IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 19TH DAY OF DECEMBER 2025 / 28TH AGRAHAYANA, 1947

MFA (WAQF) NO. 10 OF 2025

ORDER DATED 20.09.2025 IN IA 2/2025 IN WOS NO.8 OF 2023 OF WAKF TRIBUNAL, KOZHIKODE

APPELLANT/PETITIONER/PLAINTIFF:

SAYED HUSSAIN HYDROSE THANGAL, AGED 69 YEARS S/O SAYED ABDULLA HYDROSE THANGAL, MUTHAVALLY, THAIKVAU PALLY, KOCHI, REPRESENTED BY THE POWER OF ATTORNEY HOLDER SAYED HASHIM HYDROSE THANGAL, AGED 69 YEARS, S/O SAYED ABDULLA HYDROSE THANGAL, THAIKAVU PALLY KOCHI, PIN - 682005

BY ADVS.
SHRI.K.H.ASIF
SHRI.C.A.MAJEED
SMT.MOLTY MAJEED
SHRI.P.B.UNNIKRISHNAN NAIR
SMT.SHERIN BIJU

RESPONDENT/RESPONDENT/DEFENDANT:

1. **K.J. PAUL, S/O JOSEPH, BUILDING NO. XIII/788, NEAR THAIKAVU HOUSE, KARUVALIPPADY, KOCHI, PIN - 682005**

2. **SAYED SHAIK JIFFRY THANGAL, S/O LATE SAYED MUHAMMED JIFFRY, THASNI MANZIL, THIRUVANGOOR P.O., THIRUVANGOOR AMSOM, (KAPPAD) VIA KOZHIKODE, PIN - 673304**

3. **KERALA STATE WAQF BOARD REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, VIP ROAD, KALOOR, KOCHI, PIN-682017**

BY ADVS.
SHRI.MICHAEL.M.WILSON
SRI.R.RAMADAS
SMT.RENI JAMES
SMT.C.R.REKHA

THIS MISCELLANEOUS FIRST APPEALS (WAQF) HAVING BEEN FINALLY HEARD ON 11.12.2025, THE COURT ON 19.12.2025 DELIVERED THE FOLLOWING:

CR

J U D G M E N T

G. Girish, J.

Can amendment of plaint be permitted, after the completion of evidence, to incorporate a plea which would otherwise be barred by res judicata, if raised in a fresh suit? Our endeavour is to resolve this precise legal issue.

2. The refusal of the Waqf Tribunal, Kozhikode to permit amendment of the plaint by incorporating a prayer for recovery of possession in W.O.S No.8/2023, at a stage when the case stood for final hearing after the completion of evidence, is under challenge in this appeal filed by the plaintiff in the aforesaid suit.

3. Originally, the suit was instituted before the Waqf Tribunal, Ernakulam as W.O.S No.9/2015 seeking the reliefs of declaration and permanent prohibitory injunction. The aforesaid suit was decreed ex parte by the Waqf Tribunal, Ernakulam. Later on, the ex parte decree was set aside, and the suit was renumbered as W.O.S No.8/2023 and transferred to the Waqf Tribunal, Kozhikode. In the meanwhile, the petitioner herein filed W.O.S No.45/2022 before the Waqf Tribunal, Kozhikode seeking the relief of recovery of possession of the very same Waqf property which is the subject

matter in W.O.S No.9/2015 (which was renumbered as W.O.S No.8/2023). W.O.S No.45/2022 was dismissed after full trial by the Waqf Tribunal on 24.02.2025. It is thereafter, that the petitioner filed I.A No.2/2025 in W.O.S No.8/2023 seeking amendment of the plaint by incorporating a prayer of recovery of possession of the property for which the relief of declaration was sought in the aforesaid suit. According to the petitioner, the amendment was necessitated due to the dismissal of W.O.S No.45/2022 which according to him, was on the ground that no independent cause of action subsisted once the earlier ex parte decree in W.O.S No.9/2015 had been set aside and the Original Suit was restored to files for fresh trial. The Waqf Tribunal declined to grant the relief of amendment stating the reason that the petitioner failed to establish that in spite of due diligence, he could not raise the plea for amendment before the commencement of trial. It was further observed that the incorporation of a new relief for recovery of possession would definitely alter the nature of the suit. The Waqf Tribunal also referred to an earlier amendment made by the plaintiff in the year 2017 and held that the petitioner has no explanation for his failure to incorporate the prayer for recovery of possession at that time. Accordingly, the Tribunal dismissed the amendment application by the impugned order dated 20.09.2025.

