

IN THE COURT OF THE MUNSIFF OF KANNUR  
Present: Sri. Manikandan C.K, Additional Munsiff, Kannur  
Thursday, the 22<sup>nd</sup> day of January, 2026 (2<sup>nd</sup> Magha 1947)

**I A 3/2025 in FDIA 1271/2019 in ORIGINAL SUIT No. 219/2011**

- |     |                                                                                                                 |                                                                                            |
|-----|-----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| 1   | K.P. Rabiya, D/o Abdulla, aged 74 Years,<br>Vadood Villa, Kadappuram Road, P.O. Azhikode,<br>Kannur Dt-670009.  | ] Review Petitioners/<br>] <u>Petitioners</u><br>] R1, R3,R4 and R5/<br>] D1,D3,D4 and D5. |
| 2   | K. P. Aseema, D/o Abdulla, aged 69 Years,<br>Ceepee House, Kadappuram Road,<br>P.O. Azhikode, Kannur Dt-670009. | ] ] ]                                                                                      |
| 3   | K.P. Muhammed Kunhi, S/o Abdulla, aged 62<br>Years, Retired Engineer, KSEB, Dale,<br>Thalikkavu, Kannur-1.      | ] ] ]                                                                                      |
| 4   | K.P. Moosakunhi, S/o Abdulla, aged 60 Years,<br>Little Gem, near Military Hospital, Cantonment,<br>Kannur.      | ] ] ]                                                                                      |
| Vs. |                                                                                                                 |                                                                                            |
| 1   | K.P. Ibrahimkutty S/o Abdulla, aged 66 Years,<br>Keemuta Veedu, Kannur City, Kannur-670003.                     | ] Review<br>] Respondent/<br>] <u>Respondents</u><br>] Petitioner/Plaintiff                |
| 2   | K.P. Kunhayisu, D/o Abdulla, aged 73 Years,<br>Mejastic, Kannothumbal, Kannur Dt-670006.                        | ] Review<br>] Respondents/<br>] <u>Respondents/</u><br>] R2, 6 to 12<br>] D2, 6 to 12      |
| 3   | K.P. Hamza, S/o Abdulla, aged 81 Years,<br>Kottekeyan House, Mill Road, PO. Valapattanam,<br>Kannur-670010.     | ] ] ]                                                                                      |

- 4 K.P. Ummerkunhi, S/o Abdulla, aged 72 Years, Retired SP, Khamar, Padannapalm, Kannur-1. ]  
]
- 5 K.P. Nafeesa, D/o Abdulla, aged 58 Years, Flat No.603, Classic Symphony, Kakanady, PO. Mangalore. ]  
]  
]

**Suppl:**

- 6 Fais Jahan, D/o. Kunhayisu, Aged 51 years, Safron, Azhikode South amsom, Poothappara Desom, P.O. Azhikode, Kannur. ] Respondents/  
] Respondents No.  
] 2, 6 to 12/  
] D2, 6 to 12
- 7 K.P. Abdurahiman, S/o. Kunhayisu, aged 51 years, Kizhakkepurayil, Poothappara, P.O. Azhikode, Kannur ]  
]  
]
- 8 Kallukettiyapeedikayil Kurukkan Padinharepeedikayil Marjan, D/o. Rabiya, aged 42 years, Vadood Villa, Kadapuram Road, P.O. Azhikode, Kannur Dt. ]  
]  
]  
]
- 9 K. P. Surayya, D/o. Kunhayisu, Aged 43 years, Residing at Sneha, Manikka Kavu Road, P.O. Thana, Kannur-12 ]  
]  
]
- 10 Bushara Haroon, W/o. Haroon, Soopiiaragath, aged 57 years, Residing at Majestic House, Kannothumbal, Chovva P.O., Kannur-670 006. ] Supplemental  
] Respondents  
]
- 11 Aseema. P. K., (Died), W/o. Hamsa. K.P, aged 76 years, Ayishas, Kadapuram Road, Azhikode P.O., Azhikode, Kannur-670 009. ]  
]  
]
- 12 Fousiya. P.K, W/o. Muhammed Shafi, aged 55 years, Ayishas, Kadapuram Road, Azhikode P.O., Azhikode, Kannur-670 009. ]  
]  
]
- 13 Niaz Ahammed. P.K, S/o. Hamza.K.P, aged 59 years, Nujoom, Aiswarya Nagar, Chirakkal P.O., Chirakkal, Kannur-670 011. ]  
]  
]
- 14 Abdulla. P.K, S/o. Hamza.K.P, aged 57 years, ]  
]



