

**IN THE COURT OF MUNSIFF, KARUNAGAPPALLY**

**Present: Smt. Aswathy Nair, Munsiff**

Thursday the 11<sup>th</sup> day of December, 2025/20<sup>th</sup> day of Agrahayana, 1947

**IA 6/2024 in OS 350/2020**

**Between**

Plaintiffs

- :1. Kochukunju M.,  
Aged 55 Years,  
S/o. Muhammed Kunju,  
Kochayyathu House,  
Adinadu South Muri,  
Kattilkadavu P.O.,  
Adinadu Village,  
Karunagappally Taluk.
2. K.M. Sunu @ Sunumon,  
Aged 54 Years,  
S/o. Kochumathunny, Stinattu Villa,  
Thodiyoor North P.O., Thodiyoor Muri,  
Thodiyoor Village.
3. Ponnamma Sunu,  
Aged 46 Years,  
W/o. K.M. Sunu, -do -  
By Adv. G. Abhayakumar.

**And**

Defendants

- :1. Raju, Aged 58 Years,  
S/o. Kochumathunny,  
Seenayi Villa,  
Thodiyoor North P.O.,  
Thodiyoor Muri,  
Thodiyoor Village,  
Karunagappally Taluk. (1<sup>st</sup> Plaintiff)
2. Suja John, Aged 50 Years,  
W/o. Kunjumon, Sujin Villa, -do -  
(2<sup>nd</sup> Plaintiff)
3. Denoy Sajimon, Aged 47 Years,  
W/o. Saji, J.J. Villa, -do - (3<sup>rd</sup> Plaintiff)

4. Kunjumon, Aged 56 Years,  
S/o. Kochumathunny,  
Sujin Villa, -do - (4<sup>th</sup> defendant)
  5. Sajimon, Aged 52 Years,  
S/o. Kochumathunny, J.J. Villa, -do -  
(5<sup>th</sup> defendant)
- Adv. Nil.

This petition coming on for hearing before me on 11.12.2025 and on the same day the court passed the following:-

### **ORDER**

This is an application filed by the defendants seeking amendment in the written statement. Respondents in the application are the plaintiffs in the suit. Parties are referred to plaintiffs and defendants as figures in the suit.

2. The averments of the petition in brief as follows:- Petitioner is the 1<sup>st</sup> defendant in this case and he filed this affidavit on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants also. Plaintiffs in collusion with 4<sup>th</sup> and 5<sup>th</sup> defendants filed the present suit for permanent prohibitory injunction. 1<sup>st</sup> and 3<sup>rd</sup> defendants have filed written statement stating the same and 2<sup>nd</sup> defendant has filed memo adopting the contentions of the 1<sup>st</sup> and 3<sup>rd</sup> defendants. 1<sup>st</sup> defendant by virtue of sale deed 1456/2020 have obtained right over property having extend of 5.02 ares in resurvey 426/8 and also property having an extend of 7.25 ares in resurvey No.426/2010 and property having an extend of 5.80 ares in resurvey 423/3 and also having extend of 81 sqr.mtrs in resurvey 423/2-2-4 and he is

