

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt. Aneesa.A, Munsiff

Saturday the 2nd day of August, 2025/11th Sravana,1947

IA.14/2025 in OS.65/2023

(Filed on 03.07.2025)

Petitioner/Plaintiff:

Abdul Wahid,
S/o.Koyakkutty,
Kottappurathu veetil,
Kayamkulam Muri,
Kayamkulam Village.

(By Adv.G.Ashokkumar)

Respondents/Defendants:

1. Liyakathkutty,
S/o.Koyakkutty,
Kottappurathu Veetil,
Kayamkulam Muri,
Kayamkulam Village.
2. Aasyabeevi,
D/o.Koyakkutty,
Alummoottil,
Opposite Mini Civil Station,
Haripad P.O.
3. Noorjahan, D/o.Koyakkutty,
Panipurayil Veetil,
Kayamkulam muri,
Kayamkulam Village.

4. Adabiya Beevi,
W/o.Shahul Hameed,
Kumbalathu veettil,
Medamukku,
Kayamkulam muri,
Kayamkulam Village.
5. Shebeer Mohammad,
S/o.Shahul Hameed,
Kumbalathu Veettil,
Medamukku,
Kayamkulam muri,
Kayamkulam Village.
6. Sabeena,
D/o.Shahul Hameed,
Kumbalathu Veettil,
Medamukku,
Kayamkulam muri,
Kayamkulam Village.

(By Adv.C.D.Anil)

(By Adv.C.Vijayanath Babu)

This petition is coming on for final hearing on 02.08.2025 and the court of the same day passed the following.

ORDER

This is an order in a petition filed 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 plaint schedule properties belonged to the mother of plaintiff and defendants, Smt. Aleema Umma by virtue of family settlement No. 7849/1952 of Ochira Sub Registrar's Office, partition deed No. 145/1979 of Kayamkulam Sub Registrar's Office and exchange deed No. 1486/ 1984 of Keerikkad Sub Registrar's Office and she is in absolute possession of the same. She is residing in the family house situated in plaint schedule item No. 1 property. The plaintiff and defendants are grown up in the said house. The plaintiff and the 1st defendant are also residing there with their family. While so, the mother passed away and as the legal heirs, the plaintiff and defendants became joint owners of the plaint schedule property. As the plaintiff has no children, he is caring and loving the children of 1st defendant. While so, the plaintiff became heart patient and he is not in a position to do his personal needs. At that time, the 1st defendant approached the plaintiff and demanded to construct a new house after demolishing the family house and therefore, the right of the plaintiff over the plaint schedule property would be transferred to the children of 1st defendant. Whereas, the plaintiff did not agree with the

same and thus, the 1st defendant became inimical terms with the plaintiff for the last three years. The plaintiff and 1st defendant have $\frac{1}{4}$ share over the plaint schedule property, defendant Nos. 2 and 3 have $\frac{1}{8}$ share over the plaint schedule property, and defendant Nos. 4 to 6 have $\frac{1}{4}$ joint right over the plaint schedule property. Considering the illness and financial difficulties of the plaintiff, the plaintiff demanded the defendants to give his separate share over the plaint schedule property. Though defendant Nos. 2 and 3 agreed with the demand of the plaintiff, other defendants did not say anything about the same. As the plaintiff got convinced the bad intention of the defendants, again he demanded the defendants to partition the plaint schedule property. It is reliably learnt by the plaintiff that the defendants are trying to make illegal constructions in the middle portion of the property in which the family house situates with an intention to destroy the family house and to make complications to the partition of the plaint schedule property and thus the plaintiff has filed this suit. After filing of the suit, on examination of documents with regard to the property of mother Smt. Aleema Umma, it is noted that, in addition to the plaint schedule property, the property belongs

to Smt. Aleema Umma was omitted to incorporate in the plaint. The plaintiff has joint right over the said property and therefore, at the time of partition, those properties also are to be included. Otherwise, the petitioner will be put to irreparable injury and hardships. Thus, the plaintiff sought to amend the plaint by including the property belongs to Smt. Aleema Umma in the property schedule description as follows:-

അന്യായത്തിലെ വസ്തുവിവര പട്ടികയിൽ 3-ാം പട്ടികയ്ക്ക് ശേഷം

4-ാം പട്ടിക

നമ്പർ	-	1
ഡിസ്ട്രിക്ട്	-	ആലപ്പുഴ
സബ് ഡിസ്ട്രിക്ട്	-	കായംകുളം
താലൂക്ക്	-	കാർത്തികപ്പള്ളി
ഫരീക്ക	-	കായംകുളം
വില്ലേജ്	-	കായംകുളം
കര	-	കായംകുളം മുറി
അതിർത്തി	-	കായംകുളം മുനിസിപ്പാലിറ്റി
കിഴക്കു	-	പുരയിടം
തെക്കു	-	ഇടവഴി
പടിഞ്ഞാറു	-	പുരയിടം
വടക്കു	-	പുരയിടം
ഇനം	-	പാട്ടം
ബ്ലോക്ക് നമ്പർ	-	066
റീ സർവ്വേ നമ്പർ	-	22
ആർസ്	-	07.48
വിവരണം	-	ടി റീ സർവ്വേയിൽ 07 ആർസ് 48 ച. മീറ്റർ വസ്തുവും അതിൽ നിൽപ്പ് സകല വകകളും കൂടിയാകുന്നു.

