

IN THE COURT OF THE MUNSIFF, KODUNGALLUR.**Present:- Smt.Karthika.K.,Munsiff.****Thursday, 6th day of November, 2025/15th Karthikam, 1947 SE****I.A.8/2025 IN O.S.868/2004**Petitioners/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

Respondents/Plaintiffs

1. Kadeejabi, Aged 53, D/o. Ayyaril Muhammedkutty,
Eriyad Village & Desom, Kodungallur Taluk.
2. Ramlu, Aged 49, 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,
1st plaintiff, Kadeejabi.
4. Rasheed, Aged 47, S/o. Ayyaril Muhammedkutty,
Eriyad Village & Desom, Kodungallur Taluk,
represented by Power of attorney Holder, 1st Plaintiff,
Kadeejabi.

By Adv.T.K.Prabakaran

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 remit the commission report dated 26.8.2025 filed by the Advocate Commissioner.

2. **The petition averments is as follows:-** The petition is filed by the 3rd defendant in this case. The suit is one for boundary fixation and permanent prohibitory injunction. Adv. V.M.Sreekumar is appointed as a new commissioner by this court for the reason that the property involved in these cases are not measured correctly and there were mistakes in the survey measurements. As per the requisition of the commissioner the entire property has been measured by using the modern survey equipments. But the commissioner has omitted to submit a report and plan before the court by correctly understanding the cases of the plaintiffs and defendants. The commissioner has reported that he has measured the property based on the possession since there were conflicts between the boundary and the survey number. But the commissioner has not stated in the commission report on what basis the commissioner has decided the possession. If the advocate commissioner had any difficulty in identifying the properties and submitting a plan he could have prepared several survey plans and might have left the approval of plan to the final decision of the court. The petitioner has also filed objection in the commission

report. It is necessary to add the answers to the additional queries sought in this petition for completing the evidence of the petitioner. The commissioner does not require any specific efforts to mark the properties in the survey sketch by referring the title deeds and four boundaries. Hence for the proper final adjudication of the above case it is necessary to allow this petition.

3. **The respondents filed objection in this case as follows:-** This petition is not maintainable either in law or on facts. The plaintiffs have filed a petition IA.9/2025 to dismiss the report and survey sketch filed by Adv. V.M.Sreekumar on 26.8.2025. In spite of the dismissal of the survey report the prayer of the petitioners that it has to be remitted to the Advocate Commissioner is pleaded with an ulterior motive and cannot be allowed. It is not necessary to remit the commission report and sketch to the Advocate Commissioner. The commission report and sketch has to be dismissed based on the objection filed by these respondent. Hence this petition may be dismissed.

4. Heard both sides.

5. Point to be considered:-

“ Whether the petition can be allowed?”

6. **The point:-** This petition is filed by the defendants 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 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 once decided by this court and four appeals were filed before the Hon'ble Sub Court, Irinjalakuda from each cases 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 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 the 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 was held sustained.

7. 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. It was ordered that 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 of

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.

8. As per the judgment in A.S. 42/2006, A.S.43/2006, A.S.48/2006 & A.S.49/2006 Adv. P.Kanakamani has been appointed as the advocate commissioner in the supervision of Sr.Adv. Suresh Muraleedharan. The advocate commissioner filed a commission report and plan. But another petition was 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. 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 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 the objections filed by parties 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 an 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 . From this commission report and plan the plaintiff and defendants filed objection and the plaintiff in O.S.868/2004 filed the petition to remit back the commission report.

9. The order of the Hon'ble Appellate court in the common judgment in appeal Nos. A.S.42/2006, A.S.43/2006, A.S.48/2006 & A.S.49/2006 is that the plaint 'B' and 'C' schedules in Ext.A1 and other disputed properties may be properly identified. By going through the sketch and the schedules and the provided by the commissioner in Ext.C1 sketch filed along with the commission report it can only be concluded that the commissioner has properly identified the properties as per document No.455/1976 and 647/1970 and has marked all the properties correctly.

10. 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 it has an extent of 16.776. As per item No.5 the plaintiff has 18 ¾ 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 though 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.

11. All the measurements are correctly included in the sketch and 'B' and 'C' schedules as per the partition deed No.647/1970 was properly identified and marked in the sketch. Hence I am of the view that the commissioner has filed a report and plan which is helpful to address and adjudicate the disputes arised in this case.

11. The commissioner has also looked into the queries of the plaintiffs and defendants mentioned in the work memo and have answered the same in the commission report. If at all any mistakes are there, during the time of trial, after the examination of the commissioner and the surveyor, if the evidence comes out to the effect that this sketch and the report is not sufficient to determine the actual disputes involved in this case, the commission report can be remitted or set aside at that stage. All the cases are pending for adjudication from the year 2000 to till date. Two cases are pending for the last 25 years and 2 cases are pending for the last 21 years. This is the 3rd commission report filed by the commissioner in this case. If the commission report is remitted back it will cause serious prejudices to the parties of this case. Hence unless and until the parties adduces evidence to the effect that this commission report and sketch is not sufficient to

adjudicate the disputes involved in this case, I don't find any reason to set aside the commission report and plan filed by the commissioner. 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)

//True copy//

Junior Superintendent

copied by:KS

compared by: