

IN THE COURT OF THE MUNSIF OF PARAPPANANGADI
Present:- Smt. Aswani Nalin, Munsiff

Thursday, the 8th day of January, 2026
the 19th day of Pousha, 1947

INTERLOCUTORY APPLICATION NO. 01 OF 2026
in
ORIGINAL SUIT NO:200 of 2019

Between:-

1. Sreemathi.K, 67 years, D/o Kannaran
Kuruniamthodi Palliyali Veedu, P.O.Puthucode
Azhinhilam amsom, Puthucode desom,
PIN 673633, Kondotty Taluk
2. Malukutty @ Syamala.M, 64 years, D/o Kanaran
Pullur Purayi House, P.O.Pulikkal, Anthiyoor Kunnu,
Muttaayoor amsom, Valiyaparambu desom,
PIN 673 637, Kondotty Taluk
3. Sarala.M, 61 years, D/o Kanaran
Mozhippurath, Edakkatt Veedu, P.O.Karad Paramba
Karad asmom desom, PIN 673632, Kondotty Taluk

Petitioners
Plaintiffs

And:-

Velayudhan.C, 58 years, S/o Kanaran
Chingamparambath Veedu. P.O.Puthucode
Azhinhilam amsom, Puthucode desom,
PIN 673633, Kondotty Taluk

Respondent
Defendant

This petition is coming on the 7th day of January, 2026 for final hearing before me in the presence of Sri.P.G.Anoop Narayanan, Advocates for the petitioners and of Sri.M.K.Anees, Advocate for the respondent and having stood over to this day for consideration, the court passed the following:

ORDER

This is a petition filed under 151 of CPC.

2. The petition averments in brief are as follows:-

The petition is filed by the plaintiff to recall PW1. The contention of the petitioners is that the defendant after filing of written statement had amended the written statement. But the evidence regarding those amended averments were due to foresight not included in chief affidavit. Hence it is highly necessary to

recall PW1 to adduce evidence regarding the same, failing which the petitioner would sustain irreparable injury. Hence this petition.

3. The respondent filed counter statement contending that the petition is not maintainable and is filed with out any bonafides. There is no sufficient cause to recall PW1. PW1 was already examined and cross-examined. The petitioner can file such a petition only to clarify ambiguities and to remove doubts. This petition has been filed to include those facts which were not included in the original chief affidavit. The written statement was amended on 15/12/2025. No steps were taken then. The petitioners are aware that the plaint is not maintainable. The petition itself is filed only to harass the respondent. If the petition is allowed, prejudice would be cause to the respondent and would sustain legal injury. Hence the petition is to be dismissed with costs.

4. Based on the aforesaid rival contentions, the following points came up for consideration:-

1. Whether the petition is allowable ?
2. Relief and costs?
5. Heard both sides.

6. **Point No.1** :- This is a petition filed to recall PW1, who was already examined from the side of the plaintiffs. The contention of the petitioners is that the defendant had made an amendment in the written statement. The plaintiffs due to oversight failed to adduce evidence regarding the averments included in the written statement by way of amendment. The learned counsel for the respondent contended that the petition is not maintainable and is filed only to fill the lacunae in their original evidence. He also argued that witness can be recalled only to clarify ambiguities and remove doubts in evidence and not to fill gyps in parties case. He relied on '**2025 (3) KHC 525**'.

7. It is pertinent to note that this is a suit for partition. The amendment in the written statement was done on 15/12/2022. The amendment sought for by the defendant is with respect to the subject matter itself, the property that sought to be

partitioned and the core and foundational issue is whether the property is a self acquired property or coparcenary property. Any adjudication without affording opportunity to both sides to adduce evidence on that this issue would result in serious prejudice. It is also to be noted that the pleading regarding coparcenary property was introduced through amendment. The petitioners seeks to recall PW1 only to meet that specific defence. On this aspect it is pertinent to note that the power under Order 18 Rule 17 of CPC read with Section 151 is intended to enable the court to give complete justice and to avoid decisions based on technicalities. Moreover the petition is filed to recall PW1 only to meet the specific defence and not to fill any lacunae. Moreover the petition to recall PW1 is sought for only to adduce evidence with respect to defence introduced subsequently which goes to the root of the subject matter. Further, this will not in any way cause prejudice to the defendant as they have opportunity to cross examine the witnesses that is recalled and has also opportunity for their evidence. But if this petition is dismissed, it might result in failure of proper dispensation of justice and this court will be compelled to decide the matter without complete evidence and that too on a vital issue. Therefore in the interest of justice IA can be allowed.

8. **Point No.2** :- Considering the facts and circumstances of the case, parties shall bear their respective costs.

In the result, IA is allowed. No order as to costs.

(Dictated to the Confidential Assistant, transcribed by her corrected and pronounced by me in open court to on this the 8th day of January, 2026.)

Munsiff