

IN THE COURT OF THE MUNSIFF OF KANNUR
Present: Sri. Manikandan C.K, Additional Munsiff, Kannur
Monday, the 2nd day of February, 2026 (13th Magha,1947)

I A 01/2024 in ORIGINAL SUIT No. 374/2021

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| 1 | Rasheeda Velluvakandy Puthiya Purayil,
W/o Moidu, aged 48 years, residing at
Velluvakkandy Puthiya Purayil House,
P.O.Kottali, Kannur 670 005. |] | Petitioners/
Defendants |
| 2 | Moidu. V.K, S/o Beerankutty, aged 62 years,
Business, residing at Velluvakkandy Puthiya
Purayil House, P.O. Kottali, Kannur 670 005. |] | |

Vs.

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| | Nuseeba Velluvakandy Puthiya Purayil,
D/o Moosakkutty, aged 43 years, No occupation,
Residing at Nuseeba's, Sadulipally, P.O.Kottali,
Kannur 670 005 rep by her POA Muhammed
Rafeek.T.P, aged 61 years, S/o Khalid, Mottammal
Road, South Bazar, Kannur District. |] | Respondent/
Plaintiff |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------------|

The petition is filed under Order XXVI, Rule 14 and Sec.151 of CPC to set aside Commission Report.

This petition coming on the 13th day of January, 2026 for final hearing before me in the presence of Sri. P C Pradeep, Advocate for the petitioners/defendants; and of S/Sri.K K Balaram, K Babu, K O Pratap Nambiar, M R Hareesh and Shaheena K M, Advocates for the respondent/plaintiff; and having stood over for consideration till this day, the court passed the following:

ORDER

This application is filed to set aside commission report and plan dated 26.09.2023 and to appoint a fresh advocate commissioner with Taluk Surveyor.

2. Gist of the averments in the petition is as follows:- Petitioner herein is the defendant No.1 in the above suit. This petition is filed for and on behalf of other defendants also. The above suit is filed for mandatory injunction directing the defendants to remove the pillars in plaint 'B' schedule property and the gate fitted to the pillars. The main contention of the petitioner/defendant No.1 is that the plaint A, B and C schedule properties seen in partition deed No.3984/2011. But it can be seen that plots demarcated by the advocate commissioner differs from the plots allotted under the partition deed. There is no survey stone as stated by the advocate commissioner and plan prepared by the commissioner basing upon the said survey stone mark cannot be relied for any purpose. Further contention of the petitioner is that the plan prepared by the advocate commissioner is without following survey guidelines. The parties herein had no case that the pillars sought to be removed in lying beyond the property allotted to the parties in the partition deed. The case of the plaintiff is that pillars are lying within the area demarcated for ingress and egress to the properties including that of plaintiff.

So, it become highly essential and necessary to make it sure that the measurement are taken by the advocate commissioner properly and following the statutory guidelines. Further contention of the petitioner is that no survey stone physically seen in RS No.167/1 at the place noted by the advocate commissioner. The measurement of the northern boundary in RS No.168/1 and RS No.168/2 are not the exact physical measurement available in the site. All these measurements were taken by the advocate commissioner based on the facts and date given to her by the plaintiff. The measurement shown by advocate commissioner with respect to the road is incorrect. The exact physical measurement of the PWD road is 7.6 metres. The measurement noted by the advocate commissioner from the point where she had marked the existence of stone to the point 'I' in the plan is 7.6 metres whereas the exact physical measurement of these points are 8.6 metres and 7.6 metres. Further contention is that the survey boundary marked by the advocate commissioner are not based on any survey stone or any other survey mark or FMB. Further contention of the petitioner is that the observation of the advocate commissioner is that F, G, H, I, F marked in the plan is situated in Government land is incorrect and made without any legal or factual basis. At the time of taking measurement of the plaint schedule properties, plot F was seen extended on the western side of A1 line marked in

the sketch plan. In fact a strip of land which forms part of F plot lying on the western side of the boundary wall on the west on the same was pointed out by the advocate commissioner at the time of inspection. Further contention of the petitioner is that the report and plan submitted by the advocate commissioner in the above case is defective and unreliable for the reason stated above. Hence, the petition to set aside the commission report and plan dated 26.09.2023.

3. Respondent filed counter. The averments in the counter is as follows:- This respondent denied entire averments in the petition except those that are expressly admitted. The contention of the respondent/plaintiff is that at the time when the advocate commissioner inspected the plaint schedule properties, both the parties as well as their respective counsels were present. Commissioner inspected and measured the property as pointed out by both counsels. An experienced surveyor was also appointed by this court to assist the commissioner. The said surveyor was a retired Assistant Director of Survey and Land Records. Advocate commissioner measured the property with the help of FMB from the Village Office and assistance of Village Officials. There is no reason to disbelieve the report and plan submitted by the advocate commissioner. The report submitted by the advocate commissioner as per the guidelines and now the petitioner is raising

unnecessary allegations against the commissioner and person, who assisted the commissioner. Since the advocate commissioner reported that area GJFKG in the plan situated in the Government land, the petitioner will not be able to defend his case because the pillars are situated in the above said area. The only intention of the petitioner is to harass the respondent and to drag the matters. Hence, the petition is to be dismissed with costs.

