

IN THE COURT OF THE MUNSIFF, CHANGANACHERRY

Present :- Smt. Sarica A.R, Munsiff

Monday 4th day of August, 2025
13th Sravana, 1947

I.A. No.6/2025 in O.S. No. 399/2017 &O.S No.229/2017

Review Petitioner/Plaintiff :-

Gopinathan Nair, 80 years, S/o Krishna Pillai,
Ampattupeedikayil House, Malakunnam P.O,
Kurichy Village, Changanacherry Taluk.

By Adv. K Madhavan Pillai

Review respondents/Defendants :-

1. Harikumar, 57 years, S/o Madhavan Nair, Lakshmivilasam House, Malakunnam P.O, Kurichy Village, Changanacherry Taluk.
2. Indira R Nair @ Valsamma, 65 years, W/o Radhakrishnan Nair, Ampattupeedikayil House, Malakunnam P.O, Kurichy Village, Changanacherry Taluk.

D1 By Adv.E.A Sajikumar,

D2 By Adv.K Madhavan Pillai

This petition is coming up for consideration before this Court on 04.08.2025 and the court on the same day passed the following :-

ORDER

Petition filed to review the order dated 09-06-2025.

(2) Petition averments is as follows: IA 6/2025 was filed to review the order dated 09/06/2025 wherein the matter was listed for trial. Advocate Anitha Prasad and Surveyor Pradeep Kumar had identified the properties and produced the commission report before the court on 13/02/2020. However, due to discrepancies in the report and plan, remit back petition was filed and an order was passed, wherein fresh report and plan was produced on 12-1-2022 without curing the discrepancies in the earlier plan. Item No. 2 and item No.3 properties were "A" and "B" schedule properties in the partition deed No.556 of 1984 of Changanacherry SRO were to be identified and located. However even in the remit back report, only the measurements in the resurvey records were taken into consideration and the partition deed was not considered. This report and plan cannot be accepted in evidence. A memo was seen filed by the advocate commissioner stating that there is no change in both the reports. IA 5/2025 was filed before the court to state the importance of this commission report in fair adjudication of matter in dispute which was dismissed by the court, causing

apparent error on the face of record. Despite requests to measure plaint schedule property according to title deeds, the plaint schedule property was once again measured only as per resurvey records and this commission report cannot be accepted but ought to be remitted back to cure the discrepancy. Hence this petition.

2) The objection filed by the respondent is that IA 1/2020 the petition was filed to remit back the commission report after which a fresh commission report and plan was seen filed on 12-01-2022. There is no discrepancy in the commission report and plan. To measure "A" and "B" schedule property as per the partition deed is not possible. There are mistakes in the partition deed and location and identification of the plaint schedule properties have been done based on the physical existence of the properties and the partition deed. Also, measurement of item No.3 property on its western side in the north-south direction is not possible. Thus there is no necessity for review.

3) Points for consideration are as follows:

- 1) Whether the review petition to be allowed ?
- 2) Reliefs and costs ?

4) Heard both sides.

5) **Points:-** Primarily, it is seen that as per the order in IA 3/2022, the commission report and plan was remitted back. Thereafter a memo was filed by the commissioner stating that she had visited the property 2nd time and in this memo, that on 22-05-2025 she had visited the plaint schedule property along with the surveyor and that there is no change in the new report compared to the old report was submitted by her. She has stated that upon visiting this property again there is going to be no difference between the plan that was to be remitted back and the fresh plan produced and therefore she has submitted to remove her as the Advocate commissioner.

6) Now the objection filed by the respondent to this IA is that there are mistakes in the partition deed because of which measurement of the properties as per the title deed is not possible. It is also averred that it was not possible to measure item No.3 on the western side in the north-south direction. Thus, the contention raised by the respondents was that it was not possible for the commissioner to measure the same. This matter is pending since 2017. The suit is for mandatory injunction and permanent prohibitory injunction with the clear

direction to comply with the partition deed for measuring the property.

7) From the deposition of the commissioner in IA 3/2022, it can be understood that though the extent of item No.2 property is 6 Ares in the Partition Deed, the property is stated to have an extent of 6.20 Ares in the report and plan submitted by the commissioner. PW1 had deposed that “0.20 Are വിസ്തീർണം പ്രത്യേകം തിട്ടപ്പെടുത്തിയിട്ടില്ല”. She was confronted with the question as to was she not supposed to measure the property as per the Partition Deed and the reply was that “ഭാഗഉടമ്പടി പ്രകാരം സ്ഥലം തിട്ടപ്പെടുത്തി. ആധാരപ്രകാരം 6.0 Are ആണ് ഉള്ളത്. ഭാഗഉടമ്പടി പ്രകാരം സ്ഥലം തിട്ടപ്പെടുത്താൻ ആവശ്യപ്പെട്ടിരുന്നു.” However, she deposed that the Partition Deed had shown item No.2 to be 6.20 Ares whereas the tax receipt and resurvey records shows an extent of 6.35 Ares. PW1 also stated that there exists a pathway towards the south of the total property. Item No.3 property which is “A” schedule property in the Partition Deed was stated to have an extent of 4 Ares and stated that “പടിഞ്ഞാറു വശം തെക്ക് വടക്ക് തീർത്ത് സ്ഥലം കണ്ടില്ല” and added that in between the 10 cents and the road between the west lies the property of a third person. Though she stated that no difference was identified from the measurements in Exts.C1 and C2, she clarified that she had measured the property

according to revenue records, title deeds and as per the lie of the property. She had failed to state with certainty that the Partition Deed was also examined before measuring.

