

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

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

Friday, the 14<sup>th</sup> day of November, 2025 / 23<sup>rd</sup> Karthika 1947

**I.A.No. 20/2025 in O.S No.23/2022**

**Petitioners/1<sup>st</sup> & 2<sup>nd</sup> Defendants:-**

- 1 Nabeesa Sainudeen, aged 64 years, W/o Late C.H. Sainudeen, residing at Thoppikkudy @ Cherianjiyil House, Perumattam Kara, Puthuppady P.O, Velloorkkunnam Village, Muvattupuzha Taluk and now residing at Anicadu Kara, Muvattupuzha Village, Muvattupuzha Taluk.
- 2 Rubiya Sainudeen, aged 30 years, D/o Late C.H Sainudeen, residing at Thoppikkudy @ Cherianjiyil House, Perumattam Kara, Puthuppady P.O, Velloorkkunnam Village, Muvattupuzha Taluk and now residing at Anicadu Kara, Muvattupuzha Village, Muvattupuzha Taluk.

*By Advs. H. Nujumudheen, Antony Shyju  
& Sherin Achu Ninan*

**Respondents/Additional Plaintiff 2 & 3/Additional 3<sup>rd</sup> Defendant:-**

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

*R1 & R2 – By Advs. Jijo Joseph, Rahim P.M,  
Nisamol P.H & P.K. Shymy.*

This petition is filed under Order 7 Rule 11 Read With Section 151 of Civil Procedure Code 1908 to allow the petition and reject the suit as court fee paid is insufficient. The petition is coming on for final hearing on 03.11.2025 in the presence of the above counsel and the Court on 14.11.2025 passed the following:-

### **ORDER**

This petition is filed by the petitioners/defendants 1 and 2 under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, seeking rejection of the plaint on the ground that the court fee paid is insufficient. The petition is supported by an affidavit sworn by the 2<sup>nd</sup> petitioner, stating that the suit was filed by Abdulkhader for partition of the plaint A to H schedule properties. The claim of the original plaintiff is that he is the brother of late Sainudheen, who was the husband of the 1<sup>st</sup> defendant. Hence, he is claiming right over the plaint schedule properties. During the pendency of the suit, Abdulkhader passed away and his legal heirs were impleaded as additional plaintiffs and additional 3<sup>rd</sup> defendant. After their impleadment, the additional plaintiffs amended the plaint and altered the relief portion. The market

value of the plaint schedule properties is shown as ₹1,38,50,000/-. The plaintiffs are claiming 7/16 shares over the plaint schedule properties and their value of share is mentioned as ₹62,09,400/-. The plaintiffs remitted fixed court fee of ₹300/- under Section 31(2) of the Kerala Court Fees and Suit Valuation Act. As per Section 31 of the Kerala Court Fees and Suit Valuation Act, there is no exemption is fixed. Therefore, the fee remitted by the plaintiffs is insufficient and the plaint is to be rejected. During the cross-examination, PW1 admitted that there is no gross profit from the plaint D schedule property, and that the value of the property is not mentioned properly in the plaint. PW1 supported the suggestion of defendants 1 and 2 that as per the revenue records, the value of the plaint D schedule property will amount to rupees two crores. They do not have joint possession over the plaint schedule property. Therefore, they have to pay the court fee under Section 37(1) of the Kerala Court Fees and Suit Valuation Act. Hence, the petition.

2. The respondents 1 and 2/additional plaintiffs 2 and 3 filed objection stating that the petition is not maintainable either in law or on facts. All the parties to the suit are not made parties to the petition. Hence, it is to be dismissed In limine. In the plaint, it is

specifically pleaded that the plaintiffs are in joint possession and enjoyment of the plaint schedule properties with the defendants, and the court fee is to be paid as per Section 37(2) of the Kerala Court Fees and Suit Valuation Act. For the purpose of determining whether the plaint has been properly valued or proper court fee has been paid, the court is bound to examine only the pleadings in the plaint. Joint possession within the meaning of Section 37(2) does not necessarily mean joint physical possession for all practical purpose. Therefore, the value of the suit and the court fee paid by the plaintiffs are sufficient. The averment that the market value shown in the plaint, in respect of the plaint A to H schedule properties, has been stated without proper application of law, is incorrect. The allegation that, as per Section 31 of the Kerala Court Fees and Suit Valuation Act, no exemption is provided, and hence the court fee remitted by the respondents is insufficient, and that the plaint is to be rejected on the said ground alone, is incorrect. The suit was instituted by the father of the 1<sup>st</sup> respondent. At the time of instituting the suit, while drafting the plaint, instead of Section 31(2) of the Act was erroneously cited instead of Section 37(2). Upon realising the mistake, the respondents filed an application to amend the plaint to

rectify the same. The value of the plaint D schedule property mentioned in the petition is not proper. The allegation that, during cross-examination, PW1 admitted that there is no gross profit from the plaint D schedule property, that the value of the property is not mentioned properly in the plaint, and that PW1 supported the suggestion of defendants 1 and 2 that, as per the revenue records the value of plaint D schedule property is rupees two crores is incorrect. The prayer in the suit is for partition of the plaint schedule properties, claiming de jure possession and the plaintiffs being the master of the suit, the relief sought according to the legal character filed by the plaintiffs in the case. Therefore, the respondents prayed to dismiss the petition.

3. Both sides were heard.

4. The point raised for consideration is as follows:

*Is the plaint not properly valued and the court fee paid insufficient?*

5. The point:- I have perused the records. After settlement of issues, the case was included in the trial, and PW1 was examined in this case. At this stage, the present petition has been filed.

The petitioners are seeking rejection of plaint, contending that the value of the properties shown in the plaint is incorrect and that the plaintiffs have no joint possession over the plaint schedule property. According to the petitioners, the market value of plaint A to H schedule properties shown as ₹1,38,50,000/- without proper application of law.

6. The suit was instituted by Abdulkadher, the predecessor in interest of the respondents, claiming partition of the plaint schedule properties. He had specifically pleaded in the plaint that he is in joint possession of the plaint schedule property, and paid fixed court fee as provided under Section 31(2) of the Kerala Court Fees and Suits Valuation Act. Upon his death, the respondents were impleaded in the suit as additional plaintiffs. They have filed a petition to correct the Section 31(2) as 37(2) and is pending.

7. Though the respondents contended that the market value stated in the plaint is not correct, the petition does not disclose what market value the plaint schedule property would actually fetch. It is pertinent to note that the petitioners had filed a counter-claim in respect of the subject matter in the suit, which was subsequently not

pressed. The valuation in the counter claim was shown as the same market value as stated in the plaint. The present petition has been filed by the petitioners based on an answer elicited from PW1 in response to a suggestive question put to PW1 by the counsel for the petitioners during cross-examination. Therefore, I am of the considered view that the present petition is devoid of merit and has been filed solely with the intent to protract the proceedings. This point is answered accordingly against the petitioners.

In the result, the petition is dismissed. No costs.

*Dictated to the Confidential Assistant, typed by her directly into computer, corrected and pronounced by me in the Open Court, this the 14<sup>th</sup> day of November 2025.*

Sd/-

ATHEEK RAHMAN

CIVIL JUDGE(SENIOR DIVISION)

**APPENDIX :- Nil**

Sd/-

CIVIL JUDGE(SENIOR DIVISION)

Ss/-

Jts/-

I.A.No.20/2025  
in OS 23/2022

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**Order**  
**in I.A. No.20/2025**  
**in O.S. 23/2022**  
**Dated: 14.11.2025**