

**IN THE COURT OF THE PRINCIPAL MUNSIF, CHERTHALA**

**Present: Sri. Rovin Rodrigues, Principal Munsiff**

**Thursday, the 21<sup>st</sup> day of May 2026 / 31<sup>st</sup> Vaisakha, 1948**

**IA 08/2025 in O. S. No. 265/2025**

(Filed on 18.07.2025)

Petitioners/Plaintiffs:-

1. Krishna Shenoy, aged 90, S/o. Janardhana Shenoy, Puthankad Madathil, Padinjattumkara South Muri, Thuravoor Village, Cherthala. Alappuzha.
2. Balagopala Shenoy, aged 57, S/o.Krishna Shenoy, -do-

*By Adv. Jacob Tomlin Varghese.*

Counter Petitioners/Defendants:-

1. Puthenkavu 80 Padashekara Neluyulpadaka Samithi, Rep. By President, Satheesh Shenoy, aged 48, S/o.Padmakumar Shenoy, Dhanwanthari Madom, Cherthala P.O. Cherthala Vadakku Village.
2. Puthenkavu 80 Padashekara Neluyulpadaka Samithi, Rep. By Secretary, K.G.Antony, aged 61, S/o. K.K.George, Koyikaram Parambil, Netoor P.O., Ernakulam.

*By Adv. Bejoy.K.V*

This petition having been finally heard on 21.05.2026 and the Court on the same day passed the following:-

### **ORDER**

This is a petition filed by the plaintiffs under order XXXIX Rule 2A read with sections 94 and 151 of the Code of Civil Procedure.

2. The petition averments, in brief, are as follows:- The suit has been filed seeking permanent prohibitory and mandatory injunctions against the defendants. The defendants have no right or authority over the plaint schedule property. It is the family property allotted to the first plaintiff under Partition Deed No. 1260 of 1995, enjoyed exclusively by him and managed by the second plaintiff. The property forms part of the Puthenkad Padasekharam, where fish farming is carried on. On 11-01-2022, the 2nd defendant, claiming to be Secretary of Thuravoor Puthenkad 80 Nellulpadaka Padasekhara Samithi, sought permission from the first plaintiff to lay a 25-metre pipe through the eastern bund of the plaint item No. 1 property for pumping out water, which was granted. But later the defendants misused the permission, trespassed into the item No. 1 property during the plaintiff's absence, and constructed a new bund obstructing fish farming. Despite a

temporary injunction order granted by this court, on 16-07-2025 the defendants again trespassed, demolished the southern bund, and illegally installed a sluice. When confronted, the defendants threatened to take possession of the plaintiffs' property. The defendants being anti-social elements, the plaintiffs are unable to resist them without court intervention. Unless the original condition of the plaint schedule property is restored, the plaintiffs will suffer irreparable loss and hardship. Therefore, it is prayed that this Court may be pleased to order the restoration of the plaint schedule property to its original condition by directing the defendants to remove the illegally installed sluice and reconstruct the demolished bund. Alternatively, an advocate commissioner may be appointed to restore the property under the supervision of the court. Hence, the petition.

3. The respondents/defendants filed an objection with the following contentions: The petition is neither maintainable nor filed in good faith. It is false, frivolous, and intended only to harass the respondents. The property described as plaint item no. 1 is not the family property of the petitioners. It was not allotted to the first plaintiff under Partition Deed No. 1260 of 1995. The extent and boundaries have been fabricated. The petitioners have never been in possession or enjoyment of the plaint item no. 1 property, which is

