

**IN THE COURT OF THE MUNSIF, KOCHI**

**Present:-**

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

Tuesday, the 25<sup>th</sup> day of November, 2025/ 04<sup>th</sup> Agrahayana, 1947.

**I.A No. 15/2025 in O.S No. 344/2020**

**Petitioner/Plaintiff:-**

Vimala, aged 88 years, W/o. Sheshagiri Pai, r/o. House No. 4/1100, North Cherlai, Mattancherry, Kochi – 2.

**By Adv. A. Anilkumar**

**Respondents/Defendants:-**

1. Francis Xavier, Valiyaparambil House, Maruvakkad Muri, Near Velankkannimatha Church, Chellanam Village, Kochi Taluk. (Died)
2. Mary, aged 54 years, W/o. Francis Xavier, Valiyaparambil House, Maruvakkad Muri, Near Velankkannimatha Church, Chellanam Village, Kochi Taluk.
3. Linda, aged 33 years, D/o. Francis Xavier, Valiyaparambil House, Maruvakkad Muri, Near Velankkannimatha Church, Chellanam Village, Kochi Taluk, Kochi – 682008.
4. Tom, aged 29 years, S/o. Francis Xavier, Valiyaparambil House, Maruvakkad Muri, Near Velankkannimatha Church, Chellanam Village, Kochi Taluk, Kochi – 682008.

**R1 Died**

**R2 by Adv. Padmini Devi C.**

**R3 & R4 - Exparte in the suit**

This Petition having been finally heard on 24.11.2025 and the Court on 25.11.2025, passed the following:-

**ORDER**

The petition filed by the plaintiff under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner for local inspection.

2. **Petition summary is as follows** : The suit is for fixation of boundaries, mandatory and prohibitory injunctions, recovery of possession and for damages. The petitioner had filed I.A No. 13/25 seeking temporary prohibitory injunction against the defendants to restrain them from executing any construction work in the plaint A and B schedule properties till disposal of the suit. They had trespassed into 3 cents of the petitioner's property, on their southern side and are making construction in the said land which is sought to be recovered in the suit. After trespassing, they removed the temporary fencing so as to annex the same with their property. Therefore, as of now, both the properties are lying contiguously. Hence, the construction work before fixing the boundary will be fatal to the petitioner's interest. An urgent commission is to be deputed to collect evidence with regard to the constructions activities, dumping of construction materials, the stage of the construction of the building etc.

3. **The 2<sup>nd</sup> respondent filed objection with the following contentions :-**

a) The plaintiff has no locus standi to institute the suit as no documents have been produced by her to prove her right to institute the suit. The plaintiff has also not produced the Will executed by late Sheshagiri Pai as per which she claims right over the property. The plaintiff has not produced any document to show that late Sheshagiri Pai was the legal heir of late Venkiteswara Pai.

b) The present suit is barred by res judiceta, in view of O.S 422/2005 which was instituted by Sheshagiri Pai against the 1<sup>st</sup> and 2<sup>nd</sup> defendants. From the kraya certificate No.3472/1977, it can be seen that the 20 cents therein is comprised of 7 pieces of land, out of which 10 cents was transferred to the defendant's father-in-law.

c) Sheshagiri Pai had executed 4.69 Ares of property lying with the common boundaries to one Vijaya Vamanan as per the sale deed No.2504/2012 of SRO, Kochi. The back documents shown in the said sale deed are the Kraya certificates No.1449/1977 and 3472/1977. As per the schedule of the said sale deed, the property covered by Kraya certificate No.3472/1977 is lying in Re-Sy.No.65/1. The respondent's property is lying in Sy No.62/7 and the plaintiff claimed her right in Sy No.62/8. The genuineness of the purchase certificate is to be considered with caution since no mutation has been done or tax was paid in pursuance to the said purchase certificate.

d) The respondent had received certified copy of the kraya certificate under the RTI Act from the Land Tribunal Office, Kottayam which shows that the Kraya Certificate No.3472/1977 is signed by the Land Tribunal and the signatures are visibly different. The lease deed No.1327/1096 ME is not legible and the actual property on which that right falls could not be traced and demarcated based on the said document. The purchase certificate is also silent about the boundaries. The plaintiff had admitted that the defendants are in possession of the property claimed by them. In the above circumstances, the petition is liable to be dismissed.

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

- I. Whether the petition is allowable ?
- II. Reliefs and costs?

5. Heard both sides.

6. **Point Nos.(i) and (ii):-** The above petition is filed by the plaintiff to depute an Advocate Commissioner to conduct local inspection of the property inter alia to report whether the plaint A and B schedule properties are lying contiguously, to report the nature of work going on therein and also to report the present status with details of measurement is possible. According to the petitioner, the execution of the construction work before fixation of boundary between the properties will be fatal to her

interest. The petitioner also alleged that the respondent had trespassed into 3 cents of her property on their southern side and was making construction. On the other hand, the 2<sup>nd</sup> respondent objected the petition mainly challenging the locus standi of the petitioner to institute the suit and also alleging difference in the survey numbers of the properties. The second respondent also contended that the Kraya Certificate No.3472/1977 produced by the petitioner was doubtful. The learned counsel for the 2<sup>nd</sup> respondent argued that the lease deed No.1327/1096 ME was not legible and that the actual property cannot be traced and demarcated based on the said document. According to her, the purchase certificate was also silent about the boundaries.

7. It may be noted that the petitioner had filed I.A No.13/2025 seeking a temporary prohibitory injunction restraining the respondents from executing any construction work in the plaint A and B schedule properties, from taking the fully loaded lorries to the plaint A schedule property and from dumping the building materials in it till disposal of the suit.

8. It is pertinent to note that the above suit was instituted inter alia for fixation of boundaries of the A schedule property (plaintiff's property) with that of the B schedule property (defendant's property) and for recovery of the plaint C and E schedule properties from the 1<sup>st</sup> and 2<sup>nd</sup> defendants. It is

also to be noted that IA 11/2024 which was filed by the plaintiff for a survey commission was allowed as early as on 28/9/2024.

9. Considering the nature of the suit, this Court is of the view that it is only just and proper to depute an Advocate Commissioner to ascertain the matters stated in the petition. The contentions raised by the 2<sup>nd</sup> respondent touching the merits of the case can be decided only at the time of trial. Accordingly, these points are found in favour of the petitioner and the petition is liable to be allowed.

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

- i. Advocate Rohini N.T is appointed as the Advocate Commissioner.
- ii. Pay batta Rs.3500/- (Rupees Three Thousand Five Hundred only) to the learned Advocate Commissioner directly and file memo.
- iii. Intimate the learned Commissioner.

Dictated to the Confidential Assistant transcribed by her, corrected and pronounced by me in the open court on this the 25<sup>th</sup> day of November, 2025.

**Sd/-  
Nishad Ibrahim  
Principal Munsiff**

**APPENDIX:- Nil**

**Id/-  
Principal Munsiff**

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**Principal Munsiff**

Order in  
**I.A No. 15/2025 in**  
**O.S No. 344/2020**  
**Dated: 25.11.2025**