

**IN THE COURT OF THE SUBORDINATE JUDGE,
KOTTARAKKARA**

**Present:- Sri. Shanavas. A, Civil Judge (Senior Division)
On Monday the 11th day of August, 2025/20th day of Sravana, 1947.**

IA 1/2025 in OS 32/2025

Between

Petitioner:-

Thajudeen, aged 60 years,
S/o. Abdhul Majeed,
Puthen Veedu, Manjappara,
Kottukkal Village, Kottarakkara Taluk,
Kollam District.

By Adv. Sri.Sethulekshmi.

And

Respondents:-

1. Thomas Chacko, aged 70 years, S/o. Chacko,
Ambukunnil Veedu, Ilavakodu,
Chadayamangalam Village, Kottarakkara Taluk.
2. Annamma Thomas, aged 65 years,
W/o. Thomas Chacko, Ambukunnil Veedu,
Ilavakodu, Chadayamangalam Village,
Kottarakkara Taluk.
3. Soya Manoj Mathew, aged 40 years,
W/o. Manoj Mathew, Ambukunnil Veedu,
Ilavakodu, Chadayamangalam Village,
Kottarakkara Taluk.

By Adv: Sri. Varghese.P. Mathew.

This petition is filed U/O. XXXIX R. I of the Code of Civil Procedure, 1908 for temporary injunction is coming on for final hearing before me on 02.08.2025 and having stood over for consideration to this day, the court passed the following:-

ORDER

This is an order in a petition filed under Order XXXIX Rule 1 of the Civil Procedure Code, 1908 for temporary injunction.

2. **Petitioner's case in brief is as follows:-** Petitioner is the plaintiff. The suit filed for realisation of money. The petitioner and respondent No. 1 and 2 are familiar to each other. Respondent No.2 is the wife of respondent No. 1 and respondent No.3 is daughter of respondent 1 and 2. Respondent No. 1 was the owner of plaint schedule property ad measuring 6.70 Ares comprised in Block No. 42 resurvey No. 236/6-2 of Chadayamangalam Village. On 03/10/2013 the respondent No. 1 executed an agreement with respect to the sale of plaint schedule property to the petitioner for a total consideration of ₹ 38,00,000/-. At the time of execution of agreement the petitioner paid ₹1,50,000/- as advance sale consideration. Further the respondent No. 1 agreed that he will

execute the sale deed with respect to the plaint schedule property in favour of the petitioner after receiving balance sale consideration of ₹ 36,50,000/- within one year from the date of agreement. Thereafter on 10/12/2024, the period of the above agreement was extended for further one year as per the request of the respondents. As there are encumbrances in the plaint schedule property, the agreement was extended till the encumbrances and court attachment in the plaint schedule property are over. On 01/01/2022 the respondent No.1 and 2 entered into an agreement and extended the period till 30/04/2022. Further it was extended to 30/09/2022. During the above period petitioner paid ₹ 9,20,000/- to respondent No. 1 and 2 as part of the sale consideration. Thereafter it was given to understand that the respondent No. 1 executed a settlement deed No.2256/2020 of Sub Registrar's Office, Chadayamangalam in favour of respondent No.3. Hence the plaint schedule property stands in the name of the respondent No. 3. It is a sheer violation of the conditions in the agreement. Respondent No. 1 fraudulently transferred the plaint schedule property in the name of respondent No. 3, thereby the respondents cheated the petitioner. On 20/12/2024 respondent No. 1 came to the residence of the petitioner and informed him that unless and until the petitioner paid ₹ 50,00,000/- he will not execute the sale deed. Though mediators intervened the respondents were adamant. Further it was declared by the respondents that they will not pay the advance amount. The petitioner was ready and willing to purchase the plaint schedule property. Since the respondent No. 1

was not ready to execute the sale deed as per the agreement, he is liable to repay the amount of ₹ 9,20,000/- with interest. The settlement deed executed in favour of the respondent No. 3 is a fraudulent document. The respondents are making an attempt to transfer the plaint schedule property. Therefore the petitioner sought for restraining the respondent No. 3 from executing any kinds of document with regard to the plaint schedule property.

