

**IN THE COURT OF THE MUNSIF, ATTINGAL  
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIF  
TUESDAY 4<sup>th</sup> FEBRUARY, 2025 / 15<sup>th</sup> MAGHA, 1946**

**IA.2/2021 IN OS.636/2014**

**Petitioner /Plaintiff:**

Remani, W/o Reghuvaran, Charuvila Puthen Veedu, Koduvazhannoor,  
Pulimath Village.

By Advocate: Sri.G.Surendran

**Counter Petitioner/ Defendant:**

Uthaman, S/o Natesasn, Kallithottam Veedu, Stalin Mukku, Melkadakkavoor,  
Chirayinkeezh Village.

By Advocate: Srmt.V.Geetha

This petition having been finally heard on 04.02.2025 and the court on same day passed the following:

**ORDER**

This is a petition filed under order VI Rule 17 of CPC.

2. **The petition averments are as follows:** The petitioner is the plaintiff in the suit. The suit is for injunction. On 24.11.2014, that is after filing of the suit the defendant and his men destroyed the mud boundary situated on the southern side of the plaint schedule property to widen the pathway. But the said attempt failed due to the intervention of the commissioner and police. But for the preservation of the plaint schedule property the boundary has to be demarcated. Hence this petition to amend the plaint incorporating the aforesaid pleadings and also the relief of construction of compound wall on the south of the plaint schedule property.

3. **The defendant filed objection as follows:** The petition is not maintainable either under law or on facts. The respondent never tried to create any pathway as alleged. On 24.11.2014 at 4 PM the advocate commissioner went to the plaint schedule property. It is clear from the report, but the commissioner has not reported that the defendant was present at that time nor they destroyed the boundary.

Even if the pathway is widened it will not reach the respondent's property. The amendment will change the nature of the suit. The alleged incident happened in the year 2014 and the delay occurred since no such incident occurred. The limitation period already expired. This petition is filed to cause undue hardship to the respondent/defendant. Hence the petition may be dismissed with costs.

4. The points that arose for consideration are:

1. Can the petition be allowed ?
2. Reliefs and costs ?

5. Heard both sides.

6. **Point No.(1):** The petitioner has sought for amendment contending that after the institution of the suit, particularly on 24.11.2014 the defendant/respondent destroyed the mud boundary on the eastern side of the plaint schedule property and hence a relief of constructing compound wall is highly necessary. The respondent in turn contended that the amendment will change the nature of the suit and also that the amendment is time barred. As per Article 113 of the Limitation Act, 1963 the period of limitation for any suit for which no time period is provided anywhere is three years from the date when the right to sue accrues. Hence the period of limitation begins to run from 24.11.2013 and has already expired.

7. The learned counsel for the petitioner relied on the judgment of Hon'ble Supreme Court in **Rajesh Kumar Aggrawal v. Modi 2006(3) KLT 192** it was held as follows:

*'In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief*

*claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.*

*As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused’.*

8. The learned counsel for the petitioner also relied on the judgment of in ***M/s SEPC Ltd. v. V.S. Sunilkumar 2024(2) KHC 457*** wherein the Hon’ble High Court of Kerala relying on ***A.K.Gupta and Sons Ltd v. Damodar Valley Corporation AIR 967 SC 96*** held as follows:

*‘This court notices the settled legal position that the amendment is not liable to be thrown out, nearly for the reason that amended relief stands time barred.’*

9. In ***Vineet kumar v. Mangal Sain Wadhera AIR 1985 SC 817***, the court relying on the dictum laid down in ***A.K Gupta case*** (cited above) held that *‘to find that an amendment brought in even after the statutory period of limitation will be allowed, if it does not constitute a new cause of action or raise a new case; but only adds to the fact already on record’.*

10. In ***Pankaja and Anr v. Yellappa (D) by Lrs in 2004 KHC 1297*** it was held that *‘We do not agree with the courts below that the amendments sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written*

*statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.'*

11. The learned counsel for the respondent in turn relied on the decision of Hon'ble Supreme Court in **Sambath Kumar v. Ayyakannu in (2002) 7 SCC 559** wherein it is held as follows:

*'An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See Observations in Siddalingamma and Anr. vs. Mamtha Shenoy - (2001) 8 SCC 561)'*

12. The learned counsel for the respondent also relied on the decision of Hon'ble High Court in **LIC of India v. Sajeev Builders Pvt Ltd and Anr AIR 2022 SC 4256** it is held as follows:

*'A prayer for amendment is generally required to be allowed unless -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 relevant factor consideration, -by the amendment, the other side loses a valid defence'.*

13. From the discussion above it can be seen that the Apex Court and the Hon'ble High Court has held that an amendment should not be thrown out merely

for the reason that the relief stands time barred. The test to be applied while considering whether an amendment should or should not be allowed is to consider whether allowing the same cause prejudice to the opposite party.

14. In the instant case, the respondent contended that the amendment should not relate back to the date of institution of the suit but shall have effect only from the date of the petition. The reason stated for the same by the respondent was that the amendment is time barred and there was inordinate delay by the petitioner in seeking the amendment. Normally amendment will have effect from the date of suit unless the court has specifically stated that it will have effect from the date of petition only. The question is whether the proposed amendment introduce a new cause of action and whether it will destroy the defence set up by the defendant. The plaintiff/petitioner filed this petition to amend the plaint on the ground that after the date of institution of the suit the defendant destroyed the southern boundary ie, the subsequent development and is intricately connected with the subject matter of the suit. The Appellate Court has in ***LIC of India v. Sajeev Builders Pvt Ltd and Anr*** has clarified that while dealing with the prayer for amendment the court should avoid a hyper technical approach and also that delay in applying amendment alone is not ground for disallowing the prayer and where the aspect of delay is arguable the prayer for amendment could be allowed and issue of limitation can be framed separately for decision.

15. Hence this court is of the view that the aforesaid amendment sought for is necessary for the purpose of determining the real question in controversy between the parties. Further the contention that the amendment shall have effect only from

the date of the petition is also not acceptable since the said amendment will not destroy the defence set up by the defendant. No such defence was pleaded by the defendant in the written statement. Hence the amendment will not cause prejudice to the defendant. Further the delay occurred in filing the amendment can be compensated with costs. The question of limitation can be considered as an issue as held by the Hon'ble Apex Court. Hence this court is of the view that there are sufficient grounds for allowing the petition and the loss incurred to the defendant can be compensated with costs.

14. **Point No.(2):** In result, the petition is allowed on payment of costs of Rs.1,500/- to the defendant. The plaintiff shall carry out amendment within 14 days from the date of this order.

*Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 04<sup>th</sup> day of February, 2025.*

*Sd/-*  
SWATHI. R. KRISHNAN  
MUNSIFF

**Appendix:** Nil

*Id/-*  
MUNSIFF

*// True copy//*

Typed by: Sheena.K  
Compared by: Lasitha

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