

**IN THE COURT OF THE MUNSIFF, KOCHI**

**Present:-**

**Sri. Nishad Ibrahim., Principal Munsiff**

Monday, the 24<sup>th</sup> day of November, 2025/ 03<sup>rd</sup> Agrahayana, 1947.

**I.A No. 02/2025 in I.O.P No. 01/2025**

**Petitioner/Plaintiff:-**

Sadanandan P.A., aged 72 years, S/o. Late Achuthan, Pazhampilly House, Kochambalam West, Nayarambalam, Pin – 682509.

**By Advs. M.M. Vinod Kumar, P.K. Rakesh,  
M.J. Kirankumar, K.S. Mizver.**

**Respondent/6<sup>th</sup> Defendant:-**

Balachandran P.A., S/o. Late Achuthan, Pazhampilly House, Nayarambalam, now r/at Karthika – 1785, 2<sup>nd</sup> Cross, Prasanth Nagar, T.Dasarahalli, Bangalore, Pin – 560057.

**By Advs. Jyothi Anilkumar, Anju Sagar A. & Sherin K.S.**

This Petition having been finally heard on 18.11.2025 and court on 24.11.2025, passed the following:-

**ORDER**

Petition filed by the plaintiff under Order 39 Rules 1 and 2 of CPC for interim injunction.

2. **The petition summary** : a)The suit is for partition and cancellation of Settlement Deed No. 194/2012. The petitioner and defendants are the children of late P.K. Achuthan and Umavathy. Achuthan obtained kudikidappu right over 10 cents in Survey No. 236/1 of Nayarambalam Village, with a small house, as per the Purchase Certificate

No. 5973/1970. The petitioner later purchased another 10 cents in Re-survey No. 66/9 in Block No. 7 (old Survey No. 236/6) on the northern and eastern sides of the kudikidappu property, in his mother Umavathy's name, through the Sale Deed No. 402/1974 of SRO, Njarakkal. Both properties form a single compact plot with common boundaries. This 10 cents was bought with the petitioner's own hard-earned money out of affection and trust towards his mother. At that time, the parents and defendants had no employment or income and contributed nothing towards the purchase. Hence, despite the deed standing in his mother's name, the petitioner has absolute right over that 10 cents.

b) The petitioner was the only earning member of the family in the early 1970s. After SSLC and typewriting, he worked as a clerk in the Handloom Weavers Co-operative Society, North Paravur, then in Karavan Goods Carrier Ltd., Ernakulam, and from 1981 to 2010 in Associated Traders & Engineers Ltd., Ernakulam. From his salary, he supported his parents and siblings and purchased the 10 cents mentioned above. He also financially assisted his father in conducting the marriages of defendants 1, 3 and 5. The defendants 2, 4 and 6 were minors or unemployed during the 1970s–80s and were dependent on him. After his marriage on 31.10.1983, he moved to a rented house as the kudikidappu house was too small. In 1991, he purchased another

10 cents in Nayarambalam and built a house in 1992, where he has been residing with his family since.

c) Although residing separately, the petitioner regularly visited his parents and supported all siblings until they became self-reliant. He cared for his parents until their deaths in 1992 and 2023. On 05-05-1990, Achuthan and Umavathy jointly executed the Will No. 24/1990 of SRO, Njarakkal, bequeathing the plaint schedule properties to the petitioner and defendants 3 and 6. Recognising that the petitioner had purchased 10 cents in his mother's name, 8 cents on the north-eastern side were allotted to him, 3 cents on the south-east to defendant 3, and 9 cents with the tharawad house to defendant 6. The 2<sup>nd</sup> defendant was excluded as he had already received his father's toddy-tapping licence. The Will further directed defendant 6 to pay Rs. 3,000/- (Rupees Three Thousand only) each to defendants 1 and 4, and the petitioner to pay Rs. 3,000/- (Rupees Three Thousand only) to defendant 5. The Will was to take effect only after the deaths of both executants. After Achuthan's death on 22-10-1992, the Will became operative.

