

IN THE COURT OF THE MUNSIF, KOCHI

Present:-

Sri. Nishad Ibrahim., Principal Munsiff

Tuesday, the 06th day of January, 2026/ 16th Pousha, 1947.

I.A No. 26/2025 in O.S No. 155/2013 & I.A No. 27/2025 in O.S No. 155/2013

I.A No. 26/2025 in O.S No. 155/2013

Petitioners/Plaintiffs:-

1. Shiny Pious, D/o. Joseph, Kollamparambil House, PHC Road, Near Health Centre, Cheranelloor.
2. Blessy Femila, D/o. Joseph, Veliyath House, Near Priyadarshini Bus Stop, Kumbalangi.
3. Beela Tessa, D/o. Joseph, Valiyaparambu Road, Mulavukad, P.O. Mulavukad.
4. Lovely, D/o. Joseph, Kochery House, Kumbalangi South, Kumbalangi.

By Advs. Sajan Antony N., Leema Rosy D. & Sandra Robin

Respondents/Defendants:-

1. Shiya, D/o. Joshi, Vallomparambil House, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk.
2. Shimi, D/o. Joshi, Vallomparambil House, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk.

By Adv. O.J. Alfred.

I.A No. 27/2025 in O.S No. 155/2013

Petitioners/Plaintiffs:-

1. Shiny Pious, D/o. Joseph, Kollamparambil House, PHC Road, Near Health Centre, Cheranelloor.
2. Blessy Femila, D/o. Joseph, Veliyath House, Near Priyadarshini Bus Stop, Kumbalangi.
3. Beela Tessa, D/o. Joseph, Valiyaparambu Road, Mulavukad, P.O. Mulavukad.
4. Lovely, D/o. Joseph, Kochery House, Kumbalangi South, Kumbalangi.

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Respondents/Defendants:-

1. Shiya, D/o. Joshi, Vallomparambil House, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk.
2. Shimi, D/o. Joshi, Vallomparambil House, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk.

By Adv. O.J. Alfred.

These Petitions having been heard on 19.12.2025 and the Court on 06.01.2026, passed the following:-

C O M M O N O R D E R

IA 26/2025 :

Petition filed by the plaintiffs under Order VI Rule 17 and S. 151 of CPC for amending the plaint.

2. **The petition summary :-** a) The petitioner submits that the 1st plaintiff was his father and the 2nd plaintiff his mother, both of whom have since expired. The 1st plaintiff was the sole plaintiff when the suit was instituted, seeking fixation of the southern boundary of the plaint A schedule property, a decree for permanent prohibitory injunction restraining the defendants from closing the plaint B schedule way and from trespassing into the plaint A schedule property, along with consequential reliefs. At the time of institution, the sole plaintiff was aged 77 years and was suffering from severe chronic ailments, requiring repeated hospitalisation. He died on 22.02.2022, and subsequently his wife also passed away. After the demise of the 1st plaintiff, his legal heirs were impleaded as additional plaintiffs.

b) The defendants filed a written statement along with counterclaim, contending that the plaintiffs are bound to surrender the counterclaim B schedule property, claiming title and seeking vacant possession. Since the reliefs in the suit were based on the title of the plaintiff over the plaint A schedule property, the petitioner's father informed him that, upon consultation with his counsel regarding the counterclaim, he was advised to amend the plaint to incorporate an additional relief seeking declaration of title over the plaint A schedule property. He had instructed his counsel accordingly and informed the family that such an application would be filed.

c) On 25.01.2022, the defendants filed I.A. No.9/2022 to advance the hearing along with other applications. They also filed I.A. No.12/2022 seeking amendment of the written statement and incorporation of additional reliefs in the counterclaim, which was allowed. The plaintiffs filed a written statement to the amended counterclaim. However, permitting amendment of the written statement and counterclaim after settlement of issues is irregular. Since the limitation period for filing a review petition had expired, the petitioners instructed their counsel to approach the Hon'ble High Court by filing an O.P. (Civil).

d) While preparing the petitions challenging the order in I.A. No.12/2022, it was noticed that no amendment had been carried out in the plaint to incorporate the relief of declaration of title. On verification of the case records, it was found that no amendment application had been filed despite clear instructions from the 1st plaintiff. Hence, the present petition is filed seeking amendment of the plaint to include the additional relief of declaration of title of the plaintiffs over the plaint A schedule property. If the amendment is not allowed, the petitioners will suffer irreparable loss and hardship, which cannot be compensated at a later stage.

