

IN THE COURT OF THE MUNSIFF, KOCHI**Present:-****Sri. Nishad Ibrahim., Principal Munsiff**Friday, the 19th day of December, 2025/ 28th Agrahayana, 1947.**I.A No. 13/2025 in O.S No. 344/2020****Petitioner/Plaintiff:-**

Vimala, aged 88 years, W/o. Sheshagiri Pai, r/o. House No. 4/1100, North Cherlai, Mattancherry, Kochi – 2.

By Adv. A. Anilkumar**Respondents/Defendants:-**

1.	Francis Xavier, Valiyaparambil House, Maruvakkad Muri, Near Velankkannimatha Church, Chellanam Village, Kochi Taluk. (Died)
2.	Mary, aged 54 years, W/o. Francis Xavier, Valiyaparambil House, Maruvakkad Muri, Near Velankkannimatha Church, Chellanam Village, Kochi Taluk.
3.	Linda, aged 33 years, D/o. Francis Xavier, Valiyaparambil House, Maruvakkad Muri, Near Velankkannimatha Church, Chellanam Village, Kochi Taluk, Kochi – 682008.
4.	Tom, aged 29 years, S/o. Francis Xavier, Valiyaparambil House, Maruvakkad Muri, Near Velankkannimatha Church, Chellanam Village, Kochi Taluk, Kochi – 682008.
	R1 – Died R2 by Adv. Padmini Devi C. R3 & R4 – Exparte in the suit

This Petition having been finally heard on 15.12.2025 and the Court on 19.12.2025, passed the following:-

ORDER

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

3. **The petition summary** : - a) The suit is for fixation of boundary, mandatory and prohibitory injunctions, recovery of possession and for damages against the defendants. It was averred in the plaint that the defendants have trespassed into the A schedule property on its western side and closed the access to her property by putting up masonry wall on the western boundary of it. They have trespassed into the A schedule property and are holding about 3 cents of land. Therefore, the petitioner has sought for fixation of boundary of property with that of the property of the defendants i.e., the plaint B schedule property and also sought for recovery of possession of the trespassed land by demolishing the structures made therein.

b) In the meantime, it has come to the knowledge of the plaintiff that the defendants have demolished their existing building in the plaint B schedule property and are planning to construct a new building in it. For the said purpose, they have demolished the D

schedule wall, which was constructed to block the petitioner's access into A schedule property from the public road on the west. By demolishing a part of the wall, the defendants have been unloading building materials such as M -sand, concrete blocks, iron bars and cement etc., by taking lorries through the A schedule property. It is unknown whether the defendants are making the new construction in their land i.e., the plaint B schedule property or not. As there is no clear demarcation between the plaint A and B schedule properties, the construction of building in the B schedule property is not wise. It is likely to complicate the existing litigation. The defendants have no right to take the loaded lorries in the A schedule property and dump the building materials in it. Due to this frequent passing of loaded lorries, the ground level of A schedule property has gone down and it became a marshy land. Hence this application is filed for restraining the defendants by a temporary prohibitory injunction from executing any construction work in the plaint A and B schedule properties, from taking the fully loaded lorries to the plaint A schedule property and from dumping the building materials in it, till disposal of the suit.

3. **The 2nd respondent/2nd defendant filed counter :-** a) This IA has been filed without any legal or factual base, and not maintainable in law. The suit has been instituted by one lady called Vimala who put her signature

as Latha. No document has been produced before this Court to show the right of this Vimala to institute the suit against the respondents. It has been stated in the plaint itself that Sheshagiri Pai had instituted a suit against the first defendant (deceased) and the suit was withdrawn by Sheshagiri Pai without liberty to file a fresh suit based on the same cause of action i.e., the plaintiff has no right in the property alleged to be trespassed by the first defendant. So, he cannot claim the reliefs sought in this plaint. The survey number shown in the purchase certificate and the plaint is not matching. There is no clarity as to the property in respect of which this injunction has been sought.

