

**IN THE COURT OF THE MUNSIF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIF
MONDAY 13th JANUARY, 2025 / 23rd POUSHA, 1946**

IA No.11/2022 in OS No. 575/2008

Petitioners/ Plaintiffs:

1. Sudhambika, D/o Radha, Mylakunnil Veedu, Near Govt. H.S. Kilimanoor, Pazhayakunnummel Village.
2. Sheela, D/o Radha, Mylakunnil Veedu, Near Govt. H.S. Kilimanoor, Pazhayakunnummel Village.
3. Sheeja, D/o Radha, Mylakunnil Veedu, Near Govt. H.S. Kilimanoor, Pazhayakunnummel Village.

By Advocate: Sri. K.S. Vinod & Smt. Nima Vinod

Counter Petitioners/ Defendants:

1. Rugmini, W/o Sudhakaran, Sudha Bhavan, Moothala, Pallikkal Village.
2. Suresh Babu, S/o Sivasankaran, Mylakunil Veedu, Near Govt.H.S.S. Kilimanoor, Pazhayakunnummel Village.
3. Sathyabhama, aged 80 years, Varuthattil Veedu, Near Madan Nada, Kurakkada, Kizhuvilam Village.
4. Prasad, S/o Sathyabhama, aged 45 years, Varuthattil Veedu, Near Madan Nada, Kurakkada, Kizhuvilam Village.

By Advocates: Sri. S. Lenin & Smt. J.S. Radhika

This petition having been finally heard on 13.01.2025 and the court on same day passed the following:

ORDER

This is a petition filed under Order XLVII Rule 1 of the Code of Civil Procedure,1908.

2. **The petition averments are as follows:** The review petitioner's filed IA.7/22 to remit back the commissioner report and plan since the plan was not prepared as per the directions of the Court and that the B schedule was not located correctly. This Court vide order dated 31-05-2022 dismissed the application. Hence this petition to review the order on the grounds that the reason stated by this Court for disallowing the

application was that no objection was filed to the report and the plan and that reason is erroneous. The property was not located as per the old survey records and the plan does not contain G line, check line, ladder etc. Hence the order in IA.7/22 suffers from materials and patent defects and is liable to be reviewed.

3. **The respondents filed an objection contending as follows:** The petition is not maintainable either under law or on facts. The commission report was filed after ascertaining all matters sought for in the application. The commission report cannot be remitted back on the sole testimony of the surveyor. The grounds stated for reviewing the order are not correct. Hence the petition may be dismissed with costs.

4. The points that arose for consideration are:

1. Can the petition be allowed ?

2. Reliefs and costs ?

5. From the side of petitioners the advocate commissioner was examined as PW1.

6. Heard both sides.

7. **Point No.(1):** This is a petition filed by the review petitioners to review the order dated 31-05-2022 dismissing IA.7/22. The ground stated by the review petitioners is that the reason stated by the Court that the petitioners have not filed an objection to the commission report and plan is patently erroneous. The review petitioners also contended that the court had overlooked the order whereby the commissioner was directed to locate the properties based on the old survey records. The plan was prepared without the G line, check line and ladder also. Further the surveyor was examined and he conceded that the survey was not conducted based on the old survey sketch. The respondents contended that the grounds stated by the petitioners to review the order is

not acceptable and the commission report cannot be remitted on the basis of the examination of the surveyor alone. The advocate commissioner was not examined.

8. In this petition the review petitioners have examined the advocate commissioner as PW1. The petitioner contended that the advocate commissioner has prepared the plan not in accordance with the order of the court.

9. The advocate commissioner who was examined as PW1 deposed as follows:

'പഴയകുന്നമേൽ വില്ലേജിലും കിളിമാനൂർ വില്ലേജിലും റിസർവേ നടത്തിയപ്പോൾ വാദിയുടെ എ പട്ടിക വസ്തുവിന്റെ 30 ചതുരശ്ര മീറ്റർ കിളിമാനൂർ വില്ലേജിൽ ഉൾപ്പെടുത്തി റീ സർവേ നടത്തിയെന്നും അതു മുഖാന്തരം വാദിയുടെ road frontage നഷ്ടമായെന്നുമാണ് വാദിയുടെ തർക്കം . അക്കാര്യം പരിശോധിക്കണമെങ്കിൽ old survey plan ഉം re-survey plan ഉം അനുസരിച്ച് ഭൂമിയിൽ locate ചെയ്ത് പരിശോധിക്കണം'.

10. Hence PW1 has deposed that to ascertain the dispute raised by plaintiff identification has to be done and the same has to be located on the basis of the old and new survey plans.

11. The question that is to be considered is whether this Court has power to invoke the power of review in the instant case. The Hon'ble Apex Court has in ***Arun Dev Upadhyaya Vs. Integrated Sales Services Limited (2023) 8 SCC 11*** held as follows-

'An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.'

12. Hence to invoke the power of review the error should be clear on mere perusal itself. In the instant case the reason stated by the order dated 31-05-2022 dismissing IA.7/22 was that the petitioner failed to file an objection to the commission report. As per the decision cited above the Hon'ble Apex Court has clarified that there should not be a long drawn process of reasoning on the point. The petition to remit back the commission report itself serves as an objection to the commission report and the said reason is in fact an error apparent on face of record. A reason that it is to be presumed that there was no error in the proceedings by commissioner solely since no objection was raised by the petitioners is in fact an error on face of record.

13. This Court has vide order dated 18/02/2020 held that the properties were not measured in accordance with the old survey records and has directed the advocate commissioner and surveyor to measure out the plaint schedule properties in accordance with the recitals in the title deeds relied by the parties and also on the basis of old records. In Ext.C3 (a) plan it is specified that the old survey sketch is not available and hence the property was located and drawn as per the old survey number.

14. The surveyor who was examined as DW1 has deposed as follows:

‘ആധാരങ്ങൾ ഒന്നും തന്നെ ഞാൻ പരിശോധിച്ചിട്ടില്ല. സബ് ഡിവിഷൻ സ്കെച്ച് ഉപയോഗിച്ച് മൊത്തം വസ്തു അളന്നാൽ മാത്രമേ യഥാർത്ഥ കിടപ്പ് മനസ്സിലാക്കുകയുള്ളൂ.’

15. Hence this Court is of the view that there is error apparent on face of record and hence the order dated 31-05-2022 dismissing IA.7/22 has to be reviewed.

16. **Point No.(2):** In view of the discussion above, this petition is allowed and the order dated 31.05.2022 dismissing IA.7/22 is reviewed as follows:

The Ext.C3 commission report and C3 series plans are remitted back to the advocate commissioner under Order XXVI Rule 10(3) of CPC and the advocate commission and surveyor is directed to conduct further inquiry by measuring out the plaint schedule properties in accordance with the specific recitals in title deeds and also on the basis of the old and new survey records and sub division sketch.

Pay additional batta of Rs.2000/- to the advocate commissioner and Rs.1000/- to the surveyor.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 13th day of January, 2025.

Sd/-
SWATHI.R.KRISHNAN
MUNSIFF

Appendix:

Exhibits marked for the Petitioner: Nil

Exhibits marked for the Counter Petitioners: Nil

Witness examined for the Petitioner:

PW1 31.10.2023 Adv. V. Balachandran

Witness examined for the Counter Petitioner: Nil

Court Exhibits: Nil

Id/-
MUNSIFF

//True Copy//

Typed by: Lasitha
Compared by: Sheena.K

MUNSIFF