

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

**IA 08/2025 AND IA 09/2025 IN OS No.48/2024**

**IA 08/2025**

**Petitioner/Defendant:**

Mananakku Welfare Association, (Reg.No.TVM/TC/412/2022), Mini Mass,  
Mananakku, Perumkulam P.O, Trivandrum, 695 102, represented by its Chairman,  
Abdul Jabbar, aged 74 years, S/o Muhammed Kasim, AJ Building, Perumkulam,  
Mananakku, Keezhattingal Village, Thiruvananthapuram – 695 102

By Advocate: Sri.Hareesh Kumar K L

**Counter Petitioner/Plaintiff:**

Shijina Aseez, D/o Muhammed Shibili, TC-27/736(3), ARA 123, Athani Lane,  
Vanchiyoor Post, Thiruvananthapuram 695 035

By Advocate: Sri.A Gopalakrishnan Nair

**IA 09/2025**

**Petitioner/Plaintiff:**

Shijina Aseez, D/o Muhammed Shibili, TC-27/736(3), ARA 123, Athani Lane,  
Vanchiyoor Post, Thiruvananthapuram 695 035

By Advocate: Sri.A Gopalakrishnan Nair

**Counter Petitioner/Defendant:**

Mananakku Welfare Association, represented by Chairman, Abdul Jabbar,  
aged 74 years, S/o Muhammed Kasim, AJ Building, Perumkulam,  
Mananakku

By Advocate: Sri.Hareesh Kumar K L

These petitions are having been finally heard on 29/07/2025 and the court on the same day passed the following:

**COMMON ORDER**

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

2. **The petition averments are as follows:** The petitioner is the defendant in the suit. The defendant is the absolute owner in exclusive possession and enjoyment of 1 Hectar 64 Ares and 79 Sq. meters of property comprised in Re-survey Nos. 237/1-2-1 and 237/1-2 of Pazhaya Kunnummel village obtained by virtue of Sale Deeds Nos. 1267/2023 and 1268/2023 dated 15/09/2023 of Kavalayoor SRO. The entire property of the defendant society is situated at the

northern side of the Kuravankuzhi-Tholikuzhi public road near Aattoor junction which leads to the Main Central road at Kuravankuzhi between Nilamel and Kilimanoor. The defendant society purchased the property by investing huge amounts of money which was contributed by the members of the defendant society with the intention of developing the land for the purpose of starting a new villa project as many of the members are NRI's or Gulf returnees or having relatives working abroad who are interested in acquiring a good residential accommodation in a prominent place at an affordable rate and the present property is quite a suitable one as it is located in a scenic and beautiful place near Aattoor junction and having good connectivity with the Main Central road. The plaintiff alleges to be the owner of the property on the western side of the property of the defendant society and she claims to be the owner in possession of approximately 5 acres of property. The properties on the western, northern and eastern sides are clearly separated and demarcated from the plaintiff schedule properties by definite boundaries, survey stones, fencing and also by the natural boundary of mud formations. Therefore, neither the plaintiff nor anyone else got any right with respect to the title and possession of the defendant Society. The plaintiff, at the instigation of her brother, is raising some false allegations regarding the western boundary of the entire property of the defendant Society which is sharing the eastern boundary of her property. The illegal attempt of the plaintiff is to raise some false, fictitious and frivolous allegations regarding the western boundary of the defendant's property with the malicious intention to encroach upon and usurp a portion of the

