

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Monday the 17th day of November, 2025/26th Karthika, 1947

I.A. No. 11/2025 in O.S. No. 56/2023

Petitioners/Defendants:--

- 1 N Arafath, S/o.K S Nazar, aged 40 years, Flash House, Pattukulangara Desom, Thuravoor PO, Alapppy District
- 2 Amarath F N, S/o. K S Nazar, aged 40 years, Flash House, Pattukulangara Desom, Thuravoor PO, Alapppy District

By Adv. K A Shaji Mathew & P Suresh

Respondent/Plaintiff :-

Francis Manjooran, S/o.Devassy, aged 50 years, Manjooran House, Subhash Nagar, Chalakudy, Pin-680307.

By Advs. Lilly Antony & Jolly John

This petition come up for hearing before me on 15.11.2025 and the court on 17.11.2025 passed the following:-

ORDER

The petition filed to amend the written statement.

2. The averments in the petitions in brief are as follows:- The petitioners are the defendants in the above suit. The above suit was filed for recovery of possession of the plaint schedule property and to pay damages

for use and occupation etc. The plaintiff has admitted in the plaint that these defendants are liable to pay Rs.20,000/-(Rupees Twenty thousand only) per month for use and occupation of the building. He has shown the valuation for plaint schedule property as Rs.2,00,000/-(Rupees Two Lakhs only) ie, 10 times the rental value of the property(20,000 x 10) which is not correct. The valuation for a suit related to a building in Kerala is based on its annual rental value, as this value is typically ten times the annual rental value. The calculation involves multiplying the annual rental value by a factor of ten to determine the suit's market value for court fee and jurisdiction purposes. There is no statutory rule to consider the monthly rental value to determine the court fee and jurisdiction in the case of a building. But the plaintiff herein has calculated the monthly rent of Rs.20,000/- as the rental value and its multiplication by 10 is shown as court fee for valuation purpose and thus the jurisdiction is wrongly determined. The actual valuation to be computed is Rs.24,00,000/-(20,000 x 12x10 ie,annual rental value x 10) and the court fee is to be paid thereon. Therefore, the suit is not properly instituted. This court has no jurisdiction to entertain the suit.

3. While drafting the written statement due to an oversight the said

fact was left to be stated. There is no willful laches or negligence on the part of these petitioners/defendants or our counsel for the said mistake happened while preparing the written statement. As this is a serious question of law regarding jurisdiction of this court in the above suit it is highly necessary to amend the written statement by adding the pleading on the mistake in the valuation of the court fee and lack of jurisdiction of this court. The suit is bad for proper and sufficient court fee and thus for proper institution of the suit. Hence it is highly necessary to amend the written statement by adding the words in page 4 after last sentence in para 9 of the written statement that “The valuation of the plaint schedule property for the purpose of court fee and jurisdiction shown is not correct and this court has no jurisdiction to entertain the above suit and hence the suit is to be dismissed on that ground its”. Otherwise, irreparable injury, loss and hardship may be caused to these petitioners which cannot be compensated in terms of money. Hence the petition.

4. The respondent filed counter contending that the above suit is filed with a view to delay the final disposal of this suit. This is another mode of delaying tactics adopted by the petitioners/defendants who are rank trespassers. The defendants are not at all vigilant in this case. In this

case, the defendants filed IA.2/2024 to appoint an advocate commissioner for local inspection. This court allowed that application on 25.11.2024. But it took 10 months to file the commission report. Defendants did not take any effort to get the report filed at the earliest. So far defendants filed objections to the commission report. This is the conduct of the defendants in this suit. The above suit is for recovery of possession of the plaint schedule property from the defendants on the strength of his title and also for recovery of damages for use and occupation @ Rs.20,000/- per month. The suit was filed on 02.03.2023. The defendants filed a written statement on 19.09.2023. On 23.01.2024, this court raised issues and the respondent remitted the balance court fee and legal benefit funds fees within 15 days. Even though in the written statement, defendants raised a contention that the valuation shown is not correct, this court did not raise any issue in that aspect because this court was convinced that proper valuation is shown. Defendants did not file any application to frame additional issues regarding valuation. The defendants then filed IA.2/2024 (commission application) on 26.02.2024. The respondent filed a counter on 25.03.2024. The defendants dragged the matter and at last this court passed an order on that application on 25.11.2024. Now the suit is ripe for trial. According to

the petitioners/defendants, the actual valuation to be computed is Rs.24,00,000/-(20,000 x 12 x 10 i.e., annual rental value x 10) and the court fee is to be paid thereon(para 4 of the affidavit). The statement is wrong. The petitioner has shown the correct valuation and paid the correct court fees. The relevant provision of the Kerala Court Fees and Suits and Valuation Act applicable in this case is S.7(3). The petitioners/defendants have no case that the rental value is more than Rs.20,000/-. Hence the valuation for jurisdiction and court fee shown in the plaint are correct. There are no mistakes. There is no bona fides in filing this application. Hence the petition may be dismissed with exemplary costs.

5. The points arise for consideration:-

- (i)Whether the petition can be allowed?
- (ii)Reliefs and costs?

6. Heard both sides. Perused petition, objection and case records.

7. **Point No.(i) and (ii):-** The present petition is filed by the petitioner seeking amendment of the written statement to incorporate an additional plea regarding the alleged defect in valuation of the plaint and the consequent lack of jurisdiction of this Court. The petitioners contend that the plaintiff has incorrectly valued the suit property by taking the

monthly rent of ₹20,000 as the basis, instead of computing the annual rental value and multiplying the same by ten. According to them, the correct valuation ought to be ₹24,00,000, requiring payment of higher court fee, and hence the suit is not properly instituted. It is further submitted that the omission to raise this contention in the written statement occurred due to oversight, without any willful negligence. On the other hand the respondent contended that the suit is one for recovery of possession and damages for use and occupation, properly valued under Section 7(3) of the Kerala Court Fees and Suits Valuation Act, and that the court fee has already been duly remitted. It is further stated that this Court, while framing issues on 23.01.2024, found the valuation proper and therefore did not raise any issue on that aspect. The conduct of the defendants in delaying the commission proceedings is also highlighted. This court considered the rival submissions made by the parties. The amendment sought pertains to a legal plea regarding valuation and jurisdiction. The proposed amendment does not alter the nature or character of the suit. The trial has not yet commenced. No prejudice will be caused to the respondent as it because he will get a fair opportunity to defend the same. In **Rajkumar Gurawara (Dead) through LRs v M/S S.K**

Sarwagi and Co (P) Ltd (AIR 2008 SC 2303, 2008 KHC 977), the Hon'ble Supreme Court held that *“6... To put it clear, O.6 R.17 CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pretrial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso.”*

8. The above dictum is squarely applicable to the present case on hand. On considering the above, this court is of the view that the petition is liable to be allowed. Accordingly, point No.(i) and (ii) are found in favour of the petitioner.

In the result, the petition is allowed as follows:

- a) The defendant/petitioner is permitted to amend the written statement. The amendment shall be carried out within 7 days from the date of this order.**
- b) No order as to costs.**

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 17th day of November 2025).

Sd/-
Simi P Siju
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

O R D E R

I.A. No.11/2025

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Dated : 25.11.2024