paying tax for the above said properties. Plaintiff schedule property belongs to 1<sup>st</sup> plaintiff and 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants by virtue of will deed 36/III executed by their parents Kochumathunni and Annamma. After the execution of the will deed, the above said Kochumathunni and Annamma died and the above will came into existence. Hence plaintiff schedule property is in the co-ownership of 1<sup>st</sup> plaintiff and 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants. But on the northern side of the plaintiff schedule property there exists Kottakkakathu Junction- Ayurveda Hospital junction public road. Plaintiff schedule property has been used by the 1<sup>st</sup> defendant for his transportation from the above said public road to the property of the 1<sup>st</sup> defendant and the said pathway has a width of 4.5 meters and a length of 52 meters. The 1<sup>st</sup> defendant has purchased his property from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and this led to enmity between plaintiffs, 4<sup>th</sup>, 5<sup>th</sup> defendant and 1<sup>st</sup> and 3<sup>rd</sup> defendants. Hence in order to defeat the right of the 1<sup>st</sup> defendant over his properties, plaintiffs along with 4<sup>th</sup> and 5<sup>th</sup> defendants filed this suit against 1<sup>st</sup> to 3<sup>rd</sup> defendants. Further to obstruct the usage of 1<sup>st</sup> defendant, plaintiffs have installed a gate on the northern end of the plaintiff schedule property and thereby obstructed the usage of the pathway by the 1<sup>st</sup> defendant. Further due to the intervention of mediators the gate was opened and as per the report of the advocate commissioner this court has ordered to maintain status-quo of the properties. Further the 2<sup>nd</sup> defendant has

transferred his  $\frac{1}{4}$  right over the plaint schedule property in favour of the 1<sup>st</sup> defendant. However, still plaintiffs and 4<sup>th</sup> & 5<sup>th</sup> defendants obstructing the usage of pathway through the plaint schedule property for accessing the property of the 1<sup>st</sup> defendant and they openly declared that they will not allow him to use plaint schedule property for the pathway. Hence he filed this petition to amend the written statement and to incorporate counter claim for his declaration of his right over the plaint schedule property. Hence this petition.

3. **Plaintiffs/respondents entered appearance on receipt of copy of this petition and filed objection as follows:--** This petition is not maintainable either in law or on facts. 1<sup>st</sup> defendant has never used plaint schedule property as a pathway for the transportation to his property. It is true that after the death of the parents of the 1<sup>st</sup> plaintiff, 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants as per the will deed, 1<sup>st</sup> plaintiff, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants have obtained right over the plaint schedule property. The plaint schedule property is in the co-ownership of 1<sup>st</sup> plaintiff and 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants. Hence said property can be transferred only with the consent of the other co-owners. The 1<sup>st</sup> defendant has purchased his property from the 2<sup>nd</sup> defendant even prior to the execution of the will and he has other pathway for his transportation. He has never used plaint schedule property for his transportation. The 2<sup>nd</sup> defendant has no right to transfer his  $\frac{1}{4}$ <sup>th</sup> right over the plaint schedule property to the 1<sup>st</sup>

defendant since the plaint schedule property has not been partitioned. The 2<sup>nd</sup> defendant cannot transfer his ¼<sup>th</sup> share alone to the 1<sup>st</sup> defendant and it is against the conditions stated in the will. The contention of the 1<sup>st</sup> defendant that they have obstructed the 1<sup>st</sup> defendant from entering into the plaint schedule property is utterly false and no such incident has happened. The 1<sup>st</sup> defendant has no right to file this petition. Hence the petition may be dismissed.

4. On the basis of the above pleading the only point is raised for consideration.

Is the petition allowable?

5. Heard the learned counsel for both sides.

6. **The Point**-- The specific contention of the petitioners is that 1<sup>st</sup> defendant has been using plaint schedule property for his transportation to the property purchased by him from the 2<sup>nd</sup> defendant. However plaintiffs and 4<sup>th</sup> & 5<sup>th</sup> defendants who did not like the purchase of the property by the 1<sup>st</sup> defendant from the 2<sup>nd</sup> and 3<sup>rd</sup> defendant obstructed the usage of plaint schedule property by the 1<sup>st</sup> defendant. Hence he could not access his properties purchased by him for valid consideration. Accordingly, the 2<sup>nd</sup> defendant, who has ¼<sup>th</sup> right over the plaint schedule property has transferred the same to the 1<sup>st</sup> defendant for using the same to access his properties

