

I.A.21/2024  
O.S.83/2013

**IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),  
MUVATTUPUZHA**

Present:- Sri. Atheek Rahman, Civil Judge (Senior Division)  
Thursday, the 13<sup>th</sup> day of June, 2024 / 23<sup>rd</sup> Jyaishta 1946  
**I.A.No. 21/2024 in O.S.No. 83/2013**

Petitioners/Plaintiffs:-

1. Aleyamma, aged 64 years, W/o Thomas, Nadukudiyil House, Kuroor Kara, Kothamangalam Village, Kothamangalam Taluk, represented by her husband and power-of-attorney holder Thomas, aged 75 years, S/o Cherian, Nadukudiyil House, Kuroor Kara, Kothamangalam Village, Kothamangalam Taluk.
2. Cherian, aged 60 years, S/o Antony, Elanjickal House, Kozhippilly Kara, Varappetty Village, Kothamangalam Taluk.

By Adv. M/s. Joshy Joseph & Bini P.C

Respondents/Defendants :-

1. P.P.Paulose, aged about 70 years, S/o Puravath, Pallimalil House, Kuroor Kara, Kothamangalam Village, Kothamangalam Taluk.
2. Babu, aged about 39 years, S/o Anthru, Pazhambilly House, Nellikuzhy Kara, Eramalloor Village, Kothamangalam Taluk.
3. Mary, aged about 60 years, W/o Late M.J. Paulose, Mangalathu House, Mazhuvannoor Kara, Iyrapuram Village, Kunnathunad Taluk.
4. Baby, aged about 55 years, Chavaramplackal House, Keezhmuri Kara, Ramamangalam Village, Muvattupuzha Taluk.

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5. M.J.Salomy, aged about 60 years,  
W/o Mathew Tharakan, Madapparambil House,  
Thrikkakkara, Vazhakkala Village, Kanayannoor Taluk.
6. Alice John, aged about 48 years, W/o Saju Cherian,  
Mangalasseril House, Periyappuram Kara,  
Onakkoor Village, Muvattupuzha Taluk.
7. Dolly John, aged about 44 years, W/o Daniel,  
Thenumgal House, Pankodu Kara,  
lykkaranadu Village, Kunnathunad taluk.
8. N.M.Pareeth, aged about 58 years, S/o Mytheen,  
Nadappadayil House, Thangalam Kara,  
Kothamangalam Village, Kothamangalam Taluk.
9. Mamachan Joseph, aged about 47 years,  
Elichirayil House, Kondimattom Kara,  
Keerampara Village, Kothamangalam Taluk.
10. Joseph @ Negul, aged about 31 years, S/o Joseph,  
Peechattukudiyil House, Malayinkeezhu Kara,  
Kothamangalam Village, Kothamangalam Taluk.
11. Ibrahim, aged about 55 years, S/o Muhammed,  
Kottayil House, Venduvazhy Kara,  
Kothamangalam Village, Kothamangalam Taluk.
12. Aliyar, aged about 65 years, S/o Mytheen,  
Karakuzhy House, Amala Kara,  
Pindimana Village, Kothamangalam Taluk.
13. M.N.Pankajakshan Nair, aged about 47 years,  
S/o K.P.Narayanan Nair, Kallarackalputhenpura House,  
Pindimana Kara, Pindimana Village, Kothamangalam Taluk.
14. Arun Roy, aged about 23 years,  
S/o Roy, Maliyil House, Kuroor Kara,  
Kothamangalam Village, Kothamangalam Taluk.

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15. Reji Kuriakose, aged about 39 years, S/o Kuriakose, Chavaramplackal House, Keezhmuri Kara, Ramamangalam Village, Muvattupuzha Taluk.
16. Mereena Roy, aged about 55 years, W/o Roy, Maliyil House, Kuroor Kara, Kothamangalam Village, Kothamangalam Taluk.
17. Basil Roy, aged about 27 years, S/o Roy, Maliyil House, Kuroor Kara, Kothamangalam Village, Kothamangalam Taluk.
18. Town Central Muhayuddeen Juma Masjid, Kuroor Kara, Kothamangalam Village, represented by its President, M.B.Noushad, Monikkattil House, Kothamangalam Village, Kothamangalam Taluk.

