

IN THE COURT OF MUNSIFF, MUVATTUPUZHA

Present : Sri. Tony T. Thadathil, JMFC -III Muvattupuzha,

In Charge of Munsiff, Muvattupuzha

Tuesday, the 23rd day of September, 2025/ 1st Aswina, 1947

I.A. 3/2025 in O.S. No. 67/2025

Petitioners/ Plaintiffs :

1. P.V. Antony, S/o. Varkey, aged 57 years, Kandanattu (Kandanattuputhenpurackal) House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661
2. Paulin, W/o. Baby, aged 64 years, Thattarkunnel House, Vazhappilly Kara, East Vazhappilly P.O., Mulavoor Village, Muvattupuzha Taluk - 686673
3. Santha, W/o. George, aged 68 years, Kannampuzhakaliyadan House, Puthuppady Kara, Puthuppady P.O., Kothamangalam Village, Kothamangalam Taluk- 686673
4. Celin, W/o. Devasia, aged 63 years, Kannampuzhakaliyadan House, Puthuppady Kara, Puthuppady P.O., Kothamangalam Village, Kothamangalam Taluk- 686673
5. P.V. Jose, S/o. Varkey, aged 70 years, Kandanattu (Kandanattuputhenpurackal) House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661
6. Anice, W/o. Mathew, aged 79 years, Kandanattu (Kandanattuputhenpurackal) House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661

By Adv. K.R. Udayakumar

Respondents/ Defendants :

1. Molly Baby, W/o. P.V. Baby, aged 66 years, Kandanattu @Puthenpura House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661
2. Pious George, S/o. P.V. Baby, aged 40 years, Kandanattu @ Puthenpura House, Ramangalam Kara, Muvattupuzha P.O., Marady Village, Muvattupuzha Taluk -686661
3. Jaimon Mathew, S/o. Mathai Mathew, aged 39 years, Ancheril House, Pothonicad Kara, Pothonicad P.O., Pothonicad Village, Kothamangalam Taluk- 686671

By Adv. Gigi Peter

This petition came up for hearing on 16.09.2025 and this Court on 23.09.2025 delivered the following:-

ORDER

This is a petition filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking an order of temporary prohibitory injunction.

2. The facts in the petition, in brief, are as follows: The present suit is one for fixation of boundary and permanent prohibitory injunction. Petitioners and respondents 1 and 2 have inherited A schedule property measuring 1.21 Ares (3 cents) in survey no. 377/29B

of Marady village, as the heirs of Mariyakutty who died on 12-8-1995. B schedule property jointly owned by respondents 1 and 2, lies on the northern side of A schedule property. It has an extent of 1.62 Ares (4 cents) in survey no. 377/29A. A and B schedule properties are lying as a contiguous plot without any demarcation. An old *tharawadu* house is situate in both the said properties. Respondents 1 and 2 have demolished a part of the said *tharawadu* in order to effect constructions by encroaching into A schedule property. They have engaged the third respondent for that purpose. Though petitioners approached the Tahsildar, Muvattupuzha, to identify the boundary between A and B schedule properties, respondents are not amenable for the same. It is learnt that respondents have applied for permit for constructing building by encroaching into A schedule property. On 24-2-2025, respondents attempted to construct foundation of the new building by including a portion of A schedule property. Construction of building without identifying the boundary between both the properties, will cause irreparable injury and loss to the petitioners. Hence this petition is filed seeking an order of temporary prohibitory injunction restraining the

respondents and their men from selling or alienating the B schedule property by including any portion of A schedule property and from making any constructions therein.