d) After the father's death, Umavathy managed the entire property. The defendant 3, being divorced, lived with her in the tharaward house; the others lived separately. On 14-10-2024, when the

petitioner visited, defendant 3 asserted that he could enter the house only with 6<sup>th</sup> defendant's permission. Being shocked, the petitioner made enquiries at the Nayarambalam Village Office and SRO Njarakkal, suspecting fraudulent documents or mutation intended to defeat his rights or nullify Will No. 24/1990. In December 2024, he learned that although the kudikidappu property still remained in his father's name, the adjacent 10 cents purchased in his mother's name had been conveyed to the 6<sup>th</sup> defendant through the Settlement Deed No. 194/2012. The house No. VII/252 continues in the name of deceased Umavathy.

e) Umavathy never voluntarily executed the Settlement Deed No. 194/2012 or any such document. She had memory loss from 2010 onwards and was incapable of executing any valid document. Though residing with defendant 3, her care and expenses were borne entirely by the petitioner. He believes defendants 3 and 6 colluded and fabricated the alleged deed. The 6<sup>th</sup> defendant never cared for the parents. The petitioner asserts that Umavathy never executed the settlement deed and would not nullify her own earlier Will. The thumb impression and signatures in the deed are not hers.

f) Even the executant's name in the deed is wrong—shown as “Umadevi” instead of “Umavathy,” which appears in all her official

documents. She never used the name “Umadevi.” The age shown is false. The signatures vary across pages. Given her memory loss, she was totally incapable of conveying any right to anyone in 2012. The deed is fabricated, forged, void, and never acted upon; defendant 6 acquires no right over the 10 cents.

g) The petitioner and defendants jointly possess the property after their parent’s deaths. As Will No. 24/1990 is the parent’s last Will and expresses their intention regarding shares, the plaint schedule property must be partitioned accordingly. The petitioner is ready for partition and to fulfil the conditions of the Will. On 08-01-2025, he issued a lawyer’s notice to all defendants; all except defendant 5 received it (5<sup>th</sup> defendant’s notice returned “unclaimed”). But none responded. The 6<sup>th</sup> defendant, having influence, is attempting to sell property under the forged settlement deed. As he has no independent right, a temporary injunction is necessary to restrain the defendants 3 and 6 and their agents from alienating, encumbering, or committing waste over the plaint schedule property, failing which the petitioner will suffer irreparable loss. The petitioner has a strong prima facie case and the balance of convenience is in his favour. An application for interim relief is filed accordingly.

**3.The respondents/defendants filed counter with the following contentions :**

a) The petition is not maintainable. The 20 cents referred to in the plaint schedule form a single block: 10 cents belonged to the father under the Kudikidappu Certificate No. 5973/1972, and the remaining 10 cents belonged to their mother under the sale deed of 1974. In 1991, the parents executed a registered Will, allotting 15 cents to the respondent. The father died in 1992. The 10 cents purchased by the mother was later assigned to the respondent through the Settlement Deed No. 194/2012, granting him full rights of sale and purchase. The mother died on 26-09-2023. Since the parent's death, the respondent has been in exclusive possession of 15 cents—5 cents under the Will and 10 cents under the settlement deed—and exercising full ownership rights.

b) The properties are not partible. He also has no right to seek for cancellation of the deed validly executed by the mother. The respondent denied the petitioner's statement that he purchased the 10 cents under the Sale Deed No. 402/1974 using his own funds. He was only 22 years old at the time of purchase of the said property, without regular income. At that time, the father worked as a toddy tapper and the mother was working in a shrimp company, and the land was

purchased using the benefits obtained while transferring the father's job to the second defendant, along with money the mother earned from a shrimp company.

