

IN THE COURT OF THE MUNSIF OF PARAPPANANGADI

Present:- Smt. Aswani Nalin, Munsiff

Monday, the 21st day of July, 2025
the 30th day of Ashadha, 1947

INTERLOCUTORY APPLICATION No.21 of 2025
ORIGINAL SUIT NO: 268 of 2015

Between:-

Rukhiya, W/o C.K.Unnimoyi, Kalathil House,
Rarorath amsom, Velimanna Desom, P.O.Velimanna
PIN 673 582, Ernad Taluk

Petitioner
Plaintiff

And:-

1. Moideenkutty, S/o Kunhali Haji
2. Ahammed Saleem, S/o Kunhali Haji,
Areekkad House, Kannamangalam amsom desom,
Tirurangadi Taluk.
3. Parol Muhamood, S/o Hussain, Manithottathil House,
Vazhakkad amsom, Cheruvayoor desom
P.O.Cheruvayoor, PIN 673 645, Eranad Taluk.
4. Cholakkara Balakrishnapanicker, S/o Sankunni Nair,
Kalathil House, Kannamangalam West.P.O, PIN 676305,
Kannamangalam amsom desom, Tirurangadi Taluk.
5. Abdul Gafoor, S/o Ayammu Haji, Alungal House,
Kannamangalam West.P.O, PIN 676305,
Kannamangalam amsom desom, Tirurangadi Taluk.

Respondents
Defendants

This petition is coming the 2nd day July, 2024 for final hearing before me in the presence of Sri.V.Chandrasekharan and Sri.Vipin Chandrasekhar, Advocates for the petitioner, Sri.K.P.Chandran, advocate for the 3rd respondent. Sri. C.P.Jamshid Rahman, Advocate for the respondents 1 and 2. Respondents 4 and 5 are also called absent, set exparte and having stood over this day for consideration and the court passed the following:-

ORDER

This is a petition filed under Order 6 Rule 17 of CPC to amend the plaint.

2. Petition averments in brief are as follows:-

The suit has been filed for partition. The 4th respondent in his written statement had contended that the petition schedule property was in possession of

the 4th respondent and he had obtained purchase certificate as per document No.31/1994 and that Sinu then he was in exclusive right, title and possession, which is not true. The 4th respondent have no right over the plaint schedule property and the purchase certificate have been obtained without impleading the petitioner, original owners or persons in possession. Therefore it has been obtained by fraud which will not in any way affect the rights of the petitioner in plaint schedule property. It is also contended that the petition schedule property had been assigned in favour of 5th respondent as per document No.3438/2005. As the 4th respondent himself do not have right over the said property, he has no right to further assign property in favour of the 5th respondent. The respondents 4 and 5 have colluded and fabricated the document to defeat the rights of the petitioner. Hence the plaint is to be declared that the documents are not binding upon the petitioner and respondents 1 to 3. Hence to avoid the document and to pass a decree of partition. Hence this petition amended for declaration.

3. The respondents filed counter statement contending that the petition is not maintainable either in law or on facts. The petitioner had on an earlier occasion amended as per order in IA 17/2025. At that time none of this averments have been raised in the said petition. There is no reason to amend the plaint. The petitioner cannot be said to have exercised due diligence. The written statement was filed on 16/08/2022, all these contentions were raised then. Therefore this petition cannot be allowed. Hence the petition is to be dismissed with costs.

4. From the rival contentions of both parties, the following points arise for consideration:-

1. Whether the IA is allowable?
2. If so, relief and costs?

5. Point No.1:-The petition is filed by the petitioner contending that the respondents had raised a contention regarding 2 documents, document

Nos.31/1994, 3438/2005. The petition is filed to amend the plaint in such a way as to seek a relief for the declaration that the documents are not binding on the petitioner, respondents 1 to 3 and also that to avoid the documents and to affect partition with respect to plaint schedule property. Here it is pertinent to note that the suit is of the year 2015. The contention that the 4th respondent had obtained a purchase certificate was raised in the written statement filed on 16/08/2022. After lapse of 3 years the matter has been listed for trial. The matter was posted to 23/09/2023 for steps it was listed on 28/10/2023 and an ex parte decree was also passed on 25/01/2024. Thereafter the suit was restored and then listed to 13/06/2025. On that day the petitioner was also examined. Subsequently IA 17/2025 was filed by the petitioner on 16/06/2025 for amendment of Re-survey number. That was allowed. At that time also the petitioner had not averred any of the contentions made in this petition and again on 25/06/2025 the petitioner had again filed the petition to amend the plaint. Here it is pertinent to note that **order VI Rule 17 of C.P.C** says, *“The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”. In **David V. Annamma (reported in 2025 KLT Online 1074)** it has been held by the Hon’ble High Court that “ it is true that as per order **VI Rule 17 of C.P.C.**, no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence, the party could not have raised that matter before the commencement of trial”. In this case petitioner’s evidence is already over. The petitioner has after the trial commenced already amended the plaint and now the petitioner has come before the court again*

to amend the plaint. The amendment sought for is based on the contention raised in the written statement. But it is to be noted that the written statement was filed as early in the year 2022. Therefore it cannot be said that in spite of due diligence the petitioner could not have brought the matter before the court. However the amendment sought for will not in any way change the nature of the suit or cause any prejudice to the respondents. Therefore in the interest of justice this court is of the view that the petition can be allowed. However the petition have been filed highly belatedly and that too after trial has commenced. Therefore this court is of the view that the petition can be allowed on payment of costs of Rs.5,000/-.

In the result, the petition is allowed on payment of costs of Rs.5,000/-(Rupees Five Thousand only)

(Dictated to the Confidential Assistant, transcribed by her corrected and pronounced by me in open court to on this the 21st day of July, 2025.)

Munsiff