

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Friday, the 10th day of April, 2026/ 20th Chaithram, 1948

I. A No. 7/2026 in O.S. No. 5/2026

Petitioner/Defendant:-

K P Abhishek, S/o.Late.Padmanabhan, aged 49 years, Kuzhikkaledath House, Puthuvype Village, Azheekkal Kara, Kochi Taluk, Ernakulam District-682508

By Advs. C P Jyothi, C P Rajesh & Abhirami K B

Respondent/ Plaintiff:-

K P Abhilash, S/o.Late.Padmanabhan, aged 50 years, Kuzhikkaledath House, Near Karuthedam Co.op Bank, Puthuvype Village, Azheekkal Kara, Kochi Taluk, Ernakulam District-682508

By Adv. P Ravindranath & R Divakaran

This petition come up for hearing before me on 08.04.2026 and the court on 10.04.2026 passed the following:-

ORDER

The present petition is filed by the defendant seeking consideration of the maintainability of the suit as a preliminary issue before proceeding

further with the trial.

2. The averments in the petition in brief are as follows:- The petitioner is the defendant in the above suit. The suit has been filed by the plaintiff seeking a prohibitory injunction restraining the petitioner from entering into the plaint schedule property. According to the petitioner, after filing of the suit on 10.01.2026, the plaintiff began collecting income from the ice plant situated in the plaint schedule property, though the same actually belongs to the petitioner. The petitioner contends that the plaintiff instituted the suit by suppressing material facts and without producing any supporting documents. It is specifically alleged that the plaintiff has no right, title, or interest over the plaint schedule property. As per Document No.1690/1/2025 of SRO, Njarakkal, the plaintiff had relinquished his half share in the entire property belonging to their deceased mother. Therefore, the plaintiff cannot now claim any right or possession over the said property. It is further averred that the document number described in the plaint schedule is not in existence and does not relate to the property where the ice factory is situated. The petitioner submits that he has produced all relevant documents establishing his right, ownership, and possession over the property in question. According

to the petitioner, he is the absolute owner of the plaint schedule property as well as the ice factory and is entitled to protect his rights. The continuation of the suit without first deciding its maintainability would cause serious prejudice and hardship to him. Hence, the petition.

3. The respondents filed an objection contending as follows: The above suit has been filed seeking a decree of permanent prohibitory injunction restraining the defendant from obstructing the functioning of the ice plant conducted by the respondent in the plaint schedule property. The respondent submits that “Friends Enterprise Ice Plant” was established by him by investing his own funds, and all licences, registrations, and statutory permissions obtained from the Central and State Governments stand in his name. It is further contended that the petitioner/defendant obtained the release deed in respect of the property by exercising undue influence, pressure, coercion, fraud, and other unfair means, thereby cheating the respondent, who is his own brother. However, the said release deed pertains only to the land and does not include the building, machinery, business, goodwill, licences, or other commercial rights associated with the ice plant.

4. The respondent submits that the petitioner/defendant is attempting to unlawfully interfere with and obstruct the respondent's business activities by misusing the said release deed. It is contended that the suit is perfectly maintainable, as the cause of action arose due to the interference with the running business of the respondent. The ice plant business is an independent commercial venture, and the transfer of land, if any, does not affect the respondent's business rights. It is also contended that the defendant, being the younger brother, has no right to disturb the functioning of the business without following due process of law. The injunction granted is justified in the circumstances. The contention that the suit is not maintainable is false, legally unsustainable, and amounts to an abuse of the process of Court. According to the respondent, the petition has been filed only to harass him and to unlawfully grab his property and business. Hence, the petition is liable to be dismissed with costs.

5. **The points arise for consideration:-**

1. Whether the petition can be allowed?
 2. Reliefs and costs?
6. Heard both sides. Perused petition, objection and case records.

7. **Point No.1:-** The case of the petitioner/defendant is that the plaintiff has instituted the above suit seeking to restrain the petitioner from entering into the plaint schedule property. According to the petitioner, after filing of the suit, the plaintiff began collecting income from the ice plant situated in the plaint schedule property. It is contended that the ice factory and the property exclusively belongs to the petitioner. The petitioner further submits that the plaintiff suppressed material facts while instituting the suit and has no documentary evidence to establish any right over the plaint schedule property. The petitioner relies upon Document No.1690/1/2025 of SRO, Njarakkal, contending that the plaintiff had relinquished his half share in the entire property belonging to their deceased mother. According to the petitioner, by virtue of the said release deed, the plaintiff no longer retains any right or possession over the property. It is also contended that the petitioner has already produced documents proving his ownership, possession and right over the property where the ice factory is situated. Hence, the petitioner argues that the maintainability of the suit itself must be considered first. On the other hand, the respondent/plaintiff contends that the suit is one for permanent prohibitory injunction restraining the defendant from obstructing the functioning of “Friends Enterprise Ice Plant” conducted by the plaintiff. According to the respondent, the

business was started with his own funds and all licences, registrations and statutory permissions stand in his name. It is further contended that the release deed relied on by the defendant pertains only to the land and not to the building, machinery, business, goodwill, licences or commercial rights connected with the ice plant. The respondent alleges that the defendant is attempting to interfere unlawfully with the running business.

8. This court considered the rival submissions made by the parties. The question raised by the petitioner relates to maintainability of the suit on the basis of disputed rights arising out of the release deed and the nature of rights over the plaint schedule property and business establishment. The rival contentions disclose serious disputes regarding title, possession, ownership of business, scope of the release deed, and independent commercial rights over the ice plant. Whether the release deed extinguished only rights over land or also affected business rights, machinery and commercial interests are all matters requiring evidence. Such disputed factual and legal issues cannot be decided merely as a preliminary matter unless they purely relate to jurisdiction or statutory bar. In the present case, the issue of maintainability is intertwined with the merits of the dispute and

requires full adjudication upon appreciation of evidence. Hence, this Court finds no reason to consider maintainability as a preliminary issue at this stage.

In the result, the petition is dismissed.

(Typed by me, corrected and pronounced by me in open Court on this the 10th day of April 2026.)

Sd/-
Simi P Siju
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

SS
compd by

O R D E R

I.A. No.7/2026

O.S. No. 5/2026

Dated : 10.04.2026