

IN THE COURT OF THE SUB JUDGE, PALA

Present:- Sri. Mithun Gopi G.S, Sub Judge

Wednesday, the 11st day of March, 2026
20th day of Phalguna 1947

IA 1/2026

in

AS 49/2023

Petitioner:-

Kuttiyamma George Alias Brijith, 58 years,
W/o Late George Kurian, Kaithakulath
Nirappil , Monippally P O, Monippally Kara,
Monippally Village, Meenachil Taluk.

By- Adv. Mathew Mathai Muthukadan

Respondent:-

Titus Mathew, aged 60 years, S/o Mathew
Erattamakkil, Monippally P O, Monippally
kara, Monippally Village, Meenachil Taluk.

By - Adv. Usha Menon.

This petition finally heard on 11.03.2026 and the court on same day passed the following.

ORDER

Application filed under Order 41 Rule 27 and under Section 151 of the Code of Civil Procedure (herein after referred to as "CPC").

2. The applicant is the learned counsel for the respondent in the appeal and the respondent herein is the appellant in the above appeal.

3. **The applicant's case in brief is as follows:** The respondent in the appeal has been living in Canada with his children for some time and the application is filed at her request. In the suit, the respondent in the appeal was examined as DW1 and two documents, Ext. B1 and Ext. B2, were marked and admitted in evidence. Among the documents thus admitted in evidence, Ext. B2 is the order issued by the Pala Revenue Divisional Officer on 10/08/2016 on the complaint filed by Sri.Thomas K.M., Smt.Kuttiyamma George and fifty-nine others regarding the public road in dispute in the case, stating that the public road was obstructed. The original of the order was misplaced by the respondent in the appeal and a photocopy was produced before the trial court. The copy of the said order was marked as Ext. B2 with the endorsement "subject to objection." The applicant is producing the original document of the order, which was found at her house during a search and was handed over to the applicant by a relative of the respondent in the appeal for production in the case. Although the respondent in the appeal had made every effort to produce the original document in court in due time, she was unsuccessful and consequently the original document could not be produced as evidence. Hence, the original document of Ext. B2 has to be admitted in evidence or otherwise, it will cause irreparable harm to the respondent in the above appeal. Hence this application.

4. The respondent in this application has opposed the application.
5. Heard the rival contentions across the Bar. Perused the records.
6. The sole point to be considered is whether the application is to be allowed or not?
7. **The point:** The applicant submitted that the respondent in the appeal was examined as DW1 and Ext. B1 and Ext. B2 were marked in evidence. Ext. B2 is the copy of the order issued by the Pala Revenue Divisional Officer dated 10/08/2016 on the complaint filed by Sri.Thomas K.M., Smt.Kuttiyamma George and fifty-nine others regarding the obstruction of the public road in dispute. The applicant further submitted that the original of the said order had been misplaced and therefore only a photocopy could be produced before the trial court, which was marked as Ext.B2 subject to objection. It was also submitted that the original document was subsequently found in the house and was later handed over to the applicant by a relative for production before this Court. Despite earnest efforts, the respondent in the appeal could not produce the original before the trial court in time. Therefore, it was prayed for allowing the application and admitting the original of Ext.B2 in evidence.
8. The learned counsel for the respondent opposed the application and argued that Ext. B2 was already marked in evidence before the trial court and the suit against the respondent in the appeal was dismissed. It was also contended that the respondent in the appeal had sufficient

opportunity to produce the original document before the trial court but failed to do so. It was further argued that the reason now stated for the non-production of the original document is not satisfactory. The learned counsel prayed for dismissal of the application.

9. For a proper appreciation and for the just disposal of this application, it is necessary to extract Order XLI Rule 27 of CPC which reads as under:

27. Production of additional evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

10. On a perusal of the above provision, it is evident that under Order XLI Rule 27 CPC, additional evidence in an appeal can be

permitted only in limited circumstances. Such evidence may be admitted if the trial court had refused to admit evidence which ought to have been admitted or if the party seeking to produce the evidence establishes that, despite exercising due diligence, the evidence was not within their knowledge or could not be produced at the time when the decree was passed. It can also be allowed if the court considers it necessary to enable it to pronounce judgment or for any other substantial cause. Therefore, unless the case falls within these specified grounds, additional evidence cannot ordinarily be admitted at the appellate stage.

11. The Honourable Apex Court in **Union of India (UOI) v. Ibrahim Uddin and Ors.** reported in **(2012) 8 SCC 148** held in paragraph 25 that; *“The general principle is that the Appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 Code of Civil Procedure enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment.”*

12. The Honourable Apex Court in **Iqbal Ahmed (Dead) by L.Rs. and Ors. v. Abdul Shukoor** reported in **2025 INSC 1027** held in paragraph 8 that; *“In our opinion, before undertaking the exercise of considering whether a party is entitled to lead additional evidence Under*

Order XLI Rule 27(1) of the Code, it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed to be brought on record. In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence as it may not be permissible to take such evidence into consideration."

13. After considering the rival submissions, perusing the records and examining the law on the point, the Court notes that the applicant seeks to produce the original of Ext. B2, an order dated 10/08/2016 issued by the Pala Revenue Divisional Officer regarding the obstruction of a public road. Only a photocopy of the said order was produced before the trial court, which was seen and considered in its judgment. The applicant has not demonstrated sufficient cause for producing the original document at the appellate stage, particularly in view of the delay of more than two years after the filing of the appeal. Further, it has not been shown that the trial court had refused to admit any evidence which ought to have been admitted or that the document could not have been produced earlier despite the exercise of due diligence. More over the applicant failed to establish that the production of the original document of Ext.B2 is necessary for the effective adjudication of the appeal.

14. In view of the above, the conditions under Order XLI Rule 27 CPC for admitting additional evidence are not satisfied. Consequently,

this Court is of the view that the application is only liable to be dismissed and accordingly, it is ordered so.

In the result: The application is dismissed. No costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 11th day of March, 2026.)

Sd/-
Mithun Gopi G.S
Sub Judge

APPENDIX: Nil

Id/
Sub Judge

Typed by: Manju
Compd by: Sindhu

Mithun Gopi G.S
Sub Judge