application. The contention of the review petitioner/respondent Nos.1, 3, 4 and 5 is that advocate commissioner, as per the report, allotted plot 'A' to the plaintiff, plot 'B' to defendant No.6, plot 'D' to defendant No.7, plot 'E' to defendant No.8, plot 'C' kept unallotted for defendants 1 to 5 and plot 'F' for defendant No.11 as it was excluded from the partition. Further contention is that respondent Nos.1, 3, 4 and 5 filed IA 2/2023 for second preliminary decree and said application was allowed by this court and therefore the said order merged with original preliminary decree. Further contention of the petitioners is that they filed IA 1/2024 to remit back the commissioner's report and to file a report as per the second preliminary decree and this court allowed the petition and directed to allot plot 'C' to the defendants 1, 3, 4 and 5. The said order is an error apparent on the face of the record, as the plot 'C' is the plot remained unallotted as the plaintiff, defendants 6, 7 and 8 managed with get prime plot with road access. Further grievance of the petitioners is that the major portion of the plot 'C' occupied by the road and balance cannot be partitioned among the review petitioners as a separate plots. The commissioner's report dated 13.11.2025 will reveal that plot 'C' cannot allot among with defendants 1, 3, 4 and 5 equitably. Hence, the application to review the order passed in IA 1/2024.

3. The averments in the counter filed by respondent No.1/final decree petitioner is as follows:- This respondent denied entire allegations contained

in the petition except those which are expressly admitted. The contention of this respondent is that in IA 1/2024, this court was pleased to direct the commissioner to allot plot 'C' among the review petitioners. Thereafter, advocate commissioner issued inspection notice on 17.10.2025 by stating that he will be visiting the property on 26.10.2025. Petitioner brought the advocate commissioner for partitioning the property among the petitioners, but the petitioners did not co-operate for the same and thereafter commissioner returned the warrant. Further contention of the respondent is that there is no error apparent on the face of the record. There is a delay of 224 days in filing this application. Further contention of the respondents is that there is no visible error on the face of the record and no new facts are to be discovered. Further contention of the respondent is that this petition is filed only to prolong the passing of final decree to harass the petitioner from enjoying the fruits of the decree. Hence, the petition is to be dismissed.

4. Heard both sides.

5. The sole question to be answered is whether the petition is allowable or not?

6. **The point**:- The contention of the review petitioner/respondent Nos. 1, 3, 4 and 5 is that advocate commissioner, as per the report, allotted plot 'A' to the plaintiff, plot 'B' to defendant No.6, plot 'D' to defendant No.7, plot 'E' to defendant No.8, plot 'C' kept unallotted for defendants 1 to 5 and plot 'F' for

defendant No.11 as it was excluded from the partition. Further contention is that respondent Nos.1, 3, 4 and 5 filed IA 2/2023 for second preliminary decree and said application was allowed by this court and therefore the said order merged with original preliminary decree. Further contention of the petitioners is that they filed IA 1/2024 to remit back the commissioner's report and to file a report as per the second preliminary decree and this court allowed the petition and directed to allot plot 'C' to the defendants 1, 3, 4 and 5. The said order is an error apparent on the face of the record, as the plot 'C' is the plot remained unallotted as the plaintiff, defendants 6, 7 and 8 managed with get prime plot with road access. Further grievance of the petitioners is that the major portion of the plot 'C' occupied by the road and balance cannot be partitioned among the review petitioners as a separate plots. The commissioner's report dated 13.11.2025 will reveal that plot 'C' cannot allot among with defendants 1, 3, 4 and 5 equitably. On the other hand, the contention of the respondent/final decree petitioner is that in IA 1/2024, this court was pleased to direct the commissioner to allot plot 'C' among the review petitioners. Thereafter, advocate commissioner issued inspection notice on 17.10.2025 by stating that he will be visiting the property on 26.10.2025. Petitioners brought the advocate commissioner for partitioning the property among the petitioners, but the petitioners did not co-operate for the same and thereafter commissioner returned the warrant. Further contention of the respondent is that there

is no error apparent on the face of the record. There is a delay of 224 days in filing this application. Further contention of the respondent is that there is no visible error on the face of the record and no new facts are to be discovered.

