

**IN THE COURT OF THE MUNSIF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIF
TUESDAY 29th JULY, 2025 / 13th SRAVANA, 1947**

IA 06/2025 in OS No.48/2024

Petitioner/Plaintiff:

Shijina Aseez, D/o Muhammed Shibili, ARA-123, TC-27/736(3), Athani Lane,
Vanchiyoor Post, Thiruvananthapuram Taluk
By Advocate: Sri.A Gopalakrishnan Nair

Counter Petitioners/Defendant:

Mananakku Welfare Association, represented by Chairman, Abdul Jabbar, S/o
Muhammed Kasim, A J Building, Perumkulam, Mananakku
By Advocate: Sri.Hareesh Kumar and Manu R Chandran

This petition is having been finally heard on 29/07/2025 and the court on the same day passed the following:

ORDER

This is a petition filed under Order XXVI Rule 9 of CPC.

2. **The petition averments are as follows:** Petitioner is the plaintiff in the suit. The suit is for permanent prohibitory injunction. The plaint schedule item No.1 and 2 properties belong to the plaintiff and is situated as a compact plot. The eastern property belongs to the defendant. There existed survey stones and a boundary separating the plaintiff's and defendant's property. The defendant tried to destroy the boundary using excavator and tried to remove the survey stones and this suit was filed. An advocate commissioner visited the properties and filed a report. The defendant did not file a vakalath, written statement or objection to the injunction application till now. On 09.05.2025 during the court vacation, the defendant encroached into the eastern 1 acres of property that was part of plaint A schedule property and started installing iron pipes to mark it as the western

boundary of defendant's property. The defendant committed the aforesaid illegal act with the aid of several influential people in the locality. The defendant wilfully violated the injunction order of this court and hence prosecution proceedings has to be initiated against the defendant. Hence a prosecution petition is filed along with this petition. Hence this petition to appoint an advocate commissioner to ascertain the details and age of the iron fencing created by the defendant and to ascertain the mischief committed therein after the first commissioner visited the property.

3. **The defendant filed an objection contending as follows:** The original suit as well as the petition are not maintainable either under law or on facts. The defendant is the absolute owner of property measuring 1 hector 64.79 ares of property in re-survey No.237/1-2-1 and 237/1-2 of Pazhayakunnummel village by virtue of sale deed Nos.1267/2023 and 1268/2023 both of Kavalayoor SRO. The land is well demarcated by clear boundaries, has proper road access and was acquired for a villa project to benefit the NRIs and Gulf returnees who are members of the society. The plaintiff is attempting to encroach upon the defendant's property. On 22.08.2024 the plaintiff tried to encroach using earth movers but that attempt was prevented by the local residents. The defendant never made any attempt to encroach into plaintiff's property. The defendant instituted O.S.485/2024 before this court and obtained an order of temporary injunction against the plaintiff herein. The property of defendant society has definite and clear boundaries on all four sides. The main allegation raised by the plaintiff is that the defendant society demolished the existing boundary and encroached upon the plaintiff's property and

cut down trees and removed earth from the property. The plaintiff has not made any earnest effort to take out a survey commission for measuring her property on the basis of the alleged title deeds in her favour so as to convince the court by bringing to light the real factual situation existing at the site and to ascertain the alleged encroachment, if any. The negative attitude of the plaintiff clearly reveals the fact that the plaintiff is interested only in making wild allegations and not in proving the actual facts by clear and cogent evidence. The most reasonable and sensible approach that can be adopted for effectively resolving the dispute involved in this case is to take out a survey commission with the assistance of the Taluk surveyor to measure out the property of the plaintiff on the basis of the alleged title deeds. All the works carried out within the property of the defendant Society were strictly confined within the boundaries of the defendant society's legally acquired property and the accompanying allegation and accusation of the threat by the defendant society's workers are completely baseless and nothing more than a pure fabrication. Furthermore, regarding the commissioner's visit, it was an ex- parte commission and the defendant had no knowledge of the alleged commissioner's visit but reserves the right to challenge the contents of the alleged report, if any, that would suggest anything harmful to the interests and rights of the defendant society and contrary to the actual state of affairs. The plaintiff's present attempt is only to make the defendant not to carry out any maintenance work or development activity within the property of the defendant society. Merely appointing an advocate commissioner would not serve the purpose because both the plaintiff and

defendant owns altogether about 10 Acres of land and it is impossible for the advocate commissioner to ascertain actual extent of the respective properties in present physical possession and to demarcate and show in the plan the exact boundaries and to file report about the allegation of encroachment without the help of the Taluk Surveyor. Hence, taking into consideration the seriousness of this matter a Senior Advocate has to be appointed as Advocate Commissioner for ascertaining the matters in dispute. Moreover, the defendant society is filing a survey commission application for measuring out the property of the defendant society with the help of a taluk surveyor. The point No. 1 and 2 in matters to be ascertained in the petition is not allowable and hence denied. The earlier advocate cannot be appointed again for measuring out the entire property and the things to be ascertained in the petition is fraudulent and baseless. The proposed advocate commissioner is not equipped with well versed knowledge of identifying the boundaries of the property in dispute and to prepare report without the help of a Taluk Surveyor. The commissioner cannot identify the entire area of the property and its boundary in dispute. The plaintiff ought to have filed a commission application for measuring out the entire property and its boundary with the help of a Taluk Surveyor. Instead, they have only filed a Commission application to appoint an Advocate commissioner for identifying the alleged encroachment and that too in comparison to an alleged earlier encroachment. The advocate commissioner alone cannot measure out the property and prepare an imaginary sketch or plan which is not enough to prove the actual boundary of the plaintiff and

