

IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind S.J, Munsiff, Thiruvalla.

Friday the 12th day of September 2025/ 21st day of Badhram 1947 SE.**IA 01/2025 in OS 244/2025**

BETWEEN

1. Rev. Fr. Varghese John, aged 58, S/o late K.J.John, Kadakkethu Veedu, Mundiappally P.O, Kaviyoor Village, Thiruvalla Taluk. (Vicar, Chengaroor St. George Orthodox Church)
 2. Rev. Fr. Nithin Joseph Cherian, aged 30, S/o C.M Cherian, Chakkalayil Veedu, Kaviyoor P.O & Village. (Vicar, Chengaroor St. George Orthodox Church)
 3. K.V.Varghese, aged 66, S/o Late Varghese Varghese, Kombadavathu Malayil Veedu, Chengaroor P.O, Kalloppa Village, Puthussery Muri, Mallappally Taluk.
 4. Secretary, St. George Orthodox Church, Philip Thomas, aged 56, S/o M.P.Thomas, Mundaplackal Kunnamthanam P.O, Mallappally Taluk.
 5. Lio Jacob Joy, aged 39, S/o C.C.Varghese, Chamayil Veedu, Kunnamthanam P.O, Mallappally Taluk. (Former Secretary)
- (By Adv. V.C.Sabu)

Petitioners/
Plaintiffs

AND

Rajan Abraham, aged about 70, S/o late P.C.Abraham, Puthiyaveettil, Puthusseri P.O, Mallappally.

(By Adv. P.Praveen)

Counter petitioner
Defendant

This petition is filed u/o 26 Rule 9 & Rule 10(A) and section 151, 94(e) of Civil Procedure Code to withdraw the order of attachment.

This petition is having been finally heard on 11.09.2025 and stood over for consideration on 12.09.2025 and on the same day the court passed the following:-

ORDER

The afore numbered application is filed by the plaintiffs under Order XXVI R 9 of the Code of Civil Procedure, 1908.

2. The petition averments in brief are as follows:- The petitioners are the plaintiffs in the suit. The suit is filed for realization of damages to the 1st plaintiff church for realization of damages occurred to the 1st plaintiff due to the acts of the defendant. An Advocate commissioner and an expert engineer are to be deputed to report regarding the nature and quality of the graveyards constructed by the defendants. Hence the petition.

3. The respondent entered appearance and filed objection contending as follows: The petition is not maintainable either under law or on facts. The petition is premature as the defendant has not filed written statement and the commission application can be considered only after the pleadings of the defendant is filed. The 1st plaintiff is not properly represented and the present Vicar Father Varghese John does not have any legal right to represent the 1st plaintiff church. The present suit is filed by the plaintiff to realize an amount of Rs. 4,69,880/- with interest @ 9% from the defendant and his assets which the plaintiffs alleges to have been misappropriated by the defendant during the process of constructing graveyards in the 1st plaintiff church premises. The commission application is filed to ascertain the lie and nature of the newly built graveyard, ascertain the details including the price of the rocks and earth which has been excavated during the process of escalation of the graveyard and to compare the said work in the quotation already received and to ascertain the actual expense. The plaintiffs are trying to ascertain facts which are not relevant for the adjudication of the suit. Hence the present petition is liable to be dismissed.

4. Heard both sides.

5. The suit is filed by the plaintiffs to realize an amount of Rs. 4,69,880/- which includes the principal amount of Rs. 4,37,097/- with pre suit interest

contending that the defendant while acting as a trustee of the 1st plaintiff church had misappropriated the funds for construction of graveyards in the 1st plaintiff church. The present petition is filed to depute an Advocate commissioner and expert engineer to ascertain the nature of the 16 new graveyards and renovated five graveyards and to assess the costs incurred for the same. The main contention raised by the respondent is that the present petition is premature and that the respondent has not filed written statement in the case. It is now well settled that a commission application can be allowed prior to filing of a written statement in the case and thus the contention of the respondent in that regard is devoid of merits. The respondent has also contended that the 1st plaintiff church is not properly represented. The plaintiffs had produced the relevant minutes of the General Body meeting of the 1st plaintiff church would show that the general body had decided to take civil and criminal action against the misappropriation of the funds for construction of the graveyard. The secretary of the church is also a plaintiff in the suit and thus it cannot be said that the suit is not properly instituted.

6. As already stated, the dispute in the present case pertains to the quality and quantity of the work of the construction of the graveyards. Ascertaining the present nature, the quantity and quality of the construction of the graveyards is necessary for ascertaining whether there occurred any misappropriation of funds for the construction of the same. Therefore it cannot be said that the appointment of an advocate commissioner and expert engineer to assess the quantity and quality of construction work done in the graveyards are outside the scope of the suit. Though the plaintiff had ascertained the said damages and had quantified the same, the same is only the assessment made by the plaintiffs and it cannot be taken as a conclusive proof to decide the question of quality and quantity of work done. Appointing an Advocate commissioner and expert Engineer would bring forth materials before the court to show the nature of work done. The same cannot be said to be a collection of evidence. An Advocate commissioner is not bound to collect evidence. He is only to report the facts which he perceives after visiting the property which includes the nature,

quantity and quality of the work done.

7. The petitioner has also sought for ascertaining the value of the rocks and the soil in the cemetery and taken from the graveyard. The same cannot be done by the Advocate commissioner and the expert engineer and therefore the same need not be considered. More over the petitioner has also sought for comparing the expense for the construction with the quotation work and to cross check the same. The same is not within realm of the duty of the Advocate commissioner and the same also is not liable to be allowed. Thus this court is of the opinion that excluding the said portions, the present commission is application is liable to be allowed. Thus Adv. Ashish Oommen George is deputed as the Advocate commissioner and Assistant Engineer LSGD is deputed as the Expert Engineer. The petitioner shall pay commission Batta of Rs. 6000/- and Expert Batta of Rs. 3,500/-. There is no order as to costs.

In the result the present petition is allowed. Adv. Ashish Oommen George is deputed as the Advocate commissioner and Assistant Engineer LSGD is deputed as the Expert Engineer. The petitioner shall pay commission Batta of Rs. 6000/- and Expert Batta of Rs. 3,500/-.

Dictated to the Confidential Assistant, typed by her, corrected, and pronounced by me in open court, this the 12th day of September, 2025.

Sd/-

ARAVIND S.J.
MUNSIFF

APPENDIX

NIL

Id/-
MUNSIFF

Fair/Copy of order in
I.A.02/2025 in OS 244/25
Dated: 12.09.2025