

IN THE COURT OF THE SUBORDINATE JUDGE, SATHYAMANGALAM.

**PRESENT: Tmt.K.S.Shabeena, M.L.,
Subordinate Judge, Sathyamangalam.**

Thursday, the 02nd day of April 2026
(2056 Thiruvalluvarandu Visuvavasu varudam Panguni Thingal 19th day)

C.M.A.10/2025
CNR. No. TNED050006482025

Sundarammal

.... Appellant/Respondent/
Plaintiff

/vs/

1.Rangasamy
2.Vaitheeswaran
3.Tamilarasan
4.Subramani
5.Ayyasami
6.Udhayakumar

.... Respondents/Petitioners/
Defendants

Before the lower court in I.A.No.4/2024 in O.S.71/2023

1.Rangasamy
2.Vaitheeswaran
3.Tamilarasan
4.Subramani
5.Ayyasami
6.Udhayakumar

.... Petitioners/Defendants

/vs/

Sundarammal

.... Respondent/Plaintiff

This Civil Miscellaneous appeal coming before me for final hearing on 02.04.2026 in the presence of Thiru.P.Thamarai Manalan counsel for the appellants, and Thiru.S.A.Mohamed Mubarak, counsel for the respondent and upon hearing the arguments of both sides, upon perusal of all connected material records and having stood over for consideration till this date, this court pronounced the following....

JUDGEMENT

This Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(104) of the Code of Civil Procedure, challenging the order dated 30.04.2025 passed by the learned District Munsif, Sathyamangalam, in I.A. No.04 of 2024 in O.S. No.71 of 2023.

2. Gist of the Petition:

1. The appellant is the plaintiff in O.S. No.71 of 2023, wherein the suit has been laid for the reliefs of permanent and mandatory injunction in respect of the suit property. The respondents herein, who are the defendants in the suit, filed I.A. No.4 of 2024 seeking appointment of an Advocate Commissioner to measure the suit property and to demarcate the boundaries between the respective lands.

2. The trial Court, by order dated 30.04.2025, allowed the said application and appointed an Advocate Commissioner with specific directions to measure the properties and file a report along with a plan. Aggrieved by the said order, the appellant has preferred the present Civil Miscellaneous Appeal.

3. Grounds of Appeal:

The appellant contends that the impugned order is unsustainable in law and fact on the following grounds:

1. The principal contention of the appellant in the memorandum of appeal is that the order passed by the trial court is contrary to law, evidence and probabilities of the case. The appellant contends that the trial court failed to properly appreciate the documentary evidence produced on her side.

2. The learned counsel for the appellant would contend that the order of the trial Court is unsustainable in law and on facts. It is submitted that the trial Court failed to consider the earlier Commissioner's report filed in O.S. No.510 of 1984, wherein the physical features including the pathway, canal and coconut trees had already been identified and recorded.

3. It is further contended that the respondents themselves have admitted the existence of coconut trees in the earlier proceedings and therefore cannot now seek a fresh commission on a contradictory plea. The appellant would also contend that the dispute in the suit is not with regard to boundary fixation, but relates to interference with possession, and therefore the appointment of a Commissioner to measure and fix boundaries is wholly unwarranted.

4. The trial Court has failed to consider the documents produced by the appellant, including the earlier Commissioner's report, criminal proceedings and other material evidence, and has mechanically allowed the application.

4. Contentions of the Respondents:

1. Per contra, the learned counsel for the respondents would submit that the dispute between the parties is essentially with regard to the identification and demarcation of the boundary between the lands in Survey Nos.62/4, 62/5 and 62/6B.

2. It is contended that unless the exact boundary is fixed with the aid of a surveyor, the Court would not be in a position to effectively adjudicate the dispute. It is further submitted that the appointment of a Commissioner is only to assist the Court and does not prejudice the rights of either party.

5. Points for Consideration:

In the point that arises for determination in this appeal is whether the order of the trial Court appointing an Advocate Commissioner for measurement and demarcation of the suit properties warrants interference?

6. Discussion:

6.1. This appeal arises out of an interlocutory order passed by the learned District Munsif appointing an Advocate Commissioner under the provisions of the Code of Civil Procedure. The correctness of such an order has to be examined in the light of the statutory framework governing appointment of commissions and the settled principles laid down by judicial precedents.

6.2. At the outset, it is necessary to advert to the scope and object of **Order XXVI Rule 9 of the Code of Civil Procedure**, which empowers the Court to issue a commission for local investigation. The said provision contemplates that in any suit

where the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or for ascertaining the market value of any property, or the amount of any mesne profits or damages, the Court may issue a commission to such person as it thinks fit. The essential requirement, therefore, is whether the local investigation would assist the Court in effectively adjudicating the issues involved.

