

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE - IV,
KOZHIKODE**
**Present:- Sri.Pradeep P, B.com, LLB., III Addl. Motor Accidents
Claim Tribunal/IV Addl. District Judge**

Tuesday, the 31st day of March 2026

COMMON JUDGMENT IN APPEAL SUIT No.16/2022 &17/2022

APPEAL SUIT No.16/2022

Between:-

1. Achamveettil Moideen Koya, aged 50 years ,
Medical College Staff, Residing at
Achamveettil, Cherukulathur Amsom,
Peruvayal Village, Poovattuparambu Desom,
P.O.,Poovattuparambu, Pin:673008, Kozhikode
Taluk.
2. Penkottil Sulaiman, S/o Kadiri, aged 55 years,
Residing at Sameer Manzil, Swastham,
Cherukulathur Amsom, Peruvayal Village,
Poovattuparambu Desom,
P.O., Poovattuparambu, Pin:673 008,
Kozhikode Taluk.

Appellants/D2
andD3

And:-

1. Manthattil Reas Ahammed, S/o Abdul Khader,
aged 42 years, Coolie, House number 12/1015,
Cherukulathur Amsom, Peruvayal Village,
Poovattuparambu Desom,
P.O., Poovattuparambu, Pin:673 008.
2. Thazhe Penkottil Sulaiman Haji (Died),
S/o Mammad, aged 60 years, Cherukulathur
Amsom, Peruvayal Village, Poovattuparamba
Desom, P.O. Poovattuparambu, Pin:673 008.
Kozhikode Taluk.

Respondents

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| <ol style="list-style-type: none"> 3. Maniyambalam Juma-ath Palli, Anakuzhikara,
Represented by the President, Kuttikattur
P.O., Poovattuparambu, Kozhikode – 8 4. Maniyambalam Juma-ath Palli, Anakuzhikara,
Represented by the Secretary Kuttikattur P.O.,
Poovattuparambu, Kozhikode - 8 | |
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On appeal against the order passed by the Addl Munsiff-II,
Kozhikode in OS No.688/2014 dated 29.11.2021 and made in:-

OS No.688/2014

Between:-

Manthattil Reas Ahammed, S/o Abdul Khader, aged 42 years, Coolie, House number 12/1015, Cherukulathur Amsom, Peruvayal Village, Poovattuparambu Desom, P.O., Poovattuparambu, Pin:673 008.	Plaintiff
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And:-

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| <ol style="list-style-type: none"> 1 Thazhe Penkottil Sulaiman Haji
S/o Mammad, aged 60 years, Agriculture,
Cherukulathur Amsom, Peruvayal Village,
Poovattuparamba Desom, P.O.
Poovattuparambu, Pin:673 008.
Kozhikode Taluk. 2 Achamveettil Moideen Koya, aged 50 years
, Medical College Staff, Residing at
Achamveettil, Cherukulathur Amsom,
Peruvayal Village, Poovattuparambu
Desom,
P.O. Poovattuparambu, Pin:673008,
Kozhikode Taluk. 3. Penkottil Sulaiman, S/o Kadiri,
aged 55 years, Residing at Sameer Manzil,
Swastham, Cherukulathur Amsom, | <p>Defendants</p> |
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Peruvayal Village, Poovattuparambu
Desom, P.O., Poovattuparambu,
Pin:673 008,
Kozhikode Taluk.

