

**IN THE COURT OF THE SUB JUDGE, CHENGANNUR**

**Present: Smt. Veena.V.S, Sub Judge**

**Saturday, 18<sup>th</sup> January 2025 /28<sup>th</sup> Pousham 1946**

**IA 7/2024 in OS No.7/2024**

**(Filed on:06.12.2024)**

**1<sup>st</sup> Defendant /Petitioner :-** Eapen George Ittyerah,  
Green Home, Dhaliyur P.O,  
Near Delhi Public School,  
Coimbatore -641 109  
From Madavana Bunglow,  
Keezhcherimel, Chengannoor,  
Alappuzha.

***[By Adv. Alex.P.Chacko]***

**Plaintiff/Defendants 2&3/ :- 1. Cr.Petitioners** Jijish Kumar.K.G,  
Manapurathu House, Kulathoor.P.O,  
Attipra Village,  
Thiruvananthapuram Taluk.

***[By Adv.P.K.Ajith Kumar]***

2. George Issac,  
Pandisseril House, Kuttoor Muri & Village,  
Thiruvalla Taluk.
3. Blessy George.  
Pandisseril House, Kuttoor Muri & Village,  
Thiruvalla Taluk.

***[By Adv. Suresh Mathai]***

This Petition having been finally heard on 18.01.2025 and the court on the same day passed the following

**ORDER**

The petition is filed by the plaintiff under Order XXVI Rule 9 CPC.

Petition averments in brief are as follows:

2. The petitioner is the 1<sup>st</sup> defendant in the above case. The suit is for realisation of earnest money paid by the plaintiff to the 1<sup>st</sup> defendant and for compensation. Due to the breach of the terms of the sale agreement committed by the plaintiff, the 1<sup>st</sup> defendant terminated the said agreement for sale vide notice dated 12-06-2023. The plaintiff baselessly contended that the 1<sup>st</sup> defendant committed breach of the said agreement by conveying portion of the property to the defendants 2<sup>nd</sup> and 3<sup>rd</sup> by executing a sale deed. The 1<sup>st</sup> defendant had earlier conveyed an extent of 4.86 Ares of his property comprised in Resurvey No. 257/31 to the defendants 2<sup>nd</sup> and 3<sup>rd</sup> and 1.15 Ares by executing Sale Deed vide No. 1193/2002 and 833/2023 which will not in any way affect the property agreed to be sold to the plaintiff. In order to disprove the plaintiff allegation and to substantiate the contentions of the 1<sup>st</sup> defendant it is necessary to survey the properties mentioned above by the Advocate Commissioner with the assistance of a Surveyor. Hence the petition is filed.

3. The 1<sup>st</sup> respondent/the plaintiff filed objection by contending that the petition is not maintainable either in law or on facts. The 1<sup>st</sup> defendant and some other persons having interest over the plaint schedule property accepted Rs. 10,00,000/- (Rupees Ten lakhs only) as an advance for selling out the plaint schedule property on the strength of an agreement for sale executed in between the plaintiff and the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant deliberately caused delay in the execution of the stipulations in the said agreement for sale and then after send an Advocate notice by stating that the agreement was revoked. The 1<sup>st</sup> defendant had transferred 1 Ares 15 Sq. Metre out of the plaint schedule property to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and through the said defendants the petition for lifting the attachment order passed by this court was filed. When the said petition was dismissed the 1<sup>st</sup> defendant filed the present petition. The commission report is not necessary for the fair disposal of the present case. Hence the petition may be dismissed.

4. From the above petition averments and contentions in the objection the following points were raised for consideration .

1. Whether the petition is allowable?
2. Reliefs and costs?

**Point Nos. 1 and 2:-**

5. The suit is for the refund of earnest money and for compensation. In the plaint the plaintiff alleged that the 1<sup>st</sup> defendant and the plaintiff entered into an agreement for sale with respect to the plaint schedule property for an amount of Rs. 4,67,50,000/- (Rupees Four crores sixty seven lakhs and fifty thousand only) and the 1<sup>st</sup> defendant accepted Rs. 10,00,000/- (Rupees Ten lakhs only) as an advance. Later the 1<sup>st</sup> defendant did not perform his part and sold out the portion of the plaint schedule property to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The 1<sup>st</sup> defendant vehemently denied the said allegations and contended that he did not sell out any portion of the plaint schedule property. Rather he sold out another property to the 2<sup>nd</sup> and 3<sup>rd</sup> defendant which does not have any connection with the property agreed to be sold to the plaintiff.

6. Since the suit is not only for the refund of the earnest money but also for the compensation for breach of contract, it is highly necessary to adjudicate which party failed to perform his part in the agreement for sale executed in between the plaintiff and the 1<sup>st</sup> defendant. It is also necessary to adjudicate the fact whether the transfer of property made by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> defendant covers any portion of the

plaint schedule property and whether it will cause prejudice to the plaintiff so as to claim compensation from the 1<sup>st</sup> defendant. So I am of view that appointment of a Commissioner and Surveyor is necessary so as to identify the plaint schedule property and the property transferred in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> defendant by the 1<sup>st</sup> defendant. Hence the petition is allowed. Advocate Ashok S. Pillai is appointed as the Commissioner. Ms. Sruthy. M is appointed as the Surveyor. Deposit Rs. 5,000/- (Rupees Five thousand only) as the commission batta and Rs. 4,000/- (Rupees Four thousand only) as survey batta. No order as to costs.

*Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 18<sup>th</sup> day of January 2025.*

Sd/-  
**Veena. V.S**  
**Sub Judge**

**Appendix** - Nil

Id/-  
**Sub Judge**

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**Sub Judge**