

IN THE COURT OF THE MUNSIF, KODUNGALLUR.
Present:- Smt.Karthika.K.,Munsiff.
Thursday, 6th day of November, 2025/15th Karthikam, 1947 SE

I.A.9/2025 IN O.S.868/2004

Petitioners 1 to 4/2 to 5 Plaintiffs

1. Kadeejabi, Aged 54, D/o. Ayyaril Muhammedkutty,
Eriyad Village & Desom, Kodungallur Taluk.
2. Ramlu, Aged 52, D/o. Ayyaril Muhammedkutty,
Eriyad Village & Desom, Kodungallur Taluk.
3. Nisar, Aged 51, S/o.Ayyaril Muhammedkutty,
Eriyad Village & Desom, Kodungallur Taluk,
Represented by Power of Attorney Holder,
Kadeejabi.
4. Rasheed, Aged 48, S/o. Ayyaril Muhammedkutty,
Eriyad Village & Desom, Kodungallur Taluk,
represented by Power of attorney Holder,
Kadeejabi.

By Adv.T.K.Prabakaran

Respondents/Defendants

1. Muhammed Ismayil, Aged 54
S/o. Ayyaril Abdul Rahmankutty,
Eriyad Village & Desom, Kodungallur Taluk.
2. Muhammed Iqbal, Aged 52, S/o. Edassery
Ayyaril Abdul Rahmankutty, Eriyad Village & Desom,
Kodungallur Taluk.
3. Abdul Salam, Aged 49, S/o. Ayyaril Abdul Rahmankutty,
Eriyad Village & Desom, Kodungallur Taluk.
4. Shyna, Aged 43, D/o. Ayyaril Rahmankutty,
Eriyad Village & Desom, Kodungallur Taluk.
5. Rukkiya, Aged 75, W/o. Ayyaril Abdul Rahmankutty,
Eriyad Village & Desom, Kodungallur Taluk.

By Adv.K.P.Manoj

This petition coming on this day for hearing before me, the court on the same day passed the following:

ORDER

This is a petition to dismiss the commission report and sketch dated 26.8.2025 filed by the commissioner.

2. **The petition averments as follows:-** This is a petition filed by the 2nd plaintiff in the above suit. The suit is one for declaration. The petitioner avers that the commission report filed by Adv.V.M.Sreekumar dated 26.8.2025 is not correct and so many mistakes have crept in the report and sketch. The court has directed the commissioner to prepare a sketch based on the work memo filed by the plaintiff and another sketch based on the work memo filed by the defendants. But the commissioner failed to produce two separate sketch and has produced only one sketch. The commissioner has committed a serious error in that matter. In the work memo filed by the plaintiff the plaintiff has required the commissioner to measure and identify the properties covered by 'B' schedule to partition deed No.647/1970 obtained by the Ist plaintiff Muhammed Kutty which consists of 3 cents in survey 1534/3, 16 cents in survey 1534/15, 1.500 cents in survey 1534/21, 14.500 cents in survey 1534/16, 18.750 cents in survey 1538/4, 5 cents in survey 1538/10 and 2 cents in survey 1534/17 consisting of 25.750 cents. It is also required by the plaintiff that 20 cents in survey 1538/4 obtained form one Rabiya vide sale deed No.455/1976 to the Ist plaintiff, Muhammed kutty to be measured. But the commissioner

did not measure the property as per the requisition of the plaintiff and nor did he identify and file a survey sketch verifying the matters mentioned in the work memo. The commissioner also did not identify or mark 30.500 cents obtained by Ist defendant Abdul Rahiman vide 'C' schedule to partition deed No.647/1970. This is also a serious fault happened from the side of the commissioner. The plaintiff had also requested to mark the building constructed by the defendants in plaint schedule item No.1 property and to mark the said building in the sketch. But the commissioner has neglected the query of the plaintiff. The defendants has encroached into 3 cents of land owned by plaintiff and constructed a building. But the commissioner has not verified the encroachment and marked the same in the sketch. By doing so the commissioner has acted in a way to protect the interest of the defendants.

