

**IN THE COURT OF THE MUNSIFF, KAYAMKULAM****Present: Sri.Shanavas.A, Munsiff**Tuesday the 11<sup>th</sup> day of October 2022/19<sup>th</sup> Aswina 1944**IA. 2/2022 in ORIGINAL SUIT. 383/2018****(Filed on 22/02/2022)****Plaintiffs:**

1. Babu, aged 54 years,  
S/o.Madhavan,  
Thekkekalathattel veedu,  
Puthuppally Vadakku Kochu muri,  
Puthuppally Village,  
Karthikappally Taluk.
2. Deepthy Babu, aged 41 years,  
W/o.Babu,  
Thekkekalathattel veedu,  
Puthuppally Vadakku Kochu muri,  
Puthuppally Village,  
Karthikappally Taluk.

**(By Adv.Sri.C.D.Anil)****Defendants:**

1. Haridas, aged 62 years,  
S/o.Paramu,  
Marangattu veedu,  
Puthuppally Vadakku Kochu muri,  
Puthuppally Village,  
Karthikappally Taluk.

2. Kannan, aged 28 years,  
S/o.Aravindakshan,  
Manappurathu veedu,  
Puthuppally Vadakku Kochu muri,  
Puthuppally Village,  
Karthikappally Taluk.
3. Vijayi, aged 32 years,  
D/o.Soman,  
Manappurathu veedu,  
Puthuppally Vadakku Kochu muri,  
Puthuppally Village,  
Karthikappally Taluk.
4. Omana Anil, aged 48 years,  
W/o.Anil,  
Panchara Thoppil,  
Palace Ward,  
Krishnapuram Village,  
Karthikappally Taluk.
5. Aravindakshan, aged 55 years,  
S/o.Madhavan,  
Manappurathu veedu,  
Puthuppally Vadakku Kochu muri,  
Puthuppally Village,  
Karthikappally Taluk.

6. Chandrika, aged 52 years,  
W/o.Aravindakshan,  
Manappurathu veedu,  
Puthuppally Vadakku Kochu muri,  
Puthuppally Village,  
Karthikappally Taluk.
7. Akhil Aravind, aged 26 years,  
S/o.Aravindakshan,  
Manappurathu veedu,  
Puthuppally Vadakku Kochu muri,  
Puthuppally Village,  
Karthikappally Taluk.
8. Harikrishnan, aged 27 years,  
S/o.Haridas,  
Marangattu veedu,  
Puthuppally Vadakku Kochu muri,  
Puthuppally Village,  
Karthikappally Taluk.
9. Rema, aged 53 years,  
W/o.Late. Udayan,  
Pandakasala,  
Palace Ward,  
Krishnapuram Village,  
Karthikappally Taluk.

10. Chandrika, aged 58 years,  
W/o.Kunjumon,  
Choolapurayil,  
Puthuppally Vadakku Kochu muri,  
Krishnapuram Village,  
Karthikappally Taluk.
11. Sreejith, aged 32 years,  
S/o.Kunjumon,  
Choolapurayil,  
Puthuppally Vadakku Kochu muri,  
Krishnapuram Village,  
Karthikappally Taluk.

**(By Adv.Sri.A.Shajahan)**

This petition is filed Under Order 26 Rule 9 and Section 151 of the Civil Procedure and coming on for final hearing before me on 11.10.2022 in the presence of the counsel for both sides and court on the same day passed the following.

**ORDER**

This is an order in a petition filed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointment of an advocate commissioner with an expert.

2. The gist of averments in the petition are as follows:-

Petitioner is the 1<sup>st</sup> plaintiff in the suit. The suit is filed to shift plaint schedule item No. 2 property to the eastern boundary of plaint schedule item No. 1 property and for damages. So that, the plaint schedule item No. 1 property has to be measured out, demarcated and located the same for the just disposal of the suit. On 09.09.2018, the 4<sup>th</sup> defendant and men trespassed into the plaint schedule property and caused mischief there and cut and removed various trees and thereby causing loss to the tune of Rs. 19,57,000/-. So, in order to ascertain the above loss, agricultural and other items, expert persons such as Agricultural Officer, Krishi Bhavan Kayamkulam has to appoint to assist the commissioner. Furthermore, the property has to be measured out on the basis of resurvey plan and boundary has to be fixed. Thus, the petition.

3. Respondents/ defendants, except defendant Nos. 7 and 11, filed objection contending *inter alia* as follows:- The petition is not maintainable either in law or on facts. The Government is not made as party in the suit and the petition. On the eastern side of the plaint schedule property, there lies some puramboke property. It is not advisable to fix the eastern boundary of the plaint schedule property without demarcating the puramboke property. Thus, the respondents

sought to dismiss the petition.

4. The following points were formulated for consideration:-

1. Whether the petitioner is entitled to get an order to appoint a commissioner to demarcate the plaint schedule property and to depute an expert to assist the commissioner to ascertain damages as sought for ?

2. What shall be the order as to reliefs and costs?

5. Heard both the sides.

6. **Point No. 1:-** The suit was filed to shift plaint schedule item No. 2 property to the eastern boundary of plaint schedule item No. 1 property and to realize damage @ Rs. 5,00,000/- with 12% future interest. The allegation against the respondents is that on 10.08.2018, the 4<sup>th</sup> defendant made illegal measurements of the schedule item property. Again on 09.09.2018, the defendants under the leadership of the 4<sup>th</sup> defendant, trespassed into the plaint schedule property with handy mechanized wood cutters and fell various trees, which caused loss to the petitioner to the tune of Rs. 19,57,000/-. It is essential to ascertain the damage and for measuring out property in order to fix

boundary, a commissioner, surveyor and expert is necessary. Therefore, I am inclined to allow this petition. Thus, point No. 1 is found in favour of the petitioner.

7. **Point No. 2:-** In view of my discussions and findings on point No. 1, the petition is liable to be allowed.

In the result, I.A stands allowed. Adv. A. Asharafudeen is appointed as commissioner and the Agricultural Officer, Krishi Bhavan, Kayamkulam is appointed as expert to assist the commissioner. Sri.Linu S.Panel Surveyor is appointed as Surveyor. Pay batta to the commissioner and expert to the tune of Rs. 5,000/- each and Rs.3000/- to Surveyor.

*(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 11<sup>th</sup> day of October, 2022.)*

Sd/-  
SHANAVAS.A  
MUNSIFF

APPENDIX:  
NIL

Sd/-  
MUNSIFF

// True Copy //

MUNSIFF

Typed by:Shafeek  
Compd by:

Order in IA.2/2022 in  
OS.No.383/2018, Dated.11/10/2022.