

IN THE COURT MUNSIF, KOTHAMANGALAM

Present : Sri. Ganesh Kumar M.S, Civil Judge (Junior Division)

Saturday, the 31st day of May 2025/10th Jyaishta 1947

IA No.03/2025 in OS No.63/2025

Petitioner:- Senior Hassainar, S/o. Hassainar,
Muthanikkattu House, Pareekkanni PO,
Paimattom, Kothamangalam.

By Advs.M/s. Sanilkumar, Rohit S.

Respondents:

- 1 INTUC party represented by area secretary,
Paimattom area, Pareekanni PO, Paimattom-
686671.
- 2 Muhammed (Alias Unni Thanipuzha)
Kadukkapillil House, Koovallor PO,
Kootamvely-686671.
- 3 Basheer, Kootungal house, Pareekanni PO,
Paimattom-686693.
- 4 Joy Chitnappilli, Chitnapilli House,
Pareekanni PO, Paimattom-686693.
- 5 Baby Chakkalath House, Pareekanni PO,
Paimattom-686693.
- 6 Shinto Varghese, Vettkallel House,
Koovallor, Kootamvely-686671.

By Advs. M/s. Gigi Peter, Sidharth S Nair.

This petition is coming on for final hearing on 03.04.2025 in the presence of the above counsels and on 31.05.2025 the court passed the following:-

ORDER

1. The application is filed by the plaintiff/ petitioner seeking an order of temporary injunction inter alia restraining the defendants from trespassing into plaint A schedule property and committing waste therein under Order XXXIX Rule 2 r/w 151 of Code of Civil Procedure, 1908 (hereafter referred to as CPC).

2. **The averments contained in the affidavit, filed along with the application, are as follows:-** The petitioner is the plaintiff in the above suit. The suit is for declaration of title, recovery of possession, permanent prohibitory injunction and for other reliefs. The petitioner is the absolute owner in possession of plaint A schedule property, by virtue of Deed No. 895/2020 of SRO, Kothamangalam. Plaint A schedule property has definite boundaries and is easily identifiable from adjacent properties. On 25.01.2025, the defendants trespassed into the plaint schedule property and directed the plaintiff to hand over 2 cents of property

to them. They declared that they will not allow the plaintiff to reside peacefully in the plaint schedule property. The defendants have trespassed into plaint schedule property and annexed plaint B schedule property with their property. The plaint B schedule property is part and parcel of plaint A schedule property. Hence, it is necessary to restrain the defendants from trespassing into plaint A schedule property, destroying its boundaries and committing waste therein.

3. **Per contra, the respondents filed counter affidavit inter alia contending as follows:-** The averments in the affidavit filed along with the petition are false and frivolous. The plaintiff is not in exclusive possession of plaint A schedule property. The plaint A schedule property is not identifiable. The defendant never trespassed into the plaint A schedule property nor annexed any portion of the same. The plaintiff has no prima facie case in his favour. He has no balance of convenience in his favour. Hence, the petition is liable to be dismissed.

4. From the above, the following points came up for

consideration:-

1. Whether the prima facie case is in favour of the petitioner?
2. Whether the balance of convenience is in the favour of the petitioner?
3. Whether the denial of order of injunction sought for, would cause irreparable loss to the petitioner?
4. What shall be order and costs?
5. From the side of the petitioner, Ext.A1 to A4 were marked. From the side of the respondents, Ext.B1 to B3 were marked. Ext.C1 and C1(a) were also marked.
6. Heard and perused the records.
7. **Point Nos. 1 to 3:-** For the sake of brevity and convenience these points are considered together. The petition is filed by the petitioner seeking an order of injunction inter alia restraining the respondents from trespassing into the plaint A schedule property. According to the petitioner, he is the owner of plaint A schedule property by virtue of Ext.A1-Sale Deed.

According to him, the respondents have trespassed into plaintiff A schedule property and annexed 2 cents from the plaintiff A schedule property into their property. He apprehends that the respondents would further trespass into plaintiff A schedule property and commit waste therein. Hence, he urges to allow the petition.

8. Per contra, the specific case of the respondents are that the plaintiff is not in exclusive possession of plaintiff A schedule property. According to them, vide Ext.B1- Sale Deed they are in possession of some portion of plaintiff A schedule property. According to them, they are in possession of the same and are paying tax for their property.

9. It is pertinent to note that the suit is for declaration of title, recovery of possession and for permanent prohibitory injunction. On a bare perusal of plaintiff and the affidavit filed in support of the application, it is axiomatic that the plaintiff/petitioner has admitted that the respondents have trespassed into plaintiff A schedule property and has taken possession of some portion of the same. That is the reason why the plaintiff seeks a

decree of recovery of possession of plaint B schedule property from the defendants. It is pertinent to note that plaint B schedule property is a part and parcel of plaint A schedule property. The plaintiff himself has admitted that the respondents have already trespassed into plaint A schedule property and took possession of some of its portion. Thus, the reliefs sought for by the plaintiff, seeking an order of temporary injunction directing the respondents from not to trespass upon plaint A schedule property and commit waste therein, cannot be granted, in light of the fact that even according to the plaintiff the defendants are in possession of some portion of plaint A schedule property. An order of temporary injunction can only be granted prior to the commencement of wrong. In the case in hand, plaintiff himself has admitted that the defendants have already committed a wrong affecting his right to property prior to the commencement of the suit. It is trite law that an order of temporary injunction can only be granted to prevent an injury to the party seeking the said relief. In the case in hand, the party seeking the discretionary relief has

admitted that the other party has already caused an injury to him in relation to a property in dispute. Thus, from the above discussion, I am of the view that the order sought for by the petitioner cannot be granted. Thus, I am satisfied that the petition is liable to be dismissed.

10. **Point No.4:-** In light of my findings on point No.1 to 3, I am of the view that the petition is liable to be dismissed.

In the result,

The petition is dismissed. Parties shall bear their respective costs.

(Dictated to the Confidential Asst., typed by her, corrected and pronounced by me in open court on this the 31st day of May, 2025)

Sd/-
Ganesh Kumar.M.S
Civil Judge
(Junior Division)

APPENDIX

Petitioners Exhibits:-

- A1 28.05.2020 : Copy of sale Deed No.895/2020 of SRO, Kothamangalam.
- A2 01.04.2025 : Encumbrance Certificate issued from SRO, Kothamangalam.
- A3 15.03.2025 : Copy of complaint submitted to SHO, Oonnukal, Police Station.

A4 NIL : Copy of complaint filed before RDO,
Muvattupuzha.

Respondents Exhibits:-

- B1 26.03.2005 ; Copy of sale Deed No.2302/25 of SRO,
Kothamangalam.
B2 01.03.2023 : Tax receipt (KL07061301057/2025) issued
from Pallarimangalam Village Office.
B3 17.03.2025 : Copy of possession certificate No.92769471
issued from Pallarimangalam Village Office.

Court Exhibits:

- C1 28.03.2025 : Commission report filed by Adv.
Commissioner Meenu P Rajan.
C1(a) 28.03.2025 : Rough sketch

Witnesses on both sides :NIL

Id/-
Civil Judge
(Junior Division)

//True copy//

Civil Judge
(Junior Division)