3. **The respondents filed objection in this case as follows:-** This petition is not maintainable either in law or on facts. If the commissioner has not perused and reported the queries sought in the work memo, the defendant has no objection for remitting the commission report. There is no provision of dismiss the commission report. The respondent has no objection in filing different sketches.

4. Heard both sides.

5. Point to be considered:-

“ Whether the petition can be allowed?”

6. **The point:-** This petition is filed by the 2nd plaintiff in O.S.868/2004. This case is connected with O.S.448/2000, 498/2000 and 1097/2002. The plaintiffs and defendants in both the cases are the legal heirs of a common ancestor named Kunji Beerachi. O.S.868/2004 and O.S.448/2000 is filed by legal heir of Muhammad Kutty and O.S.498/2000 and 1097/2002 is filed by the legal heirs of Abdul Rahiman who is the brother of Muhammedkutty. All the properties in dispute are involved in partition deed No.647/1970. The case was one decided by this court and appeals were filed before the Hon’ble Sub Court, Irinjalakuda as A.S.42/2006, A.S. 43/2006, A.S.48/2006 & A.S.49/2006. The Hon’ble Sub Court considered all the appeals together and by a common judgment to set aside the judgment and decree in O.S.448/2000 and 498/2000 and partly dismissed O.S.1097/2002 with respect to ‘B’ and ‘C’ schedule of O.S.1097/2002. The judgment and decree in O.S.864/2004 is dismissed with respect to declaration of title, fixation of boundaries and injunction in respect of item Nos.1 to 5 in O.S.864/2004 and the decree passed in respect of item No.6 of plaint schedule is sustained. The Hon’ble Sub Court has remanded the matter and has ordered that the trial court shall dispose of the suit afresh in accordance with law. Ext.C3 report and C3(a) sketch shall be remitted to the commissioner and the trial

court may appoint another experienced advocate to the satisfaction to the learned Munsiff as a joint commissioner along with the advocate commissioner who had submitted Ext.C3 report and C3(a) sketch for the purpose of proper identification of 'B' and 'C' schedules in Ext.A1 and other disputed properties and the suits shall be disposed off in accordance with law after affording an opportunity to both sides to adduce further evidence. As per the judgment in A.S. 42/2006, 43/2006, 48/2006 & 49/2006 Adv. P.Kanakamani has been appointed as an advocate commissioner in the supervision of Sr.Adv. Suresh Muraleedharan. The advocate commissioner filed a commission report and plan. But another petition is filed before this court as I.A.3151/2014 in O.S.868/2004 to remit back the commission report and plan filed by the advocate commissioner. That petition was dismissed by this court by the order dated 28.2.2015.

7. Thereafter the plaintiffs in O.S.868/2004 has filed OP © No.670/2015 before the Hon'ble High Court of Kerala. The Hon'ble High Court after hearing the parties of both sides by the order dated 24.9.2024 set aside the commission report and plan filed by Adv.P.Kanakamani dated 28.2.2015 and it was ordered to reconsider the IA.3151/2014 along with objection and directed the Munsiff Court to pass fresh order within 3 weeks from the date of this judgment. Thereafter the court has appointed

Adv.V.M.Sreekumar, Senior Counsel of this Bar as the advocate commissioner in this case and the Taluk Surveyor was also appointed to assist him to measure the properties. After the measurement of the entire property the commissioner has filed a commission report on 26.8.2025 . The 2nd plaintiff in O.S.868/2004 filed the petition to set aside the commission report and plan.

8. The order of the Hon'ble Appellate court in the common judgment in Appeal Nos. 42/2006, 43/2006, 48/2006 & 49/2006 is that the plaint 'B' and 'C' schedules in Ext.A1 and other disputed properties to be identified properly. By perusal of the schedule provided by the commissioner in Ext.C1 sketch filed along with the commission report the commissioner has properly identified each and every property as per document No.455/1976 and 647/1970 and has marked all the properties correctly.

