

IN THE COURT OF THE MUNSIFF, KOCHI
Present:

Sri. Nishad Ibrahim., Principal Munsiff

Friday, the 31st day of October, 2025/ 09th Karthika, 1947.

I.A No.18/2025 in I.A No.1082/2013 in O.S. No.155/2013 & I.A
No.23/2025 in O.S. No.155/2013

I.A No.18/2025 in O.S. No.155/2013

Petitioners/Plaintiffs 3 to 6:-

1.	Shiny Pious, D/o. Joseph Kollamparambil House, PHC Road, Near Health Centre, Cheranelloor.
2.	Blessy Femila, D/o. Joseph, Veliyath House, Near Priyadarshini Bus Stop, Kumbalanghi.
3.	Beela Tessa, D/o. Joseph Valiyaparambu Road, Mulavukad, P.O., Mulavukad.
4.	Lovely, D/o. Joseph, Kochery House, Kumbalanghi South, Kumbalanghi.
	By Advs. Sajan Antony N., Leema Rosy D. & Sandra Robin

Respondents/Defendants:-

1.	Shiya, D/o. Joshi, Vallomparambil House, Kumbalanghi Desom. Kumbalanghi Village, Kochi Taluk.
2.	Shimi, D/o. Joshi, Vallomparambil House, Kumbalanghi Desom, Kumbalanghi Village, Kochi Taluk.
	By Adv. O.J. Alfred

I.A No.23/2025 in O.S. No.155/2013**Petitioners/Plaintiffs No.3 to 6:-**

1.	Shiny Pious, D/o. Joseph Kollamparambil House, PHC Road, Near Health Centre, Cheranelloor.
2.	Blessy Femila, D/o. Joseph Veliyath House, Near Priyadarshini Bus Stop, Kumbalanghi.
3.	Beela Tessa, D/o. Joseph Valiyaparambu Road, Mulavukad, P.O., Mulavukad.
4.	Lovely, D/o. Joseph, Kochery House, Kumbalanghi South, Kumbalanghi.
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Respondents/Defendants:-

1.	Shiya, D/o. Joshi, Vallomparambil House, Kumbalanghi Desom. Kumbalanghi Village, Kochi Taluk.
2.	Shimi, D/o. Joshi, Vallomparambil House, Kumbalanghi Desom, Kumbalanghi Village, Kochi Taluk.
By Adv. O.J. Alfred	

This petition having been finally heard on 23.10.2025 and the Court on 31.10.2025, passed the following:-

C O M M O N O R D E R

I.A. No. 18/2025 is filed by the 4th plaintiff u/s. 151 CPC to remove the case from the list.

2. **The petition summary :-** a) The 1st plaintiff is the father and the 2nd plaintiff the mother of the other plaintiffs, both now deceased. The

1st plaintiff, as sole plaintiff, instituted the suit seeking a decree to fix the southern boundary of the plaint A schedule property and for a perpetual injunction restraining the defendants from closing the plaint B schedule way, trespassing into the plaint A schedule property, and for other consequential reliefs. IA 1082/2013 was filed under Order XXXIX Rule 1 CPC for interim prohibitory injunction restraining the defendants and their agents from closing or obstructing the plaint B schedule way, from trespassing into or erecting any structure or fence on the southern side of the plaint A schedule property, or doing any act prejudicial to the plaintiff's rights over the property and easement. This Court allowed the application on 04.10.2013, making the earlier order dated 29.05.2013 absolute. The respondent's appeal before the Hon'ble Sub Court, Kochi was dismissed on 27.03.2014, and the said order continues in force pending disposal of the suit.

b) The commission report dated 27.06.2013 identified 10 cents forming part of the plaint A schedule. In the commission report filed in IA 3136/2015, it was recorded that the property marked as D contained coconut trees bearing fruit. Presently, six fruit-bearing coconut trees exist in the property obtained under the partition deed No. 4454/1981. After the demise of the 1st and 2nd plaintiffs, the residential building on plaint A schedule was rented out, and the

other plaintiffs, including the petitioner, visit occasionally. The plaintiffs collect all usufructs, plucking coconuts once every five to six months, last done in January 2022. On 03.07.2025, the plaintiff was informed that the respondents trespassed into the plaint A schedule and plucked coconuts with a climber's help. The petitioner, on reaching the property, saw the 2nd respondent returning home with a sack of coconuts and the climber leaving. On 15.07.2025, the petitioner and the 4th petitioner inspected the property and found that fruits from five coconut trees had been taken and leaves cut.

c) The respondents were fully aware of this Court's order in IA 1082/2013, yet wilfully violated it on 03.07.2025 by entering the plaint A schedule and taking the usufructs. Even now, inspection of the trees would reveal cut leaves and signs of plucking. The petitioners have sought prosecution of the respondents for willful disobedience and appointment of an Advocate Commissioner to record the violation. The case was posted for trial on 10.09.2025, but to adjudicate these applications, it may be removed from the list.

3. **The respondent's counter:** The petition is not maintainable on facts or law and is filed to delay the proceedings. The plaintiffs and their predecessor have prolonged the case, knowing that the outcome would be adverse. The respondents have never violated any court order and have not

entered the property since the interim order. The allegation of trespass on 03.07.2025 is false and fabricated to delay the suit. The prosecution petition and commission application are separate matters requiring independent evidence and do not justify removing the case from the trial list. Hence, the respondents pray that this petition be dismissed with costs.

