

IN THE COURT OF THE CIVIL JUDGE OF MANJERI.
Present:- Sri.Arun Bechu.N.N, Civil Judge (Senior Division)

Tuesday, the 9th day of April, 2024

EXECUTION APPLICATION Nos.15/2024, 16/2024, 17/2024

in

EXECUTION APPLICATION No. 9/2024

in

EXECUTION PETITION No.39/2023

in

INTERLOCUTORY APPLICATION No.941/2016

in OS No.105/2006

Execution Application No.15/2024:

Between:-

P.T.Kunhalikutty, 70 years, S/o Kunhahammed,
Parayan Thodika House, Nilambur amsom desom and
PO, Nilambur Taluk, Malappuram District.

Petitioner
JD2

And:-

1. Parayan Thodika Kunhayisha, 75 years,
D/o Kunhahamed, Kappil House,
Vazhikkadav amsom desom, PO Marutha,
Nilambur Taluk, Malappuram District.
2. Parayan Thodika Nafeesa, W/o Kunhi Moidu,
Kappil House, Nilambur amsom desom,
Malappuram District.
3. Parayathodika Sainaba, D/o Unnimothi,
Parayan thodika House, Vazhikkadavu amsom
desom, Marutha Post, Malappuram District.
4. Parayan thodika Kunhimammed,

Respondents/
DH/JD R1, 3 to 27

- S/o Unnimothi, Parayanthodi House,
Vazhikkadavu amsom desom, Marutha Post,
Malappuram District.
5. Parayan thodika Hussain, S/o Unnimothi,
Parayathodika House, Vazhikkadavu amsom
desom, Marutha Post, Malappuram District.
 6. Pathummakutty, W/o Aboobacker,
Pilathodan House, Mampad amsom desom,
Malappuram District.
 7. Parayan thodika Ayisha, W/o Mohammedali
Moothedath Parakkal House, Manimooli
Post, Malappuram District.
 8. Parayan thodika Amina, W/o Rouf,
Pilathodan House, Mambad amsom desom,
Malappuram District.
 9. Parayanthodika Kadeesa, D/o Kunhahamed,
Parayanthodika House, Marutha, PO,
Vazhikkadavu amsom desom, Malappuram
District.
 10. Fathima, W/o Parayanthodika Hamza,
Kanhirathingal, Marutha amsom desom,
Malappuram District.
 11. Suneer, S/o Parayanthodika Hamza,
Kanhirathingal, Marutha amsom desom,
Malappuram District.
 12. Abid, S/o Parayanthodika Hamza, Kanhirathingal,
Marutha amsom desom, Malappuram District.
 13. Jafer, S/o Parayanthodika Hamza, Kanhirathingal
Marutha amsom desom, Malappuram District.
 14. Shameer, S/o Parayanthodika Hamza,
Kanhirathingal, Marutha amsom desom,
Malappuram District.
 15. Nishad, S/o Parayanthodika Hamza,
Kanhirathingal, Marutha amsom desom,
Malappuram District.
 16. K.V.Thanooja, W/o Kakkodan Musthafa,
Kakkodan House, Sulthan Batheri, Wayanad
District.

Respondents/
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17. K.P Shahina, W/o Eranjikkal Haneefa,
Shahini Manzil, Nilambur amsom desom,
Malappuram District.
18. K.V.Muhammed Sajeer, S/o K.V.Mohamedali,
Shahina Manzil, Nilambur amsom desom,
Malappuram District.
19. Anwar Sadath, S/o K.V.Mohamedali, Shahina
Manzil, Nilambur amsom desom, Malappuram
District.
20. Sainaba, D/o Pilakkalkandi Ummer,
Parayanthodi House, Padikkunnu, Janathappadi,
Nilambur Post, Nilambur Taluk, Malappuram
District.
21. Muhammadali, S/o Pilakkalkandi Ummer,
Pilakkalkandi House, Kalarikkunnu, Manalody,
Nilambur Taluk, Malappuram District.
22. Isumunneesa, D/o Abdurahiman,
Musliyarakath House, Charamkulam,
Chandakkunnu Post, Nilambur Taluk,
Malappuram District.
23. Sakkeer Hussain, S/o Abdurahiman,
Thahir House, Poochakkuth, Jilla Krishi Thottam,
Chungathara Post, Nilambur Taluk, Malappuram
District.
24. Rahmath, W/o Late Parayanthodika
Abdul Azeez @ Azeez, Parayanthodika House,
Kalathinkadavu, Nilambur amsom desom,
Nilambur Post, Malappuram District.
25. Ahammedkutty, S/o Late Parayanthodika
Abdul Azeez @ Azeez, Parayanthodika House,
Kalathinkadavu, Nilambur amsom desom,
Nilambur Post, Malappuram District.
26. Asitha, D/o Late Parayanthodika
Abdul Azeez @ Azeez, Parayanthodika House,
Kalathinkadavu, Nilambur amsom desom,
Nilambur Post, Malappuram District.
27. Anula, W/o Late Parayanthodika
Abdul Azeez @ Azeez, Parayanthodika House,

