

IN THE COURT OF THE MUNSIF, KAYAMKULAM

Present: Smt. A.Aneesa, Munsiff

Wednesday, the 11th day of June ,2025/21st Jaishtha, 1947

IA.8/2025 and IA.9/2025 in OS.37/2018

(Filed on 22.05.2025)

Petitioners/ Addl.2nd Plaintiff:

1. John.K.Mathew, aged 55 yrs,
S/o.Late.K.C.Mathew,
Bincy Cottage, Olakettiyambalam.P.O,
Koippally kazhazhma muri,
Mavelikara Taluk,
Alappuzha District.

Addl.3rd Plaintiff:

Abraham Mathew, aged 52 yrs,
S/o.Late.K.C.Mathew,
Bincy Cottage, Olakettiyambalam.P.O,
Koippally karazhma muri,
Mavelikara Taluk,
Alappuzha District.

(By Adv.Nakul.O.S)

Respondent/ Defendant:

Johnson Varghese, aged 52 yrs,
S/o.Late.Geevarghese,
Kottutharayil,
Olakettiyambalam.P.O,
Koippally karazhma muri,
Mavelikara Taluk,
Alappuzha District.

(By Adv.Kala Danush)

This petition is coming on for final hearing on 11.06.2025 and the court of the same day passed the following.

COMMON ORDER

I.A.No. 8/2025

This is an order in a petition filed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 to appoint a commissioner.

2. The gist of averments in the petition are as follows:-
Petitioner is the additional 3rd plaintiff in the suit. The suit is filed for mandatory injunction and permanent prohibitory injunction. The defendant/respondent violated the injunction order passed by this court and trespassed into the plaintiff schedule property by destroying the fencing situated on the eastern side of the defendant's property separating the plaintiff schedule property. He installed a green coloured plastic sheet above the well and tied it in the property of the defendants through a rope. He closed the well situated in the plaintiff schedule property with an aluminium sheet. The illegal activities of the defendant came to the knowledge of the petitioner on 24.02.2025, while he visited the plaintiff schedule property along with his mother and wife. While he questioning the illegal activities of the defendant, he abused the petitioner, his mother and wife with abusive

words. The defendant trespassed into the plaint schedule property and went down to the well with the intention of polluting the drinking water in the well. The petitioner recorded the above said illegal activities of the defendant in his mobile phone. In order to ascertain the illegal activities committed by the defendant in the plaint schedule property, a commissioner is to be deputed for preparing a mahazar, report and rough sketch. Thus, this petition.

I.A.No. 9/2025

This is an order in a petition filed for directing the commissioner for preparing a rough sketch.

3. The gist of averments in the petition are as follows:-
Petitioner is the additional 3rd plaintiff in the suit. The suit is filed for mandatory injunction and permanent prohibitory injunction. While drafting I.A.No. 8/2025, it was omitted to state that the commissioner is to be directed to prepare a rough sketch. Thus, this petition is filed to direct the commissioner to prepare a rough sketch.

4. The respondent/ defendant filed objection contending *inter alia* as follows:- The averments in the first paragraph of the petition is partly correct. The averments in the second paragraph of the petition is completely false and hence denied. The allegations stated in the

affidavit as occurred on 24.02.2025 is false. Only after three months from that date, this petition is filed with the intention of making hardships to the defendant. The averments stated in the affidavit are false. The well situated adjacent to the defendant's residential house has been using for drinking water by the defendant. The petitioner thrown coconut leaves and waste into the well. Also destroyed the boundary fencing situated near the well. The defendant for the purpose of removing the waste materials from the well, went down into it. Thereafter, he installed an aluminium sheet and a green coloured sheet above the well for protecting the drinking water. In order to ascertain these matters, the petitioner filed this commission application and the defendant has serious objection to the application. Only through a survey commission, it can be ascertained the position of the well. Earlier, a commissioner visited the property and a report was filed before the court. Thus, this petition is to be dismissed.

5. Heard both sides.

6. The petitioner herein sought for issuance of a commissioner in order to ascertain the illegal acts alleged to be done by the defendant by violating the injunction order passed by this court. Along with the commission application, the petitioner has filed

a prosecution petition also. For the just disposal of the prosecution petition also, a commission report is highly necessary. If this court is inclined to allow this petition, there would be no prejudice caused to the respondent. It is to be noted that the issuance of a commissioner is not an order against any party. It will help the court to resolve the conflict. Hence I am of the view that the petitions are to be allowed.

In the result, the petitions are allowed. Adv. Smt.Parvathy Sekhar is appointed as commissioner. The petitioner is directed to remit Rs. 3,500/- as batta to the commissioner.

(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 11th day of June, 2025.)

Sd/-
ANEESA.A
MUNSIFF

APPENDIX: Nil.

Sd/-MUNSIFF

// True copy//

MUNSIFF

Typed by:
Compd.by