

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt. Aneesa.A, Munsiff

Friday the 24th day of October, 2025/2nd Karthika,1947

IA.2/2022 in OS.293/2011

(Filed on 15.10.2025)

Petitioners/ Plaintiffs:

1. Sudeep Kumar, Vishnu Bhavanam,
Peringala Muri, Kayamkulam.
2. Rema Bai, Vishnu Bhavanam,
Peringala Muri, Kayamkulam.

(By Adv.P.Viswanathan)

Respondents/Defendants:

1. Gopalakrishna Pillai (Died),
S/o.Krishna Pillai,
Mannampally Kizhakkathil,
From Ambazhavelil,
Peringala muri,
Kayamkulam Village.
2. Anandavally Kunjamma, aged 70 years,
Aarambil (Priya Sadanam)
Peringala muri,
Kayamkulam Village.

3. Vijayalekshmi Kunjamma, aged 40 years,
D/o. Anandavallikunjamma,
Aarambil (Priya Sadanam)
Peringala muri,
Kayamkulam Village.

Addl.D4. Radhakrishnan Unnithan,
S/o.Gopalakrishna Pillai,
Aarambil veettil,
Vallikunnam muri,
Vallikunnam Village.

(Addl.D4 impleaded as per order in IA.3209/17 dtd.29.08.18)

(By Adv.Pradeep.S.Nair)

This petition is coming on for hearing on 24.10.2025 and the court of the same day passed the following.

ORDER

This is a petition filed by the 1st plaintiff for and on behalf of the 2nd plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 to amend the plaint.

2. **The gist of averments in the petition are as follows:-**

The petitioners are the plaintiffs in the suit. In this case, the defendants were appeared and filed written statement and was posted to 29.01.2022 for further steps. On the 5th page of the property description table in the description column, in the 6th line after 8 cents

instead of 'വിതവടക്കമുള്ള', it is written as 'വടക്കമുള്ള'. It is to be corrected in the plaint in accordance with the title deed. Moreover, the plaintiffs got knowledge about the earlier suit O.S.35/1985 only at the time of appearance of Amin on 22.01.2011 for effecting delivery in the execution petition filed in the suit. On enquiry, the plaintiffs got information that the said suit was filed for fixation of boundary, declaration of title over 1 cent of property which situates on the western side of plaint scheduled property in south-north direction, in old survey.46/42A and which is a portion of plaint scheduled property. The said suit was dismissed by the trial court and the plaintiffs in that suit preferred A.S.87/1990 before Hon'ble Additional District Court, Mavelikara against the dismissal of O.S.35/1985. The said appeal was decreed and the defendants filed second appeal 540/1992 before the Hon'ble High Court of Kerala against the judgment in A.S.87/1990. While the second appeal was pending, the original 2nd defendant died and the said appeal was abated and dismissed. By suppressing all these facts about the previous suit, the predecessors of the plaint scheduled property, Sri.Mohanan and others executed sale deed no.1119/2001 dated 08.05.2001 in favour

of plaintiffs in this suit. On the basis of the said deed, mutation was effected by the plaintiffs in their favour and land tax was also paid and the said property is in the possession of the plaintiffs as per the resurvey measurements. On getting knowledge about the previous suit, the plaintiffs preferred I.A.1634/2013, review petition before the Hon'ble High Court of Kerala and thereafter the plaintiffs filed R.S.A.196/2016 and it is pending. Hence for the just decision of this case, these matters are to be included in the plaint by way of amendment. Otherwise, it will cause irreparable loss and injury to the plaintiffs. No prejudice will be caused to the defendants on allowing this amendment application. Thus, the plaintiffs sought to amend the plaint by including the following matters.

1. അന്യായം അഞ്ചാം പേജിൽ വസ്തു വിവര പട്ടികയിൽ, വിവരണ കോളത്തിൽ ആറാം വരിയിൽ 8 സെന്റ് എന്നതിന് ശേഷം 'വടക്കമുള്ള' എന്നതിന് പകരം 'വിരുവടക്കമുള്ള' എന്ന് തിരുത്തി ചേർക്കണം.

2. അന്യായം ആറാം പാഠയ്ക്ക് ശേഷം 6(a) കൂടുതലായി ചേർക്കണം:

6(a)- “രണ്ടാം പ്രതിയും മറ്റും വാദികളായും ഈ നമ്പർ കേസിലെ വാദികളുടെ മുൻഗാമികളായ മോഹനൻ മു.പേ പ്രതികളായും, അന്യായ പട്ടിക വസ്തുവിനെ സംബന്ധിച്ച O.S.35/1985 നമ്പരായി ബഹുമാനപ്പെട്ട ഈ