- Suppl4. Maniyambalam Juma-ath Palli,
Anakuzhikara, Represented by the
President, Kuttikattur ,
P.O.,Poovattuparambu, Kozhikode – 8
- Supl.5. Maniyambalam Juma-ath
Palli,Anakuzhikara, Represented by the
Secretary Kuttikattur P.O.,
Poovattuparambu, Kozhikode – 8
(Supplemental Defentants No.4 and 5 are
impleaded as per order in IA 3451/2017
dated 07.10.2017)

APPEAL SUIT No.17/2022

Between:-

1. Achamveettil Moideen Koya,
aged 50 years , Medical College Staff,
Residing at Achamveettil, Cherukulathur
Amsom, Peruvayal Village,
Poovattuparambu Desom,
P.O. Poovattuparambu, Pin:673008
Kozhikode Taluk.
2. Penkottil SulaimanHaji, S/o Kadiri,
aged 55 years, Residing at Sameer Manzil,
Swastham, Cherukulathur Amsom,
Peruvayal Village, Poovattuparambu
Desom,
P.O. Poovattuparambu, Pin:673 008,
Kozhikode Taluk.

Appellants/D2 and
D3

And:-

1. Manthattil Abdul Khader, S/o Kunhayin
Molla (Died), aged 77 years,Swastham,
House Number 12/1015, Cherukulathur

	Amsom, Peruvayal Village, Poovattuparambu Desom, P.O, Poovattuparambu, Pin:673 008.	
2.	Thazhe Penkottil Sulaiman (Died), S/o Mammad, aged 60 years, Cherukulathur Amsom, Peruvayal Village, Poovattuparamba Desom, P.O. Poovattuparambu, Pin:673 008. Kozhikode Taluk.	
3.	Maniyambalam Juma-ath Palli, Anakuzhikara, Represented by the President, Kuttikattur P.O., Poovattuparambu, Kozhikode – 8	Respondents/ Plaintiff,D1,D4 &5
4.	Maniyambalam Juma-ath Palli,Anakuzhikara, Represented by the Secretary, Kuttikattur P.O., Poovattuparambu, Kozhikode – 8	
*Supl.5.	Riyas Ahammed, aged 51 years, S/o Late Manthattil Abdul Khader, House No.12/1015, Cherukulathur Amsom, Poovattuparamba Desom, Povattuparamba P.O., Kozhikode – 673 008.	
*Supl.6.	Buhshara, aged 54 years, D/o late Manthattil, Abdul Khader, House No.12/1015, Cherukulathur Amsom, Poovattuparamba Desom, Poovattuparamba (P.O.), Kozhikode -673 008.	
*Supl.7	Thasneem, aged 48 years, S/o Late Manthattil Abdul Khader, House No.12/1015, Cherukulathur Amsom, Poovattuparamba desom, Poovattuparamba P.O., Kozhikode – 673 008.	

*Supl.8	Jasbeera, aged 45 years, D/o Late Manthattil Abdulkhader, House No.1/1015, Cherukulathur Amsom, Poovattuparamba Desom, Poovattuparamba (P.O.), Kozhikode – 673 008.	Respondents/ Plaintiff,D1,D4 &5
*Supl.9	Thasleena, aged 43 years D/o Late Manthattil, Abdul Khader, House No.12/1015, Cherukulathur Amsom, Poovattuparamba Desom, Poovattuparamba.P.O., Kozhikode- 673 008. (Supplemental 5 to 9 impleaded as per order in IA 24/2024 dated 01.08.2025.)	

On appeal against the order passed by the Addl Munsiff-II,
Kozhikode in OS No.689/2014 dated 29.11.2021 and made in:-

OS No.689/2014

Between:-

Manthattil Abdul Khader, S/o Kunhayin Molla, aged 77 years Swastham, House Number 12/1015, Cherukulathur Amsom, Peruvayal Village, Poovattuparambu Desom, P.O., Poovattuparambu, Pin:673 008.	Plaintiff
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And:-

1	Thazhe Penkottil Sulaiman S/o Mammad, aged 60 years, Agriculture, Cherukulathur Amsom, Peruvayal Village, Poovattuparamba Desom, P.O. Poovattuparambu, Pin:673 008. Kozhikode Taluk.	Defendants
2	Achamveettil Moideen Koya, aged 50 years , Medical College Staff, Residing at Achamveettil, Cherukulathur	

