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Palayyan Vs. Chellan Nadar

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Court : Kerala

Decided On : Mar-04-2015

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Palayyan

Respondent : Chellan Nadar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE4H DAY OF MARCH201513TH PHALGUNA, 1936 OP(C).No. 581 of 2015 (O) ---------- (Against the order dated 11.12.2014 in I.A.3939/2014 in O.S.701/2012 of Munsiff Court, Neyyattinkara) PETITIONERS: ---------- 1. PALAYYAN, S/O.KUNJAN, KAMPARA KANAKKATTU KANAKA VILASAM BUNGLOW, ARAYOOR DESOM, CHENKAL PAKUTHY.

2. SOPHY, D/O.KANAKAMMA, KALLUVILA VEEDU, METHUKUMMAL DESOM MEETHUKUMMAL PAKUTHY.

3. SWAMYNATHAN S/O.PONNUMONY NADAR, KALLUVILA VEEDU MEETHUKUMMAL DESOM, METHUKUMMAL PAKUTHY. BY ADV. SRI.V.SUNIL KUMAR (PANACHAMOODU) RESPONDENTS: ---------- 1. CHELLAN NADAR S/O.DANIAL NADAR, THAI VEEDU, ERACHALLOOR DESOM KULATHOOR PAKUTY NOW RESIDING AT PUTHENVILA ELISA COTTAGE

ALIAS PLAY COTTAGE ARAYOOR DESOM CHENKAL PAKUTHY - 695122.

2. ELISI ELIZABATH, W/O.CHELLAN, THAI VEEDU, ERACHALLOOR DESOM, KULATHOOR PAKUTY NOW RESIDING AT PUTHENVILA ELISA COTTAGE ALIAS PLAY COTTAGE ARAYOOR DESOM CHENKAL PAKUTHY - 695122.

3. RASALAYYAN S/O.KUNJAN NADAR, RETNA COTTAGE, DARSAN NAGAR, KUDAPPANAKKUNNU , PEROOORKADA PO.-695005. OP(C).No. 581/2015 4. LILLY, D/O.RATHINAM, SOUMYA, KODANGAVILA, ANTHIYOO P.O69550 5. SOLOMAN S/O.KUNJAN, SP. BHAVAN, PONVILA, ARAYOOR DESOM, CHENGAL VILLAGE - 695122.

6. PUSHPABAI D/O.RETHINAM, 18/101, PAZHATHOTTAM KANYAKUMARI - 629001.

7. SATHYARAJAN S/O.KUNJAN NADAR, AS. NIVAS, PONVILA ARAYOOR DESOM, CHENKAL VILLAGE - 695122.

8. ANIL RAJ S/O.KUNJAN NADAR, RETNAVILASAM BUNGLOW PONVILA, ARAYOOR DESOM, CHENKAL VILLAGE - 695122.

9. JUSTIN RAJ S/O.KUNJAN NADAR , JP. BHAVAN, PONVILA ARAYOOR DESOM, CHENKAL VILLAGE - 695122.

10. V.JOHNSON ANIL NIVAS, AYIRA PO, PARASSALA - 695 502.

11. RANI KUMARI D/O.KUNJUKRISHNAN, KANIMELTHATTU PUTHEN VEEDU, PONVILA, AYIRA PO. - 695502. THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON0403-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 581 of 2015 (O) ---------- APPENDIX PETITIONERS' EXHIBITS : ---------- P1: A TRUE COPY OF PLAINT IN OS.NO.701 OF 2012 ON THE FILE OF THE COURT OF THE MUNSIFF NEYYATTINKARA. P2: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS1AND2 P3: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS3TO7 P4: A TRUE COPY OF IA.NO.3939/14 ALONG WITH THE AFFIDAVIT. P5: A TRUE COPY OF

OBJECTION FILED BY THE RESPONDENT1AND2 P6: A TRUE COPY OF OBJECTION FILED BY THE RESPONDENTS3TO7 P7: A TRUE COPY OF THE

ORDER
DATED1112.2014 IN IA.NO.3939 OF 2014 IN OS.NO.701/12 OF THE COURT OF THE MUNSIFF, NEYYATTINKARA. RESPONDENTS' EXHIBITS: NIL. ---------- // True copy // P.A. To Judge. smp P.BHAVADASAN, J.

---------- Original Petition (Civil) No.581 OF2015---------- Dated this the 4th day of March, 2015.

JUDGMENT

Under challenge is Ext.P7 order whereby the court below dismissed the application for amendment of the plaint. The petitioners laid the suit namely, O.S.No.701/2012 for recovery of possession on the strength of their title. It is not disputed that there was a prior suit between the parties as O.S.No.832/1986 which went in favour of the defendants in the suit.

2. The allegation in the plaint was that subsequent to O.S.No.832/1986, there was trespass into the property of the plaintiffs and therefore the plaintiffs laid the present suit for appropriate reliefs.

3. The defendants resisted the suit by pointing out that in the earlier suit, the entire matter was decided and it is only to get over the decree, the present suit has been laid. In the present suit, a commission was taken out and the Commissioner had filed a report. Thereafter the petitioners moved for O.P.(C) No.581/2015 2 amendment of the plaint as per Ext.P4 amendment application. The respondents filed objection to the said petition and the court below finding that if the amendment is allowed, there will be changes in the identity of property, dismissed the application as per Ext.P7.

4. Assailing the said order, learned counsel appearing for the petitioners pointed out that the court below was not justified in coming to the conclusion that by way of amendment of plaint, identity of the property will be changed. Amendment was

only intended to bring the description of the property in tune with the property identified by the Commissioner and no prejudice will be caused to the defendants. The court below has not applied its mind and therefore it is said that the order is unsustainable.

5. That there was an earlier suit between the parties is not in dispute. The plea now put forward by the plaintiffs relates to a major portion of the plaint schedule property in earlier suit. In the plaint, plaint schedule property was shown as comprised in survey No.652/7. The case of the plaintiffs is that after the Commissioner visited the property and identified the property, O.P.(C) No.581/2015 3 they realised that a portion of their property lies in survey No.652/6 and that necessitated the amendment.

6. One could have well understood the necessity for an amendment had it been in the nature mentioned above, as it is possible that there may be an error committed in mentioning of re-survey number but that is not what was intended by the amendment application. Amendment application also seeks changes to boundary of the property. It is because of that reason that the court below has observed that the identity of the property will be changed.

7. At the time of hearing of this petition, this Court asked the learned counsel for the petitioners as to how the boundaries could be changed though there was an error occurred in the plaint regarding survey number and if the boundaries shown in the plaint is as one contained in the title deed. The reply given was that boundary shown in the plaint is not as in the title deed and it is based on re-survey plan. It is strange that such an answer is given. The court below has noticed that allowing the amendment has the effect of change of identity of property. The O.P.(C) No.581/2015 4 amendment application does not mention the reason as to why amendment has been sought for. It is as vague as it can be. Amendment is not allowed as a matter of course. Amendment is allowed only when there are sufficient reasons for not making proper averment at the initial stage. Here, one should remember that there was already a suit in which a decree was passed. Considering all the above aspects, this Court finds no reasons to interfere with the order of the court below. This original petition is without merits and it is accordingly

dismissed. Sd/- P.BHAVADASAN JUDGE smp

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