കോടതിയിൽ അന്യായം നിലവിലുണ്ടായിരുന്നു എന്നും ആയതു വാദികൾക്ക് അനുകൂലമായി വിധിയുണ്ടായി എന്നുമുള്ള സംഗതി ടി കേസിലെ വിധി നടത്ത നടപടിയുടെ ഭാഗമായി 22.11.2011 ൽ delivery നടത്തുന്നതിലേക്കായി ആമീൻ അന്യായപട്ടിക വസ്തുവിൽ എത്തിയപ്പോൾ മാത്രമാണ് വാദികൾക്ക് അറിവ് ലഭിച്ചിട്ടുള്ളത്. തുടർന്നുള്ള അന്വേഷണത്തിൽ അന്യായപട്ടികയുടെ ഭാഗമായ മുൻ സർവ്വേ 46/42A യിൽ പെട്ടതും 10 സെന്റുള്ള അന്യായപട്ടിക വസ്തുവിന്റെ പടിഞ്ഞാറും തെൻവടലെത്തിച്ചു 1 സെന്റ് വസ്തുവിനെ സംബന്ധിച്ച അവകാശ സ്ഥാപനവും അതുത്തി നനിർണ്ണയത്തിനും മറ്റുമായാണ് ടി അന്യായം ബോധിപ്പിച്ചതെന്നും, കേസ് തള്ളിയ വിധിയ്ക്കെതിരെ ടി കേസിലെ വാദികൾ മാവേലിക്കര ജില്ലാ കോടതിയിൽ AS.87/90 നമ്പറായി അപ്പീൽ ബോധിപ്പിച്ചു അപ്പീൽ വിധി ആയെന്നും, ടി വിധിയ്ക്കെതിരെ പ്രതികൾ കേരളാ ഹൈ കോടതിയിൽ RSA.540/1992 നമ്പർ അപ്പീൽ ബോധിപ്പിച്ചിരുന്നു എന്നും, അപ്പീൽ പ്രതികൾ ഹാജരായി കേസ് നടന്നു വരവേ, അപ്പീൽ രണ്ടാം പ്രതി മരണപ്പെട്ടു എന്നും തുടർന്ന് അവകാശികളെ കക്ഷി ചേർക്കാതിരുന്നതിനാൽ അപ്പീൽ abate ചെയ്തു എന്നും മനസ്സിലാക്കിയിട്ടുള്ളതാണ് ' എന്ന് കൂടുതലായി ചേർക്കണം.

3. 6(a) യ്ക്ക് ശേഷം പാരഗ്രാഫ് 6(b) കൂടുതലായി ചേർക്കണം:

6(b):- “അന്യായ പട്ടിക വസ്തുവിനെ സംബന്ധിച്ചുള്ള കേസ് പൂർണ്ണമായും മറച്ചു വെച്ചാണ് വാദികൾ പേർക്ക് മുൻഗാമികളായ മോഹനനും മറ്റും ചേർന്ന് 8.5.2001 ലെ 1119 നമ്പരായി വിലയാധാരം എഴുതി രെജിസ്റ്ററാക്കിച്ച് വാദികൾ അന്യായ പട്ടിക വസ്തു കരം തീർത്തു റീസർവ്വേ അളവുകൾ പ്രകാരം കൈവശം വെച്ചുനടവിച്ചു പോരുന്നത് എന്ന് കൂടുതലായി ചേർക്കണം.

4. 6 (b) യ്ക്ക് ശേഷം പാഠഗ്രാഹ് 6 (c) കൂടുതലായി ചേർക്കണം:

“O.S.35/1985 നമ്പർ കേസിനെ സംബന്ധിച്ച മനസ്സിലാക്കിയതിനെ തുടർന്ന് വാദികൾ ബഹു കേരളാ ഹൈ കോടതിയിൽ I.A.1634/12 നമ്പരായി റിവ്യൂ ഹർജിയും തുടർന്ന് RSA.196/16 നമ്പരായി അപ്പീൽ ഫയൽ ചെയ്തു നിലവിൽ ഇരിയ്ക്കുന്നതുമാണ് ” എന്ന് കൂടുതലായി ചേർക്കണം. Thus, the petition.

3. The respondents/ defendants No.1 and 2 filed objection contending inter alia as follows:- The petition is not maintainable either in law or on facts. There is no sufficient reason stated in the affidavit for the omission to incorporate the pleadings which are sought to be incorporated. The averments in paragraphs No.1 and 2 are true and hence admitted. The averments in paragraph No.3 is false and hence denied. This amendment application is filed only after

the elapse of 11 years from the filing of plaint. The matters sought to be amended are within the knowledge of the plaintiffs at the time of filing of the suit itself. For the purpose of obtaining an ex parte temporary injunctions, the plaintiffs willfully suppressed these material facts before the court and obtained temporary injunction against the defendants. The averment that the plaintiffs got knowledge about the pendency of O.S.35/1985 only on 22.11.2011, at the time when Amin appeared in the plaint scheduled property for effecting delivery is false. O.S.35/1985 was filed against the predecessors of the plaintiffs for obtaining 1 cent of land out of the 5 cents in survey No.46/42A of Kayamkulam Village. While pending that suit on 08.05.2001, the plaintiffs purchased 4 cents of property on the eastern side of the said survey, but plaintiffs have no right over the said 1 cent of property situates on the western side of the said property purchased by the plaintiffs. On the date of purchase itself, the plaintiffs were aware about the pendency of O.S.35/1985 against the previous owners of the said property and the said one cent of property was not purchased by the plaintiffs. O.S.35/1985 was decreed in favour of 2nd defendant and his siblings. Thereafter, the 2nd

