

IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIFF
THURSDAY 22nd MAY, 2025 / 1st JAISHTA, 1947

EA 161/2022 EP.10/2014 IN OS.No. 326/2009

Petitioner/Judgment Debtor:-

Babu.S, S/o Appiamma, aged 48 years, Valiyavila Veedu, Kodithookkikunnu,
X Ward, Kavalayoor P O, Manamboor Village, Varkala Taluk,
Thiruvananthapuram.

By Advocate: Sri.T.A.Rajeev

Counter Petitioner/ Decree Holder:-

Muhammed Ismail @ Sainulabdeen, aged 90 years, S/o Asanaru Pillai
(Late) Munjanadu Veedu, Kavalayoor, Manamboor Village.

By Advocate: Sri.G.Surendran

This petition having been heard on 26.03.2025 and the court on 22.05.2025 passed the following:

ORDER

This is a petition filed under Order XLVII Rule 1 r/w Section 114 of CPC.

2. **The petition averments are as follows:** The petitioner is the claim petitioner in the EP. On 05.11.2022 this court allowed EA.152/2022 and directed the Amin to measure out the plaint schedule property and deliver the same to the decree holder. The said order is erroneous in the eye of law and there is apparent error on the face of record. The plaint schedule property was ordered to be measured out as per the survey plan in final decree passed in O.S.01/1978 on the file of Hon'ble Sub Court, Attingal in which the petitioner herein is not a party and this court has no jurisdiction to order delivery of the property. The counter petitioner does not have possession of the property and he has not produced stamp paper under Rule 236 of Civil Rules of Practice for getting the final decree engrossed. The petitioner herein did not subscribe her signature to the partition deed. The counter petitioner ought to have filed a suit for declaration of title and

recovery of possession. Due to the aforesaid ground the order dated 05.11.2022 in EA.152/2022 may be reviewed.

3. **The decree holder filed an objection as follows:** The petition is not maintainable either under law or on facts. The execution court cannot go against the decree. There is no error apparent on the face of record. There was no direction in the order to measure out the plaint schedule property as per the survey plan appended to the final decree passed in O.S.01/1978. E.A.152/2022 is not for seeking delivery of property but to appoint a surveyor to assist the Amin to identify the property. The plaint schedule property was separated and allotted to the share of Muhammed Ismayil as per final decree in O.S.01/1978 and delivery is only required when the sharers are in joint possession. The petitioner was a signatory to the partition deed and there was no necessity to file a suit for declaration of title and recovery of possession. There are no sufficient reasons for allowing the petition. Hence the petition may be dismissed with costs.

4. Following points are raised for consideration:

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 claim petitioner to review the order dated 05.11.2022 in EA.152/2022. The petitioner contended that there is an error apparent on the face of record since the delivery was ordered, as per survey plan in final decree passed in O.S.01/1978. Other ground levelled by the review petitioner was that the claim petitioner and the decree holder does not have possession over the plaint schedule property. All the grounds levelled by the

review petitioner is with regard to the merits of the case. Execution court is not expected to go behind the decree. On perusal of records it is seen that EA 153/2022 was to appoint a surveyor to assist the Amin to identify the property. The contention that the order was to measure out the property as per the final decree in O.S.01/1978 of Hon'ble Sub Court, Attingal is not correct. More over, the grounds alleged with respect to the merit of the case and the contentions that ought have been taken as defence in the original suit is not sufficient for this court to intervene and to invoke its power under Order XLVII Rule 1 of CPC. The power to review shall not be invoked by the executing court in such a manner that it acts as if the court is going behind the decree. The powers of the execution court is restricted and it is well settled that any ventures out of the strict mandated contours is legally impermissible. An error apparent on the face of record is such an error ie., clear on mere perusal and does not include in its ambit, matters that requires circumspection raising possibility of two divergent views with clear legal reasoning. There is no error apparent on the facer of record in the instant case and there are no sufficient grounds to review the order.

7. **Point No.(2):** In view of the above discussion, the petition is dismissed with costs.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 22nd day of May 2025.

Sd/-
SWATHI. R. KRISHNAN
MUNSIFF

Appendix: Nil

Id/-
MUNSIFF

//True Copy//

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

MUNSIFF