3. The third respondent filed counter-affidavit stating that all the heirs of Mariyakutty are not impleaded as parties herein and hence the petition is bad for non-joinder of necessary parties. Preliminary decree was passed in O.S. 141/2012 in respect of A schedule property. Respondents 1 and 2 being co-owners of A schedule property, petitioners cannot seek the relief of fixation of boundary and injunction, without filing final decree application. They cannot also seek the relief of injunction against respondents 1 and 2 who are co-owners of the A schedule property. There is an old residential building in B schedule property which is owned by the respondents 1 and 2. They decided to construct a new building after demolishing the old building. The third respondent was authorized to effect the construction works. The respondents have obtained a building permit and plan from the municipality. When the building construction was started, this petition was filed to halt the same. Petitioners are in inimical terms with the respondents since their demand for sale of B schedule property for a

paltry sum was rejected by the respondents. The boundary stones between A and B schedule properties were uprooted by the petitioners before filing the suit. There is demarcation between both the properties. The allegation that respondents have demolished a portion of the building by trespassing into the A schedule property, is not correct. It is also false to say that respondents have attempted to effect construction by including a portion of A schedule property. The construction is done only in B schedule property. If the building construction is prevented by an injunction, huge financial losses will be caused to the respondents. Hence it is prayed to dismiss the petition with costs.

4. Respondents 1 and 2 filed memo adopting the contentions in the counter-affidavit filed by the third respondent.

5. From the side of petitioners, Ext. A1 to A17 were marked. From the side of respondents, Ext. B1 to B12 were marked. Ext. C1 and C1(a) were marked as Court exhibits.

6. Heard the learned counsel for both sides. Perused the records.

7. Admittedly, A schedule property is jointly owned by the petitioners and respondents 1 and 2 and it extends to 3 cents in survey

no. 377/29B of Marady village. It is also not in dispute that B schedule property belongs to the respondents 1 and 2 and that the said property has an extent of 4 cents in survey no. 377/29A.

8. The lie of the suit properties, as asserted in the affidavit of the first petitioner, is not challenged by the respondents. As per the petitioners, B schedule property situates on the northern side of A schedule property. Ext. C1(a) sketch also shows the properties that way. Although respondents asserted that there is demarcation between A and B schedule properties, Ext. C1 report suggests otherwise. It reveals that both the said properties are lying as a contiguous plot, within four walls. Petitioners assert that a portion of the building in the A schedule property was demolished by the respondents for construction purpose. Respondents admit that they had decided to demolish the old building for the new building construction. As per them, the said building is in B schedule property. It is reported in Ext. C1 report that a building has been partially demolished for the purpose of construction works. As rightly pointed out by the petitioners, Ext. A1 Partition deed no. 188/1111 (M.E.) mentions that a house is situate in 3 cents of land covered by survey no. 377/29B which is the A schedule property. On the

other hand, Ext. A2 Sale deed no. 2638/1971 and Ext. B3 Partition deed no. 1198/2023, which are the prior deeds of B schedule property, are silent about any building or other structure in that property. Non-mention of the existence of any such structure is not likely in the prior deeds of B schedule property if the house or a portion of it was actually situate in that property. However, here, petitioners themselves pleaded that the house is situate in both the suit properties.

9. A material contention of the respondents is that respondents 1 and 2 being co-owners in respect of A schedule property, injunction cannot be granted against them. Further, they assert that petitioners have an alternate efficacious remedy in the form of final decree application in O.S. 141/2012. Petitioners having abstained from initiating final decree proceedings in respect of A schedule property, they are not entitled to the equitable remedy of injunction in respect of that property, is the argument of the respondents.

10. Here is a case where petitioners, co-owners of A schedule property, apprehend constructions by encroaching into that property, by respondents 1 to 3, of whom respondents 1 and 2 happens to be the co-owners of the same property. An injunction is sought by the petitioners

to protect A schedule property from encroachment. Respondents claim that they are effecting constructions only in B schedule property owned by respondents 1 and 2. They are not exercising their right as co-owners of A schedule property while attempting such construction. In that process, if the construction encroaches into A schedule property, they cannot claim immunity from injunction in the capacity as co-owners of that property.

11. In *Rajendran Pillai J. v. B. Bhasi and Others* [2022 KHC Online 79], the hon'ble Kerala High Court held that there is no rigid tenet that no injunction can be granted against one co-owner at the instance of other co-owner. It was further held that '*one co - owner out of the many has no right to build on which is joint property, without the consent of others, notwithstanding that, the erection of such building may cause no direct loss to other joint owners or its stature can be termed as 'improvement', since on separation of sharers, one co - owner's right to enjoy his share shall not be hassled by such building.*

(iii) *a co - owner cannot be permitted to erect building in the common property without the consent of other co - owners, since one co - owner on separation of his share has every right to enjoy his property even as*

barren land for having gentle breeze or otherwise without a building therein..... If one co - owner feels or apprehends obstruction in the matter of enjoyment of his co - ownership right, he can very well institute a Suit restraining the other co - owner from obstructing the enjoyment within the sphere of co - ownership right, without disturbing the similar right of the other co - owner / co - owners, even without opting for partition'.

12. In the factual situation pointed out by the petitioners, it cannot be said that final decree proceedings would be an alternate efficacious remedy. Suppose final decree proceedings are going on at the instance of the petitioners. If the alleged encroachment happens during that time, petitioners will have to move a temporary injunction application in that proceeding as well to arrest the encroachment. True that if final decree is passed, the northern boundary of the A schedule property will be fixed. However, the same does not mean that any encroachment will not happen into A schedule property thereafter. Moreover, Ext. A13 is the copy of final decree application filed in O.S. 141/2012. It is seen as filed on 18-3-2025, i.e. after the filing of the present petition. The present suit is for fixation of boundary and

injunction which are the apt remedies available for petitioners against the alleged attempt for encroachment. Anyhow, this Court does not find valid basis to accept the contentions of the respondents as stated earlier.

13. Another contention of respondents is that if an injunction is granted as prayed for, the same will disable the respondents 1 and 2 from transferring their undivided right over A schedule property. The injunction prayed is against sale or alienation of B schedule property by including any portion of A schedule property. Such an injunction, even if granted, will not restrain the respondents 1 and 2 from selling or alienating their undivided right over the A schedule property.

14. Yet another contention of the respondents is that a temporary injunction will prevent them from enjoying the B schedule property as its absolute owners. It is their prayer that being owners, respondents have the right to decide as to for what purpose the B schedule property should be put to use. There cannot be any doubt that respondents 1 and 2 are entitled to put their property to the best use as decided by them. However, the intervention of this Court will be necessary when petitioners entertain a reasonable apprehension that constructions are carried out by the respondents by encroaching into A

schedule property. It is to avoid irreparable injury to the petitioners that an injunction may be necessary to restrain such construction by encroaching into A schedule property, if petitioners have a prima facie case and balance of convenience is in their favour. Here, petitioners are the co-owners of A schedule property and they have filed this petition and suit to protect their co-ownership property from encroachment. Admittedly, the properties are lying without any demarcation and hence it has to be ensured that any construction in B schedule property is restricted to the four confines of that property. To avoid any injury to the petitioners, an injunction against construction by encroaching into A schedule property is necessary. Denial of injunction on the ground that if ultimately, on fixation of boundary, any encroachment is found, removal of construction is possible, is not the correct view. If action of a party to a suit will frustrate the suit or seriously inconvenience the other party in obtaining the fruits of the decree that may be passed in his/ her favour, such action can be restrained by an order of temporary prohibitory injunction. The purpose of interim injunction order is preservation of subject matter property until final decision in the suit.

15. Here, there is reasonable ground to find that the construction in B schedule property, is likely to encroach into A schedule property as well. If construction is permitted as attempted by the respondents, serious inconvenience or delay may be caused to the petitioners in obtaining the fruits of the decree that may be passed in their favour. The financial losses that may be caused to the respondents due to grant of injunction against construction, stands in a lower pedestal compared to the above referred inconvenience or delay that may be caused to the petitioners.

16. The normal rule is that a decree of permanent prohibitory injunction will not be granted unless the property in respect of which injunction is granted, is not lying within well defined boundaries. Here, since A and B schedule properties are presently not demarcated from each other, a decree of permanent prohibitory injunction can be granted only as a consequential relief, after granting a decree for fixation of boundary. The same does not mean that in the interim stage, no injunction can be granted in respect of A schedule property which has no demarcation with B schedule property. Denying interim injunction when apprehension regarding encroachment is a reasonable

apprehension, will amount to denial of justice.