defendant filed E.P.81/2010 before this court for the execution of decree and Amin and Village Officer were deputed by this court for effecting delivery. But the plaintiffs obstructed the delivery and thereafter with the aid of Kayamkulam Police, delivery was effected and said 1 cent of property was measured out and the possession of the said property was handed over to the 2nd defendant on 23.11.2011. The plaintiffs filed this suit and filed a prosecution petition by misleading the court that the delivery effected by the Amin is the violation of the injunction order passed by this court. The said petition is also pending. Only for the purpose of defeating the execution and delivery of the 1 cent of property, the plaintiffs purposefully filed this suit. Since the delivery was effected, this suit became infructuous and the amendment sought to be incorporated is not maintainable and this petition is to be dismissed. The averments in the 4th paragraph of the petition is false and hence denied. The plaintiffs purchased 4 cents of property out of 5 cents in old survey 46/42A of Kayamkulam Village from the previous owners of the plaintiff scheduled property. The 2nd defendant filed O.S.35/1985 against the previous owners of the plaintiffs for the declaration of

title and possession over the 1 cent of property on the western side of the property situates on the said survey number. Later, as per the order of Hon'ble High Court of Kerala, the execution of the decree was effected. The 1 cent of property situates on the western side of survey.46/42A was not purchased by the plaintiffs and they have no right over the said property. The 2nd defendant filed E.P.81/2010 before this court for the execution of decree in O.S.35/1985. The plaintiffs filed E.A.174/2011, claim petition in the said E.P and this court dismissed the claim petition. Against the dismissal of said claim petition, plaintiffs preferred A.S.59/2012 before the Hon'ble Additional District Court, Mavelikara, but the said appeal was also dismissed by the Hon'ble Court. In the order of dismissal of said appeal, the Hon'ble Additional District Court, Mavelikara observed that the plaintiffs are pendente lite purchasers and they are bound to obey the order of the court. The plaintiffs filed this suit on 29.09.2011. The 2nd defendant obtained delivery in E.P.81/2010 on 23.11.2011. Before two months of the said delivery order in E.P.81/2010, in order to defeat the said order, the plaintiffs intentionally filed this suit. From these facts, it is evident that the

plaintiffs were aware of the proceedings in O.S.35/1985 much earlier. Even then the plaintiffs filed this suit suppressing all those facts and have obtained a temporary injunction against the defendants. These matters are stated in the objection and the written statement filed by the defendants. Only with the intention of defeating the defence of defendants, the plaintiffs now preferred this amendment application. Thus it is to be dismissed. All the averments stated in the paragraphs No.5 and 6 of the petition are false and hence denied. Since this amendment application is filed with the intention of defeating the defence of defendants, this petition is to be dismissed with the costs of the defendants.

4. The following points are formulated for consideration:-

1. Whether the petitioners are entitled to an order for amending the plaint as sought for ?
2. What shall be the order as to reliefs and costs ?

5. Heard both sides.

6. **Point No. 1**:- The suit is originally filed for a decree of permanent prohibitory injunction. According to the petitioners, they got knowledge about the previous suit O.S.35/1985 and the

Execution Petition 81/2010 only at the time of delivery in the E.P on 22.11.2011. Thereafter, the petitioners enquired about the previous suits and they got knowledge about the said suit, appeals and the execution petition. Now the petitioners want to incorporate those facts into the plaint by way of amendment. According to them, it is highly necessary for the just decision of the case. Per contra, according to the respondent, in order to defeat their defence, the petitioners preferred this amendment application and hence it is to be dismissed. On perusal of records, it is found that all the amendments sought for are of such nature as is necessary for just disposal of the case. Further the amendments sought for does not change the nature and character of the suit. It does not also cause prejudice to the respondents. The court is satisfied that the proposed amendments are necessary for a complete and effective adjudication of the questions in controversy between the parties. The proposed amendments are absolutely necessary for the continuation of proceedings. Therefore, I am inclined to allow this petition. Thus, point No. 1 is found in favour of the petitioners.

7. **Point No. 2:-** In view of my discussions and findings on point No. 1, the petition is liable to be allowed. Point No.2 is also found in favour of the petitioners.

In the result, the petition stands allowed. The petitioners shall carry out the amendment within seven days and produce the amended plaint. No order as to costs.

(Dictated to the confidential assistant, typed by her, corrected and pronounced by me in open court on 24th day of October, 2025).

Sd/-
ANEESA.A,
MUNSIFF

APPENDIX - Nil.

Sd/- MUNSIFF

// True copy //

MUNSIFF

Typed by:Shafeek
Compd.by