

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY

Present: Smt. Gale Joy Chettupuzha, Munsiff-Magistrate

Wednesday, the 11<sup>th</sup> day of February, 2026  
22<sup>nd</sup> day of Magha – 1947

EXECUTION APPLICATION No. 1/2025  
EXECUTION PETITION No.18/2024  
ORIGINAL SUIT No.9/2015

Nadeera, Aged 56 years,  
W/o.M.K.Muhammed, Swastham,  
Panolithazhathu Veedu, Manipuram P.O.,  
Parambathkavu amsom, Kozhikode Taluk.

V/s.

Biju Paulose, Aged 54 years, S/o.Paulouse,  
Ainattu Veedu, Kaippancherry,  
Sulthanbathery amsom, Sulthanbathery  
Taluk, Wayanad.

Petitioner/Respondent  
Plaintiff

Respondent/Petitioner  
Defendant

This Execution Application is coming on this day for hearing before me in the presence of Sri.P. Raj Mohan, Advocate for petitioner and Sri.T.M.Rasheed, Advocate for Respondent and on the same day the court passed the following:-

ORDER

This is a petition filed by the respondent/judgment debtor seeking to set aside the Commission Report, rough sketches and photographs submitted by the Advocate Commissioner dated 24.09.2025.

2. **Case of the Petitioner, in brief, is as follows:-** The petitioner challenges the Commission report, sketches and photographs on the ground that they are vitiated by errors, omissions and incorrect assumptions. It is contended that the Advocate Commissioner failed to properly identify the properties, did not prepare a detailed plan with necessary measurements and boundaries, and misunderstood the terms of the settlement forming part of the decree in O.S.No. 9/2015. It is further alleged that the measurements recorded are incorrect, the sketches are inaccurate, and several factual findings are erroneous. According to the petitioner, the Commissioner exceeded her authority by recording findings instead of merely noting factual observations, and that the report is one-sided and intended to favour the decree holder. On these grounds, the petitioner seeks to set aside the report and for appointment of a fresh Commissioner.

3. The respondent/decreed holder opposed the petition contending that the application is devoid of merit and is filed only to delay execution proceedings. It is submitted that the Advocate Commissioner conducted inspection after due notice to both parties, in their presence, and recorded the physical features and measurements at the site. The core issue in execution is whether the judgment debtor has violated the decree by constructing a platform reducing the open space, and the Commissioner has clearly reported the same. According to the respondent, the allegations against the Commissioner are baseless, and dissatisfaction with the findings cannot be a ground to set aside the report.

4. The point that arises for consideration is: “Whether the petitioner has made out sufficient grounds to set aside the Commission Report?”

5. Heard both sides.

6. The Advocate Commissioner was examined before this Court and Exts. C1 report and C1(a) sketch were marked. It is settled law that the report of an Advocate Commissioner is a piece of evidence intended to assist the Court in understanding the physical features of the property. Such a report cannot be set aside lightly unless it is shown that the same is vitiated by fraud, bias, or fundamental procedural irregularity causing prejudice.

7. In the present case, the principal contention of the petitioner is that the Commissioner had not perused the decree and the settlement agreement and therefore was not competent to record findings regarding violation of the decree.

8. On evaluation of the evidence tendered by the Advocate Commissioner, it is true that he has stated that he had not independently perused the decree or the joint statement forming part of the decree. He has also stated that certain observations in the report were made based on the pleadings and work memos submitted by the parties. However, these aspects, by themselves, are not sufficient to discard the entire report. The essential purpose of a local inspection is to note the physical features existing at the site. In his evidence, the Commissioner has clearly and consistently stated that:

1. there exists an open space having a width of about 3.10 metres on the western side of the building;

2. a continuous elevated portion/platform having a width of about 1.20 metres is constructed along the western side adjoining the building;
3. the height of the said structure at the junction with the building is about 12 cm, with a sloping portion towards the outer side;
4. there are multiple shop rooms facing the said portion, and access to the shops is through the said area;

These material aspects relate to objective physical features observed at the site and have not been effectively discredited in cross-examination.

9. The criticism regarding non-preparation of a detailed plan or omission of certain measurements may affect the weight to be attached to the report, but does not render the report liable to be set aside in toto. Similarly, the contention that the Commissioner made certain observations regarding violation of the decree without reading the decree would only mean that such conclusions are not binding on the Court. It is always for the Court to independently interpret the decree and arrive at its own conclusions. It is also significant that both parties were given notice of inspection, were present at the time of inspection, and had submitted work memos. No procedural irregularity or denial of opportunity is established.

10. The allegations of bias, mala fides, or deliberate falsification have not been substantiated by any acceptable material. Mere dissatisfaction with the report or the fact that the findings are unfavourable to the petitioner cannot be a ground to set aside the report. The report, sketches and photographs can be

appreciated along with other evidence in the execution proceedings, and the parties are at liberty to point out defects and seek appropriate clarification, if necessary. Setting aside the report at this stage is neither warranted nor justified.

In the result, E.A. No. 1/2025 in E.P. No. 18/2024 is dismissed. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and Pronounced by me in open court this the 11<sup>th</sup> day of February, 2026)

MUNSIFF-MAGISTRATE

Appendix:- - Nil.

MUNSIFF-MAGISTRATE

Typed by : Girija T N  
Compared by : Haseena K A