defendant's property so as to enrich unlawfully. The plaintiff along with her henchmen made an attempt to encroach into the property of the defendant by taking advantage of the fact that the office bearers of the defendant's Society were not present at the property as they were all living at far away places. The defendant Society's properties are in imminent danger of losing natural lateral support and illegal encroachment. The legitimate and lawful requests made by the office bearers of the defendant Society to the plaintiff to desist from unnecessary and illegal activities have fallen and the plaintiff and her brother had openly declared that they will continue with their activities. Subsequently, the defendant filed OS. No. 485/2024 and obtained temporary injunction against the plaintiff in the present case and the same is pending before this Court. The plaintiff is now making an attempt to appoint an Advocate Commissioner to prepare a rough sketch without measuring out the properties. There is no such encroachment as alleged by the plaintiff. The defendant only did some maintenance work within the property owned and possessed by the defendant Society. Therefore, the present attempt of the plaintiff to appoint only an Advocate Commissioner alone without the assistance of Taluk Surveyor is ill motivated and to suppress the actual facts of the aforesaid case with the malicious intention to create false evidence. An advocate commissioner cannot prepare a rough sketch without measuring out the properties with the assistance of the Taluk Surveyor. If the Commissioner alone visits the properties and prepares a rough sketch arbitrarily by wrongly showing a portion of the properties of the defendant society as an encroached area as per the false representations and dictates of the plaintiff, then the same would result in an absolute miscarriage of justice and

would cause irreparable injury, untold hardships, loss and misery to the defendant society. Therefore, the appointment of an advocate commissioner with the assistance of the Taluk surveyor is highly necessary and indispensable for measuring out the properties of the defendant society so as to ascertain the fact that the boundaries of the properties of the defendant society are still intact and there is no question of any encroachment as alleged by the plaintiff.

3. **The plaintiff filed an objection contending as follows:** The petition is not maintainable either under law or on facts. The plaintiff has 2 hectares and 12.40 ares of property. There is no definite boundary or survey stones on the eastern and southern sides of plaintiff schedule property. The survey stone now in existence was removed by the defendant from its exact location and placed inside the plaintiff schedule property. The fence is not situated in the boundary and part of plaintiff schedule property is included inside that fence. The defendant filed O.S.485/2024 alleging falsehood. The plaintiff has no objection in defendant doing maintenance activity in their property. They have no right to encroach into the plaintiff schedule property. But in the light of maintenance work, the defendant has no right to trespass into the plaintiff schedule property or construct fence inside the same. The plaintiff herein filed commission application since the defendant trespassed into the plaintiff schedule property and constructed a fence. In the commission report filed in O.S.485/2024 also it is clearly reported that there is no boundary separating the plaintiff's and defendant's property. The defendant's intention is in fact not to conduct maintenance work. Since there is no boundary separating the plaintiff's

and defendant's property, the defendant has no right to construct fence without measuring both properties. Only the prior commissioner who filed the first report can ascertain whether fence was constructed subsequent to the first visit. The assistance of Taluk surveyor is not necessary. Assistance of surveyor is only essential to fix the exact extent of encroachment. However, small the encroachment be, that amounts to wilful violation of this court's order. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> prayers sought to be ascertained was already reported by the advocate commissioner appointed in O.S.485/2024. Hence there is no requirement for appointing a new advocate commissioner. This petition is filed to delay the proceedings and to destroy the evidence that may be adduced in the prosecution petition. Hence the petition may be dismissed with costs.

**I.A. 09/2025:**

This is a petition filed by the plaintiff to appoint an advocate commissioner and Taluk surveyor.

4. **The petition averments are as follows:** The petitioner is the plaintiff in the suit. The suit is for injunction. The plaintiff schedule item No.1 and 2 properties belongs to the plaintiff and are situated as a compact plot. On the eastern side of plaintiff schedule property situates the defendant's property. There exists survey stones separating plaintiff's and defendant's properties. The plaintiff filed this suit when the defendant destroyed the boundary stones and tried to encroach into the plaintiff schedule property. During the vacation time, the defendant and his men

encroached around 1 acre of plaintiff schedule property and constructed iron pipes after the encroached portion and hence the plaintiff filed the prosecution petition. The defendant raised a contention that there existed well defined boundaries on all sides of defendant's property and that they have not encroached the plaintiff schedule property. The defendant filed O.S.485/2024 concealing the existence of this suit and an advocate commissioner was appointed in that suit. The aforesaid advocate commissioner reported that there is no boundary or fence separating both properties. It is at such a portion that the defendant constructed the fence. Hence the plaintiff schedule properties have to be measured with the help of digital survey and the boundary separating both properties should be fixed and a report and plan showing encroachments if any is highly necessary. Hence this petition to appoint an advocate commissioner and Taluk surveyor and to conduct digital survey.

