

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

Present: Smt.Aneesa.A, Munsiff

Tuesday 5<sup>th</sup> August ,2025/14<sup>th</sup> Sravana, 1947

**IA.10/2025 in OS.447/2023**

(Filed on 04.02.2025)

**Petitioners/Plaintiff:** 1. Sudharma, W/o. Ashokan,  
Pazhambadisseril Swanthanam,  
Chirakkadavom muri,  
Kayamkulam Village.  
(Now residing at Dakshina House No.14,  
Sreebhadra Nagar,  
N.C.C Road, Peroorkada,  
Thiruvananthapuram.

(By Adv.A.Shajahan)

**Respondents/Defendants:**

1. Dr.Kavitha Dev,  
W/o. Jayakumar,  
S.S.Puram Avadi Main Road,  
Avadi, Chennai District,  
Tamil Nadu-600077.  
Now residing Sadhupurathu veetil,  
Komalloor muri,  
Chunakkara Village.(D1).
2. Jayakumar, S/o.Kumaran,  
S.S.Puram Avadi Main Road,  
Avadi, Chennai District,  
Tamil Nadu- 600077.

Now residing Sadhupurathu veettil,  
Komalloor muri,  
Chunakkara Village.(D2)

3. Adv.A.Ajikumar, Kollasseril,  
Kannampally Bhagom muri,  
Keerikkad Village,  
Kayamkulam P.O.
4. Dr.Amrutha, D/o.Jayasree,  
Sreemandiram,  
Pennukkara muri, Aala Village,  
Chengannur Taluk,  
Perungala P.O, Alappuzha.
5. Dr.Arun Devaraj,  
S/o.Devarajan,Pranavam,  
Krishnapuram muri,  
Krishnapuram Village,  
Krishnapuram P.O.
6. Dr.Sudhithra.K.S,  
W/o. Dr.Arun Devaraj,  
Pranavam,  
Krishnapuram muri,  
Krishnapuram Village,  
Krishnapuram P.O.
7. Manaf, S/o.Pookunju,  
Valiyaparambil,  
Eruva muri, Pathiyoor Village,  
Kayamkulam P.O.

8. Muhammed Asharaf,  
S/o.Azeezkunju,  
Noorattu, Eruva muri,  
Pathiyoor Village,  
Kayamkulam P.O.
9. Sheeba Mol,  
W/o.Muhammed, Ashraf,  
Noorattu, Eruva Muri,  
Pathiyoor Village,  
Kayamkulam P.O.
10. Siddique, S/o.Pookunju,  
Valiyaparambil,  
Ervua muri, Pathiyoor Village,  
Kayamkulam P.O.

**(D1, D2 & D5 to D10 Adv.M.R.Salim)**

**(D3 & D4 C.D. Anil S.Vijayanadababu)**

This petition is coming on for hearing on 05.08.2025 and the court of the same day passed the following.

**ORDER**

This is an order in a petition filed by the petitioner/ plaintiff 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:-**

Petitioner is the plaintiff in the suit. The 1<sup>st</sup> defendant is the daughter of the plaintiff in her first marriage and the 2<sup>nd</sup> defendant is the husband of the 1<sup>st</sup> defendant. The first husband of the plaintiff Sri. Sahadevan died intestate and his properties devolved upon the plaintiff, his mother Smt. Kalyani and to 1<sup>st</sup> defendant as his legal heirs. With respect to the properties of deceased Sahadevan, the plaintiff and the mother of Sahadevan executed a partition deed No. 2742/1992 of Nooranad Sub Registrar's Office. The plaintiff in her personal capacity and in representative capacity of the 1<sup>st</sup> defendant executed the partition deed. The plaint schedule property is allotted to the 1<sup>st</sup> defendant as her share. There is a recital in the partition deed in such a way that the petitioner has life interest and the right to reside and taking yield from the item No.2 property in the said partition deed is reserved. Thus, the plaintiff is holding possession of the said property and the building. The properties received by the 1<sup>st</sup> defendant absolutely in her favour were already sold by her. At the time of marriage between the defendants and thereafter, the properties, money and gold ornaments were given to the 1<sup>st</sup> defendant

by the plaintiff. Those moneys were spent extravagantly by the 2<sup>nd</sup> defendant for the purpose of his business at Chennai and it were lost. Even after two children were born to 1<sup>st</sup> defendant, she demanded more money from the plaintiff, but the plaintiff reluctant to give money to her. Thus, she demanded for relinquishing the right of the plaintiff over the plaint schedule properties, but, since the tomb, where the father of the 1<sup>st</sup> defendant was buried, is in the plaint schedule property and the plaintiff wants to preserve the plaint schedule property of the 1<sup>st</sup> defendant for the petitioner's life time and because the income taken from the property will be a help to her, she is not ready to relinquish the right over the plaint schedule properties. Hence the defendants were now in inimical terms with the plaintiff. While so, in order to declare the clause in partition deed stating that the right to collect usufructs and the right to reside in the building as void, the 1<sup>st</sup> defendant as plaintiff filed O.S.No.187/2019 before the Munsiff's Court Mavelikara. While existing that suit, the 1<sup>st</sup> defendant told the plaintiff that due to financial stringency and out of sudden emotion, she filed the said suit and also informed that she is not interested to continue with the suit. By believing the words of the 1<sup>st</sup>

