

IN THE COURT OF THE MUNSIF, IRINJALAKUDA
Present: Sri. Eldos Mathew., Principal Munsiff
Thursday, 14th August 2025/23rd Sravana, 1947

IA 2/2025 in O.S. 4015/2015

Petitioners/Plaintiffs:-

1. Sasidharan, 52 years, S/o Peramarath Ramar,
Chengaloor Village, Desom, Mukundapuram Taluk.
2. Jayaprakash, 58 years, S/o Peramarath Ramar,
Chengaloor Village, Desom, Mukundapuram Taluk.
By Adv. K. Gopinadhan

Respondents/Defendants:-

1. Radha, 75 years, W/o Peramarath Raveendran,
Chengaloor Village, Desom, Mukundapuram Taluk.
2. Binoj, 42 years, S/o Peramarath Raveendran,
Chengaloor Village, Desom, Mukundapuram Taluk.
3. Neena, 55 years, D/o Peramarath Raveendran,
Chengaloor Village, Desom, Mukundapuram Taluk.
4. Naina, 54 years, D/o Peramarath Raveendran,
Chengaloor Village, Desom, Mukundapuram Taluk.
5. Smitha, 52 years, D/o Peramarath Raveendran,
Chengaloor Village, Desom, Mukundapuram Taluk.
By Adv. Asha S. Menon

This petition coming on this day for hearing and the court passed the following:-

ORDER

Petition to remit the Commission Report

2. The petitioner is the 2nd plaintiff in the suit. The properties belong to the plaintiffs and defendants were measured in accordance with survey records and based on the title deed. After measuring the property, Commissioner filed report on 01.02.2025. Allegation is that the Commissioner has measured the property based only on physical possession.

In fact, the property has to be measured based on the title deed. Then only the eastern boundary can be fixed and the encroachment into further eastern B schedule pathway can be ascertained. So, the petitioner prays to remit the Commission Report.

3. Respondents/defendants filed objection to this petition. Advocate Commissioner has visited the property with the help of Surveyor and filed detailed report. He has identified the property with the help of Title Deed and Will. This petition is devoid of any merit and it is filed only to protract the matter.

4. The point for consideration is:

Whether petition can be allowed?

5. **The Point:** The Commissioner was examined on the side of petitioner as PW1 and Ext.C1 and C1(a) were marked through him. According to him, the defendant in the suit has title to 41 cents of property. But, after the measurement, Plot-B of the defendant was found to be of 42.15 cents. He has not confined the B plot to 41 cents as there was excess property in his possession. Yet, the excess property was not separately plotted. The disputed pathway found on the eastern side of the said property is 1.5 Kol width. During cross examination, PW1 stated that there was a distinct physical boundary demarcating the boundary between B schedule property of the defendant and the eastern pathway. As the side measurements were not

mentioned in the deed, Property was identified based on physical demarcations. PW1 also stated that the Plaintiff has also excess property in his possession.

6. Having perused the evidence and the Commission Report, it is seen that the predecessor of the parties herein-Ravindran obtained the property by virtue of Settlement Deed No.2735/1982 in which the eastern boundary is shown as pathway of 1 Kol width which is the Plaint C schedule. Admittedly, both the parties have excess property in their possession. However, 1½ Kol wide pathway is now set out through the eastern boundary of the property of the defendant as mentioned in the Will No.114/88. The Commissioner has reported a well demarcated boundary between the defendant's B plot and the eastern pathway. The Plaintiff assails the Commission Report on the ground that their pathway has to be fixed after plotting 41 cents of the property belongs to the defendant. If that is done, the cultivation all along the side of the eastern boundary has to be cut and removed.

7. Admittedly, the side measurements of the property are not included in the title deed. The Commissioner has reported that old trees like coconut, nutmeg tree, arecanut, malabar tamarind, teak wood are there throughout the boundary. Thus the physical demarcation of boundary is distinct. Both properties are lying in the same survey sub division 850/2. When the survey demarcation as such has no relevance to the dispute, the boundary has to be

determined with recourse to other methods. In **Kumaran Krishnan v. Ulahannan Mathai (1957 KLT 42)**, it was held that 'the evidence supplied by boundaries, extent, survey numbers and lekhoms forms the determining factors when the identity of property is put in issue.

8. It is true that defendant is entitled only for 41 cents of property as per the title deed. But it should not be lost sight of the fact that what ever be the extent of property in their possession, Plaintiff is not entitled to get more than 1.5 wide pathway. That has been identified and plotted by the Commissioner. Hence, petition is devoid of any merit and hence, it stands dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and revised by me and pronounced in open court on this the 14th day of August, 2025)

Sd/-

**Eldos Mathew,
Principal Munsiff.**

APPENDIX:-

Petitioners Witness:-

PW1 19.05.2025 Rajesh M. S

Petitioners Exhibits:- Nil

Court Exhibits:-

C1 & C1(a) Commission report and sketch submitted by
Adv. M. S. Rajesh dated 01.02.2025.

Sd/-

Principal Munsiff.

//True copy//

Principal Munsiff.

Copied by:rh

Com by:

Order in IA 2/2025 in OS 4015/2015
Dated: 14.08.2025