c) The petitioner, born on 26-09-1952, was only 20 years old in 1972 and had only one year of apprentice service in the Handloom Corporation Society, without salary. He joined Caravan Goods Carriers only in 1973 for a small wage. Hence, he could not have financed the 1974 purchase.

d) The Will of 1990 was voluntarily revoked by the parents, who executed a new Will in 1991—Will No. 57/3/1991—which is their last Will. The petitioner never took care of the parents. Will No. 24/1990 was jointly cancelled in 1991, and Will No. 57/3/1991 was executed without inducement. After their deaths, only this Will is operative. Hence, no division can be made under Will No. 24/1990.

e) The petitioner was fully aware of the 1991 Will and its terms, which were read to all siblings after the father's ceremonies. His claim that he learned of the 2012 settlement deed only in December 2024 is false; he knew of the transfer when the mother executed it. The claim that the mother suffered memory loss in 2010 is completely false. She remained mentally sound until her death in

2023. The property was gifted to the respondent through the 2012 settlement deed of her free will. The petitioner falsely claims that the mother's name was different; "Umavathy" and "Umadevi" refer to the same person, as evidenced by her tax receipts. Age was recorded approximately due to lack of documents. The petitioner's allegations regarding her signature are also baseless. Since 2012, the respondent has possessed the property, paid taxes, and exercised full rights of ownership. The petitioner has no right over it.

f) In any event, the operative Will is Will No. 57/3/1991, under which only the 3<sup>rd</sup> respondent and the respondent have rights. Under the settlement deed, the 10 cents belong solely to the respondent. The respondent has full rights over 15 cents, and the remaining 5 cents belong to the 3<sup>rd</sup> respondent, Dharmavalli. Neither the petitioner nor any other defendant has any right to claim shares and the petitioner has no right to seek cancellation of the settlement deed or an order of injunction.

4. The petitioner had filed a reply affidavit denying the case of the respondent.

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

(i) Does the petitioner have a prima facie case?

- (ii) Is balance of convenience in favour of the petitioner ?
- (iii) Will any irreparable injury or loss be caused to the petitioner, if an order of injunction is not granted?
- (iv) Is the petitioner entitled to get an order of interim prohibitory injunction as prayed for?
- (v) Reliefs and costs?

6. On the side of the petitioner/plaintiff, Exts.A1 to A8 were marked. Exts. B1 to B3 were marked on the side of the respondent.

7. Heard both sides.

8. **Point Nos. (i) to (iv) :-** It is undisputed that the petitioner and the respondent are the children of late P.K Achuthan and late Umavathy. It is also undisputed that the plaint schedule property having an extent of 20 cents is lying contiguously. There is no dispute between the parties that out of these 20 cents, 10 cents of property was obtained by the father of the parties as per the purchase certificate bearing number 5973/1972 and that the remaining 10 cents of property was purchased by their mother as per the sale deed No. 402/1974 of SRO, Njarakkal.

9. According to the petitioner, the parents had jointly and voluntarily executed the will bearing number 24/1990 of SRO, Njarakkal

bequeathing the plaint schedule properties in favour of himself, the 3<sup>rd</sup> and 6<sup>th</sup> defendants as per their own volition. The petitioner claimed that he had purchased the 10 cents of property in his mother's name with his own hard earned money reposing trust and love towards his mother. Accordingly, he claimed that he had absolute rights and title over the said 10 cents of property though the sale deed for the property was in his mother's name. According to the petitioner, considering the fact that the 10 cents of property was purchased by him in his mother's name, 8 cents on the north-eastern side of the plaint schedule property was set apart to his share as per the Will bearing No. 24/1990 of SRO, Njarakkal.

10. It is the further case of the petitioner that in December 2024, on enquiry, he came to know that the father's property still stood in his name and that the 10 cents of property adjacent to the kudikidappu property on its northern and eastern sides, purchased by him in his mother's name was seen conveyed in favour of the 6<sup>th</sup> defendant as per the settlement deed No.194/2012 of SRO, Njarakkal. According to the petitioner, his mother Umavathy had not voluntarily executed any settlement deed No. 194/2012 or any other document till her death. He further alleged that his mother was suffering from loss of memory from 2010 onwards and that consequently, she was unable to legally execute any document at the relevant time.