Respondents/
DH/JD R1, 3 to 27

Kalathinkadavu, Nilambur amsom desom,
Nilambur Post, Malappuram District.

Execution Application No.16/2024:

Between:-

P.T.Kunhalikutty, 70 years, S/o Kunhahammed,
Parayan Thodika House, Nilambur amsom desom and
PO, Nilambur Taluk, Malappuram District.

Petitioner
JD2

And:-

1. Parayan Thodika Kunhayisha, 75 years,
D/o Kunhahamed, Kappil House,
Vazhikkadav amsom desom, PO Marutha,
Nilambur Taluk, Malappuram District.
2. Parayan Thodika Nafeesa, W/o Kunhi Moidu,
Kappil House, Nilambur amsom desom,
Malappuram District.
3. Parayan Thodika Sainaba, D/o Unnimothi,
Parayathodika House, Vazhikkadavu amsom
desom, Marutha Post, Malappuram District.
4. Parayan Thodika Kunhimammed,
S/o Unnimothi, Parayathodika House,
Vazhikkadavu amsom desom, Marutha Post,
Malappuram District.
5. Parayan Thodika Hussain, S/o Unnimothi,
Parayan Thodika House, Vazhikkadavu amsom
desom, Marutha Post, Malappuram District.
6. Pathummakutty, W/o Aboobacker,
Pilathodan House, Mampad amsom desom,
Malappuram District.
7. Parayan Thodika Ayisha, W/o Mohammedali
Moothedath Parakkal House, Manimooli Post,
Malappuram District.
8. Parayan Thodika Amina, W/o Rouf,
Pilathodan House, Mambad amsom desom,

Respondents/
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Malappuram District.

9. Parayan Thodika Kadeesa, D/o Kunhahamed, Parayan thodika House, Marutha,PO, Vazhikkadavu amsom desom, Malappuram District.
10. Fathima, W/o Parayan Thodika Hamza, Kanhirathingal, Marutha amsom desom, Malappuram District.
11. Suneer, S/o Parayan Thodika Hamza, Kanhirathingal, Marutha amsom desom, Malappuram District.
12. Abid, S/o Parayan Thodika Hamza, Kanhirathingal, Marutha amsom desom, Malappuram District.
13. Jafer, S/o Parayan Thodika Hamza, Kanhirathingal Marutha amsom desom, Malappuram District.
14. Shameer, S/o Parayanthodika Hamza, Kanhirathingal Marutha amsom desom, Malappuram District.
15. Nishad, S/o Parayan Thodika Hamza, Kanhirathingal, Marutha amsom desom, Malappuram District.
16. K.V.Thanooja, W/o Kakkodan Musthafa, Kakkodan House, Sulthan Batheri, Wayanad District.
17. K.P Shahina, W/o Eranjikkal Haneefa, Shahini Manzil, Nilambur amsom desom, Malappuram District.
18. K.V.Muhammed Sajeer, S/o K.V.Mohamedali, Shahina Manzil, Nilambur amsom desom, Malappuram District.
19. Anwar Sadath, S/o K.V.Mohamedali, Shahina Manzil, Nilambur amsom desom, Malappuram District.
20. Sainaba, D/o Pilakkalkandi Ummer, Parayan Thodika House, Padikkunnu, Janathappadi, Nilambur Post, Nilambur Taluk,

Respondents/
DH/JD R1, 3 to 27

Malappuram District.

