

**IN THE COURT OF THE MUNSIFF, KAYAMKULAM**

**Present: Sri.Shanavas.A, Munsiff**

Wednesday the 5<sup>th</sup> day of April 2023/15<sup>th</sup> Chaithra 1944

**IA. 1/2022 in ORIGINAL SUIT.447/2022**

**(Filed on 17/12/2022)**

**Petitioners/Plaintiffs:**

1. Sreeletha.L, aged 47 years,  
Aiswarya, Eruva West muri,  
Pathiyoor Village,  
Karthikappally Taluk.
  
2. Nithya.S, aged 25 years,  
D/o.Sreeletha.L,  
Krishna Nivas,  
Prayar South muri,  
Clappana Village,  
Alumpeedika,  
Karunagappally Taluk.  
From Aiswarya,  
Eruva West muri,  
Pathiyoor Village,  
Karthikappally Taluk.

3. Nithin.U, aged 21 years,  
S/o.Late.Udayakumar,  
Aiswarya,  
Eruva West muri,  
Pathiyoor Village,  
Karthikappally Taluk.

**(By Adv.Sri.C.D.Anil)**

**Cr. Petitioners/Defendants:**

1. Prasannan, aged 51 years,  
Karunyam, Eruva West muri,  
Pathiyoor Village,  
Karthikappally Taluk.
2. Sukumari, aged 75 years,  
W/o.Thankappan,  
Ananda Bhavanam,  
Eruva West muri,  
Pathiyoor Village,  
Karthikappally Taluk.
3. Kathal, aged 19 years,  
S/o.Prasannan,  
Karunyam, Eruva West muri,  
Pathiyoor Village,  
Karthikappally Taluk.

**(By Adv.Sri.B.Ramesh Chandrakumar)**

This petition is filed Under Order 39 Rule 1 and 2 and Section 151 of the Civil Procedure Code 1908 and coming on for final hearing before me on 29.03.2023 in the presence of the counsels for both sides and having been stood over for consideration till 05.04.2023 and the court on the same day passed the following.

### **ORDER**

This is an order in a petition filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 for a temporary injunction.

2. The gist of averments in the petition are as follows:- The 1<sup>st</sup> petitioner is the 1<sup>st</sup> plaintiff in the suit. Plaintiff Nos. 2 and 3 are the son and daughter of the 1<sup>st</sup> petitioner born out of the wedlock with Late Udayakumar. The marriage between the 1<sup>st</sup> petitioner and Late Udayakumar was solemnized on 11.04.1995. The fortune received by the 1<sup>st</sup> petitioner on account of their marriage was entrusted to the father-in-law of the 1<sup>st</sup> petitioner Sri. Thankappan. By utilizing the price of the gold ornaments, one cent of property was purchased in the name of Late Udayakumar as well as the 1<sup>st</sup> petitioner at Kareelakulangara Junction and thereafter, they started a medical store in the name and style Sree Sai Medicals. The 1<sup>st</sup> respondent is the younger brother of deceased Udayakumar and 2<sup>nd</sup> respondent is the mother-in-law of the 1<sup>st</sup>

petitioner and 3<sup>rd</sup> respondent is the son of the 1<sup>st</sup> respondent. Meanwhile, Sri. Thankappan transferred plaint A schedule property ad measuring 2.2 ares to the 1<sup>st</sup> petitioner by virtue of gift deed No. 842/2000 of Kareelakulangara Sub Registrar's Office. After mutating the above property, the 1<sup>st</sup> petitioner has been residing there with his children. Thereafter, the 1<sup>st</sup> petitioner purchased plaint B schedule property ad measuring 81 Sq. Meters by virtue of sale deed No. 1384/2004 executed by Sri. Thankappan, which is for the vehicular access to plaint A schedule property. By availing a housing loan, the 1<sup>st</sup> petitioner constructed a residential building in plaint A schedule property. Meanwhile, she joined Kerala Health Service as Pharmacist. The title holder of the property comprised in re-survey No. 458/8, Sri. Thankappan, permitted the 1<sup>st</sup> petitioner to construct the building partaking 2 ½ cents included in re-survey No. 458/8. Meanwhile, deceased Thankappan and his wife executed settlement deed No. 1204/2007 of Sub Registrar's Office Kareelakulangara in favour of deceased Udayakumar scheduled as CDEF property. There are four items of property provided in the said settlement deed. Item No. 1 property having an extent of 4.76 ares is scheduled herein as C schedule