4. Heard the learned counsel for the petitioner, learned counsel for respondents 1 and 2 and the learned Standing Counsel for the 3rd respondent.

5. The subject matter of the suit, in which the amendment is sought, are the properties said to be belonging to the Thykavu Mosque of Mattancherry, Kochi. The petitioner instituted the aforesaid suit in his capacity as the mutawalli of the aforesaid Mosque. The allegation in the suit was that the property scheduled thereunder are being wrongly held by the first defendant/first respondent consequent to the lease made by the second defendant/second respondent. Despite a contention in the above regard about the illegal possession of the suit properties by respondents 1 and 2, the petitioner did not incorporate a prayer for recovery of possession in the plaint. Obviously, W.O.S No.45/2022 was instituted by the petitioner with the prayer for recovery of possession of the very same properties in order to mitigate the anomaly in W.O.S No.9/2015 (now renumbered as W.O.S. No.8/2023) due to the absence of a prayer for recovery of possession of the suit properties. Annexure-A2 judgment rendered by the Waqf Tribunal in W.O.S No.45/2022 would reveal that the aforesaid suit was dismissed disallowing the prayer for recovery of possession of

the suit properties after evaluating the evidence adduced from both sides.

6. As already stated above, the necessity for amending the plaint in W.O.S No.8/2023 is stated to be the dismissal of W.O.S No.45/2022 by the Waqf Tribunal, Kozhikode. According to the petitioner, W.O.S No.45/2022 was dismissed due to lack of cause of action in view of the order of the Waqf Tribunal setting aside the ex parte decree in W.O.S No.9/2015 and renumbering the above suit as W.O.S No.8/2023. The contention of the petitioner in the above regard is factually incorrect. A reading of Annexure-A2 judgment rendered by the Waqf Tribunal, Kozhikode in W.O.S No.45/2022 would reveal that the Tribunal declined to grant the relief of recovery of possession prayed for in the said suit mainly for the reason that a mutawalli is not empowered to file a suit for recovery of possession. Furthermore, it is observed in the said judgment that the plaintiff did not adduce any evidence to identify the properties and that there was nothing to show that there existed a lease arrangement of the properties as stated by the plaintiff. Paragraph No.19 of the aforesaid judgment of the Waqf Tribunal which contains the reasoning for disallowing the relief of recovery of possession of the suit properties, is extracted hereunder for the sake of convenience and easy reference:

> *"Going by the rival contentions, it could be seen that the mutawalli is not empowered to file a suit for recovery of possession. Hence, it is concluded that he is not competent to sign and verify the plaint. There is a special provision which incorporates the procedure for recovering waqf properties. Unless and until such procedure is adopted, it will not be possible for the Waqf Board to recover the waqf property. It is true that the property when recovered is to be delivered to the mutawalli concerned. But that does not mean that the mutawalli is empowered to file a suit for recovery of possession. On that ground alone, this suit has to go. Furthermore, the plaintiff has not adduced any evidence to identify the properties. There is also nothing in evidence to show that there is or was a lease arrangement as stated by the plaintiff in the plaint. In such circumstances, it is only to be concluded that this plaintiff is not entitled for the relief of recovery of possession of plaint schedule property. The issue is answered against the plaintiff."*

7. It is clear from the findings of the Waqf Tribunal in the aforesaid judgment that the contention of the petitioner that the Tribunal disallowed the prayer for recovery of possession due to lack of independent cause of action after setting aside the ex parte decree in W.O.S No.9/2015 which was renumbered as W.O.S No.8/2023, is patently incorrect. On the other hand, the Tribunal had considered the pleadings and evidence of both parties on merit and found that the petitioner is not entitled for the recovery of possession of the

suit property. Now, the question to be looked into is whether the petitioner could incorporate a relief for recovery of possession in the plaint in W.O.S No.8/2023 by way of amendment after the dismissal of W.O.S No.45/2022 on merit with the finding that the petitioner is not entitled for the relief of recovery of possession sought therein.