8) The property of the 3rd person as mentioned by PW1 in her deposition, between the plaint schedule properties, was also not measured. In the later part of deposition she had mentioned that towards the southern side of the “TS” wall is a strip of land. When asked, whether the property missing from “A” schedule was added to the “B” schedule, she stated that she cannot give a clear answer regarding the same. Thus, there is no clarity as to the missing part.

9) Though the commissioner had deposed in certain places that she had measured the property in accordance with the partition deed, the deposition of PW2 has been considered and as per the deposition of PW2, item Nos.2 and 3 together form item No.1 and the extent of item No.1 has 10.04 Ares. Item No.3 is stated to have an extent of 3.84 Ares and item No.2, 6.20 Ares and it was clearly stated that “കൈവശവും റീസർവ്വെ പ്രകാരവും അളന്നപ്പോൾ 6.20 ആർ വസ്തു കണ്ടു. കൈവശ പ്രകാരമാണ് അളന്നത് ” when there was a clear direction to measure the property as per the partition deed. PW2 was also asked “പടിഞ്ഞാറു ഭാഗം തെക്ക് വടക്ക് തീർത്ത് എന്നു പറഞ്ഞാൽ മൊത്തം വസ്തുവിന്റെ വഴി മുതൽ തെക്ക് വടക്ക് തീർത്ത്

അളക്കണമോ ? and PW2 replied that വേണം.” However, the property was not measured as such.

10) It is also pertinent to note that it is deposed by PW2 that “കിഴക്കു ഭാഗം തെക്കു വടക്കു തീർത്ത് 6 ആർ അളന്നാൽ വടക്കുഭാഗം വസ്തുവിലേക്ക് വഴി കിട്ടുമോ ?” and PW2 deposed in the affirmative “കിട്ടും”. PW2 stated that the property was measured according to the resurvey records and possession. PW2 also stated that “പ്രമാണത്തിൽ പറയുന്ന 6 ആർ വസ്തു (ബി പട്ടിക) തിട്ടപ്പെടുത്തിയോ ? ഇല്ല. കൈവശമുള്ള 6.20 ആർ വസ്തു അളന്നു.” He appears to be not aware of the fact that the report was remitted back for measuring according to the partition deed and added that “6 Ares വിസ്തീർണ്ണം അളന്നുകാണിക്കണമെന്നു പറഞ്ഞില്ല. പറഞ്ഞാൽ കാണിക്കുമായിരുന്നു”.

11) 32 Sq.m. property missing from “A” schedule property in the Partition Deed is denoted as “UVLKU” under resurvey 408/4. However, it was also stated that the 25 cent property is seen in 408/4 having an extent of 6.20 Ares, but that it cannot be denoted as to which side there is an enlargement. PW2 also deposed that to the south of “A” schedule property in the Partition Deed, is the property of a 3rd person. He also stated that it is not possible to state as to where the missing part of the “A” schedule property is included and to the question as to whether the reduction in the extent of the “A” schedule property in the Partition

Deed has added up to the extent of "B" schedule property, the surveyor replied that he was not aware of the same.

12) On perusal of the deposition of PW1 and PW2 and on perusal of the direction to remit back the commission report for measuring the property as per the partition deed, it is understood that the property is not measured as per the Partition Deed. The discrepancies in the former report is not rectified in the latter. There is no clarity as to the reduction or enlargement in the extends of the schedule "A" and schedule "B". Also it was stated that the property of a 3rd person lies in between. However not much clarity is given on this aspect. This suit pending since 2017. The suit is for mandatory and permanent prohibitory injunction and there was a clear direction to comply with the Partition Deed for measuring the property. It is true that filing applications one after another for the purpose of remitting advocate commissioner's report and plan is to be discouraged but in the situation, for proper adjudication of the matter in dispute, a clear report without any discrepancy is essential.

13) The submission by the commissioner is that there is no change in the reports and that the objection by the respondent is about the impossibility to measure as per the title deeds.

In the result, it is not in the interests of justice to proceed with trial based on a commission report in which discrepancies is not cured. Based on the memo filed by Adv. Anitha Prasad as to no apparent change in her second visit and report, a new advocate commissioner and surveyor is to be appointed to cure the discrepancies in the commission report. Thus, order dated 9/6/2025 to list the case for trial is reviewed and the matter is posted for pre-trial steps. Suit pending since 2017 and the petitioner is directed to proceed with pretrial steps diligently and expeditiously. Based on the facts and circumstances of the case it is evident that a fresh commissioner is to be appointed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced by me in open court on this the 4th day of August, 2025.)

Sd/-

Sarica A.R
MUNSIFF

APPENDIX -Nil

Id/-

MUNSIFF

// True Copy//

Copied by:
Compared by:

Sd/-

SARICA A.R

MUNSIFF