

IN THE COURT OF THE MUNSIF, KOCHI**Present:-****Sri. Nishad Ibrahim., Principal Munsiff**Friday, the 19th day of December, 2025/ 28th Agrahayana, 1947.**I.A No. 17/2025 in O.S No. 344/2020****Petitioners:-**

1.	Francis Xaviour, Valiyaparambil House, Maruvakkad, North Chellanam, Kochi - 682008. (Died)
2.	Mary Xaviour, W/o. Late Francis Xaviour, Valiyaparambil House, Maruvakkad, North Chellanam, Kochi - 682008.
	P1 – Died P2 by Adv. Padmini Devi C.

Respondents:-

1. Vimala, W/o. Sheshagiri Pai, C.C No. 4/1100, Mattancherry P.O., Kochi – 682002.
2. Linda, D/o. Late Francis Xaviour, Valiyaparambil House, Maruvakkad, North Chellanam, Kochi – 682008.
3. Tom, S/o. Francis Xaviour, Valiyaparambil House, Valiyaparambil House, Maruvakkad, North Chellanam, Kochi – 682008.

**R1 by Adv. A. Anilkumar
R2 & R3 – 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 2nd defendant u/s. 151 of CPC to frame a preliminary issue challenging the locus standi of the plaintiff to institute the suit.

2. **The petition summary** : a) The petitioner/2nd defendant has serious contentions about the locus standi of the plaintiff to file this suit. The respondent/plaintiff has instituted the suit as the legal heir of late Sheshagiri Pai, whose properties were devolved upon her as his wife. The plaintiff has not produced any document to show that Sheshagiri Pai is no more or to show that there are no children in her wed-lock with Sheshagiri Pai and that she is his sole legal heir. The plaintiff has not produced any relationship certificate/succession certificate to show that she has any connection with late Sheshagiri Pai. There is no prayer in the plaint that no Will has been executed by Sheshagiri Pai before his death.

b) As per the information received by this petitioner, there is a Will No.212/2013 of SRO Kochi, and based on that Will, the plaintiff Vimala has filed suits before the Munsiff's Court, Kochi itself and many properties left behind by Shehagiri Pai has been sold after his death as his legal heir. When a person has executed a Will, the devolution of his property should be based on that Will and there is

no scope for devolution under the general law. Hence, the plaintiff has no locus standi to file a suit as the natural legal heir of Sheshagiri Pai. A suit filed by a person without locus standi is not maintainable before any Court of law. The issue that "the petitioner has no locus standi to file the suit" may be taken as a preliminary issue and all the proceedings in the case may be stayed until the disposal of this IA to meet the ends of justice.

3. Objection of plaintiff/respondent : The IA is not maintainable either in law or facts of the case. The petition is for framing of an issue as to whether the petitioner has locus standi to file the suit or not and to try the issue as a preliminary issue. In the affidavit of the petitioner, none of the reasons stated in paragraph 2 to 9 are sufficient for framing an issue with regard to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. The averments made in the affidavit are all the question of facts. As per Order 14 Rule 2 (2) of CPC, if the court is of the opinion that the case as a whole or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) Jurisdiction of the Court, (b) a bar to the suit created by any law for the time being in force. After going through the affidavit, it is seen that none of the averments therein are touching the question of jurisdiction or bar. Therefore,

the issue of locus standi is a pure question of fact and can be considered only after evidence. Therefore, the IA may be dismissed with costs.

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

- i. Whether the petition is allowable ?
- ii. Reliefs and costs ?

5. Heard both sides.

6. **Point Nos. (i) and (ii) :-** According to the petitioner/2nd defendant, the plaintiff has not produced any documents to show that Sheshagiri Pai was no more and that there are no children in her wedlock with Sheshagiri Pai and further to show that she was the sole legal heir of late Sheshagiri Pai. According to the petitioner, the plaintiff has not produced any relationship/succession certificate to show that she has any connection with late Sheshagiri Pai. According to the petitioner, there is a Will no.212/2013 of SRO, Kochi based on which the plaintiff had instituted suits before the Munsiff's Court, Kochi itself and many properties left behind by Sheshagiri Pai had been sold after his death as his legal heir. The learned counsel for the petitioner/2nd defendant further argued that the plaintiff had not stated anything about the Will. The learned counsel argued that when a person has executed a Will, the devolution of his property should be based on that Will and there is no scope for devolution under the

general law. Accordingly, the learned counsel would argue that the plaintiff has no locus standi to institute the suit as the natural legal heir of Sheshagiri Pai. As per the averments in the affidavit, the petitioner prayed that an issue that the plaintiff has no locus standi to institute the suit, may be taken as a preliminary issue and that all the proceedings in the case may be stayed until the disposal of the IA, to meet the ends of justice.

7. On the other hand, the learned counsel for the respondent/plaintiff opposed the petition stating that none of the reasons stated by the petitioner was sufficient to frame an issue as to the locus standi of the plaintiff to institute the suit. The learned counsel would argue that all the averments stated in the petition are questions of facts. The learned counsel would argue that as per Order 14 Rule 2 (2) of CPC, if the Court is of the opinion that the case as a whole or any part thereof may be disposed of on an issue of law only, it may try that issue first and that such issue must relate to (a) Jurisdiction of the Court, (b) a bar to the suit created by any law for the time being in force. Accordingly, the learned counsel argued that the issue of locus standi is a pure question of fact which can be decided only after evidence is taken.

8. It may be noted that the defendants had filed their written statement as early as on 20.06.2023 and the following issues were framed :

- i. *Is the plaintiff entitled to get a mandatory injunction as prayed for ?*
- ii. *Whether the plaintiff has title over the plaint C and E schedule properties ?*
- iii. *Are the defendant Nos.1 and 2 in possession of the plaint C and E schedule properties ?*
- iv. *Is the plaintiff entitled for recovery of possession of plaint C and E schedule after demolition of plot D and F schedule structures as prayed for ?*
- v. *Is the plaintiff entitled for permanent prohibitory injunction as prayed for ?*
- vi. *Is the plaintiff entitled for damages as prayed for ?*
- vii. *Reliefs and costs ?*

9. In paragraph 4 of the written statement, it was stated that it is a matter to be proved that the plaintiff was the wife of Sheshagiri Pai and that Sheshagiri Pai inherited the property of Venkiteswara Pai. That apart, the defendants did not challenge the locus standi of the plaintiff to institute the suit in the written statement.

10. The above claim in the written statement of the defendants itself would show that the locus standi of the plaintiff to institute the suit can be decided only after adducing evidence. As per Order XIV Rule 2 (2) of CPC, the Court may try an issue first if that issue relates to (a) Jurisdiction of the Court, (b) a bar to the suit created by any law for the time being in force. Since the issue sought to be framed as a preliminary issue by the petitioner lacks the support of pleadings and also because, it does not fall into the category of issue mentioned in Order XIV Rule 2 (2) of CPC, this Court is of the view that this petition lacks merits and is liable only to be dismissed. Accordingly, these points are found against the petitioner.

In the result,

1. The petition is dismissed.
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:-Nil

**Id/-
Principal Munsiff**

///True Copy///

Principal Munsif

Order in
I.A No. 17/2025 in
O.S No. 344/2020
Dated: 19.12.2025