

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),

MUVATTUPUZHA.

Present:- Sri. Atheek Rahman, Civil Judge (Senior Division)

Wednesday, the 28th day of May, 2025 / 7th Jaishtha 1947

I.A.No. 14/2025 in O.S No.23/2022

Petitioners/Additional 2nd and 3rd Plaintiffs:-

- 1 Ameer T.A, aged 45 years, S/o Abdulkhader residing at Thoppikkudiyil House, Perumattam Kara, Puthuppady P.O, Velloorkunnam Village, Muvattupuzha Taluk.
- 2 Fathima Abdulkhader, aged 66 years, W/o Abdulkhader and residing at Thoppikkudiyil House, Perumattam Kara, Puthuppady P.O, Velloorkunnam Village, Muvattupuzha Taluk.

By Advs . Jijo Joseph, Nisamol P.H & Rahim P.M

Respondents/Defendants/ Additional 3rd Defendant:-

- 1 Nabeesa, aged about 65 years, W/o Sainudheen and residing at [Thoppikudy@Cheriyanjyil](#) House, Perumattam Kara, Puthuppady P.O, Velloorkunnam Village, Muvattupuzha Taluk and now residing at Anicadu Kara, Muvattupuzha Village, Muvattupuzha Taluk.

- 2 Roobiya, aged about 25 years,
D/o Sainudheen and residing at
[Thoppikudy@Cheriyanjyil](#) House,
Perumattam Kara, Puthuppady P.O,
Velloorkunnam Village, Muvattupuzha Taluk
and now residing at Anicadu Kara,
Muvattupuzha Village, Muvattupuzha Taluk.
- 3 Suhara Salim, aged 49 years,
D/o Abdulkhader and residing at
[Thoppikudyil](#) House, Perumattam Kara,
Puthuppady P.O, Velloorkunnam Village,
Muvattupuzha Taluk and now residing at
W/o Muhammed Salim, Chettisseriyil House
(Vavanapuram House), Aarpookara Kara,
Aarpokara Village, Kottayam Taluk,
Medical College, Gandhi Nagar P.O,
Kottayam District, Pin – 686008.

***R1 & R2- By Advs . H Nujumudeen, Antony Shyju
& Sherin Achu Ninan***

R3- No Vakalath.

This petition is filed Under Order VI Rule 17 and Section 151 of the Code of Civil Procedure 1908 for amending the plaint and is coming on for final hearing on 26.05.2025 in the presence of the above counsel and the Court on 30th day of May 2025 passed the following:-

ORDER

This petition is filed by the petitioner/additional plaintiffs 2 and 3 under Order VI Rule 17 read with Section 151 of the Code of Civil

Procedure, to amend the plaint. The petition is supported by an affidavit sworn by the 1st petitioner.

2. Brief averments in the affidavit in support of the petition are as follows:- Suit is filed for partition by the original plaintiff. During the pendency of the suit, the petitioners and the additional 3rd defendant were impleaded, being the legal heirs of the original plaintiff. Upon the death of the original plaintiff, his right over the plaint schedule properties are devolved upon the petitioners and the additional 3rd defendant. After the death of the original plaintiff, there is a change in the share. For the proper adjudication of the case, it is highly essential to make a consequential amendment. Hence, this petition.

3. Brief averments in the objection filed by the respondents 1 and 2 are as follows:- The petition is not maintainable either in law or on facts. The petitioners filed this petition to change their status as plaintiffs. The petitioners are attempting to alter the relief in the plaint. If the amendment is allowed, the basic nature of the suit will be changed. The suit is scheduled for trial on 09.06.2025. Meanwhile, the petitioners have filed this amendment petition with malicious intention to delay the proceedings. The petitioners have no right to alter the pleadings in the

plaint filed by the original plaintiff. The petitioners may only proceed with the suit as the legal heirs of the original plaintiff. The claim of the petitioners is that, the ratio of the share changed after the death of the original plaintiff is incorrect. Late Sainudeen, the original owner of the property, had a debt of more than two crore rupees. According to the provisions of the Mohammedan Law, the property of the deceased can be partitioned only after settling the outstanding debt of the deceased. The first three points requested to be amended should not be allowed, as they would alter the basic nature of the plaint and introduce a new case. Hence, they prayed to dismiss the petition.

4. Both sides were heard.

5. The point raised for consideration is as follows:-

Is the proposed amendment necessary to decide the real question in controversy between the parties?

6. The point:- The suit was filed by Abdul Khader for the partition of the plaint schedule properties. The parties to the suit are governed by the provisions of Mohammadan Law. During the pendency of the suit, Abdul Khader passed away, and his legal heirs were impleaded as additional plaintiffs 2 and 3, as well as the additional 3rd defendant.

Additional plaintiffs 2 and 3 filed this petition for a consequential amendment in the plaint, seeking the division of their share within Abdul Khader's share.

7. The respondents have raised a serious objection, stating that the petitioners cannot seek division of their share within Abdul Khader's share. If such an amendment is allowed, it will change the basic nature of the suit, and a new case will be introduced. Furthermore, Abdul Khader had a debt exceeding two crore rupees. According to the provision of the Mohammedan law, the outstanding liabilities of the deceased should be settled before partitioning the properties.

8. I have perused the pleadings in the plaint as well as the proposed amendment described in the petition. The petitioners seeking division of their share within Abdul Khader's share. There is no legal impediment to seek the division of the share of the legal heirs in a partition suit when the original party passed away. However, they must pay separate court fees for their respective shares. The contention of the respondents that if the petition is allowed, the basic nature of the suit will be changed has no due force and only to be discarded. The objection regarding the ratio of the share can be considered only after a full fledged

trial. At this stage, the court is examining whether the proposed amendment is necessary to decide the real question in controversy between the parties. Although the respondents contend that the present amendment filed by the petitioners is intended to stall the proceedings, after going through the proposed amendment, I am of the view that this contention lacks merit, and the petition can be allowed. The point is answered accordingly in favour of the petitioners.

In the result, the petition is allowed. The petitioners are directed to carry out amendment within two days from the date of this order, and to submit the amended plaint. The petitioners are also directed to remit the requisite court fees.

Dictated to the Confidential Assistant, typed by her directly into computer, corrected and pronounced by me in the Open Court, this the 28th day of May 2025.

Sd/-

ATHEEK RAHMAN
CIVIL JUDGE(SENIOR DIVISION)

APPENDIX :- Nil

Sd/-

CIVIL JUDGE(SENIOR DIVISION)

Ss/-

Sk/-

// True Copy //

(By Order)

Sheristadar

I.A.14/2025
O.S.23/2022

- 7 -

Copy of Order in
in I.A. 14/2025
in O.S. 23/2022
Dated: 28.05.2025