

IN THE COURT OF THE MUNSIFF-MAGISTRATE, KALPETTA

Present: Sri.Nijesh Kumar.P., Munsiff-Magistrate

Friday, the 10th day of April, 2026

20th day of Chaithra, 1948

INTERLOCUTORY APPLICATION No.01/2026

ORIGINAL SUIT No.63/2025

BETWEEN:

1. Abdul Razak, aged 71 years, 338, Cheyenne Falls Avon Lake 44012, OHIO, USA, 44012.
2. Shakeela Abdul Razak, Aged 62 years, W/o Abdul Razak, Seawind Skyline Apartments 3B, Beach Road, P.O. Beach Nagaram, Calicut Beach, Kozhikode-673032.
3. Stasha Saina Razak, Aged 41, D/o Abdul Razak, R/o 10551, Brodie Springs Trail, Austin, Texas 78748, America.
4. Javeed Azees Razak, Aged 40, S/o Abdul Razak, R/o 7025, 1st Street East, Apt 615 B, Bradenton, Florida, Rep by their Power of Attorney Holder Sadique K M, aged 54 years, S/o K M Muhammed, Vazhakaliparambu, Faroke Post, Faroke amsom desom, Kozhikode Taluk, Kozhikode- 673631.

Petitioners
Plaintiffs

AND

1. Shanavas, S/o Kunjali. C., Chemban House, Pallikkunnu, Vandoor Post, Malappuram District-679 328.
2. Anas, Aged 33 years, S/o Muhammed M C, Naduvattichali House, Thachanna, Urungattiri, Malthara Post, Malappuram Pin: 673 639.

Respondents
Defendants

This petition coming on this day for hearing before me in the presence of Sri.Rajesh Odungattil., Counsel for Petitioners/Plaintiffs and Mohan. K. N, Counsel for Respondents/Defendants and having stood over for consideration on the same day, the court passed the following:

ORDER

Petition filed by the plaintiff under Order XXVI Rule 9 CPC to depute

advocate commissioner for local inspection of the petition schedule shop rooms.

2. **Petition averments:-** As per license agreement the plaint schedule rooms were given to the respondents for doing business. Now the period of license is over. Still the respondents are in possession of the Plaint schedule shop rooms. But the respondents are not doing any business in the shop rooms and they closed the shop rooms after removing all the articles. In order to ascertain the above said aspects, a commissioner has to be deputed for inspecting plaint scheduled shop rooms. Hence the petition.

3. The petition to appoint a commission for local inspection is nothing but an attempt to gather evidence to the petitioner/plaintiff through the Advocate Commissioner is liable to be dismissed. The entire averments in the affidavit to the effect that this respondent is attempting to part with or to transfer the same to third parties and displayed a board with phone number upon the shutter of the shop room is not true and the same is nothing but an attempt to make believe the baseless stories narrated therein. It is submitted that the present petition is nothing but an unwanted exercise for ulterior purposes. The requisition to the commissioner to peruse the petitioner's mobile phone and to report the contents therein are quiet out of the contentions in the plaint and the defense. The further claim that the petition schedule shop rooms are remaining closed and there is no business is being conducted. It is submitted that the present suit is filed for the recovery of the licensed premises on the ground of expiry of the time limit. Therefore the absence of occupation or business in the premises makes no consequences in the present suit and the plaintiff's claims therein. Therefore there is no need to ascertain the details of accounts, cash bill, receipt book, details of the workman etc., as attempting to be adduced as evidence through an advocate commissioner.

4. Heard both sides. The petitioner has filed a work memo. As per the work memo the petitioner wants the commissioner to examine the account details, cah bill, receipt book, details of the employee, to note the electricity bill paid by the respondent, the electricity bills which are not paid by the respondent, to peruse the video recorded by the petitioner. These all are matters pertaining to collection of

evidence by the advocate commissioner for the petitioner which the Advocate Commissioner is not required to do. The Advocate commissioner can be deputed to report regarding the present nature and condition of the plaint schedule shop rooms and to note whether the respondents are doing business in the shop rooms. Hence this petition can be allowed.

In the result, this petition is allowed. Adv.Shana Sherin is appointed to inspect the plaint schedule shop rooms. Pay ₹2,500/-(Rupees Two thousand five hundred only) as batta to be advocate commissioner. The advocate commissioner is directed to note the present nature and condition of the shop rooms and to note whether the respondents are doing business in the plaint schedule shop rooms.

(Dictated to the Confidential Assistant transcribed by her, corrected and pronounced by me in open court on this the 10th day of April, 2026)

MUNSIFF-MAGISTRATE

Appendix:-Nil

MUNSIFF-MAGISTRATE

Typed by : Shinu.V.J
Compared by : Jayaprakash.A.P.

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COPY OF ORDER

IA. 01/2026
OS.63/2025

(Dated : 10.04.2025)