

Sherly vs Omana

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Court : Kerala

Decided On : Jan-25-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/152/2022

Appellant : Sherly

Respondent : OMANA

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 25TH DAY OF JANUARY 2022 / 5TH MAGHA, 1943
AGAINST THE ORDER DATED 13.12.2021 IN I.A.NO.1/2021 IN A.S.
NO.82/2019 BEFORE THE ADDITIONAL DISTRICT COURT, NORTH
PARAVUR

PETITIONER/APPELLANT IN A.S./PLAINTIFF SHERLY AGED 65
YEARS W/O. BENEDICT, PANAKKAL HOUSE, CHERIAPAZHAMPILLY
THURUTH, NORTH PARAVUR, ERNAKULAM DISTRICT BY ADVS.
SUSHANTH.J. C.K.PREM RAJ KRISHNAPRIYA B. B.S.SIVAJI
T.B.PRASANNAN RESPONDENTS/RESPONDENTS IN A.S./
DEFENDANTS 1 & 2: 1 OMANA W/O. KARTHIKEYAN RESIDING AT

THAIKUTTATHIL HOUSE, CHENDAMANGALAM VILLAGE, NORTH PARAVUR, ERNAKULAM, PIN - 683513 2 THOMAS S/O. VAKKACHAN, RESIDING AT KALLUNGAL HOUSE , NORTH PARAVUR, ERNAKULAM THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 25.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 25th day of January, 2022 Petitioner, who is the plaintiff/appellant in A.S.No.82/2019, pending before the Additional District Court, North Paravur, has filed this Original Petition under Article 227 of the Constitution of India, being aggrieved by Ext.P4 (order in I.A.No.1/2021), an amendment application filed by the petitioner before the Appellate Court to incorporate changes in the description of the plaint B schedule property.

2. Heard the learned counsel for the petitioner.

3. When the learned counsel for the petitioner was asked

to justify the amendment sought for during appellate stage by highlighting compliance of proviso to Order VI Rule 17 to the effect that despite of due diligence, the amendment could not have been effected before the commencement of trial. The learned counsel, in fact, failed in this endeavour.

4. I have perused Ext.P4(3), the affidavit in support of the

petition filed by the petitioner. In the said affidavit, nothing is stated about the compliance of proviso to O VI Rule 17 of CPC. The averments therein is that some mistakes occurred while drafting the plaint due to oversight and there was no deliberate negligence on the part of the plaintiff/appellant to do the same. In fact, the affidavit, in support of the petition is quite insufficient to allow the amendment prayed for. The amendment sought for is to change the description of B schedule way with a view to fill the lacuna in evidence during appellate stage. It is in this context, the learned District Judge rightly dismissed the amendment application. I find no perversity or arbitrariness in the order. Accordingly, this Original Petition is

dismissed, without being admitted. In the result, this Original Petition stands dismissed. Registry is directed to forward a copy of this judgment to the court below concerned, within seven days, for information. Sd/- A. BADHARUDEEN JUDGE nkr APPENDIX OF OP(C) 152/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE MEMORANDUM OF PLAINT FILED Exhibit P2 TRUE COPY OF THE JUDGMENT DATED 18.02.2015 Exhibit P3 TRUE COPY OF THE MEMORANDUM OF APPEAL FILED IN AS 82/2019 Exhibit P4 TRUE COPY OF THE I.A 1/2021 IN A.S 82/2019 Exhibit P5 TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT Exhibit P6 TRUE COPY OF THE ORDER DATED 13.12.2021 IN IA 1/2021IN A.S 82/2019

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