

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh. M., Additional Munsiff

Wednesday, the 19th day of November, 2025/ 28th Karthikam, 1947.

I.A.07/2025 in O.S. No.438/2023

(Filed on 14.08.2025)

Petitioner/Defendant:-

K.V.Sasikumar,
S/o Viswambharan, Kandathil Unichira house,
Thrikkakara.P.O, Kanayannur Taluk, Ernakulam.
**By Adv. A.S.Santhosh, Adv.N B Sunil Nath
& Adv. S.K Harish**

Respondent/Plaintiff:-

Syed Shihabuddin Roshan,
S/o Saiyuddhin Ahammed, Cheriyaarambil House,
Ezhupunna South.P.O, Cherthala Taluk.
By Adv. Nandanam Rajasree

This petition having been finally heard on 19.11.2025 and the Court on the same day passed the following:-

ORDER

This is a petition filed by the petitioner under Sec.94 & 151 of CPC for restraining the respondent from doing any fish cultivation by making any development activities and from committing any waste in the plaint schedule property till the disposal of the suit.

2. Petition averments in brief :-

The petitioner herein is the defendant in the above case. The above suit was filed by the respondent/plaintiff for a mandatory injunction directing the petitioner to remove himself from the plaint schedule property which absolutely

belongs to the petitioner by virtue of Sale Deed No.2772/2006 of Kuthiathode SRO. The petitioner filed a counter claim in the suit seeking a mandatory injunction directing the plaintiff to surrender and vacate the plaint schedule property, etc. The petitioner had granted a license in favour of the plaintiff/respondent for conducting shrimp cultivation in the property. As per the last agreement, the license was for 2 months up to 31/08/2023. Even though the respondent wanted to continue the license, the petitioner was not willing to extend the same. Thereupon, on 21/08/2023, the respondent filed the above suit by alleging false facts. His aim was to continue the fish cultivation in the property and to obtain unlawful enrichment. Along with the suit, he filed a temporary injunction petition restraining the petitioner from trespassing into the plaint schedule property, etc., as I.A. No.1/2023. After an elaborate hearing of both parties and perusing the documents produced, this Court dismissed the petition on 16/12/2024, holding that the plaintiff has no right over the property. That order was not challenged by the respondent and hence became final. Thereafter, even though the respondent did not surrender the property to the petitioner, he is not conducting any fish cultivation in the property. However, last month when the petitioner visited the property, it was seen that hundreds of bamboos were stored on the eastern side bund of the property by the workers of the respondent, and on the northern bund a portion was cut open to make a sluice. On enquiry, they stated that the respondent is going to start shrimp cultivation by strengthening the side bunds using the bamboos. Neighbours of the property also stated that the respondent informed them that this Court allowed him to do such cultivation and therefore he is going to proceed. Thereupon, the petitioner lodged a complaint before the SHO, Aroor, on 15/07/2025. Though the police asked the respondent to appear before them, he

informed the police that it is a matter seized by the court and he would not appear. Accordingly, the police informed the petitioner that since there was a civil suit, they were unable to interfere and had limitations. Now it is reliably learned that the respondent is making hasty steps to strengthen the side bunds of the property and to commence fish cultivation. He has no manner of right to do the same. The respondent was only a licensee and the license period has expired. This Court has already dismissed the temporary injunction petition filed by the respondent. The respondent is a man having money and muscle power, and the petitioner is unable to resist his unlawful activities. In these circumstances, a temporary injunction is to be passed against the respondent restraining him from making any fish cultivation in the property, from undertaking any development activities in the plaint schedule property, and from committing any waste therein until the disposal of the suit, failing which the petitioner will be put to irreparable injury and hardship. Hence this petition.

