

IN THE COURT OF THE MUNSIFF, PUNALUR
 PRESENT :-Smt. Reshma R.S, Civil Judge, Junior Division
 Thursday the 23rd day of October 2025, 1st day of Karthika 1947.

IA 9/2025 in OS 134/2008

Between

Petitioners/

Plaintiffs

- : 1. Maneesha, aged 15 (Minor),
 D/o. Earnest Perera, Perera, Evershine,
 Vilakkudy Muri, Vilakkudy Village,
 Pathanapuram represented by Esther,
 Earnest Perera,(Mother and Next friend),
 Perera, Perera Evershine, Vilakkudy Muri,
 Vilakkudy Village, Pathanapuram.
2. Maya, aged 20, D/o. Earnest Perera, Perera,
 Evershine, Vilakkudy Muri, Vilakkudy Village,
 Pathanapuram.
3. Manoj, aged 22, S/o.Earnest Perera, Perera,
 Evershine, Vilakkudy Muri, Vilakkudy Village,
 Pathanapuram.
- Addl. 4. Esther, Perera, Evershine, Vilakkudy Muri,
 Vilakkudy Village, Pathanapuram.
(By Adv. V. M. Joseph)

And

Respondents/

Defendants

- : 1. Justus Perera, aged 48, S/o. Joseph Perera,
 Morning Star, Vilakkudy Muri,
 Vilakkudy Village, Pathanapuram Taluk,
 Kollam.
2. Alphonse Perera, aged 56, S/o. Joseph Perera,
 Morning Star, Vilakkudy Muri,
 Vilakkudy Village, Pathanapuram Taluk,
 Kollam.
3. Fredittamma Berty, Habi, Kannimeltheri,
 Vadakkevila Village, Kollam, S/o.Joseph
 Perera, Morning Star, Vilakkudy Muri,
 Vilakkudy Village, Pathanapuram Taluk,
 Kollam.

4. Hycinth Sophiya, Kalichery House,
Kaumudi Nagar, Pallithottam P.O,
Kollam East Village.

(By Adv. P.C.Sivaraja Pillai for D1 to D3)

This petition is coming on for hearing before me on 23.10.2025 and on the same day court passed the following.

ORDER

Application filed under Section 6 Rule 17 of the Code of Civil Procedure, 1908.

2. **The application averments, in brief, are as follows:** The applicant is the additional fourth plaintiff in the suit. This application is filed on behalf of other plaintiffs also. The suit is filed for partition, declaration and other consequential reliefs. The plaint schedule properties originally belonged to the mother of defendant nos. 1 to 3, and the mother died on 24.11.2007. After the death of the mother, the plaint schedule properties are in the joint possession and ownership of the parties to the suit. The mother was laid up for two years before her death. She was not in her senses and she was incapable of identifying people. She also had memory loss. The document, alleged to be executed by the mother, is forged. The mother never executed any such documents. The suit has been filed, disclosing all these things. Even though there are plaint averments to the effect that the mother never created such a document as alleged and the signature is not that of the mother, the applicants failed to incorporate a relief of declaration that the documents are void. If such a declaration is not sought, that may lead to more conflicts in the future.

Hence, an amendment is to be made in the prior portion of the suit to incorporate that relief. There is no need to amend the pleadings. If this application is rejected, that would cause irreparable injury and hardships to the applicants. Hence this application.

3. **The 1st respondent filed objection contending the following:** The application is not maintainable either in law or on facts. The application lacks bona fides. The suit was filed in 2008 and end-day evidence was completed in this case. Thereafter when the case was posted for final hearing, the present permanent application is filed. Such an application cannot be allowed. The application averments are false. The proposed amendment would change the nature and basic character of the suit. Hence, the amendment application is liable to be dismissed with costs.

4. **The 2nd and 3rd respondents filed objection contending the following:** The application is not maintainable either in law or on facts. From the beginning itself the plaintiffs are trying to retract the proceedings and delay the hearing. Final adjudication of the case. The present application is also filed to achieve that object. Hence this application is liable to be dismissed with a cost.

5. No documents were produced from either side.

6. Heard both sides.

7. The sole point to be considered is whether this application can be allowed.

8. **The point:** The learned counsel for the applicants argued that application is to be allowed in the interest of justice. According to the applicants, even though there are sufficient pleadings to the effect that the mother never executed any settlement deeds as alleged by the defendants, the applicants failed to incorporate the relief of a declaration that those documents are void. Instead, the relief sought in the plaint is only to partition the plaint schedule properties. Hence the present application is filed to incorporate that relief in the prayer portion. On the other hand, the learned counsel for the respondents vehemently objected to the application on the ground that the present application is filed to delay the trial and to cause hardships to the respondents.

9. Here the only thing to be considered is whether the present amendment application can be filed, can be allowed at this point of time. It can be seen that the suit was filed in 2008. Now, entire evidence has been completed in this case and the case stands posted for final hearing. At this stage, the present amendment application is filed.

10. It can be seen that the present application is filed under Order VI Rule 17 of CPC. Proviso to Order VI Rule 17 is as follows: - *“Provided that no application for amendment shall be allowed after the trial as 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.”* Hence it is very evident that there is specific bar for entertaining an application

under Order VI Rule 17 after the commencement of trial. In the present case, the amendment application is filed after the conclusion of trial. The facts and circumstances of this case makes it clear that the proposed amendment is not a matter which the party could not raise before the commencement of trial. This application is highly belated. The applicant cannot simply say that the proposed amendment ought to have been included in the suit and that was accidentally omitted. The suit is of the year 2008. After the conclusion of trial, the present application cannot be allowed. No specific reason is stated in the application. However, a perusal of the application makes it clear that the applicant omitted to include the relief in the suit. It cannot be considered as a sufficient reason to seek an amendment at this final stage of proceedings, after the closure of the entire evidence. I do not find any merit in the contentions of the applicant. The present application can only be considered as an attempt to protract the cases indefinitely. At the time of pre-trial steps also, the applicant did not file any amendment application. Here, the contention that there is no amendment in the pleadings cannot be considered as a reason to allow this application, as the applicant wants to incorporate a relief in the suit. The nature of the suit would change. If this application is allowed, it will cause high prejudice to the respondents, which cannot be even compensated by way of costs. The respondents would not get an opportunity to defend the case with the proposed amendments. The same is against the principles of natural justice also. Considering all these aspects, this court is of the view that allowing this

application at this stage will result in injustice. Hence this application is liable to be dismissed.

In the result: The application is dismissed. There shall be no order as to costs.

Pronounced in open court on this, the 23rd day of October 2025.

Sd/-
Civil Judge (Junior Division)

Appendix: Nil

Id/-
Civil Judge (Junior Division)

//True Copy//

Typed by : Saranya V S

Compared by :

CIVIL JUDGE (Junior Division)