

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Thursday the 1st day of January, 2026/ 11th Pausa, 1947

IA No. 1/2023 in OS. No. 297/2012

Petitioner/Plaintiff:-

Alice Xavier, W/o.Late Xavier @ Ponnann, Attipetty House, Paul Theruviparambil Road, Kumbalanghi P.O., Pin – 682 007.

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

Respondents/ Defendant:-

- 1 John, S/o.Lawrence, Panakkal House, Kumbalanghi PO, Kumbalanghi Village, Kochi – 682 007.
- 2 T B Joseph, S/o.Bappu, Thathamangalath, Opposite Illikal Temple, Kumbalanghi, Kochi – 682 007.
- 3 Jenin, S/o.Job, Nangeril House, Opposite Illikal Temple, Kumbalanghi, Kochi – 682 007.
- 4 Varghese N M @ Satheesan, S/o.Manuel, Nikarthil House, Near Supplyco Market, Illickal Junction, Opposite Illikal Temple, Kumbalanghi, Kochi – 682 007.

By Advs. K J Vincent & Joseph Edakkat

This petition come up for hearing before me on 19.12.2025 and the court on 01.01.2026 passed the following:-

ORDER

The petition is for amending the plaint.

2. Petitioner's contentions to summarize, is as follows:- The petitioner is the plaintiff in the above suit. The above suit filed for

permanent prohibitory injunction against the defendant. In the written statement filed by the defendants it is claimed that the plaint B schedule pathway is legally still in the name of former owner(Vincentia) and that plaintiff has no right of entry into the pathway. On a detailed study of the title records, it is very clear that the plaintiff her two sons are in fact the owners of the pathway and the defendants only have a mere user there through. These facts and the details of the derivation of title to the plaint B schedule pathway have not been as such spoken to in the plaint. The factum of such omission and need to specify the same in the pleadings were made known to the plaintiff only recently when the plaintiff in this case as well as in other related suits touching upon these properties and pathway rights pending before this court as OS.300/2020(plaintiff herein and her sons are defendants) and OS.352/2012 engaged a new lawyer on the earlier counsel relinquishing their vakkalaths. For the due and proper adjudication and grant of relief the said omitted facts detailing the ownership of the pathway with the plaintiff and her two sons, has to be incorporated in the plaint. This title derivation and ownership of the pathway etc has been stated in the written statement filed by her along with her sons in OS.300/2020 before this court in which the defendants 2, 3 and 4 herein as well as the brother of the 4th defendant herein are the plaintiffs. Hence the petition.

3. The respondent filed counter stating that the subject matter of the suit is 1/5 undivided share of plaintiffs devolved upon her intestate succession of a property purchased by her husband as per sale deed No.3050/2006 of SRO, Kochi. The plaintiff purchased this property wherein manipulations are made to the boundaries which has been deliberately brought in. It was the subsequent developments that caused the urge to create a right to user of the pathway. Smt.Annakkutty Peter constructed a commercial complex on the land covered by the documents of title bearing No.3716/97 and four shops on the other property. After construction of the said buildings the direct access were badly affected and she sought to create rights on the pathway where she had no right of access. She and her subsequent buyers sought to achieve this by manipulating several sale deeds granting easements to places and properties where no right of access as may be seen in sale deed of the original title holder Vincentia effected to one Annakkutty Peter bearing deed No.3716/97 of SRO, Kochi. By this amendment petition the petitioner wants to incorporate more subject matter to the present suit so as to change the nature and character of the suit. If the amendment sought for is allowed much prejudice and hardships will be caused to the respondent who have already obtained a favourable temporary injunction order from this court in

counter claim filed by respondents as per the common order in IA.2310/12 and 2748/12 dated 02.02.2013 and upheld in CMA.9 & 11/13 dated 02.05.2013 by the Hon'ble Sub Court, Kochi. Hence the petition may be dismissed.

4. **The following point arise for consideration:-**

(i) Whether the petition is allowable?

(ii) Relief and Cost ?

5. Heard both sides.

6. **Point No.(i) and (ii):-** The petitioner filed the present application seeking certain amendment or addition in the plaint. The petitioner contended that on a detailed study of title records it is clear that the plaintiff and her 2 sons are in fact the owners of the pathway and the respondents only have the right to use the said pathway. On the above stated reasons the petitioner filed the applications seeking amendment or addition in the plaint. The reason for the delay in filing the present application is also stated in the amendment application. On the other hand the respondent mainly contended that the attempt of the petitioner is to incorporate more subject matter to the present suit so as to change the nature and character of the suit. The respondent also contended that the plaintiff and her 2 sons have no right in

the pathway the attempt of the plaintiff is a manipulated and calculated one. This court considered the rival submissions made by the parties across the bar. At the outset it is stated that the suit is posted for pre-trial steps and the same is not ripened for trial. According to the petitioner, the plaintiff and her 2 sons are owners of the pathway and the respondents are only mere users of the said pathway. The proposed amendment in no way change the nature of character of the suit. Establishment of ownership rights of the petitioners over the pathway is a matter to be adjudicated at the time of trial. Moreover, the proposed amendment is not beyond the scope of the relief sought in the present suit. **In Rajkumar Gurawara (Dead) through LRs v M/S S.K Sarwagi and Co (P) Ltd (AIR 2008 SC 2303, 2008 (2) KHC 977)**, the Hon'ble Supreme Court held that *"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"*. On an over all consideration of the facts and circumstances of the present case and also upon considering the dictum laid down by the Hon'ble Supreme Court,

as referred above, this court is of the view that the application seeking is only to be allowed. Accordingly Point No.(i) and (ii) are found in favour of the petitioner.

In the result, the petition is allowed without costs and carryout amendment within 5 days.

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 1st day of January 2026)

Sd/-
Simi P Siju
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

O R D E R

I.A. No.1/2023 in

O.S. No.297/2012

Dated : 01.01.2026