5-ാം പട്ടിക

നമ്പർ	-	1
ഡിസ്ട്രിക്ട്	-	ആലപ്പുഴ
സബ് ഡിസ്ട്രിക്ട്	-	കായംകുളം
താലൂക്ക്	-	കാർത്തികപ്പള്ളി
വില്ലേജ്	-	പത്തിയൂർ
കര	-	എരുവ മുറി
അതിർത്തി	-	കായംകുളം മുനിസിപ്പാലിറ്റി
കിഴക്കു	-	ലത്തീഫ് വക
തെക്കു	-	റോഡ്
പടിഞ്ഞാറു	-	വഴി
വടക്കു	-	സുൽഫി വക
ഇനം	-	പാട്ടം
റീ സർവ്വേ നമ്പർ	-	55/107
ആർസ്	-	08.05
വിവരണം	-	ടി റീ സർവ്വേയിൽ 08 ആർസ് 05 ച. മീറ്റർ വസ്തുവും അതിൽ നിൽപ്പ് സകല വകകളും കൂടിയാകുന്നു.

6-ാം പട്ടിക

നമ്പർ	-	2
ഡിസ്ട്രിക്ട്	-	ആലപ്പുഴ
സബ് ഡിസ്ട്രിക്ട്	-	കായംകുളം
താലൂക്ക്	-	കാർത്തികപ്പള്ളി
വില്ലേജ്	-	കീരിക്കാട്
കര	-	കണ്ണമ്പള്ളിഭാഗം മുറി
അതിർത്തി	-	കായംകുളം മുനിസിപ്പാലിറ്റി
കിഴക്കു	-	നാസർ വക
തെക്കു	-	റോഡ്
പടിഞ്ഞാറു	-	ഷാൻ വക
വടക്കു	-	പൈനം കാവിൽ വക
ഇനം	-	പാട്ടം
റീ സർവ്വേ നമ്പർ	-	19/30, 19/143, 19/144
ആർസ്	-	18.20, 00.90, 01.15
വിവരണം	-	റീ സർവ്വേ 19/30 ൽ 18 ആർസ് 20 ച. മീറ്ററും, റീ സർവ്വേ 19/143 ൽ 90 ച. മീറ്ററും, റീ സർവ്വേ 19/144 ൽ 01 ആർസ് 15 ച. മീറ്ററും വസ്തുവും അതിൽ നിൽപ്പ് സകല വകകളും കൂടിയാകുന്നു.

Thus, this petition.

3. The respondents/ defendants filed objection contending inter alia as follows:- The petition is not maintainable either in law or on facts. The petition is filed with necessary intention to prolong the trial in the above matter. The proposed amendments are not necessary for the fair adjudication of the suit. If the amendment is allowed, the very nature of the suit will be altered and on that count the proposed amendment is impermissible as per law. According to the petitioner, there was omission with respect to the incorporation of the schedule and in paragraph No. 5 of the affidavit, it is stated that there are some other properties are left by the deceased Haleema Umma, which was omitted to be incorporated in the plaint at the time of institution of the suit. The said statement is not sufficient to hold that the petitioner is entitled to carry out amendment. In paragraph No. 1 of the affidavit, the plaintiff relies on four deeds to establish co-ownership over the property, whereas, on the other hand, there is no such deed vide No. 7849 of 1952 in the name of deceased Haleema Umma. Item No. 2 of the original suit, the plaintiff or any other person do not have co-ownership over the same, and the said

property was settled in the name of this defendant during the life time of Haleema Umma. Item No. 6 in serial No. 2 property is not partible and the plaintiff or any other defendant have no co-ownership over the property. In the said column, 18 ares 20 Sq. Metre is incorporated, purported to be in re-survey No. 19/30. The plaintiff shall put strict proof regarding the co-ownership over the same, the said proposed amendment is to confuse the court during trial. Item Nos. 4 to 6 are not essential for the fair adjudication of the suit. The plaintiff had not produced the title records in respect to the property also. Thus, this petition is liable to be dismissed.

4. The following points are formulated for consideration:-

1. Whether the petitioner is 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 petitioner/ plaintiff filed the petition to amend the plaint. It is stated in the petition that the properties of Smt. Haleema Umma, the mother of plaintiff and defendants, were omitted to be incorporated in the plaint at the time of institution of the suit. The plaintiff has joint right over the said property and

therefore, at the time of partition, those properties also are to be included. Otherwise, the petitioner will be put to irreparable injury and hardships. The respondent filed objection to the petition stating that the proposed amendments are not necessary for the fair adjudication of the suit. According to the respondent, if the amendment is allowed, the very nature of the suit will be altered. On perusal, it is seen that the amendment sought will not change the character of the suit. No prejudice will be caused, if this court is inclined to allow this petition. Therefore, I am inclined to allow this petition. Thus, point No. 1 is found in favour of the petitioner.

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

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

(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 02nd day of August, 2025.)

Sd/-
ANEESA.A,
MUNSIFF

APPENDIX - Nil.

Sd/-
MUNSIFF

// True copy //

Typed by:shafeek
Compd.by

MUNSIFF