21. Muhammadali, S/o Pilakkalkandi Ummer, Pilakkalkandi House, Kalarikkunnu, Manalody, Nilambur Taluk, Malappuram District.
22. Isumunneesa, D/o Abdurahiman, Musliyarakath House, Charamkulam, Chandakkunnu Post, Nilambur Taluk, Malappuram District.
23. Sakkeer Hussain, S/o Abdurahiman, Thahir House, Poochakkuth, Jilla Krishi Thottam, Chungathara Post, Nilambur Taluk, Malappuram District.
24. Rahmath, W/o Late Parayanthodika Abdul Azeez @ Azeez, Parayanthodika House, Kalathinkadavu, Nilambur amsom desom, Nilambur Post, Malappuram District.
25. Ahammedkutty, S/o Late Parayanthodika Abdul Azeez @ Azeez, Parayanthodika House, Kalathinkadavu, Nilambur amsom desom, Nilambur Post, Malappuram District.
26. Asitha, D/o Late Parayanthodika Abdul Azeez @ Azeez, Parayanthodi House, Kalathinkadavu, Nilambur amsom desom, Nilambur Post, Malappuram District.
27. Anula, W/o Late Parayanthodika Abdul Azeez @ Azeez, Parayanthodika House, Kalathinkadavu, Nilambur amsom desom, Nilambur Post, Malappuram District.

Respondents/
DH/JD R1, 3 to 27

Execution Application No.17/2024:

Between:-

P.T.Kunhalikutty, 70 years, S/o Kunhahammed, Parayan Thodika House, Nilambur amsom desom and PO, Nilambur Taluk, Malappuram District.

Petitioner
JD2

And:-

1. Parayan Thodika Kunhayisha, 75 years,
D/o Kunhahamed, Kappil House,
Vazhikkadav amsom desom, PO Marutha,
Nilambur Taluk, Malappuram District.
2. Parayan Thodika Nafeesa, W/o Kunhi Moidu,
Kappil House, Nilambur amsom desom,
Malappuram District.
3. Parayathodika Sainaba, D/o Unnimothi,
Parayan thodika House, Vazhikkadavu amsom
desom, Marutha Post, Malappuram District.
4. Parayan thodika Kunhimammed, S/o
Unnimothi, Parayanthodi House, Vazhikkadavu
amsom desom, Marutha Post, Malappuram
District.
5. Parayan Thodika Hussain, S/o Unnimothi,
Parayathodika House, Vazhikkadavu amsom
desom, Marutha Post, Malappuram District.
6. Pathummakutty, W/o Aboobacker,
Pilathodan House, Mampad amsom desom,
Malappuram District.
7. Parayan Thodika Ayisha, W/o Mohammedali
Moothedath Parakkal House, Manimooli Post,
Malappuram District.
8. Parayan thodika Amina, W/o Rouf,
Pilathodan House, Mambad amsom desom,
Malappuram District.
9. Parayanthodika Kadeesa, D/o Kunhahamed,
Parayanthodika House, Marutha, PO,
Vazhikkadavu amsom desom, Malappuram
District.
10. Fathima, W/o Parayanthodika Hamza,
Kanhirathingal, Marutha amsom desom,
Malappuram District.
11. Suneer, S/o Parayanthodika Hamza,
Kanhirathingal, Marutha amsom desom,
Malappuram District.

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13. Jafer, S/o Parayanthodika Hamza, Kanhirathingal Marutha amsom desom, Malappuram District.
14. Shameer, S/o Parayanthodika Hamza, Kanhirathingal, Marutha amsom desom, Malappuram District.
15. Nishad, S/o Parayanthodika Hamza, Kanhirathingal, Marutha amsom desom, Malappuram District.
16. K.V. Thanooja, W/o Kakkodan Musthafa, Kakkodan House, Sulthan Batheri, Wayanad District.
17. K.P Shahina, W/o Eranjikkal Haneefa, Shahini Manzil, Nilambur amsom desom, Malappuram District.
18. K.V.Muhammed Sajeer, S/o K.V.Mohamedali, Shahina Manzil, Nilambur amsom desom, Malappuram District.
19. Anwar Sadath, S/o K.V.Mohamedali, Shahina Manzil, Nilambur amsom desom, Malappuram District.
20. Sainaba, D/o Pilakkalkandi Ummer, Parayanthodika House, Padikkunnu, Janathappadi, Nilambur Post, Nilambur Taluk, Malappuram District.
21. Muhammadali, S/o Pilakkalkandi Ummer, Pilakkalkandi House, Kalarikkunnu, Manalody, Nilambur Taluk, Malappuram District.
22. Isumunneesa, D/o Abdurahiman, Musliyarakath House, Charamkulam, Chandakkunnu Post, Nilambur Taluk, Malappuram District.
23. Sakkeer Hussain, S/o Abdurahiman, Thahir House, Poochakkuth, Jilla Krishi Thottam, Chungathara Post, Nilambur Taluk, Malappuram District.
24. Rahmath, W/o Late Parayanthodika