b) The defendants were possessing and enjoying the property claimed by the plaintiff at least for 50 years. As per the survey details, no basic documents can be traced to show the right of the plaintiff in the property. The plaintiff claims that her husband received the purchase certificate in 1976. Till date, no mutation has been effected or tax was paid and OS 422/2005 is silent about the purchase certificate. So, the genuineness of the purchase certificate is to be considered with caution. The basic document produced in the suit is the lease deed No. 1327/1096 ME and a 'kraya certificate' No.3472/1977 dated 02/04/1977 of Land Tribunal Ernakulam in

favour of Sheshagiri Pai. The lease deed No. 1327/1096 ME is not legible and the actual property on which that right falls could not be traced and demarcated based on that document. The purchase certificate is also silent about the boundaries.

c) Moreover, as stated in the plaint, the plaintiff's husband had filed a suit No.422/2005 before this Court for recovery of possession and mandatory injunction against the 1st and 2nd defendants in this suit, which was dismissed without liberty to file fresh suit. In the plaint itself, it is stated that the defendants have trespassed into their property and holding it, i.e., they are admitting that the defendants are in possession of the property. The plaintiff cannot seek an injunction against the respondents/defendants who are in possession of the property for a long time. Moreover, as per the respondent's information and belief, the property adjacent to their property is that of a Church. This Court has ordered to measure the property with the help of a retired District Surveyor with police protection based on the resurvey records on 12/11/2025. So, the haste shown by the plaintiff in seeking injunction reflects some hidden agenda. Under these circumstances, this IA may be dismissed to meet the ends of justice.

4. **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 ?

5. On the side of the petitioner, Exts.A1 to A4 were marked. Ext.C1 was also marked. On the side of the defendants, Ext.B1 to B5 were marked.

6. Heard both sides.

7. **Point Nos. (i) to (iv) :-** According to the petitioner, the above suit was instituted for fixation of boundary, mandatory and prohibitory injunctions, recovery of possession and for damages against the defendants. The petitioner alleged that it was averred in the plaint that the defendants had trespassed into the A schedule property on the western side and closed the access to her property by putting up masonry wall on the western boundary. According to the petitioner, the defendants had trespassed into her property and is holding about 3 cents of land. The measurement of the property is fixed to be conducted on 14.12.2025. In the meantime, it has come to her knowledge that the defendants had demolished the existing

building in the plaint B schedule property and is planning to construct a new building therein for which they have demolished the D schedule wall. According to the petitioner, after such demolition, they have been unloading building materials by taking lorries through the A schedule property. According to the petitioner, it is not known whether the defendants are making the new construction in their land i.e., the plaint B schedule property or not. According to her, as there is no clear demarcation between the plaint A and B schedule properties, the construction of building in the B schedule property is not wise.

8. The 2nd respondent opposed the petition stating that the plaintiff has no right in the property alleged to be trespassed by the 1st defendant in view of the fact that OS 422/2005 instituted by the plaintiff's husband for recovery of possession and mandatory injunction against the 1st and 2nd defendants in this suit, was dismissed without liberty to file a fresh suit. The 2nd respondent also contended that there is no clarity as to the property in relation to which the injunction has been sought. The 2nd respondent further contended that in the plaint itself it was stated that the defendants had trespassed into their property and were holding it. Hence, according to the 2nd respondent, the petitioner is admitting that the defendants are in possession of the property.

9. The above suit was instituted inter alia for fixation of the boundaries of the A schedule property and B schedule property and to allow the plaintiff to recover the plaintiff C schedule and E schedule properties from the 1st and 2nd defendants on the strength of the title of the plaintiff after demolition of the plaintiff D and F schedule structures standing therein.

10. It is pertinent to note that the 2nd respondent had challenged the locus standi of the petitioner to institute the suit stating that no document has been produced by her to show her rights to institute the suit. In the objection, the 2nd respondent had stated that, in the plaint itself it was stated that the defendants had trespassed into their property and was holding it and hence, the plaintiff was admitting that the defendants are in possession of the property. It is pertinent to note that the defendants have no case that they had not trespassed into the property of the plaintiff, instead the claim of the 2nd respondent is that the plaintiff cannot seek an order of injunction against the defendants who are in possession of the property for a long time.