7. A close scanning though the records, learned commissioner filed report before this court on 13.11.2025. As per the report, the property divided into 6 plots as plots 'A, B, C, D, E and F'. Learned commissioner also reported that the plot 'C' having an extent of 8.86 Are is to be divided among the defendants 1, 3, 4 and 5 and therefore the extent of the one share entitled by the party is 3.127 cents. If plot 'C' is to be divided into four plots among defendants 1, 3, 4 and 5, a road is necessary to allot for each plots. Learned commissioner further reported that if some extent of land is kept common as road, the entitled extent of the one share will be reduced. Learned commissioner further reported that plot 'C' is shapeless one and narrow piece of land and it cannot be used for constructing building and cannot be allotted to anyone. Anyhow, the final decree petitioner was examined before this court as PW1. PW1 deposed that the second final decree can be passed by dividing the plot C. He requested to pass final decree on the basis of the commissioner's report, plan and share list. He also deposed that second final decree can be passed in respect of plot 'C' among the review petitioners. During cross examination, PW1 deposed that the learned commissioner inspected the property as per order in IA 1/2024. He also deposed during cross exami-

nation that “Ext.C2 പ്ലാനിൽ ഞങ്ങൾ അവിടെ ഉണ്ടായിരുന്ന കക്ഷികൾ പറഞ്ഞ പ്രകാരം plot വെച്ചതാണ്. അതിന്റെ ബാക്കിയുള്ള പ്ലോട്ടാണ് C”. He also deposed that there is a road having a length of 23 metre and width of 5 metre to plot C from the main road. He also deposed that “ഞങ്ങൾക്ക് allot ചെയ്ത് കഴിഞ്ഞ സ്ഥലം, ബാക്കിയുള്ള സ്ഥലം കണക്കാക്കിയാണ് plot C”. Learned counsel for the review petitioners put a suggestion to PW1 that “plot C അഞ്ച് ആളുകൾക്കിടയിൽ ഭാഗിച്ചു കഴിഞ്ഞാൽ അത് ഉപയോഗ ശൂന്യമായി മാറും. Plot C അഞ്ച് ആളുകൾക്കായി വിഭജിച്ചു കഴിഞ്ഞാൽ road access ഏത് ഭാഗത്ത് കൊടുക്കും, എങ്ങനെ കൊടുക്കും എന്ന് എനിക്കറിയില്ല”. He also deposed during cross examination that "ഈ വസ്തു രണ്ടാമത് അളന്ന് തിരിക്കുന്നതിന് എനിക്ക് ആക്ഷേപമില്ല. ഈ plot എല്ലാവർക്കും ഉപയോഗപ്രദമായ രീതിയിൽ അളന്ന് തിരിക്കുന്നതിന് എനിക്ക് ആക്ഷേപമില്ല". It is true that there is no any error apparent on the face of the record. Moreover that, since the review petition filed to review the order in IA in the main final decree application, I am of the view that the delay occurred need not be viewed seriously. On the basis of the report of the advocate commissioner that the plot C is a shapeless one, narrow piece of land, cannot be used for constructing building and cannot be allotted to anyone coupled with the evidence of PW1 during cross examination that he has no objection in measuring the property again to allot the plots all the persons in a useful manner, I am of the view that, a fresh measurement of property and fresh allotment of the entire property are necessary by considering the objection of the review petitioner. Therefore, learned commissioner shall file further report, plan, share list and account. Hence, application is to be allowed.

In the result,

1. The application allowed, order in IA 1/2024 reviewed.
2. Learned commissioner shall measure the entire decree schedule property except plot, if any kept from partitioned by preliminary decree.
3. Report remitted back to the same commissioner with the assistance of surveyor namely Sri. Sreehari.
4. Learned commissioner shall file further report, plan, share list and account.
5. Review petitioner shall pay commissioner's batta of Rs.4,000/- and surveyor batta of Rs.2,500/- directly.
6. Being the final decree application is in the year 2019, learned commissioner shall file report within one month from the date of this order.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open court, this the 22<sup>nd</sup> day of January, 2026).

Sd/-

ADDITIONAL MUNSIFF

Fair/ Spare copy of Order in  
in IA 3/2025 in  
FDIA 1271/2019 in  
OS No.219/2011, Dated: 22.01-2026.