

IN THE COURT OF THE MUNSIFF, KOYILANDY
Present:- Smt. Raveena Naz, Munsiff, Koyilandy

Thursday the 10th day of April, 2025

I.A. No. 02/2025 in O.S. No. 47/2025

Between:-

Gopalakrishnan Nair, S/o. Kunhikrishnan Nair,
 Ranjini House, Kakkodi Mukku, PO Chelannur,
 Chelannur Amsom Desom, Thamarassery
 Taluk, PIN- 673616

} Petitioner/
 Plaintiff

And : -

- 1 President, Naduvannur High School Society,
 Reg. No.S.2/1950, Represented by its
 President, PO Vakayad.
- 2 C.K. Asokan, S/o. Edavana Govindan Nair,
 Retired, Teacher, President, Naduvannur High
 School Society, Reg. No.S.2/1950, Kunnath
 Veedu, Kottur Amsom, Thiruvode Desom,
 Thiruvode PO- 673614
- 3 V.P. Govindan Kutty Nair, S/o. Unni Nair,
 Thottappurath Chithrakam Veedu, Retired,
 Teacher, Secretary, Naduvannur High School
 Society, Reg. No.S.2/1950, Thrikkuttissery
 Amsom, Vakayad Desom, PO Vakayad.

} Respondents/
 Defendants

This Petition coming on this the 8th day of April, 2025 for final hearing before me in the presence of Sri. P. Sankaran Elattery and Smt. Fareeda Hanna, Advocates for Petitioner/Plaintiff and of Sri. K.P Rajagopal and Smt. Farha, Advocates for Respondents/Defendants and having stood over to this day for consideration, and the Court passed the following:

ORDER

1. The Application is filed under Order 39 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').
2. The averments in the Application in brief are as follows: The Applicant herein is the Plaintiff in the suit. The Applicant contends that he is a member of the 1st Respondent society having voting rights since 27.03.2013. As per the judgment in OS 25/2010, the decree schedule property was partitioned and it was agreed that the interest of the Plaintiff in the said suit will be given to the 1st Respondent society herein in exchange of share in the society. Accordingly, the Petitioner herein who was the Plaintiff in OS 25/2010 has relinquished his right over the plaint schedule property thereupon and the Plaintiff therein was given share in Naduvannur High School Society. The Petitioner was the director of 1st Respondent society from 2013 till 2016 and was treasurer of the 1st Respondent society, for a period of 3 years from 25.05.2016. Later, on 01.05.2019, the Petitioner was again elected as the President of the society for a period of 3 years. As per the bye-law of the 1st Respondent society, each member is entitled to one vote irrespective of their share in the society. It is also stated in the bye-law that if the membership has to be cancelled, it can be cancelled with the passing of resolution by more than one half of the members of the society. There is no reason to expel the Petitioner from the society. After the election in 2019, another

governing committee was elected which is functioning against the bye-law and in the most undemocratic manner. In order to prevent the Applicant herein from participating from the election to the governing committee to be elected in 2025, the 1st Respondent has expelled the Applicant herein from the committee. A notice was issued informing the same to the Applicant. Therefore, the Applicant herein seeks for an interim order of injunction restraining the Respondents from preventing the Applicant to participate in the general body.

3. Notice was served on the Respondents. Respondents filed Objection contending as follows: The Respondents denies that the Applicant has been a member having voting rights of 1st Respondent society since 27.03.2013. The Respondents admits that an agreement has been executed between Smt. Kunjiyamma, Sri. Balan Nair and Smt. Janaki Amma and the 1st Respondent society on 27.03.2013 as per which the membership and stipulations has to be decided in a committee meeting. The Respondent admits that the Applicant was allotted share worth Rs. 200/- (Rupees Two Hundred only) in the 1st Respondent society. It is also admitted that OS 25/2010 was decided as per the compromise decree among parties to the suit. Although it was agreed that the Applicant, Smt. Kunjiyamma, Sri. Balan Nair and Smt. Janaki Amma is to be allotted shares, Plaintiff Nos. 6 and 7 in OS 25/2010 had not signed the agreement. The share was allotted to the Applicant on the assurance of the Applicant that he shall ensure that Plaintiff

Nos. 6 and 7 in OS 25/2010 shall sign the agreement. It is also admitted by the Respondent that the Applicant was functioning as the Director of the 1st Respondent society from 2013 to 2016, the Applicant was the treasurer of the governing committee of 1st Respondent and that he was functioning as the President of the 1st Respondent society. The averment in the Application that a member can be expelled from the 1st Respondent society only on passing of resolution by more than half of the members of the society is false and denied. The Respondent also denies that the Respondents are acting in violation of the bye-law and an undemocratic manner as alleged in the Application. The notice regarding expulsion of the Applicant from the 1st Respondent society dated 07.01.2015 is as per the decision of the management committee. In order to elect the management committee of the 1st Respondent society for the next 3 years, general body meeting is scheduled on 17.04.2025 and election is scheduled on 03.05.2025. The Application has been filed without any *bona fide* intention and the Application is to be dismissed with costs to the Respondents.

4. The following points arose for consideration:

1. Could the Applicant establish a *prima facie* case?
2. Could the Applicant prove that irreparable injury and hardship will be caused to him, if interim injunction is not granted and the balance of convenience is in his favour?
3. Is the Applicant entitled to an order of interim prohibitory injunction as

prayed for?

