

IN THE COURT OF THE MUNSIF, KOCHI**Present:****Sri. Nishad Ibrahim., Principal Munsiff**Friday, the 01th day of August, 2025/10th Sravana, 1947.**I.A No.01/2025 in O.S No.117/2025****Petitioners/ Plaintiffs:-**

1.	Kamalanantha Pai, aged 81 years, S/o. Late Narayana Pai and Saraswathi Bai, r/o. C.C 7/1936, Town Hall Road, Koovappadam, Mattancherry, Kochi – 682 002.
2.	Suresh Kumar, aged 65 years, S/o. Late Narayana Pai and Saraswathi Bai, r/o. C.C 7/1936, Town Hall Road, Koovappadam, Mattancherry, Kochi – 682002.
	By Advs. A. Anilkumar, Mohamed Naseer P.S., Balamuralikrishna C.U. & Mary Crescent

Respondents/Defendants:-

1.	Santha Bai, aged 87 years, W/o. Krishna Prabhu, r/o. C.C Door No. 8/1825, Town Hall Road, Koovappadam, Mattancherry, Kochi – 682 002.
2.	K. Dinesh Prabhu, aged 65 years, S/o. Krishna Prabhu, r/o. C.C Door No. 8/1825, Town Hall Road, Koovappadam, Mattancherry, Kochi – 682002.
	R1 & R2 by Advs. Dileep D. Bhat, Suchithra K.R., Ganesh S. Pai & Arun E.A.

This petition having been heard on 28.07.2025 and the court on 01.08.2025, passed the following:-

ORDER

Petition filed by the plaintiffs under Order 39 Rule 1 of CPC for a temporary prohibitory injunction.

2. **The petition summary:** a) The suit seeks a perpetual injunction against the defendants, restraining them from obstructing repairs and

maintenance of the plaint B schedule building. The defendants own the A schedule property. The plaintiffs, along with their siblings and mother, were permitted to reside in the A schedule building during their lifetime. Currently, only the plaintiffs reside in the portion identified as the B schedule building. For the purpose of this injunction petition, the properties are referred to as Injunction A and B schedule properties.

b) Since 2013, the plaintiffs have defended OS 7/2013, AS 5/2014, and RSA 1303/2014. The OS was instituted to eject them from the B schedule building. However, as per the settlement deed No. 3317/1985 of SRO Kochi, the plaintiffs were permitted by their grandmother who was the settlor to reside in the B schedule building. Ignoring this limited right and wrongly treating it as a license, the defendants attempted to evict them. Due to ongoing litigation, no maintenance or repair has occurred for decades. The building's roof tiles are damaged, window panels and doors are broken, and the floor is deteriorated, rendering the building uninhabitable. Consequently, the plaintiffs had to move to the upstairs portion of a vegetable shop where they work. To make the B schedule building habitable, at least a tarpaulin must be placed on the roof, and essential repairs be made to the floor, windows, and doors. The shop owner granted temporary permission to stay upstairs, requiring urgent repair to the B schedule building to enable relocation.

c) On 15.04.2025, two workers were summoned by the petitioners for repair, but the defendants threatened them, forcing them to flee. The defendants then complained to the SHO, Mattancherry Police Station. After reviewing the settlement deed and relevant court orders, the SHO stated that the plaintiffs were not entitled to conduct repairs and warned them of consequences if repairs were proceeded without the orders of the court. Left with no other alternative, the plaintiffs now seek relief from this Court. The defendants reside in a house built within the A schedule property.

d) The first plaintiff is 82 years old, infirm, and suffering from multiple ailments. The second plaintiff, a senior citizen, earns daily wages at a vegetable shop. Both are lifelong bachelors with no support. Urgent repairs are needed to make the injunction B schedule building habitable. The defendants are likely to obstruct the repairs. Hence, the plaintiffs seek a temporary prohibitory injunction to prevent such obstruction.

3. **The respondents/defendants filed counter with the following contentions:-** a) The suit and the injunction petition are not maintainable in law or fact. The petition lacks full disclosure of facts and omits necessary parties, making it liable for dismissal. The defendants are absolute owners of A and B schedule properties. The claim that plaintiffs and their family were permitted to reside in the properties is incorrect. The allegation that the

plaintiffs currently reside in the B schedule building is false and fabricated to file a frivolous petition. Both properties fall under the A schedule of the settlement deed No. 3317/1985 of SRO, Kochi.

b) It is true that there was litigation between the parties. During the pendency of the litigation, parts of the building began to collapse, and neither plaintiffs nor their siblings attempted to repair. The plaintiffs shifted their residence in 2020; since then, the building has remained unoccupied. The damage occurred to the building due to lack of habitation and with the passage of time. The plaintiffs have no right to repair the building, which is owned, possessed, and taxed by the defendants.

c) On 15.04.2025, the plaintiffs, without informing the defendants, summoned workers who began demolishing parts of the building. On discovering this, the defendants intervened and reported the matter to the SHO. After reviewing the relevant documents, the SHO rightly stated that the plaintiffs have no right to repair as per the court orders. The plaintiffs failed to maintain the property during their stay. They vacated in 2020 and are not currently residing there. The defendants had built a house in the A schedule property and are residing there. But, that does not preclude them from accessing or using the B schedule building. The settlement deed grants only a right to reside during their lifetime, not the ownership. The defendants, as the absolute

owners, are entitled to use the property. The plaintiffs are attempting to modify the structure under the guise of repairs, which is impermissible.

d) Both the A and B schedule properties are under the absolute ownership of the defendants. As per the Sub Collector's order dated 29.05.2020 in RDOCHN/568/2019-F1), mutation was carried out after removing the petitioner's names from the BTR. The plaintiffs had also left waste and debris in the property during their occupancy. They had a duty to maintain the property; but they did not. The building lacks basic sanitation facilities, such as a washroom. The plaintiffs have neither a prima facie case nor balance of convenience in their favour to justify a temporary injunction.

