

IN THE COURT OF SUB JUDGE, KOCHI

Present :

Smt. Rejani Thankappan, Sub Judge, Kochi

Monday, the 21st day of July, 2025/ 30th Ashadam, 1947

I.A.No.6/2024 in O.S.No. 56/2021

Petitioner/2nd Defendant :-

Shahanaz, aged 47, D/o. Ibrahim, 5/1404, New road, Mattancherry
now residing at ESI Road, Kannabilli Veedu, Palluruthy
Thekkumuri, Rameswaram Village.

By Adv. Jinimol P.M

Respondents/Plaintiff and 1st Defendant :-

1. Josena, aged 32, W/o. Late John @ John Tinson, residing at
Kumaroth House, Priyadarsini Bus Stop, Kumbalanghi.
2. Anna Tintu, aged 39, W/o. Biju, residing at Arakkapadath House,
Pambayimoola, Edakochi.

R1 by Advs. K.S Sathish Babu & Nimmi Joseph

R2 by Adv. K.P Shibu & Sulekha P.A

This petition filed under Order 39 Rule 1 of Civil Procedure Code.

This petition having come up for hearing before me on 21.07.2025 and
the court on the same day passed the following :-

ORDER

This petition is filed by the petitioner/2nd defendant under Order 39 Rule
1 of the Civil Procedure Code for temporary prohibitory injunction.

2. The petition averments, in brief, are as follows:-

The petitioner is the second defendant in the original suit. She had entered into a mortgage agreement with the husband of the plaintiff/1st respondent on 01.03.2021, thereby she had taken possession of the upstairs rooms of the building situated in the plaint schedule property for an amount of Rs.4,50,000/-(Rupees four lakhs fifty thousand only) for 11 months. The husband of the plaintiff/1st respondent died before the expiry of the term of the mortgage agreement. After the death of the husband of the plaintiff /1st respondent the relatives of her husband had filed a suit for partition with regard to the property belongs to the husband of the plaintiff /1strespondent . The petitioner/2nd defendant had retained the possession of the up stair rooms of the house situated therein since they had not returned the mortgage amount of Rs.4,50,000/- till date. In this circumstances, the respondents, who are the plaintiff and the first defendant, are trying to dispose the petition schedule property. If they are succeeded in their attempt it will cause irreparable injury to this petitioner/2nd defendant. In this circumstances, the petitioner / 2nd defendant have no other remedy. Hence this petition is filed to restrain the respondents from alienating, encumbering or committing any waste in the plaint schedule property.

3. The 1st respondent, who is the plaintiff in this case, filed objection to this petition with following contentions:-

The petition is not maintainable either in law or on facts. It is admitted in the plaint itself that, the husband of this 1st respondent/plaintiff had accepted Rs.4,50,000/- from the petitioner/2nd defendant. Hence in the suit itself this 1st respondent/plaintiff prayed to surrender the vacant possession of the upstairs portion of the building in the plaint schedule property after accepting Rs.4,50,000/- for which charge has to be created over the plaint schedule property. If at all the undivided share of this 1st respondent /plaintiff is sold, even then, the petitioner/2nd defendant is entitled to charge over the property having an amount of Rs.4,50,000/-. The petitioner/ 2nd defendant has no right to file this petition to deprive the right of this respondent / plaintiff to pledge or to rent the ground floor or alienate the plaint schedule property. The plaint schedule property is the subject matter of the suit. The petitioner/ 2nd defendant is now staying in the upstairs portion of the building. Hence, the petitioner/ 2nd defendant is not entitled to file petition of this nature. Hence, the 1st respondent/plaintiff prays for dismissing the petition.

4. The points arised for consideration are:-

(i) Whether the petitioner/ 2nd defendant is entitled

get an order of permanent prohibitory injunction

as prayed for?

(ii) Other reliefs and costs.

5. Heard both sides.

6. Point No.1:-

It is an admitted fact that the petitioner/ 2nd defendant has charge over the plaint schedule property for an amount of Rs.4,50,000/-. Perused the records, affidavit and documents. Since the charge over the property is an admitted fact in this case, I am satisfied that prima facie case is existed in favour of the petitioner. Hence the 1st respondent/plaintiff and the second respondent /1st defendant, their men and agents are hereby restrained from alienating, encumbering or committing any waste in the plaint schedule property, without releasing the charge of the petitioner/ 2nd defendant over the plaint schedule property. Point No.1 is found in favour of the petitioner.

7. Point No.2:-

Considering the facts of the case, respective parties shall bear their own costs.

In the result, the petition allowed as follows:-

The respondents/plaintiffs and 1st defendant, their men and agents, are hereby restrained from alienating, encumbering or

committing any waste in the plaint schedule property, without releasing the charge of the petitioner/ 2nd defendant over the plaint schedule property.

Dictated to the Confidential Assistant, typed by her corrected by me and pronounced in open court on this the 21st day of July, 2025.

Sd/-

**REJANI THANKAPPAN
SUB JUDGE**

APPENDIX:-Nil

Typed by: ancy

Comp.by:

Sd/-

**SUB JUDGE
(By Order)**

True copy

Sheristadar

Order in

I.A.No.6/2024 in O.S.No. 56/2021

Dated: 21.07.2025