defendant, for meeting the financial difficulties of the 1<sup>st</sup> defendant, the plaintiff executed a settlement deed dated 26.05.2023 in favour of the 1<sup>st</sup> defendant by handing over the right of the plaintiff over the property having an extent of 24.76 ares and having a value of more than two Crores to the 1<sup>st</sup> defendant. Thereafter, as the 1<sup>st</sup> defendant told the plaintiff that the case has been withdrawn by her, the plaintiff did not conduct the said case and therefore, on 26.05.2023, the said suit was decreed ex parte in favour of the 1<sup>st</sup> defendant. Thereafter, the plaintiff filed R.P.No. 36/2023 before the Munsiff's Court, Mavelikara to set aside the ex parte decree and the same is pending. While so, it is reliably learned on 21.12.2023 that, as per the mandatory injunction in O.S.No. 187/2019, without taking any legal proceedings to evict the plaintiff from the plaint schedule property, the defendants and men conspired together for selling the plaint schedule property to strangers and to demolish the building and tomb in the plaint schedule property and to remove the furniture and household items from the plaint schedule property. The defendants have no right to do so. In order to restrain the defendants from the above mentioned illegal acts, the petitioner filed I.A.1/2023 along

with this suit. Along with the suit, I.A.2/2023 a commission application was also filed by the petitioner and the commissioner filed a report on 23.12.2023 stating the description of plaint scheduled properties, the details of trees standing therein, the description of plaint scheduled building and tomb situated therein. Thereafter, in the absence of petitioner in the plaint scheduled property on 09.03.2024, the respondents no.1 and 2 illegally trespassed into the plaint scheduled properties and demolished the building and tomb situated in the plaint scheduled properties, they cut down all the trees standing therein and illegally took the possession of the plaint scheduled properties. Thus the petitioner filed I.A.5/2024 for deputing a commissioner for ascertaining the illegal acts done by the respondents no.1 and 2 in the plaint scheduled property. On 11.07.2024, a second commission report was filed in this case. In the report, the commissioner specifically stated that on 02.03.2024, when the commissioner came to the plaint scheduled properties for inspection, one Satheesh opened the gate for and on behalf of 2<sup>nd</sup> defendant. The commissioner specifically reported the destruction of the building, tomb and cutting down of trees in the plaint scheduled

properties. Thereafter on 24.05.2024, this court after hearing I.A.1/2023 dismissed that petition. Against that order, the petitioner filed C.M.A.23/2024 before Hon'ble Additional District Court, Mavelikara and now also it is pending. Now the respondent nos.1 and 2 transferred the plaint scheduled properties to additional respondents 3 to 11 and they are doing construction works in the plaint scheduled properties. On 31.12.2024, the petitioner sent an advocate notice to the respondents directing them to stop the illegal construction activities in the plaint scheduled properties. They have not sent a reply notice. Now the construction work is progressing in the plaint scheduled property. The petitioner is entitled to restore the original state of plaint scheduled property on the date of institution of the suit. Thus this petition is filed for directing the respondents to surrender the vacant possession of the plaint scheduled property to the petitioner and also directing the respondents no.5 and 6 from stopping the construction works in the plaint scheduled properties.

**3.The counter petitioners 1 and 2/ additional defendants 1 and 4 filed objection contending *inter alia* as follows:** The petition is not maintainable either in law or on facts. All the averments except

which are admitted in the objection are specifically denied here under. The petition is not maintainable either in law or on facts. All the averments except which are admitted in the objection are specifically denied here under. The above petition is filed by the plaintiff by incorporating mandatory and prohibitory injunction. As per law, mandatory injunction and prohibitory injunction are two distinct reliefs having different legal characters and impacts. At present, the plaintiff does not have title or possession over the plaintiff schedule properties. Now the plaintiff schedule properties are under the absolute possession and enjoyment of the counter petitioners 3 to 11 in this petition. The plaintiff in this case has already preferred another suit as O.S.220/2024 for recovery of possession of plaintiff schedule property. In such premise, even if the plaintiff is entitled to get possession of the plaintiff scheduled property, the available remedy open to the plaintiff is to prosecute the O.S.220/2024 on merits. The properties including the property scheduled in the plaintiff previously belonged to 1<sup>st</sup> defendant's deceased father Sahadevan, who died intestate as far as his assets are concerned by leaving behind his mother, plaintiff and 1<sup>st</sup> defendant herein as legal heirs. So the

plaintiff, 1<sup>st</sup> defendant and mother of Sahadevan got inherited to the assets of deceased Sahadevan through intestate succession and each of them became entitled to get 1/3 shares each over the assets of Sahadevan. 1<sup>st</sup> defendant was a minor at the time at which her father expired. The right vested upon the 1<sup>st</sup> defendant over the assets of her deceased father, is a 'right by birth' and as such no one had any right or authority to impose any other interest over the said right of 1<sup>st</sup> defendant. While so, a Partition Deed no.2742/1992 was executed so as to partition the assets left behind by Sahadevan and the same was executed by the plaintiff and mother of Sahadevan. At the time of execution of said partition deed, the 1<sup>st</sup> defendant was a minor and so plaintiff executed and signed the deed for and on behalf of 1<sup>st</sup> defendant. In that deed, there is a recital that to reserve her right to reside in the building in the plaint scheduled property and to take yield from the plaint scheduled property. The said recital is void ab initio, nonest in law and can not be enforced through the process of law due to the following reasons.

i)The plaint schedule property has been allotted to the 1<sup>st</sup> defendant in the Partition deed no.2742/1992 as her 1/3 share in the

assets of her deceased father, Sahadevan. So the right which has been acquired by the 1<sup>st</sup> defendant over the plaint schedule property is a right by birth. Such right should not have been interfered or burdened with any other interest without the valid consent of the 1<sup>st</sup> defendant or without permission from the District Court concerned. So the recital in the said partition deed to reserve life interest for the plaintiff over the property of the 1<sup>st</sup> defendant is the blatant violation of the provisions of concerned laws.

ii) The plaintiff incorporated the controversial recital in the Partition deed no.2742/1992 without obtaining required permission as per law from the District Court, who has jurisdiction over the plaint scheduled property.

iii) By incorporating the controversial recital in the Partition deed no.2741/1992 welfare, well-being and evident advantage to the minor has not been ensured.

iv) The controversial recital in the Partition deed no.2742/1992 dated 12.11.1992 amounts to a condition restraining the plaintiff or any person under her from parting with or disposing of her interest in the plaint scheduled property. So plaintiff has purposefully

incorporated the said recital in the said partition deed so as to prevent the 1<sup>st</sup> defendant from enjoying the plaint scheduled property against the whims and fancies of the plaintiff.

v) Over 1/3rd share neither the plaintiff nor anyone else got any right. By the incorporation of the controversial recital in Partition deed no.2742/1992, plaintiff did not get any benefit. So the said recital cannot be treated as one for the beneficial enjoyment of plaint scheduled property by the 1<sup>st</sup> defendant, but only for the personal need of the plaintiff, who merely represented as her guardian.

vi) The controversial recital in Partition deed no.2742/1992 is against the provisions of Section 23 of the Indian Contract Act. So the controversial recital is onerous to the plaintiff only. But by virtue of that recital, the 1<sup>st</sup> defendant was disabled from enjoying her property over which she has got right by birth.

4. By virtue of said deed, the plaintiff was reserved with possession of plaint scheduled property and specific recitals re there for transferring possession of the plaint scheduled property to the 1<sup>st</sup> defendant. The father of 1<sup>st</sup> defendant died in the year 1991. Within six months from the date of execution of said deed, the plaintiff

remarried. After her second marriage, the plaintiff shifted her residence from the plaint schedule property to Thiruvananthapuram along with her husband. Thereafter the plaintiff never had any permanent residence in the plaint scheduled property. After the marriage of the 1<sup>st</sup> defendant, she took possession of the plaint scheduled property and the structures therein. As there existed cordial relationship between the plaintiff and the 1<sup>st</sup> defendant, at that time, a key of the plaint scheduled building and gate were retained by the plaintiff with the consent of the 1<sup>st</sup> defendant. In the meanwhile, the plaintiff sold the properties which were allotted to her in the Partition deed no.2742/1992 dated 12.11.1992 to strangers and utilized the money as consideration for her own needs. After the 1<sup>st</sup> defendant attained majority, the plaintiff herself sold some of the properties allotted to the 1<sup>st</sup> defendant in the said partition deed. In fact, the 1<sup>st</sup> defendant was quite unaware about the Partition deed no.2742/1992 dated 12.11.1992 for a long time. While so, the plaintiff began to raise unwanted claims over the plaint scheduled property under the strength of controversial recital in the Partition deed no.2742/1992. Thereafter the relationship between the plaintiff