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

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

5. On the side of petitioners/plaintiffs, Exts.A1 to A3 were marked. No documents were marked on the side of the respondents. The report filed by the learned advocate commissioner was marked as Ext.C1 series.

6. Heard both sides.

7. **Point Nos. (i) to (iv) :-** According to the petitioners/ plaintiffs, the defendants are the owners of the plaint A schedule property and the plaintiffs, their siblings and their mother were permitted to reside in the plaint A schedule building during their lifetime. They also alleged that as of now, only the plaintiffs were residing in the portion of the plaint A schedule property which was described as the plaint B schedule building. According to them, they were permitted by the grandmother, to reside in the B schedule building as per the recital in the settlement deed no.3317/1985 of SRO, Kochi. The copy of the said deed was marked as Ext.A1. It was also the case of the plaintiffs that since 2013, they were defending OS 7/2013, AS 5/2014 and RSA 1303/2014. The said suit was instituted for ejecting them from the B schedule building. According to the petitioners, due to the said litigation, no maintenance and repair were carried out in the A and B schedule buildings for decades together and subsequently, the whole building became non-habitable and the petitioners were forced to shift their residence to the upstairs portion of the vegetable stall wherein they were working for their livelihood. The petitioners also claimed that on 15.04.2025, when they summoned 2 workers for carrying out the basic repair work to the building, the defendants had obstructed the same.

8. It is undisputed that the defendants are the owners of the plaint A schedule property. In paragraph 9 of their counter, it was stated that the

petitioners were granted with the right to reside in the building during their lifetime as per the settlement deed. According to the respondents, under the guise of repairing the building, the petitioners were trying to modify the building which cannot be permitted.

9. Ext.C1 series are the report and connected documents filed by the learned commissioner appointed in this case. With regard to the plaint B schedule property, the learned commissioner reported that the house was not safe for habitation in its current state and that there was no electric supply to the property. The learned commissioner had also reported that the plaintiff's current residence was a single room situated on the top floor of RV Vegetable shop at Mattanchery. The learned commissioner also reported that it appears to be a cramped space barely sufficient for one person to reside comfortably.

10. It may be noted that even as per the counter of the respondents, the petitioners were under a mandatory duty to maintain the property in good condition and not to allow the condition to get deteriorated due to neglect or improper use.

11. From the above discussion, I am of the view that the petitioners have an arguable case in their favour especially because, the life interest of the petitioners over the plaint B schedule property and their obligation to maintain the property in good condition were not disputed by the respondents. Hence, it is to be held that the petitioners have a prima facie case in their favour. The aspects of balance of convenience and irreparable

injury are also in their favour as any further delay in carrying out the repair will cause more damage to the B schedule. Accordingly, these points are found in favour of the petitioners.

12. **Point No.(v):-** In view of my findings in point nos.(i) to (iv), the petition is liable to be allowed.

In the result, the petition is allowed as follows :

1. The respondents/defendants are restrained by way of an interim prohibitory injunction from obstructing the petitioners in carrying out the minor repairs such as; covering the roof top with a tarpaulin sheet, repair the damaged portion of the floor with cement mortar and necessary repairs to the damaged window panels and doors so as to make the B schedule building habitable, until disposal of the suit.
2. No order as to costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court on this the 1st day of August, 2025.

Sd/-
Nishad Ibrahim
Principal Munsiff

APPENDIX:-

<u>Petitioner's Exhibits:-</u>		
A1	01.11.1985	Copy of deed No. 3317/1985 Sub Registrar Office, Kochi.
A2	10.03.2014	Copy of Judgment in O.S 7/2013 before the Court of the Munsiff, Kochi.
A3	24.09.2014	Copy of Judgment in AS 5/2014 before the Court of the Sub Judge, Ernakulam.

<u>Respondent's Exhibits:-</u>		Nil
<u>Court's Exhibits:-</u>		
C1	18.06.2025	Commission Report by Adv. Shervin Deruz
C1(a)	--	Photographs
C1(b)	--	Photographs
C1(c)	--	Photographs
C1(d)	--	Photographs
C1(e)	--	Photographs
<u>Plaintiff's Witness:-</u>		Nil
<u>Defendant's Witness:-</u>		Nil
<u>Court's Witness:-</u>		Nil

**Id/-
Principal Munsiff**

/// True Copy///

Principal Munsiff

**Order in
I.A No.01/2025 in
O.S No.117/2025
Dtd: 01.08.2025**