

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Wednesday the 21st day of January, 2026/ 1st Magha, 1947

IA No. 2/2026 in OS. No. 216/2022

Petitioner/Plaintiff:

Xavier @ Joshy, S/o. Varghese, aged 40 years, Mathirapally House, near Sacret Heart Church, Anjilithara Road, Kumbalangi P O, Kochi-682 007.

By Advs. P. J. Justine and Sumi. O

Respondent/ Defendant:

Govindan V N, S/o. Narayanan, aged 57 years, Veliparambil House, Kumbalangi P O, Kochi-682 007.

By Adv. Sreely Kumar

This petition come up for hearing before me on 14.01.2025 and the court on 21.01.2026 passed the following:-

ORDER

The petition is for appointing an Adv. Commissioner to inspect the petition schedule property.

2. **Petitioner's contentions to summarize, is as follows:** The petitioner is the plaintiff in the above case. The above suit is filed for

perpetual injunction and other consecutive reliefs. For the proper adjudication of the above suit it is highly necessary to measure the property of the plaintiff and defendants and the on the basis of title deeds and survey records. The connected ie, OS.211/2022 was pleased to listed 07.11.2025 and the same was removed from the list and appointed an advocate commissioner for the purpose of measurement of the properties. Now the said case posted to 24.01.2026 for commission report. The parties in both the suit are one and the same, subject matter and issues to be decided in the two suits are same. Hence for the proper adjudication of both the suits joint trial is highly necessary. Otherwise it will be resulted in the multiplicity of proceedings and abuse of process of the court.

3. The respondent filed objection contended that the above petition is not maintainable either in law or on facts. The only intention of the petitioners is to prolong the proceedings and to harass the respondent. The case was specifically posted for trial from 26.03.2025 for taking steps . Thereafter 8 times the case was posted for steps. For more than 9 months the petitioner deliberately did not

file any petitions of took any steps. Thereafter on 11.12.2025 this court was pleased to include the case in the list for trial on 09.01.2026. There is no pathway as stated in the affidavit. It is the property purchased, owned and possessed by this respondent. So far the petitioner has not filed any petition for joint trial of the above case with any other case as stated in the affidavit. Absolutely no valid or sufficient reason is stated in the affidavit for not filing the commission application for the last more than 9 months. Despite getting more than sufficient time for taking steps, even now the petitioner has not filed a joint trial petition. The above petition is highly belated. No reason was stated for not filing the petition earlier. Due to the belated filing of the petition for removal from the list. The respondent has suffered financial loss since he could not go for work. The present petition is only to protract the litigation and to harass the respondent. Hence the petition may be dismissed.

1. 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.

5. Heard both sides.

6. **Point No.(i) & (ii)**: The present application is filed by the petitioner seeking appointment of Advocate Commissioner to measure plaint schedule properties, defendants property and the pathway leading to the plaintiff and defendants property with the assistance of a taluk surveyor. The present suit is a simple suit for injunction seeking a decree of perpetual injunction restraining the defendant and his men from obstructing the peaceful usage of plaint C schedule or altering plaint C schedule property. A further decree of perpetual injunction restraining the defendant from trespassing into plaint A schedule property was also sought by the plaintiff/ petitioner.

7. The present application is filed by the petitioner on the date on which the suit is listed for trial on 09.01.2026. The suit is of the year 2022. Also, this court had granted more than enough time, precisely from 26.03.2025 to 11.12.2025 for taking pre-trial steps. In the interregnum this court posted the suit for 9 times , only for the purpose of taking pre-trial steps. But in all these months the petitioner remained silent and no steps were taken. He can very well file the

present application during the time of pre trial steps. Filing of the present application on the very same day when the suit listed for trial is only to protract the matter. Moreover, it is averred in the petition that in the connected suit, OS No.211/2022, this court appointed Advocate Commissioner by removing the suit from the list. Admittedly, the reliefs sought in both the suits are not identical. Also, there is no joint trial application filed by any of the parties in the suit till date. Thus, from the above discussions, this court is of the view that the petition is liable to be dismissed.

In the result, the Petition is dismissed.

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 21st day of January 2026)

APPENDIX : Nil

//True Copy//

**Sd/-
Simi P Siju
Additional Munsiff**

**Id/-
Additional Munsiff**

Additional Munsiff

ORDER
I.A. No.2/2026 in
O.S. No.216/2022
Dated : 21.01.2026