

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh. M., Additional Munsiff

Saturday, the 17th day of January, 2026/ 27th Pousham, 1947.

IA No.02/2025 in O.S. No.74/2013

(Filed on 16.12.2025)

Petitioners/Plaintiffs:-

1. Kunjamma, W/o Ananthan,
Karaatharayil, Aroor Muri, Aroor Village,
Cherthala Taluk (Died)
2. Krishnan, aged 72,
S/o Ananthan, Karaatharayil, Aroor Muri,
Aroor Village, Cherthala Taluk.
3. Padmanabhan, aged 62,
S/o Ananthan, Karaatharayil, Aroor Muri,
Aroor Village, Cherthala Taluk.
4. Surendran, S/o Ananthan,
Karaatharayil, Aroor Muri, Aroor Village,
Cherthala Taluk.
5. Vijayan, aged 59,
S/o Ananthan, Karaatharayil, Aroor Muri,
Aroor Village, Cherthala Taluk
6. Chandrika, aged 57,
D/o Ananthan, Karaatharayil, Aroor Muri,
Aroor Village, Cherthala Taluk.
7. Dayanandan, aged 52,
S/o Ananthan, Karaatharayil, Aroor Muri,
Aroor Village, Cherthala Taluk.

P2, P3, P5 to P7 by Adv.M.M.Vinod,

Adv.C Purushothaman Nair & Adv.Haritha Unni.

Respondents/Defendants:-

1. Sanathanan, aged 68,
S/o Ramachandran, Palayilparambu,
Aroor Muri, Aroor Village, Cherthala.
2. Kunjumani, aged 52,
D/o Ramachandran, Palayilparambu,
Aroor Muri, Aroor Village, Cherthala.
3. Maheswari, aged 50,
D/o Ramachandran, Palayilparambu,
Aroor Muri, Aroor Village, Cherthala.
4. Manohari, aged 50,
D/o Ramachandran, Palayilparambu,
Aroor Muri, Aroor Village, Cherthala.

R1 by Adv.T.Jayakrishnan

This petition having been finally heard on 09.01.2026 and the court on 17.01.2026 passed the following:-

ORDER

This is a petition filed by the petitioner under Order XXVI Rule 9 of Code of Civil Procedure for deputing a commissioner for local investigation.

2. Petition averments in brief –

The petitioner herein is the 7th plaintiff in the above suit. The suit is one for declaration and injunction, based on easement right. Therefore, for the proper and effective adjudication of the lis, the interest of justice highly demands the production of a comprehensive plan, after measuring the plaint schedule properties, in terms of survey. The defendants have also disputed the very identity of the pathway. In these

circumstances, it is necessary to appoint an Advocate Commissioner and a competent Surveyor, to assist the Commissioner and direct the Commissioner to prepare a comprehensive plan of the plaint schedule properties, after measuring the properties based on respective title deeds, survey, and law in force. Otherwise, a proper and effective adjudication of the lis could not be made, and there exists a chance for destroying the evidence etc. by delay. Hence this petition.

3. Respondent filed objection contending as follows –

The petition is an abuse of process. Already there are enough commission reports, capable of settling the disputes involved in the case. Since 2013 the defendants are harassed but for the sadistic pleasure of the plaintiffs. During this long period another road also stands formed enabling access towards west for the plaintiffs. As such they have different ways leading to their property and is unnecessarily insisting for a way dividing the poor defendant's property into two and making its enjoyment unworkable. No reason is forthcoming for deputing another commissioner. Some other reason might exist in filing this petition, other than that could be seen from the face of it. Earlier reports and court proceedings stare at the petitioners. Hence the petition is liable to be dismissed.

4. Heard both sides. Perused the records.

5. The case of the petitioner is that a comprehensive plan is necessary for the proper and effective adjudication of the suit. Upon a careful perusal of the case records, it is evident that the suit has been filed seeking a declaration of the plaintiff's right of prescriptive easement over the plaint B schedule pathway, along with a consequential injunction. It is pertinent to

note that a survey commission report has already been procured by the plaintiff in this matter. As per the said report, both the plaintiff A and plaintiff B schedule properties have been measured on the basis of survey as well as the title deeds. The report specifically delineates the B schedule pathway over which the plaintiff claims a right of prescriptive easement. The only subsequent change to the suit, after the filing of the above-mentioned survey commission report, is the inclusion of the servient tenement as the C schedule property. Under the guise of this amendment, the plaintiff now seeks to have all the plaintiff schedule properties measured afresh, again on the basis of survey and title deeds. It is significant to note that the petitioner does not contend that the findings in the earlier commission report are erroneous. The said report has not been found inadmissible in evidence thus far. As already stated, the sole question to be adjudicated in this suit is whether the plaintiff has acquired a right of prescriptive easement over the B schedule pathway. The findings of the Advocate Commissioner regarding the lie, location, length, and width of the B schedule pathway are already before this Court. What is absent in the earlier commission report, and is now sought to be ascertained through the present application, is the extent of the C schedule property, which is the servient tenement. However, the extent of the said property is not a matter in dispute in this suit. Therefore, for the purpose of ascertaining the same, there is no necessity to depute a fresh commission. This Court is of the considered view that the materials already available on record are sufficient for elucidating the dispute involved in this case. Accordingly, the petition seeking the appointment of a new commission is found to be devoid of merit and is hereby dismissed.

In the result this I.A. is dismissed.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 17th day of January, 2026.)

Sd/-
MAHESH. M.
ADDITIONAL MUNSIFF

APPENDIX :- NIL

Sd/-
ADDITIONAL MUNSIFF