

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

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

Friday, the 18th day of July, 2025 / 27th Ashadha 1947

I.A.No.2/2025 in O.S. No. 37/2022

Petitioner/Plaintiff:-

Yasina Azeez, D/o Kuruppathadathil Azeez,
aged 20 years, Kizhakkekara Kara,
Muvattupuzha Village, Muvattupuzha Taluk
represented by her Power of Attorney Holder
Azeez S/o Saithumammed, aged 50 years,
Kuruppathadathil Veedu, Kizhakkekara Kara,
Muvattupuzha Village, Muvattupuzha Taluk.

By Adv. N Ramesh & Raju P V

Respondent/Defendant:-

- 1 Muvattupuzha Nirmalamatha Church
represented by its Vicar, Near Nirmala College,
Muvattupuzha Kara, Muvattupuzha Village,
Muvattupuzha Taluk.
- 2 Rev:Father: Sottar Peeringarappilly,
aged about 55 years, Vicar of Muvattupuzha South
Niramalamatha Church, Muvattupuzha Kara,
Muvattupuzha Village, Muvattupuzha Taluk.
- 3 George, aged about 55 years, S/o Methipparayil Kurian
Mavinchuvad Bhagom, Muvattupuzha Kara, Trustee of
Nirmalamatha Church.

- 4 John aged about 55 years, S/o Lonappan,
Panokkaran Veedu, residing at
near NEST Muvattupuzha Kara
- 5 Tomy aged about 55 years,
S/o Joseph Mar Basil Veedu,
Kizhakkekara Kara, Muvattupuzha Village.

By Advs. Paul Mathew & Babitha T.H

This petition is filed under Section 151 of Civil Procedure Code and is coming on for final hearing on 04.07.2025 in the presence of the above counsel and the Court on 18th day of July 2025 passed the following:-

ORDER

This petition is filed by the petitioner/plaintiff under Section 151 of CPC, seeking to discharge the next friend and permit her to proceed with the suit in her own name, as she attained majority. The petition is supported by an affidavit sworn by the petitioner, wherein it is stated that the suit was instituted through her father as her next friend, claiming damages. As she has now attained majority, the petition has been filed seeking permission to continue the suit in her own name.

2. Respondents filed objection contending that the petition is not maintainable either in law or on facts. It is stated that the petition,

having been filed under Section 151 of the Code of Civil Procedure, is not sustainable, as a specific provision under Order XXXII of the Code of Civil Procedure exists to discharge the next friend and permitting the petitioner to proceed with the suit in her own name. Furthermore, the petitioner's father, who was her next friend passed away on 10.03.2025, and this fact has been suppressed from the Court. Therefore, the respondents prayed to dismiss the petition.

3. Both sides were heard.

4. I have perused the records. The suit was instituted through the petitioner's father as her next friend, since she was a minor at the relevant time. The petitioner now states that she has attained majority and seeks to discharge her next friend and proceed with the suit in her own name. In support of her claim, she produced a copy of her SSLC Book. The copy of the SSLC Book shows that the petitioner's date of birth is 05.04.2004. The claim of the petitioner's regarding the majority, as well as the authenticity of the SSLC Book, are not in dispute.

5. The respondent objected to the petition on the ground that the petitioner suppressed the death of her father from the Court. It is pertinent to note that no document produced in support of the said contention before the court. According to the respondents, her father passed away on 10.03.2025. It is to be noted that if the next friend died, it is the duty of the Court under Order XXXII Rule 11 Sub-rule (2) to appoint another next friend or guardian to the minor petitioner. Hence, the said contention has no due force and only to be discarded.

6. The next objection raised is that the petition has been filed under an incorrect provision of law. It true that Rule 12 of Order XXXII of the Code of Civil Procedure, 1908, is the specific provision applicable for filing a petition to discharge the next friend and to permit the petitioner to continue the suit in her own name upon attaining majority. However, it is well settled that if a court has jurisdiction to entertain an application in law, simply because the applicant has not stated the correct provision of law or has stated wrong or incorrect provision of law, that circumstances will not divest the power of the court to entertain the application and pass

appropriate order on merit. Therefore, the said objection raised by the respondents is devoid of merit and is liable to be discarded.

In the result, the petition is allowed. The next friend of the petitioner is discharged, and the petitioner is permitted to continue with the suit in her own name. The office is directed to carry out necessary corrections in the title of the suit in accordance with sub-rule (3) of Rule 12 of Order XXXII of the Code of Civil Procedure, 1908.

Dictated to the Confidential Assistant, typed by her directly into computer, corrected by me and pronounced in the Open Court on this the 18th day of July 2025.

Sd/-
ATHEEK RAHMAN
CIVIL JUDGE(SENIOR DIVISION)

APPENDIX :- Nil

Ss/-
Bmm/-

Sd/-
CIVIL JUDGE(SENIOR DIVISION)

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Order
in I.A. 02/2025
in O.S. 37/2022
Dated: 18.07.2025