the defendant society. The present attempt is only to pressurize the defendant to heed to their illegal demands. Hence, these two points can only be allowed with the assistance of a Taluk Surveyor and therefore, it is liable to be dismissed.

4. The points that arose for consideration are:

1. Can the petition be allowed ?

2. Reliefs and costs ?

5. Heard both sides.

6. **Point No.(1):** This is a petition filed by the plaintiff to appoint an advocate commissioner to ascertain the description and age of the fence constructed by the defendants encroaching the plaintiff schedule property for fair disposal of prosecution petition. The defendant objected the same contending that the defendant did not encroach whereas it was infact the plaintiff who encroached into the defendant's property. It was contended that the plaintiff filed a commission application without seeking the assistance of a qualified surveyor. Since the assistance of Taluk surveyor is highly necessary, a mere commission application will not stand for a moment. It was contended that the defendant did not violate the order of this court. The plaintiff and defendant owns around 10 acres of land and it is impossible for the advocate commissioner to ascertain the actual extent of the properties and show the same in a plan without the help of a taluk surveyor. It was contended that the first and second points sought for cannot be ascertained since the prior advocate commissioner is not equipped with the knowledge of identifying the

boundaries. The third and fourth prayers were also objected to on the ground that it is attempt by the plaintiff to create false evidence and if there infact had been any encroachment, it could only be identified by proper surveying.

7. Considering the contentions raised by both sides, it is seen that the defendant objected to this application on the primary ground that the advocate commissioner could not ascertain the points without the assistance of a qualified surveyor. The learned counsel for plaintiff during the course of hearing contended that only the prior advocate commissioner can ascertain the points sought for in this petition and identify any subsequent encroachments. The learned counsel for plaintiff contended that they are not against measurement and survey of plaint schedule property and defendant's property whereas the case requires appointment of the same commissioner to find whether any willful violations of the order of this court was committed by the defendant.

8. The learned counsel for defendant relied on the judgment of of Hon'ble High Court of Kerala in ***George v. Nidhin B Parapattu and Ors 2022(2)KHC 250*** and contended that '*there is no rigid rule that commissioner with the assistance of surveyor to measure plaint schedule property shall not be appointed in a suit for simple injunction*'.

9. Subsequently, both plaintiff and defendant filed survey commission applications as I.A.09/2025 and 08/2025 respectively. The first point sought to be

ascertained in this petition is to identify whether any changes were made in the plaint schedule property subsequent to 25.01.2024 and the second is to describe the physical features and age of fence and the fourth prayer is to prepare a rough sketch showing the same. The third prayer is to give a detailed report regarding the encroachment that already existed at the time of first visit and the subsequent encroachment. The learned counsel for plaintiff contended that, if the commissioner requires the assistance of a surveyor that can be sought for by the commissioner itself and the purpose behind filing this application should be looked into. Ascertaining the violation if any committed by the defendant subsequent to the first visit can only be done by the prior commissioner who filed the first report. This argument is of profound importance particularly when both plaintiff and defendant filed separate survey commission applications. The reason behind appointing a commissioner in this petition is to specifically identify encroachments if any subsequent to the first report. If the defendant has any objection with regard to the extent, the same can only be considered at a later stage. The proper course is to appoint the same advocate commissioner who filed the first report to ascertain the matters sought for in this petition. The question of appointing a qualified surveyor need not be looked into in this petition since both parties filed separate petition for survey commission. The fifth prayer sought for by the plaintiff is vague and the same could not be entertained since it is not proper for the parties to ask the commissioner to ascertain matters without the notice of the court. This court is of the view that the same advocate commissioner who filed the prior report has to be

appointed to ascertain the first four prayers sought for in this petition for fair disposal of the prosecution petition. The defendant could raise their objections in the prosecution petition and the objections raised does not impede the appointment of an advocate commissioner in this petition.

10. **Point No.(2):** In view of the discussion above, this petition is allowed and Adv.Lakshmi Vijayan is appointed as the advocate commissioner. The plaintiff is directed to pay batta of Rs.4000/- within 30 days. Advocate commissioner is directed to ascertain the point Nos. 1 to 4 in the commission application and file the report within 2 months.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 29th day of July, 2025.

Sd/-
SWATHI.R.KRISHNAN
MUNSIFF

Appendix: Nil

Id/-
MUNSIFF

//True Copy//

Typed by: Shilpa.K.S
Compared by: Sheena

MUNSIFF