

**IN THE COURT OF THE MUNSIFF, KOYILANDY**  
**Present:- Miss. Raveena Naz, Munsiff, Koyilandy**

**Thursday the 19<sup>th</sup> day of June, 2025**

**I.A. No. 07/2023 in O.S. No. 02/2023**

**Between:**

Pramod Kumar, Aged 54 years S/o. Madhavan Nair,  
 Vadakkedath House, Melur Amsom, Elattery Desom,  
 Koyilandy Taluk- 673306

} Petitioner/  
 1<sup>st</sup> Defendant

**And :**

1 Nambarambath Balan, Aged 74 years,  
 S/o. Kunhisankaran, Pratheeksha, Thekku Veedu  
 Lane, Kacheri Amsom, Kurumbrakkattussery Desom,  
 Kozhikode Taluk- 673001

} Respondents/  
 Plaintiff, 2<sup>nd</sup>  
 Defendant

2 Sajan, Aged 56 years, S/o. Madhavan Nair,  
 Vadakkedath House, Melur Amsom, Elattery Desom  
 Koyilandy Taluk- 673306

This Petition coming on this the 4<sup>th</sup> day of June, 2025 for final hearing before me in the presence of Sri. N. K. Rajan and Sri. C. Ullas, Advocates for Petitioner and Sri. P. Prabhakaran, Advocate for Respondent No. 1 and Sri. N. K. Rajan and Sri. C. Ullas, Advocates for Respondent No. 2 and having stood over to this day for consideration and the Court delivered the following:

1. The Application is filed under Order 26 Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').
2. The averments in the Application in brief are as follows: The Applicant herein is the 1<sup>st</sup> Defendant in the suit. The Applicant seeks to remit the report of the Advocate Commissioner filed as per Order in IA 3/2023. The Applicant seeks to set aside the report and plan on the following grounds:

1. The Advocate Commissioner had not identified the plaint schedule properties as per boundaries and measurements.
2. The Advocate Commissioner had not ascertained the measurements of the property sold by the Plaintiff and had not ascertained the pathway to the property.
3. The Advocate Commissioner had not identified the road through the western side of the plaint schedule property, by-lane on the northern side of the plaint schedule property the lane of Vadakkedath Temple and the pathway to the temple through the western side of the plaint schedule property, stairs to the temple property, the road starting from Elatteri-Kuruvangad Road passing through the front side of Vadakkedath Temple ending on the south-western side of the property of the Plaintiff, public way to the property of the Applicant and to Thekkeyil Temple as well as Poothappara. The said pathways are necessary for the fair adjudication of the dispute.
4. The report of the Advocate Commissioner stating that waste materials are piled up on the western boundary of the plaint schedule property for accessing the property of the Applicant herein is false.
5. The report of the Advocate Commissioner stating that the plaint schedule property is lying at a depth of 1.5 to 2 metres on the southern side of the property of this Applicant is false.
6. The statement of the Advocate Commissioner that the stairs from the property of this Applicant to the plaint schedule property does not appear to be use regularly is false.
7. The statement of the Advocate Commissioner that there is a by-lane reaching the north-western side of the property of the Applicant herein is false.

8. There is no by-lane as such and it is only a water channel which could not be used as a pathway.
  9. The Advocate Commissioner had not given notice to the Applicant herein regarding inspection.
3. The 1<sup>st</sup> Respondent filed Objection contending as follows: The 1<sup>st</sup> Respondent herein is the Plaintiff in the suit. There are no reasons for setting aside the report of the Advocate Commissioner. There is no pathway or public way as stated in the Application. The report of the Advocate Commissioner stating that waste materials are piled upto 1.5 metres to 2 metres on the western side of the plaint schedule property is true. There is a by-lane on the north-western portion of the property of the Applicant. The Application is to be dismissed with costs to the Respondent.
4. Upon rival contentions, the following points arose for consideration:
1. Could the Applicant establish that the Advocate Commissioner failed to ascertain the matters as required in IA 3/2023?
  2. What shall be the order as to costs?
5. The report and plan, of the Advocate Commissioner is marked as Ext.C1 and Ext.C1(a), respectively.
6. Heard both sides.
7. **Point No. 1**

