

IN THE COURT OF THE SUBORDINATE JUDGE, ALAPPUZHA
Present:-Smt. Rekha Laurian, Sub Judge
Saturday the 28th day of February, 2026/ 09th day of Phalguna 1947

IA 13/2025 in O.S.No. 37/2023

Filed on 24.10.2025

- Petitioners:-**
1. Mani Joseph, S/o. Joseph, Puthuparambil House, Koorali P.O, Ilamkulam Village, Kanjirappalli Taluk, Kottayam District.
 2. Muhammad Niyas, S/o. Sayed Muhammed, Puthoorpalli House, Kanjirappalli P.O, Kanjirappalli Village, Kanjirappalli Taluk, Kottayam.

(By Adv E.M.Suresh)

- Counter Petitioner:-**
- A.Riyas, aged 52 years, S/o. Abdul Kasim, Valuparambil House, Alappuzha Head Post Office, Alappuzha Kara, Alappuzha West Village, Ambalappuzha Taluk, Alappuzha District.

(By Adv. Jayan C.Das)

This petition having been finally heard on 18.02.2026 and the court on the 28.02.2026 passed the following:-

ORDER

The application is filed under Order VI Rule 17 r/w section 151 of Code of Civil Procedure.

2. The petition averments in brief are as follows: - The petitioner is the first plaintiff. The application is filed for and on behalf of the 2nd plaintiff also. The suit is filed for return of money. On 15.06.2020, the defendant entered into an agreement with the plaintiff and received advance amount of Rs.50,00,000/- as three installments. It was also agreed to sell the property for Rs.2,00,000/- per cent. It was also agreed that the profit will be about Rs.3,00,000/- per cent and that will be divided between the parties. The defendant entered into false agreement making his

acquaintance Muhammed Saheer as a first party and plaintiffs and defendant is 2nd party. On 23.10.2021 agreeing for Rs.2,25,000/- per cent it was agreed that Saheer will purchase the property on or before 22.09.2022. Later, on inquiry, the plaintiff found that Saheel is no more and was having no capacity to purchase the said property. The defendant had suppressed real facts from the plaintiff and entered into an agreement on 15.06.2020. After creating the false agreement, the wife and son of the defendant on consent of the defendant had sold the building for Rs.15,00,000/-. Since the defendant was about sell the remaining property the suit was filed. An error occurred in calculating the amount and interest. Hence the amendment is sought for in

1) in paragraph No. 5 of the plaint, the 1st sentence, added the sentence as “ the defendant failed to produce original title deeds, its prior deeds, tax paid receipts, ROR, valuation certificate of the building their in with his Aadhar Card and pancard” after the word ‘terms’. The next sentence the word ‘had’ denoted after defendant is to be deleted, instead of ‘failed’ added and in the last sentence as after ‘sale consideration’, ‘If the order terms in the agreement are not fulfilled’ is to be deleted.

2) in para No.9 of the plaint, to add @18%’ after the sentence ‘including interest’. Thereafter deleting ‘balance’ denoted after ‘for the’ and added instead of ‘entire’ and also added ‘since this is a business transaction’ denoted after ‘amount’.

3) in para No.12 of the plaint, deleted the amount of ‘Rs.40,50,000/- (Forty lakhs and Fifty Thousand only)’ denoted in the 2nd line, instead of Rs.69,89,178/-(Sixty Nine lakhs Eighty Nine Thousand One Hundred and Seventy Eight only) is to be added.

4)in para No.13 of the plaint, in the 3rd line the sentence ‘and on 01.02.2022 the date on which the defendant expressed his inability to execute the sale deed’ is to be added after the word ‘paid’. In the 4th line added the word ‘certain’ after the word ‘repaid’ and deleted as ‘out Rs.50,00,000/- denoted after ‘amount’.