9. The commissioner has properly identified item No.1 of plaint 'A' schedule in O.S.868/2004 situated in survey 1534/3 covered by partition deed No.647/1970 and is marked as plot 'H' in the sketch. He has identified item No.2 of plaint 'A' schedule in O.S.868/2004 situated in survey 1534/15 which has an extent of 16 cents as plot No.'G'. Item No. 3 of plaint schedule in O.S.868/2004 situated in survey 1534/21 is marked as plot 'F'. The plaintiff has 14 ½ cents in survey 1534/16. But in the sketch it is marked as 'E' plot and it has an extent of 16.776. As per item No.5 the plaintiff has 18

$\frac{3}{4}$ cents in survey 1538/4 and 5 cents in survey 1538/10 and 20 cents in survey 1538/4. All the properties mentioned in the plaint schedule in O.S.868/2004 has been clearly marked by the commissioner in the sketch. 'C' schedule to partition deed No.647/1970 in survey 1534/3, 1534/15, 1534/20 and 1534/21 described in the schedule for defendants is also marked in the sketch. The commissioner in his report has stated that there are differences in the description of the property in document No.1508/1980,2700/1988,286/1990 and 1782/1993 and the measurements described in the survey sub division in the village records. Since it was difficult to measure the property based on these documents the entire property was measured as per the village records and as per the actual possession. It was also reported that even through 40 cents was seen to have alienated based on document No.1782/1993 in survey 1538/4. As per the prior document the person who has alienated the property was seen to have obtained only 18.750 cents in the particular survey sub division.

10. The plaintiff in O.S.868/2004 in their objection stated that the court has directed the commissioner to prepare a sketch based on the work memo filed by the plaintiff and another sketch based on the work memo filed by the defendant. But the commissioner omitted to prepare two different sketches based on

the work memos filed by the plaintiff and defendant. But on perusal of the common judgment of the Hon'ble Sub Court and on perusal of the order of the Hon'ble High Court in OP © No.670/2015 no directions were given to prepare two different sketches based on the work memo filed by each party. This court has also not ordered to prepare two different sketches based on the work memo filed by the parties. Hence the allegation of the plaintiff that non preparation of two different sketches is an omission from the part of the commissioner cannot be accepted.

11. In the objection filed by the plaintiffs they stated that the commissioner has not marked the different extent of property stated by them and various survey numbers mentioned in the objection. But on perusal of the sketch it is seen that the commissioner has marked each and every plot in different colours by giving different alphabetical numbers to the plots and has made separate schedules on the left hand corner of the sketch filed by the commissioner. The direction in the common judgment is to identify item Nos. 1 to 5, because the finding with respect to item No.6 was allowed by the appellate court. Hence the dispute is only with respect to item Nos. 1 to 5 in the plaint schedule of O.S.868/2004. The only discrepancy found is with respect to the extent of two plots which can be clarified only after the examination of the commissioner and the surveyor. The commissioner has also

identified the 'C' schedule and marked the same in the sketch and provided a schedule in the sketch with respect to the total extent of property in the possession of the Ist defendant, Abdul Rahiman in the survey sketch. The dispute is with respect to 'B' and 'C' schedule property covered by partition deed No.647/1970 which is specifically identified and marked by the commissioner in the sketch. Hence the allegations of the plaintiff with respect to the non identification and non marking of the property covered by the documents are not sustainable. Hence I don't find any reason to set aside the commission report filed by Adv. V.M.Sreekumar filed on 26.8.2025. Hence this petition is dismissed.

In the result, the petition stands dismissed.

Dictated to the Confdl.Asst., transcribed by her, corrected by me and pronounced in open court on this the 6th day of November,2025.

Sd/-
KARTHIKA.K,
MUNSIFF

Appendix-NIL

Id/-
MUNSIFF
(By order)

copied by:KS

//True copy//

compared by:

Junior Superintendent