

**IN THE COURT OF MUNSIFF, WADAKANCHERY**

Present:- Sri. Yahya. T. K., Munsiff

Tuesday, the 03<sup>th</sup> day of March, 2026/ 12<sup>th</sup> Phalgunam 1947 SE

I.A.03/2026, I.A.05/2026, I.A.06/2026 AND I.A.07/2026 IN  
O.S.23/2018

I.A.03/2026

Petitioner/ Plaintiff:

Abdul Jaleel @ Jaleel, aged 68 years, S/o Ummer,  
Mammasrayillath House, Eranellur Village, Kechery Post and Desam,  
Talappilly Taluk, Thrissur – 680 501.

By Adv. Limsy. K. J.

Respondent/ Defendant:

Faisal Latheef, aged 46 years, S/o Abdulkhader Faisani, Karengan,  
Eranellur Village, Kechery Post and Desam, Talappilly Taluk,  
Thrissur – 680 501.

By Adv. Jacob. C. Job.

I.A.05/2026 & I. A. 06/2026

Petitioner/ Plaintiff:

Abdul Jaleel @ Jaleel, aged 68 years, S/o Mammasrayillath Ummer,  
Eranellur Village, Kechery Post and Desam, Talappilly Taluk,  
Thrissur – 680 501., represented by Power of Attorney Holder and  
Daughter : Amina Jaleel, aged 29 years.

By Adv. Limsy. K. J.

Respondents/ 1<sup>st</sup> Defendant/ Proposed 2<sup>nd</sup> Defendant:

1. Faisal Latheef, aged 46 years, S/o Karengal Abdulkhader Faisani,  
Eranellur Village, Kechery Post and Desam, Talappilly Taluk,  
Thrissur – 680 501.
2. Fathima Jamal, W/o Mussliyam Veettil Late Jamal, Eranellur Village,  
Kechery Post and Desam, Near Usha Clinic, Pin Code: 680 501,  
Talappilly Taluk.

By Adv. Jacob. C. Job.

I.A.07/2026

Petitioner/ Plaintiff:

Abdul Jaleel @ Jaleel, aged 68 years, S/o Mammasarayillath Ummer, Eranellur Village, Kechery Post and Desam, Talappilly Taluk, Thrissur – 680 501., represented by Power of Attorney Holder and Daughter : Amina Jaleel, aged 29 years.

By Adv. Limsy. K. J.

Respondent/ Defendant:

Faisal Latheef, aged 46 years, S/o Karengal Abdulkhader Faisani, Eranellur Village, Kechery Post and Desam, Talappilly Taluk, Thrissur – 680 501.

By Adv. Jacob. C. Job.

These petitions are coming on this day for hearing, the Court passed the following:

COMMON ORDER

These are applications filed by plaintiffs in the above suit. I.A.05/2026 is to amend the plaint for incorporating additional pleadings. I.A.06/2026 is to add an additional defendant. I.A.07/2026 is to remit the commission report and plan. I.A.03/2026 is to remove the suit from the list of trial because of filing of the earlier mentioned applications. Since contentions in all these applications are interlinked, these applications were considered together and are disposed of by this common order.

2. **Summary of I.A.05/2026 and I.A.06/2026** ; Amendment of the plaint is necessary for deciding the actual dispute between the parties. The property of the plaintiff is included in the possession of a lady namely Fathima Jamal who holds property on the southern side of plaint schedule

property. Hence that lady is to be impleaded as D2 in the suit. Also necessary amendments as sought is to be made in the plaint. Hence it is prayed that both applications may be allowed.

3. **Respondent/defendant filed counter as follows** ; The cause of action for adding the proposed D2 allegedly arose after filing of the suit. Even if any such cause of action, the same is an independent one. It cannot be clubbed with the original cause of action. There will be misjoinder of cause of actions if the proposed D2 is added and amendments are made. Attempt of the plaintiff is to change nature and character of the suit. Hence it is prayed that both the applications are dismissed.

4. **Summary of I.A.07/2026 and I.A.03/2026** ; The plaintiff has filed applications for amendment and impleadment of a new defendant. Property of the new defendant is to be measured as per her title deed. Also the available commission report and plan is incorrect. They cannot be accepted in evidence. Hence it is prayed that the present commission report and plan may be set aside. In I.A.03/2026 it is prayed that in view of the filing of the above application, the suit may be removed from the list of trial cases.

