

IN THE COURT OF THE MUNSIFF, PUNALUR
PRESENT :-Smt. Reshma R.S, Civil Judge, Junior Division
Friday the 24th day of October 2025, 02nd day of Karthika 1947

Common Order in IA 1/2023 and IA 4/2025 in OS 546/2015

IA 1/2023 in OS 546/2015

Between

Petitioner/

Plaintiff

: Balachandran, S/o.Keshavan, Kaliyilazhikath Veedu,
Mailottukonam, Aeram Muri, Anchal Village,
Punalur Taluk.

(By Adv. S.R.Amrit)

And

Respondents/

Defendants :

1. Ramanan, S/o.Keshavan, Kaliyilazhikath Veedu,
Mailottukonam, Aeram Muri, Anchal Village,
Punalur Taluk.
2. Omana, W/o.Ramanan, Kaliyilazhikath Veedu,
Mailottukonam, Aeram Muri, Anchal Village,
Punalur Taluk.
3. Archana, D/o.Ramanan, Kaliyilazhikath Veedu,
Mailottukonam, Aeram Muri, Anchal Village,
Punalur Taluk.
4. Ambadi, S/o.Ramanan, Kaliyilazhikath Veedu,
Mailottukonam, Aeram Muri, Anchal Village,
Punalur Taluk.

IA 4/2025 in OS 546/2015

Between

Petitioners/

Defendants

- : 1. Ramanan, aged 75, Kaliyilazhikath Veedu,
Mailottukonam, Aeram Muri, Anchal Village.

2. Omana, aged 70, W/o.Ramanan, Kaliyilazhikath
Veedu, Mailottukonam, Aeram Muri, Anchal Village,

(By Adv.T.A.Philip)

And

Defendant/

Plaintiff

: Balachandran, aged 72, S/o.Keshavan,
Kaliyilazhikath Veedu, Mailottukonam, Aeram Muri,
Anchal Village,
(By Adv. S.R.Amrit)

This petition is coming on for hearing before me on 24.10.2025 and on the same day court passed the following.

COMMON ORDER

Applications filed under Order XXVI R. 10(3) of the Code of Civil Procedure, 1908.

2. **The application averments, in brief, in IA 1/23, are as follows:** The applicant is the plaintiff in the suit. The suit was filed for declaration, fixation of boundary, and other consequential reliefs. The commission report filed on 20.10.2022 is inadmissible in evidence and liable to be set aside. The plaint A and B schedule properties were not properly surveyed and shown in the plan. The boundary line separating the plaint A and B schedule properties was not shown. The boundary line separating plaint A and B schedule properties from the property of the respondents is not shown. The boundary line shown in the plan is not proper. The present commission report is not helpful in adjudicating the dispute in this case. Neither the applicant nor the respondents have any contention that the northern side property of plaint A and B schedule properties is in possession of the respondents. The advocate commissioner and the

surveyor have no authority to decide on the possession of the properties. The reason for showing the property shown as 1,m,2,3,28,c,g,h,14,15,16,17,18,19,27,A,1 to be in the possession of the defendants is not made clear. The surveyor surveyed the properties not on the basis of the commission report. There is no such pathway as shown in the plan. The surveyor is to be removed from the panel as he tried to mislead the court. Hence, the commission report is liable to be set aside. Otherwise, it would cause irreparable injury and hardships to the applicant. Hence, this application.

3. The respondents filed objection contending the following: - The application is not maintainable either in law or on facts. No sufficient reason is stated in the application to set aside the commission report. The advocate commissioner and the surveyor properly surveyed the properties and prepared the plan. It is false to state that the measurements shown in the plan are incorrect. The reasons stated in the application, using letters a, b, c and d, are false. The properties of the respondents are situated on the northern side of plot A and the B schedule properties. The boundary line separating the property of the applicant and the respondents is clearly shown in the plan. The present suit is filed to fix the boundary of the plot schedule property. The boundary is clearly mentioned in the plan. The advocate commissioner and surveyor did not decide the possession of the properties. The pathway exists and is clearly shown in the plan. The applicant obstructed the use of the pathway by the respondents, and hence OS 475/2015 was filed, which was

jointly tried with this case. In both cases, there are commission reports, and the advocate commissioners saw the existence of that pathway. There is no reason stated in this application to set aside or remit the commission report. Hence, this application is liable to be dismissed with costs.

4. The application averments in brief, in IA 04/2025, are as follows:

The applicants are the defendants in the suit. The suit was filed for fixation of boundary, declaration and other consequential delays. The commission report filed by the advocate commissioner cannot be admitted in evidence. The advocate commissioner has prepared the mahazar and report without any good faith, in accordance with the surveyor's plan. The A and B schedule properties were not properly located and identified. The total extent of the properties was not calculated. On the southern side of the plaint schedule properties, Panchayath road is situated. Some portions of the plaint schedule properties were lost for the development of the road, and the advocate commissioner failed to ascertain that matter. The plan relied upon by the advocate commissioner for the survey of the properties is not evident. The pathway is not properly surveyed. The portions of property lost for the development of the road were not reduced from the total extent of the properties. Hence, the Survey Commission report is liable to be set aside. Otherwise, it would cause irreparable injury and hardships to the applicants. Hence, this application.

5. The respondents did not file any objection to this application.

6. As submitted by the parties, these applications were posted along with the suit. After examining the advocate commissioner and surveyor as DW3 and DW5, and after the closure of the evidence, these applications were heard. The survey commission report filed on 20/10/2022 was marked as Ext. C2 series.

7. Heard both sides, and perused all the available records.

8. The sole point to be considered is whether the survey commission report filed in this case is liable to be set aside or remitted back?

9. **The Point:** The learned counsel for the applicant argued that the application is to be allowed in the interest of justice. According to the applicants, the advocate commissioner and surveyor did not identify and locate the plaint A, and B schedule properties and its boundary sought to be fixed through the process of court and hence, the commission report is liable to be remitted back or set aside. The learned counsel for the respondents also contended that the commission report cannot be relied upon, as the total extent of the property is not shown, and the property lost for the development of the southern side road was not ascertained.

10. Here, the sole thing to be considered is whether there are grounds to set aside or remit back the commission report filed in this case. The suit is filed seeking the relief of declaration, fixation of boundary and other consequential reliefs. Considering the nature of the suit, a proper survey commission report is essential to have a final adjudication of the dispute. Here, the applicants

challenged the commission report on the ground that the advocate commissioner and the surveyor did not survey and demarcate the plaint A and B schedule property, and the boundaries were not properly shown. Hence, the commission report is not acceptable in evidence. The respondents also have a similar contention. It was also contended that the properties lost for the development of the southern side panchayat road are not ascertained by the advocate commissioner, and it was not reduced from the total extent of the properties.

11. The advocate commissioner was examined as DW3. He deposed before the court that the distance from C point to D point was shown as 148.6 in the table. But in the plan, it is shown as 37.4. According to DW3, he did not notice that mistake at the time of filing the commission report. DW3 further added that the extent of the properties comprised in survey numbers 225/5, 225/4, 225/7 was not mentioned in the plan. According to DW3, the black lines in the plan denote the re-survey boundary. When a specific question was put to DW3 to the effect that in the written statement, the defendants do not have a contention that the portions of the plaint schedule property are in their possession, his answer was that he does not remember that aspect. DW3 further added that he is unable to depose regarding the title document of plaint A and B from the plan. He further added that plaint A schedule property was shown in the plan as per the title document. But the same is not clear from the plan.

12. During his cross-examination, he deposed before the court that the properties were surveyed based on re-survey plan, and the old survey plan was not available. According to DW3, the public road situates on the southern side of plaint A and B schedule properties and the records of the public road were not available. He further added that the boundaries separating the properties of the respondents were not shown in the plan. He further added that during the survey, he could not identify whether the properties were lost for the development of the southern side road. He further added that the properties were shown in accordance with the title documents.

13. The surveyor was examined as DW5. He deposed before the court that he is unable to depose about the documents relied on by him at the time of survey, from the plan. He added that the total area of the properties could not be shown in the plan as there were 3 or 4 survey numbers. DW5 deposed before the court that the extent of the properties comprised in Survey Nos. 225/5, 225/4, and 225/7 could not be ascertained from the plan. He further added that the extent of plot number 7 could not be ascertained from the plan and that if the commission report is remitted back, he can correct all the mistakes in the commission report. He further added that there was no demand in the commission application to ascertain the extent of the properties, and that it is possible to fix the boundary without ascertaining the total extent of the property. He further added that the plan was not prepared as demanded in the commission application. He further added that he has not visited the property

on August 24th. But later he added that he once visited the plaint schedule property without the advocate commissioner.

14. From the evidence of the advocate commissioner and surveyor, it is clear that the survey was not properly conducted. There are several mistakes in the survey plan. The measurements shown in the ladder and the plan do not tally with each other. The surveyor who prepared the plan himself made it clear that it is not possible to ascertain the total extent of the property from the plan. It is interesting to note that even though the properties were surveyed, the total extent of the properties was not shown. The reply given by the surveyor was that there was no demand in the commission application to ascertain the total extent of the property. The suit is filed for the fixation of the boundary of the property, and without ascertaining and mentioning the total extent of the property, the lines shown as the boundary cannot be accepted. Another point to note is that the property was not properly shown on the plan using letters. The boundaries separating the properties were not shown, despite the fact that the suit was filed for fixation of boundary. The pathway is not properly surveyed. The properties lost to the development of the southern-side road are not clearly shown. The total area of the property is not mentioned. Considering all these factors, this court is of the view that the commission report cannot be admitted in evidence, as the parties would be put to irreparable injury and hardships. Hence, this court consider it proper to remit back the commission report to the

same advocate commissioner and surveyor to cure the above-said defects in it, and to refile it after proper survey and demarcation of properties.

In the result: These applications are allowed. The commission report is remitted back. The advocate commissioner is directed to execute the work expeditiously and properly, and to file the report forthwith after correcting all errors. There shall be no order as to costs.

Pronounced in open court on this, the 24th day of October 2025.

Sd/-
Civil Judge (Junior Division)

Appendix:

Court Exhibits

C2	20.10.2022	Commission Report prepared by the Adv. Commissioner Milad.M
C2(a)	29.07.2022	Mahazar prepared by the Adv. Commissioner Milad.M
C2(b)	24.08.2022	Rough sketch prepared by the Adv. Commissioner Milad.M

Id/-
Civil Judge (Junior Division)

//True Copy//

Typed by : Saranya V S

Compared by :

CIVIL JUDGE (Junior Division)