property. Item No. 2 property having an extent of 4.48 ares is scheduled herein as D schedule property. Item No. 3 property having an extent of 1.72 ares of property comprised in re-survey No. 458/7 is scheduled herein as E schedule property. Item No. 4 property having an extent of 25 Sq. Metres of property comprised in re-survey No. 458/20 is scheduled herein as F schedule. So, the deceased Udayakumar had title over 11.21 ares of property. The 1<sup>st</sup> petitioner availed a loan of Rs. 1,40,000/- from HUDCO for the construction of the house and it costs 8,50,000/-. For clearing the liability, another housing loan was taken from LIC to the tune of Rs. 3,00,000/-. Sri. Udayakumar, the husband of the 1<sup>st</sup> petitioner misappropriated the salary and Rs. 20,00,000/-, which was taken by the 1<sup>st</sup> petitioner from the Provident Fund account. The 3<sup>rd</sup> plaintiff was born on 23.07.2001. The father-in-law of the 1<sup>st</sup> petitioner Sri. Thankappan died on 22.07.2013. Due to the spendthrift habit of deceased Udayakumar, the spouses were in bad financial condition. Accordingly, deceased Udayakumar went to Muscat in 2009. Thereafter, he started a labour supply company in Dubai. Whereas, the company was in doldrums. Thereafter, deceased Udayakumar returned to the native place and he was having so many debts. Moreover, the life style

of deceased Udayakumar resulted in such a woeful situation. During these times, the 1<sup>st</sup> petitioner backed deceased Udayakumar and thereafter, he returned to India during July 2020 in the midst of outbreak of Covid-19 in a Vande Bharath flight. The 1<sup>st</sup> petitioner was brutally manhandled by deceased Udayakumar. In order to solemnize the marriage of the 2<sup>nd</sup> plaintiff, C to F schedule properties together with salary certificate of the 1<sup>st</sup> petitioner was given and availed a loan of Rs. 20,00,000/- from Pathiyoor Farmers Bank. The marriage of the 2<sup>nd</sup> plaintiff was solemnized on 13.12.2021. She was given 60 sovereigns of gold ornaments and other bride gifts by the 1<sup>st</sup> petitioner. In the meantime, deceased Udayakumar was diagnosed with Chronic kidney disease and he was undergoing dialysis at Parumala St. Gregorious Hospital.

3. At this instant, the creatinine and urea level of deceased Udayakumar was very high. An amount of Rs. 33,51,062/- was received as compensation from the National Highway authorities since some portion of C to F schedule properties acquired for road widening. The solatium was deposited in the account of the 1<sup>st</sup> petitioner and deceased Udayakumar. The loan availed from the Farmers' Co-operative Bank was

renewed and the remaining amount was withdrawn for the purpose of construction of shopping complex in D schedule property. Regarding the compensation, there arose some dispute between the 1<sup>st</sup> petitioner and deceased Udayakumar. That paved the way for filing O.P 1336/2022 before the Hon'ble Family Court, Mavelikara. Due to efflux of time, the renal issues of deceased Udayakumar was very severe and he was at the 5<sup>th</sup> stage of kidney disease and he had undergone dialysis. Due to the atrocities committed by deceased Udayakumar, the 1<sup>st</sup> petitioner went to her parental house. The deceased Udayakumar was treated at Taluk Hospital, Kayamkulam and he was undergone dialysis therein. The medical records clearly proved that deceased Udayakumar was cognitive disfunction during the period. On 10.11.2022, 12.11.2022 and on 15.11.2022, deceased Udayakumar underwent dialysis at Taluk Hospital Kayamkulam. On 16.11.2022, the 1<sup>st</sup> petitioner went to her maternal home and by 9 p.m, deceased Udayakumar was taken to Taluk Hospital Kayamkulam whereby he kicked the bucket at 10.48 p.m. The cremation of deceased Udayakumar conducted on 17.11.2022. The gift deed No. 842/2000 of Sub Registrar's Office, Kareelakulangara is scheduled herein as G schedule. A two wheeler of deceased Udayakumar, which is

scheduled as H schedule. Despite the demand on the part of the petitioner, the 1<sup>st</sup> defendant had not returned the Enfield Bullet, which is scheduled as H schedule. The 2<sup>nd</sup> respondent by suppressing material facts from this court, filed O.S.No. 401/2022 stating that she has been residing in A schedule property. The visit of the commissioner in O.S.No. 401/2022 was on 23.11.2022. Thereupon, the 1<sup>st</sup> respondent directed the petitioner to vacate plaint A schedule item. Further enquiry, it was seen that a deed styled as settlement deed with regard to C to F schedule properties was executed and registered as settlement deed No. 1130/2022 of Sub Registrar's Office, Kareelakulangara on 16.09.2022. On further verification of the fraudulent document, it is seen that the document dated 16.09.2022 was presented on 17.09.2022 at 11 a.m. In between 16.09.2022 and 17.09.2022, deceased Udayakumar suffering from cognitive disfunction and he was undergone dialysis at Taluk Hospital, Kayamkulam. So, he has no normal stage to execute such a settlement deed. As it is a fraudulent, this has to be cancelled and declared as void through process of the court. Since the petitioners are the co-owners of the plaint schedule property, they are every right to possess and enjoy the plaint schedule property by virtue of the Hindu