3. The respondents filed objection contenting interalia as follows:- The petition is not maintainable either in law or on facts. The petitioner filed the petition and the suit by suppressing material facts from the court and to cheat the respondent for unlawful gain. It is true that the petitioner and respondent No. 1 entered into an agreement with regard to the sale of the plaint schedule property. It was agreed that the plaint schedule property would be transferred to the petitioner on payment of ₹ 38,00,000/-. The respondent No.1 had some financial transactions at Muthoot Finance and other financial institutions. An amount of ₹ 1,50,000/- was received as advance from the petitioner. The respondent No. 1 was ready to execute a sale deed at any time after receiving the balance sale consideration. Whereas, the petitioner was not ready to pay the balance amount and to get the property transferred. The agreement was extended on 10/12/2014 after receiving Rs.5,30,000/- and extended to one year. Further ₹ 6,80,000/- was received by the respondent on 10/12/2014. Litigations were pending against the respondent No. 1 and the

property was attached. However the respondent No. 1 managed to lift the attachment by depositing security amounts. Further the respondent No. 1 informed the petitioner to purchase the plaint schedule property as per the agreement. Thereupon an amount of ₹ 40,000/- was given to the respondent No. 1 and another agreement was executed. The respondent No. 1 asked the petitioner to purchase the plaint schedule property even after the lifting of attachment. In the meantime the period of agreement between the petitioner and respondent was over. Unable to find any other alternative way, respondent No. 1 settled the property in favour of respondent No. 1 for receiving money and he cleared all debts. Again the petitioner informed that he will purchase the plaint schedule property very soon. Thereafter again respondent No.1 and petitioner entered into another agreement and extended the period till 31/12/2021. Respondent No. 3 gave general power of attorney to respondent No.1 with regard to the plaint schedule property. It has agreed that the petitioner will come to Sub Registrar's Office Chadayamangalam with the balance sale consideration on 30/04/2022. Though the respondents waited at the Sub Registrar's Office, Chadayamangalam till 5 pm, the petitioner did not turn up. The petitioner came to the house of the respondents anew on 02/05/2022 and tendered apology regarding the conduct on his part, stating that he could not raise money. Again the petitioner informed the respondents to come to the office of Sub Registrar's Office Chadayamangalam on 29/09/2022. On that day also the petitioner did not turn up, again the respondent

No. 1 and 2 came to the Sub Registrar's Office Chadayamangalam on 30/09/2022. But the petitioner did not turn up . In fact the petitioner evading the execution of the sale deed by burying one's head in the sand. Thereupon the respondent No. 1 issued a legal notice to the petitioner. It was the fault on the part of the petitioner. Respondents were ready to execute the deed. The petitioner has no prima facie case; the balance of convenience is also not in his favour. Therefore the respondents sought to dismiss the petition with costs.

4. Heard both sides.

5. The following points arose for consideration:-

1. Whether the petitioner has made out a prima facie case ?
2. To whom the balance of convenience lies?
3. Whether the petitioner will be put to irreparable injuries in the event of refusal of injunction?
4. Reliefs and costs?

6. Ext. A1 to Ext.A4 were marked on the side of petitioner for reference. Ext. B1 to Ext. B9 were marked on the side of respondents for reference.

7. **Point No. 1 to 3:** These points can be considered together. The plaintiff/petitioner sought for restraint of the respondents,

especially 3rd respondent from executing any kind of document with respect to the plaint schedule property. The documents on the side of the plaintiff show that the defendant No.1 executed Ext.A1 agreement in favour of the petitioner with regard to the sale of the plain schedule property. Ext. A2 shows that the same was executed in continuation of Ext. A1, stating that there are some encumbrances in the plaint schedule property and it was recorded that the respondents received ₹ 7,20,000/- . Ext. A3 shows that respondent No. 1 agreed to execute the sale deed on the receipt of the balance amount in view of the power of attorney issued by respondent No. 3. It is argued by the learned counsel for the petitioner that even though the respondent No. 1 and 2 received the amount in the year, 2013 they did not execute the sale deed as per Ext. A1 agreement for sale, instead of that for defeating the rights of the petitioner, respondent No. 1 executed Ext. A4 settlement deed in favour of the respondent No. 3 with respect to the plaint schedule property. Therefore the petitioner approached the court for return of money advanced with interest. Along with the prayer for recovery of money it is sought to prohibit 3rd respondent from alienating the plaint schedule property.

