

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

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

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

**IA 10/2025 in O. S. No. 265/2025**

(Filed on 25.08.2025)

**Petitioners/Defendants:-**

1. Puthenkavu 80 Padashekara Neluyulpadaka Samithi, Rep. By President, Satheesh Shenoy, aged 48, Dhanwanthari Madom, Cherthala P.O.
2. Puthenkavu 80 Padashekara Neluyulpadaka Samithi, Rep. By Secretary, K.G.Antony, aged 62, S/o. K.K.George, Koyikaram Parambil, Netoor P.O., Ernakulam.

*By Adv. Bejoy.K.V*

**Counter Petitioners/Plaintiffs:-**

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

*By Adv.Jacob Tomlin Varghese*

This petition having been finally heard on 20.05.2026 and the Court on 21.05.2026 passed the following:-

**ORDER**

This is a petition filed by the defendants under order XXXIX Rule 4 read with sections 94 and 151 of the Code of Civil Procedure.

2. The petition averments, in brief, are as follows:- The petitioner is the secretary of the Puthenkavu 80 Padasekhara Nellulpadaka Samithi and the second defendant in the above case. The plaintiffs have wrongly filed the suit, seeking permanent prohibitory and mandatory injunctions for property that does not belong to them. The plaintiffs have falsely claimed that the Devaswom-owned canal, which is located east of their property, belongs to them, thereby misleading the court and obtaining an injunction order in I.A. No. 01/2025. An urgent notice was ordered against the defendants and the matter was posted to 09-06-2025. The case was then adjourned for return of notice against the second respondent/second defendant. But the plaintiffs advanced the case and obtained an ex parte injunction order against the defendants. The first defendant, believing the case was posted for 28-07-2025 and being engaged in official duties, could not appear on 09-06-2025. It was only upon appearing on 28-07-2025, he came to know that the injunction had already been granted. The plaintiffs, having no right or possession over the canal, misrepresented facts to the court and thereafter filed prosecution and

restoration petitions alleging violation of the injunction against the defendants. Had the defendants been heard, such an order would never have been passed. Therefore, the injunction order dated 10-07-2025 in I.A. No. 01/2025 may be vacated, and a just order be passed in accordance with law. Otherwise the defendants will suffer irreparable loss and hardship. Hence, the petition.

3. The respondents/plaintiffs filed an objection and contended the following: The petition is neither legally nor factually sustainable and has not been filed in good faith. The plaint schedule property belongs to the respondents' family and was allotted to the first respondent under Partition Deed No. 1260 of 1995. The canal belonging to the Tirumala Devaswom lies only as a boundary to the respondent's property. The bund constructed from that canal still exists as the boundary of the respondent's land. The court had ordered urgent notice on 09-06-2025, considering the seriousness of the matter. Despite receiving notice, the defendants failed to appear in court. They trespassed onto the plaint schedule property, and destroyed the bund. Consequently, the respondents filed an advance petition. The court appointed a commissioner who reported the true facts, based on which the injunction order was passed. The respondents' possession and rights over the plaint schedule property have been prima facie established through survey and

identification by the court. The defendants have no adjoining property. The defendants have been committing acts of trespass and destruction. The injunction order was rightly passed to prevent such unlawful acts. The petition does not disclose any genuine hardship or valid grounds to vacate the injunction. The respondents have already filed petitions to restore the destroyed bund. Therefore, the petition may be dismissed with costs.

4. Heard both sides and perused the records.

5. On 10.07.2025, this court passed an ex parte temporary injunction restraining the defendants from trespassing into the plaint item no.1 property and from putting up any further constructions therein. The defendants have seriously disputed the identity of the plaint item no. 1 property, contending that it forms part of a Devaswom canal and does not belong to the plaintiffs. However, the identity, title and possession over the disputed property are matters to be decided in the trial on the basis of evidence. At the interlocutory stage, this Court is only required to examine whether there exists a prima facie case warranting protection of the subject matter of the suit. The records reveal that, during the pendency of the suit, a portion of the bund allegedly forming part of the plaint schedule property was destroyed and a sluice was installed by the defendants. The commissioner's report and other materials available before this Court prima facie disclose acts affecting the existing

physical nature of the disputed property. The temporary injunction order was passed by this court after considering the available records and circumstances necessitating urgent protection. Mere absence of the defendants on the posting date or their explanation regarding non-appearance, by itself, is not a sufficient ground to vacate the injunction. The balance of convenience lies in preserving the status quo and preventing further changes to the disputed property. The petitioners/defendants have not made out any cogent reason warranting interference under Order XXXIX Rule 4 CPC. There is nothing on record to show that the injunction order caused undue hardship to the defendants. In such circumstances, this Court finds no merit in the petition.

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 this the 21<sup>st</sup> day of May 2026)

Sd/  
**Rovin Rodrigues**  
Principal Munsiff

Appendix: - Nil

Id/-  
Principal Munsiff

//True Copy//

Principal Munsiff