

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

RPNo. 1164 of 2015 () IN OP(C).2975/2014

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AGAINST THE ORDER IN OP(C) 2975/2014 of HIGH COURT OF KERALA
DATED 12-12-2014**

REVIEW PETITIONER(S)/PETITIONERS:

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- 1. ABRAHAM K.SCARIA AGED 67 YEARS
S/O.ABRAHAM, MAVINANGUKAROTTU VEEDU, NATTAKOM VILLAGE
KOTTAYAM DISTRICT.**
 - 2. SARAMMA SCARIA AGED 62 YEARS
W/O. ABRAHAM K. SCARIA, MAVINANGUKAROTTU VEEDU
NATTAKOM VILLAGE, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS KACHIRAMATTOM**

RESPONDENT(S)/RESPONDENTS:

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- 1. C.T.JACOB, AGED 66 YEARS
S/O. THOMAS, KELACHANDRA HOUSE, CHINGAVANAM KARA
NATTAKOM VILLAGE, KOTTAYAM TALUK, KOTTAYAM - 686 013.**
 - 2. PHILIP JACOB, AGED 42 YEARS
S/O.C.T. JACOB, KELACHANDRA HOUSE, CHINGAVANAM KARA
NATTAKOM VILLAGE, KOTTAYAM TALUK, KOTTAYAM - 686 013.**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 22-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

R.P. No. 1164 of 2015
in
O.P.(C) No. 2975 of 2014

Dated this the 22nd day of December, 2015

ORDER

A misconceived and ill-advised review petition seeks review of the judgment dated 12.12.2014 in O.P.(C) No.2975/2014.

2. The issue before this Court related to a plea of amendment which was declined by the court below on the ground that there was delay and the relief sought for amendment was based on entirely different cause of action. The suit was initially laid on the basis that construction that is being carried on by the defendants is without an approved plan and permit. Later on, an amendment was sought for incorporating a prayer that the construction was being carried on in violation of the permit, plan and licence.

3. The court below felt that the cause of action being different, the amendment could not be permitted and there

was also considerable delay in filing the amendment application and accordingly, the application was dismissed. That was challenged before this Court.

4. This Court noticed that there was an earlier suit between the parties in which the defendants who are the defendants in the present suit also, had categorically stated that they had an approved plan and permit for construction and they had produced the same. It was noticing the said fact, that this Court observed in the above order that even after knowing there was approved plan and permit, it was considering that fact, the present suit has been laid. It was also noticed by this Court that the reliefs in the suit are inconsistent if the plaint is allowed to be amended. This Court also noticed that the relief sought for in the amendment application is entirely different and distinct from the original relief sought for.

5. The counsel appearing for the review petitioners pointed out that on verification of the records of the Municipality, it was found that the local authority do not have the original plan and permit with them, but they have only a true copy of the plan and permit with them. The plaintiffs now alleges that the approved plan and permit produced by the defendants is as a result of collusion, fraud etc. between them and the Municipality.

6. First of all, in the present suit the Municipality is not a party. Secondly, if it is set aside the above plan and report, then the cause of action becomes different from that of the original suit i.e. O.S.No.144/2013.

7. A prayer was made at the time of hearing of the review petition that the review petition may be allowed and the O.P. may be allowed to be withdrawn. It comes too late in the day for such a prayer to be made.

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8. After having heard the matter on merits and having decided on merits, the petitioners cannot be allowed to withdraw O.P. now.

This review petition is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge