

IN THE COURT OF MUNSIFF, KOTHAMANGALAM

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

Monday, the 13th day of October 2025/21st Aswina 1947

IA No.02/2025 in OS No.140/2025

Petitioner/
Plaintiff:-

Lissy K A, aged 52 years, W/o. Baiju Thomas,
Kavumgmpillil House, Chelad PO,
Kothamangalam 686681, currently residing at
Lissy KA, Style Enclave, 5 C Apt, Thrikkakara PO,
Ernakulam Kerala, 682021.

By Advs. M/s. A. Cherian, Korah Joy.

Respondents/
Defendants:

- 1 St.Stephen's Bes Ania Jacobite Syrian Church
Chelad, Kothamangalam-686681, rep by its trustee
Roy aged about 62 years, Appackkal House,
Chelad PO, Kothamangalam-686681.
- 2 St.Stephen's Bes Ania Jacobite Syrian Church
Chelad, Kothamangalam-686681, rep by its trustee
Reji Simon aged about 60 years, S/o. Simon,
Kottisserikudiyil House, Chelad PO,
Kothamangalam-686681.

By Advs. M Jayalal, A R Ani, V C Babukumar.

This petition is coming on for final hearing on 12.09.2025 in the
presence of counsel for both sides and on 13.10.2025 the court passed
the following

ORDER

1. The petition is filed by the petitioner/plaintiff seeking an order of temporary injunction restraining the defendants/respondents from making extended construction or alteration in the plaint schedule properties until the final disposal of the suit under Order XXXIX Rule 1 and 2 of C.P.C., 1908.

2. **The averments contained in the affidavit filed along with the petition, in brief, are as follows:-** The petitioner is the plaintiff in the above suit. She is the absolute owner of plaint A schedule property by virtue of Sale Deed No.620/2003 of SRO, Kothamangalam. The plaint B schedule property which is situated on the south western corner of plaint A schedule property and it is being put use for worship and there is a holy cross in the same. The plaint C schedule property is a part and parcel of plaint A schedule property and it is situated on the northern side of municipal road. The defendants demolished the western boundary of plaint C schedule property and tried to annex the same with B schedule property. They are entitled to do so. The defendants are trying to encroach upon plaint C schedule

property. They installed foundation stone and started construction in the plaint C schedule property. They threatened that they will encroach in to plaint A and C schedule properties. Hence, it is necessary to restrain the defendants from making any extended construction in plaint B schedule property till the final disposal of the suit.

3. **Per contra the respondents/defendants filed counter affidavit inter alia contending as follows:-** The petition is not maintainable either under law or on facts. All the averments contained in the petition are false and concocted. The suit is bad for non joinder of necessary parties. Further, the members of respondent church are also the stake holders. They are not in the party array. No Order I Rule 8 publication is filed along with suit. The plaintiff has no absolute ownership in plaint A schedule property. The plaint C schedule property is not a part and parcel of plaint A schedule property. The plaint B schedule and C schedule properties are lying conjointly and they are in the possession of respondents. Plaint B and C schedule properties are lying in a lower plain than that of plaint A schedule property. The respondents have enclosed plaint B and C schedule

properties by barbed wires. Now, the respondents are making construction in the property in their hand. The attempt of the petitioner is to grab plaint C schedule property from the respondents. The attempt of the petitioner is to prevent the respondents from constructing the holy cross in the plaint B schedule property. Thus, the petition is liable to be dismissed.

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

- I Whether the petitioner has established prima facie case in her favour?
- II Whether the balance of convenience is in favour of the petitioner?
- III Whether the denial of order sought for, would cause irreparable loss to the petitioner?
- IV Reliefs and costs?