11. On the other hand, the respondent contended that the parents of the parties had executed a joint Will deed in the year 1991 which was their last will. According to him, as per the said will deed, 15 Cents of property was allotted to him. Subsequently, the 10 cents of property which was obtained by the mother as per the sale deed and which was included in the Will was settled in his favour as per the settlement deed bearing No. 194/2012. The respondent claimed that, accordingly, he was absolutely enjoying the 15 Cents of property at present. According to the respondent, since the Will deed which was registered in the year 1990 was cancelled and a new Will deed was made in the year 1991, the petitioner was not entitled to seek partition of the plaint schedule property as per the Will deed of the year 1990.

12. The respondents had produced Exts. B1 to B3. Ext.B2 is the copy of the joint will deed dated 15.07.1991 executed by Achuthan and his wife Umavathy. As per the same, it was executed after cancelling the Will deed which was registered as the deed No.24/1990 of SRO Njarakkal. As per Ext.B2, the executants had bequeathed the property in favour of the respondent after their deaths. It was stated in Ext.B2 that it was executed with respect to the 10 cents of property obtained by Achuthan as per the patta bearing No.OA 5973/90 and the 10 cents of property which was purchased by Umavathy.

13. Ext.B3 is the copy of the settlement deed bearing No.194/2012 executed by Umadevi @ Umavathy in favour of the respondent with respect to the 10 cents of property obtained by her as per the sale deed bearing No.402/1974 of SRO, Njarakkal. It may be noted that the above suit is instituted inter alia for a decree of cancellation of the said deed alleging mainly that the mother was suffering from memory loss from 2010 onwards and that she was totally unable to execute any documents. It is also alleged by the petitioner that the said settlement deed was fabricated and forged. It is pertinent to note that apart from making such allegations, the plaintiff/petitioner did not produce any documents to prima facie suspect the genuineness of the above registered settlement deed.

14. From the above discussion, this court is the view that the petitioner could not prove the existence of a prima facie case in his favour. The aspects of balance of convenience and irreparable injury are also not in his favour. Accordingly, these points are found against the petitioner.

15. **Point No.(v)** : In view of my findings in Point Nos. (i) to (iv), the petition is liable to be dismissed. I find no reason to deviate from the normal rule that costs shall follow the event.

**In the result,**

1. The petition is dismissed.

2. The petitioner is directed to pay the costs of the petition to the respondent.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 24<sup>th</sup> day of November, 2025.

**Sd/-**  
**Nishad Ibrahim**  
**Principal Munsiff**

**APPENDIX:-**

**Petitioner's Exhibits:-**

A1	--	Certified copy of Will No. 24/1990.
A2	--	Certified copy of settlement deed No. 194/2012 of Sub Registrar Office, Njarakkal.
A3	17.11.2012	Death Certificate of Achuthan.
A4	25.10.2023	Death Certificate of Umavathy.
A5	08.01.2025	Office copy of Lawyer notice.
A6	--	Returned envelop issued to 5 <sup>th</sup> defendant.
A7	--	Acknowledgment Cards (5 Nos.)
A8	--	Notice

**Respondent's Exhibits:-**

B1	12.03.1974	Copy of sale deed.
B2	15.07.1991	Copy of Will deed
B3	24.01.2012	Copy of the settlement deed.

**Court's Exhibits:-**

Nil

**Petitioner's Witness:-**

Nil

**Respondent's Witness:-**

Nil

**Court's Witness:-**

Nil

**Id/-  
Principal Munsiff**

**///*True Copy*///**

**Principal Munsiff**

Order in  
**I.A No. 02/2025 in**  
**I.O.P No. 01/2025**  
**Dated: 24.11.2025**