

IN THE COURT OF THE MUNSIF'S, PUNALUR  
 PRESENT :- Smt. Reshma R.S, Civil Judge (Junior Division)  
 Friday the 19<sup>th</sup> day of December, 2025/28<sup>th</sup> day of Agrahayana, 1947.

**IA 12/2025 in OS 134/2008**

**Between**

**Petitioner/**

**5<sup>th</sup> Defendant** : Hyacinth Sophia Paul, W/o Alphonse Perera,  
 Kalichery House, Kaumudi Nagar 33,  
 Pallithottam, Kollam-691001.  
**(By Adv. R. Sivadasan)**

**And**

**Respondents/**

**Plaintiffs** : 1. Esthar, W/o Late Earnest Perera, Evershine,  
 Vilakkudy Muri, Vilakkudy Village,  
 Pathanapuram.  
 2. Maneesha, D/o Late Earnest Perera, Evershine,  
 Vilakkudy Muri, Vilakkudy Village,  
 Pathanapuram.  
 3. Maya, D/o Late Earnest Perera, Evershine,  
 Vilakkudy Muri, Vilakkudy Village,  
 Pathanapuram.  
 4. Manoj, S/o Late Earnest Perera, Evershine,  
 Vilakkudy Muri, Vilakkudy Village,  
 Pathanapuram.  
**(By Adv. John George and Adv. V.M Joseph)**

This petition is coming on for final hearing before me on  
 19-12-2025 and on the same day the 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 5<sup>th</sup> defendant in the suit. The suit is filed for partition,  
 declaration and other consequential reliefs. The settlement deed Nos.

3036/2007, 3037/2007, 3038/2007 and 3039/2007 are liable to be set aside.

But the plaintiffs do not have any right to proceed against the applicant's property, which she purchased under a valid sale deed No.2548/2007. At the time of examination, the applicant made it clear in her affidavit in lieu of examination in chief. However the applicant failed to incorporate that relief through a counter claim by amending the written statement. The applicant is entitled to raise a counter claim and is entitled to get a declaration that the applicant is the absolute owner of properties covered under sale deed No. 2548/2007. Hence the written statement is to be amended to incorporate the counter claim. Otherwise, it would cause irreparable injury and hardships to the applicant. Hence this application.

3. The plaintiffs vehemently objected to the application contending that this is an attempt to protract the proceedings indefinitely. No written objection was filed.

4. Heard both sides.

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

6. **The point:** The learned counsel for the applicant argued that application is to be allowed in the interest of justice. According to the applicant, she purchased the property covered by sale deed No.2548/2007 after paying balance sale consideration and the plaintiffs are not entitled to

set aside that document. The applicant prayed for allowing her to amend the written statement to incorporate a counter claim. On the other hand, the learned counsel for the plaintiffs vehemently objected to the application on the ground that the applicant is trying to protract the proceedings indefinitely.

7. Here the only thing to be considered is whether the present amendment application 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. The applicant wants to amend her written statement to incorporate a counter claim seeking a relief of declaration. From the application averments itself it is clear that the written statement was filed in 2019. Now after the conclusion of entire trial the present application is filed to raise a counter claim.

8. 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 make 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 she failed to raise a counter claim at the time of filing the written statement. 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, to allow the proposed amendment at this stage of the proceedings. 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. If this application is allowed, it will cause high prejudice to the respondents, which cannot be even compensated by way of costs. 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 19<sup>th</sup> day of December 2025.

Sd/-  
Civil Judge (Junior Division)

**Appendix: Nil**

Id/-

Civil Judge (Junior Division)

//True Copy//

Typed by : Reeja Jasmine M.V

Compared by :

**CIVIL JUDGE (Junior Division)**