5. **Respondent/plaintiff filed counter as follows** ; Absolutely, there is nothing in the above application to say that what is the mistake committed by the Advocate Commission. Attempt of the plaintiff is to somehow drag the proceedings. Suit cannot be removed from the list.

Hence it is prayed that both the applications may be dismissed.

6. Heard both sides. Perused the argument notes filed by the plaintiff/petitioner.

7. The following point arose for consideration :

- i. *Whether the proposed amendment is necessary to decide the actual dispute between the parties ?*
- ii. *Whether the proposed amendment could not have raised before commencement of trial inspite of due diligence ?*
- iii. *Whether the proposed D2 can be added to the suit at this stage ?*
- iv. *Whether the plan and report of the Advocate Commissioner dated 20.11.2023 is liable to be remitted back ?*
- v. *Whether the suit is liable to be removed from the list ?*

8. **Points (i) to (iii)** : The suit was originally filed seeking permanent prohibitory injunction with respect to the plaint schedule property against the present defendant. Subsequently, amendment was done and a prayer for fixation of boundary of the southern side of plaint schedule property was also incorporated. The plaintiff is claiming absolute title and ownership over the plaint schedule property by virtue of document No.1810/1971 of S.R.O Mundur. Admittedly, the properties originally belonged to father of the plaintiff. As per the original plaint, plaintiff claimed ownership and possession over a total extent of 5.75 Ares comprised in Re-Sy No.187/8 of Eranellur Village. Now he wants to enlarge the extent to 7.38 Ares. The defense of the respondent/defendant is

that out of the 5.75 Ares of land, father of the plaintiff already assigned 4 ½ cents of land to one Chandran as per registered sale deed No.3656/1995 in 1995 and Chandran sold that property to Noorjahan in 1996 who in turn sold that property to Shahira who stated to the sister of plaintiff. The defendant says that Shahira had assigned 4 ¼ cents of property to the him vide registered deed No.4636/06. Thus, defendant set up a title over a part of plaint schedule property through the father of plaintiff himself.

9. The matter is in the list of trials. Plaintiff wants to make substantial changes in the pleadings. He also wants to add a new person as D2, alleging accrual of a new cause of action that, too, allegedly arose after filing of the suit. For collecting data regarding the facts related to the new cause of action, the plaintiff now wants to take out a survey commission. All these applications have been filed at this juncture.

10. According to the learned counsel for the plaintiff, while considering an application for amendment, the element of bona fides must also go into the zone of consideration. Learned counsel argued that there is no prohibition in law against adding a new defendant even if the cause of action has subsequently arisen. According to the plaintiff, adding a new defendant and amending the plaint as sought is absolutely vital for arriving at a just decision in the case. Let me verify whether the demands made by the plaintiff are allowable at this stage. I will first discuss the proposed amendments.

11. Extreme amendments have been sought for by the plaintiff. In the original plaint, there is specific pleading in paragraph 3 that a part of the property was already surrendered to the pathways situated on the northern and eastern side of the plaint schedule property. It has been specifically admitted in the original plaint that the extent of property after these surrenders in the possession of the plaintiff, after resurvey, is only 5.75 ares. But in I.A.05/2026 the said admission is sought to be withdrawn by the amendment proposed as per paragraph 3 of that application. Apart from the same, the admission made in regard to the extent of the property presently in the possession of plaintiff is also sought to be withdrawn by way of the amendment sought to the description of the property as per paragraph 12 of I.A.05/2026. The plaintiff wants to delete 5.75 acres and add 7.38. Are in that place. Thus, it can be seen that the plaintiff is trying to take away the admissions already made in the plaint. Such an attempt cannot be permitted.

12. As regards the impleadment of a new defendant as sought in I.A.06/2026, what is stated in that application is that the proposed defendant has trespassed upon the western and southern boundary of the plaintiff's property during 2019-2020. It is to be noted that the present suit was filed on 17.01.2018. The cause of action alleged against the proposed defendant is absolutely an independent one, and it cannot be clubbed with the earlier cause of action. Firstly, there will be misjoinder of cause of

action. Secondly, adding a new defendant who is a total stranger at this stage of trial will vex the entire proceedings and trial.