Amsom, Peruvayal Village, Poovattuparambu Desom, P.O., Poovattuparambu, Pin:673008 Kozhikode Taluk.	
3. Penkottil Sulaiman, S/o Kadiri, aged 55 years, Residing at Semeer Manzil, Swastham, Cherukulathur Amsom, Peruvayal Village, Poovattuparambu Desom, P.O. Poovattuparambu, Pin:673 008, Kozhikode Taluk.	Defendants
*Supl4. Maniyambalam Juma-ath Palli, Anakuzhikara, Represented by the President, Kuttikattur P.O., Poovattuparambu, Kozhikode – 8	
*Supl.5. Maniyambalam Juma-ath Palli, Anakuzhikara, Represented by the Secretary Kuttikattur P.O., Poovattuparambu, Kozhikode – 8 (Supplemental Defendants No.4 and No5 are impleaded as per order in IA 3453/2017 dated 07.10.2017)	

These appeals are coming on 18th day of March, 2026 for final hearing before me in the presence of Sri.V.P. Narayanan advocate for Appellants for both cases and Sri. B.M. Shamsudheen, advocate for R1 for both cases and R2 died in both cases and R3 to R4 are not entered in appearance for both cases. Sri. B.M. Shamsudheen advocate for R5 to R9 in AS 17/2022 and having stood over to this day for consideration and the court delivered the following.

COMMON JUDGMENT

1. These appeals are preferred under section 96 r/w Order XLI Rule 1 of CPC against the decrees in OS 688/2014 and OS 689/2014 before the Additional Munsiff Court-II, Kozhikode, which were disposed of by a common judgment.

2. AS 16/2022 is preferred by the defendants No.2 and 3 against the decree in OS 688/2014 which was a suit for permanent prohibitory injunction restraining the defendants and their men from trespassing into the plaint A schedule property or from causing any damage to the building situated in the plaint B schedule property.

3. AS 17/2022 is preferred by the defendants No.2 and 3 against the decree in OS 689/2014 which was also a suit for permanent prohibitory injunction restraining the defendants and their men from trespassing into the plaint D schedule property or from causing any damage to the plaint D schedule property.

4. The trial Court, after trial, decreed OS 688 of 2014 by restraining the defendants No.1 to 3 by permanent prohibitory injunction from trespassing into plaint B schedule, or from demolishing the floor or from causing any obstruction to the plaintiff from constructing boundary on eastern side of the plaint schedule property and decreed OS 689 of 2014 by restraining the defendants No.1 to 3 by permanent prohibitory injunction from trespassing into the plaint D schedule property or from causing any obstruction to the plaintiff from constructing boundary on the northern side of the plaint D schedule property.

5. The case in the plaint in OS 688/14 is as follows: The Plaint A schedule property belonged to Damodaran Namboodiri of Kizhakkiniyakath Palanchery Ilom as per jenmam assignment deed No.1762/1947 of Chathamangalam SRO. The plaint A schedule property was purchased by Alavi as per document No.154/1976 who sold the same to father of plaintiff. The father of the plaintiff transferred the property admeasuring 1.35 cents as per jenmam assignment deed No.974/2009 to the plaintiff. Since then plaintiff has been in absolute ownership and possession of the plaint A schedule property. The plaintiff after obtaining requisite plan and license from Peruvayal Panchayat has constructed plaint B schedule shop room in plaint A schedule property. The defendants have no right over the plaint B schedule property. On 13.06.2014, defendants No.1 to 3 trespassed into the plaint B schedule property with the intention of obstructing the construction of wall on the eastern side of the plaint A schedule property, which was in progress, and attempted to demolish the floor of the shop room. They were prevented by timely intervention by the plaintiff, his father and neighbours. On 15/6/2014, they again threatened the plaintiff and his father, which resulted in filing the suit.

