

IN THE COURT OF ADDL. DISTRICT JUDGE- IV, KOTTAYAM

Present : Sri. Satheesh Kumar V., Addl. District Judge- IV, Kottayam

Monday the 23rd day of February, 2026

4th day of Magha, 1947

I.A. No.3/2022, I.A. 4/2022 and I.A. 5/2024 in A.S. No.78/2018

I.A. No.3/2022 in A.S. No.78/2018

Petitioner/Appellant :

K. J. Abraham, aged 60 years, S/o late Kuruvilla Joseph,
Kollamparambil House, Thalayolaparambu P. O.,
Vadayar Village, Vaikom Taluk, Kottayam District.

By Adv. P. V. Krishnakumar

Respondents/Respondents :-

- 1 Thalayolaparambu Grama Panchayath,
Office at Panchayath Buildings,
Thalayolaparambu P.O., represented by its Secretary
- 2 M/s. Ciudad Buildings Private Ltd., 38/602,
Pious Road, Edappally, Kochi, represented by its
Managing Director, M/s. Ciudad Buildings Private Ltd.,
38/602, Pious Road, Edappally, Kochi

By Adv. Sajan Varghese Abraham & Adv. Blessen G Mathews

I.A. No.4/2022 in A.S. No.78/2018

Petitioner/Appellant :

K. J. Abraham, aged 60 years, S/o late Kuruvilla Joseph,
Kollamparambil House, Thalayolaparambu P. O.,
Vadayar Village, Vaikom Taluk, Kottayam District.

By Adv. P. V. Krishnakumar

Respondents/Respondents :-

- 1 Thalayolaparambu Grama Panchayath,
Office at Panchayath Buildings,
Thalayolaparambu P.O., represented by its Secretary
- 2 M/s. Ciudad Buildings Private Ltd., 38/602,
Pious Road, Edappally, Kochi, represented by its
Managing Director, M/s. Ciudad Buildings Private Ltd.,
38/602, Pious Road, Edappally, Kochi
- 3 The District Collector, Kottayam Civil Station, Kottayam
R1 & R3 - By Adv. Sajan Varghese Abraham & Adv. Blessen G Mathews

I. A. No.5/2024 in A. S. No.78/2018

Petitioner/Appellant :

K. J. Abraham, aged 60 years, S/o late Kuruvilla Joseph,
Kollamparambil House, Thalayolaparambu P. O.,
Vadayar Village, Vaikom Taluk, Kottayam District.

By Adv. P. V. Krishnakumar

Respondents/Respondents :-

- 1 Thalayolaparambu Grama Panchayath, represented by its
Secretary Grama Panchayath Office building,
Thalayolaparambu P.O., Vadayar Village, Vaikom
- 2 M/s. Ciudad Builders Private Ltd., 38/602,
Pious Road, Edappally, Kochi-24, represented by its
Managing Director

By Adv. Sajan Varghese Abraham & Adv. Blessen G Mathews

These petitions having been finally heard on 20.02.2026 and the
Court on 23.02.2026 passed the following :-

COMMON ORDER

1. The appeal is preferred by the plaintiff in O.S. No. 212/2014 on the file of the Munsiff's Court, Vaikom, challenging the judgment and decree dated 7th December, 2017, whereby the suit for a declaration of title and permanent prohibitory injunction was dismissed. The parties will hereinafter be referred to according to their status in the original suit for the sake of convenience.
2. The plaintiff instituted the suit seeking a declaration of his title over 1.58 acres of land in Survey No. 204/1 of Vadayar Village. The learned Munsiff dismissed the suit primarily on the strength of certain recitals in Exhibits B1 and B2, executed decades ago, which stated that an extent of 1.68 acres in the said survey number had been "acquired by the Government." The trial court construed these recitals as a conclusive admission of the extinguishment of the plaintiff's ancestral title.
3. Heard appellant and respondent 1 in the appeal and the IAs. First of all, this Court considers the three interlocutory applications preferred by the appellant under the provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), seeking leave to introduce additional documentary evidence at this appellate stage.
4. By I.A. No. 4/2022, the appellant seeks to summon the original file and proceedings pertaining to L.A. No. 140/1958 from the District Collector of Kottayam, the third respondent in the petition. Through I.A. No.3/2022, the appellant seeks to introduce a property tax

receipt dated 23/06/2022 and a certified survey sketch of the property in Re-survey No. 249/1. Finally, by I.A. No. 5/2024, the appellant seeks to produce a certified copy of the judgment of the Hon'ble High Court of Kerala in WP(C) No. 4582/2015 dated 25/03/2024.

5. It is settled law that an application for production of additional evidence under Order 41 Rule 27 CPC must be heard and decided along with the hearing of the appeal on merits, and not separately or in isolation at an interim stage. If the application is found allowable, the appellate court must defer pronouncing judgment to provide opportunity for adducing additional evidence and recording reasons for admission (See *Malayalam Plantations Ltd. v. State of Kerala* (AIR 2011 SC 559)).
6. **Based on the grounds raised in the appeal and these applications, the following preliminary points arise for consideration:**
 - (i) Whether the additional evidence sought to be produced is essential for a just and satisfactory adjudication of the appeal under Order XLI Rule 27(1)(b) of the CPC?
 - (ii) What is the order to be passed?
7. **Point No. (i):** The power of an appellate court to admit additional evidence is an exception to the general rule of finality and is strictly circumscribed by the conditions enumerated in Order XLI Rule 27 of the CPC. While the appellant claims due diligence, the primary focus of this Court's inquiry is on clause (b), which permits the

reception of evidence if the Court itself requires it to enable it to pronounce judgment, or for any other substantial cause.

