

IN THE COURT OF THE SUBORDINATE JUDGE, ALAPPUZHA

Present:-Smt. Rekha Laurian, Sub Judge
Thursday the 20th day of November, 2025/ 29th day of Karthika 1947

IA 05 /2025 in OS. 41/2023

Filed on 11.08.2025

Petitioner/ Plaintiff:- Joji Joseph, Kadeparambu,
Changanassery P.O, Kottayam

(By Adv. Azeem Mohammed)

Cr. Petitioner/Defendant:-

1. Alphonsa Andrew, Diver House,
Pathirappally Village, Alappuzha.
2. Geethu Josy @ Kochuthresia,
Karakkad, Pathirappally Village,
Alappuzha

(By Adv. P.S. Pradeep)

This petition having been heard on 20.11.2025 and the court on the same day passed the following:-

ORDER

This is an application filed under Order 26 Rule 9 and section 151 of Code of Civil Procedure.

2. Petition averments:-Petitioner is the plaintiff in the original suit. To bring the original facts and materials before the court, it is highly essential to appoint an advocate commissioner and to call for a mahazar and report for the just disposal of the case. An advocate commissioner may be appointed for ascertaining the following facts. 1. Whether the work that was agreed as per Agreement dated 18.02.2020 is completed and the nature and extent of the work. 2. The extra work conducted by the plaintiff and the costs sustained for the extra work. 3. Quality of the tile and paint and

other articles used for construction work. 4. Any other facts to be ascertained at the request of the plaintiff. It is highly essential to ascertain the above facts for the disposal of the case. Hence, the application may be allowed.

3. Averments in the objection:- The petition is not maintainable either on law or on facts. All the averments in the petition, except those specifically admitted hereunder, are false and hence denied. The petition is liable to be dismissed in limine. The petition is to appoint an advocate commissioner for ascertaining and reporting certain facts. Even according to the plaint, the building has been completed on 02.02.2022. The building is being occupied by the defendant No. 1 and family. After elapsing a period more than 3.5 years, it will be futile exercise to assess the completion of the work as per the agreement. In the written statement it is specifically stated that work has been deserted by the petitioner/plaintiff and it was respondent/defendant who completed the construction. Hence it could not be assessed which work has been done by the petitioner. Matters to be assessed cannot be assessed at this point of time. There is no meaning in appointing an advocate commissioner for the same. Hence the petition may be dismissed since it does not carry any merit.

4. Heard both sides.

5. The learned counsel for the petitioner argued that the facts that are stated to be ascertained are highly essential for the just disposal of the case. The learned counsel for the respondent/defendant argued that the facts that are sought to be ascertained cannot be ascertained by an advocate commissioner as the contention raised in the written statement is that after a particular date the defendant herself completed the work and started residing there on 02.02.2022. So which work were completed by the plaintiff cannot be ascertained by an advocate commissioner.

6. I Perused the application, objection, plaint and written statement. Plaintiff is claiming Rs.13,82,350/- from the defendants as the amount for the additional work done. Defendant contents that the plaintiff stopped the work in between and so the defendant was constrained to appoint another workers and to complete the construction. So the defendant was forced to spend more than Rs.10,00,000 in addition for completing the work. From the pleadings it could be seen that the house was constructed before 02.02.2022 and after completion of the work the defendant started residing there on 02.02.2022. So on considering the facts to be ascertained it could be seen that it is not practically possible for an advocate commissioner to ascertain which work was done by the plaintiff and which work was done by another workers appointed by the defendant. Further, it is not possible for an advocate commissioner to ascertain the quality of the goods that is used. The application is filed in the year 2025. The house has been constructed and its work was completed in the year 2022, February. So, it is highly impractical for an advocate commissioner to ascertain the facts that are stated in the application. Hence, I am not inclined to allow this application.

In the result, application is dismissed with costs.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court today this the 20th day of November, 2025.)

Sd/-

REKHA LAURIAN

SUB JUDGE

Id/-

SUB JUDGE

Appendix:-Nil