3. Respondent filed objection contending as follows -

The petition is not maintainable either in law or on facts. The plaintiff has instituted the above suit seeking a decree of permanent injunction. The plaintiff alleged unlawful interference when the defendant and others attempted to obstruct the fish cultivation being carried on by the plaintiff in the plaint schedule property. It was the plaintiff who invested money and developed the plaint schedule property to make it suitable for fish cultivation, and thereafter the plaintiff has been continuously conducting fish farming therein. Fish cultivation is a continuous agricultural activity, and only if it is carried on for at least five years will the plaintiff be able to recover even the investment made in the property. Knowing this fact, the defendant had promised to renew the license

every year, and relying on such promise, the plaintiff made substantial investments and developments in the property. The plaintiff has not obtained any unlawful enrichment from the property. It is correct that the injunction petition filed by the plaintiff was dismissed and no appeal was filed against that order. However, after dismissal of the temporary injunction petition, the defendant and his men trespassed into the plaint schedule property in the absence of the plaintiff, cast nets, and took away the fish. They also broke open the bunds which had been closed to prevent fish from escaping, thereby causing damage. By such acts, the defendant caused a loss of about Rs.7,00,000/- to the plaintiff. Due to the wrongful acts of the defendant, the plaintiff has suffered heavy loss and is entitled to compensation. Even now, the plaintiff's fish seedlings are in the plaint schedule property, and only if the plaintiff is permitted to harvest them can the loss be mitigated. The defendant has no right to evict the plaintiff otherwise than in accordance with law. The defendant has challenged the legal process and taken law into his own hands, committing unlawful acts. The allegation that the plaintiff is hastily taking steps to commence fish cultivation is false. Fish cultivation is already being carried on by the plaintiff, and it is not a new activity. The defendant, by influencing the police at Kuthiathode, attempted to threaten the plaintiff to vacate the property immediately. By involving the police in a matter pending before this Court, the defendant has been intimidating the plaintiff. The defendant and his men trespassed into the property, destroyed the plaintiff's fish cultivation, and caused loss. They are persons who do not hesitate to commit unlawful acts, and hence the plaintiff requires the protection of this Court. In furtherance of destroying the plaintiff's fish cultivation, the defendant's relative, who resides nearby, threw a dead duck into the water used for fish farming, along with other waste materials. The plaintiff is convinced that all such

acts were done under the instructions of the defendant. The plaintiff intends to continue fish cultivation in the plaint schedule property only until the present harvest, solely to mitigate the loss of about Rs.7,00,000/- caused by the defendant. For this purpose, no new developments have been made recently, nor has the plaintiff committed any waste in the property. The plaintiff has not engaged in any acts causing hardship to the defendant; rather, it is the defendant who has caused hardship and loss to the plaintiff. The petitioner (defendant) has no prima facie case, nor is the balance of convenience in his favour. If any injunction order is passed against the plaintiff, it will cause irreparable injury, hardship, and loss to the plaintiff. Hence the petition is liable to be dismissed.

4. Heard both sides.

5. The following points are raised for consideration;

(1) Whether this petition is allowable or not?

(2) What is the order?

6. Point No.1 –

The case of the petitioner is that the respondent was a licensee of the plaint schedule property for the purpose of fish cultivation. According to the petitioner, the license period expired on 31/08/2023. However, the respondent filed the present suit 10 days before the expiration of the license period, alleging false claims. After the filing of the suit, the temporary injunction application filed by the respondent was dismissed on merits, holding that the respondent does not have any right over the plaint schedule property after the expiration of the license period. The petitioner now contends that the respondent is attempting to restart fish cultivation in the plaint schedule property without his consent by strengthening the side bunts. On the contrary, the respondent argues that he will make good the loss only if he is permitted to harvest the fish cultivation. Hence,