13. There is one more aspect. All these applications have been filed at the time when the matter was listed for trial. In such a situation the plaintiff will have to overcome the rigor of proviso to Order 6 Rule 17 CPC. The petitioner/plaintiff is bound to show that these amendments could not have been done despite due diligence. At this point learned counsel for the plaintiff relying on the decisions reported in **Eppan Antony v. Joseph 2009 (1) KHC 865**, **Mohanan Nair v. Premachandran Nair 2015 (5) KHC 559** and **Gopinathan Pillai v. Sumathykutty Amma 2015 (5) KHC 543**, argued that an application for amendment is maintainable even after commencement of evidence or during pendency of appeal. It is also argued by learned counsel for the petitioner/plaintiff that since the examination of witness has not started so far, the bar under proviso to Order VI Rule 17 will not apply.

14. I cannot fully agree with the view expressed by learned counsel in this regard. The matter is already listed for trial after completing all steps. It is true that witness has not entered the box so far. But merely because of that, it cannot be said that rigor of the proviso is not applicable. The question when it can be taken as “commenced” for the purpose of Order VI Rule 17 has come up for consideration of the superior courts in many occasions. The recent view taken by Hon’ble Supreme Court in **Vidyabhai**

**and others V.Padmalaatha and another (2009 (1) KHC 560** is that “*the date on which the issues are framed is the first date of hearing. Filing of affidavit in lieu of examination in chief is the commencement of the proceeding.*” So, as per the said dictum, trial in a suit commences on the date when the suit is taken up for framing of issues by the court after perusal of pleadings of the parties. But a different view also can be seen from the judgment of Apex court in **Baldev Sing and others V. Manohar sing and others 2006 (6) SCC 498** wherein it was held that Proviso to O.6 R17 must be understood in the limited sense as meaning the final hearing of suit, examination of witnesses, filing of documents addressing of arguments. Both these judgments were rendered by two judge bench of Apex court and the dictum in **Vidyabahi(Supra)**, being latest in point of time, is to be considered as the binding precedent. It is more so because of the fact that ‘**Baldev**’ was also referred in **Vidayabhai case**.

15. There is no doubt about the proposition of law laid down by Hon’ble High Court in the above said rulings cited by learned counsel for the petitioner. Principle of the above said ruling is that once the amendment is sought after commencement of the trial, the plaintiff is duty bound to show that the amendment could not have done in spite of due diligence.

16. Let me verify whether the plaintiff had been acting in due diligence. Specific case put by the petitioner is that the alleged encroachment was done by the proposed defendant in 2019-2020. The

petitioner got no case that they were unaware about this aspect for last six years. So it cannot be said that the plaintiff was acting diligently.

17. Even if it is accepted for the sake of argument that the amendment application is not hit by the proviso to Order 6 Rule 17, the proposed amendment cannot be allowed because it tries to take away the admissions already made. Principles in this connection can be seen from the decision reported in **Revajeetu Builders and developers v. Narayana Swamy (2009) 10 SCC 84**. Also, the cause of action alleged against the proposed D2 is entirely different, and clubbing the same with the original cause of action will vex the trial. Moreover, it appears that, by making these changes, the attempt of the plaintiff is to seek recovery of properties that are admittedly out of his possession. So the plaintiff is apparently trying to change the nature and character of the suit also. For these reasons I.A.05/2026 and I.A.06/2026 cannot be allowed. These points are found against the petitioner.

18. **Points iv and v** ; Although the petitioner/plaintiff has stated in I.A.07/2026 that the commission report and plan is not acceptable, no reasons have been supplied in that application. In the argument notes, an objection was raised stating that the defendant cannot claim possession over any part of property covered by document No.1810/1971 of S.R.O Mundur. But that is a matter to be decided in the trial. The other ground urged for the remittal is adding of the proposed D2. I have already found

that D2 cannot be added to the suit. Hence that ground also lost. Hence I.A.07/2026 cannot be allowed. This is a matter of the year 2018. It cannot be removed from list without any bonafide and genuine reasons. Consequently I.A.03/2026 is liable to be dismissed.

*In the result,*

***All these applications are dismissed. No costs.***

*(Dictated to Confidential Assistant, typed by her, corrected and pronounced by me in the open court on this the 3<sup>rd</sup> day of March, 2026)*

Sd/-  
YAHYA. T. K.,  
MUNSIF

Appendix:Nil

Id/-  
MUNSIF