

IN THE COURT OF THE MUNSIF, TIRUR
PRESENT: Sri. SANU C., MUNSIF.
Tuesday, the 26th day of August, 2025
the 04th day of Bhadra, 1947
INTERLOCUTORY APPLICATION No.3 OF 2025
IN ORIGINAL SUIT No.134 OF 2018

Between:

1. Ali, 54 years,
S/o.Cheriyeripeediyekkal Marakkar,
Thekkankuttoo amsom desom,
Thekkankuttoo P.O., Tirur Taluk.
2. Sainaba, 50 years,
W/o. Cheriyeripeediyekkal Ali,
Thekkankuttoo amsom desom,
Thekkankuttoo P.O., Tirur Taluk.

} Petitioners
Plaintiffs

And:

1. Fathima, 35 years,
D/o.Cheriyeripeediyekkal Marakkar,
Thekkankuttoo amsom desom,
Thekkankuttoo P.O., Tirur Taluk.
2. Koyakutty, 54 years,
S/o.Thayyil Kunhimammed,
Thekkankuttoo amsom desom,
Thekkankuttoo P.O., Tirur Taluk.

} Respondents
Defendants

This petition having been finally heard on 08-08-2025 before me in the presence of Sri.V.K.Vasudevan, Advocate for the petitioners and of Sri.M.K.Moosakutty, Advocate for the respondent No.1 and the respondent No.2 called absent set parte and the Court on 26-08-2025 passed the following;

ORDER

Application filed under Order VI, Rule 17 of CPC to amend the plaint.

2. **Petition averments in brief are as follows:-** Petitioner is 1st plaintiff in the suit and filed this petition for and on behalf of 2nd plaintiff also. The suit is one for permanent prohibitory injunction. In the above case, the Advocate Commissioner has inspected and measured the length of the plaint schedule way

vide order in IA No. 1/2024 and submitted detailed a report dated 01.08.2024. In the said commission report it is specifically stated that the length of plaint B schedule way is 30 meters from Panchayat Road on the east to plaint A schedule property. Therefore, it is essential to amend the plaint as stated below. Some minor amendments are to be carried out in the plaint. Following amendments are highly necessary.

- (a) In 2nd paragraph of the plaint, “സുമാർ 150 അടി ” should be deleted from the sentence 'പ്രസ്തുത വഴിക്ക് സുമാർ 150 അടി നീളവും' and replaced with “30 മീറ്റർ”.
- (b) After the 3rd paragraph of the plaint, should be added ‘3a) മേൽ നമ്പർ കേസിൽ IA 1/2024 നമ്പർ ഹരജി മറുപടി പ്രകാരം അന്യായ പട്ടിക വഴിയുടെ നീളം അളന്ന് പരിശോധിച്ച് അഡ്വക്കറ്റ് കമ്മീഷണർ 01.08.2024 തീയതി വെച്ച് റിപ്പോർട്ട് ബോധിപ്പിച്ചിട്ടുണ്ട്. പ്രസ്തുത റിപ്പോർട്ടിൽ അന്യായം ബി പട്ടിക വഴിയുടെ നീളം കിഴക്കുള്ള പഞ്ചായത്ത് റോഡിൽ നിന്നും അന്യായം എ പട്ടിക വഹകൾ വരെ 30 മീറ്ററാണ് എന്ന് പ്രത്യേകം പ്രസ്താവിച്ചിട്ടുണ്ട്.”
- (c) In the details of plaint B schedule property of plaint B schedule table, “സുമാർ 150 അടി ” should be deleted from the sentence ‘ 1 ആം താക്ക് കി.പ സുമാർ 150 അടി’ and replaced with “30 മീറ്റർ”. Similarly, “സുമാർ 150 അടി ” should be deleted from the sentence ‘രണ്ടാം താക്ക് കി.പ സുമാർ 150 അടി’ and replaced with “30 മീറ്റർ”.

- a) In the plaint B schedule table, after the plaint B schedule property details, in bracket, should be added "വഴിയുടെ തെരുവ് ആകെ വീതി 8 അടി".

No prejudice will be caused to the defendants if the suit is amended. The nature of the suit will not be changed. The cause of action also will not be changed. If the amendment is not allowed, petitioner will be put to serious loss and hardship. Hence the application to amend the plaint.

4. Respondents filed counter statement and contended that the petition is not maintainable in law. The respondents denying the entire averments in the petition. In a case filed in 2018, the petition filed now seeking amendment of the complaint is not permissible. The petitioner has deliberately filed this petition to cause difficulty to the respondents and to prolong the case. Hence the petition is liable to be dismissed.

5. Heard both sides. Perused the records and affidavit.

6. The following point arise for consideration:-

1. Whether the petition is allowable?

7. **Point No.1:-** The question to be considered is whether the contentions sought to be incorporated in the plaint ought to have pleaded when the suit was filed and as to whether the amendment would alter the nature of the suit. The amendment seeks to change the length of plaint B schedule Road from Panchayat Road in the east to plaint A schedule property to 30 meters as per the

Commissioner's report. On perusal of the petition, it can be seen that the proposed amendment relates only to the change in the dimensions of the plaintiff B schedule road. The relief sought for is not a new plea or inconsistent with the earlier stand. The amendment sought for is necessary for determining the real question in controversy. The parties should not be compelled to adjudicate the same in another suit. No prejudice will be caused to the respondent, if the petition is allowed. The amendment sought for will not alter the nature of the suit. It is well settled law that as far as possible the court should avoid multiplicity of litigation. . It is well settled law that as far as possible the court should avoid multiplicity of litigation. In **Shikharchand Jain v. Digamber Jain Praband Karini Sabha** **AIR 1974 (SC)** 1178, Hon'ble Supreme Court held that “it is open to a court to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstance where it is shown that the relief claimed originally has:

- 1) by reason of subsequent change of circumstances become inappropriate, or
- 2) where it is necessary to take notice of the changed circumstances in order to shorten litigation, or
- 3) to do complete justice between the parties.

It is therefore the view of the court that the amendment sought for is well within the scope of Order VI, Rule 17 and the parties should not be compelled for another round of litigation to adjudicate the matter. It will not alter

the nature and character of suit.

In the result,

The petition is allowed, the petitioner is permitted to amend the plaint to incorporate the amendment sought for in the petition. Carry out amendment within 2 days. Serve copy of amended plaint to the respondents.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 26th day of August, 2025).

MUNSIFF

Typed by: Krishnakumari.V

Compared by: 1) 2)

Fair Order in IA.3/2025
in OS.134/2018 Dated.26-08-2025