Succession (Kerala Amendment) Bill 2015. Hence the petitioner seeking for a temporary injunction against the respondent inter alia from alienating C to F schedule properties. Thus, this petition.

4. The respondents appeared and filed objection contending inter alia as follows:- The petition is not maintainable either in law or on facts. The averments in paragraph Nos. 1 to 26 in the petition are not sufficient to grant a temporary injunction. The petitioner is not entitled to any order prohibiting the alienation of C to F schedule properties. Similarly, the petitioner is not entitled to get any order to stall the construction in D schedule property. The petitioners have no right over the property scheduled as J schedule. In short, the plaintiff is not entitled to any order as sought by him. The extent and description of plaint A schedule was not stated by producing required documents. The petitioner had not produced any documents to see that she is the owner-in-possession of 2.5 cents of property comprised in re-survey No. 458/8. Plaint A schedule is not specifically identifiable. O.P.No. 1336/2022 was filed before the Hon'ble Family Court, Mavelikara against deceased Udayakumar by the 1<sup>st</sup> petitioner stating that B schedule property is a pathway and she managed to obtain an injunction order against

deceased Udayakumar. After the demise of Sri. Udayakumar, the above O.P was withdrawn by her. The 1<sup>st</sup> respondent has ownership, possession and enjoyment of C to F schedule properties. It is trite that there is no prohibitory order can be passed against the statutory right. The petitioner has no prima facie case. In fact, the deceased Udayakumar who was the elder brother of the 1<sup>st</sup> respondent, in consideration of the natural love and affection, executed settlement deed No. 1130/2022 of Sub Registrar's Office, Kareelakulangara on his full volition and with free consent, which was already came into force. It is not possible to declare the document as null and void or non est in law. The petitioner had approached this court on experimental basis. In fact, the petitioner was a cruel lady. She left her deceased husband when he was alive. The petitioner has no prima facie case. The respondents never done any act violating any right of the petitioners. Balance of convenience is also not in favour of the petitioners. The petitioners are not entitled to get an order of temporary injunction by violating the right of the respondents. If this court is inclined to allow this petition, it would cause irreparable injury and untold hardship to the respondents. On the other hand, by execution of the settlement deed

No. 1130/2022, which is left outstanding, there will be no injury happened to the petitioners. The petitioners filed the suit and this petition to harass the respondents. Since the petitioners had approached this court by suppressing material facts, the petitioners are not entitled for an equitable relief as sought for. The averments in the petition are vague. The treatment documents produced by the petitioners are not relevant to dispose the petition as per law. This is sheer abuse of the process of the court. On all these accounts, the respondents sought to dismiss the petition.

5. The following points were formulated for consideration:-

1. Whether the petitioners have made out a prima facie case ?
2. In whose favour, balance of convenience lies ?
3. Whether the petitioners would suffer irreparable injury and loss, if order of injunction is refused ?
4. Whether the petitioners are entitled to an injunction as prayed for ?
5. Reliefs and costs ?

6. Exts. A1 to A31 were marked on the side of the petitioners for reference. Exts. C1 and C1(a) marked as court exhibits. No documents were produced on the side of the respondents. Heard both the sides.

7. **Point Nos. 1 to 4:-** For the sake of convenience and brevity, these points are considered together. The petitioners herein approached this court for restraining respondent No.1 from alienating C to F schedule properties and from proceeding with the further construction of I schedule structure in D schedule property and from obstructing J schedule road running through D schedule property by constructing wall or fencing on the southern side of J schedule road and to restrain the respondents from committing any acts of waste in C,D,E,F schedule properties and from obstructing the peaceful residence of the petitioners in A schedule building. The case of the petitioners rest upon that Ext. A1 settlement deed was allegedly executed by deceased Udayakumar and he was not in sound disposing mind as he was undergoing dialysis due to Chronic Kidney Disease. In order to prove that deceased Udayakumar was under treatment at St. Gregorious Medical Mission Hospital, Parumala and at Government Taluk Hospital, Kayamkulam, petitioners produced Exts. A20 and A21. Both these are the diaries or note books which shows the details of the dialysis undergone by the deceased Udayakumar. It is the case of the petitioners that Ext. A1 was executed on 16.09.2022, when the deceased Udayakumar had cognitive