5. From the side of the petitioner, Exts.A1 to A3 were marked. Ext.C1 and C1(a) were also marked.

6. Heard and perused the records.

7. **Point Nos.I to III:-** For the sake of brevity and convenience, these points are considered together. The suit is for fixation of boundaries of plaint A and C schedule properties. The petition is filed by the petitioner to restrain the respondents from extending the construction in to plaint schedule properties. The case of the plaintiff is that the defendants have destroyed the boundary wall of plaint A and C schedule properties. According to her, the defendants have annexed plaint C schedule with plaint B schedule property and started construction there. She seeks to restrain the defendants from making further construction in the plaint schedule properties.

8. The learned counsel for the defendants argued that plaint C schedule property is not identifiable. He argued that it is not part and parcel of plaint A schedule property. He stated that the respondents are in possession of plaint B schedule property and it includes the alleged plaint C schedule property. He argued that plaint A schedule property is clearly identifiable from plaint C and B schedule properties. He stated that the defendants are making constructions in their plaint B schedule property and it cannot be stalled. Hence, he urged to dismiss

the petition.

9. From Ext.C1 commission report, it is clear that plaint B and C schedule properties are lying conjointly. From the same, it is also clear that plaint A schedule property is clearly identifiable from B and C schedule properties. From the same, it is also clear that construction work is going on plaint B schedule property. Admittedly, plaint B schedule property is in possession of the respondents and they are constructing a chapel therein. The plaint B and C schedule properties lies on the southern side of plaint A schedule property. Considering the fact that plaint B schedule property and plaint C schedule property are not identifiable coupled with the fact that the same is in possession of the respondents and construction works are going thereon, if the order sought for is not allowed and if the construction work is stayed, it will cause irreparable loss to the respondents. The materials loaded therein will become useless if the same is kept therein. It is pertinent to note that the suit is for fixation of boundary of plaint A schedule property with the plaint C schedule property. The advocate commissioner has categorically reported that there is clear boundary separating the said

boundaries. It is settled law that if there is boundaries between the disputed properties, no decree for fixation of boundary can be granted. The other reliefs sought for is to declare that the plaintiff is the absolute owner of plaint A and C schedule proprieties. Whether the plaintiff is the owner of plaint A and C schedule proprieties are matter to be tried and decided. From the rival contentions, I am satisfied that there is a questionable issue to be tried and decided in the suit. Hence, I am satisfied that the plaintiff has established prima case in his favour.

10. The plaintiff has sought for an order of injunction restraining the defendant from making further constructions in the plaint schedule properties. The same cannot be granted in toto, in light of the fact that plaint B schedule property is in possession of the respondents and plaint B and C schedule properties are lying conjointly. But, in order to preserve the subject matter in the lis, I am of the view that directing the defendants from making any constructions in the plaint A schedule property as identified by the advocate commissioner would serve justice. Hence, I am inclined to allow the petition accordingly.

11. **Point No.IV:-** In light of my discussion on point Nos.1 to III, I am satisfied that the petition is liable to be partly allowed.

In the result,

The petition is partly allowed as follows:-

1. The respondents are hereby restrained by way of an order of temporary injunction from making any constructions or altering the lie and nature of plaint A schedule property as identified by the advocate commissioner in Ext.C1 and C1(a) commission report and rough sketch.

2. No order as to costs.

(Dictated to the Confidential Asst., typed by her, corrected and pronounced by me open court on this the 13th day of October, 2025)

Sd/-

Ganesh Kumar M S
Civil Judge
(Junior Division)

APPENDIX:

Petitioner's Exhibits:-

- A1 18.12.1996 : Photo copy of Sale Deed No.8444/1996 of SRO, Kothamangalam.
A2 03.02.2003 : Photocopy of Sale Deed No.620/2003 of SRO, Kothamangalam.
A3 22.07.2024 : Photocopy of the tax receipt issued from Kothamangalam Village Office.

Respondents' Exhibits:NIL

Court Exhibits:

C1 16.07.2025: Commission report submitted by Adv.
Commissioner Bevin Thomas.

C1(a)16.07.2025: Rough sketch submitted by Adv. Commissioner
Bevin Thomas.

Witnesses on both sides: NIL

//True copy//

Id/-
Civil Judge
(Junior Division)

Civil Judge
(Junior Division)