and 1<sup>st</sup> defendant turned to be worsened and the 1<sup>st</sup> defendant demanded the key of the building. It is learnt that the plaintiff is going to cut and remove the trees from the plaintiff scheduled property and to encumber the plaintiff scheduled property under the strength of controversial recital in the Partition deed no.2742/1992 . In such premise, the 1<sup>st</sup> defendant instituted O.S.187/2019 before the Munsiff's Court, Mavelikara. The plaintiff retained a key of the building in the plaintiff scheduled property. In such a situation, a prayer happened to be incorporated in such a way to issue a mandatory injunction directing the plaintiff to vacate the plaintiff scheduled property. In O.S.187/2019 the 1<sup>st</sup> defendant was set an ex parte and ex parte decree was passed on 26.05.2023. Hence the 1<sup>st</sup> defendant did not proceed to execute the decree of mandatory injunction in O.S.187/2019. But now the ex parte decree in O.S.187/2019 has been set aside by the Munsiff's Court, Mavelikara. So the controversial recital in Partition deed no.2742/1992 dated 12.11.1992 is now under challenge before the Munsiff's Court, Mavelikara. The defendants admit the averments in paragraphs no.2 and 3 of the affidavit. The averments in the 4<sup>th</sup> paragraph of the affidavit are

misleading. It is true that the 1<sup>st</sup> defendant is the one and only child born in the plaintiff's first wedlock between herself and late Sahadevan. After his demise, all his properties devolved upon his wife, daughter and mother as per Hindu Succession Act. But after the demise of Sahadevan, the plaintiff herein with a dubious intention to grab interest of the 1<sup>st</sup> defendant and her right in the property fraudulently and executed a partition deed no.2742/1992 of S.R.O, Nooranad. At the time of execution of partition deed, the 1<sup>st</sup> defendant was a minor and she was represented by the plaintiff.

5. The averments in paragraph no.5 of the affidavit are completely not correct. As per Partition deed no.2742/1992 of S.R.O, Nooranadu, item no.2 schedule property was given to the 1<sup>st</sup> defendant. But the plaintiff incorporated a specific recital in the partition deed that the item number 2. property will be in the possession of the plaintiff during her life time and she will have the right to collect yield from the said property. This is with an intention to restrict the 1<sup>st</sup> defendant's absolute rights over her property and as such said recitals are illegal. In such circumstance, claiming possession of said property on the basis of said illegal and void clause

has no effect. The averments in paragraph no.6 of the affidavit are incorrect and misleading. It is absolutely false to say that the 1<sup>st</sup> defendant demanded money to the plaintiff and that as and when the plaintiff denied such demands of the defendants, the defendant demanded the plaintiff to relinquish her right over the plaintiff scheduled property. The statement that her husband's tomb is in the plaintiff scheduled property and as the plaintiff desired to live with the income being generated from the plaintiff scheduled property during her life time, the plaintiff denied to relinquish her right over the plaintiff scheduled property is false and hence denied by the defendants. Neither the 1<sup>st</sup> defendant nor the 2<sup>nd</sup> defendant at any point of time asked any money from the plaintiff. The averments in paragraph no.7 of the affidavit is not completely correct. The contention of the plaintiff regarding O.S.187/2019 filed before Munsiff's Court, Mavelikara for declaration of recitals in Partition deed 2742/1992 of S.R.O, Nooranad is not binding mandatory injunction and permanent prohibitory injunction is correct. The averments in paragraph no.8 of the affidavit is not completely correct. The plaintiff was not appeared in O.S.187/2019 before the Munsiff's Court, Mavelikara is incorrect

and misleading. The plaintiff became ex parte in the said proceedings only because of the negligence or laches from the part of plaintiff. The averments in the paragraph 9 of the affidavit are false and hence denied. It is apposite to note that after obtaining decree and judgment in O.S.187/2019 on the file of Munsiff's Court, Mavelikara, the 1<sup>st</sup> defendant became absolute owner in possession of the scheduled property and no person has any manner of right or authority over the said property. After obtaining the decree and judgment, the 1<sup>st</sup> defendant executed a deed in favour of 2<sup>nd</sup> defendant herein. The attempt of the plaintiff is to coerce the 1<sup>st</sup> defendant to accede with her illegal demands. The averments in paragraph no.9 and 10 of the affidavit are correct and hence admitted by the counter petitioners 1 and 2. But it is false to say that the defendants 1 and 2 forcefully taken possession of the plaint scheduled property and demolished the structures in the plaint scheduled property. It is true that the defendants 1 and 2 sold the plaint scheduled property to the counter petitioners 3 to 10. Counter petitioners 1 and 2 have every right to alienate the plaint scheduled property as per their will and wish. The averments in paragraph no.14 of the affidavit are false and hence

denied. The petitioner/ plaintiff has no prima facie case. Balance of convenience is in favour of the defendants 1 and 2. Hence this petition is to be dismissed with their costs.

