

**IN THE COURT OF THE TRIBUNAL FOR EFL CASES/
ADDL. DISTRICT JUDGE-I, KOZHICODE**

Present: Sri. N.R. Krishnakumar, Tribunal for EFL Cases/

Addl. District Judge-I, Kozhikode

Friday, the 12th day of September, 2025

IA 01/2025 in OA 04/2020 & IA 03/2025 in OA 05/2020

IA 01/2025 in OA 04/2020

Between:

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| 1 | Shanthilal Jadavji Patalia, S/o. Jadavji Patalia, aged 81 years, 501/A Bhavani Complex, Bhavani Shanker Road, Dadar West, Mumbai-400 028 | Petitioners/
Applicants |
| 2 | Jinesh Shantilal Patalia, S/o. Shantilal Jadavji Patalia, aged 48 years, 501/A Bhavani Complex, Bhavani Shanker Road, Dadar West, Mumbai-400 028 | |

And:

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|---|---|-----------------------------|
| 1 | State of Kerala rep. by its Secretary to Government, Department of Forest and Wild Life, Government Secretariat, Thiruvananthapuram. | Respondents/
Respondents |
| 2 | The Custodian of Ecologically Fragile Land, (The Principal Chief Conservator of Forest, Forest Head Quarters, Vazhuthakkad, Thiruvananthapuram-695 014. | |
| 3 | Divisional Forest Officer, South Wayanad Division, Kalpetta, Wayanad District-673 122. | |

IA 03/2025 in OA 05/2020

Between:

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| 1 | Satish Kumar. P. Shah, S/o. Purushotham. P Shah, aged 71 years, 4/668, Zilla Colony, P.T. Usha Road, Kalathinkunnu amsom desom, Kozhikode. | Petitioners/
Applicants |
| 2 | Himanshu S Shah, S/o. Surendrakumar P Shah, aged 51 years, 8/69, Neel Preeth, Corporation Office Road, Nagaram amsom desom, Kozhikode. | |

3	Jitendra Kumar P Shah, S/o. Purushotham P Shah, aged 67 years, 36, Jayanthi Nagar Colony, P.T Usha Road, Kalathinkunnu amsom desom, Kozhikode.	Petitioners/ Applicants
4	Ashwin S Shah, S/o. Satish Kumar P Shah, aged 43 years, Residing at 4/668, Zilla Colony, P.T. Usha Road, Kalathinkunnu amsom desom, Kozhikode.	

And:

1	State of Kerala rep. by its Secretary to Government, Department of Forest and Wild Life, Government Secretariat, Thiruvananthapuram.	Respondents/ Respondents
2	The Custodian of Ecologically Fragile Land, (The Principal Chief Conservator of Forest, Forest Head Quarters, Vazhuthakkad, Thiruvananthapuram-695 014.	
3	Divisional Forest Officer, South Wayanad Division, Kalpetta, Wayanad District-673 122.	

These petitions coming on 26th day of August 2025 for final hearing before me in the presence of Sri. V. Razal Rahiman, Smt. Jyothi. R. & Sri. John. C. Philip Advocates for petitioners and Smt. Dilna.D.B. Special Govt. Pleader for respondents in both petitions and having stood over to this day for consideration the court passed the following:

COMMON ORDER

These applications are filed by the applicants in OA's to amend the petitions to reduce and correct the extent of the schedule property in accordance with the report of the Advocate Commissioner.

2. The OA's are filed to declare that the OA schedule properties are not ecologically fragile land and to exclude the properties from the EFL notification. Advocate Commissioner appointed in the cases had inspected the property with the assistance of Surveyor and Botanist. The report of the Commissioner and Botanist show the nature of the property. The cultivated area, non cultivated area and where the structure is located are separately reported by the Advocate

Commissioner and Botanist. Now the applicants want to confine the claim to the portion where the cultivation was found by the Commissioner and Botanist. Even if the petitions are allowed confining the claim to the cultivated area, no prejudice will be caused to the respondents. Hence the applications.

3. The respondents filed counter statement and opposed the applications mainly on the ground that the report of the Commissioner, survey sketch and report of Botanist are not correct. The respondents have filed objections to the report of the Commissioner and filed petition to remit back the report of the Commissioner. Although, this Tribunal dismissed that application, liberty was given to the respondents to examine the Advocate Commissioner and Botanist and to file fresh petition to remit the report if it is proved during trial that additional materials are to be reported. Since the report of the Advocate Commissioner and Botanist are under challenge, the applicants may not be allowed to amend the applications on its basis. Moreover, the status of the disputed property as on the appointed day is the criteria. Under the above circumstances, the proposed amendment is not necessary for determination of the question in controversy. Hence, the applications are liable to be dismissed.

4. Heard the parties and perused the records. The Hon'ble Supreme Court in **Dinesh Goyal @ Pappu v. Suman Agarwal** reported in **AIR 2024 SC 4779** has considered the scope of Order 6 Rule 17 of **CPC** and enumerated the circumstances under which the parties can be permitted to amend the pleadings. There, in paragraph 11, the Supreme Court has extracted the guidelines given in this regard by the Court in a earlier decision. The relevant portion of the decision reads as follows;

*11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in **Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.** 2022 SCC OnLine SC 1128 :: 2022 ICO 1614, after considering numerous precedents in regard to the amendment of pleadings, culled out certain*

principles :-

(i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

(iii) Amendments, while generally should be allowed, the same should be disallowed if -

(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.

(b) The amendment does not raise a time-barred-claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)

(c) The amendment completely changes the nature of the suit;

(d) The prayer for amendment is malafide,

(e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are -

(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.

(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce

an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.

5. The Supreme Court reiterated the general rule that a liberal approach is to be adopted in consideration of amendment applications. If the guidelines extracted above is applied in this case, I am satisfied that the amendment sought by the applicants are only to be allowed so as to decide the real question in controversy and to avoid future dispute. As already stated above, the applicants now want to confine their claim to the extent of property where the Commissioner and Botanist found cultivation. Of course, the respondents have challenged the correctness of the report of the Commissioner and Botanist. But, that itself is not sufficient to deny the right of the applicant to confine the claim to a lesser extent. That apart even if these applications are allowed it will not cause injustice or prejudice to other side. Moreover, the respondents will be getting an opportunity to file additional counter statement, if any, also. Hence for the reasons stated above, both the applications for amendment of the pleadings are allowed. Carry out amendment.

(Dictated to the Confidential Assistant, typed by her directly on computer, corrected by me and pronounced in open Court, this the 12th day of September, 2025)

Sd/-

Tribunal for EFL Cases/
Additional District Judge-I

No oral or documentary evidence on either side.

Sd/-

Tribunal for EFL Cases/
Additional District Judge-I

Fair/copy of Order
in IA.01/25 in OA 04/2020 &
in IA.03/25 in OA 05/2020
Dated: 12.09.2025

