

IN THE COURT OF THE SUB JUDGE, ALAPPUZHA
Present:-Smt. Rekha Laurian, Sub Judge
Saturday the 1st of November, 2025/10th Karthika 1947

EA.16/2025 in EP 21/2025
Filed on 23.10.2025

Claim Petitioner :- *Changankary Nadubhagom Christian Union vaka
St. George Chundan Vallam
Regd No. ALP/TC/387/2021 , Changankary P.O.,
Edathua Village, represented by its Secretary*

By Adv. Sri. Manoj George

Cr. Petitioners :-

- 1) Brothers Boat Club, Edathua in Edathua Village,
Kuttanadu Taluk Alappuzha represented by its
present Secretary (Decree holder)
2. *Changankary Nadubhagom Christian Union,
Regd No. ALP/TC/571/2018, Karimbalil Buildings
No. 10/ 47, Edathua Village,
Edathua (Judgment Debtor)*
(CP1 By Adv. K.S. Hariharaputhran)

This petition having being finally heard on 30.10.2025 and court on 01.11.2025 same day passed the following.

ORDER

This is an application filed for accepting the witness schedule and additional witness schedule.

2. Petition averments:- The claim petitioner herein is a body constituents ,Changankary Nadubhagom Christian Union Vaka St.George Chundan Vallam. The present Secretary is filing the application. As per the by-law and MOU of the said union, the Secretary is empowered and competent to file the affidavit and petition for and on behalf of the union. In order to adduce evidence, certain

documents and witness schedule and an additional witness schedule for summoning and examining witnesses is filed. That issuance of summons to witness No.4 and 5 is most necessary being the primary office bearers of second counter petitioner. In fact, these are the persons who alleged to have formulated the JD Union maliciously and illegally. In fact, the JD Union itself is a sham one in order to attain the whim and fancies of the said witnesses and their henchmen. Also they are the persons who formulated the JD Union and registered a by-law without the sanction or approval of the general body and hence the decree formulated against a non-existing decree itself is nullity and to prove the same the presence and deposition of witnesses No.4 and 5 are in the primary witness schedule is most necessary. Besides, the additional witnesses are persons who alleged to have identified the property in possession of JD. That on adjudication of claim raised by the claim petitioner on the basis of evidence and documents, the alleged attachment will not stand. Hence, the court may be pleased to pass an order accepting the primary and additional witness schedules filed by the claimed petitioner into file and to issue summons to the witnesses therein. Or else the petitioner will be put into irreparable loss and injury.

3. Averments in the objection:- The witness No. 5 in the witness schedule dated 15.10.2025 submitted by the counsel for the claim petitioner is a party in the above suit and a decree passed in the above case in his capacity as the Secretary representing the first counter petitioner/decree holder association. It is trite law that the party to the suit and proceedings cannot be cited and examined as a witness at the instance of the opposite party. Therefore the request to issue summons to the fifth witness in the schedule, George Matthew who is still the Secretary of the first counter petitioner cannot be allowed as it is prohibited under law. Hence, it is humbly prayed that the Court may be pleased to reject the request to issue summons to witness no. 5 in the schedule of witnesses dated 15.10.2025.