**6. The additional 3<sup>rd</sup> respondent appeared and filed objection contending *inter alia* as follows:-** The petition is not maintainable either in law or on facts. All the averments except which are admitted in the objection are specifically denied here under. In paragraph 5 of the affidavit, the case of petitioner is that the scheduled item property allotted to the share of the 1<sup>st</sup> defendant by virtue of partition deed no.2742 of 1992 of S.R.O, Nooranadu. According to the petitioner, it is alleged that pending consideration of the suit, the building and other structures reported by the commissioner was demolished on 09.03.2024. This defendant is a bonafide purchaser for valuable consideration. As per Sections 54 and 55 of the Transfer of Property Act, the defendant had obtained encumbrance certificate from the concerned S.R.O and verified the prior title deed also. There is no legal right or absolute possession or legal incidence in favour of the petitioner. The plaintiff had no residence whatsoever even on the date of institution of this suit. On

13.09.2024, the defendant had purchased 6.07 Ares of property for valuable consideration and this property was mutated as per Thandaper no.379/2022 of Kayamkulam Village. After the receipt of legal notice issued by the plaintiff, then the defendant came to know that some disputes were pending among the plaintiff and the 1<sup>st</sup> defendant. Moreover, it is learnt from the records that at the time of execution of the partition deed no.2742/1992, the 1<sup>st</sup> defendant was a minor. The plaintiff in the above suit had filed O.S.2020/2024 on the file of this court for recovery of possession of scheduled item property under Section.6 of the Specific Relief Act. In I.A.3/2024, it was found that the suit was undervalued and the plaint was directed to remit deficit court fee. Thereafter the Hon'ble High Court stayed the matter in appeal. The matter is now posted to 13.08.2025 also. It is submitted that since a regular suit under Section 6 of the Specific Relief Act is pending on the file of this court, the relief is barred by the principle of constructive res judicata. It is also submitted that since there is a regular suit under Section 6 of the Specific Relief Act, the available remedy of the petitioner is to peruse the said matter and the suit become infructuous as admitted by the plaintiff in the above

application. The averments in paragraph nos.5, 7 and 8 of the affidavit is false and hence denied. The plaintiff had no possession over the property at any point of time. This defendant had no knowledge regarding the institution of O.S.187/2019 before the Munsiff's Court, Mavelikara and also unaware about the entire proceedings in this O.S. The averments in paragraph nos. 9 and 10 of the affidavit are also false and hence denied. The defendant is having no knowledge regarding the appointment of the commissioner or filing of the report on 23.12.2023 in respect to the scheduled item property. The defendant was not a party to the above proceedings also.

7. The averment in paragraph no.11 of the affidavit is not known to the defendant. The statement that on 09.03.2024, the defendants including the additional 3<sup>rd</sup> defendant trespassed into the scheduled item building and other structures is absolutely false and hence denied. This defendant is quite unaware regarding the statement in paragraph no.11 regarding the inspection of the commissioner for his second visit. The averments in paragraph no.12 of the affidavit regarding CMA.23/2024 and other proceedings are

not known to this defendant. The averments in paragraph no.13 and 14 of the affidavit are false and hence denied. The additional 3<sup>rd</sup> defendant was an absolute title holder of the property and also a bonafide purchaser for valuable consideration. The petitioner/plaintiff has no prima facie case. Balance of convenience is in favour of the additional 3<sup>rd</sup> defendant. Hence this petition is to be dismissed with the costs of the additional 3<sup>rd</sup> defendant/ additional 3<sup>rd</sup> respondent.

**8. The counter petitioners 4 to 10/ additional defendants 5 to 11 filed objection contending *inter alia* as follows:** The petition is not maintainable either in law or on facts. All the averments except which are admitted in the objection are specifically denied here under. The above petition is filed by the plaintiff by incorporating mandatory and prohibitory injunction. As per law, mandatory injunction and prohibitory injunction are two distinct reliefs having different legal characters and impacts. At present, the plaintiff does not have title or possession over the plaint schedule properties. Now the plaint schedule properties are under the absolute possession and enjoyment of the counter petitioners 3 to 10 in this petition. The

plaintiff in this case has already preferred another suit as O.S.220/2024 for recovery of possession of plaint schedule property. In such premise, even if the plaintiff is entitled to get possession of the plaint scheduled property, the available remedy open to the plaintiff is to prosecute the O.S.220/2024 on merits. The properties including the property scheduled in the plaint previously belonged to 1<sup>st</sup> defendant's deceased father Sahadevan, who died intestate as far as his assets are concerned by leaving behind his mother, plaintiff and 1<sup>st</sup> defendant herein as legal heirs. So the plaintiff, 1<sup>st</sup> defendant and mother of Sahadevan got inherited to the assets of deceased Sahadevan through intestate succession and each of them became entitled to get 1/3 shares each over the assets of Sahadevan. 1<sup>st</sup> defendant was a minor at the time at which her father expired. The right vested upon the 1<sup>st</sup> defendant over the assets of her deceased father, is a 'right by birth' and as such no one had any right or authority to impose any other interest over the said right of 1<sup>st</sup> defendant. While so, a Partition Deed no.2742/1992 was executed so as to partition the assets left behind by Sahadevan and the same was executed by the plaintiff and mother of Sahadevan. At the time of

execution of said partition deed, the 1<sup>st</sup> defendant was a minor and so plaintiff executed and signed the deed for and on behalf of 1<sup>st</sup> defendant. In that deed, there is a recital that to reserve her right to reside in the building in the plaint scheduled property and to take yield from the plaint scheduled property. The said recital is void ab initio, nonest in law and can not be enforced through the process of law due to the following reasons.

