

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

Present: Smt. Aneesa.A, Munsiff

Saturday the 5<sup>th</sup> day of July, 2025/14<sup>th</sup> Ashada ,1947

**IA.1/2024 in OS.39/2024**

(Filed on 27.01.2024)

**Petitioner/Plaintiff**

Susheelan, aged 72 yrs,  
S/o.Govindan,  
Suraj Bhavanam,  
KMC/Ward 31,  
Kayamkulam P.O,  
Krishnapuram Muri,  
Krishnapuram Village.

**(By Adv.V.Boban)**

**Respondent/Defendant**

Issac, aged 68 yrs,  
S/o. Kuruvilla,  
Pattaniparambil,  
KMC/ Ward 31,  
Kayamkulam P.O,  
Krishnapuram Muri,  
Krishnapuram Village.

**(By Adv.Shaji Zacharia)**

This petition is coming on for hearing on 05.07.2025 and the court of 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 temporary injunction.

2. The gist of averments in the petition are as follows:- The petitioner is the 1<sup>st</sup> plaintiff in the suit. The suit is filed for permanent prohibitory injunction. The plaint schedule properties obtained to the plaintiff Nos. 1 and 2 by virtue of gift deed No. 4345/1984 of Sub Registrar's Office, Kayamkulam, sale deed Nos. 2583/1989, 1288/1996, 1535/2004 and 4023/1985. The plaint schedule property is now in the possession and enjoyment of plaintiff Nos. 1 and 2. They constructed a residential building at the middle portion of the plaint schedule property and on the northern side of the said residential building, they constructed shop rooms. Now, the plaintiffs are residing in the plaint schedule building and the shop rooms are leased out. On the eastern, southern and western sides of the plaint schedule property, there is compound wall and on the northern side, separating with the PWD road, there is clear boundary marks. Except the way portion from the northern PWD road to the residential building of the plaintiff, the property situated on the east and west of those properties, there is shop rooms. The property situates on the western

side of the plaint schedule property belonged to the defendant's father's brother and he sold that property to S.N Central School and now there is clear compound wall between that property and the plaint schedule property on the western and southern sides. The only access to the plaint schedule property is the northern road situated on south-north direction. On the northern side of the shop room, which is situated on the northern side of the plaint schedule property, the portion of property on the northwestern corner except the portion which is used for transportation towards the said shop rooms and house, the plaintiffs are using as agricultural land and also used for placing the advertisement board of the said shop room. On the adjacent eastern side of the plaint schedule property is the residential property of the defendant. Earlier, there was a dispute between the plaintiff and defendant with respect to the eastern boundary of the plaint schedule property. Even though the said dispute was settled, now also, the plaintiffs and defendant are in inimical terms. With the intention of making hardships to the plaintiffs and for causing obstruction to the access of the plaintiffs, the defendant installed flag pole on the southern side of the said pathway. The defendant has no right over the plaint schedule property. The defendant is to be

restrained from committing any mischief in the plaint schedule property or installing boards or banners which causes obstruction to the access of plaint schedule property from the northern road. The 1<sup>st</sup> plaintiff is now under rest after cardiac treatment. Now, the plaintiffs got reliable information on 23.01.2024 that the defendant is going to cause obstruction to the peaceful enjoyment of the plaint schedule property. The said act of the defendant is to be restrained. A prima facie case is in favour of the plaintiff and balance of convenience is also in favour of them. Thus, this petition is filed to restrain the defendant and his men from trespassing into the plaint schedule property or installing any board or banners which cause obstruction to the access of the plaint schedule property from the northern public road until the disposal of the suit.

3. The respondent appeared and filed objection contending *inter alia* as follows:- The petition is not maintainable either in law or on facts. The averments in the 4<sup>th</sup> paragraph of the affidavit is not completely correct. The averment that the plaintiffs purchased the plaint schedule property and constructed shop rooms is to be proved by the plaintiffs. The shop rooms constructed on the northern side of the residential building of the plaintiffs is against the rules of

Municipality. On enquiry, it is also revealed that for the said constructions, no licence was given from the Municipality. But, the plaintiffs using their influence with the silent consent of the officials of the Municipality and their relative ward council, the said shop rooms are conducting. The averment in the 5<sup>th</sup> paragraph of the affidavit that there is clear boundary between the plaint schedule property and the northern public road is false. The northern boundary of the plaint schedule property is not the PWD road. The eastern, western and southern boundaries of plaint schedule property is fixed with compound walls. On the northern side of the plaint schedule property, in east-west direction, there is the property of defendant's father's brother John Issac and the said property is included in re-survey No. 2 in Block No.213 and thandaper No. 150 of Krishnapuram Village. The said property is having an extent of 95 Sq. Metres. After the death of Sri. John Issac, the said property is in the possession of his legal heirs and mutation is also effecting with respect to the property. On the immediate northern side of the plaint schedule property is the property of Sri. John Issac and on the northern side of the said property is the PWD road. There is a pathway from the PWD road to the property of the plaintiffs at a width of 4 feet and it was

given by the predecessors of Sri. Issac John to the plaintiffs. The averment in the 6<sup>th</sup> paragraph of the affidavit that on the portion of the property on the eastern and western side of the said pathway, is cultivating by the plaintiffs and an advertising board is also installed there is false. The said portion of the property belongs to the successors of defendant's father's brother Sri. John Issac. The legal heirs of Sri. John Issac are now residing abroad in connection with their job. By utilizing that circumstance, now the plaintiffs are making attempt to illegally obtain their property. As per the commission report, there is no cultivation on the portion of property at the northern side of the residential building of the plaintiffs. Moreover, due to continuous rain, the said portion of the property is covered with grass. But, before the visit of the commissioner, the plaintiffs cut the grasses and it was clearly reported by the commissioner in her report. The advertising board installed in the property of the defendant's father's brother is not by the plaintiffs. With the consent of the legal heirs of Sri. John Issac, the organization 'Enxel Learning Hub Institution' installed the advertising board. The other averments stated in the affidavit are false. All the averments in the 7<sup>th</sup> paragraph of the affidavit are false. The averment that there was a dispute

between the plaintiffs and defendant and it was settled is true. But, the averment that the plaintiffs and the defendant are in inimical terms is false. The averment that with the intention of obstructing the pathway of the plaintiffs, the defendant installed flag pole on the southern side of the PWD road is false. But, years back, with the consent of the defendants' father's brother, the CPI(M) supporters installed a flag mast on the northern portion of the northwestern corner of plaint schedule property near to the road margin. The said flag mast has no connection with the property of the plaintiffs or PWD road. It was clearly reported by the commissioner also. No obstruction was also reported by the commissioner in the pathway which leads to the property and the house of the plaintiffs. Thus, the plaintiffs have no cause of action to institute this suit. With the intention of obtaining 95 Sq. Metres of property in block No. 213, re-survey No. 2 in thandaper No. 150, which is in the possession of the legal heirs of deceased John Issac, the plaintiffs falsely instituted this suit. Since there is no cause of action for the plaintiffs, this suit itself is not maintainable. The defendant has no intention to create any obstruction in the pathway leading to the property of the plaintiffs and their residential building and the defendant has not made any

attempt to do so. The date of cause of action stated is false. The tax receipt in the name of Sri. John Issac with respect to the said 95 Sq. Metres of property and the location sketch is also produced. On 06.07.2024 at 8 p.m, at the instigation of the plaintiffs, Sree Narayana Darsana Janakeeya Vedi, Chirakkadavam, Kayamkulam Reg. No. APL/TL 63/2024, an organization in the same community of the plaintiffs trespassed into the portion of the property of defendant's father's brother and destroyed the advertising board and a new advertising board was installed and the boundaries were covered with a plastic sheet. They also committed mischief in the property of defendant's father's brother. The defendant informed the said mischief to Abraham P John, the elder son of Sri. John Issac, but, he is now under rest after a cardiac surgery. He informed that after his treatment, he will initiate civil and criminal proceedings against the plaintiffs. No obstruction has been reported by the commissioner in the plaint schedule property or pathway. The 95 Sq. Metres of property in the ownership of defendant's father's brother situates on the northern side of the plaint schedule property is suppressed by the plaintiffs and filed this suit. It is also falsely stated to the commissioner that the said property belongs to the plaintiffs. The

commissioner did not inspect any documents with respect to the plaint schedule property. In the 95 Sq. Metres of property in re-survey No. 2 at its western portion near the southern boundary, there is a compound wall separating the plaintiffs' property and the said compound wall leads to the western end of the pathway of the plaintiffs in the east-west direction and the said compound wall is clearly shown by the commissioner in her report. From it itself, it is evident that all the averments stated in the plaint are false. The plaintiffs have no prima facie case and the balance of convenience is also in favour of the defendant. Thus, this petition is to be dismissed with the costs of the respondent.

4. The following points were formulated for consideration:-
  1. Is there a prima facie case in favour of the petitioners ?
  2. Is the balance of convenience in favour of the petitioners ?
  3. Are the petitioners would suffer irreparable injury and loss, if order of injunction is refused ?
  4. What is the order as to Reliefs and costs?
5. Heard both sides.

