

IN THE COURT OF THE MUNSIF, ETTUMANOOR

Present: Miss. Annu Mary Jose., Munsiff

Thursday, the 20th day of November, 2025
29th day of Karthika 1947

EA. No. 1/2025 in EP. No.13/2024

Petitioner/Decree holder:

Pushpadharan, aged 56 years,
S/o. Damodharan, Nelloor Veettil,
Kanakary P.O., Kanakary Village,
Kanakary Kara, Meenachil Taluk,
Kottayam District.

By Adv. T.K. Sureshkumar.

Respondent/Judgment debtors:

1. Haridas, Mambazhassery Veettil,
Kanakary Kara, Kanakary Village,
Kottayam District.
2. Bijumon, Sivashylam, Kanakary Kara,
Kanakary Village, Kottayam District.
3. Naveenkumar, Ushanivas, Kanakary Kara,
Kanakary Village, Kottayam District.

4. Jacob, Madukkaniyil Veettil,
Kanakkary Kara, Kanakkary Village,
Kottayam District.
5. Kochaniyan, Sarath Bhavan,
Kanakkary Kara, Kanakkary Village,
Kottayam District.
6. Muraleedharan, Vellooparambil Veettil,
Kanakkary Kara, Kanakkary Village,
Kottayam District.
7. Thomas K., Eerachirayil Veettil,
Kanakkary Kara, Kanakkary Village,
Kottayam District.

JD1 to 7 By Adv. E.M. Suresh.

This Petition has come up for hearing on 20.11.2025 and the court on the same day passed the following:-

ORDER

This application is filed by the decree Holder under Order 26 and Section 151 of the Code of Civil Procedure to appoint an Advocate Commissioner and to give police assistance.

2. The averments in the affidavit filed in support of the application in brief are as follows:- The petitioner is the decree holder in the above case. The suit was dismissed and the counter-claim filed by the decree holder was decreed. The decree holder had earlier filed E.P 26/23. 'fc' line which was the boundary between the counter-claim A schedule property and B schedule way was fixed by the Amin and Surveyor in E.P 26/23. Thereafter E.P was closed. When the decree holder attempted to construct wall on 'fc' line, judgment debtors obstructed the decree holder. Hence, it is prayed to appoint an Advocate Commissioner and decree holder may be permitted to construct the wall on 'fc' line under the supervision of an Advocate Commissioner. It is also prayed to provide police assistance, if judgment debtors cause any obstruction.

3. The judgment debtors filed objection contending as follows:- The application is not maintainable. E.P 26/23 was closed as satisfied. The decree holder has no right to construct wall on 'fc' line. There is no relief for recovery of possession and court fee was not paid for the same. AS 99/23 is also pending against the judgment and decree in O.S 24/2017. The

above application is filed only to reduce the width of way which is being used by the judgment debtors.

4. Heard. Perused the records.

5. The counsel for the petitioner/decreed holder submitted that 'fc' line was fixed as the boundary between the counter-claim A schedule property and B schedule way. So the decreed holder has every right to construct boundary wall on the line and the judgment debtors have to be restrained from obstructing the decreed holder. Per contra the learned counsel for the respondents/judgment debtors submitted that there is no prayer for recovery of possession. The court fee was not paid for that relief. Hence, the decreed holder has no right to construct wall on 'fc' line.

6. I have gone through the contentions of the learned counsel for the decreed holder, learned counsel for the judgment debtors and perused the records in the above case. The prayer of the decreed holder is to appoint an Advocate Commissioner and he may be permitted to construct boundary wall on 'fc' line under the supervision of an Advocate Commissioner. At this

juncture it is necessary to consider the decree in O.S 124/2017.

It read as follows:-

1. *The counter claim plaintiff/defendant is granted a decree by declaring the boundary between the counter claim 'A' schedule property and the counter claim 'B' schedule way as 'fc' in accordance with Ext.C2(a) plan.*
2. *Ext C2(a) plan shall form part of the decree.*
3. *The counter claim plaintiff/defendant is granted a decree of permanent prohibitory injunction directing the counter claim defendants/plaintiffs and men under them from trespassing into counter claim 'A' schedule property or from committing any acts of waste therein.*
4. *The counter claim plaintiff/defendant is entitled to get costs of the litigation.*

7. A perusal of records would also show that E.P 26/23 was earlier filed by the decree holder and 'fc' line was fixed by the Amin and the Surveyor. The case of the decree holder is that the judgment debtors obstructed him from constructing wall on 'fc' line. It is to be noted that the decree would clearly

show that 'fc' line in Ext.C2(a) plan is fixed as boundary. So, the decree holder has every right to construct wall on 'fc' line. It is true that there is no prayer for decree of fixation of the boundary. It is significant to note that the prayer of the decree holder is not to recover the portion of property. It is only to construct a permanent boundary wall on 'fc' line. If the decree holder is not permitted to do the same under the supervision of an Advocate Commissioner, then the decree holder will be put to much hardship. The letter and spirit of the decree has to be taken into consideration. Since the decree holder contended that judgment debtors obstructed him from constructing wall, this execution petition is also maintainable.

8. It is also contended by the decree holder that police assistance has to be provided since the judgment debtors had obstructed the decree holder. Considering the above factors this court of the view that police assistance has to be provided to the decree holder.

9. In the result, the application is allowed. The Advocate K.B Kunjumon is appointed as the Advocate Commissioner and batta of Rs.4,000/- shall be given by the Advocate

Commissioner directly. The order shall be communicated to SHO concerned to provide assistance to the decree holder.

(Dictated to the Confidential Assistant, transcribed and typed by her corrected by me and pronounced in open Court on this the 20th day of November, 2025)

**Sd/-
Annu Mary Jose
Munsiff**

APPENDIX: Nil.

**Sd/-
Annu Mary Jose
Munsiff**

Copied by :
Compared by :