purchased by him from the 2<sup>nd</sup> defendant. However even after the purchase of the ¼<sup>th</sup> share of the plaint schedule property by the 1<sup>st</sup> defendant, plaintiffs, 4<sup>th</sup> and 5<sup>th</sup> defendants obstructed the usage of plaint schedule property by the 1<sup>st</sup> defendant and collusively filed this suit along with 4<sup>th</sup> and 5<sup>th</sup> defendant. Hence it is absolutely necessary that the written statement of the 1<sup>st</sup> defendant need to be amended so as to incorporate the counter claim to declare his ¼<sup>th</sup> right over the plaint schedule property and also for permanent prohibitory injunction to restrain the plaintiffs and 4<sup>th</sup> & 5<sup>th</sup> defendant from obstructing the usage of the plaint schedule property by the 1<sup>st</sup> defendant. On the flip side plaintiffs/ respondents contended that 1<sup>st</sup> defendant never used plaint schedule property as a pathway for his transportation to the property purchased by him. Even-before the execution of the will-deed by their parents, the 1<sup>st</sup> defendant has purchased property from the 2<sup>nd</sup> defendant and he has a definite pathway for using his property. He never accessed plaint schedule property for his transportation. Plaint schedule property has been devolved upon 1<sup>st</sup> plaintiff and 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants by virtue of will deed executed by their parents. However property has not been partitioned by metes and bounds and separate shares were not allotted to each parties. Hence the 2<sup>nd</sup> defendant cannot transfer his ¼<sup>th</sup> share alone to the 1<sup>st</sup> defendant.

7. Here in this case admittedly 1<sup>st</sup> plaintiff and 2<sup>nd</sup>, 4<sup>th</sup> & 5<sup>th</sup> defendants are the co-owners of the plaint schedule property by virtue of will deed No.36/III and they have entitled for ¼<sup>th</sup> share each over the plaint schedule property. One of the main arguments advanced by the 1<sup>st</sup> defendant is that he has purchased the ¼<sup>th</sup> right over the plaint schedule property from the 2<sup>nd</sup> defendant and even before that he was using plaint schedule property for the transportation and accessing to his properties purchased by him from the 2<sup>nd</sup> defendant. Plaintiffs are purposefully obstructing the usage of the plaint schedule property by the 1<sup>st</sup> defendant even-after the purchase of the ¼<sup>th</sup> share over the plaint schedule property. Hence he filed this petition to make necessary amendments in order to incorporate counter claim for declaring his right over the plaint schedule properties. Plaintiffs admitted that 2<sup>nd</sup> defendant has ¼<sup>th</sup> right over the plaint schedule property and according to 1<sup>st</sup> defendant the same has been transferred in favour of him by the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant also admitted the same in his written statement. In such a scenario if the amendment to incorporate a counter claim to declare the right of 1<sup>st</sup> defendant right over plaint schedule property is not allowed, it would only lead to multiplicity of litigation. Moreover the contentions raised by the plaintiffs is that plaint schedule property has never been used by the 1<sup>st</sup> defendant for his transportation and plaint schedule property has not yet been partitioned by

metes and bounds. Hence the 2<sup>nd</sup> defendant cannot transfer his ¼<sup>th</sup> right in favour of the 1<sup>st</sup> defendant. However all the above said contentions need to be proved by adducing evidence and it can be ascertained only through a full fledged trial. Considering the facts and circumstances of this case I believe that if the amendment sought to be incorporated is not allowed it will only cause irreparable injury and loss to 1<sup>st</sup> defendant and it will only lead to multiplicity of litigation. Hence this point is found in favour of the petitioner. Hence petition is to be allowed

8. In the result, petition is allowed and granting permission to 1<sup>st</sup> defendant to incorporate the amendments sought in the petition along with counter claim. Amendments shall be carried out within five days.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 11<sup>th</sup> day of December, 2025)

Sd/  
Aswathy Nair  
MUNSIFF

**Appendix** : Nil

Id/  
Munsiff

//true copy//

Munsiff

Typed by: Rekha. P.R.  
Compared:

