

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, VALLIYOOR

Present: Mithuna.A.Kaiser, B.A., B.L., Additional District Munsif, Valliyoor

Monday, On the day of 03rd day of November 2025.**I.A.No.5/2025****In****O.S.No.19/2018**

Benat

.... Petitioner/3rd defendant

-Vs-

1. A.Maria Leela

..... Respondent/plaintiff

2. Praveen Suhila

3. Saraswathi

.... Respondents/1, 2 Defendants

This petition came before this court on 25.10.2025 for a final hearing in the presence of Thiru.G.Sivakumar, Learned counsel for the petitioner, Thiru.Ramanarayana Perumal, Learned counsel for the 1st respondent, 2nd and 3rd respondent were set exparte and upon hearing both sides, perusing the case records, and having stood over the consideration till this day, this court hereby delivers the following:

ORDER

The present petition has been filed by the petitioner under Order XXVI Rule 10(3) of the Code of Civil Procedure, 1908, seeking to set aside and scrap the Commissioner's report filed.

1. GIST OF AVERMENTS IN PETITION:

1.1. The petitioner had filed this petition to scrap out the Commissioner's report filed by the Advocate Commissioner through order dated 05.12.2024 in I.A. No. 4/2023. The petitioner had already filed detailed objections pointing out the flaws and other infirmities against the said report on 22.07.2025. The rough sketch filed along with the impugned report is false, evasive, and does not portray the actual lay and measurements on the spot. The Commissioner's report bears no authentication, no certification, nor disclosure of the author. Such a document without legal sanctity cannot be relied upon by this Court.

1.2. It was further stated that the Commissioner, instead of measuring the suit property as per the FMB, Patta, and Survey Plan, abdicated and delegated her responsibility to a private surveying agency arranged by the plaintiff. It is pertinent that the said private surveyor could not identify the reference point "A" as per the survey rules and had fixed it preemptively. This, in turn, vitiates the entire commissioner report and plan. Further, it was stated that the Advocate Commissioner failed to examine the planned schedule properties and revenue records while preparing the plan. The plan was arbitrarily prepared by scanning and even altering the FMB sketch, amounting to tampering with government records. Further, the Commissioner's report deliberately suppressed the fact that the plaintiff is in possession of land in excess of her entitlement. The fixation of

reference points such as A, B, C, D, etc., and the unsealed boundary line between the plaintiff's and defendant's properties are contrary to the survey rules and actual layout plan. The actual and whole extent of the property in Survey No. 1235/4A1 and 1235/4A2 was not properly measured, and the full extent was not recorded. Therefore, the petitioner has filed this application to set aside the Commissioner's report and plan filed by the Advocate Commissioner. Thus, prays that the Advocate Commissioner's report be scrapped out.

2. GIST OF COUNTER FILED BY 1ST RESPONDENT:

2.1. The petition is not maintainable either in law or on facts and is liable to be dismissed in limine. The petitioner has found fault with the Commissioner's report, which is not true, and the allegations made by the petitioner are baseless. The Commissioner had discharged her duty properly and in accordance with the order of this Court. She had sought the assistance of a surveyor from the Taluk Office, and no private surveyor was engaged. These allegations have been levelled only to tarnish the image of the Commissioner. The contention that the Commissioner deliberately failed to note the plaintiff's possession of land in excess of what he is entitled to is utterly false. Moreover, it is not within the Commissioner's scope to determine who is in possession of what extent of land. The Commissioner has carried out her duty strictly in accordance with the Court's direction. The petitioner has filed this application

only to protract the proceedings for his own convenience. Therefore, the allegations raised are only for the sake of objecting to the Commissioner's report. Hence, it is prayed that the petition be dismissed.

3. POINT FOR CONSIDERATION :

Whether the petition under Order XXVI Rule 10(3) and Section 151 CPC has to be allowed or not?

3.1. The present petition has been filed by the petitioner under Order XXVI Rule 10(3) of the Code of CPC, seeking to set aside and scrap the Commissioner's report pursuant to the order passed in I.A. No.4/2023 dated 05.12.2024. The petitioner contends that the Advocate Commissioner, while executing the warrant of commission, had used a digital locating instrument allegedly arranged by a private party for identifying the "A" stone. It is further contended that the measurements recorded by the Commissioner were erroneous, vague, and not denoted properly, thereby rendering the report unreliable and unfit to be accepted as evidence. Per contra, respondents contended that the instrument used by the Commissioner was a government-approved survey device, and hence, the mere use of such a digital instrument would not vitiate the report. It is

further submitted that the Commissioner's report is genuine, duly prepared after physical inspection, and can therefore be relied upon, with its evidentiary value to be decided at the appropriate stage of trial.

3.2. On careful perusal of the records and the Commissioner's report, this court is of view that the suit has been filed for declaration of title over the 2nd schedule property and recovery of possession over the same property from the defendants. The petitioner/3rd defendant and the 1st respondent/plaintiff had agitated in their objection for the commissioner report that DGPS instruments were used to locate the survey stone and the commissioner had delegated her power to private agency and thus fixed the A point presumptively. In this regard, the Court observes that use of DGPS, which is a satellite based navigation system used to obtain the accurate position. Usage of DGPS by the surveyor, being government-approved does not by itself vitiate the commission proceedings.

3.3. On perusal of commissioner report, it reveals that the property under survey No.1235/4 was subdivided as 1235/4A1 and 1245/4A2 and was inspected. It was stated in the commission report that "petitioner/plaintiffs land in Sy No.1245/A2 of extent 1 Acre 20 cents

were under possession of respondent/defendant” whereas also stated that “the encroached portion lies in Sy.No.1245/A1.” Therefore this court is of view that, the Commissioner has failed to demarcate with clarity, the exact extent and boundaries of the plaintiff’s property as per the document. There is no correlation between the documentary extent, revenue record extent, and physical measurement found in suit property. Even on encroachment the commissioner fails to disclose, what is the total extent of land found after encroachment. Also failed to identify the 1st and 2nd schedule of property and failed to identify the extent of actual lie of land. The report further suffers from vagueness and lack of analytical reasoning, as it merely states the total extent in the sub divided survey number.

3.4. Moreover, taking into consideration that both the petitioner and respondent had filed a objection to the above said Commissioner report, this Court finds that the present Commission report doesn’t provides clear correlation between documentary title, revenue entries, ground situation, and filled with ambiguity on averments regarding 1.20 cents description. In light of the above discussion, this Court is of the view that the Commissioner’s report is vague, incomplete, and fails to assist the Court in arriving at a proper conclusion regarding the issue in dispute. Therefore,

this Court is justified in scrapping the advocate commissioner report filed as per order passed in I.A. No.4/2023 dated 05.12.2024.

In the result, the petition is allowed. No cost.

This Order dictated to the Typist, directly typed in computer by him, corrected and pronounced by me in open Court, on 3rd day of November 2025.

Additional District Munsif,
Valliyoor.

Witnesses examined on the side of Petitioner and Respondents: Nil

List of Documents on the side of the Petitioner and Respondents : Nil

Additional District Munsif,
Valliyoor.

Additional District Munsif Court,
Valliyoor
I.A.No.5/2025
in
O.S.No.19/2018
Draft/Fair Order
Dated: 03.11.2025