

IN THE COURT OF THE MUNSIF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIF
THURSDAY 30th OCTOBER, 2025 / 8th KARTHIKA, 1947
IA.07/2025 IN OS.340/2021

Petitioner (Plaintiff):

K.K.Kabeer, S/o Kasim Kunju, Mumthaz Manzil, Thalamcode, Vavarambalam, Keezhthonnakkal Village, Thiruvananthapuram District.

By Advocate: Sri. Vakkom.R.Jayaprakash

Counter Petitioners (Additional Defendants):

1. Smitha Prakash, W/o Prakash, Prakash Bhavan, Thalamcode, Vavarambalam, Keezhthonnakkal Village.
2. Prakash, S/o Sundaresan, residing at Prakash Bhavan, Thalamcode, Vavarambalam, Keezhthonnakkal Village.
3. Ambadi, S/o Prakash, residing at Prakash Bhavan, Thalamcode, Vavarambalam, Keezhthonnakkal Village.

By Advocates: Sri.V.S.Udayakumar and Sri.V.Devadath

This petition is having been finally heard on 30.10.2025 and the court on the same day passed the following:

ORDER

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

2. **The petition averments are as follows:** The petitioner is the plaintiff in the suit. The suit is filed for permanent prohibitory and mandatory injunction and realization of damages. While typing the plaint, a mistake crept in while stating that the branches of the existing overhanging trees were cut and removed by the 3rd defendant and his parents. What the plaintiff intended to plead was that it was removed by the 1st defendant and his parents. Being an inadvertent typing error, it is quite necessary to allow the petitioner to correct the same by amending the plaint. It is a clerical error since the order of defendants stated in the sentence did not come to the petitioner's attention earlier. It came to the knowledge of the plaintiff only on 14.08.2025 that such a typing mistake occurred in the aforesaid sentence. If the amendment is not made it will create doubts in the pleadings of the plaintiff and put

the plaintiff to irreparable loss and injury. There was no negligence and purposeful delay in filing the application for amendment. Hence this petition.

3. **The defendant filed an objection contending as follows:** The petition is not maintainable either in law or on facts. The plaintiff filed the petition without any bonafides. The only intention of the plaintiff is to delay the trial and also to cause prejudice to the defendants. The amendment petition is filed at a belated stage after the suit was listed on 02.06.2025, after adducing evidence by the plaintiff and also after partly cross examining the plaintiff. The plaintiff filed IA No.4/2024 for the expeditious trial of the suit and filed IA. No.5/2025 for advancing the case. Hence the petition may be dismissed with costs.

4. The following points arose for consideration:

1. Can the petition be allowed ?

2. Order and costs ?

5. Heard both sides.

6. **Point No.(1):** This petition is filed by the plaintiff to amend the plaint contending that an inadvertent typing error crept in the 5th paragraph of the plaint and the said error came to the notice of the plaintiff only on 14.08.2025. The plaintiff contended that if the typing error is not amended it will create doubt in pleadings and put the plaintiff to irreparable injury. The defendant objected to the petition contending that the amendment is sought for at a highly belated stage and that to after cross examining the plaintiff in part.

7. The learned counsel for defendant contended that during the cross examination of PW1, a question was put forth to him specifically raising this anomaly in the 5th paragraph of the plaint. Hence the aforesaid error in the plaint was made a defence by the defendant during the time of cross examination of PW1 and the plaintiff cannot be allowed to amend the same at this juncture. It is true that an amendment that is in the nature of a clerical error can be well allowed if the plaintiff proves due diligence and if the court is satisfied that the amendment is highly necessary to determine the real question in controversy whereas an amendment that will cause prejudice to the opposite party shall never be allowed. In the instant case, the error in the pleading was put forth by the learned counsel for defendant during cross examination. Hence the defendants took a defence on that pleading which is evident from the cross examination of PW1. Hence the plaintiff cannot seek for an amendment that destroys the defence made out by the defendant. It will surely cause prejudice to the defendants.

8. In ***Life Insurance Corporation of India v. Sajeiv Builders Pvt Ltd and Anr*** AIR 2022 SC 4256 the Hon'ble Apex Court specified the principles to be followed by considering the an amendment application which are as follows:

9. Our final conclusions may be summed up thus:

(i) Order II Rule 2 Code of Civil Procedure operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of

amendment being barred Under Order II Rule 2 Code of Civil Procedure is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the Code of Civil Procedure.

(iii) The prayer for amendment is to be allowed (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and (ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration, (ii) the amendment changes the nature of the suit, (iii) the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence.

(v) *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

(vi) *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

(vii) *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

(viii) *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

(ix) *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

(x) *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

(xi) *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in*

amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

10. In the instant case, the defendants put forth a defence on the basis of the error that crept in the pleadings. The amendment hence will result in serious prejudice to the defendants since they will lose the defence set up by them during cross examination. The delay in filing the application can only be condoned if no prejudice will be caused to the opposite party. Hence, allowing the plaintiff to amend the plaint after the defendants have cross examined the plaintiff on that error will not be proper.

11. **Point No.(2):** In view of the discussion above, the petition is dismissed with costs.

Dictated to Confidential Assistant, typed by her, corrected and pronounced by me in open Court on the 30th day of October, 2025.

Sd/-
SWATHI. R. KRISHNAN
MUNSIFF

Appendix: Nil

Id/-
MUNSIFF

Typed by: Sheena.K
Compared by: Shilpa K S