disfunction and he was not aware of the consequences of his act. Later, according to the petitioners, the deceased Udayakumar was not sound disposing of mind to execute Ext. A1. The recitals of Ext. A1 is at par with a settlement deed. It is stated in Ext. A1 that C to F schedule properties transferred to 1<sup>st</sup> respondent by deceased Udayakumar on account of his natural love and affection. Subsequently, it was contended by the respondent that by virtue of Ext. A1, he had mutated C to F schedule properties in his account and further he has been in possession and enjoyment of the same. The 1<sup>st</sup> respondent opted to defend the petition stating that the 1<sup>st</sup> petitioner had filed O.P.No.1336/2022 before the Hon'ble Family Court against deceased Udayakumar. As the family life of the 1<sup>st</sup> petitioner and deceased Udayakumar was not harmonious, the 1<sup>st</sup> petitioner left the company of deceased Udayakumar when the deceased Udayakumar needed her company in his life. Exts. A25 and A28 are the lab records of deceased Udayakumar. Ext. A25 is dated 04.10.2022 and Ext. A28 is dated 07.10.2022. On assay of Ext. A25, the creatinine level of deceased Udayakumar as on 04.10.2022 was 20.0mg/dl, against the normal range of 0.08-1.3mg. Similarly, uric acid of the deceased Udayakumar

as on 04.10.2022 was 11.8mg/dl against the normal range of 2.6-6.8mg. Likewise, in Ext. A28 dated 07.10.2022, the creatinine level of deceased Udayakumar was 14.80mg/dl against the normal range of 0.80-1.40. As regards the uric acid, calcium, potassium, albumin were also high when compared to the normal range as per the lab test report in Ext. A28.

8. It is to be noted that Ext. A1 was executed on 16.09.2022. The executant Sri. Udayakumar had died on 16.11.2022; i.e., precisely two months after the execution of Ext. A1 document. Ext. A20 reveals that he had undergone dialysis at St. Greogrious Medical Mission Hospital at Parumala from 20.07.2021 till 18.11.2021. Ext. A21 also shows that he had undergone dialysis for the period from 22.11.2021 till 15.11.2022. These are the available medical documents with regard to the dialysis of the deceased Udayakumar. When coming to the date of execution of Ext. A1, i.e., on 16.09.2022, Ext. A21 shows that he had undergone dialysis and he was advised for further dialysis on 20.09.2022. Exts. A20 and A21 clearly shows that the deceased Udayakumar had renal issues and had undergone dialysis as per the schedule stated in Exts. A20 and A21. On the date of execution of Ext.

A1, it is seen that the deceased Udayakumar was undergoing dialysis. Exts. A25 and A28 clearly reveals that he was not normal on 04.10.2022 and on 07.10.2022. Immediately prior to Ext. A25, the execution of Ext. A1 was muted. That does mean that deceased Udayakumar had cognitive disfunction and he is not sound disposing mind. In any case, the reason for execution of Ext. A1; that only be revealed after a full-fledged trial after adducing evidence on either side including production of medical records and all. The possession of medical records and cash bills prima facie proves that the petitioners looking after the affairs of deceased Udayakumar when he was alive. For supporting the family of the petitioner, it was argued by the learned counsel for the petitioners that, 1<sup>st</sup> petitioner had expended the nest egg including her salary for the welfare of the family including deceased Udayakumar. According to the learned counsel for the petitioners, by playing fraud and undue influence, the 1<sup>st</sup> respondent managed to obtain Ext. A1 document in his favour stating that he had natural love and affection towards deceased Udayakumar. Deceased Udayakumar being the spouse of the 1<sup>st</sup> petitioner, as per the law of intestate succession, the petitioners are entitled to get C to F schedule properties as per law. As already stated,

the objection raised by the respondent that C to F schedule properties were transferred to the respondent by the deceased Udayakumar as per law by executing Ext. A1 is clouded with suspicion. It seems odd that on the death bed of the deceased Udayakumar, he could execute Ext. A1 in favour of respondent No.1. This is also dubious that without informing the rightful owners of the properties, the 1<sup>st</sup> respondent managed to obtain the same. It seems that there is some foul play in executing Ext. A1. As already stated, those matters only be adjudicated after a full-fledged trial after adducing evidence on either side. In the meantime, the property at the *lis* has to be preserved as per law. Any further transaction of C to F schedule properties will definitely interfere with the right of the property of the petitioners. At this point of time, this court not intending to stall any constructions in the properties. The constructions in the plaint schedule properties by respondent No.1 will be subject to the final adjudication of the suit. So, on going through the entire averments on either side, it can be summed up that the petitioners could very well proved that the petitioners have a strong *prima facie* case. The balance of convenience is in favour of them. The petitioners will put to irreparable injuries in the event of refusal of

injunction. Thus, I am inclined to allow the petition in part. Hence point Nos. 1 to 4 are found in favour of the petitioners.

