

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt. Aneesa.A, Munsiff

Friday the 18th day of July, 2025/27th Ashada,1947

IA.6/2024 in OS.355/2019

(Filed on 25.11.2024)

- Petitioners/Plaintiffs:** 1. Rema Devi.S, aged 50 yrs,
W/o. Late. Suresh Babu,
Perumthottathil,
Pathiyoor Muri,
Keerikkadu P.O,
Pathiyoor Village,
Karthikappally Taluk.
2. Vishnu Narayanan, aged 26 yrs,
S/o. Late. Suresh Babu,
Perumthottathil,
Pathiyoor Muri,
Keerikkadu P.O,
Pathiyoor Village,
Karthikappally Taluk.
3. Varada.S.Nair, aged 21 yrs,
D/o. Late. Suresh Babu,
Perumthottathil,
Pathiyoor Muri,
Keerikkadu P.O,
Pathiyoor Village,
Karthikappally Taluk.

(By Adv. E.Stephen)

Respondent/2nd Defendant:

Beena Hari Nair, aged 51 yrs,
D/o. Savithri Amma,
Anugraham,
House No. 253, Plot No. 47,
KHESE Park,
Lohgaon, Pune-32.

(By Adv.M.M.Warrier)

This petition is coming on for hearing on 18.07.2025 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 petitioner is the 1st plaintiff in the suit. Plaintiff Nos. 2 and 3 are the children of the petitioner. The petitioner filed this petition for and on behalf of petitioner Nos. 2 and 3 also. The 1st defendant, who is no more, was a spinster sister of the petitioner's husband's mother's sister and 2nd defendant is the direct sister of the petitioner's deceased husband, Suresh Babu. The plaint schedule property and the family house therein have been subjected to a number of litigations, viz;

O.S.No. 281/2017, O.S.No. 233/2018 and O.S.No. 260/2018, all of which are tried jointly along with the above numbered suit. By the death of the 1st defendant, the entire plaint schedule properties would devolve upon the petitioners. In the above suit, there happened some mistakes and omissions, which could only be noticed when the petitioners were preparing to tender evidence. In order to mitigate those formal defects, the petitioner had filed an application to withdraw the above number suit with liberty to seek the appropriate remedies in the above numbered suit, which is the main case. So, it has become imperative that an amendment has to be carried out in the above number suit in order to incorporate the matters sought to be amended in the accompanying petition, for which the petitioners had already filed an amendment petition as I.A.No. 4/2024 and that was allowed and amended plaint was produced. In the amendment petition, the petitioners had sought an additional relief for a decree of injunction, but, the petitioners failed to incorporate its court fee in that petition. That is not due to any wilful latches or negligence from the part of the petitioners. Hence it has become imperative that yet another amendment is needed to incorporate the same and the

amendment sought would not change the nature of the suit nor it would cause any prejudice to the defendant. Such an omission that crept up into the plaint was not due to any inadvertence or latches from the part of the petitioner or from the part of his counsel, but those crept up despite of the due diligence exercised from their part. It is to be noticed that such a discrepancy that has crept up into the plaint would prove fatal to the rights and interests of the petitioners, if not corrected and hence, this court may be pleased to allow the petitioner to rectify the mistake, by amending court fee portion of the plaint, the refusal of which cause irreparable losses and injuries to the petitioner. In the court fee portion, the following is to be added additionally, as “For a decree of permanent prohibitory injunction, the suit is valued for Rs. 500/- and a court fee of Rs. 20/- is paid as per section 27 (C) of the Kerala Court Fee and Suit Valuation Act. Rs. 100/- towards the Kerala Legal Benefit Fund under sub section (2) of Section 76 of the Kerala Court Fee and Suit Valuation Act.” Thus, this petition.

3. The respondent/ 2nd defendant filed objection contending inter alia as follows:- The petition is not maintainable either in law or

on facts. All facts except those which are admitted hereunder specifically are false and hence denied. The plaintiffs have filed a series of unnecessary suits against the 2nd defendant only to harass the 2nd defendant and with malafide intention. The suit and the right which is falsely claimed against the properties by the plaintiffs are intentional for prolonging the suit and for the said purpose, this amendment petition is also filed. The suit was once amended by the plaintiff and now again seeking an amendment which would have made when the earlier petition for amendment was filed. Amendment of the plaint in piece piece manner without any reason may not be allowed. Prejudice will be caused to the 2nd plaintiff due to the purposeful negligence from the part of the plaintiffs. The plaintiffs are purposefully protracting the suit by filing petitions and petitions with a definite aim of causing difficulty to the 2nd defendant who is now staying at Pune. The averment that the plaint schedule property is devolved upon the plaintiffs is not correct. The averment that the plaintiff had filed an application to withdraw the suit O.S.No. 233/2018 is not correct and the said suit was not so far withdrawn. The amendment now sought for by the plaintiff could have and must

be made when the plaintiff filed I.A.No. 4/2024. So, it can be seen that it is not an error from the part of the plaintiffs, but it is a wilful negligence and latches from their part. Certainly, the 2nd defendant will cause prejudice due to such amendment made by the plaintiff in the suit which they could have omitted if due diligence was made when the plaintiff filed I.A.No. 6/2024. This fact is to be considered along with the act of the plaintiff in filing two suits such as O.S.No. 281/17 and O.S.No. 233/2018 for the same reliefs and the earlier amendment in this suit was also for the same purpose and prayer sought in the earlier suits. Multiple suits and petitions are filed by the plaintiffs thereby wasting the valuable time of this court and causing monetary loss as well as mental and physical difficulty to the 2nd defendant and the 2nd defendant will be caused irreparable loss and hardships. Since this petition is not filed in a bona fide manner through suppressing material facts, the petition may be dismissed. Hence the respondent sought to dismiss the petition with costs.

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 sought to amend the plaint on the ground that in the above suit, there happened to be some mistakes and omissions, which could only be noticed when the petitioners were preparing to tender evidence. So, it has become imperative that an amendment has to be carried out in the above number suit in order to incorporate the matters sought to be amended in the accompanying petition, for which the petitioners had already filed an amendment petition as I.A.No. 4/2024 and that was allowed and amended plaint was produced. In the amendment petition, the petitioners had sought an additional relief for a decree of injunction, but, the petitioners failed to incorporate its court fee in that petition. According to the petitioner, the amendments sought would not change the basic nature of the suit nor it would cause any prejudice to the defendant. The respondent argued that in order to prolong the matter, the petitioner filed the petition. It is to be noted that there is no prejudice caused, if this petition is allowed. Since the proposed amendment is trivial in nature, I am of the view that there is no

prejudice caused to the respondent and the nature of the suit would not be changed. Therefore, I am inclined to allow this petition. Thus the 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 18th day of July, 2025.)

Sd/-
ANEESA.A,
MUNSIFF

APPENDIX - Nil.

Sd/-
MUNSIFF

// True copy //

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Typed by:Shafeek
Compd.by