

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Friday the 19th day of December, 2025/28th Agrahayana, 1947

IA No. 9/2025 in OS No. 78/2024

Plaintiff/Petitioner:-

Devassy, aged 74 years, S/o.Pullan Iype, Pullan House, Nayarambalam, residing on the opposite side of Lobelia School, Kochi Taluk, Pin-682509

By Advs. Joseph Edakkat, Smitha R & Alen Renju

Defendant/ Respondent:-

Sudhakaran, S/o.Kumaran, aged about 76 years, Panakaparambil House, Nayarambalam Village, Kochi Taluk, Pin-682509

By Adv. C P Peethambaran & Ramseena Udayakumar

This petition is come up for hearing before me on 16.12.2025 and the court on 19.12.2025 passed the following:-

ORDER

The petition is for appointing an Adv. Commissioner to conduct local inspection.

2. **Petitioner's contentions to summarize, is as follows:** The petitioner is the plaintiff in the above case. The plaint A schedule is described in the suit as a pathway enjoyed by the petitioner's father for the ingress and egress to his residential property from 1963 onwards and that it

starts from the road on the east and ends at the south-eastern end of plaint D schedule property belongs to the respondent. Further it is stated that his father had paid the entire consideration of the said piece of land on 22.02.1975 to its owner and that ever since, his father and thereafter the petitioner have become its equitable owner. The original owner passed away intestate and issue-less, before he could execute a registered conveyance of transfer of the property for which the entire consideration has been received from his father. During the life time of original owner and thereafter his distant relatives have never questioned his ownership and possession of the plaint A schedule, is the crux of the claim raised by him in the suit.

3. As a challenge to plaint claim, the defendant/respondent has taken is that plaint A schedule is a pathway that existed for 150 years and more and that it is a public pathway enjoyed by several persons. The respondent/defendant admits that his father had been entering his property to reach his residential house situated on the southern side of his property. Further defence is that after purchase of a plot of land that stood just in front of our residential property, the petitioner and his family members are not using plaint A schedule pathway as the petitioners have direct access through the property purchased on the eastern side of residential plot. On

the date of posting of the case for evidence in the list and the petitioner submitted proof affidavit the counsel for the respondent/defendant filed a petition to accept three more documents which are (1) copy of the reply from the Village Officer, Nayarambalam dated 30.04.2025, (2) copy of the reply submitted by the Asst.Executive Engineer, Kerala Water Authority dated 20.07.2024 and (3) a certified copy of the FMB.

4. From the additional documents filed by the defendant one get to understand that there is an attempt to confuse this court as to the respondent/defendant drew water connection to his house through the plaint B schedule property that stands on the southern side and not using the aged old plaint A schedule, which is the defence taken by him in written statement. To elucidate or irradiate such doubt and bring the truth before this court, the petitioner filed an application for leave to give interrogatives upon the respondent/defendant. However this court disallowed his application and the case stands posted for evidence to 29.11.2025. If the commission application is allowed, the petitioner can shortly take him or her to the spot and help her to find out the truth by physical verification of the disputed cite. The court can direct the advocate commissioner to submit the report within a week and therefore, evidence in this case can be expedited by avoid delay of summoning of many

witnesses on either side to prove this simple aspect.

5. The respondent/defendant filed objection contending that the petition is not maintainable since the same is made at a point when the documents upon which both parties have relied are already produced before this court and the only thing left in the suit is the cross-examination of witnesses. The above IA filed only for protracting the case. Earlier they have filed IA.8/2025 for delivering interrogatories which is dismissed finding that it is delay tactics. The plaintiff has given sufficient opportunity before listing the case and before posting pre-trial steps. There is no meaningful purpose in deputing a commissioner at the fag end of the case. All other arguments are speculative and assumptive. The issue regarding the drawing of water connection have no relevance in the dispute regarding this issue the documentary evidence already available. The commissioner cannot deviate from the dispositions in the documents already produced before this court. All other averments in the above IA are irrelevant and liable to be dismissed. In the light of the above facts and circumstances, this court can be pleased to reject the above interlocutory application made by the plaintiff as being not maintainable and lacking in merit, as it will cause grave prejudice to the respondent's right of cross-examination.

6. The following point arise for consideration.

(i). Whether there is a necessity to appoint an Adv. Commissioner to assist the Taluk surveyor as prayed for?

(ii). Reliefs and costs.

7. Heard both sides.

8. **Point No.(i) & (ii):-**The specific case of the petitioner is that the plaint A schedule is a pathway used by his father and thereafter by him from 1963 onwards for ingress and egress to his residential property, commencing from the eastern road and ending at the south-eastern end of plaint D schedule property. It is further contended that the entire sale consideration was paid to the original owner on 22.02.1975 and that the plaintiff's father became the equitable owner, though no registered conveyance was executed before the death of the original owner. According to the plaintiff, the pathway was enjoyed peacefully and uninterruptedly till the defendant raised objections. The defendant disputed the claim and contends that plaint A schedule is a public pathway in existence for more than 150 years, used by several persons. It is further contended that the plaintiff has an alternative access from the eastern side and is not using plaint A schedule. The defendant relies on additional documents, including replies from the Village Officer and Kerala Water

Authority and a certified copy of the FMB sketch, to substantiate his defence. The grievance of the plaintiff is that the additional documents produced by the defendant create confusion regarding the source of water connection to the defendant's house and the actual physical features of the disputed properties. Hence to find out the truth, local inspection is necessary. On the other hand the respondent contended that the application is filed only for protracting the case. Earlier they have filed IA 8/2025 for delivering interrogatories which is dismissed finding that the same is the end result of delay tactics. There is no meaningful purpose in deputing a commissioner at the fag end of the case. All other arguments are speculative. It is also contended that the question of water connection is irrelevant to the core issue in the suit and that appointment of a commissioner would prejudice the defendant's right of cross-examination.

9. This court considered the rival submission made by the parties. The specific case of the petitioner is that he is constrained to file the present application since the respondent at the time, when the case was listed for trial produced 3 documents to show that the respondent drew water connection to his house through the plaint B schedule property, that stands on the southern side and not using the age old plaint A schedule. Appointment of advocate commissioner in no way causes any prejudice to

the opposite parties as the same is necessary for the fair adjudication of the case. Even according to the respondent the things to be inspected by the learned Advocate commissioner will already be on record in the form of documents. On an analysis of the petition, this court is of the view that a limited local inspection to note the physical features as they exist on the ground would assist the court in appreciating the evidence already on record. In such circumstances, this Court is of the view that the application deserves to be allowed.

In the result, the Petition is allowed. Adv. Hijas Ahmed is appointed as Adv. Commissioner. Petitioners shall deposit Rs.3500/- (Rupees Three thousand five hundred only) batta within 10 days from the date of this order.

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 19th day of December 2025)

Sd/-
Simi P Siju
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

O R D E R

IA 9/2025

O.S. No.78/2024

Dated : 27.11.2025