

IN THE COURT OF THE MUNSIFF, KODUNGALLUR.

Present:- Smt.Karthika.K., Munsiff.

Thursday, the 12th day of June, 2025/ 22nd Jyaishta, 1947.

I.A.11/2022 IN I.A.1/2021 IN O.S.549/2021

Petitioners:

1. Prasanna, Aged 64 years, W/o Tharayil Mohanan, Kaippamangalam Beach Desom, Kaippamangalam Village, Kodungallur Taluk.
2. Aneesh, Aged 41 years, S/o Tharayil Mohanan, Kaippamangalam Beach Desom, Kaippamangalam Village, Kodungallur Taluk.

By Adv. T.M. Sabala.

Respondents:

1. Nijeesh, Aged 45 years, S/o Pothezhath Sreenivasan, Perinjanam Village and Desom, Kodungallur Taluk.
2. Asokan, Aged 50 years, S/o Balayamparambil Subrahmanian, Vanchippura Desom, Kaippamangalam Village, Kodungallur Taluk.
3. Anitha, Aged 46 years, D/o Tharayil Mohanan, Kaippamangalam Beach Desom, Kaippamangalam Village, Kodungallur Taluk.
4. Rajeena, Aged 39 years, D/o Tharayil Mohanan, Kaippamangalam Beach Desom, Kaippamangalam Village, Kodungallur Taluk.
5. Rajeesh, Aged 39 years, S/o Tharayil Mohanan, Kaippamangalam Beach Desom, Kaippamangalam Village, Kodungallur Taluk.

By Adv.Suresh Muraleedharan

This petition coming on this day for hearing before me, the court on the same day passed the following:

ORDER

This is a petition filed by the plaintiff Under Order VI Rule 17 and Section 151 of CPC for amendment of affidavit & petition.

2. **The petition averments is as follows**:-The petitioner averred that while preferring the suit the petitioner omitted to include her brother and co-owner of plaint 'A' and 'B' schedule named Rajeesh in the plaint since he was working in the gulf countries. The plaintiff has also omitted to incorporate four boundaries of plaint 'A' and 'B' schedule property while preferring the suit. In the objection filed by the defendants in I.A.1/21 and in the suit O.S.802/2021 filed by the defendants before this court the plaintiff learned that the predecessor in interest of the defendants named Vijayalakshmi and the village officer, Kaippamangalam has fraudulently added the survey No.90/1 in the title deeds of the defendants which is also the survey number of the property of the plaintiff. As per document No.1390/1951 1 acre 2 cents of property was settled by Tharayil Krishnan in the name of Sarojini,W/o Tharayil Vasu . Sarojini obtained the land situated in Kaippamangalam village survey 91/1. From said Sarojini the property was assigned to Gopalakrishnan, S/o Oravanthuruthi Aandi vide sale deed No.1579/1961. The said Gopalakrishnan assigned the said property to Vijayalakshmi, W/o Pothezhath Sreenivasan (Sister of Tharayil Mohanan) vide sale deed

No.641/1976. It is mentioned in all the documents of the defendants from 1951 to 2011 1 acre 2 cents of property was situated in survey 91/1 of Kaippamangalam village. During all these period the defendants were remitting tax for the land situated in survey 91/1. But as per the 10th paragraph of the objection filed by the defendants in I.A.1/21 it is stated that 1 acre 2 cents of property is lying in survey 90/1 of Kaippamangalam village. The plaintiff could find out that the defendants changed the survey number of 54 cents obtained by Nijeesh, S/o Vijayalakshmi on the basis of a certificate bearing No.669/2008 issued by the village officer, Kaippamangalam. Based on that certificate sub division was corrected and included in the title deed of Nijeesh as survey 90/1 instead of 91/1. The Ist respondent Nijeesh fraudulently created another document No.1078/2021 of Mathilakam SRO in the name of 2nd respondent, Asokan, S/o Balayamparambil Subramanian with respect to 10 Ares 11 square meter in resurvey 90/1. As per the village record of Kaippamangalam village and F.M.B the only property existing in survey 90/1 of Kaippamangalam village is 56 cents. The entire 56 cents was obtained by Tharayil Krishnan , grand father of Tharayil Mohanan who is the father of 2nd plaintiff vide sale deed No.1498/1941.The said Krishnan assigned the entire 56 cents in survey 90/1 to his grand son Tharayil Mohanan vide settlement deed No.36/1964. The land tax has been

remitted up to 1964 in the entire 56 cents in the name of Tharayil Krishnan and thereafter from 1964 till 5.4.2014 the tax has been remitted in the name of Tharayil Mohanan and thereafter the tax has been remitted till 2020-2021 in the name of plaintiffs being the legal heirs of Tharayil Mohanan. While so in the year 2008 by influencing the village officer, Kaippamangalam village and without giving any notice to the plaintiffs and without conducting measurement the Ist defendant's mother Vijayalakshmi obtained a certificate bearing No.669/2008 stating that the entire property was obtained by her vide sale deed No.641/1976 is lying in survey 90/1. The Ist defendant's mother Pothezhathu Vijayalakshmi has fraudulently created a document No.557/2011 of Mathilakam SRO in the name of her son Ist defendant by correcting the survey number as 90/1. Based on the said sale deed other document Nos.1077/2021 and 1078/2021 were created in the name of the 2nd defendant. The entire documents registered in the name of the Is defendant bearing No.557/2011 registered in the name of 2nd defendant as document Nos. 1077/2021 & 1078/2021 and the certificate issued by the village officer are not legally maintainable and is not binding on the defendants. The property of the defendants and the predecessors are not existed in survey 90/1. With an intention to snatch the property it is scheduled as 'B' schedule item No.2 property from the plaintiffs the

defendants obtained a certificate wrongly showing their survey number of their property situated in survey 90/1. In order to incorporate all these pleadings it is necessary to incorporate the amendment sought for by the plaintiffs. Hence the petition may be allowed.

