

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Monday the 19th day of January, 2026/ 29th Pousha, 1947

IA No. 9/2024 in OS. No. 109/2022

Applicants/Defendants:

1. Alice Xavier, W/o. Late Xavier @ Ponnal, Attipetty House, Paul Theruviparambil Road, Kumbalangi P O, Pin-682007.
2. Mithun Xavier, S/o. Late Xavier @ Ponnal, Attipetty House, Paul Theruviparambil Road, Kumbalangi, Pin-682007.
3. Nithin Xavier, S/o.Late Xavier @ Ponnal, Attipetty House, Paul Theruviparambil Road, Kumbalangi, Pin-682 007.

**By Advs. M P Ramnath, Bepin Paul, Sandhya S,
Shalu Varghese, Uma R Kamath,P Rajesh Kottakkal,
Deepak S, Antony Tharian and K S Akshay Mohan**

Respondents/ Plaintiffs:

Joseph Mathew, S/o. Late Joseph & Vincencia, Vallanat House,
Kumbalangi P O, Kumbalangi Village, Kochi Taluk.

By Advs. K J Vincent & Joseph Edakkatt.

This petition come up for hearing before me on 19.01.2026 and
the court on the same day passed the following:-

O R D E R

The petition is filed for amendment/correction of the written
statement.

2. Petitioner's contentions to summarize, is as

follows:- The petitioner is the 1st defendant in the above suit. It is noticed that certain inadvertent typographical mistakes have occurred in the written statement filed by them. That the mistakes are inadvertent once are clear by the very reading of the same and the corrections thereof sought to be made. In order that a possibly mistake free written statement is there on record, the mistakes that had occurred have to be corrected and appropriately the written statement to be amended. No prejudice whatsoever will be caused by the same. Hence the petition.

3. The respondent/plaintiff filed counter claim contending that the plaintiff is a resident of a housing colony at Illickal, Kumbalangi. His mother Vincencia Vallanat had obtained ownership and possession of one 1 acre and 66 cents of land in Sy.No.1237/1 of Kumbalangi village which she developed into a housing colony leaving two pathways into it, one on northern side and another on the southern side. In this suit the dispute is with regard to attempt to use the southern pathway by petitioners herein which is devolved on plaintiff and his siblings as legal heirs. Vincentia died intestate and her husband predeceased her and her children survived her. Plaintiff is her

eldest son. She alienated most of her properties during her life time and she retained the ownership of the properties unsold which also included the pathways so that any dispute with regard to the pathway devolved on her legal heirs including the plaintiff is subject to their authorization. Any right to use the pathways by the buyers cannot be in violation of rights in the title deed. Such rights will ipso facto void unless the legal heirs authorize it. When the document shows the pathway as the boundary of its plot, no one can authorize the use of the pathway except the legal heirs of Vincentia.

4. Smt.Vincentia had not authorized use of the northern and southern pathway to Annakutty Peter as per title deed No.3715/97 or 3716/97 of SRO, Kochi for the simple reason that the plots had public road on the west with direct access to it. She constructed 4 shop rooms on the western side of her property covered by document No.3715/97 and alienated the shops with land thereon leaving only a wicket gate on the north-western corner of the plot. Annakutty Peter had shown the access to the balance property through the southern pathway where she had no access at all as per her title deed when she alienated the balance property as per title deed No.1095/2005 of SRO, Kochi. By the proposed amendment what the petitioner is attempting

to substitute Annakutty's name instead of Vincentia. The suggested alteration in para 8 has the effect providing easement of grant to Smt.Annakutty in the southern pathway which is an attempt to mislead the court. Besides the contentions in the written statement amounts to admission and current attempt would reverse the admission. Hence the petitioners may be directed to produce their prior title deed No.3715/97 and title deed No.1095/2005 of SRO,Kochi so that court can have a correct view. Hence amendment in para 8 may be disallowed. Grammatical mistakes in para 3 and para 16 may be allowed to be rectified.

. 5. The following point arise for consideration:-

- a. Whether the petition is allowable?
- b. Relief and Cost ?

6. Heard both sides.

7. **Point No.(i) and (ii):** The specific case of the petitioner is that certain inadvertent typographical mistakes have crept into the written statement filed earlier. It is submitted that the mistakes are apparent on the face of the record and that the proposed corrections are only intended to bring clarity and avoid any possible confusion. It is further contended that no prejudice whatsoever will be caused to the

respondent/plaintiff if the amendment is allowed. On the other hand respondent contended that the proposed amendment, particularly in paragraph 8 of the written statement, would amount to substituting material facts, reversing alleged admissions, and creating an easementary right in favour of the petitioner, which according to the respondent is misleading and impermissible. This court considered the rival submissions made by the parties across the bar. The proposed amendments are sought at an early stage of the proceedings and are stated to be intended to correct inadvertent mistakes and to place the defence properly on record. The scope of amendment under Order VI Rule 17 of the Code of Civil Procedure is to enable the Court to determine the real questions in controversy between the parties. Mere apprehension of the respondent that the amendment may weaken his case cannot be a ground to reject the amendment, particularly when no irreparable prejudice is shown to be caused. Whether the contentions raised by the petitioner in the amended written statement are true, legally sustainable, or amount to admission or otherwise, are matters to be decided during trial after taking evidence. At this stage, this Court is not inclined to go into the merits of the rival claims. Also it is pertinent to note the fact that the trial has not been commenced so

far. In such circumstances, the apprehension of the respondents are totally immaterial as they will get a fair chance to file additional written statement as well as an opportunity to cross examine the party. Hence, this Court is of the view that the amendment sought by the petitioner deserves to be allowed.

In the result, the petition is allowed without costs and carryout amendment within 7 days.

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 14th day of January 2026)

APPENDIX : Nil

//True Copy//

**Sd/-
Simi P Siju
Additional Munsiff**

**Id/-
Additional Munsiff**

Additional Munsiff

SA
compd by: AJ

O R D E R
I.A. No.09/2024 in
O.S. No.109/2022
Dated :19.01.2026