

IN THE COURT OF MUNSIF, WADAKANCHERY

Present:- Sri. Yahya. T.K., Munsiff

Friday, the 13th day of June, 2025/ 23th Jyaishtam 1947 SE

I.A. 03/2024 IN O.S. 781/2015

Petitioner/ Defendant:

Sathidevi, D/o Madathil Kunjukutty Amma, Naduthara Desam,
Wadakanchery Village, Talappilly Taluk., now residing at: "DWARAKA",
Priyadarshini Housing Colony, Maradu Desam, Ernakulam District.

By Adv. K. Sajith Kumar.

Respondents/ Plaintiff:

Subhadra, D/o Madathil Kunjukutty Amma, Naduthara Desam,
Wadakanchery Village, Talappilly Taluk.

By Adv. Jacob C Job.

This petition is coming on this day for hearing, the Court passed the following:

O R D E R

This is an application filed by defendant in the above suit to remit the report and plan submitted by Advocate Commission on 28.05.2024.

2. **Summary of the application ;** The Joint Survey Commission has not measured the property not in a manner that is helpful for the just decision of the case. The counter claim schedule property has not been identified. Hence it is prayed that the survey commission report and plan may be remitted.

3. **Respondent/plaintiff filed counter as follows ;** The petition is not maintainable. No grounds have been made out to remit the commission report and plan. Thus, it is prayed that the petition may be dismissed with costs.

4. Heard both sides.

5. The following point arose for consideration :

i) Whether the report and plan submitted by Advocate Commission dated 28.05.2024. is liable to be remitted back ?

6. **The point** ; The suit is one for mandatory and prohibitory injunctions. Counter claim also for injunction. Crux of the allegation in the plaint is that the defendant /counter claimant has made a tress work in such a manner that the free access of light and air to plaint A schedule property is blocked. An alleged construction of ariel trespass to plaint 'C' schedule pathway has also been alleged.

7. The defendant has also made some counter allegations by filing a counter claim. Her allegation is that the plaintiff has constructed a wall on the eastern side of plaint A schedule property violating building rules as well as the compromise decree passed in O.S. 349/2003.

8. The Advocate Commission filed its report and plan on 28.05.2024. Grievance of the petitioner/counter claimant is that no measurement has been taken out in accordance with the plan appended to the decree in O.S. 349/2003. It is true that no such measurements were carried out. The same is stated in the report itself. But a specific reason has been assigned by the Advocate Commission for not measuring the properties in accordance with Ext.C2 plan appended to the decree in O.S. 349/2003. The reason is that substantial changes have been made to the properties of both

parties after Ext.C2 plan. It can even be seen from the survey sketch that the parties are in possession of more property than they have title to. Hence the joint survey commission cannot be blamed for not carrying out measurements in accordance with the above said plan.

9. I have one more reason to dismiss this application. The specific case of counter claimant is that the plaintiff has constructed the compound wall in violation of Municipal Building Rules. That is the reason why the plaintiff first approached Municipal Authorities. So, in order to prove the allegation in the counter claim, it is not necessary to have a measurement in accordance with the decree in O. S. 349/2003. No purpose will be served in doing so. The counter claimant can prove his allegation by just showing that the alleged construction has been made contrary to the Building Rules. For these reasons I find that the impugned report and plan is not liable to be remitted. This point is find against the petitioner.

In the result,

IA dismissed. No costs.

(Dictated to Confidential Assistant, typed by her, corrected and pronounced by me in the open court on this the 13th day of June, 2025)

Appendix:Nil

Sd/-
YAHYA. T. K.
MUNSIFF
Id
MUNSIFF