according to the respondent, the petitioner does not have any right to prevent him from conducting fish cultivation in the plaint schedule property. To prove his allegations, the petitioner has taken out a commission. The Advocate Commissioner inspected the property and filed report. On a careful consideration of the rival contentions advanced by both sides, and upon perusal of the findings contained in the Commission Report, the first issue that arises for determination is whether the petitioner has established a prima facie case. It is not in dispute that the plaint schedule property absolutely belongs to the petitioner. The only right asserted by the respondent over the property is based on an agreement entered into between the petitioner and the respondent. This Court, in I.A. No. 1/2024, has already held that the said agreement is in the nature of a license. It has further been found that the respondent has no right over the plaint schedule property after the expiration of the license period. The respondent has not pleaded nor produced any material to show that the license has been renewed in his favour by the petitioner. Thus, as on date, there exists no subsisting license enabling the respondent to conduct fish cultivation or any other activity in the plaint schedule property. It is also pertinent to note that the respondent has not filed any appeal against the order in I.A. No. 1/2024. The absence of any challenge to the said order amounts to an acknowledgment of its binding nature. Consequently, there can be no doubt that the respondent presently has no right over the plaint schedule property. The contention of the respondent is that subsequent to the order in I.A. No. 1/2024, the petitioner along with his men entered the plaint schedule property and committed waste, thereby causing a loss of Rs.7,00,000/- (Rupees Seven Lakhs only). Even assuming, for the sake of argument, that such contention is true, it does not confer upon the respondent any right to continue fish cultivation after the expiry of the license period. If the

respondent has suffered loss, he is at liberty to work out appropriate remedies in accordance with law. Similarly, the plea of the respondent that he requires a minimum period of five years of fish cultivation in order to earn profit is untenable. The respondent cannot be permitted to conduct fish cultivation in the absence of a valid license. Turning to the Commission Report, it is revealed that a worker of the respondent was present in the plaint schedule property at the time of inspection. The Commissioner has reported that the said worker was engaged in works in the property under the instructions of the respondent. This clearly indicates that certain activities are being carried out in the plaint schedule property at the instance of the respondent. The definite case of the petitioner is that the respondent is attempting to recommence fish cultivation in the plaint schedule property. This apprehension stands substantiated both by the Commission Report and by the objections filed by the respondent. The petitioner, being the absolute owner of the plaint schedule property, has the lawful right to decide what activities may be carried out therein. The respondent, whose license has expired, cannot claim entitlement to continue fish cultivation in the property. Such acts of the respondent amount to an unlawful interference with the proprietary rights of the petitioner and constitute a clear violation of the petitioner's rights. Hence this court is of the view that the aspect of prima facie case is in favour of the petitioner.

7. Coming to the aspects of balance of convenience and irreparable injury, it is evident that the respondent is not in possession of the plaint schedule property on the strength of any valid right. His right under the license expired long back, and therefore he cannot lay any claim on the basis of such an expired right. Even after the order of this Court in I.A. No. 1/2024, the respondent has continued to engage in activities within the plaint schedule property without any

legal foundation. The Commission Report makes it clear that there are no traces of fish cultivation presently being carried out in the property. The apprehension of the petitioner, however, is that the respondent is attempting to recommence fish cultivation therein. As it has already been found that the respondent does not possess any legal right to conduct such activities, the balance of convenience necessarily tilts in favour of the petitioner. The petitioner, being the absolute owner, is entitled to protect his property from unauthorized interference. Likewise, no irreparable injury will be caused to the respondent, for the simple reason that he has no subsisting legal claim or enforceable right over the plaint schedule property after the expiry of the license period. On the contrary, permitting the respondent to continue with fish cultivation would amount to a violation of the petitioner's proprietary rights and cause irreparable prejudice to him. Hence, both the aspects of balance of convenience and irreparable injury are found to be in favour of the petitioner. So this point is found in favour of the plaintiff.

8. Point No.2 –

In view of the findings in point No.1, the I.A. is allowed as follows-

The respondent is restrained from doing any fish cultivation in the plaint schedule property, making any developmental activities therein without the prior permission of the petitioner and also from committing any acts of waste in the plaint schedule property till the disposal of the suit.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 19th day of November, 2025.)

Sd/-
MAHESH M
ADDITIONAL MUNSIFF

APPENDIX:-

Documents produced/ relied from the side of the petitioner

1. Commission report and rough sketch by Adv. Nikhila Anilkumar.

Sd/-
ADDITIONAL MUNSIFF