i)The plaint schedule property has been allotted to the 1<sup>st</sup> defendant in the Partition deed no.2742/1992 as her 1/3 share in the assets of her deceased father, Sahadevan. So the right which has been acquired by the 1<sup>st</sup> defendant over the plaint schedule property is a right by birth. Such right should not have been interfered or burdened with any other interest without the valid consent of the 1<sup>st</sup> defendant or without permission from the District Court concerned. So the recital in the said partition deed to reserve life interest for the plaintiff over the property of the 1<sup>st</sup> defendant is the blatant violation of the provisions of concerned laws.

ii) The plaintiff incorporated the controversial recital in the Partition deed no.2742/1992 without obtaining required permission

as per law from the District Court, who has jurisdiction over the plaintiff scheduled property.

iii) By incorporating the controversial recital in the Partition deed no.2741/1992 welfare, well-being and evident advantage to the minor has not been ensured.

iv) The controversial recital in the Partition deed no.2742/1992 dated 12.11.992 amounts to a condition restraining the plaintiff or any person under her from parting with or disposing of her interest in the plaintiff scheduled property. So plaintiff has purposefully incorporated the said recital in the said partition deed so as to prevent the 1<sup>st</sup> defendant from enjoying the plaintiff scheduled property against the whims and fancies of the plaintiff.

v) Over 1/3rd share neither the plaintiff nor anyone else got any right. By the incorporation of the controversial recital in Partition deed no.2742/1992, plaintiff did not get any benefit. So the said recital cannot be treated as one for the beneficial enjoyment of plaintiff scheduled property by the 1<sup>st</sup> defendant, but only for the personal need of the plaintiff, who merely represented as her guardian.

vi) The controversial recital in Partition deed no.2742/1992 is against the provisions of Section 23 of the Indian Contract Act. So the controversial recital is onerous to the plaintiff only. But by virtue of that recital, the 1<sup>st</sup> defendant was disabled from enjoying her property over which she has got right by birth.

9. By virtue of said deed, the plaintiff was reserved with possession of plaint scheduled property and specific recitals re there for transferring possession of the plaint scheduled property to the 1<sup>st</sup> defendant. The father of 1<sup>st</sup> defendant died in the year 1991. Within six months from the date of execution of said deed, the plaintiff remarried. After her second marriage, the plaintiff shifted her residence from the plaint schedule property to Thiruvananthapuram along with her husband. Thereafter the plaintiff never had any permanent residence in the plaint scheduled property. After the marriage of the 1<sup>st</sup> defendant, she took possession of the plaint scheduled property and the structures therein. As there existed cordial relationship between the plaintiff and the 1<sup>st</sup> defendant, at that time, a key of the plaint scheduled building and gate were retained by the plaintiff with the consent of the 1<sup>st</sup> defendant. In the meanwhile, the

plaintiff sold the properties which were allotted to her in the Partition deed no.2742/1992 dated 12.11.1992 to strangers and utilized the money as consideration for her own needs. After the 1<sup>st</sup> defendant attained majority, the plaintiff herself sold some of the properties allotted to the 1<sup>st</sup> defendant in the said partition deed. In fact, the 1<sup>st</sup> defendant was quite unaware about the Partition deed no.2742/1992 dated 12.11.1992 for a long time. While so, the plaintiff began to raise unwanted claims over the plaint scheduled property under the strength of controversial recital in the Partition deed no.2742/1992. Thereafter the relationship between the plaintiff and 1<sup>st</sup> defendant turned to be worsened and the 1<sup>st</sup> defendant demanded the key of the building. It is learnt that the plaintiff is going to cut and remove the trees from the plaint scheduled property and to encumber the plaint scheduled property under the strength of controversial recital in the Partition deed no.2742/1992. In such premise, the 1<sup>st</sup> defendant instituted O.S.187/2019 before the Munsiff's Court, Mavelikara. The plaintiff retained a key of the building in the plaint scheduled property. In such a situation, a prayer happened to be incorporated in such a way to issue a mandatory injunction directing the plaintiff to

vacate the plaint scheduled property. In O.S.187/2019 the 1<sup>st</sup> defendant was set an ex parte and ex parte decree was passed on 26.05.2023. Hence the 1<sup>st</sup> defendant did not proceed to execute the decree of mandatory injunction in O.S.187/2019. But now the ex parte decree in O.S.187/2019 has been set aside by the Munsiff's Court, Mavelikara. So the controversial recital in Partition deed no.2742/1922 dated 12.11.1992 is now under challenge before the Munsiff's Court, Mavelikara. These counter petitioners are bonafide purchasers of the plaint scheduled property. The counter petitioner purchased different portions of the plaint schedule property from the defendants 1 and 2 for valid consideration. Counter petitioners 5 and 6 have already started the construction of a residential building in plaint schedule property and the same is nearing completion. The averments in paragraph no.14 of the affidavit are false and hence denied. The petitioner/ plaintiff has no prima facie case. Balance of convenience is in favour of the additional defendants 5 to 11. Hence this petition is to be dismissed with their costs.

