

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Civil Judge (Junior Division)
Wednesday, the 8th day of January, 2025/18th Pausha, 1946.

I.A No.17/2024 in OS.74/2017

Petitioners/Defendants:-

1. Vicar, St. Marys Catholic Church, Perumbavoor.
2. St. Marys Catholic Church, Perumbavoor. Represented by its present Trustee (Kaikkaran), Devassy, S/o. Paulose, Puthussery House, Pooppany Road, Karattupally Kara, perumbavoor Village. (Addl. 2nd Defendant)
3. Varghese, S/o. Porinchu, Mekkattukulam House, Kanjirakkadu Kara, Perumbavoor Village. (Addl. 3rd Defendant)
4. Peter, S/o. Devassy, Palluppetta House, Kanjirakkadu Kara, Perumbavoor Village. (Addl. 4th Defendant)

By Adv. P T Geevarghese

Respondents/Plaintiffs:-

1. Sebastian, S/o. Kurian, Koikkara House, BOC Road, Perumbavoor Kara, Perumbavoor Village. (1st Plaintiff)
2. Thomas P V, S/o. P T Varkey, Panakkal House, Mahathma Nagar, KSRTC Road, Perumbavoor Kara, Perumbavoor Village. (2nd Plaintiff)
3. Joshy Varghese, S/o. Varghese, Thelakkadan House, Malamury Bhagam, Pulluvazhy Kara, Rayamangalam Village (3rd Plaintiff)

R1, R2 - By Adv. M K Jayapalan

R3 - Gimmy P Antony

This petition having been finally heard before me on 08/01/2025 and the court on the same day passed the following:-

O R D E R

1. This is a petition filed to amend the written statement.
2. Petition averments in brief:- The suit is one filed pertaining to family tombs. Rev. Fr. Joseph Nalappat, who was the then vicar in the year of 2017 had omitted to include certain facts in the written statement, filed

by him pertaining to the family tombs. By incorporating the omitted facts, the contentions of the 1st defendant church would not change. Hence, the petitioners are to be permitted to amend the written statement accordingly. Hence, the petition.

3. The respondent had filed objection by stating that, the petition is filed without any bonafides and as an experimental one. The written statement filed by the 2nd defendant, who was the then vicar of 1st defendant-church cannot be amended by the 3rd defendant. This petition is intended to somehow circumvent the admissions made in the written statement. It is not permissible to amend the admissions in the written statement and there is no sufficient reason for the same. Trustee (kaikkaran) have no authority to amend the written statement. Vicar and the trustees of the church are bound by the decision taken by the general body of the church. Respondents had given the amount and applied for the family tombs as per the decisions in the general body convened by the 1st defendant church. The receipts were also produced which is admitted by the defendants in the written statement. The trustee is now trying to add some false facts which cannot be permitted. If, the amendment is allowed, the nature of the suit will change. Both vicars who were representing the 1st defendant church before the suit and during the pendency of the suit have admitted the facts. The subsequent vicar had signed in the compromise in the adalath conducted pertaining to the allotment of family tombs. These cases were listed for trial and the petition is only intended to drag the matter. Hence, the petition is to be dismissed.
4. Heard both sides.
5. On going through the prayer in the suit, it can be seen that, the suit is one filed seeking for declaration and mandatory injunction pertaining to the

allotment of family tombs on the basis of the decision taken in the general body meeting of the church dated 22.05.2011. 1st defendant represented by its Vicar, Rev. Fr. Joseph Nalappattu had filed written statement on 3.04.2017. 1st defendant church is admitting the decision of the general body of the church to allot 35 family tombs, by collecting amounts, from those who interested to take family tombs. It was also stated that, the church has no objection in giving family tombs to persons as per the resolution of the general body held on 22.05.2011. It is also stated that, some of the parishioners including the plaintiffs in the case submitted application before church, for allotment of family tombs. The receipt of the amount and the issuance of the receipt is also admitted in the written statement filed by the then vicar Rev. Fr. Joseph Nalappatt, representing the 1st defendant-church. This petition is filed by the trustee of the 1st defendant-church, who was arrayed as 3rd defendant in the suit. The written statement was filed by the 1st defendant-church represented by its vicar. 3rd defendant have no authority to amend the written statement filed by the 1st defendant, as the 1st defendant-church is represented by its vicar, especially when the 3rd defendant is an independent party to the suit and not arrayed as representing the 1st defendant-church. Moreover, the amendment sought for are to withdraw the admissions in the written statement filed by the 1st defendant-church. In view of the decision of the Hon'ble High Court of Kerala in **Jagathamma v. Indira and Others (2018 (2) KHC 885)**. From the decision of the Hon'ble High Court, it is very clear that, an admission made in the written statement cannot be permitted to be withdrawn by way of an amendment. Hon'ble High Court of Kerala held in the above case that, amendment of the pleadings in the written statement filed by the defendant cannot be permitted which would have the effect of displacing

the plaintiff's case and cause him irretrievable prejudice, etc. Moreover, 3rd defendant cannot be permitted to make any amendments in the written statement filed by the 1st defendant-church, when the 3rd defendant is not representing the 1st defendant church and he is arrayed as trustee to the church and not representing the 1st defendant church. So, in the said scenario, I could not find the petitioners to be entitled for the amendment as prayed for. Hence, the petition stands dismissed.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 08th day of January, 2025.

Sd/-
Alshari. A,
Civil Judge (Junior Division)

Appendix:-Nil

Id/-
Civil Judge (Junior Division)
(By Order)

// True copy //

(Carbon Copy issued as per order in I.A.19/25 in OS.74/17 dtd 13/01/25.

Sd/-
Examiner/Junior Superintendent

Typed by: jav
Compd by : Prasanna

Carbon Copy of Order in
IA 17/2024 in OS 74/2017
Dated : 08/01/2025