6. The defendants Nos.1 to 3 filed written statement stating that the arrayed defendants in the plaint are some of the office bearers of mutawalli - Parayil Niskara Palli Committee. Since the said committee has not been made a party, the suit is bad for non-joinder of necessary parties. The property where plaintiff claims right is a part

of Waqf property, which makes the suit not maintainable before the Civil court. The plaint B schedule property is not in existence. The document No.1762/1957 shows that the northern side of the property belongs to Mosque and the Government. The plaintiff and his father never had any property on the northern side of the mosque. The document of the year 1976 by which plaintiff had got right over the plaint A schedule property has been used for the purpose of constructing road. The plaintiff's father never got the plaint B schedule property. With a view to grab the Waqf property, plaintiff and his father has filed this suit and OS 689/2014. The defendants never committed any act of trespass. The plaintiff is not entitled to get any relief.

7. Supplemental defendants No.4 and 5 were impleaded as per order in IA 3451/17 and IA 3452/17. They did not appear on process.

8. The case in the plaint in OS 689/14 is as follows:- The plaint A schedule property belonged to Damodaran Namboodiri of Kizhakkiniyakath Palanchery Illom as per jenmam assignment deed 1762/1947 of Chathamangalam SRO. The plaint A schedule property was purchased by Alavi by document No.154/1976. The plaintiff purchased the said property from Alavi. There was an old mosque on the western side of the plaint A schedule property. As no document with respect to the mosque was available, the properties surrounding the mosque were orally given as Waqf by the plaintiff to the Mosque Committee. In the meanwhile, the Mosque Committee obtained plan and permit from Peruvayal Panchayat and constructed one shop room.

Subsequently, the plaintiff executed Wakf deed No.1705/2004 as to the property relating to the properties surrounding the mosque excluding the coconut tree, and the above shop room. Consequently, except the coconut tree, the right over the property including the mosque is vested in the mosque committee. The said property is shown as B schedule which was the part of plaint A schedule. The plaintiff was having possession over the property excluding the plaint B schedule. While so, he transferred the plaint C schedule having an extent of 1.35 cents to his son Riyas Ahammad by sale deed No.974/2009 of Mavoor SRO. The plaint D schedule property represents the remaining property with the plaintiff after the assignments made from the plaint A schedule property. The defendants have no right over the said property. The plaintiff's son and his family are residing in the plaint D schedule. On 13.06.2014, defendants No.1 to 3 trespassed into the plaint A schedule property with the intention of obstructing the construction of a wall on the eastern side of the plaint A schedule property, which was in progress, and attempted to demolish the floor of the shop room. They were prevented by timely intervention by the plaintiff, his son and neighbours. On 15/6/2014, they again threatened the plaintiff and his son, which resulted in filing the suit.

9. The defendants Nos.1 to 3 filed written statement stating that the arrayed defendants in the plaint are the office bearers of the mutawalli-Parayil Niskara Palli Committee of the Mosque. Since the said committee has not been made a party, the suit is bad for non-

joinder of necessary parties. The property where plaintiff claims right is a part of Waqf property, which makes the suit not maintainable before the civil court. The plaintiff was never in possession of plaintiff D schedule property. In fact, it is the plaintiff who trespassed and contaminated the well by throwing mud. With a view to grab the Waqf property, plaintiff and his son filed this suit and OS 668/2014. The defendants never committed any act of trespass. The plaintiff is not entitled to get any relief.

10. Supplemental defendants No.4 and 5 were impleaded as per order in IA 3453/17 and IA 3454/17. They did not appear on process.