10. The following points were formulated for consideration:-

1. Is there a prima facie case in favour of the petitioner ?
  2. Is the balance of convenience in favour of the petitioner ?
  3. Is the petitioner would suffer irreparable injury and loss, if order of injunction is refused ?
  4. What is the order as to Reliefs and costs?
11. Heard both sides.
12. **Point Nos. 1 to 3:-** These points can be considered together. The petitioner filed this I.A for temporary mandatory injunction directing the respondents to hand over the possession of plaint scheduled properties to the petitioner and also restrain the additional respondents 5 and 6 by virtue of a temporary injunction from making further construction in the plaint scheduled property. The original suit is filed for restraining the defendants no.1 and 2 from forcefully evicting the plaintiff from the plaint scheduled property and from demolishing the building, tomb and other constructions in the plaint scheduled property and from taking any movables from the building situated in the plaint scheduled property.

The petitioner admitted that at the time of filing of this suit, an ex parte decree O.S.187/2019 before the Hon'ble Munsiff Court, Mavelikara was in force. O.S.No.187/2019 was decreed ex parte on 26.05.2023 as follows: It is declared that a clause in partition deed No.2742/1992 of Nooranad S.R.O, which provides for right to the defendant (plaintiff in this case) to collect usufructs and to reside in the suit properties is not binding on the plaintiff, defendant is directed by a mandatory injunction to vacate the plaint scheduled properties and to hand over their possession to the plaintiff within one month from the date of the judgment, the defendant is restrained by a decree of permanent prohibitory injunction from committing any mischief in the plaint scheduled property and from encumbering the said properties. According to the petitioner, on 09.03.2024, the defendants demolished the tomb and building in the plaint scheduled property, cut down the trees standing therein and forcefully obtained the possession of the plaint scheduled property. Those matters were ascertained by the commissioner deputed in I.A.5/2024 in this case. Thereafter the respondents no.1 and 2 transferred the plaint scheduled property to additional respondents 3 to 11. From the side

of the petitioner, Ext.A1, a copy of Partition deed no.2742/1992, Ext.A2, a copy of judgment in O.S.187/2019 of Hon'ble Munsiff's Court, Mavelikara dated 26.05.2023, Ext.A3 a copy of Restoration Petition no.36/23 in O.S.187/2019 dated 29.03.2025, Ext.A4 a copy of advocate notice dated 31.12.2024, Ext.A5 series acknowledgment cards(2 nos) were got marked. As per Ext.A3, the order dated 29.03.2025 in R.P.36/2023, the ex parte decree in O.S.187/2019 was set aside by the Hon'ble Munsiff Court, Mavelikara. Now the petitioner's right by virtue of partition deed 2742/1992 to reside in the plaint scheduled building and to take yield from there is in existence.

13. But on the other hand, the respondents contended that the petitioner has no title or possession over the plaint scheduled property and the plaint scheduled properties are under the absolute possession and enjoyment of respondents no.3 to 11. So without possession, the petitioner has no locus standi to maintain this petition. According to the respondents, the recital in Ext.A1 partition deed is nonest in the law and cannot be enforced through the process of law. According to them, the plaint schedule property has been allotted to the 1<sup>st</sup>

defendant in the Partition deed no.2742/1992 as her 1/3 share in the assets of her deceased father, Sahadevan. So the right which has been acquired by the 1<sup>st</sup> defendant over the plaint schedule property is a right by birth. Such right should not have been interfered or burdened with any other interest without the valid consent of the 1<sup>st</sup> defendant or without permission from the District Court concerned. So the recital in the said partition deed to reserve life interest for the plaintiff over the property of the 1<sup>st</sup> defendant is the blatant violation of the provisions of concerned laws. The plaintiff incorporated the controversial recital in the Partition deed no.2742/1992 without obtaining required permission as per law from the District Court, who has jurisdiction over the plaint scheduled property. By incorporating the controversial recital in the Partition deed no.2741/1992 welfare, well-being and evident advantage to the minor has not been ensured. The controversial recital in the Partition deed no.2742/1992 dated 12.11.992 is amounts to a condition restraining the plaintiff or any person under her from parting with or disposing of her interest in the plaint scheduled property. So plaintiff has purposefully incorporated the said recital in the said partition deed so as to prevent the 1<sup>st</sup>

defendant from enjoying the plaint scheduled property against the whims and fancies of the plaintiff. Over 1/3rd share neither the plaintiff nor anyone else got any right. By the incorporation of the controversial recital in Partition deed no.2742/1992, plaintiff did not get any benefit. So the said recital cannot be treated as one for the beneficial enjoyment of plaint scheduled property by the 1<sup>st</sup> defendant, but only for the personal need of the plaintiff, who merely represented as her guardian. The controversial recital in Partition deed no.2742/1992 is against the provisions of Section 23 of the Indian Contract Act. So the controversial recital is onerous to the plaintiff only. But by virtue of that recital, the 1<sup>st</sup> defendant was disabled from enjoying her property over which she has got right by birth. Here both sides admitted that O.S.187/2019 which is filed by the 1<sup>st</sup> defendant in this case before the Hon'ble Munsiff's Court, Mavelikara seeking a declaration that the directions in the Partition deed no.2742/1992 of Nooranad S.R.O which provides for the life interest to the petitioner in this case over the 1<sup>st</sup> defendant's share is not binding on her and for a mandatory and permanent prohibitory injunction is now also pending before Hon'ble Munsiffs Court,