3. **The respondents/defendants filed counter:** a) The petition is not maintainable either in fact or in law and has been filed solely to prolong the proceedings. From the institution of the suit, the predecessor of the present plaintiffs deliberately delayed the matter, knowing that the outcome would be adverse. The consistent intention of the plaintiffs and their predecessor have been to harass the respondents and unlawfully enjoy the respondent's property for as long as possible.

b) Due to such delay, the respondents approached the Hon'ble High Court by filing an O.P. seeking expeditious disposal. The High Court directed disposal within three months, pursuant to which this Court relisted and disposed of the case. The claim that the predecessor had discussed the written statement with his counsel and was advised in 2013 to amend the plaint to seek declaration of title is false. Had such advice been given, no explanation exists for the failure to file an amendment application then. Having omitted to do so, the present plaintiffs cannot seek amendment now. As legal heirs, they can only continue the proceedings as initiated and cannot raise new claims or seek additional reliefs. They possess no rights superior to those of their predecessor. Accordingly, the petition is not maintainable and is liable to be dismissed.

IA 27/2025 :

4. Petition filed by the plaintiffs u/s. 151 of CPC to remove the case from the list, with more or less the same allegations in IA 26/2025.

5. **Respondent's counter** : a) The petition is not maintainable either in fact or in law and has been filed solely to prolong the proceedings. From the inception of the suit, the predecessor of the present plaintiffs deliberately delayed the matter, being aware that the outcome would be adverse. The consistent intention of the plaintiffs and their predecessor have been to harass the respondents and unlawfully enjoy their property. The petitioners had earlier filed an identical application as I.A. No.18/2025 seeking removal of the case from the list, which was dismissed by this Court on 31.10.2025. Hence, the present petition is not maintainable and is liable to be dismissed.

b) Since the predecessor of the petitioners was indefinitely delaying the suit, the respondents approached the Hon'ble High Court by filing an O.P. for early disposal, and the High Court directed disposal within three months. Pursuant thereto, this Court relisted the case. During that period, the original plaintiff died, and the present plaintiffs failed to get themselves impleaded despite legal advice. As a counterclaim had been filed, the respondents were compelled to

implead them as additional defendants. The plaintiffs allowed the counterclaim to be decreed and the suit dismissed by avoiding notice. Thereafter, they got themselves impleaded, changed vakalath, and have since been prolonging the proceedings by filing repeated applications. Removal of the suit from the list would cause grave hardship and loss to the respondents and should not be permitted.

6. **The following points arise for consideration:-**

- (i) Whether the petitions are allowable ?
- (ii) Reliefs and costs?

7. Heard both sides.

8. **Point Nos. (i) and (ii) :-** IA 26/2025 is filed by the plaintiffs to amend the plaint and to insert the relief of declaration of their title over the plaint A schedule property and for consequential amendment in the valuation portion. According to the petitioners, of late, it has come to their knowledge that no amendment applications were filed to incorporate the relief of declaration of the title of the 1st plaintiff in the plaint A schedule property as advised by him which has necessitated the present petition.

9. The respondents/defendants filed counter stating that the above petition has been filed only to drag the proceedings. According to them, since the predecessor of the present plaintiffs did not prefer to file such a

petition, the present plaintiffs do not have the right to file such a petition. According to them, since the present plaintiffs are the legal heirs of the original plaintiff, they cannot raise any new claim other than the claim raised by their predecessor.

10. It may be noted that the suit was instituted inter alia for fixation of the southern boundary of the plaint A schedule property. It was claimed in the 1st paragraph in the plaint that the plaintiff is the owner in possession and enjoyment of 40 cents of property which is described as the plaint A schedule property and that the plaintiff is in absolute possession and enjoyment of the same.

11. In view of the above pleadings, the objection raised by the respondents cannot be sustained and this Court is of the view that the amendment sought for is necessary for determining the real questions in controversy between the parties. It is pertinent to note that the present petition for amendment is filed before the commencement of the trial. Hence this Court is of the view that IA 26/2025 which is the petition seeking amendment is liable to be allowed on payment of cost to compensate the inconvenience caused to the respondents. Consequently, the matter is liable to be removed from the list and IA 27/2025 is also liable to be allowed.

In the result,

- i. IA 26/2025 is allowed on payment of cost of Rs.2,000/-
(Rupees Two Thousand only) to the respondents.
- ii. IA 27/2025 is allowed.

Dictated to the Confidential Assistant, transcribed and typed by her,
corrected and pronounced by me in Open Court on this the 6th day of
January, 2026.

**Sd/-
Nishad Ibrahim
Principal Munsiff**

APPENDIX:-Nil

**Id/-
Principal Munsiff**

///True Copy///

Principal Munsiff

**Common Order in
I.A No. 26/2025 &
I.A No. 27/2025 in
O.S No. 155/2013
Dated: 06.01.2026**