

IN THE COURT OF MUNSIFF, MUVATTUPUZHA

Present : Sri. Tony T. Thadathil, JMFC-III Muvattupuzha,

In Charge of Munsiff, Muvattupuzha

Tuesday, the 09th day of September 2025/ 18th Bhadra, 1947

I.A. No. 04/2024 in I.A. 01/2021 in O.S. No. 38/2017

Petitioner/ Plaintiff :

A.M. George, aged 79 years, S/o. Mathai, residing at
Idathottiyil House, Onakkoor Kara, Onakkoor Village,
Muvattupuzha Taluk

By Adv. Gigi Peter

Respondents/ Defendants :

1. State of Kerala, represented by District Collector,
Collectorate, Kakkanadu, Ernakulam
2. The Executive Engineer, Public Works Department
P.W.D. office, Muvattupuzha
3. The Assistant Executive Engineer, Public Works
Department P.W.D. office, Piravom
4. K.I. Paulose, aged about 67 years, residing at
Kavikunnel House, Kannayekkal P.O., Nelladu

By Adv. R1 to R3- Addl. Govt. Pleader

R4- Exparte

This petition came up for hearing on 14.08.2025 and this Court on
09.09.2025 delivered the following:-

ORDER

This is a petition filed under Order XXVI Rule 10(3) and section 151 of the Code of Civil Procedure, 1908, seeking to remit back the commission report filed in I.A. 01/2021.

2. Petitioner/ plaintiff states that it was prayed in I.A. 01/2021 to ascertain the old southern boundary of A schedule property. However, Commissioner did not show such a boundary in the commission report. The Commissioner could have shown such a boundary based on the commission report in I.A. 216/2017. In page no. 2 of the commission report, it is stated that C plot and F plot are situate on the northern side of B plot and E plot respectively. However, the said plots are on the southern side of B and E plots. The Commissioner has noted that the service of an expert is necessary for ascertaining point no. 5. In fact, Commissioner could and should have filed an interim report before this Court for appointment of an expert. If that was done, the petitioner could have taken necessary steps for appointment of an expert. The ascertainment of point no. 5 by appointment of an expert is absolutely necessary. Hence this petition is filed seeking to return the commission

report for curing the defects therein.

3. Respondents 1 to 3/ defendants 1 to 3 did not file any objection to this petition. Respondent no. 4/ defendant no. 4 is exparte in the suit.

4. Heard the learner counsel for petitioner. Perused records.

5. Three grounds are cited for remitting back the commission report filed as per order in I.A. 01/2021. One is that commissioner has failed to note the location of the old southern boundary of the schedule property. In page no.3 of the commission report, it is stated by the commissioner that the said old boundary could not be shown in the plan since it was non-existent at the time of the inspection and measurement. Petitioner states that the said boundary could have been shown based on the first commission report. It is not the duty of the commissioner to refer to the said commission report and show the old boundary. Commissioner is also not expected to do that, unless such a prayer is available in the commission application. There is no such prayer in I.A. 01/2021.

6. The second and third grounds projected by the petitioner are valid. The location and lie of C and F plots vis-a-vis B and E plots is

apparently mentioned erraneously in the commission report. The same needs a revisit. Likewise, point no.5 is not ascertained by the commissioner for want of expert assistance. As rightly pointed out by the petitioner, commissioner could have reported to this Court the need for an expert, prior to filing the commission report. Anyhow, commission report can be remitted for ascertaining point no.5 with the aid of an expert.

7. In the result, petition is allowed in part. The commission report is remitted back for curing defect and for ascertaining point no.5 with the assistance of an expert, as noted in this order. Assistant Executive Engineer, PWD buildings division, is deputed to assist the commissioner in ascertaining point no.5. Being a suit of the year 2017, commissioner shall file the commission report within one month. The report of Assistant Executive Engineer shall be appended to the commission report. Issue a copy of this order to commissioner and Assistant Executive Engineer (Buildings division), Muvattupuzha. Petitioner shall render necessary assistance to the commissioner and engineer. Petitioner shall deposit Rs 2000/- towards the batta payable to the engineer.

8. Await deposit of batta and commission report. Call on
16.10.2025.

*Dictated to the Confidential Asst., transcribed and typed by her, corrected
and pronounced by me in the open court on this the 09th day of September, 2025.*

Tony T. Thadathil.
JMFC -III Muvattupuzha,
(In Charge of Munsiff)

APPENDIX:- NIL

Munsiff

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ORDER in
I.A. 04/2024 in I.A. 01/2021 in
O.S. 38/2017
Dated: 09.09.2025