

**IN THE COURT OF MUNSIFF, MUVATTUPUZHA**

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

In Charge of Munsiff, Muvattupuzha

Tuesday, the 16<sup>th</sup> day of September 2025/ 25<sup>th</sup> Bhadra, 1947

**E.A. No. 35/2025 in E.P. No. 23/2016 in O.S. No. 109/2014**

**Petitioner/ Judgment Debtor :**

Shiju Augustine, S/o. Augustine, aged 45 years,  
Chempapilly House, Cherukulangara Kara,  
Kurumathoor Village, Thaliparambu Taluk, now  
residing at KCW Nethaji Public School,  
Perumbadavom P.O., Elanji, Anthyal, Muvattupuzha

**By Adv. Saji Mathew**

**Respondent/ Decree-Holder :**

Jinimol T.S., aged about 49 years, W/o.  
Ramachandran, Pulikal House, Perumthuruthu,  
Muhamma P.O., Alapuzha

**By Adv. Gigi Peter**

This petition came up for hearing on 08.09.2025 and this Court on 16.09.2025 delivered the following:-

**ORDER**

This is a petition filed under Order XXVI, Rule 9 of the Code of Civil Procedure, 1908, seeking appointment of a commissioner for local inspection, with the assistance of a civil engineer.

2. Petitioner/ first JD states that the E.P. is one for realization of money. On 24.06.2019, the decree schedule property belonging to the petitioner was sold by this Court in Court auction sale. The extent of the property was 1 acre 32 cents. The prevailing land value of the said property was ₹ 1,00,000/- per cent. The total land value of the said property will come to ₹ 1,32,00,000/-. Moreover, there was a roofed concrete building having a plinth area of around 4,000 square feet in that property which has a value of ₹ 40,00,000/-. The total value of the auctioned property was nearly 2 crores. However the said property was sold for a meager amount. Sale of the entire property was not needed to satisfy the decree. The market value of the entire property was shown as ₹ 3,05,000/-. In order to prove the contention of the petitioner in this regard, it is necessary to appoint a commissioner to ascertain the value of the building and property with the assistance of a civil engineer. Hence this petition is filed.

3. Respondent/ decree-holder filed objection stating that the contention of petitioner that the auction schedule property had a total value of ₹ 1,32,00,000/-, is not correct. It is also false to say that there is a building in that property having a value of ₹ 40,00,000/-. The entire

property does not have a value of ₹ 2,00,00,000/- as alleged by the petitioner. There is no fraud or irregularity in conducting the sale. This petition is filed on an afterthought. This petition is bad for non-joinder of necessary party. When the petition to set aside the sale is not maintainable, there is no necessity to consider the commission application. Hence it is prayed to dismiss the above petition.

4. The auction purchaser, though not cited as a respondent in this petition, came forward and filed counter affidavit stating that he has purchased the property in Court auction sale held on 24.06.2019 and he has deposited the entire purchase money before this Court. However he is not cited as a party in this petition. Previously, in support of the prayer of petitioner to set aside the sale dated 24.06.2019, he had filed E.A. 1/2020 with the same prayer. The said petition was dismissed by this Court vide order dated 19.02.2021. The said material fact is suppressed by the petitioner in this petition. The present petition is an abuse of process of this Court. This petition is liable to be dismissed. Hence it is prayed to dismiss the above petition.

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

6. As rightly pointed out by the respondent and the auction purchasers himself, auction purchaser ought to have been added as a respondent in this petition which is filed in support of the application to set aside the sale. Auction purchaser is a necessary party to this petition. He was impleaded as additional 2<sup>nd</sup> respondent in E.A. 102/2019 which is filed to set aside the sale. When that be so, filing commission application without showing 2<sup>nd</sup> respondent in the party array, is not proper.

7. This Court finds, as rightly pointed out by the auction purchaser, that a similar petition filed by the petitioner was dismissed by this Court earlier. E.A. 1/2020 is that petition, filed by the petitioner seeking appointment of a commissioner for local inspection, for ascertaining the very same points as requested in this petition. The said petition was dismissed by this Court on merits on 19.02.2025. The only addition prayed herein is appointment of a civil engineer along with the commissioner. The material prayer in E.A. 1/2020 for local inspection having been turned down by this Court, there being no change of circumstance, this Court cannot revisit the prayer in this petition on merits, when the prayers are identical in both the petitions. It follows

that this petition is liable to be disallowed.

8. **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 16<sup>th</sup> day of September, 2025.*

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

**APPENDIX:- NIL**

**Munsiff**

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**ORDER in  
E.A. 35-2025 in E.P. 23-2016 in  
O.S. 109-2014  
Dated: 16.09.2025**