9. **Point No. 5 :-** In view of my discussions and findings on point Nos. 1 to 4, the petition is liable to be allowed in part.

In the result, the petition stands allowed in part. The 1<sup>st</sup> respondent is prohibited from alienating C to F schedule properties and from obstructing the peaceful possession and residence of the petitioners in plaint A schedule item building till the disposal of the suit. Issue copy of the order to Sub Registrar's Office Kareelakulangara. There is no order as to costs.

*(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 05<sup>th</sup> day of April, 2023.)*

Sd/-  
SHANAVAS.A  
MUNSIFF

### **APPENDIX**

#### **Exhibits for the Petitioners/Plaintiffs:**

- |     |            |   |                                                                                                     |
|-----|------------|---|-----------------------------------------------------------------------------------------------------|
| A1. | 16.09.2022 | : | Certified Copy of Settlement deed<br>No.1130/1/2022 of Sub Registrar's<br>Office, Kareelakulangara. |
| A2. | 05.05.2020 | : | Certified Copy of Gift deed<br>No.842/2000 of Sub Registrar's<br>Office, Kareelakulangara.          |

|      |            |   |                                                                                       |
|------|------------|---|---------------------------------------------------------------------------------------|
| A3.  | 02.08.2004 | : | Certified Copy of Sale deed No.1384/2004 of Sub Registrar's Office, Kareelakulangara. |
| A4.  | ---        | : | Copy of measurement Plan submitted by Village officer, Pathiyoor.                     |
| A5.  | 28.11.2022 | : | Death Certificate of deceased Udayakumar.                                             |
| A6.  | 25.08.2004 | : | Loan Offer Letter.                                                                    |
| A7.  | ---        | : | Statement of Account.                                                                 |
| A8.  | 03.09.2022 | : | Marriage Certificate.                                                                 |
| A9.  | ---        | : | Location Plan.                                                                        |
| A10. | ---        | : | Original Registration Certificate of Vehicle.                                         |
| A11. | ---        | : | Passport of deceased Udayakumar.                                                      |
| A12. | ---        | : | Bank Pass Book.                                                                       |
| A13. | 05.04.2022 | : | Basic Tax receipt of Pathiyoor Village Office.                                        |
| A14. | 25.03.2022 | : | Building Tax receipt of Pathiyoor Grama Panchayath.                                   |
| A15. | ---        | : | Photographs of the Marriage Function.                                                 |
| A16. | ---        | : | Photos and CD.                                                                        |
| A17. | 17.11.2022 | : | Post Funeral Letter.                                                                  |
| A18. | ---        | : | Marriage Invitation Letter of the 2 <sup>nd</sup> Plaintiff.                          |
| A19. | ---        | : | Copy of plaint in OS.401/2022 of                                                      |

Munsiff's Court, Kayamkulam.

- A20. --- : Dialysis hand book issued by Parumala Hospital.
- A21. --- : Dialysis hand book maintained with Taluk Hospital, Kayamkulam.
- A22. 26.10.2022 : Casualty Ticket for OP.No.121467.
- A23. --- : Casualty Ticket for OP.No.123547.
- A24. 21.09.2021 : Prescription.
- A25. 04.10.2022 : Lab report of Taluk Hospital.
- A26. 13.10.2022 : Cash Bill.
- A27. 11.07.2022 : Nephrology Case record.
- A28. 07.10.2022 : Lab report.
- A29. (series) : Cash Bills (Nos.63).
- A30. 19.07.2022 : Cash Bill.
- A31. --- : Rough Sketch Showing the Topography of the Schedule Property.

Exhibits for the Cr.Petitioners/ Defendants: Nil.

Witness for the Both sides : Nil.

Court Exhibits:

- C1. 20.01.2023 : Commission report prepared by Adv.Commissioner, Smt.B.S.Kala.
- C1(a). 20.01.2023 : Rough Sketch prepared by Adv.Commissioner, Smt.B.S.Kala.

Sd/-  
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// True copy //

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Typed by: Shafeek  
Compd by:

Order in IA.1/2022  
in OS No.447/2022,  
Dated.05/04/2023.