8. The Hon'ble Supreme Court of India, in ***K. Venkataramiah v. A. Seetharama Reddy*** (AIR 1963 SC 1526), clarified that the "requirement" for evidence is that of the Court itself. This arises when the Court considers that, in the interest of justice, something which remains obscure should be filled up. The legitimate occasion for exercising this discretion arises when, on examining the evidence as it stands, some inherent lacuna or defect becomes apparent.
9. In I.A. No. 5/2024, the appellant contends that the judgment in WP(C) No. 4582/2015 quashed Exhibit B7 relied upon by the trial court, which is an inquiry report by the Deputy Inspector General of Registration. However, upon a perusal of the said judgment, I find merit in the contention of R1 that the Hon'ble High Court has not set aside or nullified Ext.B7 inquiry report, as contended by the appellant. The judgment does not interfere with the factual findings or the validity of the report marked as Exhibit B7 in the suit, corresponding to Ext.P3 in the Writ Petition. The Honourable High Court, in the above Writ Petition, set aside exhibit P5 therein, the order number 11286/ E2/2014/LD dated 12.1.2015, issued by the Principal Secretary, Taxes, Government of Kerala. From the copy of the Writ Petition, produced by the petitioner for perusal of the court, it is evident that, by exhibit P5, the Principal Secretary ordered to take necessary proceedings against the Member of the Grama Panchayath, who, as per Ext. P3 report therein

(corresponding to exhibit B7) was involved in the forgery of the document. As per the order dated 25.3.2024, the Honourable High Court directed the Government to reconsider the matter, after giving an opportunity of hearing to the petitioners, as expeditiously as possible, at any rate, within a period of five months from the date of receipt of a certified copy of the judgment. Hence, it is evident that Ext.B7 in the suit has not been set aside, as contended by the petitioner. Considering that the document sought to be proved does not support the factual claim advanced by the appellant, its reception would be an exercise in futility and would serve no purpose in the adjudication of this appeal. Consequently, I.A. No. 5/2024 is liable to be dismissed.

10. Turning to I.A. No. 4/2022, this Court finds an "inherent lacuna" in the trial record. The respondents' claim of title rests entirely on an alleged government acquisition in 1958. The trial court, while placing the entire burden on the plaintiff, failed to notice that the primary, foundational, and best evidence to resolve this conflict, the official record of L.A. No. 140/1958, was never produced.
11. Considering that the plaintiff specifically pleaded that the "admission" in Exhibits B1 and B2 was a factual error, it was incumbent upon the court to verify this against the actual acquisition records. An admission under Section 31 of the Indian Evidence Act is not conclusive proof and can be shown to be erroneous. To decide a title suit of this magnitude by relying solely on a contested recital while the relevant government record lies unexamined is unsatisfactory to the judicial conscience. On being served with a

notice to the District Collector, the third respondent in the petition, the Government Pleader, on 13.02.2023, prayed for time for producing the document voluntarily, without any order of production by the Court. This Court now requires the production of the acquisition file to effectively and justly adjudicate whether any land in Survey No. 204/1 was ever notified for acquisition. Therefore, I.A. No. 4/2022 deserves to be allowed.

12. Regarding I.A. No. 3/2022, the documents produced, the property tax receipt and the certified survey sketch, are highly relevant to the trial court's findings on possession and the maintainability of the suit. The trial court dismissed the suit on the additional ground that the plaintiff was out of possession and had failed to seek recovery of possession under the proviso to Section 34 of the Specific Relief Act. These documents provide prima facie evidence that the appellant continues to exercise acts of ownership recognised by revenue authorities even after the trial court's decree. To ensure a factually sound decision on the maintainability issue, these documents must be admitted.
13. The 1st respondent's objection regarding the lack of due diligence is not sustainable in the backdrop of the fact that the acquisition file is a public record in third-party custody. More importantly, as held in *K. Venkataramiah* (supra), the power under Rule 27(1)(b) is the Court's own power to be exercised for substantial justice.
14. **Point No. (ii):** In view of the findings above, I hold that while I.A. No. 5/2024 lacks merit, the reception of evidence sought in I.A.

No.3/2022 and the summoning of records in I.A. No. 4/2022 are imperative for a just decision.

15. In the result, the following order is passed:

(a) I.A. No. 5/2024 is dismissed.

(b) I.A. No. 3/2022 and I.A. No. 4/2022 are hereby allowed.

(c) Pursuant to the prayer in I.A. No.4/2022, the District Collector, Kottayam (R3), is directed to produce the entire original file and proceedings pertaining to L.A. No.140/1958 of the Land Acquisition Officer, Pala, and LAR No. 27/1968 of the Sub Court, Kottayam, before this Court on or before 09.03.2026.

(d) The documents produced along with I.A. No.3/2022 are ordered to be admitted in appeal, as per law. The appellant shall take necessary steps to have them proved and marked in evidence.

(e) The respondents are granted liberty to adduce evidence in rebuttal to the additional evidence now permitted.

(Dictated to and typed by the Dragon Dictation Software, corrected by me, and pronounced in open court on this the 23rd day of February, 2026)

Sd/-
Satheesh Kumar V
Addl. District Judge-IV

Appendix-Nil

Id/-
Addl. District Judge-IV

// True Copy //

Copied by:
Compared by:

Sd/-
Satheesh Kumar V
Addl. District Judge-IV