and, therefore, such an amendment cannot be permitted.

5. The learned counsel for the petitioners has invited the attention of this Court to the decision in ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363]***, ***L.J. Leach and Co. Ltd. v. Messrs. Jaidine Skinner and Co. [AIR 1957 SC 357]*** and ***A. K. Gupta and Sons Ltd. v. Damodar Valley Corporation [AIR 1967 SC 96]***.

6. It is true that normally courts would be reluctant in

allowing an amendment for incorporating a relief relating to a time barred claim. At the same time, when factual foundations are already there in the plaint for enabling the plaintiffs to seek such a relief also, such an amendment has to be allowed by deviating from the aforesaid general rule. Even otherwise, the court has the power to mold the relief in accordance with the pleadings in the plaint and also in the evidence in the matter. When the court has got such a power, it cannot be said that the party cannot be permitted to seek a molded relief based on the existing facts pleaded in the plaint. In case of an attempt to introduce a new cause of action already time barred, it could be said that such an amendment could not be allowed. When new facts are not being pleaded and a relief alone is sought for on the basis of the existing pleadings, such an amendment has to be allowed. Matters being so, Ext.P3 IA filed by the plaintiffs should have been allowed by the court below. It seems that the said amendments were sought for after inclusion of the suit in the list.

In the result, this O.P.(Civil) is allowed and Ext.P4 order

stands set aside. Ext.P3 IA stands allowed. The petitioners shall carry out the amendment in the plaint. The court below shall give an opportunity to the defendants to file additional written statement in the matter. The court below shall expedite all these proceedings, as the suit is an old one and more than that, it came up in the list. The court below shall dispose of the suit, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

Sd/-  
**(B.KEMAL PASHA, JUDGE)**

aks/08/07

*// True Copy //*

*PA to Judge*