

IN THE COURT OF MUNSIFF, MUVATTUPUZHA

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

In Charge of Munsiff, Muvattupuzha

Tuesday, the 23rd day of September, 2025/ 1st Aswina, 1947

R.P. No. 3/2025 in I.A. 9/2025 in O.S. No. 67/2025

Review Petitioners/ Plaintiffs :

1. P.V. Antony, S/o. Varkey, aged 57 years, Kandanattu (Kandanattuputhenpurackal) House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661
2. Paulin, W/o. Baby, aged 64 years, Thattarkunnel House, Vazhappilly Kara, East Vazhappilly P.O., Mulavoor Village, Muvattupuzha Taluk - 686673
3. Santha, W/o. George, aged 68 years, Kannampuzhakaliyadan House, Puthuppady Kara, Puthuppady P.O., Kothamangalam Village, Kothamangalam Taluk- 686673
4. Celin, W/o. Devasia, aged 63 years, Kannampuzhakaliyadan House, Puthuppady Kara, Puthuppady P.O., Kothamangalam Village, Kothamangalam Taluk- 686673
5. P.V. Jose, S/o. Varkey, aged 70 years, Kandanattu (Kandanattuputhenpurackal) House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661
6. Anice, W/o. Mathew, aged 79 years, Kandanattu (Kandanattuputhenpurackal) House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661

By Adv. K.R. Udayakumar

Review Respondents :

1. Molly Baby, W/o. P.V. Baby, aged 66 years, Kandanattu @ Puthenpura House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661
2. Pious George, S/o. P.V. Baby, aged 40 years, Kandanattu @ Puthenpura House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661
3. Jaimon Mathew, S/o. Mathai Mathew, aged 39 years, Ancheril House, Pothonicad Kara, Pothonicad P.O., Pothonicad Village, Kothamangalam Taluk- 686671

By Adv. Gigi Peter

This petition came up for hearing on 16.09.2025 and this Court on 23.09.2025 delivered the following:-

ORDER

This is a petition filed under sections 114 and 151 and Order XLVII Rule 1 of the Code of Civil Procedure, 1908, seeking review of the order allowing I.A. 9/2025 which was filed for survey measurement of the suit properties.

2. The facts in the petition, in brief, are as follows: Petitioners are the co-owners of A schedule property. B schedule property owned

by the respondents 1 and 2, situate on the northern side of the said property. There is no demarcation between these properties. An old house is situated in both the properties. Respondents demolished the said house and obtained building permit by suppressing the actual facts. Consequently, the above suit was filed by the petitioners for fixation of boundary and injunction. The third respondent is the P.O.A. holder of the other respondents. He filed I.A. 9/2025 for survey measurement even before the initial formalities in the suit were completed and before the defendants revealed their contentions by filing written statement. Without going through the plaint and the written statement, commissioner cannot identify the actual dispute in the case. Allowing the survey commission application even without providing an opportunity to the petitioners to file work memo, would result in denial of civil rights of the petitioners. Hence this petition is filed.

3. The third respondent filed counter-affidavit for himself and the other respondents stating that when the respondents started the building construction, immediately, petitioners approached this Court by suppressing material facts and obtained a status quo order. Respondents

have incurred close to Rs 8,00,000/- for the construction works. The iron rods and steel purchased for the purpose of construction, are stored in the open leading to damage during this rainy season. Respondents never effected any construction in A schedule property. There is no apparent error on the face of the order in I.A. 9/2025. No sufficient reasons are made out to review the said order. The proper remedy for the petitioners is appeal or revision. The real intent of the petitioners is to delay the proceedings thereby causing damage to the respondents. Respondents have remitted the batta payable to the commissioner and surveyor. All the steps have been completed for measuring the suit properties. The prayer in the suit being for fixation of boundary, no prejudice will be caused to the petitioners if the properties are measured by the taluk surveyor as per the order. Non-filing of written statement is not a ground to review the impugned order. Moreover, respondents have filed written statements along with this counter-affidavit. The intention of the petitioners is to stop the building construction at any rate. This petition is filed without any bona fides. It is an abuse of the process of law. Hence it is prayed to dismiss the petition with costs.

4. Heard the learned counsel for both sides. Perused the records.

5. The material contention of the petitioners/ plaintiffs is that the survey commission application was allowed even before filing of written statement by the respondents/ defendants and without completing the initial formalities. The said contention was considered and rejected by this Court in the order in I.A. 9/2025. Even if the said decision is erroneous, this Court cannot rehear and correct the same as if sitting in appeal against the order of this own Court. Any error which is not self-evident and which has to be detected by a process of reasoning, cannot be said to be an error apparent on the face of record. The alleged error in the impugned order falls in that category.

6. Review on the ground of any other sufficient reason, is analogous to the other grounds specified in rule 1(1) of Order XLVII. No such sufficient reason is made out to review the impugned order. The said order was passed after hearing both the sides. The proper remedy, if petitioners are aggrieved by the order, is to file appeal or revision.

7. As regards the contention that petitioners could not even

file work memo as to facts to be ascertained from their side, it has to be noted that petitioners will be well within their rights to approach the Court to direct the commissioner to ascertain the points from their side during survey measurement. Since survey measurement has not started, it is still not too late for the petitioners to do so.

8. In fact, this Court cannot help but doubt the bona fides of the contention of petitioners that it is too early for seeking survey measurement. Respondents are in dire need of a decree fixing boundary of their property with that of the petitioners, since the building construction may probably have to wait till such passing of decree. Petitioners cannot block any attempt on the part of the respondents to expedite the disposal of the suit, for the reason that petitioners are not sharing such an urgency. If respondents are seeking an early disposal of this suit and they are taking steps to that end, petitioners cannot intervene and say no. A decree for fixation of boundary is fixation of boundary of both the properties. Respondents will also benefit if the boundary of their property is fixed, so that they can proceed with construction in their property without any objection from petitioners. In fact, the filing of commission application by the respondents for fixing

the boundary between both the properties is itself vocal about the fact that they are sharing the same demand as made by the petitioners. Hence, non-filing of written statement at the point when the survey commission application was filed or allowed, is not fatal.

In the result, petition is dismissed.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in the open court on this the 23rd day of September, 2025.

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

APPENDIX:- NIL

Munsiff

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ORDER in
R.P. 3/2025 in I.A. 9/2025
in O.S. 67/2025
Dated: 23.09.2025