

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 8TH DAY OF NOVEMBER 2023 / 17TH KARTHIKA, 1945

OP(C) NO. 2152 OF 2023

ORDER DATED 06.07.2023 IN IA 6/2023 IN OS 46/2017 OF PRINCIPAL
MUNSIFF COURT, NEYYATTINKARA

PETITIONER/COUNTER PETITIONER/PLAINTIFF:

SANTHOSH KUMAR P.M



BY ADV S.NIKHIL SANKAR

RESPONDENTS/PETITIONERS/DEFENDANTS:

1 JOHN M.T



2 SMITHA P.C



3 SUJITHA P.C



BY ADVS.
BIJU BALAKRISHNAN
V.S.RAKHEE (K/945/1994)
K.J.GISHA (K/1212/2004)
AJMAL P. (K/1244/2018)
YRISHIKA R. (K/001424/2023)
AKSHAYA S.NAIR (K/003242/2023)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 08.11.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 08th day of November, 2023

Petitioner herein is the plaintiff in O.S.No.46 of 2017 on the files of the Principal Munsiff Court, Neyyattinkara. He is aggrieved by Ext.P7 order dated 06.07.2023 allowing an amendment sought for by the respondents/defendants.

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

3. Learned counsel for the petitioner would submit that the amendment sought for by the respondents has been allowed by a cryptic order, merely stating that the Court is satisfied that the amendment is necessary and that an application for amendment can be filed at any stage. It was pointed out that the application for amendment was filed after filing the proof affidavit, thus after commencement of the trial, as laid down by this Court in **Sasikala.T.V. and another v. C.P.Joseph** [2021 (1) KHC 23] and **Muhammed Ashraf v. Fasalu Rahman** [2021 KHC 611]. It was further argued by the learned counsel for the petitioner that the matters which are sought to be

incorporated by amendment are not at all required for adjudication of the suit. The suit is only for fixation of boundary and injunction from trespass. Admittedly, the respondents herein are the owners of the property adjacent to the plaint schedule property. The pleadings, which are now sought to be incorporated, are pertaining to the title of the plaint schedule property, which is not so far challenged before any forum as against the petitioner/plaintiff. The title of the plaintiff is not an issue to be adjudicated in a suit for fixation of boundary. Therefore, the amendment application ought to have been dismissed, is the submission of the learned counsel.

4. Per contra, learned counsel for the respondents would submit the petitioner/plaintiff got the property in connection with his marriage, pursuant to a deed executed by the the second respondent herein, wherein the mother in law has paid the consideration. It was pointed out that the marriage of the petitioner with the younger sister (third respondent) of the second respondent/ second defendant has already been separated by virtue of a decree of divorce.

Therefore, the petitioner/plaintiff has no right surviving in the property, which he obtained in connection with the marriage. It was also pointed out that the plaint schedule property has been attached by the Family Court as per orders in O.P.No.1085 of 2016. In such circumstances, the pleadings are absolutely necessary, according to the learned counsel.

5. Having heard the learned counsel appearing on both sides, this Court is inclined to allow this Original Petition. As rightly pointed out by the learned counsel for the petitioner, the suit is only for fixation of boundary, as also, for an injunction from trespass. Admittedly, the respondents/defendants herein are the owners of the property, which lies on immediate northern side of the plaint schedule property. The title of the plaintiff over the plaint schedule property has not so far been challenged by the respondents, or for that matter by anybody else, before any forum. Nor has the respondents preferred any counter claim in that regard. Therefore, an amendment, seeking to incorporate facts pertaining to the title of the plaintiff, is not

going to serve any useful purpose. It cannot be said that such averments are required for the adjudication of the real issue in controversy by and between the parties, having regard to the scope of the reliefs sought for in the suit. In such circumstances, the amendment sought for ought not to have been allowed. Moreover, the amendment sought for is belated as well.

In such circumstances, this Original Petition is allowed and the order dated 06.07.2023 in I.A.No.6 of 2023 in O.S.No.46 of 2017 will stand dismissed. The learned Munsiff will proceed with that suit on the basis of the original pleadings of the parties, in accordance with law.

Sd/-

**C. JAYACHANDRAN
JUDGE**

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APPENDIX OF OP (C) 2152/2023

PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF THE PLAINT IN O.S NO:46/2017 ON THE FILE OF THE DISTRICT & SESSIONS COURT, THIRUVANANTHAPURAM(VACATION COURT)

Exhibit P2 TRUE COPY OF THE WRITTEN STATEMENT IN O.S NO:46/2017 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA

Exhibit P3 TRUE COPY OF THE AFFIDAVIT IN LIEU OF CHIEF EXAMINATION FILED BY THE PETITIONER IN O.S NO:46/2017 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA DATED 01/07/2023

Exhibit P4 TRUE COPY OF THE APPLICATION FILED SEEKING TO REMOVE FROM THE SUIT FROM THE LIST SCHEDULED FOR TRIAL BY THE RESPONDENTS BEARING I.A NO:5/2023 IN O.S NO:46/2017 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA DATED 03/07/2023

Exhibit P5 TRUE COPY OF THE APPLICATION FILED SEEKING AMENDMENT OF WRITTEN STATEMENT IN THE SUIT AND FURTHER TO IMPEAD A THIRD PARTY AS ADDITIONAL RESPONDENT IN THE SUIT BY THE RESPONDENTS BEARING I.A NO:6/2023 IN O.S NO:46/2017 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA DATED 01/07/2023

Exhibit P6 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO I.A NO:5/2023 & I.A NO:6/2023 IN O.S NO:46/2017 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA DATED 04/07/2023

Exhibit P7 CERTIFIED COPY OF THE ORDER PASSED BY THE COURT OF PRINCIPAL MUNSIF, NEYYATTINKARA IN I.A. NO:06/2023 IN O.S NO:46/2017

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Exhibit P8 TRUE COPY OF THE AMENDED WRITTEN
STATEMENT FILED BY THE 1 ST AND 2 ND
RESPONDENTS IN O.S NO:46/2017 ON THE FILE
OF THE PRINCIPAL MUNSIF COURT,
NEYYATTINKARA