

IN THE COURT OF THE MUNSIFF OF HOSDURG

Present: Smt. Aiswarya Ravikumar, Civil Judge (Junior Division).

Saturday, the 3rd day of January 2026/ 13th Pousha, 1947.

Inter locutory Application No.1 OF 2025

in OS No.300 of 2017

Between:-

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| <ol style="list-style-type: none"> 1. Sulekha.P.K, aged 54 years,
D/o Vellunga, R/at Narimalam, Chayoth,
Post. Chayoth, Kinanur Village,
Vellarikundu Taluk, Kasaragod District. 2. Shaji.P.K, aged 56 years,
S/o Vellunga, R/at Narimalam, Chayoth,
Post. Chayoth, Kinanur Village,
Vellarikundu Taluk, Kasaragod District. 3. Lalitha, aged 54 years,
D/o Ittammal Kunhikannan,
W/o Late. P.K. Kumaran, Kovval Veedu,
Peringara, Pettikundu Post. Cheemeni Village,
Hosdurg Taluk, Kasaragod District. | } | <p>Petitioners/
Suppl. Defendants
No. 2 to 4.</p> |
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And

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| <ol style="list-style-type: none"> 1. K.V. Gangadharan, aged 61 years,
S/o Late. K.V. Ramankutty, R/at Chayoth,
Narimalam, Post. Chayoth, Nileswhar Via,
Kinanoor Village, Vellarikundu Taluk. 2. P.K. Mohanan, aged 55 years,
S/o Vellunga, R/at Narimalam, Chayoth. Post,
Nileswhar Via, Kinanoor Village,
Vellarikundu Taluk. | } | <p>Respondents/
Plaintiff and
1st defendant.</p> |
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Application filed Under Order 26 Rule 9 of CPC to issue a commission to prepared a survey plan of the property belonging to the petitioners.

Petition presented on : 14.10.2025.

Court fee paid : Rs.25.00

This application coming on this day for hearing before me in the presence of Sri.K.Sanjayan Nambiar, Advocate Petitioners and 2nd Respondent; of Sri.N.Rajamohanan and Smt.Bhavya.K, Advocates for 1st Respondent and the Court passed the following.

ORDER

The application is filed by supplemental defendant No. 2 to 4 for appointment of an advocate commissioner to measure the plaint schedule properties.

2. Counter filed by the respondent is to the tune that an advocate commissioner was already appointed in this suit and he had diligently measured the plaint schedule property. Thereafter first defendant had filed an application to set aside the report of the commissioner and the said application was dismissed after elaborate enquiry. Hence there is no reason why a new commissioner should be appointed at this juncture.

3. Counsel for supplemental defendant No. 2 to 4 argues that supplemental defendant no. 2 to 4 were not impleaded as parties to the suit when the first commissioner had filed his report and therefore it is necessary that a new commissioner be appointed.

4. The plaintiff in this suit bases his title upon Plaintiff A schedule property upon registered settlement gift deeds bearing No. 2481/2009 and 2500/2009 of SRO Nileshwar. Plaintiff contends that plaintiff B, C and D schedule property together forms part of plaintiff A schedule property and he has exclusive title over the same. Hence it is for the plaintiff to establish that plaintiff A schedule property comprises of plaintiff B, C and D schedule property and the same forms part of the property covered the aforesaid settlement deeds and unless the same is proved, the plaintiff cannot get a decree in his favour.

5. The first defendant in the suit had filed written statement contending that plaintiff D schedule property forms part of the property covered under the purchase certificate 10931/1977 obtained by Kunhamma. The first defendant had filed work memo for identifying the properties that were obtained by Kunhamma as per the said purchase certificate. The work memo also directed the commissioner to measure and mark the property transferred by Kunhamma to Mohanan (defendant No.1) as per document number 3315/2009, the property transferred by Kunhamma to Shaji (supplemental defendant No.3) as per document No.3316/2009, the property transferred by Kunhamma to Sulekha (supplemental defendant No.2) as per document No.3318/99 and property transferred to Kumaran (whose legal heir is impleaded as supplemental defendant No.4) as per document No.3319/2009. The commissioner had complied the work memo and filed report before the court. The first defendant had filed an

application for setting aside the report of the commissioner and had examined the commissioner. The court after detailed enquiry had dismissed the application. Subsequently, defendant No. 2 to 4 were impleaded in this suit. Now their prayer is that since they were not parties to the suit at the time when the commissioner had filed the report, the commissioner be again deputed to measure the suit property and the property obtained by Kunhamma as per the purchase certificate and aforesaid documents.

6. Defendant No.2 to 4 are the siblings of defendant No. 1 and are the children of Kunhamma. The written statement of supplemental defendant No. 2 to 4 would reveal that they are also basing their title upon the purchase certificate obtained by Kunhamma. Mere averment that supplementary defendants were not parties to the suit, when the commission report was filed, alone would not warrant appointment of a new commissioner to measure the plaint schedule property all again. The supplementary defendants ought to show how the measurement is incorrect and what substantial prejudice were caused to them by the report of the commissioner. The application filed by the supplementary defendants do not show how the report filed by the commissioner is incorrect and what material prejudice were caused to them by the said report. In the absence of the same, there is no reason why the court should depute a commissioner to measure the property again based on the very same documents of the plaintiff and the purchase certificate of the defendant's mother, merely because supplementary defendants were not parties to the suit initially.

In the result, IA dismissed

Typed and pronounced by me in open Court, this the 3rd day of January, 2026.

Sd/-

CIVIL JUDGE (JUNIOR DIVISION)

Fair/Copy of Order in IA.1/2025
in OS.300/2017.
Dated: 03.01.2026.