4. Heard both sides.

5. The sole question to be considered is whether the application is allowable or not?

6. **The Point** :- The main contention of the petitioner/defendant No.1 is that the plot A, B and C schedule properties are seen in partition deed No.3984/2011. But it can be seen that plots demarcated by the advocate commissioner differs from the plots allotted under the partition deed. There is no survey stone as stated by the advocate commissioner and plan prepared by the commissioner basing upon the said survey stone mark cannot be relied for any purpose. Further contention of the petitioner is that the plan prepared by the advocate commissioner is without following survey guidelines. The parties herein had no case that the pillars sought to be removed in lying beyond the property allotted to the parties in the partition deed. The case of the plaintiff is that pillars are lying within the area demarcated for ingress and

gress to the properties including that of plaintiff. So, it become highly essential and necessary to make it sure that the measurement are taken by the advocate commissioner properly and following the statutory guidelines. Further contention of the petitioner is that no survey stone physically seen in RS No.167/1 at the place noted by the advocate commissioner. The measurement of the northern boundary in RS No.168/1 and RS No.168/2 are not the exact physical measurement available in the site. All these measurements were taken by the advocate commissioner based on the facts and date given to her by the plaintiff. The measurement shown by advocate commissioner with respect to the road is incorrect. The exact physical measurement of the PWD road is 7.6 metres. The measurement noted by the advocate commissioner from the point where she had marked the existence of stone to the point 'I' in the plan is 7.6 metres whereas the exact physical measurement of these points are 8.6 metres and 7.6 metres. Further contention is that the survey boundary marked by the advocate commissioner are not based on any survey stone or any other survey mark or FMB. Further contention of the petitioner is that the observation of the advocate commissioner is that F, G, H, I, F marked in the plan is situated in Government land is incorrect and made without any legal or factual basis. At the time of taking measurement of the plaint schedule properties, plot F was

seen extended on the western side of A1 line marked in the sketch plan. In fact a strip of land which forms part of F plot lying on the western side of the boundary wall on the west on the same was pointed out by the advocate commissioner at the time of inspection.

7. On the other hand, the contention of the respondent/plaintiff is that at the time when the advocate commissioner inspected the plaint schedule properties, both the parties as well as their respective counsels were present. Commissioner inspected and measured the property as pointed out by both counsels. An experienced surveyor was also appointed by this court to assist the commissioner. The said surveyor was a retired Assistant Director of Survey and Land Records. Advocate commissioner measured the property with the help of FMB from the Village Office and assistance of Village Officials. There is no reason to disbelieve the report and plan submitted by the advocate commissioner. The report submitted by the advocate commissioner as per the guidelines and now the petitioner is raising unnecessary allegations against the commissioner and person, who assisted the commissioner. Since the advocate commissioner reported that area GJFKG in the plan situates in the Government land, the petitioner will not be able to defend his case because the pillars are situated in the above said

area. The only intention of the petitioner is to harass the respondent and to drag the matters.

8. On going through the case records, it would go to show that the main relief sought in the suit is to direct the defendant to remove the pillars in the plaint B schedule property and gate fitted to the pillars. The joint trial was ordered in the above case to try this case along with OS 136/2021. This suit is filed by defendant in OS 374/2021. The main relief sought in OS 136/21 is to restrain the defendant from demolishing the iron gate situated on the western entrance of plaint B schedule property and committing waste and damages therein. The main contention of the defendant in OS 374/21 is that the pillars on either side of the entrance of plaint B schedule property was in existence even at the time of above said partition and long prior to that and the gate on the western side of plaint B schedule property was also in existence even at the time of executing partition deed. From the rival contentions, it can be seen that the existence of pillars and gate are not in dispute.

9. Learned commissioner had reported that the major portion of plaint B schedule property lies in RS No.167/4 and small portion of 0.03 Ares at the western side where the above said gate and pillars situate, shown as GJKFG in the plan lies in RS 167/1 which belongs to government land. Anyhow, now the petitioner's contention is that the survey stone marked by the

commissioner without physically seen the stone. Anyhow, no steps have been taken by the petitioner to examine the commissioner or the surveyor to prove the allegation raised in the petition. On going through the plan produced by the commissioner, it can be seen that property measured and plan prepared by C. Mohanan , who was a retired Assistant Survey Director. On going through the entire records, I am of the view that there is no any ground to set aside the commissioner's report and plan dated 26.09.2023 at this stage. After the production of the evidence at the final stage, if this court feels that the present report and plan are needed to be remitted for the just decision of the case, the same will be consider at that time. The report and plan of the commissioner cannot be set aside on flimsy reason. I have not seen any reason for setting aside the report and plan. So, there is no scope for setting aside the commissioner's report and not even a scope for remittal of the report at this stage.Hence, the application is liable to be dismissed.

In the result,

1. The application is dismissed.
2. No order as to costs.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open court, this the 2nd day of February, 2026).

Sd/-

ADDITIONAL MUNSIFF

Fair/ Spare copy of Order in
in IA 01/2024 in OS No.374/2021,
Dated: 02.02-2026.

