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Amina Vs. Kunjubawa

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Court : Kerala

Decided On : Oct-18-2005

Reported in : 2005(4)KLT609

Judge : V. Ramkumar, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 6, Rule 17; ;Constitution of India - Article 227

Appeal No. : W.P.(C) No. 8556 of 2005

Appellant : Amina

Respondent : Kunjubawa

Advocate for Def. : K.R. Sadasivan Nair, Adv.

Advocate for Pet/Ap. : George Abraham, Adv.

Judgement :

V. Ramkumar, J.

1. Heard both sides.

2. The petitioners are the plaintiffs in O.S. No. 262/1993 on the file of the Munsiff's Court, Muvattupuzha. The said suit was one for recovery of possession of the plaint schedule property on the strength of title and also for a perpetual injunction

in respect of a portion of the property. The suit was dismissed by the trial court. Aggrieved by the decree, the petitioners filed A.S. No. 67/1998 before the Sub Court, Muvattupuzha. While the appeal was pending, they moved I.A. No. 864/2004 for amendment of the plaint under Order VI Rule 17 C.P.C. The said application was dismissed as per Ext.P3 order inter alia on the ground that it was belated. It is the said order which is assailed in this Writ Petition.

3. Placing strong reliance on the decision of a learned Single Judge of this Court in Karthiayani and Ors. v. Ramanathan and Ors., 2005 (2) KLT 115 : 2005 (1) KLJ 730, the learned Counsel for the respondents/defendants submitted that a petition under Article 227 of the Constitution of India will not lie against the dismissal of a petition for amendment of plaint under Order VI Rule 17 C.P.C. I do not think that the said decision can survive the subsequent ruling of the Supreme Court in Surya Dev Rai v. Ram Chander Rai, 2003 (3) KLT 490 wherein the scope and amplitude of the jurisdiction under Article 227 of the Constitution has been very succinctly expatiated by the apex court. In a fit case the jurisdiction of this Court can be exercised to interfere with an order erroneously allowing or refusing to allow the amendment of pleadings.

4. When this Writ Petition came up for final hearing today, the learned Counsel for the petitioners/plaintiffs sought permission to withdraw the suit with liberty to file a fresh suit on the same cause of action. Even though the said prayer was opposed by the learned Counsel for the respondents/defendants, in the light of the decision reported in Rajasekharan Nair v. Raju, 2003 (3) KLT SN 17 Case No. 24, I am inclined to accede to the prayer made by the learned Counsel for the petitioners. It was noticing that the plaint suffered from a formal defect that the plaintiffs sought an amendment of the plaint. Even though it was disallowed, the defect in the frame of suit remains. Hence the counsel is well within his submission in seeking permission to withdraw the suit and to institute a fresh suit on the same cause of action. (See in this connection Prabhavathi v. Kunhathabi Umma, 1981 KLT 438 and Amminikutty v. George Abraham, 1987 (1) KLT 574. Accordingly, the permission sought for is granted and the plaintiffs are permitted to withdraw the suit with liberty to institute a fresh suit on the same cause of action.

The Writ Petition is disposed of accordingly.

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