11. The petitioner had taken out a commission as per the orders in IA 15/2025 to substantiate her allegations. The learned commissioner had filed the report which was marked as Ext.C1. The learned Commissioner had reported that it was extremely difficult to precisely demarcate and identify the boundaries of the plaintiff A and B schedule properties and the

adjacent Church property as the entire area appeared to lie as a single plot without any visible demarcation such as fences, walls and trenches between these properties. The learned Commissioner also reported that upon the specific request of the plaintiff's counsel, a rough measurement of the plaintiff B schedule was done using a measuring tape and the survey sketch made available by the plaintiff's side and that in the course of such rough measurement, it was noticed that the newly constructed basement pertaining to the plaintiff B schedule appeared to encroach into the plaintiff A schedule property.

12. It is true that the 2nd respondent had filed objection to the above commission report stating inter alia that the report of the Commissioner was biased and it lacked genuine observation. The 2nd respondent had stated in the objection that measuring the property using a tape and survey sketch provided by the plaintiff's counsel was out of the scope of the commission and that measuring a property reportedly lying without boundaries with a survey sketch and measuring tape was totally illogical. Even if the report of the learned Commissioner that the construction in the plaintiff B schedule property is encroaching into the A schedule property is not accepted for the moment, it is clearly established by Ext.C1 that the plaintiff A and B schedule properties are not physically identifiable at present.

13. The 2nd respondent had produced the approved plan and permit issued by the Chellanam Grama Panchayat for the construction of the new residential building in the plaint B schedule property. The learned counsel for the petitioner pointed out that as per the approved plan, the extent of the property is 2.62 Ares (6.22 cents) and the deed numbers shown therein are 5189/95 dated 06.10.1995 and 4269/2005 dated 25.08.2005.

14. The certified copy of the document no.5189/95 dated 06.10.1995 was marked as Ext.A3, as per which the extent of the property is 5 cents. A copy of the 2nd document was marked as Ext.B4, as per which the extent of the property covered by the same is 270 sq.links which would come to approximately 0.27 cents. Hence the total area covered by both the above documents would come to only 5.27 cents. Hence, it is prima facie noticed that the extent of the property stated in the approved plan (Ext.B5) is in excess of the extent of the properties stated in the deeds stated therein. In such circumstances, this Court is of the view that the apprehension of the petitioner that the construction in the plaint B schedule property is encroaching into the plaint A schedule property is prima genuine. Hence, it is only to be held that the petitioner has a prima facie case in her favour and that the aspects of balance of convenience and irreparable injury are also in her favour. Accordingly, these points are found in favour of the petitioner.

15. **Point No. (v):-** In view of my findings in point Nos.(i) to (iv), the petition is liable to be allowed. In the facts and circumstances of the case, I refrain from awarding costs.

In the result, the petition is allowed as follows :

1. The respondents are restrained from executing any construction works in the plaint A and B schedule properties, from taking the fully loaded lorries to the plaint A schedule property and from dumping the building materials therein, till the 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 19th day of December, 2025.

Sd/-
Nishad Ibrahim
Principal Munsiff

APPENDIX:-

Petitioner's Exhibits:-

A1	--	Certified copy of the lease deed No. 1327/1096 M.E.
A2	02.04.1977	Copy of Kraya certificate No. 3472/1977.
A3	06.10.1995	Certified copy of the settlement deed No. 5189/1995.

A4 -- Copy of the sketch

Respondent's Exhibits:-

B1 27.03.2009 Copy of the order in IA 581/2009
in OS 422/2005 before Addl.
Munsiff, Kochi.

B2 -- Copy of sale deed.

B3 -- Copy of Form No. 50 Field
Register (1 page)

B4 25.08.2005 Copy of sale deed No. 4269/2005.

B5 -- Copy of Building Plan

Court's Exhibits:-

C1 05.12.2025 Commission Report by Advocate
Rohini N.T.

Petitioner's Witness:- Nil

Respondent's Witness:- Nil

Court's Witness:- Nil

**Id/-
Principal Munsiff**

///True Copy///

Principal Munsiff

Order in
I.A No. 13/2025 in
O.S No. 344/2020
Dated: 19.12.2025