6. **Point Nos. 1 to 3:-** These points can be considered together. Here, the petitioner is the 1<sup>st</sup> plaintiff and the 2<sup>nd</sup> plaintiff is his wife. The plaint schedule property is having an extent of 16.98 ares, in old survey No. 5455 and having re-survey Nos. 213/83, 213/3/2, 213/3 is in the ownership of the plaintiff Nos. 1 and 2. According to the petitioner, on the northern boundary of the plaint schedule property is PWD road and now, the defendant is attempting to trespass into the plaint schedule property and trying to install boards and banners in such a way to cause obstruction to the access of plaint schedule property from the northern PWD road. On 29.01.2024, an ex parte ad interim injunction was granted in favour of the plaintiff restraining the respondent and the men under them from committing mischief in the plaint schedule property or installing boards or banners which causes obstruction to the access of the plaint schedule property from the northern road until further orders. As per the case of the defendant, the northern boundary of the plaint schedule property is not the PWD road. In between the northern boundary of the plaint schedule property and PWD road, there is the property of defendant's father's brother deceased John Issac. He is now having 95 Sq. Metres of property in re-survey No. 2 in Block No.

213 and thandaper No. 150. The plaintiff by suppressing these facts, filed this suit and obtained an ex parte injunction against the defendant. In order to substantiate his case, the defendant produced the partition deed No. 229/1964. From the said partition deed, it is evident that, Sri. John Issac got 12 cents of property in old survey No. 5454. Now, out of the 12 cents of property, 95 Sq. Metres of property in old survey No. 5454, re-survey No. 2 in block No. 213 in thandaper No. 150 is there in between the northern side of plaintiffs' property and PWD road. The plaintiff also admitted that the defendant's father's brother sold property situated on the western side of the plaintiff schedule property to S.N Central School. According to the plaintiffs, the defendant's father's brother sold the entire property to S.N Central School and he has no property there. But, from the side of the defendant, a copy of Basic Tax Register produced showing that 95 Sq. Metres of property in re-survey No. 2 in Block No. 213, thandaper No. 150 now also is in the name of Sri. Issac John. The old survey number of the said property is also mentioned in the Basic Tax Register as 5454. A copy of location sketch showing the said property is also produced from the side of the defendant. A tax receipt for the said 95 Sq. Metres of property in the name of Sri. John Issac issued

from Krishnapuram Village Office dated 24.01.2024 is also produced from the side of the defendant. On perusal of these records, it is prima facie evident that 95 Sq. Metres of property on the northern side of the plaintiff's property in the name of Sri. John Issac is now also in the place. The commissioner also in the commission report, it is stated that there is a compound wall on the northern side of the plaintiff schedule shop rooms and there is no obstruction to the plaintiff schedule property due to the installation of fencing and advertising board on the northern side of the said compound wall. From these facts, it is prima facie evident that by suppressing the fact that the defendant's father's brother is having 95 Sq. Metres of property on the northern side of the plaintiff schedule property, the plaintiffs filed this suit and obtained a temporary injunction restraining the defendant from committing any mischief in the plaintiff schedule property or installing boards or banners which causes obstruction to the access of plaintiff schedule property from the northern road. There is no relief of declaration of title is also sought by the plaintiffs. Here, the plaintiffs suppressed the material facts regarding the existence of 95 Sq. Metres of property, which has clear boundary demarcations. The learned counsel for the respondent contended that the suppression of any

material fact would be sufficient to decline the discretionary relief of injunction. A party seeking discretionary relief has to approach the court with clean hands and is required to disclose all the material facts. From the side of the defendant, the decision of the Hon'ble High Court of Kerala in **T.M Aysha Jasmitha v. C.P Abdul Rasheed [AIR 2021 Ker. 2]** produced, in which the Hon'ble High Court held that, *“The suppression of any material fact would be sufficient to decline the discretionary relief of injunction. A party seeking discretionary relief has to approach the court with clean hands and is required to disclose all material facts, which may, one way or the other affect the decision. A person deliberately concealing material facts from court is not entitled to any discretionary relief. A person seeking relief of injunction is required to make honest disclosure of all relevant statement of facts otherwise it would amount to an abuse of process of court.”* As earlier discussed, here also, the plaintiffs suppressed the fact that the 95 Sq. Metres of property in the name of defendant's father's brother is on the northern side of the plaint schedule property. Mere pleading does not make a strong prima facie case. The case must be established with sufficient material or proved by affidavit. What is required is a finding that a prima facie case for temporary injunction is proved or made out. If

injunction is granted, it will cause irreparable loss and hardships to the defendant and if it is not granted, no irreparable injury will be caused to the plaintiffs, then the court should decline to grant such injunction. Here, the petitioners are failed to prove a prima facie case and the balance of convenience is also against the plaintiffs. Thus, point Nos. 1 to 3 are answered against the petitioners.

7. **Point No. 4**:- In view of my discussions and findings on point Nos. 1 to 3, the petition is liable to be dismissed.

In the result, the petition stands dismissed. The ad-interim injunction granted by this court on 29.01.2024 is hereby vacated. 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 July, 2025.)*

Sd/-  
ANEESA.A,  
MUNSIFF

APPENDIX - Nil.

Sd/-  
MUNSIFF

// True copy //

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Typed by:Shafeek  
Compd.by