

IN THE COURT OF THE MUNSIFF, ETTUMANOOR

Present: Miss. Annu Mary Jose., Munsiff

Wednesday, the 8th day of October, 2025
16th day of Aswina, 1947

IA.9/2024 in OS. No.85/2023

Petitioner/Plaintiff:

Jose N.J, aged 65 years, S/o. Auseph,
Pengattil House, Athirampuzha Village,
Kottayam Taluk, Kottayam District.

By Adv. K.Vinod Kumar

Counter Petitioners/Defendants:

1. Joseph Thomas, aged 68 years, S/o. Joseph,
Njonginiyil House, Athirampuzha Village,
Athirampuzha P.O., Padinjattumbhagom Kara,
Kottayam Taluk, Kottayam District.
2. George Joseph, aged 72 years, S/o. Joseph,
Njonginiyil House, Athirampuzha Village,
Athirampuzha P.O., Padinjattumbhagom Kara,
Kottayam Taluk, Kottayam District.
3. Thankamma George @ Thankamma, Aged 68 years,
W/o. George Joseph, Njonginiyil House,
Athirampuzha Village, Athirampuzha P.O.,
Padinjattumbhagom Kara, Kottayam Taluk,
Kottayam District.

By Adv. Lithin Thomas

This Petition has come up for hearing on 12.09.2025 and the court 08.10.2025 passed the following:-

ORDER

This application is filed by the plaintiff under Order 8 Rule 6C of the Code of Civil Procedure to exclude the counter-claim filed by the defendants.

2. The averments in the affidavit filed in support of the application in brief are as follows:- The petitioner is the plaintiff in the above case. The suit is filed for permanent prohibitory injunction restraining the defendants from trespassing into plaint schedule property and from committing any act of waste therein. The defendants filed written statement with counter-claim. There is only one schedule of property in the plaint but, the counter-claim plaintiffs have incorporated two more properties in the counter-claim. The contention in the written statement and counter-claim are not in any way related to the plaintiff and the title deed in favour of him. The entire allegations in the written statement are with respect to the dispute pending between them prior to the execution and registration of sale deed in favour of the plaintiff. The

allegations raised in the written statement cannot be decided without the presence of all siblings of the defendants as well as mother in their party array. It is not possible for the defendants to implead them as parties to the counter-claim. In the above circumstances, it is not possible to decide the disputes raised by way of counter-claim in the suit and the defendants have to file a fresh suit for the same. Hence this application.

3. The defendants/respondents filed objection contending as follows:- The application is not maintainable. The plaint schedule property has no specific boundaries. The plaintiff's property has only 12 cents of land and the same is described as counter-claim C schedule property. The counter-claim is filed for fixation of boundary of counter-claim schedule properties and for consequential reliefs. The plaint schedule property is allegedly obtained by the plaintiff in violation of the General Rules of Transfer of Title. So the above claim of the respondents can be disposed only by way of counter-claim and not by an independent suit. The allegation that the counter-claim is barred by non-joinder of necessary parties are false and baseless. The property owners are made parties in the suit as

well as counter-claim. Another suit by the defendants on the basis of the same subject matter and between same parties and upon same cause of action would not be maintainable and the same would be barred by res-judicata. It is prayed to dismiss the application.

4. Heard. Perused the records.

5. The learned counsel for the petitioner submitted that the defendants have to file a separate suit and they are not entitled to raise the contentions by way of counter-claim. The counsel pointed out that the urgent commission was taken and the commission report would show that the plaint schedule property has specific boundaries. It was submitted that the contentions raised in the counter-claim are with regard to the disputes pending prior to the execution and registration of sale deed in favour of the plaintiff. The transaction is different and the contentions in the counter-claim are not related the plaintiff. The counsel relied on the judgment of the Hon'ble High Court in **Ikkorakutty v. Asoka (KLT 1990 (1) SN-17)**.

6. Per contra the learned counsel for the respondents submitted that the plaint schedule property has no specific boundaries. Hence the only remedy available to the respondents is to file counter-claim seeking the relief of fixation of boundary and injunction. The plaintiff does not have ownership or possession over the entire extent of plaint schedule property. The counsel further contended that the contentions in the counter-claim cannot be disposed of by a separate suit.

