

**IN THE COURT OF THE MUNSIFF, KOCHI**

**Present :-**

**Sri. Anirudhan T K, Additional Munsiff**

Monday the 25<sup>th</sup> day of November, 2024/4<sup>th</sup> Agrahayana, 1946

**I.A. No. 2/2024 in O.S. No. 56/2023**

**Petitioners/Defendants:--**

- 1 N Arafath, S/o.K S Nazar, aged 40 years, Flash House, Pattukulangara Desom, Thuravoor PO, Alapppy District
- 2 Amarath F N, S/o. K S Nazar, aged 35 years, Flash House, Pattukulangara Desom, Thuravoor PO, Alapppy District

By Advs. Lilly Antony & Jolly John K

**Respondent/Plaintiff :-**

Francis Manjooran, S/o.Devassy, aged 50 years, Manjooran House, Subhash Nagar, Chalakudy, Pin-680307.

By Adv. K A Shaji Mathew & P Suresh

This petition come up for hearing before me on 19.11.2024 and the court on 25.11.2024 passed the following:-

**ORDER**

This is a petition for appointing an advocate commissioner with an expert.

2. **The petition summary is as follows:-** Petitioner is the 1<sup>st</sup> defendant in the above case. The suit is filed for recovery of possession and damages. The allegation of the plaintiff is that the petitioners are the

trespassers into the plaint schedule buildings. But the father of the defendants was doing business of selling antique crafts since 1995 in room No.VI/2006 belonged to one Abu.P.S. After the death of their father in 2009 the defendants continued the business and is still continuing the same. Thereafter in 2018 for expansion of the said business the room bearing No.V/394 (old No.VI/14) located nearby and its up stair building with two halls with electricity and water connection were taken on rent by the defendants from the landlord Francis Panekkadan @ Rs.15,000/-(Rupees Fifteen thousand only) per month as a rent agreement executed on 06.08.2018, by paying Rs.10,00,000/-(Rupees Ten lakhs only) towards security. After this, the defendants renovated the building spending Rs.7,00,000/-(Rupees Seven lakhs only) for roofing, false ceiling etc. and another Rs.5,00,000/-(Rupees Five lakhs only) for other works like plastering, painting etc. were also spent by the defendants. Therefore it is necessary for the defendants to appoint an Adv. Commissioner to calculate the nature of the plaint schedule buildings and to estimate the value of the materials and structures used for renovating the buildings with the assistance of a building expert. Hence, the petition.

3. The respondent/plaintiff filed counter stating that the petition is not maintainable either in law or on facts. The suit is for recovery of possession

of the plaint schedule property from the defendants on the strength of plaintiff's title and also for recovery of damages for use and occupation @ Rs.20,000/-(Rupees Twenty thousand only) per month. The defendant's contention is that there is no landlord-tenant relationship between the plaintiff and defendants with respect to the petition schedule property and they are in possession of the plaint schedule property. On the basis of the rental agreement executed between the defendants and Francis Panekkadan. It is also contended that they have spent more than Rs.12,00,000/-(Rupees Twelve Lakhs only) and also they have deposited Rs.10,00,000/-(Rupees Ten lakhs only) as security. The said Francis Panekkadan has no right or authority to rent out the plaint schedule property. The matters stated in the commission application are not at all relevant for deciding the issues raised in this case and it is not the subject matter the case. There is no counter claim filed by the defendants therefore the commission application for assessing the value of the works is unwarranted. The plaintiff is filing a separate application for prosecuting the defendants with respect to the fabricated rent deed dated 06.08.2018 and the petition may be dismissed.

4. Heard both sides.

5. **The following point arise for consideration:-**

(i) Whether this petition is allowable?

6. **The point:-** The contention of the petitioner is that unless the renovation work and improvements made in the petition schedule property are not brought before the court, no just decision will be possible. Already the petitioner has spent more than Rs.12,00,000/-(Rupees Twelve lakhs only) for the renovation work and other connected works in the petition schedule property, according to petitioners they are the lawful tenants in possession of the plaint schedule buildings. Their contention is that only by appointing an Adv. Commissioner with the assistance of an expert, the value of their work can be brought on record of this Court. Therefore, it is necessary to appoint an Adv. Commissioner in this regard. The contention of the respondent/plaintiff is that the petitioner has not filed any counter claim so as to prove their case in the counter claim. Moreover, the petition cannot be allowed since the petitioners are the trespassers in the plaint schedule building and there is no valid rent agreement executed between petitioners and respondent and there is no relevancy in bringing the above mentioned matters before the court. But, all these are matters of detailed evidence. At this prima facie stage of the case, both parties are entitled to produce evidence in accordance with their contentions. Therefore, I find no impropriety in allowing this petition so as to bring all possible evidence before this Court and its relevancy can only be decided at the stage of

evidence. Hence, the point is found in favour of the petitioner.

**In the result, the petition is allowed as follows:-**

- 1. Advocate Silesh. S.Prabhu appointed as the Advocate Commissioner herein.**
- 2. The petitioner is directed to produce panel of expert within 7 days from the date of this order.**
- 3. The petitioner shall deposit Rs.4000/- to the Adv.Commissioner as commission batta and Rs.2500/- to the Expert within 2 weeks from the date of receipt of this order.**

Dictated to the Confdl.Asst, typed by her corrected and pronounced by me in open Court on this the 25<sup>th</sup> day of November 2024.

Sd/-  
**Anirudhan T K**  
**Additional Munsiff**

**APPENDIX : Nil**

Id/-  
**Additional Munsiff**

**//True Copy//**

**Additional Munsiff**

**ORDER**

**I.A. No.2/2024**

**O.S. No. 56/2023**

**Dated : 25.11.2024**