

IN THE COURT OF THE SUB JUDGE, CHERTHALA

Present:- Ms. Lakshmy.S., Sub Judge

Wednesday 27th day of August 2025/ 5th Bhadra 1947

I.A No. 01/2025 in AS No. 24/2025

(Filed on : 21.06.2025)

Petitioner /Appellant :-

Joseph, S/o late Michael, aged 86 years, Pallipparambil,
Thuravoor.P.O, Padinjattinkara North Muri of
Kuthiyathodu Village, Pin- 688532.

By Adv. T. Jayakrishnan

Respondents/Respondents 4,5,7 :-

1. Joy, S/o Joseph, Veliyil, Padinjattinkara North Muri,
Thuravoor.P.O, Cherthala
2. Wilsappan, S/o Joseph, Of-do-do--
3. James, S/o Joseph, Of-do-do--

By Adv. M.M. Vinod

This IA coming for final hearing on 22.08.2025 and the Court on
27.08.2025 passed the following.

ORDER

This petition is filed by the appellant/plaintiff under Order XXXIX Rule 1 and Section 151 CPC to restrain the respondents from making new constructions in the plaint schedule property.

2. The averments in the petition, in brief, are as follows: The suit for partition was dismissed by the trial court ignoring the evidence tendered to prove the relation and derivation of title. Just before the conclusion of trial, the contesting defendants attempted to demolish the old family house which situated in the plaintiff's property. Now they are making preparations to construct a new house in the property. If they succeed, the petitioner would be seriously prejudiced. It would be impossible to divide the property by metes and bounds. Hence the petition.

3. The respondents filed objections as follows: The petitioner/appellant has no right to file this petition without impleading all the parties in the appeal. Hence the petition is bad for non joinder of parties and suppression of material facts. The third respondent is the absolute owner and he is in absolute possession and enjoyment of the property having an extent of 10.32 Ares, vide the partition deed bearing number 1376/2022. The third respondent started construction of residential building in the said property after obtaining pre- approved Building permit and plan from Kuthiyathodu Grama Panchayath. The petitioner/appellant has no right in any manner what so ever to

obstruct and object the construction of residential building in the property. The property, mentioned in the petition is not at all an identifiable one based on the description and boundaries as stated.

4. The 1st respondent has already constructed his residential building and he is residing there in the property owned and possessed by him. The petitioner who failed to establish a co-owner ship and joint possession even in petition schedule property has no right in any manner what so ever to restrain a true owner from enjoying his right in the property that he own vide Ext.B1. The lack of pleading regarding the right of the petitioner shows the lack of bonafides. There is no prima facie case and balance of convenience in favour of the petitioner to grant an injunction as prayed. All other contra averments are baseless and false based on the documents which are marked as Ext.B2, Ext.X1 and Ext.X2. The comparative hardship is higher and therefore also the petitioner is not entitled to get the relief as prayed.

5. Heard and perused the records.

6. The following points arise for consideration.

- (i) Whether the petitioner is entitled to get an interim order of injunction, as prayed for?
- (ii) Order as to costs?

7. **Point No.1:** - The petitioner is the appellant who has preferred the appeal against the dismissal of the suit filed for partition and separate possession of the plaint schedule property. Along with the appeal, the petitioner has filed the present application seeking a temporary injunction to restrain the

respondents/defendants from making any construction in the plaint schedule property. The petitioner submits that unless an order of injunction is granted, the respondents may alter the character of the property by putting up constructions, which would cause irreparable injury and render the relief sought in the appeal infructuous.

8. The case of the appellant is that his grandfather Kunjan Chacko was a Christian domiciled in the Princely State of Travancore, whose wife predeceased him. Kunjan Chacko died intestate on 26-11-1962 and after the judgment of the Hon'ble Supreme Court in **Mary Roy and Ors. v. State of Kerala and Ors**, reported in **1986 K.L.T. 508**, the five children of Kunjan Chacko namely Marykutty, Augustinekutty, Louis, Joseph and Elizabeth acquired 1/5th share in the properties he left behind.

9. The derivation of title to the parties to the suit as claimed by the petitioner is as follows: Marykutty died and her children Rejina, Joseph, and George inherited her share. George died unmarried and issueless. Augustinekutty, who also had 1/5th right, died issueless, leaving behind his wife and after her death, the 1/5th right devolved to the siblings of Augustinekutty. Louis, who had 1/5th share died, leaving behind his wife Celina and their children, Gracy and Vimala, as his legal heirs. Celina also died, and the 1/5th rights devolved on Gracy and Vimala. Joseph, who held a 1/5th share of the property, died, leaving his wife Thressia and their children: Joy, Wilsappan, Aidamma, James, Mable, Anniekunju, and Kunjumon. Thressia also died, and the entire right devolved on the defendants 4 to 10. Elizabeth, the

younger daughter of Kunjan Chacko, is married to Lonachan. Lonachan predeceased Elisabeth. She also got 1/5th right, and upon her death, her rights devolved to Jacob, Andappan, Sosamma, and Mariamma. Jacob died, and his legal heirs include Molly, Shijin, and Shiji.

10. According to the appellant, the properties left behind by Kunjan Chacko were dealt with by the male children as if they alone were sharers taking shelter under the Travancore Christian Succession Act. Hence the suit was necessitated.

11. Whereas, the learned counsel for the respondents submitted that the petitioner who failed to establish a co-owner ship and joint possession even in petition schedule property has no right in any manner what so ever to restrain a true owner from enjoy his right in the property that he own vide Ext.B1. He highlighted that comparative hardship has to be considered if the approved construction is stalled.

12. On a perusal of the judgment under appeal, it is seen that findings have been entered regarding non-joinder of necessary parties and insufficiency of court fee. However, no proper issue was framed on these aspects. If a finding on non-joinder was to be rendered, an opportunity ought to have been given to the appellant to rectify the defect. The absence of such an issue and the direct finding against the appellant appear irregular and require detailed consideration in the appeal.

13. As regards the relationship of the appellant with Kunjan Chacko, the reasoning of the court below in rejecting the claim, despite the documents produced, and the question whether the appellant has sufficiently proved his lineage and thereby established entitlement to a share in the property is one that requires closer scrutiny at the stage of final hearing in appeal.

14. The respondents have produced the plan they obtained from authorities for construction of a residential house which is in a limited space of the entire plaint schedule property. Since, the proposal is only for a residential building, normally, it would be unjust to stall the construction. But in this case, the documents would show that high tension electricity lines are passing through the remaining portion of the plaint schedule property. Hence, the property would not fetch a decent market value.

15. In the circumstances, if the respondents are permitted to proceed with construction activities in the plaint schedule property, it would result in irreparable hardship and injury to the appellant. The balance of convenience also lies in preserving the status quo till the appeal is finally decided. The point is found in favour of the petitioner.

16. **Point No.2:** - In view of the finding on point No.1, the IA is to be allowed, without costs.

In the result, the petition is allowed, without costs and the respondents are hereby restrained by an order of interim injunction from making any construction in the plaint schedule property, until the disposal of the appeal.

Dictated to the Confidential Assistant, typed by her directly to the Computer, corrected and pronounced by me in open court on this the 27th day of August, 2025.

Sd/-
LAKSHMY.S,
SUB JUDGE.

Appendix:-NIL

Id/-
SUB JUDGE