

IN THE COURT OF THE RENT CONTROL, SULTHANBATHERY

Present: Smt.Gale Joy Chettupuzha, Munsiff-Magistrate

Wednesday, the 18th day of March, 2026
 27th day of Phalguna – 1947

INTERLOCUTORY APPLICATION No.5/2024
ORIGINAL SUIT No.154/2024

Sheelamol Baby, Aged 61 years, W/o. Baby Mathew,
 Kalapurakkal Veedu, Kallumukku, Noolpuzha
 P.O., Noolpuzha amsom desom, Sulthanbathery Taluk,
 Wayanad District, Pin: 673592. Represented by Power of
 attorney Holder, Sheenamol Araykkal, Aged 47 years,
 W/o. Appolo, Kalapuraykkal Veedu., Kallumukk,
 Noolpuzha P.O., Noolpuzha amsom desom,
 Sulthanbathery Taluk, Wayanad District,
 Pin: 673592.

Petitioner
Plaintiff

V/s.

1. Kuriakkose, Age about 58 years, S/o. Chacko,
 Kuzhikkattil Veedu, Residing at Kaippancheri,
 Sulthanbathery amsom desom, Sulthanbathery Taluk,
 Wayanad District, Pin: 673592.
2. Biju Kurian, Age about 40 years,
 S/o. Kuriakkose, Kuzhikkattil Veedu,
 Residing at Kaippancheri, Sulthanbathery amsom desom,
 Sulthanbathery Taluk, Wayanad District, Pin: 673 592.

Respondents
Defendants

This interlocutory application is coming on this day for hearing before me in the presence of Sri.O.K.Anil, Advocate for Petitioner and Sri.K.J. Vijayakumaran, Advocate for respondents and on the same day the Court passed the following:-

ORDER

This is a petition filed under Order XXVI Rule 10(3) of the Code of Civil Procedure seeking to remit the report and rough sketch submitted by the Advocate Commissioner for conducting a further enquiry.

2. The averments in the petition, in brief, are as follows: The suit has been instituted for eviction of the defendants from the plaint B schedule property on the strength of the plaintiff's title, recovery of possession, mesne profits, and for a decree of permanent injunction. In connection with the suit, an Advocate Commissioner was appointed as per order in I.A. No. 4/2024, who inspected the property on 03.07.2024 and submitted a report along with a rough sketch. According to the petitioner, the Commissioner has committed serious errors in identifying the plaint B schedule property. It is contended that the actual B schedule property lies on the eastern side of the plaint A schedule property and has been encroached upon by the defendants, whereas the Commissioner has mistakenly identified a property on the northern side and marked the same as B schedule in the sketch. It is further alleged that the Commissioner failed to properly note the existence of the actual pathway and was misled by the defendants, resulting in an incorrect report. Hence, the petitioner seeks remission of the report for proper identification of the property and submission of a fresh report and sketch.

3. Notice was duly served on the respondents. However, no objection has been filed.

4. Heard the learned counsel for the petitioner. Perused the records including the Commission report and rough sketch.

5. On a consideration of the averments in the petition and the materials on record, it is seen that the dispute between the parties essentially relates to the identity, lie, and location of the plaint B schedule property. The petitioner has specifically pointed out alleged discrepancies in the Commission report and sketch regarding the identification of the property, including the confusion between the northern and eastern portions and the alleged omission to properly identify the access pathway. The purpose of appointing an Advocate Commissioner is to assist the Court in elucidating the factual aspects, particularly relating to identification and physical features of the property in dispute. If there is any ambiguity, omission, or apparent error in the report which may affect proper adjudication of the matter, the Court is empowered under Order XXVI Rule 10(3) of the Code of Civil Procedure to remit the report for further enquiry.

6. In the present case, considering the nature of the dispute and the specific allegations regarding misidentification of the plaint B schedule property, this Court is of the view that a further enquiry by the Advocate Commissioner is necessary for a just and proper adjudication of the case. It is also pertinent to note that the respondents have not filed any objection opposing the relief sought. In the above circumstances, this petition is liable to be allowed.

In the result, I.A. No. 5/2024 is allowed as follows:

The report and rough sketch submitted by the Advocate Commissioner pursuant to the order in I.A. No. 4/2024 are hereby remitted to the same Commissioner. Petitioner shall deposit a batta of ₹4,500/- to the Advocate Commissioner.

The Advocate Commissioner is directed to:

1. Conduct a further enquiry of the property after due notice to both parties;
2. Identify the plaint schedule properties, particularly the B schedule property, strictly in accordance with the descriptions contained in the plaint and the relevant title documents;
3. Ascertain and report the correct lie, location, boundaries, and physical features of the plaint B schedule property;
4. Specifically note the existence and location of any pathway in and around the property;
5. Correct the defects, if any, in the earlier report and rough sketch; and
6. Submit a fresh report and rough sketch within a period of one month from the date of receiving the Commission Report

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and Pronounced by me in open Court, this the 18th day of March, 2026.)

MUNSIFF-MAGISTRATE

Appendix: Nil

MUNSIFF-MAGISTRATE

Typed by: Subha V.K.

Compared by: Haseena K.A.