

IN THE COURT OF THE PRINCIPAL MUNSIF, CHERTHALA

Present: Sri. Rovin Rodrigues, Principal Munsiff

Friday, the 20th day of February 2026/ 1st Phalgunam, 1947.

IA No. 05/2024 in O. S. No.131/2021

(Filed on 20.12.2024)

Petitioner/Defendant:-

Saneesh, S/o Sasidharan,
Chengezhathu Chira, Thrichattukulam.P.O,
Panavally.

By Adv. John Varghese

Cr. Petitioner/ Plaintiff:-

Suresh Babu, S/o Narayanan,
Cheriyam Manathudi Nikarthil,
Thrichattukulam.P.O, Panavally.

By Adv.K.A.Easwariamma

This petition having been finally heard on 20.02.2026 and the Court on the same day passed the following:-

ORDER

This is a petition filed by the defendant under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 seeking rejection of the plaint.

2. The petition averment in brief are as follows:

The petitioner is the defendant in the above suit. The suit was instituted on 08/03/2021. The defendant entered an appearance on 17/03/2021

and filed a written statement on 22/06/2022. The case was posted for trial on 02/11/2024. The plaintiff was examined as PW1. The Advocate Commissioner and two other witnesses were also examined. During the trial, it was revealed that the plaint schedule property is wrongly described and that the alleged pathway claimed as plaint item No. 3 is not part of plaint item No.2. The said property actually belongs to one Komalavally Amma. The petitioner/defendant had purchased 9.5 cents from Koya Kutty Haji, out of which 2 cents were sold to the plaintiff, and the remaining 7.5 cents constitute the plaint item No. 2 property. The plaintiff, with mala fide intention to obstruct construction of a house in the plaint item No. 2 property, has instituted the suit claiming a non-existent pathway. The evidence adduced in the case, including that of the Commissioner and witnesses, clearly establishes that no such pathway exists and that item No. 3 does not form part of item No. 2. The plaintiff has also filed an application to amend the plaint by deleting item No. 2 and incorporating property allegedly belonging to Komalavally Amma, thereby altering the very nature and structure of the suit. Hence, the plaint does not disclose a cause of action and is liable to be rejected under Order VII Rule 11 CPC.

3. **The respondent/plaintiff filed an objection with the following contentions:**

The petition is not maintainable. The suit has already proceeded to trial, and substantial evidence has been recorded. The defendant produced certain title documents only on 21/11/2024. It was only thereafter that the plaintiff came to understand the exact nature and extent of the property. The description in the plaint was based on a bonafide understanding and local knowledge. The proposed amendment is only to correct an error in the description of the plaint schedule property and does not extinguish the cause of

action. The plaint contains all the necessary averments regarding the prescriptive easement right and the obstruction caused by the defendant. Hence, the petition is liable to be dismissed.

4. Heard both sides. Perused the records.

5. The law is well settled that while considering an application under Order VII Rule 11 CPC, the Court has to look only at the averments contained in the plaint. In **Srihari Hanumandas Totala v. Hemant Vithal Kamat and Others 2021 (5) KHC 85**, the Hon'ble Supreme Court has held that an application under O.7 R.11 must be decided within the four corners of the plaint. The defence taken in the written statement or evidence adduced during trial cannot be looked into at this stage. A plaint can be rejected only if it does not disclose a cause of action or falls under any of the contingencies enumerated under Order VII Rule 11 CPC. In **Alexander P. V. v. Mutturuthy Sree Bhuvaneswari Temple @ Karna Karna Temple, 2026 KHC OnLine 74**, the Hon'ble High Court has held that the power under Order VII R.11 of the Code of Civil Procedure cannot be invoked by the trial court on an application by the defendant or based on the written statement. In the present case, the plaint contains averments that the plaintiff has acquired prescriptive easementary right over the item No. 3 pathway and that the defendant obstructed the same, and the cause of action arose due to such obstruction. The contentions raised by the petitioner are based on evidence adduced during trial and alleged admissions of witnesses. Such disputed questions of fact cannot be adjudicated in a petition under Order VII Rule 11 CPC. Moreover, the suit has already progressed to trial, and substantial evidence has been recorded. At this stage, a petition to reject the plaint on disputed facts cannot be allowed. Hence, I find that the petition is devoid of merits.

As a result, the petition is dismissed. Considering the facts and circumstances, there is no order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open Court on this the 20th day of February, 2026)

Sd/-
Rovin Rodrigues
Principal Munsiff

Appendix:- Nil

Sd/-
Principal Munsiff