

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt. Aneesa.A, Munsiff

Tuesday 19th August,2025/28th Sravana,1947

IA.5/2025 in OS.236/2022

(Filed on 18.06.2025)

Petitioner/Defendant: Bhasuran, aged 64 yrs,
S/o. Bhaskaran,
Malayil Vadakkathil,
Pathiyoor Village,
Keerikkad, Alappuzha.

(By Adv.Vidhu M.Unnithan)

Respondent/Plaintiff: Pavithran, aged 62 yrs,
S/o.Bhaskaran,
Pavithram Veetil
(Malayil Vadakkathil),
Pathiyoor muri,
Pathiyoor Village,
Karthikappally Taluk,
Alappuzha District.

(Adv. K.Sreekumar)

This petition is coming on for final hearing on 19.08.2025 and the court of the same day passed the following.

ORDER

This is an order in a petition filed under Sections 151 and 114 of the Code of Civil Procedure, 1908 to re-open the evidence of plaintiff and to cross examine the plaintiff and witness.

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

The petitioner is the defendant in this case. The suit is filed for partition and permanent prohibitory injunction. This case was included in the special list and posted for hearing on 08.04.2025. The defendant was set ex-parte in the suit on 08.04.2025 on the ground of his non appearance before the court. Thereafter the court had examined the plaintiff and documents had been marked as Exts.A1 to A4. Again on 10.04.2025, a document has been marked as Ext.A5 through PW1. Since the mobile phone of defendant was damaged and its display was destroyed, he could not contact his counsel or enquire about the case matters. The defendant has already filed his written statement on 19.10.2023 before the court. The petitioner has strong contentions in the case and the suit has to be disposed on merit after considering the evidence of the petitioner also. Hence it is highly necessary to cross examine the plaintiff and witness for the fair disposal of the case. Therefore, it is essential to re-open the evidence of the defendant. Otherwise, undue hardships would be caused to the petitioner. Thus, this petition.

3. **The respondent/ plaintiff filed objection contending *inter alia* as follows:-**The petition is not maintainable either in law or on facts. There is no sufficient reasons stated in the affidavit to allow this petition. The defendant is already aware that the case was scheduled for trial on 08.04.2025. Any statements to the contrary are false and fabricated. The defendant or his advocate have deliberately failed to appear before the court. It is false to say that the mobile phone of the defendant got damaged and hence he could not contact his advocate. Now all the details of the case are available in e-Court and his advocate is aware about it. Even after the ex parte, the case was still being tried for evidence. The defendant and his advocate are aware about it. The intention of the defendant is to harass the plaintiff. Evidence should not be re-opened. The plaintiff and the witness should not be allowed to cross examine. Even though there was an opportunity to do so, it was deliberately not done by the petitioner. Therefore, the respondent sought to dismiss the petition with costs.

4. The following points were formulated for consideration:-

1. Whether the petitioner is entitled to re-open the evidence of plaintiff and to allow cross-examine the plaintiff and witness ?
2. What shall be the order as to reliefs and costs?
5. Heard both sides.
6. **Point No.1:-** The petitioner sought for re-opening the evidence of plaintiff. According to the petitioner, on 08.04.2025, due to his non appearance before the court, he was set ex parte. In the affidavit, it is stated that since the mobile phone of defendant was damaged and its display was destroyed, he could not contact his counsel or enquire about the case matters. Thereafter, the court had examined the plaintiff and documents had been marked as Exts.A1 to A5. On the other hand, the learned counsel for the respondent contended that now all the details of the case are available in e-Court and his advocate is aware about it. Any how, it is the duty of the court to order fair trial and best evidence has to be tendered for proper adjudication. Order XVIII and Rule 17 of the Code of Civil Procedure, 1908, empowers the court to recall and examine any witness already examined. Here in this case, the petitioner sought to re-open the

evidence of plaintiff. So, there is no prejudice caused, if this court allows this petition; per contra, it would be an injustice, if this court denies an opportunity to the petitioner to re-open the evidence. Thus, I am inclined to allow this petition. Therefore, 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 evidence of the plaintiff is re-opened and the counsel for the defendant is permitted to recall PW1 and witness for cross-examination. There is no order as to costs.

(Dictated to the confidential assistant, and typed by her, corrected and pronounced by me in open court on 19th day of August, 2025)

Sd/-
ANEESA.A,
MUNSIFF

APPENDIX - Nil.

Sd/-
MUNSIFF

// True copy //

MUNSIFF

Typed by:Shafeek
Compd.by

