

IN THE COURT OF THE MUNSIFF, CHANGANACHERRY

Present :- Smt. Sarica A R , Munsiff

Wednesday the 18th day of February 2026
29th Phalgunam 1947

EA 7/2025 in EP NO. 65/2023 IN FDA 1223/2017

Plaintiff/ Respondent :-

Sakeer Salim @ Raji, aged 42 years, D/o Salim Rawther,
Parachira House, Veroor Muri, Veroor Post,
Chethipuzha Village, Changanacherry

By Adv. Jani P. Bava

Defendants/ Petitioners:

1. Sajith Salim, aged 46 years, S/o Salim Rawther,
Parachira House, Veroor Muri, Veroor Post,
Chethipuzha Village, Changanacherry Taluk.
2. Fathima Abdul Lathif, aged 76 years, W/o Abdul Lathif,
Parachira House, Veroor Muri, Veroor post,
Chethipuzha Village, Chanaganacherry Taluk

**D1 and D2 by Adv. Jyothilakshmi &
Adv. K Madhavan Pillai**

This petition having been finally heard on 11.02.2026 and the
court on the 18.02.2023 Passed the following:-

ORDER

Petition filed to remit back the commission report and plan.

(2) **Averments in the petition are as follows:-** The
petitioners who are also the Judgment Debtors submitted that

the commission report Exhibit C1, C1(a) is obtained by fraud and collusion between the Decree Holder, the commissioner and surveyor. The plaint schedule property is having an extent of 13 cents in the original sale deed and as per the plan submitted it is having an extent of only 12.61 cents. Hence the Decree Holder has right over only 4.2 cents of property and house in it. There is only one access from PWD road to the plaint schedule property and the house on the eastern side of the property. The plan shows the lie of the property as "ABCDEFGJKA". The house is situated on the eastern side, except a small portion. The western side of the western portion of the whole property lies as a tail portion and the building is situate north-south on the eastern side. The report of the commissioner shows that ingress and egress to the western portion is impossible through southern and northern sides due to the position of the building. The report has been prepared on the demand of the Decree Holder and 1/3 portion is marked as "IDEFGHI" on the eastern side, which if assigned to the Decree Holder will be denying the Judgment Debtor's access to the remaining 2/3 of their property. The house situated therein is more than 40 years old and dilapidated and the value ascertained by the expert is too high.

It is in a stage of collapsing which will cause heavy damage to the life and property of the Judgment Debtors residing therein. Also, the surveyor has not surveyed the plaint schedule property as per the Survey and Boundaries Act. No proper notice was served on the first Judgment Debtor. The commission report is without any bona fides or metes and bounds. The front portion which includes major portion of the house and having access to PWD road is unlawfully assigned to the Decree Holder and the western portion is assigned to the Judgment Debtors. The commission report was filed on 01.04.2019 with objections on 21.05.2019, 25.07.2019, 26.08.2019 and 04.09.2019 when the Judgment Debtors were abroad. Their counsel had not informed them regarding the report and plan. Judgment debtors are ready to vacate the house in the property if some time may be granted. Judgment Debtors have no objection in demolishing the old building. The property can be surveyed on metes and bounds dividing it into two portions on the northern and southern sides with both portions having access from PWD road. Hence the incomplete and unlawful commission report and plan produced before the Court may not be taken in evidence as it affects the balance of convenience of Judgment Debtor and a

final decree cannot be passed upon such report and plan. Hence this petition for the commission report and plan produced before court to be returned to commissioner along with an order to produce fresh plan and report as above mentioned which does not affect the rights of any party assigning 2/3rd portion Judgment Debtors and 1/3rd portion to Decree Holder after demolishing the building.

(3) The Decree Holder filed objection submitting that this petition is not maintainable and that the suit was decreed on the basis of the compromise between the parties on 20.09.2016. The Judgment Debtors were represented in all stages including final decree application and execution and that they had no knowledge regarding the proceedings of the case is false. The survey commission inspection was conducted on 01.04.2019 and the report and plan were produced on 21.11.2019 on the basis of which final decree was passed. No objection has been filed to this commission report so far, the same of which is available from e-court status. This highly belated petition is only to delay the execution and hence should be dismissed.

