

**IN THE COURT OF THE MUNSIF-MAGISTRATE OF PONNANI**  
**Present:- Smt. Sowmya T.M., Munsiff- Magistrate, Ponnani.**

**Wednesday, the 12<sup>th</sup> day of November 2025**  
**the 21<sup>st</sup> day of Karthika, 1947**

**INTERLOCUTORY APPLICATION No.10/2025**  
**IN INTERLOCUTORY APPLICATION No.4/2024**  
**IN ORIGINAL SUIT No:127/2020**

**Between:-**

Kunnathu Muhammad Kutti, 64 years, S/o.Mammy,  
Kunnath House, Edappal P.O., Vattamkulam : Petitioner/  
Village,Udinikkara Desom, Ponnani Taluk-679 576 defendant

**And:-**

Srinivasan, 55 years, S/o.Kuttikrishnan, Edappal : Respondent/  
P.O., Vattamkulam Village, Udinikkara Desom, Plaintiff  
Ponnani Taluk, Malappuram -679 576

This petition coming on this day for final hearing before me in the presence of Aboobacker Sidhique.K., Advocate for the Petitioner/defendant and Sri.Basheer.P.P Majidha.A.M. and I.V Ratheesh, Advocates for the respondent/plaintiff and this Court passed the following:-

**ORDER**

This application, I.A. No. 10 of 2025, has been filed by the Defendant under Order IX, Rule 9 and Section 151 of the Code of Civil Procedure, seeking to restore I.A. No. 4 of 2024, which was dismissed for default on 21.10.2024.

Sd/-  
**Munsiff-Magistrate**

2. The Petitioner submitted that I.A. No. 4 of 2024 was dismissed for default because he had entrusted the file to a counsel who subsequently failed to represent the matter when it was called on 21.10.2024. The Petitioner asserts that he has serious contentions regarding the property dispute and that he was set *ex-parte* without any willful negligence on his part. He argues that restoring the application is crucial to prevent serious prejudice. The underlying I.A. No. 4 of 2024 was filed by the petitioner to set aside the Advocate Commissioner's report, and its disposal is necessary for the petitioner to effectively contest the main suit.

3. The Respondent opposed the application, contending that the Petitioner's intent is solely to cause unnecessary delay, highlighting the history of continuous non-representation by the Petitioner.

4. The Court has perused the records and notes the history of the Petitioner's non-appearance in the main suit proceedings, including defaults on 27.05.2025, 04.08.2025, and 15.09.2025. This pattern suggests a degree of laches and negligence on the side of the Petitioner. However, the Court is guided by the fundamental principle that litigation must be decided on its merits. The main suit is one for declaration and consequential injunction,

Sd/-  
**Munsiff-Magistrate**

where the Respondent has claimed a right of easement by necessity over the property belonging to the Petitioner. The Petitioner has taken a strong counter-contention, asserting that the disputed area is not identifiable and has never been used as a way. The I.A. No. 4 of 2024, which the Petitioner seeks to restore, relates directly to the challenge of the commission report, which forms the physical basis of the suit. To allow the suit to proceed without hearing the Petitioner's objections regarding the Advocate Commissioner's findings would be highly detrimental to the Petitioner's defence and would likely lead to a flawed final judgment. Therefore, in the interest of justice and for a meritorious disposal of the entire suit, the application must be restored. However, the delay and inconvenience caused to the Respondent must be adequately compensated.

**In the result, I.A. No. 10 of 2025 is allowed on terms.**

1.I.A. No. 10 of 2025 is hereby allowed. The order dismissing I.A. No. 4 of 2024 dated 21.10.2024 stands set aside, and I.A. No. 4 of 2024 is restored to the file of this Court.

Sd/-  
**Munsiff-Magistrate**

2.This restoration is subject to the Petitioner paying a cost of Rupees 5,000/- (Rupees Five Thousand Only) to the Respondent (Plaintiff) within one week from the date of this Order.

3.The Petitioner shall ensure that I.A. No. 4 of 2024 is prosecuted diligently.

(Dictated to the Confidential Assistant transcribed by her, corrected by me, and pronounced in open court this the 12<sup>th</sup> day of November , 2025).

**Appendix: Nil**

Sd/-  
**Munsiff-Magistrate**

Sd/-  
**Munsiff-Magistrate**

*/True copy//*

**Munsiff-Magistrate**

Typed by:Premalatha.J  
Compared by: Joshi.  
Premalatha

Sd/-  
**Munsiff-Magistrate**

Copy of order/Fair order  
in IA.10/2025 in IA.4/2024  
in OS:127/2020

Dated 12/11/2025

Sd/-  
**Munsiff-Magistrate**