5. **The defendant filed objection contenting as follows:** The petition is not maintainable either under law or on facts. the defendant society obtained 1 hector and 64.79 ares of property vide sale deed No.1267/2023 and 1268/2023. Aforesaid land is well demarcated with clear boundaries, has proper road access and was acquired for a village project for NRIs and Gulf returnees who are members of the society. The plaintiff attempted to encroach upon the defendant's property. The allegation levelled by the plaintiff are baseless and with the malicious intention to vex and harass the defendant society. The 1<sup>st</sup> defendant did not encroach upon or demolish any boundary wall as alleged. The defendant society filed O.S.485/2024 before this court and obtained an order of temporary prohibitory injunction

restraining the plaintiff herein. The property of defendant society has definite and clear boundaries on all four sides. The defendant society has every right to do all developmental works within his property. The visit of the ex parte commissioner was without the knowledge of this defendant and hence the defendant reserves the right to challenge the contentions of the alleged report that might be harmful to the interest and rights of the society and are contrary to actual state of affairs. Point No.4 in the commission application cannot be allowed since there was a fence already in existence at the boundaries of the property of defendant society separating it with the property of plaintiff. Hence the costs of expense inquired therein is not a matter in this suit and the plaintiff has no reason to ascertain the same. The suit is for injunction simplicitor and there is no scope for ascertaining cost for the construction of fencing. Hence there is no need for putting up of boundary. Hence the petition may be dismissed with costs.

6. The points that arose for consideration are:

1. Can the petitions be allowed ?
2. Reliefs and costs ?

7. Heard both sides in detail.

8. **Point No.(1):** These petitions are filed by the plaintiff and defendant to appoint an advocate commissioner and qualified surveyor. The plaintiff filed I.A 09/2025 also for conducting digital survey of plaint schedule properties. The plaintiff objected to the commission application filed by the defendant contending that in O.S.485/2024, the aforesaid points were already ascertained by the advocate

commissioner. The defendant objected to the commission application filed by the plaintiff contending that the suit is only for injunction simplicitor and there is no scope for ascertaining the costs of construction since there is no such pleadings in the plaint. The plaintiff filed the suit for injunction and filed I.A.04/2025 under Order XXXIX Rule 2A of CPC contending that the defendant flouted the order of this court and encroached into the plaintiff schedule properties. The defendant sought for appointing an advocate commissioner and taluk surveyor and to measure out the plaintiff schedule property and also prepare a survey plan of properties of defendant society based on their title deeds. The plaintiff sought for appointing an advanced commissioner and surveyor and to conduct digital survey. The defendant objected to the contention of the plaintiff that they encroached into the plaintiff schedule property whereas maintenance work were only conducted within the defendant's property and also contended that there already existed a fence within the property of defendant society separating the same with the property of plaintiff. The defendant did not object the conduct of digital survey. All the objections raised by both parties can only be considered at the stage of trial and does not impede the appointment of advocate commissioner and surveyor.

9. The learned counsel for defendant relied on the judgment 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 plaintiff schedule property shall not be appointed in a sit for simple injunction*'. Hence where there are allegations of encroachment and

identification of properties are highly necessary, appointment of an advocate commissioner and surveyor could not be rejected. This court is of the view that in the instant case, the appointment of advocate commissioner and surveyor is highly necessary and digital survey can be conducted.

10. **Point No.(2):** In view of the discussion above, both petitions are allowed.

Adv. Hareesh. S is appointed as advocate commissioner. Address Joint Director, Department of Survey to appoint a Taluk surveyor. Both sides shall share commission batta of Rs.6000/- and surveyor's batta of Rs. 4000/- equally. Deposit batta within 30 days.

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

*Sd/-*  
SWATHI.R.KRISHNAN  
MUNSIFF

**Appendix:** Nil

*Id/-*  
MUNSIFF

//True Copy//

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

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