3. **The objection filed by the defendants is as follows:-** The entire allegations in the petition is wrong and the plaintiffs are not entitled to get any relief prayed in the petition. No cogent reasons were provided by the plaintiff for impleading the 5th defendant in the plaint. In the second paragraph of the plaint it is specifically stated that the only legal heirs alive of deceased Tharayil Mohanan is plaintiffs and defendants 3 and 4. It is also incorporated that since the defendants 3 and 4 are not in the station they were incorporated as additional defendants since they were unable to put signature in the vakkalath and plaint. The prayer of the plaintiffs that her 5th son residing abroad may also be made a party to the suit. The commissioner has reported that it is difficult to identify the plaint schedule property with the existing description boundaries of the plaintiffs. No explanation is given in the petition while the correct boundaries were not incorporated in the plaint at the time of filing of the suit. Since the petitioner is tried to fill the lacuna of the plaint there is a legal bar to allow this petition. The entire property scheduled in the plaint stating that it is only entitled to the

plaintiffs since the description of the property mentioned in the plaint is incorrect. This also prevents the decision of the petition in favour of the plaintiffs. Sarojini, W/o Tharayil Vasu obtained an extent of 1 acre 2 cents of property vide sale deed No.1390/1951 of Mathilakam SRO from Tharayil Krishnan. As per document No.1579/1961 the property identical to the extent obtained by Sarojini was given to Gopalakrishnan and from Gopalakrishnan vide document No.641/1976 Vijayalakshmi obtained the property and from Vijayalakshmi the property was settled in favour of Ist defendant Nijeesh. The plaintiffs are not entitled to get amendment of plaint as prayed. The property entitled to the defendants is included in document of 1941 and it is included in the title deed of 1951 as 5 schedules and thereafter the 5 schedules as well as the same extent has been assigned from one person to other. The encumbrance occurred in O.S.101/1959 of Chavakkad Munsiff Court was released by giving the amount on 7.4.1962. Thereafter the property was mortgaged in Nattika Farka Corporative Rural Bank vide mortgage deed No.1048/1980. With respect to this property a location certificate has been issued after measuring the property and inspecting the entire documents. The plaint 'B' schedule item No.1 is shown as the property obtained by said Mohanan vide document No.36/1964 of Mathilakam SRO. The said properties are also included in the first schedule of document of 1964.

The plaintiffs predecessor has sold 25 cents from 1 acre 8 cents of the residential plot vide sale deed No.1672/1979. But the said property is not deducted from 'B' schedule item No.1. The defendants obtained ROR from the village office with respect to 1 acre 2 cents of property. The plaintiffs are not entitled to get an amendment as prayed. Hence the petition may be dismissed with costs.

4. Heard both sides.

5. Point to be considered:-

“ Whether the petition can be allowed?”

6. **The point:-** This is a petition filed by the plaintiff to amend the affidavit and petition I.A.1/21 filed in the above suit for interim prohibitory injunction. Initially this petition was filed before this court and as per the order dated 26.2.2022 this petition was allowed. Aggrieved by the order of the Learned Munsiff the respondent/defendant filed a civil revision petition before the Hon'ble High Court of Kerala as O.P.© 611/2022. As per the judgment and order dated 11.7.24 the Hon'ble High Court reversed the order of this court and directed to consider the amendment petition I.A.6/21 considering the objections filed by the plaintiffs in this case. Hon'ble High Court has ordered to reconsider the orders passed by this court in I.A.6/21 and I.A.3/21 and to pass fresh order in the above IA.

7. This is a petition filed by the petitioners in I.A.1/21 to incorporate certain amendments in the affidavit and petition filed for obtaining a temporary injunction against the defendants. The petitioners attempt is to incorporate certain statement in the affidavit & prayers in the petition I.A.1/21 which is an injunction application filed along with the suit. It is seen that injunction was allowed by this court in I.A.1/21. It is to be noted that the affidavit filed along with a petition is a sworn statement of facts used as evidence in the legal proceedings. It is based on the affidavit filed by the petitioner in the initial stage of the case the court will determine a prima facie case. It is also sworn in statement of the petitioner that the facts alleged are within his knowledge at the time of filing the affidavit. It is to be noted that affidavit is a formal declaration and once verified and filed it is considered as a complete and final statement. There is no provision in the court of Civil Procedure for amending an affidavit and the amendment is only related to the pleadings of the parties. Other than this amendment of the nature of only formal corrections, typographical errors or other clerical mistakes has been provided in the CPC. If the petitioner intend to get a particular relief with respect to the facts alleged during the filing of the affidavit and petition the only option of the petitioner is to file an additional affidavit and that two with the permission of the court. The amendment is sought to include

some new prayers with respect to the change in circumstances after the institution of the suit and IA. If any such situation arose after the granting of interim prohibitory and temporary injunction the option of the plaintiff is to file another application for obtaining another temporary prohibitory injunction or mandatory injunction by filing another affidavit and petition before this court. The plaintiff cannot change the declaration of facts made by them earlier before the court after finding out the existence of certain new facts at a later stage . Hence for the reasons stated above I am not inclined to allow this petition.

In the result, the petition stands dismissed.

(Dictated to the Confdl. Asst., transcribed by her, corrected by me and pronounced in open court on this the 12th day of June, 2025)

Sd/-
KARTHIKA.K.,
MUNSIFF.

APPENDIX : Nil.

Id/-
MUNSIFF.
By Order

Copied by: pn

Compared by:

/True Copy/

Junior Superintendent.