7. I have gone through the contentions of the learned counsel for the petitioner, learned counsel for the respondents and perused the records in the above case. It is contended by the petitioner that the disputes raised in the counter-claim has to be decided in an independent suit and the claim raised by the counter-claim plaintiffs ought not to be disposed by way of a counter-claim. It can be seen that suit is for permanent prohibitory injunction restraining the defendants from trespassing into plaint schedule property and from committing any act of waste therein. The counter-claim is filed for fixation of boundaries of counter-claim properties and also for

permanent prohibitory injunction restraining the counter-claim defendant from trespassing into counter-claim A and B schedule property and committing any act of waste therein. The case of the plaintiff is that the plaint schedule property belongs to him which he obtained as per sale deed no.110/2023 of Ettumanoor SRO. The defendants/respondents would contend that the plaintiff has no ownership or possession over the entire extent of plaint schedule property and the entire plaintiff's property is comprised of 12 cents only. It is scheduled as counter-claim C schedule property. It is also contended by the respondents that sale deed no.110/2023 of Ettumanoor SRO is concocted, bogus and sham document. The plaintiff is not entitled to the relief of permanent prohibitory injunction, since the plaint schedule property is not in the possession or ownership of the plaintiff. It is also contended by the respondents that the plaintiff/petitioner filed suit in respect of an imaginary property on basis of sham document and by encroaching the defendants property by creating false boundary demarcation.

8. It is to be noted that the respondents/counter-claim plaintiffs/defendants challenged, the possession and ownership of the plaintiff over plaint schedule property. It is pleaded by the defendants that the prior owners of plaint schedule property did not transfer the entire plaint schedule property to the plaintiff as per sale deed no.110/23 of Ettumanoor SRO. It is also contended that late Kathri who is the mother of counter-claim plaintiffs/ defendants had only transferred 12 cents of property to N.J Joseph and N.J Philip. They along with the counter-claim defendant played fraud and executed sale deed no.110/23 of Ettumanoor SRO by wrongly siting the extent of property as 6.32 Ares. It is also pleaded that the counter-claim defendant encroached upon counter-claim plaintiffs property by creating false boundary demarcation. It can be seen that the counter-claim plaintiff has sought for the reliefs of fixation of boundary and permanent prohibitory injunction. The counter-claim defendant has specifically pleaded that the suit is bad for non-joinder of necessary parties since the presence of the siblings of defendants as well as their mother is necessary for the just decision of the case. A perusal of counter-claim would show that the contentions are raised with regard to the

execution of sale deed no.110/2023. It is also pertinent to note that, the defendants contended that plaint schedule property has only 12 cents and same is scheduled as counter-claim C schedule property. It is also pertinent to note that even though the defendants challenged the sale deed no.110/2023, the relief sought for by defendants/counter-claim plaintiffs is fixation of boundary. Even then, it is to be noted that the plaintiff's definite case is that the plaint schedule property exclusively belongs to him. It has an extent of 6.32 Ares as per plaint schedule property also. Whether the plaint schedule property is an imaginary property and whether the prior owners of plaint schedule property transferred the entire extent of plaint schedule property can be decided only after making prior owners of plaint schedule property as parties to the counter-claim. It is to be noted that the prior owners of the plaint schedule property are not parties to the suit. Hence, they cannot be made party to the counter-claim also. Whether the plaint schedule property has an extent of 6.32 Ares or 4.8 Ares can only be decided after giving opportunity to the prior owners to explain as to whether the entire plaint schedule property was transferred to the plaintiff or not as per the sale deed

no.110/23. Even if the counter-claim is allowed to be proceeded with, and if it is found that the siblings of the defendants are necessary parties to the suit, the court cannot exercise the option of impleading them since they are not parties to the suit. The counter-claim raises issues that should be resolved in a separate suit. It requires independent decision. So, considering the facts of the case and allegations stated in the counter-claim, the claim raised by the counter-claim plaintiffs ought not to be disposed of by way of counter-claim but in an independent suit. Hence it is fit to allow the application.

9. In the result application is allowed and counter-claim is excluded. 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 08th day of October, 2025)

**Sd/-
Annu Mary Jose
Munsiff**

APPENDIX : NIL

Copied by :
Compared by :

**Sd/-
Annu Mary Jose
Munsiff**