The Applicant herein is the 1<sup>st</sup> Defendant in the suit. The suit has been filed for a decree of permanent prohibitory injunction restraining the Applicant herein

from trespassing into the plaintiff schedule property and for a decree of mandatory injunction demolishing the road set up by the Applicant herein and to reinstate the lie of the plaintiff schedule property as well as damages. The Advocate Commissioner appointed was an *ex parte* Advocate Commissioner. The Advocate Commissioner was appointed as per Order in IA 3/2023. The 1<sup>st</sup> Respondent herein was the Applicant in IA 2/2023. In IA 2/2023 the Advocate Commissioner was appointed to ascertain: (1) Identifying the plaintiff schedule property and reporting the same with the help of a plan (2) the details of the plaintiff schedule property (3) the damage caused to the plaintiff schedule property by the Defendants. It is true that the matters sought to be ascertained in IA 3/2023 is vague. Point Nos. 1 and 2 stated by the Applicant herein for setting aside the report of the Advocate Commissioner is that the plaintiff schedule property had not been identified by the Advocate Commissioner. But it is the duty of the Plaintiff in the suit to establish his case. Point No. 9 as stated in the Application for remitting the report of the Advocate Commissioner is that notice was not served on the Applicant herein for not serving notice to the Applicant herein. The Advocate Commissioner had not stating anything in the report as to why notice was not served to the Applicant herein. But this cannot be a sole ground for remitting the report of an *ex parte* Advocate Commissioner. The other reasons stated in point Nos. 4 to 8 has to be established by the Applicant herein by examination of the Advocate Commissioner. The Applicant herein stated that matters referred to in point

Nos. 4 to 8 of the present Application are reported falsely by the Advocate Commissioner. The Applicant herein who is the 1<sup>st</sup> Defendant in the suit had also raised a counter claim in the suit. As per the counter claim the Applicant herein seeks for a decree of permanent prohibitory injunction restraining the 1<sup>st</sup> Respondent herein who is the Plaintiff in the suit from obstructing the use of counter claim C and D schedule properties for accessing counter claim B schedule property. It is true that the matters as sought to be reported as stated in point No. 3 of the present Application, ie., the road through the western side of the plaint schedule property, by-lane on the northern side of the plaint schedule property the lane of Vadakkedath Temple and the pathway to the temple through the western side of the plaint schedule property, stairs to the temple property, the road starting from Elatteri-Kuruvangad Road passing through the front side of Vadakkedath Temple ending on the south-western side of the property of the Plaintiff, public way to the property of the Applicant and to Thekkeyil Temple as well as Poothappara, are necessary for the fair adjudication of the dispute especially the counter claim of the Applicant herein. But the Advocate Commissioner was not appointed to ascertain the same as these matters became relevant only after the Applicant herein had filed his written statement along with counter claim. Therefore, the report of the Advocate Commissioner filed as per Order in AI 3/23 cannot be remitted for not reporting the matters not required to be reported by the Advocate Commissioner as per Order in IA 3/23.

8. It is true that the matters required to be ascertained as per point No. 3 of the Application is necessary for the fair adjudication of the dispute. The Applicant has to file an Application for appointing an Advocate Commissioner to ascertain the matters as required by him by filing a separate application seeking appointment of an Advocate Commissioner. For the reasons stated in the preceding paragraph this court of the view that the Applicant had failed to establish that the Advocate Commissioner who was appointed as per Order in IA 3/23 had failed to ascertain the matters as required in IA 3/23.

Point No. 1 is found against the Applicant.

9. **Point No. 2**

Reckoning the facts and circumstances of the case, no order as to costs.

Point No.2 is found accordingly.

*In the result, IA is dismissed. The matters required to be ascertained as per point No. 3 of the Application is necessary for the fair adjudication of the dispute. The Applicant may file an Application for appointing an Advocate Commissioner to ascertain the matters as required by him by filing a separate application seeking appointment of an Advocate Commissioner. No order as to costs.*

(Dictated to Confidential Assistant, typed by her in Office Computer, corrected and pronounced by me in Open Court, on this the 19<sup>th</sup> day of June, 2025)

Sd/-  
**MUNSIFF**

**Witness & Exhibits on either sides** :- Nil

Sd/-  
**MUNSIFF**

Order in IA 07/2023  
in OS 02/2023  
Dated: 19.06.2025