

**IN THE COURT OF THE MUNSIFF OF KANNUR**

Present: Sri.Manikandan.C.K., Principal Munsiff, Kannur,  
Friday, the 22<sup>nd</sup> day of May, 2026 (1<sup>st</sup> Jyaishta, 1948)

**IA.No.3/2026 in OS.No.215/2023**

Shuhaibath.T., D/o.Mohammed, ]  
aged 41 years, Thayakath House, ]  
Near Mundayatt Kottam, E.M.S Road, ] Petitioner/  
Pappinissery West, Pappinissery, ] Defendant No.3  
Kannur. ]

**V/s.**

1. Muhammed Shakir.T., S/o Mahmood, ]  
aged 53 years, Shas Manzil, ]  
Pappinissery West, Arabic College, ]  
Pappinissery, Kannur-670561. ]
2. Mashood Thayakath, S/o.Mahmood, ]  
aged 43 years, Manalil House, ]  
Kalloorikkadavu, Narath.P.O., ]  
Via Kolacheri. ]
3. Sajid Thayakath, C/o.Aslaha Iqbal, ]  
aged 42 years, Al Inam, ] Respondents/  
Chakkarappara, Azhikkode.P.O, ] Plaintiff/  
Kannur- 670009. ] Defendants
4. Shahina.T., D/o.Mahmood, ]  
aged 39 years, Thayakath House, ]  
Moronnummal, Enthod, ]  
Pappinissery.P.O., Kannur- 670561. ]
5. Shanib Thayalath, S/o.Mahmood, ]  
aged 34 years, Manalil House, ]  
Kalloorikkadavu Narath.P.O., ]  
Via Kolacheri. ]

This petition coming on the 21<sup>st</sup> day of May, 2026 for hearing before me in the presence of Sri.Manuel.PJ., Advocate for the petitioner; Sri.Noushad.K and Smt.Rusleena.C.V., Advocates for the

1<sup>st</sup>respondent; S/Sri.Shafeer.C and Sanoop.E., Advocates for the respondents No.2 to 4; and having stood over for consideration till this day the court delivered the following:

### **ORDER**

This application is filed under section 151 of CPC to recall PW1.

2. The averments in the applications is as follows:- Petitioner herein is the defendant No.3 in the above suit. The above suit is filed for partitioning the plaint schedule property. The contention of the petitioner is that the plaintiff was examined as PW1 and exhibits marked on 18.03.2026. At that time, another counsel was appearing for the petitioner and due to the difference of opinion between the petitioner and her earlier counsel, she could not properly cross examined PW1 and important documents not confronted to him. Such latches in cross-examination had happened because of poor communication between the petitioner and earlier counsel. After closing the evidence of the plaintiff, petitioner's earlier counsel had relinquished the vakalath on 27.03.2026 and thereafter the petitioner approached the Legal Service Authority, Kannur and legal aid counsel was appointed. Now it is learnt that PW1 has to be effectively cross examined again for the benefit of her case. Hence, this application.

3. Respondent/plaintiff filed counter. The averments in the counter is as follows:- The above petition is not maintainable either in law or on facts. The respondent denied entire averments made in the application save those that are expressly admitted. The contention of the respondent/plaintiff is that the court already granted sufficient opportunity and ample time to the respondent to adduce evidence. Respondent further contended that the reason stated in the petition for reopening the evidence are unsustainable and untenable. Respondent further contended that the present attempt of the petitioner is only to fill up the lacuna and the allegation that counsel for the petitioner had not properly cross examined PW1 is not a valid ground for reopening the evidence of plaintiff and recall PW1. The intention of the petitioner/defendant No.3 is to cause maximum hardship to the respondent/plaintiff. Hence, the petition is to be dismissed with costs.

4. Heard both sides.

5. The sole point to be considered is whether the applications are allowable or not?

6. **The Point**:- The contention of the petitioner/defendant No.3 is that the plaintiff was examined as PW1 and exhibits marked on 18.03.2026. At that time, another counsel was appearing for the petitioner and due to the difference of opinion between the

petitioner and her earlier counsel, she could not properly cross examined PW1 and important documents not confronted to him. Such latches in cross-examination had happened because of poor communication between the petitioner and earlier counsel. After closing the evidence of the plaintiff, petitioner's earlier counsel had relinquished the vakalath on 27.03.2026 and thereafter the petitioner approached the legal service authority, Kannur and legal aid counsel was appointed. Now it is learnt that PW1 has to be effectively cross examine again for the benefit of her case.

7. On the other hand, the plaintiff/respondent contended that the above petition is not maintainable and the reason stated in the petition for reopening the evidence and unsustainable and untenable. The present attempt of the petitioner is only to fill up the lacuna and the allegation that counsel for the petitioner has not properly cross examined PW1 is not a valid ground for reopening the evidence of plaintiff and recall PW1. The intention of the petitioner/defendant is to cause maximum hardship to the respondent/plaintiff.

8. On going through the case records, it would go to show that defendant No.3/petitioner entered into appearance through counsel and filed vakalath and written statement. Plaintiff was examined as PW1 and Ext.A1 marked on 18.03.2026. This is a suit for partition

of the plaint schedule property into 6 equal shares and to allot one such share to plaintiff. The contention of the defendant No.3/petitioner is that she is residing in the house in the plaint schedule property and with consent and approval of plaintiff and other defendants, she spend more than Rs.6,50,000/- for the renovation of the house. The claim of defendant No.3 is to get the reservation of the house in the plaint schedule property in the event of partition. There is no specific dispute with regard to the share to which the petitioner/defendant No.3 is entitled. PW1 was cross examined by the learned counsel appearing for the defendant No.3 in accordance with the pleadings. Now the present application filed by the defendant No.3/petitioner on 18.05.2026 by stating that her earlier counsel had not properly cross examined PW1 and important documents were not confronted to him. It is true that defendant No.3 had engaged new counsel for her own and present counsel filed vakalath on 06.04.2026. The allegation of the petitioner is that due to the difference of opinion between her and her earlier counsel, she had not properly cross examined PW1. Anyhow, the change of lawyer by a party is not at all a ground to recall party or witness to adduce evidence. If such a practice is permitted to proceed, the trial of the case would be a never ending process. The intention of the petitioner is behind the filing of this application

after two months of the examination of PW1 is only to drag the proceedings. Moreover that the oral evidence of petitioner/defendant No.3 yet to adduce. If the prayer in the application is allowed, it would cause prejudice or injustice to the plaintiff. The reason stated in the petition is not at all a ground to recall PW1. Hence, the petition is liable to be dismissed.

In the result,

1. The application is dismissed.
2. No order as to costs.

(Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court, this the 22<sup>nd</sup> day of May, 2026).

Sd/-  
PRINCIPAL MUNSIF

Copied by: Sajini.C.V.

(True Copy)

Fair/Spare Order in  
IA.3/2026 in OS.215/2023  
dated: 22.05.2026.