11. On the basis of the above pleadings, the trial court raised issues in OS 688/14 that whether the suit is bad for non-joinder of necessary parties on the reason that the Muttavalli committee is not impleaded as defendant and whether the suit is maintainable by virtue of section 85 of Waqf Act and whether the plaintiff schedule property includes Waqf property and whether plaintiff B schedule is identifiable and is in existence and whether plaintiff has title and lawful possession over plaintiff B schedule property and whether plaintiff has any cause of action for suing and whether plaintiff is entitled to get a prohibitory injunction as prayed for and raised issues in OS 689/2014 that whether the suit is bad for non-joinder of necessary parties on the reason that the Muttavalli committee is not impleaded as defendant and whether the suit is maintainable by virtue of Section 85 of Waqf Act and whether the plaintiff schedule property includes waqf property and whether plaintiff D schedule is identifiable and is in existence and

whether plaintiff has title and lawful possession over plaint D schedule property and whether plaintiff has any cause of action against defendants for suing and whether plaintiff is entitled to get a prohibitory injunction as prayed for.

12. The trial court conducted joint trial of these cases as per order in I.A 4471/2015 treating OS 688/2014 as the leading case. On the side of plaintiffs, PW1 was examined and Exts.A1 to A6 were marked and on the side of the defendant, DW1 was examined. Exts.C1, C2, and C2(a) were also marked. After hearing both sides and appreciating the materials on record, the trial court decreed both the suits, which resulted in challenging the decrees in both suits by the defendants No.2 and 3.

13. In both appeals, the respondents appeared.

14. Heard both appeals jointly on request.

15. The following consolidated points arise for consideration in both appeals:

1. Has the trial court gone wrong in holding that the plaintiff in OS 688/14 and plaintiff in OS 689/14 were entitled to get prohibitory injunction as they could establish their exclusive respective possession over the plaint B schedule property in OS 688/14 and the plaint D schedule property in OS 689/14?
2. Can IA 1/26 be allowed?
3. Are the impugned decree and the judgment of the trial court liable to be set aside, varied or modified?

4. What order as to costs?

16. For the convenience, the parties are referred to herein as they were arraigned in suits.

17. **Point No.1:** The counsel for the appellants/defendants No.2 ad 3 in both appeals vehemently contended that the trial court palpably failed to appreciate the evidence and the law in right perspective and illegally decreed the suits granting injunction against the defendants No.1 to 3. On the other hand, the counsel for the respondents No.1 and 2 /plaintiffs in both suits contended that the decrees are fair and square and that no interference is required. The plaintiff in OS No.689 of 2014 is the father of the plaintiff in OS No. 688 of 2014. The plaintiff in OS No.688 of 2014 claims possession over the plaint A and B schedule properties in OS No.688 of 2014 by virtue of Ext.A2 deed executed by the plaintiff in OS No.689 of 2014. The plaintiff in O.S. No.689 of 2014 claims possession of the plaint D schedule property by virtue of Ext.A1 assignment deed, as it represents the balance property remaining after the assignments made by him under Ext.A2 and Ext.A6 Wakf deed. Ext.A5 Building permit obtained by the plaintiff in OS 688/14 would go to show that the plaint B schedule building in OS 688/14 was constructed by the plaintiff in that case. Exts.A3 and A4 prove that the plaintiffs have been paying tax for the plaint D schedule property in OS 689/14 and for the A schedule property in OS 688/14 respectively. The plaintiffs could establish by the oral evidence of PW1 and by the marked documents including the commissioner's report and sketch that the

plaint A and B schedule properties in OS 688/14 belongs to the plaintiff therein and the plaintiff D schedule property in OS 689/14 belongs to the plaintiff in that case.

18. The defendants have no case that they have any property near the plaintiff schedule property. Their claim is that the plaintiffs are trying to trespass upon the property of the mosque. They have not produced any material to show that the mosque has more property than what is stated in Ext.A6. The contention advanced by the defendants, that the plaintiffs are attempting to trespass upon the property of the mosque, cannot be sustained, inasmuch as the plaintiff in O.S. No.689 of 2014 was the very person who dedicated the property to the mosque. Such a person is not expected to trespass upon such property.