Respondents/
DH/JD R1, 3 to 27

- Abdul Azeez @ Azeez, Parayanthodika House,
Kalathinkadavu, Nilambur amsom desom,
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Abdul Azeez @ Azeez, Parayanthodika House,
Kalathinkadavu, Nilambur amsom desom,
Nilambur Post, Malappuram District.
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Abdul Azeez @ Azeez, Parayanthodika House,
Kalathinkadavu, Nilambur amsom desom,
Nilambur Post, Malappuram District.
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Abdul Azeez @ Azeez, Parayanthodika House,
Kalathinkadavu, Nilambur amsom desom,
Nilambur Post, Malappuram District.

Respondents/
DH/JD R1, 3 to 27

This petition coming on this day for hearing before me in the presence of Sri.P.P.Muhammed Noufal, Advocate for the petitioner in three EA's, and of Sri.Abdussalam Kolakkanni Advocate for R1 in three EA's, R2 to R27 are being not entered in appearance in all EA's and the court passed the following:-

COMMON ORDER

The above mentioned petitions are filed by the second judgment debtor. The contentions are to the effect that EA 9/2024 was filed by him under S.47 of the Code of Civil Procedure to adjudicate the claim over the property scheduled in the petition. The same exclusively belongs to the petitioner. The petitioner's property is not part of the plaint schedule property. Mistakenly, the Advocate Commissioner allotted the said property to the plaintiff. Earlier, another commission report was filed in the final decree proceedings and in the said report, the petitioner's property was not allotted to the plaintiff. Both the commission reports are filed for the purpose of EA 9/2024. The petitions are

now filed to reopen the evidence, to receive witness list and to examine Advocate Commissioner. In the witness list, the Advocate Commissioner and Surveyor who prepared the report based on which the decree was passed are sought to be examined. The Advocate Commissioner who filed the report relied on by the petitioner is also cited.

2. The decree holder has filed objection to all petitions opposing the applications.

3. Heard both sides.

4. The above mentioned Execution Petition was filed by the decree holder for obtaining delivery of plots allotted as per the final decree passed in the above mentioned suit. The petitioner herein, who is a judgment debtor, had participated in the final decree proceedings. He then filed EA 9/2024 under S.47 of the Code of Civil Procedure claiming title over portions of property allotted to the respondent in the present petition and seeks to establish that the said portions were not the subject matter of the suit. On this premise, he wants to establish that the decree is a nullity. To that end, he wants to examine the Advocate Commissioner and Surveyor who prepared the report and plan based on which the final decree was passed. Petitioner relies on another commission report on record in the final decree proceedings but it was not relied on for passing the final decree. The commissioner who prepared that report is also sought to be examined.

5. In E.A. 9/2024, documentary evidence was adduced by the petitioner and the petition was posted for orders to 20.3.2024 after hearing both sides. Then, on 16.3.2024, the present applications were filed.

6. It is true that to discredit a commission report Advocate Commissioner and Surveyor who prepared the same may have to be examined. But, the Commissioner who prepared the report was already examined by the petitioner at the final decree stage. Even then, the Court on the original side relied on the report and passed the final decree. The final decree was upheld in first appeal and

in second appeal. Even the Special Leave Petition filed against the decree before the Honourable Supreme Court of India was dismissed. So, the petitioner who was all through out a party to the final decree proceedings cannot assail the commission report based on which the decree was passed even if the petitioner's claim is that it relates to a property not included in the plaint schedule. Elaborate reasons for the same are given in the order passed today in E.A. 9/2024 and it is not necessary to reiterate the same. In fact, the said reasons were already mentioned while dismissing EA 2/2023 filed by the petitioner herein under Order 21, Rule 97 of the Code of Civil Procedure. No purpose will be served by examining the Advocate Commissioner and Surveyor as contended. Accordingly, all three petitions are only to be dismissed.

7. Based on the finding on above, all three petitions are hereby dismissed with costs.

(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open court, this, the 9th day of April, 2024.)

Sd/-

Civil Judge
(senior Division)

Typed by –Shaini.T.T

Compared by:

1. Vinodan
2. Shaini TT

.....
Copy of Common Order in EA 15/24, 16/24
and 17/24 in EA.9/2024
in EP. No.39/2023, in IA.941/2016 in
OS No.105/2006
Dated: 09-04-2024
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