

IN THE COURT OF THE MUNSIFF, ETTUMANOOR

Present: Miss. Annu Mary Jose., Munsiff

Friday, the 17th day of October, 2025
25th day of Aswina, 1947

IA. No.16/2025 in OS. No. 39/2022

Petitioners/Plaintiffs:

1. Kunjukutty, aged 79 years, S/o. Thresiamma,
Mattathil House, Padinjattumbhagom Kara,
Athirampuzha Village, Kottayam Taluk,
Kottayam District.
2. Thankamma Kunjukutty, aged 67 years,
W/o. Kunjukutty, Mattathil House,
Padinjattumbhagom Kara, Athirampuzha Village,
Kottayam Taluk, Kottayam District.

By Adv. P.I.Jayakumar

Respondent/Defendant:

Soja Sulthan, aged 41 years,
D/o. Khadar Sulthan, Mannilazhikathu-
Puthenveettil, Pathanapuram Taluk,
Kollam District.

By Adv. K.Vinod Kumar

This Petition has come up for hearing on 13.10.2025 and
the court on 17.10.2025 passed the following:-

ORDER

This application is filed by the plaintiffs under Order VI Rule 17 and Section 151 of the Code of Civil Procedure to amend the plaint.

2. The averments in the affidavit filed in support of the application in brief are as follows:- The petitioners are the plaintiffs in the above case. It is mistakenly stated in the first paragraph of the plaint and the affidavit that the suit is filed to declare the plaint schedule way as a private way and for permanent prohibitory injunction. The reliefs sought for are clearly stated in the relief portion of the plaint. The plaintiffs noticed above mistake only during the time of final hearing. Hence, it is prayed to permit to amend the plaint so as to delete the first paragraph of the plaint and affidavit.

3. The defendant/respondent filed objection contending as follows:- The application is not maintainable. It is not permissible to amend the affidavit since affidavit will not come under definition of pleadings. The above application is a highly belated one and it is filed only to fill up the lacuna in

plaintiffs case. PW1 was cross examined with regard to the relief of declaration. The application could have been filed after filing of written statement, but the petitioners did not do so. If the application is allowed, the allegations in the plaint and evidence of PW1 will be contradictory. Hence, it is prayed to dismiss the application.

4. Heard. Perused the records.

5. The learned counsel for the petitioner submitted that the first paragraph in the plaint is only a typographical error and if amendment is allowed, it will not change the nature of the suit. The counsel further contended that the petitioners do not intend to incorporate a new relief. Hence the same will not cause any prejudice to the respondent. The counsel relied on the decision of the Hon'ble Apex Court in **Vijay Gupta v. Gagninder Kr. Gandhi & Ors., (2022 SCC Online 1897) and Jai Jai Ram Monohar Lal vs. National Building Materials Supply., (1969 (1) SC 869)**. On the other hand, the learned counsel for the respondent submitted that the affidavit is not pleadings and it cannot be amended. The counsel further contended that it is stated in the written

statement that the averments in the plaint are contradictory, but the plaintiffs did not file any application to amend the plaint. The counsel further submitted that PW1 was cross-examined with regard to the admissions made in the plaint. If the application is allowed, it will take away the valuable right accrued to the defendant. The counsel relied on the decision of the Hon'ble High Court in **Chandran v. Gopalan (1999 KHC 675)**.

6. I have gone through the contentions of the learned counsel for the petitioners, learned counsel for the respondent and perused the records in the above case. It is the case of the petitioners that it is mistakenly stated in the paragraph one of the plaint that the suit is to declare that the plaint schedule way as private way. A perusal of plaint would show that it is stated in the first paragraph that it is prayed to declare plaint schedule way as a private way of the plaintiffs where as in the relief portion it is prayed to declare the prescriptive right of easement over the plaint schedule item no.2 way. It can be seen that the defendant filed written statement stating that the averments in the plaint are contradictory and there is no private way to the plaintiffs property. The first plaintiff was

examined as PW1. A reading of evidence of PW1 would also show that he was cross-examined with regard to the title over plaintiff schedule item no.2 way. He also deposed that plaintiff schedule item no.2 way belonged to his mother.

7. It is to be noted that the written statement was filed on 11.08.2022 and it is clearly pleaded that the averments in the plaint are contradictory and plaintiff schedule item no.2 way is not a way also. The plaintiffs have no definite case. It is pertinent to note that even after filing of written statement, the plaintiffs did not care to file amendment application in order to delete the averment that plaintiff schedule item no.2 way is a private way. It can be seen from the plaint that, the plaintiffs have claimed title and easement over plaintiff schedule item no.2 way. The same is also reiterated in the proof affidavit of PW1. An affidavit cannot be amended since it is not a pleading. If the plaintiffs are allowed to amend the plaint it will cause serious prejudice to the defendant. It is also significant to note that the above application is highly belated one. If the application is allowed it will affect the right accrued to the defendant. Hence, the application is liable to be dismissed.

8. In the result, the application is dismissed. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her corrected by me and pronounced in open Court on this the 17th day of October, 2025)

**Sd/-
Annu Mary Jose
Munsiff**

APPENDIX : NIL

**Sd/-
Annu Mary Jose
Munsiff**

Copied by :
Compared by :