

IN THE COURT OF THE MUNSIFF, KOCHI**Present:-****Sri. Nishad Ibrahim., Principal Munsiff**Monday, the 13th day of October, 2025/ 21st Aswina, 1947.**I.A No. 05/2024 in O.S No. 28/2023****Petitioner/Plaintiff:-**

	John K.G., aged 80 years, D/o. Late George, Kuruppaserry Road, residing on the northern side of Kumbalangi - Kallancherry Road, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk, Ernakulam.
	By Advs. Joseph Edakatt, Rohini N.T. & Smitha R.

Respondents/Defendants:-

1.	Shaiju @ Shiju, aged about 36 years, S/o. Sasi, Pollayil House, residing on the northern side of Kumbalangi-Kallancherry Road, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk, Emakulam.
2.	Antony M.X., aged about 69 years, S/o. Xavier, Mootheril House, residing on the northern side of Kumbalangi-Kallancherry Road, Kumbalangi Desom, Kumbalangi Village, Kochi Taluk, Ernakulam.
	R1 Exparte in the suit R2 by Advs. K.S. Sathis Babu & Nimmy Joseph

This Petition having been finally heard on 18.09.2025 and the Court on 13.10.2025, passed the following:-

ORDER

Petition filed by the plaintiff under Order XXVI Rule 9 of CPC for appointing an Advocate Commissioner with the assistance of a competent surveyor.

2. **The petition summary :-** The above petition is filed by the plaintiff to appoint an Advocate Commissioner and a competent surveyor. The plaintiff is the owner of 3 cents (1.21 Ares) of land in Sy. No.1082/1 of Kumbalangi Village scheduled as the A schedule. The respondents/defendants are the owners of the properties purchased from the plaintiff and are using the portion of the plaint D schedule pathway which passes through the plaint A schedule property that has proximity to the road. The plaint B & C schedule properties can be easily reached through the plaint D schedule pathway, which is the portion of the plaint A schedule made available to a person who resides on the eastern boundary of the plaint A schedule, who also purchased land from the plaintiff. Moreover, the Advocate Commissioner who inspected the suit property immediately after the institution of the suit, has reported that the boundaries of the properties are not easily identifiable or that the plaint C schedule property and the D schedule pathway are lying without any boundaries. Hence this application is filed to appoint an Advocate Commissioner to measure the plaint schedule

properties with the assistance of a competent surveyor and to report with a plan showing the details sought for in the application.

3. **The 2nd respondent filed counter** : The suit as well as the petition is not maintainable in law or fact. The relief of appointing an Advocate Commissioner to measure the property is not at all maintainable and sustainable in the eyes of law especially in a suit for injunction simplicitor. The petitioner cannot satisfy his whims and fancies by filing a measurement commission application to measure this respondent's property without even measuring his property. Moreover, in a suit for permanent prohibitory injunction without even raising a dispute and issue in the pleading with regard to the need and necessity of measurement of the property, the application for survey commission is unsustainable and only liable to be dismissed. Further, there is no question of identity of properties for the plaintiff and if the plaintiff has a case of identity of properties, then the suit ought to have been for fixation of boundary. Hence the above application is liable to be dismissed with costs.

4. **The following points arise for consideration:-**

- (i) Whether the petition is allowable ?
- (ii) Reliefs and costs?

5. Heard both sides.

6. **Point Nos. (i) and (ii) :-** It may be noted that the above suit was instituted for a perpetual injunction restraining the defendants and their men from trespassing into the plaint A schedule property, parking vehicles, storing materials and also to restrain the defendants from obstructing the plaintiff's peaceful possession and enjoyment of the plaint A schedule in any manner including fencing of the same. As per the plaint averments, the plaintiff is the owner of the plaint A schedule property. According to the plaintiff, he had provided a pathway having 3 meters from its southern boundary to the 1st defendant or his predecessor. According to him, after he had re-purchased the plaint A schedule property as per the exchange deed bearing no.1144/2017 of SRO, Kochi, a stipulation regarding the right of the 2nd defendant to use a pathway through it has extinguished. He had further stated in the plaint that the defendants with some ulterior motives, continue to walk through the plaint A schedule property and also the plaint B schedule pathway.

7. The learned counsel for the 2nd respondent/2nd defendant vehemently opposed the petition stating that the measurement of the property was absolutely unnecessary in a suit for injunction simplicitor. The learned counsel argued that the plaintiff had not raised any question of identity of the properties. According to him, if the plaintiff had any dispute

with regard to the identity of the properties, the suit ought to have been instituted for fixation of boundary.

8. As I have already stated, the suit is one for injunction simplicitor. In **Madhavan v. Narayanankutty & Ors. (2019 (4) KHC 854)**, the Hon'ble High Court of Kerala observed that the measurement with the help of a surveyor becomes necessary only if necessity for measurement of property genuinely arises from the pleadings of the parties and if such an issue is raised and that unnecessary measurement with the surveyor causes unwanted monetary expenses for the parties and causes avoidable delay in the conclusion of the litigation. In the case at hand, no issue was raised as to the identity of the properties. Though the petitioner had stated that the learned commissioner had reported that the boundaries of the properties are not easily identifiable and that the plaint C and D schedule properties were lying without any boundaries, the plaintiff had not incorporated any corresponding pleadings in the plaint. Instead, he is maintaining the claim that after he had repurchased the plaint A schedule property as per the exchange deed of 2017, the stipulation regarding the right of the 2nd defendant to use the pathway through it has extinguished.

9. In the above circumstances, it is only to be held that the petitioner could not point out any valid reason to appoint a survey

commission. Accordingly, these points are found against the petitioner and the petition is liable only to be dismissed.

In the result,

1. The petition is dismissed.
2. No order as to costs.

Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in Open Court on this the 13th day of October, 2025.

**Sd/-
Nishad Ibrahim
Principal Munsiff**

APPENDIX:- Nil

**Id/-
Principal Munsiff**

///True Copy///

Principal Munsiff

Order in
I.A No. 05/2024 in
O.S No. 28/2023
Dated: 13.10.2025