6.3. In the present case, the suit is one for permanent and mandatory injunction. However, a careful reading of the pleadings of both parties would unmistakably reveal that the real controversy between them is not merely one of interference, but fundamentally one relating to the **identity, location and demarcation of the boundary** between their respective lands in Survey Nos.62/4, 62/5 and 62/6B. The dispute regarding the planting of coconut saplings is intrinsically connected with the question as to whether the said saplings fall within the property of the plaintiff or that of the defendants.

6.4. The respondents/defendants have taken a specific stand that the saplings were planted 5 feet south of the east–west pathway and within their land, whereas the appellant/plaintiff asserts possession over the disputed portion. Thus, the core issue necessarily involves determination of the exact boundary line between the adjoining survey fields.

6.5. In such a situation, oral evidence alone would not suffice to conclusively establish the physical features or the precise location of the boundary. The Court

cannot, by mere appreciation of oral testimony, accurately identify survey boundaries or resolve disputes relating to encroachment. This is precisely the situation contemplated under **Order XXVI Rule 9 CPC**, where a local investigation becomes not only useful but indispensable.

6.6. The contention of the appellant that an earlier Commissioner's report in O.S. No.510 of 1984 had already dealt with the physical features cannot, in the considered view of this Court, be accepted as a bar to the present commission. Firstly, the said report pertains to a proceeding that took place several decades ago. Secondly, even according to the respondents, the physical features, including the coconut trees, have undergone changes over time. Thirdly, the present dispute arises out of a recent cause of action, namely, the alleged planting of saplings in the year 2023.

6.7. It is trite that a Commissioner's report reflects the factual position as on the date of inspection, and not as it existed in the past. Therefore, reliance on an earlier report cannot obviate the necessity of ascertaining the present physical condition of the property. The trial Court has rightly appreciated this aspect.

6.8. The further contention of the appellant that the trial Court failed to consider certain documents, including the earlier Commissioner's report, criminal proceedings, and other materials, does not persuade this Court to interfere with the impugned order. At the stage of appointing a Commissioner, the Court is not expected to adjudicate upon the merits of the rival claims or to render findings on title or

possession. The exercise is only for the limited purpose of facilitating proper adjudication by collecting relevant factual data.

6.9. In this context, it is also pertinent to refer to the principle that a Commissioner cannot be appointed for the purpose of collecting evidence to support a party's case, but can certainly be appointed to elucidate matters in dispute. In the present case, the appointment is not intended to gather evidence in favour of the defendants, but to assist the Court in identifying the boundary and locating the disputed saplings with reference to survey records. Such an exercise squarely falls within the permissible scope of Order XXVI Rule 9 CPC.

6.10. The argument that the suit being one for injunction, the question of boundary fixation does not arise, is also devoid of merit. It is well settled that when the issue of possession is intertwined with the identity of the property, the Court is competent to order measurement and demarcation. In fact, without such determination, any decree for injunction would be rendered vague and inexecutable.

6.11. Further, the power of the appellate Court to interfere with discretionary orders passed by the trial Court is limited. Under **Section 104 read with Order XLIII Rule 1 CPC**, an appeal lies against an order appointing or refusing to appoint a Commissioner. However, such appellate jurisdiction is not intended to substitute the discretion of the trial Court with that of the appellate Court, unless the order suffers from arbitrariness, perversity, or material irregularity.

6.12. In the case on hand, the trial Court has exercised its discretion judiciously, taking into account the nature of the dispute and the necessity for local investigation. The order does not suffer from any illegality or material irregularity warranting interference.

7. Findings:

This Court finds no such infirmity in the impugned order.

8. Result:

1. **In the result**, the Civil Miscellaneous Appeal fails and the same is dismissed.
2. The order dated 30.04.2025 passed in I.A. No.4 of 2024 in O.S. No.71 of 2023 by the District Munsif Court, Sathyamangalam, is hereby confirmed.
3. Consequently, connected miscellaneous petitions, if any, are closed.
4. There shall be no order as to costs.

Dictated by me to the Steno typist, typed by her in the Computer directly, corrected and pronounced by me in open court on this the 02nd day of April 2026.

Subordinate Judge,
Sathyamangalam.

Appellant side Exhibits: -Nil-
Respondent side Exhibits: -Nil-

Subordinate Judge,
Sathyamangalam.