8. A reading of Annexure-A3, which is the copy of the amendment application which the petitioner filed before the Waqf Tribunal, would show that the additional reliefs sought to be incorporated in the plaint in W.O.S No.8/2023 by way of amendment are exactly the same reliefs which were disallowed by the Tribunal in W.O.S No.45/2022 after a full trial. As it could be seen from the relevant paragraph of the judgment in W.O.S No.45/2022 extracted in paragraph No.6 hereinabove, the Tribunal had arrived at the categoric finding in the said verdict that petitioner, being the mutawalli of the Waqf concerned, is not empowered to file a suit for recovery of possession, nor competent to sign and verify the plaint. It is further observed thereunder that there is special provision for the recovery of Waqf properties and that without resorting to the above procedure, it will not be possible for the Waqf Board to recover the Waqf property. According to the Tribunal, when the property is recovered, it has to be delivered to the mutawalli concerned, but that does not mean that the mutawalli is empowered to file a suit

for recovery of possession. In addition to the above reasons, the Tribunal also held in the said judgment that there was lack of evidence about the lease arrangement and identity of the property sought to be recovered. Thus, it could be seen that the dismissal of W.O.S No.45/2022 was not on any technical grounds, but on merits after evaluating the evidence adduced by the parties in support of their respective contentions. The petitioner has no case that the aforesaid verdict of the Tribunal has been challenged in appeal.

9. The net effect of granting amendment as prayed for by the petitioner would be giving an opportunity to the petitioner to reagitate the issue regarding the recovery of possession of the suit properties once more before the same forum by circumventing the bar of res judicata which would have come into play if he had opted for a fresh suit for the same reliefs. Such a course of permitting the petitioner to do a thing indirectly which he could not do directly, is a procedure alien to the settled principles of law. Since the matter in issue relating to the entitlement of the petitioner to recover the possession of the properties concerned, was directly and substantially in issue in W.O.S No.45/2022, and it has been decided on merit in the said suit after full trial, the petitioner is precluded from seeking a further trial on the same point in W.O.S No.8/2023 in view of the principles of res judicata. An amendment in the above

regard, if allowed, would definitely cause prejudice to the respondents. The proper course which the petitioner could have adopted was to challenge the dismissal of W.O.S No.45/2022 before the Appellate Forum. Instead of doing that, the petitioner cannot be permitted to adopt a short cut method of raising the same issue in W.O.S No.8/2023 by resorting to amendment of the plaint.

10. The provisions relating to amendment of pleadings, as contained in Order VI Rule 17 of the Code of Civil Procedure, 1908 read as follows:

> "*17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*"

Though the operative portion of the aforesaid provision enables amendment at any stage of the proceedings, on such terms as may be just, for determining the real questions in controversy between the parties, the proviso restricts its applicability to a stage before the commencement of trial subject to the exception when the party,

in spite of due diligence, could not have raised the matter before the commencement of trial. The rider 'on such terms as may be just' makes it imperative that the courts, before granting the prayer for amendment, should ensure that the proposed amendment does not cause prejudice or injustice to the opposite party. If the amendment is intended to cripple the opposite party by depriving him of a valid defence, then it would be unjust and hence impermissible. Likewise, a legal bar brought in the statute book to confer finality and conclusiveness of decisions as a matter of public policy in the interest of the community at large, and to protect individual interest from multiplicity of litigations, cannot be circumvented by an amendment with a hidden objective of rendering that provision nugatory.

11. The law is settled that the courts, generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by law on the date of the application. But the bar in the above regard shall be a factor to be taken into account in the exercise of discretion as to whether the amendment should be ordered. It does not affect the power of the court to order it, if that is required in the interests of justice.

12. On the question whether an amendment could be allowed when a fresh suit on the amended claim would be barred by

limitation, a four Judges Bench of the Hon'ble Apex Court in **H. J. Leach And Co. v. Ms. Jardine Skinner And Co. [AIR 1957 SC 357]** held as follows:

> *"20. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice. In Charan Das v. Amir Khan [[1920] 47 I.A. 255.] the Privy Council observed:*
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> > *"That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where the effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case."*

13. Following the aforesaid dictum, a three Judges Bench of the Hon'ble Supreme Court in **T. N. Alloy Foundry Co. Ltd. v. T. N. Electricity Board and Others [(2004) 3 SCC 392]** held that the bar of limitation for a fresh suit is a factor to be taken into account by the court while exercising the discretion as to whether amendment should be ordered, and that it does not affect the power

of the court to order it. On the same point, in **Pankaja and Another v. Yellappa [(2004) 6 SCC 415]**, the Apex Court held as follows:

> "*14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.* "

The same view has been followed by the Apex Court in **Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another [(2022) 16 SCC 1]** while holding that the field of amendment of pleadings falls far beyond the purview of the bar contained in Order II Rule 2 C.P.C.

14. The question to be resolved in the case on hand is whether the amendment sought for after the completion of evidence to incorporate a plea of recovery of possession of the suit properties

which was already disallowed by the Waqf Tribunal on merits after a full trial in a prior suit between the same parties, could be termed as one which subserves the ultimate cause of justice. The answer can only be in the negative since the very basis of the principles of res judicata embodied in Section 11 C.P.C would be defeated if such a course is adopted. In this context, it is worth to quote the following observations of this Court in **Parvathi Varasiar v. Sulaiman [1988 (1) KLT 366]** on the broad objectives sought to be accomplished by the bar of res judicata envisaged under Section 11 C.P.C.

