



COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY

Present: Smt.Gale Joy Chettupuzha, Munsiff-Magistrate

Friday, the 17th day of October, 2025

25th day of Aswina – 1947

INTERLOCUTORY APPLICATION No.3/2025

ORIGINAL SUIT No.335/2014

Gafoor, S/o.Kader, Challapurath House,
Aged 50 years, P.O. Ambalavayal,
Ambalavayal amsom desom,
Sulthanbathery Taluk.

Petitioner
Plaintiff

V/s.

1. Varghese, S/o.Ouseph, Aged 61 years,
Kannamali House, Marathattu,
Narikundu P.O., Thomattuchal,
Sulthanbathery Taluk.
2. Ealiyamma, W/o.Varghese, Kannamali
House, Marathattu, Narikundu P.O.,
Thomattuchal, Sulthanbathery Taluk.

Respondents
Defendants

This interlocutory application is coming on this day for hearing before me in the presence of Sri.K.Moidu, Advocate for the petitioner and Sri.Venkitasubramaniyan, Advocate for respondents and the Court on the same day passed the following:-

ORDER

This petition is filed by the petitioner seeking to set aside the Commission Report and Plan submitted by Advocate Commissioner Sri. M.T. Babu on 05.12.2024.

2. Petition Averments (in brief):- The petitioner contends that the Commission Report and Plan submitted by Advocate Commissioner Sri. M.T. Babu are wholly insufficient for the fair and proper disposal of the jointly tried cases, O.S. No. 86/2013 and O.S. No. 335/2014. It is stated that the joint trial was ordered on the ground that the subject matter in both suits is identical, and that the Commissioner failed to verify this crucial aspect while preparing the report and plan. The petitioner points out that Advocate Sri.T.G. Mohandas had earlier been appointed as Commissioner and had submitted a report in O.S. No. 86/2013 dated 08.05.2013, and another report in the present case on 09.10.2014. It is alleged that the properties inspected in both suits were the same.

3. The petitioner further submits that proper identification and demarcation of the disputed properties could only have been done by examining the title deeds and patta sketches pertaining to W.C.S. No. 1638/1973 (allegedly obtained by the predecessors of the defendants) and W.C.S. No. 1640/1973 (obtained by the petitioner's father, Kader). The Commissioner's report, however, records that village records including the Field Measurement Book (F.M.B.) and Co-relation Register were not available in the Village Office.

4. It is alleged that the Commissioner failed to verify whether Plot "A" (shown as the disputed property) and Plot "B" (shown as in the possession of the defendants) actually form part of W.C.S. No. 1638/1973 or whether the relevant survey numbers were correctly identified. The petitioner contends that the report and plan are baseless and unsustainable, as the properties to which the petitioner is entitled and the disputed property were not identified with reference to the title boundaries and patta sketches under W.C.S. Nos. 1638/1973 and 1640/1973. It is further alleged that Plots "A" and "B" were wrongly identified as disputed properties and incorrectly shown as forming part of Document No. 3813/1981 belonging to the

defendants. On these grounds, the petitioner prays that the report and plan submitted by the Advocate Commissioner be set aside and rejected as invalid.

5. Respondents entered appearance and filed counter statement raising the following contentions:- The respondents contend that the petition seeking to set aside the Commission Report and Plan dated 05.12.2024 is not maintainable either in law or on facts and is liable to be dismissed in limine. Except for matters expressly admitted, all other averments in the affidavit are denied. It is submitted that a Commission Report and Plan, once submitted, form part of the court record and cannot be set aside merely at the instance or whims of a party. No valid or cogent reasons have been advanced to justify such a course, nor has the petitioner pointed out any specific aspects the Commissioner failed to report. The petition is alleged to be a deliberate attempt to delay and prolong the litigation, amounting to an abuse of the process of court.

6. The respondents deny the allegation that the Commissioner ignored the fact of the joint trial between O.S. No. 335/2014 and O.S. No. 86/2013, asserting that no omission or procedural irregularity has been shown. The respondents further submit that the claim that proper identification requires reference to Patta Nos. W.C.S. 1638/1973 and 1640/1973 is false, since these pattas cover a much larger extent of land that has undergone several alienations over time, making precise identification impracticable. The petitioner has not produced any patta sketches and is merely on a fishing expedition. The allegation that the Advocate Commissioner ignored a work memo allegedly filed by the petitioner is an afterthought without bona fides. No such work memo was filed or approved by the Court, and the Commissioner was not bound to consider any informal communication. The reasons cited to set aside the report are vague, speculative, and insufficient. The respondents

therefore pray that the petition be dismissed with costs, including compensatory costs.

7. Heard both sides and perused the records.

8. The primary question that arises for consideration is whether sufficient grounds have been made out to set aside the Commission Report and Plan dated 05.12.2024. It is well settled that a Commission Report forms part of the court record and is intended to assist the Court in appreciating the factual aspects relevant to adjudication. Such a report is not conclusive and will be acted upon only if the Court finds it credible and consistent with the evidence. However, it cannot be discarded merely because one party is dissatisfied with its contents.

9. In the present case, the petitioner has not demonstrated any substantial infirmity, irregularity, or legal defect in the Commissioner's proceedings. The allegation that the report is "insufficient" or "erroneous" is unsupported by any reliable material. The Commissioner's report expressly records that certain village records such as the F.M.B. and Co-relation Register were not available in the Village Office a factual circumstance which cannot be impugned merely because it is unfavourable to the petitioner.

10. The petitioner has also failed to produce the patta sketches or any other authentic records to substantiate the claim that the identification made by the Commissioner was incorrect. The existence of earlier reports by another Commissioner does not by itself render the present report invalid, particularly when the property was re-inspected in connection with the joint trial and the findings appear consistent with the site conditions noted. In view of the foregoing discussion, this Court finds that there are no valid or cogent grounds to set aside the Commission

Report and Plan dated 05.12.2024 submitted by Advocate Commissioner Sri. M.T. Babu. The objections raised by the petitioner are speculative and unsupported by evidence.

The Commission Report shall remain on record and will be considered along with other evidence at the stage of final disposal of the suits.

In the result, the petition is dismissed. There will be 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 17th day of October, 2025)



MUNSIFF-MAGISTRATE

Appendix:- - Nil.



MUNSIFF-MAGISTRATE

Typed by : Girija T N ✓
Compared by : Subha V K ✓