not part of the said partition deed. The plaint schedule property does not form part of Puthenkad Padasekharam belonging to the plaintiffs. The second defendant approached the first plaintiff and obtained a written consent, but this was under pressure from the plaintiffs. It was only for drawing an electric line from the post in the plaintiffs' land to pump water from the paddy field into the western canal, not for laying pipes through the plaint item no. 1 property. The canal in question is Devaswom property, not the plaintiffs' land, which they have falsely described as plaint item no. 1 property. The defendants never trespassed on plaint item no. 1 nor constructed any bund on the plaintiff's property. The defendants constructed bunds in the Devaswom canal with its consent and did not obstruct any fish farming. The plaintiffs have falsely described the canal as their property to obstruct cultivation. The second defendant never met or threatened the plaintiffs. The court proceedings would show that on 09-06-2025 the matter was adjourned to 28-07-2025, awaiting return of the summons. Only because the plaintiffs advanced the case was an ex parte injunction granted. The defendants never trespassed into the plaintiffs' property nor installed a sluice in it. The sluice was installed in the Devaswom canal with its consent. The Commissioner's report and rough plan dated 26-05-2025 clearly show that the sluice is not

within the plaint item no.1 property. The condition of the plaint schedule property has not changed, there is no need for restoration, and the plaintiffs have no right over the Devaswom canal where the sluice and bund are situated. Hence, the petition may be dismissed with costs.

4. Heard both sides. Perused the records.

5. The petitioners/plaintiffs claim that the plaint item no.1 property forms part of the family property allotted to the first plaintiff under Partition Deed No.1260 of 1995 and that the same is exclusively enjoyed and managed by them. They contended that on 16.07.2025, the defendants trespassed into the property, demolished the southern bund and installed a sluice, thereby violating the order of temporary injunction granted by this court. The plaintiffs therefore seek restoration of the property to its original condition by removal of the sluice and reconstruction of the bund.

6. The respondents/defendants argued that the plaint item No.1 property does not belong to the plaintiffs and the description of the property has been fabricated. It is contended that the canal where the sluice and bund were constructed is Devaswom property and not part of the plaint schedule property. The respondents claim that the sluice was installed with the consent of the Devaswom authorities and not within the plaintiffs' property. They

relied upon the Advocate Commissioner's report and rough sketch dated 26.05.2025 to contend that the sluice is not situated in plaint item no.1 property.

7. In proceedings under Order XXXIX Rule 2A CPC, the burden lies heavily upon the petitioners to establish, by cogent and convincing materials, not only the existence and communication of a valid injunction order but also its wilful and deliberate violation by the respondents. Going by the court records, it is evident that the case was posted to 28.07.2025 for return of notice to the second respondent/second defendant. However, the case was advanced by the petitioners/plaintiffs on 10/07/2025 to obtain an ex parte injunction order against the respondents/defendants. The said order directed the respondents/defendants not to trespass into the plaint schedule item No. 1 property and put up any further constructions.

8. The allegations of trespass, demolition of bund and installation of sluice are seriously disputed by the respondents/defendants. Their case is that the disputed canal is Devaswom property and not part of the plaint schedule property. Significantly, the Advocate Commissioner's report and rough plan dated 26.05.2025, prima facie, indicate that the sluice is not situated within

plaint item No.1 property. The newly appointed advocate commissioner in her report dated 05.01.2026 has stated that the boundaries of plaint item No.1 property were different from what was stated in the plaint and a survey measurement is necessary to properly identify the property. There is also no satisfactory material before this Court to conclusively establish that the alleged acts were committed within the plaint schedule property or that the respondents had wilfully violated the injunction order passed by this Court. The rival claims regarding the identity, title and possession over the disputed property are matters to be adjudicated in the suit after a full-fledged trial. In *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, 1962 KHC 489, the Hon'ble Supreme Court has held that the inherent powers are to be exercised by the Court in very exceptional circumstances, for which the Code lays down no procedure.

9. In the above circumstances, this Court finds that the petitioners/plaintiffs have failed to establish any deliberate or wilful violation of the injunction order by the respondents. Hence, the petition is liable to be dismissed.

As a result, the petition is dismissed. Considering the facts and circumstances, there is no order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open Court on the 21st day of May, 2026.)

Sd/-  
**Rovin Rodrigues**  
Principal Munsiff

Appendix: - Nil

Id/-  
Principal Munsiff

//True Copy//

Principal Munsiff