

**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. 21/2025 in O.S No.23/2022**

**Petitioners/Additional 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs:-**

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

*By Advs. Jijo Joseph, Nisamol P.H & P.K. Shymy.*

**Respondents/Defendants/Additional 3<sup>rd</sup> defendant:-**

- 1 Nabeesa , aged about 64 years, W/o 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 Roobiya , aged about 25 years, D/o 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.

- 3 Suhara Salim, aged 49 years, D/o Abdulkhader and residing at Thoppikkudiyil House, Perumattam Kara, Puthuppady P.O, Velloorkunnam Village, Muvattupuzha Taluk and now residing at W/o Muhammed Salim, Chettisseriyil House (Vavanapuram House ), Aarpookara Kara, Aarpookara Village, Kottayam Taluk, Medical College, Gandhi Nagar P.O, Kottayam District, Pin - 686008.

***R1 & R2 – H. Nujumudheen, Antony Shyju  
& Sherin Achu Ninan  
R3 – No Vakalath.***

This petition is filed under Order VI Rule 17 and Section 151 of Civil Procedure Code 1908 for amending the plaint. 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/additional plaintiffs 2 and 3, under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, seeking amendment of the section for remitting the court fees mentioned in the plaint. It is further averred that suit was filed by the predecessor of the petitioners. After his death, the petitioners were impleaded as additional plaintiffs. The father was in joint possession of the plaint schedule properties with the defendants. The father paid the

fixed court fee of ₹300/- as per Section 37(2) of the Kerala Court Fees and Suit Valuation act. However, while drafting the plaint, instead of Section 37(2), it is wrongly shown as Section 31(2) of the Act. The said mistake came to the knowledge of the petitioners only on 18.09.2025. In spite of due diligence, the petitioners could not file application for amendment before the commencement of trial. There is no willful laches or negligence on the part of the petitioners. Hence, the petition.

2. The counsel for the respondents filed objection stating that the petition is not maintainable either in law or on facts. The present petition has been filed after the commencement of the trial, and it is not permissible without re-opening the evidence of the plaintiffs. The petitioners have not stated proper cause for amending the plaint. The additional plaintiffs and additional 3<sup>rd</sup> defendant are only the legal heirs of original plaintiff. The respondents raised the contention that the suit filed by the original plaintiff is under valued, and after the death of the original plaintiff, the additional plaintiffs and additional 3<sup>rd</sup> defendant were impleaded in the party array. Thereafter, the petitioners filed an amendment application and it was allowed by this court. After the amendment, they themselves placed as plaintiffs. In such a situation

they could not claim the benefit of claim raised by the original plaintiff.

Due to the amendment the structure of the suit has been totally changed and the present additional plaintiffs are not in joint possession of the plaint schedule property. Therefore, they are not entitled to claim any benefit under Section 37(2) of the Kerala Court Fees and Suits Valuation Act. Hence, prayed to dismiss the petition.

3. Both sides were heard.

4. The points raised for consideration are as follows:

1. Is the amendment sought for necessary to decide the real question in controversy between the parties?

2. Are the plaintiffs established that even after due diligence they could not make the amendment prior to the commencement of trial?

5. Point Nos. 1 and 2: For the sake of convenience and to avoid repetition, these points are considered together. I have perused the pleadings in the plaint. In the valuation portion of the plaint, it is mentioned that the court fee is payed under Section 31(2) of the Kerala

Court Fees and Suits Valuation Act. The petitioners contend that it was a mistake crept while drafting the plaint. The said section is to be corrected as section 37(2) of the Kerala Court Fees and Suits Valuation Act. The plaint was instituted by their predecessor in interest. Even after due diligence they could not amend the mistake before the commencement of the trial.

6. The respondents contend that after the death of the sole plaintiff, the petitioners are impleaded as additional plaintiffs and also amended the prayer portion. Therefore, they themselves become the plaintiffs in the plaint. The respondents also disputed that the plaint is undervalued. Hence, they objected the amendment.

7. As per proviso to Order VI Rule 17 CPC, no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Herein this case, the additional plaintiffs are claiming right through their predecessor in interest and seeking partition. The petitioners specifically pleaded that even after due diligence, they could

not make the amendment prior to the commencement of the trial. The fixed court fee of ₹300/- is paid in the suit by the predecessor in interest of the additional plaintiffs. Therefore, correcting the wrong provision mentioned in the plaint will not cause any prejudice to the defendants. I am of the view that the proposed amendment is necessary to decide the real question in controversy between the parties. Furthermore, if the proposed amendment is allowed, the basic nature of the suit will not be changed. These points are answered accordingly in favour of the petitioners/plaintiffs.

In the result, the petition is allowed.

*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/-

Apn/-

I.A.No.21/2025  
in OS 23/2022

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**Order**  
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**Dated: 14.11.2025**