

IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIFF
THURSDAY 22nd MAY, 2025 / 1st JAISHTA, 1947

EA 34/2023 IN EA 159/2022 IN EP.10/2014 IN OS.No. 326/2009

Petitioner/Claim Petitioner:-

Appiamma, aged 95 years, D/o Kurumba, Valiyavila Veedu, Kodithookkikunnu,
X Ward, Kavalayoor P O, Manampoor Village, Varkala Taluk,
Thiruvananthapuram.

By Advocate: Sri.T.A.Rajeev

Respondents/ Counter Petitioners:-

Muhammed Ismail @ Sainalubdeen, S/o Asanaru Pillai (Late),
Munjanadu Veettil, Kavalayoor, Manampoor Village.

By Advocate: Sri.G.Surendran

This petition having been heard on 26.03.2025 and the court on 22.05.2025 passed the following:

ORDER

This is a petition filed under Order I Rule 10 of CPC.

2. **The petition averments are as follows:** The petitioner is the power of attorney holder of the claim petitioner. For the just and proper adjudication of the claim petition, ie., E.A.159/2022 all parties and their legal heirs to the sale deeds 4505/1958, 4506/1958 and 3782/1960 and partition deed No.2919/1955 and all partition in O.S.01/1978 of Hon'ble Sub Court, Attingal shall be impleaded in the claim petition. Hence this petition to implead additional claim petitioners 2 to 15 in E.A.159/2022.

3. **The 9th counter petitioner filed an objection contending as follows:**

The petition is not maintainable either under law or on facts. The counter petitioner 2 to 9 are not necessary parties in the proceedings and there is no decree against these counter petitioners. The claim petitioner, Appi Amma filed a petition as E.A.258/2019 against the counter petitioner herein before the Hon'ble Sub Court in EP.18/2014 in O.S.262/2010 of Hon'ble Sub Court, Attingal and evidence was adduced in that EA and when that EA was pending, the same petitioner filed EA.33/2020 in EP.18/2014 and that petition is also pending. Now the petitioner filed impleading petition in EA.159/2022 for the same purpose. The matter has to be adjudicated before the Hon'ble Sub Court and the petitioner has no authority to file this petition before this court. The relief sought for in E.A.159/2022 is not at all allowable and the petitioner has no right to challenge the aforesaid deeds. The petitioner has no right to file a petition to set aside the decree in O.S.01/1978. Moreover, both these decrees were passed by Hon'ble Sub Court and this court. Hence the petition may be dismissed with costs.

4. Following points are raised for consideration:

1. Can the petition be allowed ?

2. Reliefs and costs ?

5. Heard both sides.

6. **Point No.(1):** The petitioner filed this petition to implead additional counter petitioner 2 to 15 contending that they are necessary parties due to the

reason that they were parties to the partition deed, sale deed and also O.S.01/1978. The counter petitioner objected to the petition contending that the claim petitioner already preferred a claim petition in E.P.18/2024 in O.S.269/2010. The petitioner has no right to file such a petition since the claim petitioner is challenging the decree of Hon'ble Sub Court, Attingal. The petitioner sought to implead the additional counter petitioners contending that they are parties to the partition deed and sale deed and also O.S.01/1978. First of all the petitioners has to substantive to the reason as why they are to be impleaded. A mere contention that they are parties to the partition deed and sale deed is not maintainable. Further the petitioner challenged the partition deed executed in the year 1955 contending that she had not subscribed her signature to the same. It is true that a claim petition has to be considered like a plaint and resultantly the status of plaintiff being that of '*dominus litus*' shall also be given to the claim petitioner in a claim petition. Whereas the plaintiff is bound to state as to why the parties should be impleaded. The party can only be implead if he or she is a necessary party or proper party. Hence the duty is upon the plaintiff to prove that the presence of parties is necessary and without them an effective decree cannot be passed. Through this petition the petitioner is challenging the decree in O.S.326/2009. The petitioner has not clarified as to how the additional counter petitioners to be impleaded are proper parties to the claim petition. Hence this court is of the view that there are no sufficient grounds to allow this petition.

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

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 22nd day of May 2025.

Sd/-
SWATHI. R. KRISHNAN
MUNSIFF

Appendix: Nil

Id/-
MUNSIFF

//True Copy//

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

MUNSIFF

**Copy of order in EA34/2023 in EA
159/2022 in EP.10/2014**

OS.No. 326/2009

Dated: 22.05.2025