IA 23/2025:

4. **The petition summary:-** The late 1st plaintiff had instituted this suit seeking to fix the southern boundary of the plaint A schedule property and for injunction against obstruction of the plaint B schedule way and trespass. The defendants filed a written statement with counterclaim. The case is posted for trial on 10.09.2025. Since the defendants violated the Court's order in IA 1082/2013, the petitioner filed IA 20/2025 seeking to prosecute them and attach their properties. To substantiate the same, IA 19/2025 (Commission Application) and IA 18/2025 (petition to remove the case from trial list) were also filed. During discussion with the counsel, the petitioner noticed an error — the defendant's amended written statement included an additional relief in the counterclaim, which was irregular. Since the time to seek review has lapsed, the petitioner intends to file an O.P. (Civil) before the Hon'ble High Court challenging the order in IA 12/2022. The petitioners require 30 days to file the O.P. before the Hon'ble High Court. Hence, they seek adjournment of the trial for 30 days. Another

petition was filed earlier for the purpose which was numbered as IA 21/2025. It was allowed and the case was posted for trial on 15.10.2025.

5. The respondents/defendants did not file counter to this application.

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

i) Whether the petitions are allowable ?

ii) Reliefs and costs ?

7. Heard both sides.

8. **Point nos. (i) and (ii)** : IA 18/2025 was filed by the plaintiffs for removing the matter from the list. According to them, they have filed a petition to prosecute the respondents for their intentional violation of the order of this Court and a petition to appoint an Advocate Commissioner to inspect and record the violation. The learned counsel for the petitioners argued that the suit may be removed from list to adjudicate the said applications. It is true that the petitioners had filed IAs 19/2025 and 20/2025 respectively for the issuance of a commission and for prosecuting the respondents. It may be noted that IA 19/2025 was allowed by this Court as per the order dated 24.09.2025.

9. On the other hand, the respondents/defendants opposed the above petitions. According to them, the petition to remove the matter from the list is filed only to protract the proceedings. The learned counsel for the respondents argued that the petitioners were trying to somehow lag the proceedings since they very well knew that they will not succeed the suit. The learned counsel also argued that the prosecution petition is a separate proceeding which requires separate evidence and that it is an appealable order as per Order 43 Rule 1 (r) of CPC. Accordingly, the learned counsel argued that the suit is not liable to be removed from the list for the reason of pendency of the prosecution petition.

10. In **C. Aravindaksha Menon & Ors. v. Raghava Menon (2007 (2) KHC 287)**, the Hon'ble High Court of Kerala held that Order 39 Rule 2A of CPC provides for consequence of disobedience or breach of injunction and that the suit was dismissed after trial was not a ground to hold that the party who has violated the injunction order should not be proceeded with under Order 39 Rule 2A. In this decision, the Hon'ble Court observed thus : "R.2A provides for two types of orders, one for attachment and other for detention in civil prison. Attachment is intended for compelling the party to obey the order. If the disobedience does not continue, the Court could release the property from attachment. There may be cases where the consequence of disobedience or breach cannot be

compensated. There are also cases where a party violating the order, cannot restore the status quo ante. For example, if the order of injunction is against cutting of trees and trees are cut, there is no question of restoring the trees. In such a situation, the most effective course open is to consider the case for detention in civil prison of the person who violated the order. That the suit was dismissed after trial is not a ground to hold that the party who was violated the interim order should not be proceeded with under Rule 2A”.

11. In the instant case, the major allegation raised by the petitioners in IA 20/2025, the prosecution petition, is that the respondents had trespassed into the plaint A schedule and plucked coconuts from five coconut trees standing therein and that their coconut climber has cut leaves of the said coconut trees.

12. The nature of the alleged violation would show that the alleged acts of violation committed by the respondents cannot be undone even if the allegations are proved by the petitioners. In the light of the above dictum laid down by the Hon’ble High Court of Kerala, this Court is of the view that the prosecution petition filed by the petitioners as IA 20/2025 can be proceeded separately and that there is no necessity to remove the suit from the list for that purpose.

13. IA 23/2025 is filed by the petitioners to adjourn the case for a period of 30 days to enable them to approach the Hon'ble High Court against the order of this Court in IA 12/2022. It is pertinent to note that IA 12/2022 was allowed by this Court as early as on 24.03.2022. A perusal of the proceedings in the case would show that the suit was restored to file on 22.01.2025 after setting aside the decree in the counterclaim. Thereafter, the matter was posted on 10.02.2025, 22.02.2025, 19.03.2025, 04.04.2025, 22.05.2025, 10.06.2025, 14.07.2025 and to 23.07.2025 for pre-trial steps. On 23.07.2025, since there were no further steps, the matter was listed to 10.09.2025. It was on this day that the petitioners came up with the prosecution petition and other petitions. It is also pertinent to note that the petitioners have earlier filed IA 21/2025 on 15.09.2025 seeking adjournment for a period of 30 days for the same purpose as stated in IA 23/2025. IA 21/2025 was allowed by this Court and the matter was adjourned till 15.10.2025. Considering these facts, this Court is of the view that the petitioners are trying only to protract the proceedings.

14. From the above discussion, this Court is of the view that both IAs 18/2025 and 23/2025 lack merits and are liable only to be dismissed. I do not find any reason to deviate from the normal rule that costs shall follow the event. Accordingly, these points are found against the petitioners.

In the result,

1. IAs 18/2025 and 23/2025 are dismissed.
2. The petitioners are jointly and severally directed to pay the costs of the petitions to the respondents.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 31st day of October, 2025.

**Sd/-
Nishad Ibrahim
Principal Munsiff**

APPENDIX :-Nil

**Id/-
Principal Munsiff**

///True Copy///

Principal Munsiff

**Common Order in
I.A No.18/2025 in &
I.A No.23/2025 in
O.S. No.155/2013
Dated: 31.10.2025**