

STATE OF KERALA
IN THE SUBORDINATE JUDGE'S COURT, ERNAKULAM

Present:

Smt.Ancy T., 1st Additional Civil Judge (Senior Division)

Monday, the 23rd day of February, 2026/4th Phalguna 1947

I.A. No.11/2025 in O.S No.50/2022

**Petitioners/
Defendants:**

1. Pradeep K.G., S/o.Gopinathamenon, aged 66 years, Prayaga, P.J Antony Road, Punathil Lane, Edappally South Village, Palarivattom P.O., Ernakulam District, Pin - 682025.
2. Sujatha K.G., D/o.Gopinatha Menon and W/o.Haridas, aged 64 years, Ponneth South Road, Ernakulam Village, Elamkulam P.O, Kanayannoor Taluk, Ernakulam District, Pin - 582020.

By Adv.Millu Dandapani.

**Counter
Petitioner/
Plaintiff:**

Savitha K.G., D/o.Gopinathamenon and W/o.Gopinathan, Saga, Kottappuram, Nadama Village, Thekkumbhagam Kara, Tripunithura Kanayannoor Taluk, Ernakulam District - 682301.

By Advs. P.R. Rajesh, John T. Paul, Thomas Bose and Kurian Joseph.

This petition filed under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 praying this court may be pleased to vacate the temporary injunction order dated 05.04.2022 passed in I.A. No. 2 of 2022 in O.S. No. 50 of 2022 and permit the defendants to peacefully use, occupy, and carry out necessary construction or repair works in the plaint schedule properties without any obstruction from the plaintiff or persons claiming under her in the interest of justice.

This application coming on for hearing before me on 19.02.2026 and the Court on 23.02.2026 delivered the following:

ORDER

This application is filed by petitioner/ first defendant under Order 39 Rule 4 and u/s.151 of CPC.

2. The averments in the affidavit accompanying the petition in brief are as follows:- The suit is filed by the respondent/plaintiff seeking partition of the plaint B schedule property into three equal shares and allotment of 1/3rd share to the plaintiff along with consequential reliefs. The case is posted to 06.11.2025 for filing an undertaking affidavit by the plaintiff. Along with the suit, the plaintiff filed I.A. No.2/2022 under Order 39 Rule 1 CPC seeking temporary injunction restraining the defendants from demolishing, committing waste, or continuing construction in building No. 61/2179 situated in the plaint A and B schedule properties. The said application was allowed on 05.04.2022. The defendants came to know that the plaintiff has rented out the second floor of the plaint A schedule property and is using the common pathway and amenities which is within the defendants' possession. The plaintiff has allegedly placed locks on the common entrance, put up notice boards for letting out the premises and interfered with the common pathway thereby affecting the defendants' rights. Due to the injunction order passed in I.A. No. 2/2022, the defendants are restrained from carrying out constructions or repairs there by preventing them from utilizing or developing their

share and caused hardship and financial loss. Meanwhile, the plaintiff is allegedly misusing the injunction order by enjoying portions of the property including common areas beyond her entitlement. The plaintiff's conduct indicates misuse of the injunction order to gain an unfair advantage over the defendants. Hence, it is necessary to vacate the injunction order dated 05.04.2022 to restore parity and to enable the defendants to enjoy their rightful share. The balance of convenience lies in favour of the defendants and no prejudice will be caused to the plaintiff if the injunction order is vacated especially considering her conduct. Hence it is prayed that the temporary injunction order passed in I.A. No. 2/2022 is be vacated. Hence the petition.

3. Respondent/plaintiff filed counter statement and it is summed up as follows:- The petition is not maintainable either in law or on facts and all averments are denied except those specifically admitted. All the averments are denied except the fact that the respondent/plaintiff placed a notice board in front of the gate in order let out her own portion of the building which will not infringe any of the right of the petitioners. The petitioners/defendants have no right to undertake any construction or repair work in the plaint schedule property without the consent and knowledge of the respondent/plaintiff who has right and interest in the property. Any illegal or unauthorized construction would cause damage to the property including the respondent's second floor. The respondent/plaintiff believes that the

petitioners may take hasty steps to destroy the building and cause loss. The balance of convenience lies entirely in favour of the respondent/plaintiff. Vacating the injunction order would cause heavy loss, hardship and injustice to her rights. The petitioners have approached the Court with unclean hands in order to harass the respondent. Hence, it is prayed that the petition is to be dismissed with costs.

4. On the basis of the averments in the application, the following points are raised for consideration :-

1. Whether the injunction order passed on 05.04.2022 is liable to be vacated or not ?
2. Reliefs and costs?
5. No documents were marked from either sides.
6. Both sides were heard.
7. **Points No.1 & 2 :-**

The suit is filed one for partition of the plaint B schedule property into three equal shares and allotment of 1/3rd share to the plaintiff along with consequential reliefs. According to the petitioner, the respondent has rented out the second floor of the plaint A schedule property and is using the common pathway and amenities which is within the defendants' possession. The plaintiff has placed locks on the common entrance, put up notice boards for letting out the premises and interfered with the common pathway, thereby affecting the

defendants' rights. Due to the injunction order passed in I.A. No. 2/2022, the defendants are restrained from carrying out constructions or repairs there by preventing them from utilizing or developing their share which caused hardship and financial loss.

8. According to the respondent, the petitioners have no right to undertake any construction or repair work in the plaint schedule property without the consent and knowledge of the respondent/plaintiff who has right and interest in the property. Any illegal or unauthorized construction would cause damage to the property, including the respondent's second floor.

9. Along with the suit, the respondent/plaintiff filed I.A. No. 2/2022 under Order 39 Rule 1 CPC seeking temporary injunction restraining the defendants from demolishing, committing any acts of waste, or continuing any construction activities in building No. 61/2179 which is situated in the plaint A and B schedule properties. That application was allowed and injunction order was passed on 05.04.2022. Now the case is listed for trial and the plaintiff was already examined as PW1 on 05.02.2026. Since the trial is under progress, I am of the view that the allegations raised by the petitioner can be decided in the suit itself. Hence there is no necessity to vacate the injunction order which was passed on 05.04.2022. So this application stands dismissed. Considering the facts and circumstances of the case, the parties shall bear their respective costs.

In the result, this application is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court, on this the 23rd day of February, 2026).

Sd/-

Ancy T.

**1st Additional Civil Judge
(Senior Division)**

Appendix: Nil

Id/-

**1st Additional Civil Judge
(Senior Division)**

Typed by : ms
Comp.by : sm

**O R D E R in
I.A. No.11/2025 in
OS No.50/2022
Dated: 23.02.2026**