> *" 7. Res judicata involves the principle of estoppel which is a rule of evidence. It is the broader rule of evidence which prohibits the re-assertion of a cause of action. The basis of every action is the cause of action which alone enables the action to be brought before Court. A cause of action that is brought before Court and results in a decision thereby loses its identity and validity as the cause of action merges in the judgment or order. Thereafter, it has no independent existence as the cause of action, whether all facts constituting that cause of action is presented before Court for decision or not. Thereafter the remedy or relief is only basing on the judgment or order. When the decision becomes unenforceable, the relief based on the cause of action is also lost. This rule is based on the finality and conclusiveness of decisions as a matter of public policy in the interest of the community at large and to protect*

individual interests also from multiplicity of litigations. A second decision for the same relief off the same cause of action is impermissible. Otherwise, it will lead to conflicting decisions on the same cause of action by equally competent authorities leading to harassment and multiplicity of actions at the hands of cantankerous litigants and the administration of justice itself will be put to contempt and disrepute. The cause of action cannot thus survive the decision of Court on the basis of what is stated above which is known as the general principles of res judicata [see: State of Uttar Pradesh v. Nawab Hussain AIR 1977 SC 1680].

8. Now it is well established that on the question of res judicata S.11 CPC. is not exhaustive. S.11 itself provides that the bar is not confined to issues which the Court is asked to decide. It also covers issues or facts which are so clearly part of the subject matter and could have been raised but not raised. If such issues in the same cause of action are allowed to be raised in a subsequent litigation it will amount to opening flood gates to miscreants for abusing the process of Courts by successive litigations on the same cause of action when one fails. If on the same set of facts more than one cause of action are there, all of them should be put together and not separately. That is necessary for subduing a cantankerous litigant by the bar of res judicata from successive actions. This is constructive res judicata which is an aspect or amplification of the general principle provided under Explanation IV."

15. It is of no doubt that the avowed objectives behind the concept of res judicata would be thrown to winds if a litigant is permitted to circumvent the above bar by resorting to the indirect way of setting forth the proscribed plea by way of amendment in a pending suit between the same parties, that too, at a stage when the evidence is already over. As far as the present case is concerned, if the amendment sought for is allowed, the Waqf Tribunal will be put to the precarious situation of sitting on judgment upon its own verdict in W.O.S No.45/2022. Since the latter suit, that is W.O.S No.8/2023, stands posted for final hearing after the closure of evidence, there is no scope for deciding the bar of res judicata as a preliminary issue. In any case, if the Waqf Tribunal, on the basis of the evidence on record in W.O.S No.8/2023, finds that the prayer for recovery of possession is allowable, it would amount to reversing its own finding in W.O.S No.45/2022 like an Appellate Court.

16. As already stated in paragraph No.10 above, the only exception as per the proviso to order VI Rule 17 C.P.C where amendment could be permitted after the commencement of trial is the inability of the party to raise the matter before trial in spite of due diligence. In the case on hand, the contention of the petitioner is that the necessity to make amendment in W.O.S No.8/2023 arose only when W.O.S No.45/2022 was dismissed, and hence the

exceptional circumstance in the proviso to Order VI Rule 17 C.P.C would come to his rescue. The argument in the above regard is in fact against the real purport of the proviso to Order VI Rule 17 C.P.C. The above contention of the petitioner would make it clear that his attempt is to reagitate an issue before the same forum which had already rejected on merits a plea in the above regard. In other words, the contention of the petitioner is that he was not in a position to seek amendment incorporating a plea of recovery of possession so far since the Waqf Tribunal rejected the same plea in another suit between the same parties only recently. The contention in the above regard is in fact an admission that the petitioner, by the amendment application, has been trying to indirectly make the Tribunal decide again an issue between the same parties which the Tribunal had already decided on merit. Therefore, the above course adopted by the petitioner is against the avowed objective of amendment which is intended to subserve the ultimate cause of justice.

17. In the light of the settled principles of law discussed aforesaid, the petitioner cannot be permitted to have amendment of the plaint in W.O.S No.8/2023 as prayed for in I.A No.2/2025. Needless to say, the impugned order of the Waqf Tribunal does not suffer from any error or impropriety.

In the result, the M.F.A is hereby dismissed.

(Sd/-)

ANIL K. NARENDRAN, JUDGE

(Sd/-)

G. GIRISH, JUDGE

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