
(2022) 03 KL CK 0117

In the High Court Of Kerala

Case No : Original Petition (C) No. 519 Of 2022

Smt. Gomathy D/o Nesamma

APPELLANT

Vs

Subaida Beevi W/o Vahab

RESPONDENT

Date of Decision : 15-03-2022

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2022) 03 KL CK 0117

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : G.Sudheer

Final Decision : Dismissed

Judgement

A. Badharudeen, J

1. In this original petition filed under Article 227 of the Constitution of India, the plaintiff in O.S.No.119 of 2016 impugns order in I.A.No.06 of 2022 dated 07.03.2022.

2. As per the said order, the amendment sought for by the plaintiff to incorporate a lengthy amendment in the plaint, that too filed after examination of PW1 and on completion of the cross-examination of PW1, was dismissed by the learned Munsiff on the finding that the application was filed after commencement of trial only to fill up the lacuna in the evidence of PW1 after examination of PW1.

3. The learned counsel for the petitioner argued at length to convince this Court that the amendment proposed is very much essential to address the grievance of the plaintiff. When he was asked to justify compliance of proviso to Order 6 Rule 17, in a petition filed for amending the plaint, after commencement of trial, the learned counsel failed to point out even a sentence from the affidavit in support of the petition regarding compliance of proviso. Therefore, the same alone is a reason to dismiss the application.

4. The learned Munsiff dismissed the application on the finding that the attempt is to fill up the lacuna in evidence. That apart, I have gone through the amendment sought for. It appears that amendment was intended to incorporate many aspects in deviation from the original pleadings. That apart, for want of compliance of proviso, the petition cannot be allowed and the learned Munsiff rightly dismissed the same. Going by the order, I do not find any illegality, perversity or arbitrariness to interfere in the impugned order, in a petition filed under Article 227 of the Constitution of India. Therefore, this original petition lacks merit and the same deserves dismissal.

Accordingly, this original petition is dismissed.