

IN THE COURT OF THE PRINCIPAL MUNSIFF, CHERTHALA

Present: Sri. Rovin Rodrigues, Principal Munsiff

Friday, the 17th day of October 2025/ 25th Ashwinam, 1947.

IA 03/2025 in O. S. No. 111/2017

(Filed on 17.09.2025)

Petitioners/ Defendants :-

1. Karthiyaani, aged 81, W/o.Rajappan,
Vettukadavil, Vayalar East Village,
Cherthala.
 2. Mahilamanil, aged 58, W/o.Prakashan, - do -
 3. Prakashan, (died) -do -
 4. Akhil Prakash, aged 35, S/o. Prakashan, - do -
 5. Athul Prakash, aged 30, S/o. Prakashan, - do -
- By Adv. M.M.Vinod.*

Cr.Petitioner/Plaintiff:-

Thomaskutty, aged 67, Vettukadavil,
Vayalar muri, Vayalar East Village, Cherthala.
By Adv. D.Jayasree.

This petition having been heard on 17.10.2025 and the Court on the same day passed the following:-

ORDER

This is a petition filed by the counsel for the defendants under sections 94(e) and 151 of the Code of Civil Procedure.

2. The petition averments, in brief, are as follows:- The first defendant is aged 81 years and is unable to attend the court due to age-related constraints. The

other defendants are presently out of station owing to professional obligations. Hence the counsel for the defendants is filing this petition on their behalf. The Advocate Commissioner who filed Exhibit C2 commission report and the Surveyor who prepared the Exhibit C2(a) plan were examined as DW1 and DW2 respectively. DW2 deposed that he measured the plaint schedule property using the litho plan and a blueprint of the survey plan produced before the Court. It contradicts both the actual facts and DW1's version. He further stated that he convinced DW1 regarding the identity of the properties based on the litho plan and conducted measurements accordingly. But such details are absent in the C2 report, creating ambiguity. DW2 also alleged that the defendants obstructed the measurement of the northern property, yet no such observation was recorded by the Advocate Commissioner in her report. Any measurement conducted based on the litho plan, as claimed by DW2, is per se illegal, contrary to the directions of this Hon'ble Court, and amounts to a mockery of the judicial process. The advocate commissioner-DW1 has to be recalled for clarifying the above contradictions. Hence, the petition.

3. The respondent/plaintiff filed an objection to the petition and contended as follows: The petition is not maintainable either in law or on facts. The petitioners have neither the authority nor the right to file such a petition. The person who affirmed the affidavit on behalf of the petitioners has no authority to do so. The statements made therein are false and hence denied. The reasons stated—

namely, the old age of the first petitioner and the absence of the other petitioners from the station—are not genuine. None of the petitioners are under any legal or physical impediment from affirming the affidavit themselves. The second petitioner, being an active political worker, is frequently present at the residence situated on the eastern side of the plaint scheduled property. This has been witnessed by the respondent. There is no necessity to recall and re-examine DW1 as claimed. The reasons stated in the affidavit do not constitute sufficient grounds for allowing the petition. Moreover, no hardship or prejudice will be caused to the petitioners if the petition is rejected. Hence, the petition may be dismissed.

4. Heard and perused the records.

5. This petition is filed by the counsel for the defendants seeking to recall the Advocate Commissioner (DW1) for further examination. On a perusal of the deposition of DW2 and the Exhibit C2 report, it appears that certain contradictions exist regarding the mode and manner in which the measurement of the plaint schedule property was conducted, especially concerning the reliance on the litho plan. The Advocate Commissioner, being the officer of the Court, is duty-bound to assist the Court in elucidating the factual aspects. Therefore, it is essential, in the interest of justice, to afford an opportunity to clarify the apparent inconsistencies between the depositions of DW1 and DW2 and the contents of the Commission report. This Court is of the considered opinion that recalling the Advocate Commissioner (DW1) for the limited purpose of clarification will not

cause any prejudice to either party and will aid in the proper adjudication of the matter.

As a result, the petition is allowed. The Advocate Commissioner (DW1) shall be recalled for further examination and clarification on the points indicated above. There shall be no order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open Court on this the 17th day of October, 2025)

Appendix: - Nil

/True Copy/

Sd/-
Rovin Rodrigues
Principal Munsiff

Sd/-
Principal Munsiff

Rovin Rodrigues
Principal Munsiff

*Fair Copy of Order in
IA No.03/25in O.S.111/2017
Dated: 17.10.2025*