4. Heard both sides.

5. The learned counsel for the petitioner argued that the examination of all the witnesses is highly essential for the just adjudication of the claim petition. Hence the application is to be allowed. The learned counsel for the counter petitioner/Decree Holder argued that the fifth witness in witness schedule dated 15.10.2025 cannot be summoned before the court as he is a party to the proceedings before the court. He is the Secretary of the Decree Holder Association. Hence the prayer to examine him may be rejected as it is against the settled position of law. He relied upon the decision of our Hon'ble High Court in Jortin Antony and others v. Marthanda Varma and others 2000(2)KLT 680 our Hon'ble High Court held that "A. Code of Civil Procedure, 1908 – Order XVI, Rule 21 – Right to summon the opposite party to give evidence - Held – A party to the suit does not have a right as such to summon the opposite party to give evidence – The court can summon the opposite party if there are suitable reasons in exercise of its power under Rule 14 of Order XVI of Code of Civil Procedure. Held : R.21 only indicated that when a party to the suit is required by the other party to give evidence, the provisions as to witnesses shall apply so far as applicable. Since no substantive right a such is conferred on a party to call his opposite party to give evidence, R.21 cannot be construed as conferring such a power on a party to the suit. We are therefore of the view that by reference to R.21 of O.XVI as it existed in Kerala subsequent to the insertion thereof on 09.06.1956, we cannot hold that a party to the suit has got the right to examine the opposite party as his witness. By the 1976 amendment of the Code, no alternation was made to the Code of 1908 without State amendments to R.7 or R.21 of O.XVI. The only significant amendment was to R.14 of O.XVI by substituting in the place of any person excluding a party to the suit the expression 'any person including a party to the suit'. Though it is only by virtue of R.21 as it stood amended in Kerala by notification dated 09.06.1995 that it could be argued that a party to the suit can be required by the other party to the suit to give evidence and in that contingency the provisions as to witnesses shall apply. R.21 without reference to the Kerala amendment only provided

that wherein a party to a suit is required to give evidence, the Provisions as to witnesses shall apply to him. The only power available to the High Court or the State Legislature is to further amend the Code if a departure is warranted from the provisions as they obtained in the Code as amended by the Amending Act of 1976. We are therefore of the view that the insertion dated 09.06.1959 cannot be relied on to hold that a party to the suit has the right to summon the opposite party to give evidence. It is clear from R.14 of O.XVI of the Code as amended that the court has the power when it thinks it necessary to examine a party to the suit or to compel a party to the suit to give evidence so as to enable the court to take a decision satisfactory to its conscience. But this power available to the court and made specifically available by the amendment brought to R.14 cannot be confused with the right of a party to call upon an opposite party to give evidence on his behalf. Clearly, when a party to the suit does not mount the box to speak in support of his case in the pleading, that can be a circumstance which would enable the court to accept the case of the opposite party. That can also be a circumstance where the court can draw an adverse inference against the party who has withheld himself from the witness box. But those consequences arising out of non-appearance of a party as a witness cannot confer a right on a party to the suit to cite his opponent as his own witness. The power available to the court under R.14 of O.XVI cannot be confused with a right to a party to the suit. Whereas R.7 enables the court to call on any person whether a party to the suit or a non-party to the suit who is present in court to give evidence and provides the consequences for the failure of that person to give evidence, R.14 also enables the court to summon a person to give evidence even if he is not present in court whether he be a party or only a witness of its own accord and in furtherance of its quest of give a just decision in the cause. As regards a party to the suit even this power was not available until the year 1976 and this power becomes available only after the insertion of the amendment of 1976. All that R.21 says is that in case where the court thinks that it is necessary to direct a party to give evidence, the procedure regarding a witness could be applied by the court regarding that party as well”.

6. I considered the application, objection and arguments raised by both sides. On perusal of the documents and the witness schedule, it is seen that witness No.5 in the witness schedule dated 15.10.2025 is the Secretary of the Decree Holder Association. It is well settled position of law that the opposite party cannot be summoned as witness on behalf of the other side except when the court finds it necessary. Other than the witness stated above four witnesses are cited from the side of the claim petitioner. It is stated in the application that witness number 5 is to be examined to prove that JD Union is a sham one and registered a bylaw without the approval of the general body. In order to prove this point the claim petitioner can very well examine the members of the general body or the registering authority. Considering the averments in the application, I find no necessity to allow the examination of the office bearer of the Decree Holder on behalf of the claim petitioner. Hence, I am not inclined to allow *(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court today this the 01st day of November, 2025.)* this application with regard to witness No.5. In the result, application is partly allowed except the examination of witness No.5 in schedule dated 15.10.2025. No order as to costs.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court today this the 01st day of November, 2025.)

Sd/-
Rekha Laurian,
Sub Judge , Alappuzha.

Appendix : Nil

Sd/-
Sub Judge

fair copy of Order in EA 16/2025 in EP 21/2025
Dated 01.11.2025