

**IN THE COURT OF THE MUNSIFF, KOCHI**  
**Present:-**

**Sri. Nishad Ibrahim., Principal Munsiff**

Thursday, the 06<sup>th</sup> day of November, 2025/ 15<sup>th</sup> Karthika, 1947.

**I.A No.09/2025 in O.S No.25/2023**

**Petitioners/Defendants Nos. 2, 3 &1:-**

1.	Ameer P.B., aged 29 years, S/o. Basheer P.H., H.No.17/271D, Puthenpurackal House, Chirayil Road, Palluruthy, Kochi - 682 006.
2.	Shaniya M.S., aged 25 years, W/o. Ameer P.B., H.No.17/271D, Puthenpurackal House, Chirayil Road, Palluruthy, Kochi - 682006.
3.	Saleem M.H., aged 46 years, S/o. Hamza, H.No. 17/271D, Puthenpurackal House, Chirayil Road, Palluruthy, Kochi-682 006.
<b>By Adv. M.H. Hanis (Manakal)</b>	

**Respondents/Plaintiff & Defendants Nos. 4 to 6:-**

1.	K.K. Safiya, aged 57 years, W/o. K.K. Aboobacker, 17/271A, 17/2718, Chirayil Road, Edakochi Village, Kochi Taluk, Palluruthy – 682 006.
2.	Secretary, Corporation of Kochi, Palluruthy Zonal office, Palluruthy, Kochi - 6.
3.	Assistant Engineer, Town Planning Section, Palluruthy Zonal office, Corporation of Kochi, Palluruthy, Kochi - 682 006.
4.	Overseer, Palluruthy Zonal office, Corporation of Kochi, Palluruthy, Kochi - 6.
<b>R1 by Advs. Benedicta Vembly, Ann Mary Silvester, Feba Mary Thomas &amp; Gopika H.H. R2 to R4 - NoVakalath</b>	

This Petition is filed under Order XXVI Rule 9 of Code of Civil Procedure, to appoint an advocate commissioner with the Assistance of Taluk Surveyor, Kochi and Building Inspector, Palluruthy Zonal Office, Kochi Municipal Corporation, Kochi – 682006 and having been finally heard on 06.11.2025 and the Court on the same day, passed the following:-

**ORDER**

Petition filed by the defendants to appoint an Advocate Commissioner with the assistance of Taluk Surveyor and other experts to inspect the plaint schedule property and counter claim properties.

2. The respondent/plaintiff filed objection.
3. Heard both sides.
4. According to the petitioners, in order to ascertain the encroachment of the plaintiff over the counter claim A schedule property and for fixation of the western boundary of the counter claim petitioner, it is absolutely necessary to conduct the measurement of the property based on the title deeds, prior deeds, FMB sketch and relevant survey records.
5. The respondent/plaintiff opposed the petition stating that this petition was filed at this stage with the only intention to cause delay and to cause prejudice to the respondent. The respondent also argued that the petitioners had filed the written statement with counter claim as early as on 13.10.2023 and though the respondent filed written statement to it, no commission application had been filed by the petitioners.

6. The learned counsel for the respondent also pointed out that the evidence of PW1 was already completed and the examination-in-chief of the learned Advocate Commissioner was also over. The learned counsel for the respondent argued that the present petition was filed after seeking adjournment for the cross-examination of the learned commissioner.

7. It may be noted that the above matter was posted on 26.07.2024, 29.08.2024, 10.10.2024, 16.11.2024, 19.12.2024, 25.02.2025, 17.03.2025, 22.05.2025 and to 19.06.2025 for taking pre-trial steps. The matter was listed for trial to 13.08.2025 on 19.06.2025. On 22.08.2025, the plaintiff was examined as PW1 and on 15.09.2025, the examination-in-chief of the learned commissioner was recorded as PW2 and the matter was adjourned for cross-examination of PW2 as prayed by the petitioners/defendants. It was at this juncture, that the petitioners came up with the present petition.

8. It is pertinent to note that D1 to D3 had filed their written statement with counter claim as early as on 11.10.2023 and issues were framed on 6.12.2023.

9. It is true that the counter claim was preferred by the petitioners inter-alia for fixation of the western boundary of the counter claim A schedule property, mandatory injunction and recovery of possession.

10. The learned counsel for the petitioners submitted that they could not file the commission application earlier due to financial difficulties. But,

that cannot be accepted as a genuine reason for the inordinate delay caused in presenting the petition.

11. It may be noted that the commission report available in the case is the report and rough sketch filed by the learned commissioner in IA 3/2023 after conducting local inspection.

12. It is true that the present petition is filed at a highly belated stage after the examination of the plaintiff as PW1 and the examination-in-chief of the learned commissioner as PW2. However, considering the nature of the reliefs sought in the counter claim, this court is of the view that the petitioner shall be permitted to take out a survey commission as prayed by them for the proper adjudication. At the same time, they are liable to compensate the inconvenience caused to the respondent/plaintiff. Accordingly this petition is liable to be allowed on payment of cost of Rs.3500/-.

In the result, the petition is allowed as follows:

1. The petition is allowed in payment of cost of Rs.3500/- to the respondent/plaintiff.
2. Advocate S. Vaidyanathan is appointed as the Advocate Commissioner. Pay batta Rs.5000/- to the learned commissioner.

3. Office is directed to address the Deputy Director of Survey and Land Records to appoint a competent surveyor to assist the learned Advocate Commissioner. Pay batta Rs.2500/- to the surveyor so appointed.
4. The Building Inspector, Palluruthy Zonal Office, Kochi Corporation is directed to assist the learned commissioner. Pay batta Rs.2500/- to the Building Inspector.
5. Office is directed to intimate the learned Advocate Commissioner and the other officers concerned after payment of the costs ordered as per clause (1).

Pronounced by me in open Court on this the 06<sup>th</sup> day of November, 2025.

**Sd/-  
Nishad Ibrahim  
Principal Munsiff**

**APPENDIX:- Nil**

**Id/-  
Principal Munsiff**

**///True Copy///**

**Principal Munsiff**

Order in  
**I.A 09/2025 in**  
**O.S No.25/2023**  
**Dated: 06.11.2025**