Mavelikara. So the controversial recital in the Ext.A1 partition deed dated 12.11.1992 is now under challenge and is yet to be adjudicated by the Hon'ble Munsiffs Court, Mavelikara. So no further discussion about the validity of the recital in Ext.A1 partition deed is warranted here. Here all the prayers sought in the suit have already turned infructuous. Moreover, O.S.220/2024 filed by the petitioner u/S.6 of Specific Relief Act for recovery of possession of plaint scheduled property is also pending before this court for adjudication. From this, it is evident that an equally efficacious remedy was already sought by the petitioner. Moreover, the learned counsel for the petitioner admitted that he has not pressed C.M.A.23/2024 which was filed against the dismissal order of I.A.1/2023 in this case before Hon'ble Additional District Court, Mavelikara. Here the learned counsel for the respondents rightly pointed out that an interim mandatory injunction is a precarious right to be granted with due care and caution. So the interim application for handing over possession which are in the nature of granting final relief cannot be granted at this stage. According to the respondents no.3 to 11, they are bonafide purchasers of the plaint scheduled property. They purchased different

portions of plaint scheduled property from respondents no.1 and 2 for valid consideration. Respondent nos.5 and 6 had already started construction of a residential building in the plaint scheduled property purchased by them and the same is nearing its completion. According to the respondents no.5 and 6, they purchased the portion of plaint scheduled property and started construction of a residential building by availing loan and by gathering money by pledging 6<sup>th</sup> respondent's gold ornaments. The learned counsel for the petitioner contended that the respondents altered the subject matter of suit during the pendency of this suit, hence a status quo ante is to be ordered. 14. The Hon'ble High Court of Kerala in **Anilkumar and Others v. K.Rajendran reported in 2021 (1) KHC 766** held that 'power of the court to restore state of affairs to a position anterior to suit by issue of an interim mandatory injunction cannot be exercised in a suit for a decree of prohibitory injunction. Grant of temporary injunction in a suit for prohibitory injunction and mandatory injunction rigour of test to be followed in both proceedings are different. Prima facie case made out in a suit for mandatory injunction proceedings must be so strong and unusually clear that the suit has a high probability of

success. Principles of law which Courts have to follow while considering the plea for issue of interim mandatory injunction enumerated'. Here as already discussed the prayers sought in the original suit has been become infructuous. Moreover, the Hon'ble Apex Court in **Samir Narain Bhojwani v. M/s.Aurora Properties and Investments and Another reported in 2018 KHC 6615** held that 'An interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction'. Here it is already discussed that the construction of a residential building of respondents no.5 and 6 is going in the plaint schedule property. According to the respondents no.5 and 6 there is no encumbrance noted in the encumbrance certificate when they purchased the plaint scheduled property. Thereafter they started construction. The Hon'ble Bombay High Court in **Olga D'Souza and Others v. M/s.Nitin Developers Pvt.Ltd, Goa and Others reported in 2020 KHC 4662**

held the rejection of ad interim injunction proper and held that 'plaintiff sought ad interim injunction against construction raised by defendants, purchaser. Plaintiffs would not suffer any irreparable injury, for money could always compensate their loss if any. On the contrary, the defendants as the builders, may suffer enormous loss having already spent money for construction. Refusal to grant ad interim injunction not on merits but on basis of equitable considerations attracting doctrine of lis pendens as statutorily recognised under S.52 of the Transfer of Property Act. Hence all developments over suit property shall be subject to outcome'. Here also the respondents no.5 and 6 already spent a huge amount for the construction of the building and if this court restrain them from the further construction, it will cause irreparable loss and injury to them. Even if the construction is continuing, the petitioner would not suffer any irreparable injury. The right of the petitioner in the plaint scheduled property and her possession are to be decided in the suit pending before Hon'ble Munsiff's Court, Mavelikara. Here, the petitioner failed to made out a prima facie case. Balance of

convenience is also in favour of the respondents. Thus, point Nos. 1 to 3 are answered against the petitioners.

14. **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. 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 August, 2025.)*

Sd/-  
ANEESA.A,  
MUNSIFF

APPENDIX - Nil.

Sd/-  
MUNSIFF

MUNSIFF

Typed by:Shafeek  
Compd.by