4. What shall be the order as to costs?
5. The documents produced from the side of the Applicant along with the plaint and IA 5/2025 are marked as Exts. A1 to A9. No oral evidence adduced from the side of Applicant. No oral or documentary evidence adduced from the side of the Respondents.
6. Heard the learned counsel for the Applicant and Respondents.
7. **Point Nos. 1 to 3**

The contention of the Applicant is that as per the compromise arrived in OS 25/2010, the Applicant is a member of the 1st Respondent society and is having share worth Rs. 200/- (Rupees Two Hundred only). Being the member of the 1st Respondent society the Applicant is having the right to vote irrespective of the value of shares as per Ext. A9 bye-law. Although not stated in the Application that the Applicant has been expelled from the 1st Respondent society, Ext. A1 evidences that the Applicant is restrained from participating in the general body meeting of the 1st Respondent society. Ext. A2 is the agreement executed between the Applicant, Smt. Kunjiyamma, Sri. Balan Nair and Smt. Janakai Amma and the 1st Respondent society as per which the Applicant was given share worth Rs. 200/- (Rupees Two Hundred only). This is not disputed by the Respondents. Ext. A2 and Ext. A3 are not disputed by the Respondents. The contention of the Respondents is that

although Ext. A2 was signed by the Applicant, Smt. Kunjiyamma and Sri. Balan Nair and Smt. Janaki Amma, Defendants Nos. 6 and 7 in Ext. A3 had not signed Ext. A2 and therefore the 1st Respondent could not enjoy the benefits of the decree or obtain title over the property in OS 25/2010. It is also agreed by the Applicant that share was allotted to the Applicant as he had given up his right over the property in OS 25/2010 in favour of the Respondents. As seen from Exts. A6 to A8 it is found that the Applicant is a member of the 1st Respondent society since 2013 and that he is entitled to voting rights. The contention of the 1st Respondent is that the Applicant and 9 other persons were given voting rights on the assurance that the right over the property involved in OS 25/2010 is transferred in favour of the 1st Respondent but the Applicant as well as the other persons mentioned in Ext. A1 notice have not taken any effort to transfer the property and accordingly the 1st Respondent society had to issue Ext. A1 notice. As per Ext. A1 notice, it is found that 10 persons including the Applicant had not taken steps to transfer the property in favour of the 1st Respondent and as per the decision of the management committee in which 15 members have participated the 1st Respondent society issued Ext. A1 notice.

8. On the basis of admission from the 1st Respondent regarding the fact that he was a member of the 1st Respondent society since 2013 and on the strength of Exts. A6 to A8, it is found that the Applicant was a member of the 1st

Respondent society and had also functioned as the President and treasurer of the 1st Respondent society. It is also undisputed that the Applicant is a member of the 1st Respondent society. The right of participation of the Applicant general body meetings till the registration formalities are completed are suspended in Ext. A1 notice. On considering Exts. A2, A6 to A8 and the admission of the Respondents, the Applicant has established the *prima facie* case. The relief sought for in the Application is that he shall not be restrained from participating in the annual general body meeting of the 1st Respondent society or participating in the election of the 1st Respondent society. The case of the Respondents is that as the terms of Ext. A3 judgment and decree are not complied, and as all the Defendants in OS 25/2010 had not signed Ext. A2 agreement, the Applicant cannot be permitted to participate in the general body meeting. The compliance with the decisions arrived in OS 25/2010 and the default if any made by the Applicant has to be established during the trial on appreciation of evidence. The Applicant herein will be subjected to irreparable injury if he is not permitted to participate in the annual general body meeting and election of the 1st Respondent society which scheduled in April, 2025, that too, when the Respondents admits that the Applicant was a member of the the 1st Respondent society since 2013 and has functioned as the treasurer and President of the 1st Respondent society. Therefore, balance of convenience is also found in favour of the Applicant. The Applicant established that he

has a prima facie case, balance of convenience is in his favour and that he will be subjected to irreparable injury and hardship if he is restrained from participating in the general body meeting and election of the 1st Respondent society.

Point Nos. 1 to 3 are found in favour of the Applicant.

9. **Point No. 4**

Reckoning the facts and circumstances of the case, no order as to costs.

In the result, the Respondents are restrained by way of an interim order of injunction from obstructing the participation of the Applicant in the annual general body meeting and election of the 1st Respondent society till the disposal of the suit. No order as to costs.

(Dictated to Confidential Assistant, typed by her in Office Computer, corrected and pronounced by me in Open Court, on this the 10th day of April, 2025)

Sd/-
MUNSIFF

Petitioner's Witness: Nil

Petitioner's Exhibits:

Ext. A1	: 14.01.2025	: Copy f Notice
Ext. A2	: 27.03.2013	: Certified Copy of Agreement.
Ext. A3	: 22.06.2013	: Certified Copy of Judgment in OS 25/2010
Ext. A4	: 22.06.2013	: Certified Copy of Decree in OS 25/2010

Ext. A5	: 20.06.2013	: Certified Copy of Joint Statement
Ext. A6	: 20.03.2013	: Copy of Minutes Book
Ext. A7	: 13.04.2019	: Photo Copy of Members List
Ext. A8	: 01.05.2023	: Photo Copy of Members List
Ext. A9	: 24.02.2001	: Photo Copy of Bye law

Sd/-
MUNSIFF

Copy of Order in IA 02/2025
in OS 47/2025 Dated: 10.04.2025