8. Conversely, the learned counsel for the respondents argued in vehemence that it was the fault of the petitioner. He did not comply, rather he had no interest in executing the sale deed. Ext.A1 to Ext.A3 are corresponding to Ext. B1 to Ext. B3. Apart from that there are 3 documents produced on the side of the respondents. Ext.

B4 is the sale deed No. 1328/2022 of Chadayamangalam Sub Registrar's Office, dated 30/04/2022. Ext.B5 is the settlement deed No. 2737/2022 of Chadayamangalam Sub Registrar's Office dated 28/09/2022. Ext. B6 sale deed No.2740/2022 of Chadayamangalam Sub Registrar's Office dated 30/09/2022. In all these documents amply prove that respondent No. 1 and 2 are the registration witnesses. Those documents further show that they were present at the Sub Registrar's Office, Chadayamangalam for executing sale deed in favour of the petitioner. Ext. B7 is the Advocate notice issued to the petitioner stating that since the he did not turn up for execution of sale deed, he was required to pay compensation to the respondents to the turn on ₹ 5,80,000/-. Ext.B8 and Ext. B9 are the postal receipts as well as the acknowledgement card of the Ext. B7. The learned counsel for the respondents intensely argued that it was the fault of the petitioner, the respondents were ready to execute the sale deed whereas the petitioner failed to execute sale deed stating that the petitioner did not issue any notice stating that he was ready for the same. It is pertinent to note that there is no record produced to prove that the petitioner was ready for executing the sale deed. It can be seen that Ext.A1 was executed in the year 2013. The suit was found filed in the year 2025. It is true that there are some encumbrances in the plaint schedule property. But as per Ext. B7 it is seen that the same was cleared by the respondents. Still, according to the respondents, the petitioner was not amenable for purchase of the plaint schedule property. In that event the respondent No. 1 executed Ext. A4 document to respondent No. 3. So the present owner of the plaint schedule property is respondent No. 3. There is no agreement

between the petitioner and respondent No. 3. The matter in dispute and the rights between the parties can only be adjudicated after a full-fledged trial in this case. Whether the transfer of plaint schedule property to respondent No. 3 was for defeating the rights of the petitioner should be brought out in evidence after trial. It is prima facie proved that the petitioner could not perform his part as per agreement due to his own fault; therefore he cannot blame the respondents for no fault committed by them. At any rate property of respondent No. 3 cannot be prohibited for the debt allegedly incurred by respondent No. 1 and 2. There was no notice issued to the respondent No. 1 and 2 by the petitioner stating that he was ready to execute the sale deed by paying balance sale consideration. On the other hand, respondent No. 1 and 2 informed their readiness and willingness to execute the sale deed, which can be evidenced by Ext. B4 to Ext. B6 documents. On analysing the entire records and facts, I am of the view that the petitioner failed to make out a prima facie case. Balance of convenience is also not in favour of the petitioner. The petitioner will not put to irreparable injuries in the event of refusal of injunction. Hence I am not inclined to allow this petition. Thus pointnos.1 to 3 are found against the petitioner.

9. Point No. 4:- In view of my discussions and findings on point Nos. 1 to 3 the petition is liable to be dismissed.

In the result, the petition stands dismissed. There is no order as to costs.

(Dictated to the confidential assistant, typewritten by her, corrected and pronounced in open court on this 11th day of August 2025.)

Sd/-
SHANAVAS. A
Civil Judge (Senior Division)

Appendix:-

Exhibits marked for the Petitioner:-

A1	03.10.2013	Sale agreement.
A2	Nil	Agreement
A3	NIL	Agreement
A4	17.11.2020	Settlement deed.

Exhibits marked for the respondents:-

B1	03.10.2013	Copy of Sale agreement.
B2	NIL	Copy of agreement
B3	Nil	Copy of agreement.
B4	30.04.2022	Certified copy of Sale deed No. 1328/2022.

B5	28.09.2022	Certified copy of Settlement deed No. 2737/2022.
B6	30.09.2022	Certified copy of Sale deed No. 2740/2022.
B7	06.10.2022	Legal Notice.
B8	06.10.2022	Postal receipt.
B9	Nil.	Acknowledgment Card.

Witness examined for both sides: -NIL.

Sd/-
Civil Judge (Senior Division) .

Typed by : Binu.S
Compd.by: Sangeetha. L