

IN THE COURT OF THE MUNSIF-MAGISTRATE, PATTAMBI
Present:- Smt.Neema Noor Mohamed, Munsiff-Magistrate
Tuesday, the 14th day of October, 2025/ 22nd Aswina, 1947 S.E.

I.A. No.888/2025 IN
ORIGINAL SUIT No.32/2008

Between:-

Rajan, Aged-70 years,
S/o. Kidangil Velayudhan,
Kappoor Amsom Desom,
Pallangattu Chira, Pattambi Taluk.

: **Petitioner**
D 3

And:-

Royal Educational Foundation,
Mannara paramba, reptd. By its-
General secretary, Abdul Azees,
Chalissery Post, Pattambi Taluk.

: **Respondent**
Plaintiff

This petition coming on 06/10/2025 for final hearing before me in the presence of Sri. V.P.Manoj Kumar, advocate for the petitioner and of Sri. M.K.Moosakkutty, advocate for the respondent and after having stood over for consideration till this day and this court passed the following.

ORDER

This review petition is filed under section 114 r/w order 47 CPC.

2. Petition averments are as follows: The petitioner is the third defendant in the above suit which was originally filed for Perpetual injunction. Subsequently, the plaint was subsequently amended to include a prayer for declaration of title. This petitioner and other defendants, through additional written statement contended that the valuation of the plaint is not proper. An additional issue was framed and this Court entered into a finding that the valuation is not proper and directed the plaintiff to take steps to value the plaint within a period of 15 days from 24/01/2020 i.e. the date of order. The respondent/plaintiff did not comply the said order and the suit was ultimately rejected by this Court vide order dated 01/12/2021. Subsequently, the

plaintiff filed an application for review of order dated 01/12/2021 which was also dismissed by this court. Thereafter the plaintiff approached the Hon'ble High Court Of Kerala vide O.P. (C) 1402/2023 which was allowed by the Hon'ble High Court vide order dated 28/01/2025 and permitted the plaintiff/respondent to compute the court fee and pay. The matter was heard in detail by this court which passed an order on 28/07/2025 which is sought to be reviewed vide this petition.

3. The petitioner arrayed following grounds for review:-

1. The order passed on 28/07/2025 is against the order dated 24/01/2020 and hence is patently and hence is ex facie wrong in law.

2. This Court while passing the order on 24/01/2020 had expressly held and entered a finding that the plaint schedule properties are not agricultural land as defined in Kerala Court Fees and Suit Valuation Act.

3. After entering into such finding. This Court ordered payment under Section 7 (3A) of Kerala Court Fees and Suit Valuation Act.

4. The finding of this Court that the plaint schedule properties are agricultural land in the order dated 28/07/2025 is hence legally incorrect and is barred by principles of res judicata which binds the court as well apart from the parties to the suit.

5. This court cannot enter a finding which directly contradicts its own earlier order since this court cannot sit in appeal over its own earlier order.

6. This court had also not considered the dead line fixed by the Hon'ble High Court of Kerala vide its order dated 28/01/2025 granting the petitioner

one more opportunity to amend the plaint and value the suit property within a period of ten days from the receipt of the order.

7. This court has also not taken into account the effect of the order of the Hon'ble High Court of Kerala dated 28/01/2025. The order has the effect of setting aside the dismissal of review petition numbered as IA 350/2022.

4. On the other hand the defendant filed counter stating that the petition is devoid of merits as it goes beyond the scope of review. The respondent also submitted that no res judicata will lie. Respondent further stated that the order passed by this court merges into the order of the Hon'ble High Court of Kerala which is the legal principle to be looked into. Moreover, it is not stated anywhere by the defendant/review petitioner that this property may fetch a different price or it may fetch value, higher than what is stated in the plaint. The respondent contended that simply making a bald statement that court fee is not correct is insufficient to take steps to assess market value of the property and thereby there is no error apparent on the face of the record to review the order.

4. Points for consideration are:

1. Is the review petition maintainable ?
2. Orders ?

5. **Point No. 1:** The present review petition is filed against the order dated 28/07/2025 wherein this court found that the plaint schedule property is an agricultural land and the court fee has to be computed under section 25(b) of Kerala Court Fee and Suit Valuation Act. Before discussing as to the factual matrix

of the case and the rival contentions made, the court is taking this space to understand what is the scope of review under the Code of Civil Procedure. The provision as to review is mentioned in section 114 r/w order 47 of the Code of Civil Procedure.

Section 114 CPC reads thus:

Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Order 47 CPC reads thus:

1. Application for review of judgment

(1) Any person considering himself aggrieved-

(a) by a decree or Order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or Order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence

which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or Order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or Order made against him, may apply for a review of judgment to the Court which passed the decree or made the Order.

(2) A party who is not appealing from a decree on Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

6. Keeping in mind the provision and scope of review, coming into the contention of the petitioner, it is necessary to closely peruse the order of Hon'ble High Court of Kerala in OP(C) No. 1402/2023 dated 28/01/2025 wherein the court had directed this court to grant the respondent/plaintiff one more opportunity to amend the plaint and value the suit within a period of 10 days from the date of receipt of the order and had also set aside the order of this court dated 12/06/2023 wherein the suit was dismissed under order 7 rule 11 CPC. The suit was then restored and the respondent/plaintiff is seen to have paid the BCF within the time prescribed from records. On appearance the review petitioner contented that the computation of court fee is not proper and on this aspect both parties were heard at length. Interestingly, the entire arguments from the side of respondent/plaintiff

revolved around the issue that the property is an agricultural land thereby the suit is valued accordingly and the computation made by respondent/plaintiff stands proper. In order to convince this point, the counsel also relied on the verdict of Hon'ble High Court of Kerala in ***Narayanan Nair v. Dr. Lokesh Nair 2014 (2) KHC 467***. Both parties missed to emphasise on the factum that whether it is an agricultural land or not was already adjudicated as early as on 24/01/2020 by the learned predecessor and the court had come to the conclusion that the plaint schedule property is not an agricultural land. Without knowing such an order was passed, this court inadvertently again adjudicated on the issue as to whether the plaint schedule property is an agricultural land and decided that plaint schedule property is an agricultural land and directed to pay court fee under section 7(3A) of the Kerala Court Fee and Suit Valuation Act. This prompted the petitioner herein to file this application. As rightly pointed out by the petitioner herein, this is an error apparent on the face of the record which is definitely finding a scope to review the order dated 28/07/2025.

7. Thus the court has decided to review the order dated 28/07/2025 based on the principle of *actus curiae neminem gravabit* i.e. no parties shall suffer because of the error on the part of court. The order of the learned predecessor dated 24/01/2020 wherein it was decided that the plaint schedule property is not an agricultural land will stand in effect and the respondent/plaintiff shall compute the court fee under section 7(3A) of the Kerala Court Fee and Suit Valuation Act. Hence the point No. 1 is answered in favour of the petitioner.

8. Point No. 2 : IA allowed.

Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, this the 14th day of October, 2025.

Sd/-
Munsiff.

Witness examined & Exhibits marked on both sides : Nil

Sd/-
Munsiff.

Copied by : Sulochana.M
Compared by : Brij Mol. K.S

(True copy)

Munsiff

Fair/Copy of Order
I.A.No.888/2025 (01/2025)
in O.S. No.32/2008
Dated: 14.10.2025