R1 - No Vakalath

R2 to R12, R17 - Exparte

R13 & R14 - By Adv. M/s.N.N.Elayath & Ritamma Mathew

R15 - By Adv. Ajai Mathew

R16 - By Adv. M/s.N.N.Elayath, Ritamma Mathew & Ajsal Meeras

R18 - By Adv. M/s.N.Ramesh & Raju P.V

This petition is filed under Order 26 Rule 9 and read with Section 151 of Civil Procedure Code, 1908 to appoint an Advocate Commissioner to bring forth a Report and Survey Plan after ascertaining the matters with the assistance of Taluk Surveyor, Kothamangalam and is coming on for hearing on 13<sup>th</sup> day of June, 2024 in the presence of the above counsels and the Court on the same day passed the following:-

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## **ORDER**

This petition is filed by the plaintiffs/petitioners under Order 26 Rule 9 and section 151 of the Code of Civil Procedure, 1908 to depute an Advocate commissioner and Taluk Surveyor to measure the plaint schedule properties. This petition is supported by an affidavit sworn by the power of attorney holder of the holder of the 1<sup>st</sup> plaintiff/petitioner.

2. Brief averments in the affidavit in support of the petition are as follows: In the affidavit it is stated that the suit is filed for declaration of title, fixation of boundary and other reliefs. At the time of filing the suit, petitioner was under the impression that the plaint B schedule property is comprised in Survey No.1021/6B. But, after survey measurement as per order in IA 592/2014, it is came to the knowledge of the petitioner that plaint B schedule property is comprised in Survey No.1021/6A. Accordingly, the plaint was amended by incorporating additional relief of recovery of possession and additional defendants 16 to 18 were impleaded. Since additional defendants were not party to the suit at the time of survey measurement of the scheduled properties, there is every chance for disputing the earlier commission reports. So, in order

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to avoid unnecessary disputes and multiplicity of proceedings, it is highly necessary to conduct a fresh survey measurements in the scheduled properties. Hence the petition.

3. Additional 18<sup>th</sup> respondent filed objection stating that the petition is not maintainable either in law or on facts. The petition is filed only to protract the matter. The matters sought for in the present petition is already ascertained by the Advocate commissioner in the commission report filed as per order in IA 592/2014. Hence, prayed to dismiss the petition.

4. Other respondents did not file objection.

5. Both sides were heard.

6. The point that raised for consideration is as follows:

Is the petitioner entitled to an order to appoint an Advocate Commissioner and Taluk Surveyor as prayed for?

7. The point:- The contention of the petitioner is that after filing the commission report as per order in IA 592/2014, it has come to the knowledge of the petitioner that survey number of plaint B schedule

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property is 1021/6A instead of 1021/6B. Subsequently, plaint was amended and additional relief of recovery of possession was incorporated and additional defendants 16 to 18 were also impleaded. So, in order to avoid further disputes regarding the commission report and to avoid multiplicity of proceedings, the petitioner wants to take out a fresh commission. The additional 18<sup>th</sup> respondent contended that matters sought for in the present petition is already reported by the advocate commissioner as per order in IA 592/2014. So, there is no need to depute a new commission to ascertain the same matters. Further, the 18<sup>th</sup> respondent contended that the present petition is filed only to protract the matter.

8. It is pertinent to note that, in the affidavit in support of the petition the petitioner has no case that anything new to be ascertained or there is any error in the commission report already filed as per order in IA 592/2014. Moreover, the petitioner has no case that the measurement done by the Advocate commissioner and the surveyor is wrong. The reason stated in the affidavit in support of the petition is that additional defendants were impleaded and to avoid unnecessary

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disputes and multiplicity of proceedings it is highly essential to depute a new commission to measure out the plaint schedule properties. This is not a sufficient ground to depute a new commission. It is also pertinent to note that no sufficient data or materials produced before the Court to show that the commission report and survey plan filed by the advocate commissioner is not sufficient to decide the *lis*. The matters enumerated in the present petition are already been ascertained by the advocate commissioner in the commission report and plan submitted as per order in IA 592/2014. The only contention in the objection dated 28.09.2022 filed by the petitioner to the said commission report and plan is that the survey number of the B schedule property shown is not correct. No data is seen produced before the Court to establish the said fact. Order 26 Rule 9 of the Code of Civil Procedure provides to depute a commission for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits. So, the parties to a suit are not entitled to get an order under Order 26 Rule 9 of the Code of Civil Procedure, according to their whims and fancies. On perusal of

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the affidavit in support of the petition and the records, it is obvious that the present petition is devoid of merit and it is liable to be dismissed.

In the result, the petition is dismissed. No costs.

Dictated to the Confdl.Asst., transcribed and typed by her, corrected by me and pronounced in the Open court on this the 13<sup>th</sup> day of June, 2024.

Sd/-  
ATHEEK RAHMAN  
CIVIL JUDGE(SENIOR DIVISION)

**APPENDIX** :- Nil

Sd/-  
CIVIL JUDGE(SENIOR DIVISION)

Typed by : Pkm/-  
Compd by : Ss/-

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Order in  
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Dated: 13.06.2024