17. There is one another reason to grant an injunction as prayed for. Going by Ext. B10 plan, which is claimed by the respondents to be the only available plan, the lie and location of A and B schedule properties are not in the manner suggested by both the sides. B schedule property comprised in survey no. 377/29A is situated in that plan in 'L' shape as against rectangular shape as depicted in Ext. C1(a) sketch. The construction is attempted by the respondents by deeming B schedule property as a rectangular plot. The same will prejudice the petitioners if it is ultimately found that the B schedule property is having 'L' shape.

18. When the identity of and the boundary between both the properties are not clear, it is only fit and proper to injunct the respondents against continuing the construction works commenced by them till the disposal of the suit. There is no reason to restrain alienation or sale of B schedule property as prayed for, as petitioners have not raised any apprehension regarding such alienation or sale by the respondents.

19. **In the result**, petition is allowed in part. Respondents and their men are restrained by an order of temporary prohibitory injunction

from continuing the construction works commenced by them till the disposal of the suit.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in the open court on this the 23rd day of September, 2025.

Tony T. Thadathil.
JMFC -III Muvattupuzha,
(In Charge of Munsiff)

APPENDIX

Witnesses for the Petitioners :- NIL

Exhibits for the Petitioners :

Exhibit numbers	Date of Document	Name of Document
A1	08.10.1935	Copy of partition deed no. 188/1111 of Muvattupuzha S.R.O
A2	06.10.1971	Copy of sale deed no. 2638/1971 of Muvattupuzha S.R.O
A3	Undated	Copy of thandaper account
A4	06.02.2025	Copy of tax receipt
A5	12.02.2025	Copy of letter to Tahsildar (LR), Muvattupuzha
A6	17.02.2025	Copy of letter to Tahsildar (LR), Muvattupuzha

A7	Undated	Rough sketch
A8	Undated	Photos (3 in no.)
A9	10.12.2015	Copy of judgment in O.S. 141/2012 of Munsiff's Court, Muvattupuzha
A10	10.12.2015	Copy of decree in O.S. 141/2012
A11	27.11.2019	Copy of judgment in A.S. 137/2019 of Addl. District Court, Muvattupuzha
A12	15.03.2025	Copy of building tax receipt
A13	18.03.2025	Copy of F.D.A. 5/2025 in O.S. 141/2012 of Munsiff's Court, Muvattupuzha
A14	18.03.2025	Copy of schedule of properties in F.D.A. 5/2025 in O.S. 141/2012
A15	15.07.2023	Attested copy of power-of-attorney of Molly Baby
A16	24.03.2025	Stop memo issued by Secretary, Muvattupuzha Municipality
A17	09.08.2023	Attested copy of power-of-attorney of Pious George

Witnesses for the Respondent :- NIL

Exhibits for the Respondent :

Exhibit numbers	Date of Document	Name of Document
B1	10.12.2015	Copy of judgment in O.S. 141/2012 of Munsiff's Court, Muvattupuzha
B2	10.12.2015	Copy of decree in O.S. 141/2012 of Munsiff's Court, Muvattupuzha

B3	19.12.2022	Copy of partition deed no. 1198/2023 of Muvattupuzha S.R.O
B4	09.06.2023	Copy of settlement deed no. 2322/2023 of Muvattupuzha S.R.O
B5	24.06.2024	Copy of tax receipt
B6	24.06.2024	Copy of tax receipt
B7	27.01.2025	Building permit
B8	08.08.2025	Letter of District Survey Superintendent, Ernakulam
B9	12.08.2025	Letter of Central Survey office, Trivandrum
B10	Undated	AB plan of Survey no. 377/29 of Arakuzha Village
B11	03.08.2023	Power of Attorney of Pious George
B12	15.07.2023	Power of Attorney of Molly Baby

Court Witnesses**:- NIL****Court Exhibits**

Exhibit numbers	Date of Document	Name of Document
C1, C1(a)	19.03.2025	Commission report and rough sketch filed by Adv. Antony Jose in O.S. 67/2025 in I.A. 02/2025

Munsiff

I.A. 3-2025 in O.S. 67-25

- 17 -

ORDER in
I.A. 3/2025 in O.S. 67/2025
Dated: 23.09.2025