19. The argument of the Counsel for the appellants is that the plaintiffs have no property on the north of the mosque situated in the property. The plaintiffs do not claim any right over any property lies on the north of the mosque. Their claim is only relating to D schedule in OS 689/14, which lies on the east of the mosque and the B schedule in OS 688/14, which lies on the west of the mosque in the property. Ext.A6 Wakf document itself would go to show that on the east and west of the Wakf property belongs to the executant. So, such contention is also liable to be rejected.

20. Another contention raised by the appellants is that plaintiff in OS 689/14 has no property with him as claimed in the plaintiff D schedule after dedicating to wakf and assigning to his son. This case is

based on a wrong notion that the property originally owned by the mosque was not considered at all by the plaintiff in OS 689/14 while executing Ext.A6 Wakf deed. A cursory reading of Ext.A6 Wakf Deed would go to show that the existing mosque as well as the appurtenant land is the property involved in the Wakf deed. So, the contention of the appellants that if the extent of the property originally owned by the Mosque and the total extent of the property covered by Ext.A6 are added, there will be no property to the plaintiff in OS 689/14 as stated in D schedule with him is liable to be rejected.

21. Another serious argument raised by the counsel for the appellants is that the trial Court had no jurisdiction to entertain the suit since the suit property consists of Wakf property. Of course, it is an admitted case of the plaintiff in OS 689/14 that plaint B schedule of that suit is a Wakf property dedicated by him. Most importantly, the plaintiff does not seek any relief with respect to the Wakf property. Wakf property is specifically scheduled only for the purpose of convenience. The suit is not at all relating to the Waqf property. The relief claimed by the plaintiff is only in relation to the plaint D schedule property, which is the balance property with him after assigning the plaint A schedule property in OS 688/14 to the plaintiff therein and dedicating the plaint B schedule to the Wakf. So, the contention of the appellants that the suit is not maintainable before the Civil Court on the reason that the suit property in OS 689/14 involves Wakf Property can never be accepted. That apart, neither on the date of suit nor on the date of appeal, the Wakf was not a registered one. In the light of

Khabib Alladin v. Muhammed Ahmad (2026 KLT Online 1144)(SC), the Wakf Tribunal has jurisdiction to entertain the matters only if the proceedings are relating to Wakf which is specified in the list of Auquf. The appellant in AS No.17/22 filed IA No.1/26 under Order XLI Rule 27 for receiving two documents as additional evidence. One is the Certificate of Registration dated 30.01.2025 issued by Kerala State Wakf Board. The second one is the certified copy of the Wakf Register of State Wakf Board. It appears that those documents are produced in the light of the above-said decision. It is well settled that when a party to the appeal can be permitted to produce additional evidence. In **Union of India vs Ibrahim Uddin & Anr (2012 (8) SCC 148)**, the Hon'ble Supreme Court held as follows:

"36. The general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI R.27 CPC enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself. (Vide: K. Venkataramiah v. A. Seetharama Reddy & Ors., AIR 1963 SC 1526; The Municipal Corporation of Greater Bombay v. Lala Pancham & Ors., AIR 1965 SC 1008; Soonda Ram & Anr. v. Rameshwaralal & Anr., AIR 1975 SC 479; and Syed Abdul

Khader v. Rami Reddy & Ors., AIR 1979 SC 553).

37. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).

38. Under Order XLI, R.27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence. [Vide: Lala Pancham & Ors. (supra)].

39. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non - production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC

912; and S. Rajagopal v. C.M. Armugam & Ors., AIR 1969 SC 101).

40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal."

22. The above binding precedent shows that the appellants cannot be allowed to produce documents as a matter of right in appeal. A scrutiny through the documents produced by the appellants would go to show that both the documents produced are documents came in to existence much after the filing of the appeal. So, those are not relevant documents as far as the present appeals are concerned. Most importantly, none of the produced documents is an indispensable document for the disposal of these appeals. Whether the plaint B schedule in OS 689/14 is a registered Waqf or not is not germane in the present case. So, the newly produced documents have no relevance at all in the case. So, IA 1/26 is dismissed.

