

**Abdulla Vs. Pathumma**

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**Court :** Kerala

**Decided On :** Apr-05-2002

**Reported in :** 2003(2)KLT289

**Judge :** K.S. Radhakrishnan, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

**Appeal No. :** C.R.P. No. 150/98

**Appellant :** Abdulla

**Respondent :** Pathumma

**Advocate for Def. :** T.P. Kelu Nambiar, Sr. Adv.,; P.G. Rajagopalan,; M. Gopi

**Advocate for Pet/Ap. :** O. Ramachandran Nambiar and; Prasanna H. Kamath, Adv.

**Judgement :**

ORDER

**K.S. Radhakrishnan, J.**

1. This revision petition is filed by plaintiffs 2 to 5 against the order in LA. No. 24 of 1998 in O.S. No. 164 of 1994 of the Munsiffs Court, Payyannur. LA. No. 24 of 1998 was filed under Order VI, Rule 17 of the Code of Civil Procedure for

amendment of the plaint.

2. Plaintiffs instituted the suit for permanent prohibitory injunction restraining defendants 1 and 4 from obstructing the plaintiffs from using plaint schedule property as pathway leading to plaint A Schedule property and also for a mandatory injunction. It is alleged that the plaintiffs and their predecessors have been using the plaint B Schedule pathway for the last 56 years openly and without any interruption and the plaintiffs have got easement right over plaint B Schedule property both by prescription and necessity. Due to oversight, plaintiffs have omitted to include the prayer of declaration for easement right and hence it has become necessary to amend the plaint incorporating additional prayer for declaration. Request of the plaintiffs for amendment of the plaint was opposed by the contesting respondent No. 4 by filing counter affidavit. It is contended that the suit was filed in the month of June 1994 and cause of action arose on 1st June 1994. Petition for amendment was made on 3rd January 1998. Hence the prayer for declaration was barred by law since three years have elapsed after the cause of action.

3. The court below disallowed the petition for incorporating the prayer for declaration. The court below felt if the amendment is allowed it will cause prejudice to the defendants. The amendment sought to be incorporated by the plaintiffs for declaration was hit by the law of limitation under Article 58 of the Limitation Act, 1963. Reference was also made to the decision of the Apex Court in S.A.R. (Civil) 1996 (1) at page 639. (I am of the view the question as to whether amendment sought for is hit by law of limitation could be urged as an issue in the suit.) In this connection it will be profitable to refer to the decision of the Apex Court in Raghu Tilak D. John v. S. Rayappan and Ors. (2001 (2) SCC 472). According to the Apex Court, amendment sought could not be declined since the dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case by framing an issue. (I am of the view, in the above-mentioned circumstances, the court below was not justified in rejecting prayer for amendment since the said point can be raised as an issue. In such circumstances I am inclined to set aside the order in LA. No. 24 of 1988 and allow the application for

amendment with a direction that if the parties are so advised they can raise an issue with regard to the additional prayer.) The revision petition is disposed of as above. I make it clear I am not expressing any opinion on the plea of limitation raised in this proceeding.

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