5) To delete in statement of account as 'balance to be'. The amount denoted as Rs.40,50,000/-(Rupees Forty Lakhs and Fifty Thousand only) is to be deleted and instead of Rs.50,00,000/-(Rupees Fifty Lakhs only) is to be added. To Delete the year '2023' denoted 'interest @ 18% p.a from 15.06.2023' and add '2020' and 3 years denoted after '97 days'. Delete the amount 'Rs.1,96,425/-' instead of added 'Rs.29,39,178/-' and also delete the total amount Rs.42,46,425/- instead of Rs.79,39,178/-. Thereafter, 'less amount received Rs.9,50,000/- is to be added and also add Rs.69,89,178 denoted after 'Net balance to receive'.

6) the relief portion A in the 1st line, deleted Rs.42,46,425/-(Rupees Forty Two Lakhs Forty Six Thousand Four Hundred and Twenty Five only) is to be deleted and Rs.69,89,178/- (Rupees Sixty Nine Lakhs Eighty Nine Thousand One Hundred and Seventy Eight only) is to be added.

7) in valuation of 1st line 'Rs.42,46,425/- is to be deleted and Rs.69,89,178/- is to be added and also delete Rs.3,58,120/- instead of Rs.5,77,536/- is to be added after 'and court fee of Rs.', deleted 'Rs.42,465/- instead of Rs.69,892/- is to be added after 'LBF is to be paid Rs.'.

8)The plaint amount, court fee and LBF denoted in the locket are deleted and new figure are added.

3. Objection filed by the counter petitioners/defendants reads as follows :- The amendment petition is not maintainable either in law or on facts and is liable to be dismissed in limine. The amendment sought is not a mere clerical or typographical correction, as falsely projected by the plaintiff. The proposed deletion and alteration of paragraph 9.B relating to court fee, legal benefit fund and valuation directly affects the foundation of the suit, including the valuation and statutory compliance under the Kerala Court Fees and Suits Valuation Act. The plaintiff who has in unequivocal terms admitted the manner and method of valuation in the plaint is estopped from withdrawing the said

admission as to valuation. Hence the proposed amendment with a view to withdraw the admission already made can not be allowed. The plaintiff has admitted that specific figures relating to court fee and LBF were consciously incorporated in the amended plaint. Having done so, the plaintiff cannot now be permitted to retract the same under the guise of “inadvertent clerical error”, especially when such figures have legal consequences. The issue of proper court fee and valuation is a mixed question of law and fact, which goes to the root of the maintainability of the suit. Such an issue cannot be diluted or withdrawn by way of amendment at this belated stage. The amendment is sought after filing of written statements and replication and after the defendants has specifically relied upon the pleadings relating to valuation and court fee. Therefore, the proposed amendment will cause serious prejudice to the defendants, which cannot be compensated by costs. The explanation offered is vague, self-serving and unsupported by any material. The contention that the impugned portion is “surplusage” is legally untenable. Once pleaded, valuation and payment of court fee become part of the record and cannot be selectively deleted to overcome statutory objections raised by the defendants. The amendment, if allowed, would amount to permitting the plaintiff to improve and rectify a defective suit, which is impermissible in law. It would also defeat the defendants’ valuable right to question court fee and maintainability. The amendment is not necessary for the real adjudication of the dispute, but is only intended to circumvent the objections raised by the defendants and to avoid statutory consequences. The petition is therefore filed malafide, with the sole intention of filling up lacunae in the plaintiff’s case and hence deserves outright rejection. Hence the petition is liable to be dismissed with costs.

4. Heard both sides.

5. The contention of the petitioner is that after change of vakalath certain matters came to notice and it is to be amended. The contention raised by the respondent is that the amendment sought for introduces a new fact and changes the nature of the suit.

6. I perused the application, objection, plaint and written statement. It is seen that the amendment is sought for in almost all paragraphs including cause of action and valuation. An entirely new case is being introduced by the amendment sought for. It changes the very nature of the suit. This will definitely cause prejudice to the opposite side. The purpose of amendment is not to introduce a new fact at the later stage. For these reasons I find no merit in the present application. Hence I am not inclined to allow this application.

7. In the result, the application is dismissed with costs.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court today this the 28th day of February, 2026.)

Sd/-

REKHA LAURIAN
SUB JUDGE

Appendix:-Nil

Id/-

SUB JUDGE