(4) The only point for consideration is:

- 1) Whether the remit back petition should be allowed ?
- 2) Reliefs and cost ?

(5) To prove the case of the petitioner, PW1 was examined and Exhibits C1 and C1(a) and C2 were marked.

(6) Heard both sides.

(7) **Points 1 and 2:-** Before perusing into the commission report and plan, this Court peruses into the final decree, wherein,

- 1) 'IDEFGHI plot' in Ext.C1(a) plan is allotted as the share of the plaintiff/petitioner.
- 2) The plaintiff to whom share is allotted shall produce non-judicial stamp papers within reasonable time to engross the final decree.
- 3) Ext.C1(a) plan shall be appended to the decree.
- 4) No costs.

(8) PW1, the advocate commissioner deposed that the property which is rectangular in shape is split into three parts. She deposed that the southern boundary wall and the wall of the house lies conjointly on the southern side with no gap, whereas on the northern side the width is very less with only 75 centimeters. She deposed that there is very less space for entry to the back side. She has clarified that “പട്ടിക വസ്തുവിന്റെ പടിഞ്ഞാറുവശം പ്രവേശിക്കാൻ ബുദ്ധിമുട്ടാണ്.” Now what is important to note as per pleadings of Judgment Debtors is that the Judgment Debtor has clearly quoted in the 10th paragraph of his petition that the Judgment Debtors are ready to vacate the property and has no objection in demolishing the old building after which the property can be split into three as per the final decree. Here PW1 has also submitted that the property can be partitioned only on demolishing the house. She has added that apart from the PWD road, there is no other means for access to the property on the western side as this property is surrounded by other property on all sides. She has deposed “പുറകിലുള്ള വസ്തുവിൽ കയറാൻ ആണെങ്കിൽ വീട് പൊളിക്കാതെ കയറാൻ കഴിയില്ല. നടന്നു കയറാൻ പറ്റും പക്ഷേ വാഹനഗതാഗതം പറ്റില്ല. മൊത്തത്തിൽ വിറ്റ് വീതം വെക്കുന്നതാണ് കുറച്ചുകൂടെ

നല്ലത് എന്ന് ഞാൻ പറഞ്ഞിരുന്നു. അല്ലാതെ പാർട്ടീഷൻ ചെയ്യാൻ ബുദ്ധിമുട്ടാണ്. പുറകിൽ ഉള്ളവർക്ക് വഴി കിട്ടില്ല.”

(9) Now the Judgment Debtor has himself also submitted in his pleadings the residential building is on the verge of collapsing which will cause heavy damage to life and property. He has also stated to the contrary that he is residing in this residential house, despite his submission that the house may collapse. That the Judgment Debtors were not informed by their lawyers is not an excuse considering the online mediums available to know the status of the case. Mere averments of fraud and collusion is not sufficient ground to set aside a commission report or plan.

(10) Now at the time of hearing, the Decree Holder and the Judgment Debtors, had both consented that the property can be demolished. As per the version of the advocate commissioner, it is because of the residential building in the plaint schedule property that partition has become a hindrance. As both sides submit to the dilapidated condition of the building therein, the ideal solution would be to demolish the building and partition the plaint schedule property into three equal portions as per the report and plan before this Court. There is no discrepancy in the report and plan for which it is to be remitted back. The

expense of the demolition is to be shared by both sides following which the steps can be taken for partition into 3 equal portions as per the report and plan submitted.

In the result, the petition is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced by me in open court on this the 18th day of February, 2026.)

Sd/-
SARICA A.R
MUNSIFF

APPENDIX:-

Documents marked for the Plaintiff/ Respondent : Nil

Documents marked for the Defendants/ Petitioners : Nil

Court Exhibits :

C1	09.03.2018	Commission report filed by Adv. Anitha Prasad
C1(a)	09.03.2018	Survey Plan prepared by Rajendran Nair
C2	02.03.2018	Report and sketch filed by expert commissioner and Asst. Engineer PWD (Building section) Changanacherry

Witness examined for the Plaintiff/ Respondent :

PW1	10.02.2026	Adv. Anitha Prasad
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Witness examined for the Defendants/ Petitioners : Nil

Id/-
MUNSIFF