

**IN THE COURT OF THE MUNSIF, KOCHI**

**Present :-**

**Sri. Anirudhan T K, Additional Munsiff**

Wednesday the 17<sup>th</sup> day of July , 2024/26<sup>th</sup> Ashadam, 1946

**IA No. 20/2024 in O.S. No. 1/2020**

**Petitioner/2nd Plaintiffs:-**

Rose Mary, aged 51 years, W/o. Bonyface, Palliparambil House,  
Schoolmuttam, Ochamthuruthu PO, Ernakulam District

By Advs. K V Vinod & Anand Shankar

**Respondent/Defendant:-**

George Roy, aged 50 years, S/o.Antony, Maliyekkal House, Valappu  
Market (West), O K Balakrishnan Road, Ochamthuruthu PO,  
Ernakulam District

By Adv. Sham Joseph

This suit come up for hearing on 12.07.2024 and the court on the  
17.07.2024 passed the following:-

**ORDER**

The petition is for amendment.

2. **Petitioner's contentions to summarize, is as follows:**The  
petitioner is the 2<sup>nd</sup> plaintiff in the above case. The 1<sup>st</sup> plaintiff, Antony, the  
father of the petitioner died on 08.12.2021 therefore as a legal heir and as  
per the Will executed by father, petitioner became of the owner of the plaint  
schedule property and petitioner was impleaded in the case as 2<sup>nd</sup> plaintiff.  
At present the suit is filed for permanent prohibitory injunction and

mandatory injunction. But while this case was pending the defendant herein, the brother of petitioner, filed O.S. 311/2022 seeking partition of the property and joint trial was allowed in that case with this case. In the suit for partition the relief sought by the plaintiff is that the plaint schedule property is lying in joint possession and ownership therefore, the same is to be partitioned. Thus, defendant has denied absolute ownership of petitioner over the plaint schedule property. But, the plaint schedule property is exclusively owned and possessed by the petitioner as per Will bearing reg. no.49/2014 of SRO, Njarakkal. Therefore, it is highly necessary to declare the ownership and possession of plaint schedule property in petitioners favour, for which an amendment to that effect is necessary, hence the petition is filed.

3. The respondent/defendant filed objection stating that the petition is lacking bonafide and against the law with an ulterior motive to protract the matter. The above suit is for permanent prohibitory injunction but plaintiff seeking relief of declaration through the said amendment, thus raising inconsistent case and thereby changing the fundamental character of the suit. The petition is highly belated since, the Will came into fore on the death of the testator on 08.12.2021. In O.S.311/2022 petitioner has raised all the contentions as raised in the amendment petitions, therefore, the petition may

be dismissed.

4. Heard both sides.

5. It is seen that the amendment sought has a consequential amendment after filing of O.S.311/2022. The respondent is the plaintiff in that suit and has raised dispute regarding the absolute ownership of the petitioner over the plaint schedule property. Therefore, the contention of the petitioner, that amendment is necessary is tenable and no prejudice would be caused to the respondent by allowing this petition. If the amendment is not allowed, it may cause multiplicity of proceedings and by allowing the amendment no right is going to be created in favour of the petitioner. Hence, the petition can be allowed in the interest of justice.

**In the result, petition is allowed. Carry out the amendment within 3 days from the date of this order.**

*(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 17<sup>th</sup> day of July, 2024)*

Sd/-

**Anirudhan T K  
Additional Munsiff**

**APPENDIX : - Nil**

Id/-

**Additional Munsiff**

**//True Copy//**

**Additional Munsiff**

**ORDER**

**IA No. 20/2024**

**O.S. No. 1/2020**

**Dated : 17.07.2024**