23. Another contention raised by the appellants is that since the Muthawalli of the property covered by Ext.A6 Wakf Document is Parayil Niskara Palli Committee, the said committee is a necessary party to the suit and in the absence of said committee in the party array the suit is bad for non-joinder of necessary party. First of all, an unregistered committee has no legal existence. Admittedly, Parayil Niskara Palli Committee was not a registered committee. So, in order

to sue the committee, all members of the committee should be impleaded. The written statement does not speak about the members of such committee. So, there is no legally maintainable contention as to non-joinder in the written statement. That apart, this is a suit for injunction simpliciter. The plaintiff needs to array the persons who made obstruction or committed mischief to the plaintiff's properties as defendants. So, the contention that the suit is bad for non-joinder of necessary party for the reason that the committee is not impleaded is unworthy of acceptance.

24. Another contention raised by the counsel for the appellant is that decree in the suits are nullity being passed against dead person as the defendant No.1 died during the pendency of the suit and the death of the defendant No.1 was not recorded in the cause title of the plaint or his legal heirs were not impleaded. Most importantly, the counsel who was appearing for the defendant No.1 did not make any memo before the trial Court that defendant No.1 died. If such a memo was filed, the Court would have suo moto recorded such fact in cause title and proceeded with the suit. In the present suit, there were altogether five defendants. The right to sue survives against the surviving defendants alone being a suit for injunction against trespass. So, there is no question of abatement of the suit on the reason that no legal heirs of defendant No.1 were impleaded. Before proceeding with the suit, the trial Court ought to have made an entry that the right to sue survives against the surviving defendants. It is only a technical error due to lack of awareness about the death of the party. Of course,

the trial Court could not have passed a decree against a dead person. If it is done, that part of the decree is void. It does not mean that the decree passed against the surviving defendants i.e. defendants No.2 and 3 is void. So, the decree passed against the deceased defendant No.1 alone is void. So, the contention in this regard is also liable to be rejected.

25. Another contention of the counsel for the appellant is that since the appellants disputed the title of the plaintiffs over the property on which the relief is claimed, without a prayer for declaration, the suit for injunction simpliciter is not maintainable. In a case where the plaintiff is able to show that he is in possession of the property based on his title document, no plaintiff can be relegated to a title suit only for the reason that the defendants disputed the title of the plaintiff without any basis. Reliance can be placed on **Anathula Sudhakar v. P. Buchi Reddy (Dead) by Lrs. and Ors., (AIR 2008 SC 2033)**. So, the finding of the trial court that the plaintiffs are entitled to get decree of injunction is liable to be confirmed. So, it cannot be held that the trial court gone wrong in holding that the plaintiff in OS 688/14 and plaintiff in OS 689/14 were entitled to get prohibitory injunction as they could establish their exclusive respective possession over the plaint B schedule property in OS 688/14 and the plaint D schedule property in OS 689/14. So, this point is found against the appellants.

26. **Points No. 2 and 3:-** On a careful re-appreciation of the materials available on record, I find no reason to interfere with the

common judgment and the decrees of the Trial Court in both cases since the trial court rightly decided both matters and resultantly decreed both the suits granting decree of prohibitory injunction. So, it is ineluctable to confirm the decrees and common judgment of the Trial Court subject to the fact the decrees passed against the deceased defendant No.1 in both suits are void. Since the appeals are sans merit, those are liable to be dismissed. The costs shall follow the event is the normal rule. There is nothing to deviate from the basic rule.

In the result,

Both appeals are dismissed with costs of the respondents No.1 and 2 .

(Dictated to the Confidential Assistant, typed by her, corrected by me, and pronounced in open Court on this the 31st day of March, 2026).

Addl. District Judge-IV

Witness & Exhibits on either sides :- Nil

Addl. District Judge-IV