

IN THE COURT OF THE MUNSIFF- MAGISTRATE, SASTHAMCOTTA.

Present : Miss.RESHMA RAJAN., CIVIL JUDGE (JUNIOR DIVISION)

Wednesday the 27th day of August 2025

5th day of Bhadra, 1947

IA. 1/2025 in OS. 144/2025

Between

Petitioner/
Defendant

Raji.Y, aged 41 years,
W/o.Prakash,
Prakash Bhavanam,
Naduvile Muri,
Sooranadu North Village,
Kunnathur Taluk, Kollam District
from Kochayyathu Veedu,
Puliyoor South Muri,
Kallelibhagom Village,
Kunnathur Taluk, Kollam District.

(By Adv. Sairam.K.G)

And

Respondent/
Plaintiff

Rajeev. K.Nair, aged 65 years,
S/o.kunjikrishnan Nair,
Rajeev Sadanam (Naluthundil),
Naduvile Muri, Sooranadu North Village,
Kunnathur Taluk, Kollam District.

(By Adv. S.Sudhikumar)

This petition is coming on for final hearing before me on 27/08/2025
and on the same day the court passed the following:-

ORDER

This is a petition filed under Order 39 Rule 1 CPC seeking temporary prohibitory injunction.

2. The averments in the petition are as follows:- The petitioner is the plaintiff in the original suit. The petitioner had acquired the plaint A schedule property, having a total extent of 13.49 Ares of property in block number 2 of Sooranadu North Village comprised in Re.Sy Nos.715/1-1 as per the settlement deed number 1946/04 dated 03.12.2004 of the SRO Sooranadu. Since then, the plaint A schedule property, which is lying as a single compact plot, is in absolute possession and enjoyment of the plaintiff. The plaint B schedule property having an extent of 60 cents comprised in Re Survey No. 715 in Block No.1 of Sooranadu North village lying in the East South portion of the plaint A schedule property is owned by the defendant. The defendant is carrying out excavation of soil and stones in the Plaint B Schedule property. On 25.05.2025, the defendant, with the aid of a JCB, illegally tried to excavate soil and stones in the plaint B schedule property and the said attempt was thwarted by the plaintiff and the neighbouring property owners. The acts of the defendant, if permitted, will destroy the lateral support of the Plaint A Schedule property. Hence, this petition is filed seeking a temporary prohibitory injunction restraining the defendants from committing any act of waste in both the A and B Schedule properties and from excavating soil from the B Schedule property in a manner that would cause destruction of the lateral support of

the Plaint A Schedule property. In the above circumstances, this application is filed seeking interim prohibitory injunction.

3. The respondent filed objection contending as follows: The petition is not maintainable either in law or in facts. The plaintiff filed the application suppressing material facts and obtained an ad interim injunction order. The plaint A and B schedule properties are not ecologically fragile areas. There is no illegal excavation carried out in the plaint B schedule property as alleged by the defendants. The plaint B schedule property is excavated only for agricultural purposes. The defendant had obtained valid permission from the Environmental Department and Pollution. The respondent had also given an application for obtaining a permit from Geological Survey for the same. Therefore the petition is filed with a malafide intention on the part of the plaintiffs. Hence the IA is liable to be dismissed with costs .

4. Based on the aforesaid rival contentions, the following points arose for consideration:

- i) *Whether the petitioner has got a prima facie case in his favour ?*
- ii) *In whose favour the balance of convenience lies ?*
- iii) *In the event of declining the relief, does it cause any irreparable injury to the petitioner ?*
- iv) *Whether the relief of temporary injunction as sought for can be granted ?*
- v) *Reliefs and costs ?*

5. Heard both sides. No exhibits were marked on the side of the

petitioner. Exts.B1 to B2 were marked on the side of the respondent. Ext.C1 commission report and Ext.C1(a) rough sketch were marked as court exhibits.

6. **Points Nos i to iv** :-As common facts are to be considered under the aforesaid issues, they are taken together for the sake of brevity and to avoid repetition. It is the case of the petitioner that he is residing in the Plaint A Schedule property and that to the east of the said property lies the respondent's property, which is described as the plaint B Schedule property. On 25.05.2025, the defendant excavated the laterite soil and stones in the plaint B Schedule property, purportedly for the purpose of cultivation. The learned counsel for the petitioner contends that the respondents are, in fact, attempting to excavate the soil in the plaint B Schedule property with the ulterior motive of conducting mining operations therein. It is further contended that if the excavations are permitted in the plaint B Schedule property, the lateral support of the plaint A Schedule property will be lost, leading to serious damage and even destruction of the Petitioner's property.

7. On the other hand, the learned counsel for the respondent contended that the petition is frivolous and filed without merit. It is their case that the defendants have no intention of unlawfully removing soil, stones, or engaging in mining activities and that the excavation is solely for agricultural purposes in the plaint B Schedule property. It is further submitted that the respondents have duly sought permission from the competent authorities for excavation and have specifically approached the Environmental Pollution Control Board as well as the Environmental

Geological Survey Board. They further contended that such excavation in the plaint B schedule property will not in any manner impair the lateral support of the plaint A Schedule property and thereby cause damage to the said property as alleged by the plaintiff.

8. Upon perusal of Exhibits B1 and B2 documents which were produced from the side of the defendant, it is evident that Exhibit B1 relates to a permission granted to one Shine, who is a different individual altogether, while the respondent herein is one Mr. Sudhi. The Ext. B1 further discloses that the permission is in the nature of a two-year grant for the purpose of mining, and not cultivation. Exhibit B2 is a certificate issued by the Pollution Control Board, which also indicates that the permission sought was connected with mining activity. Hence, the documents relied upon by the Defendant themselves shows that the excavation is not for agricultural purposes, but rather for carrying out mining operations in the plaint B schedule property .

9. The Adv commissioner visited the property and prepared the Ext C1 commission report and Ext. C1(a) rough sketch. As per the Ext. C1 plan the Advocate commissioner noted that there is a fence between the plaint A and B schedule property. There are also cultivation of jackfruit, manchiyam, plantation anjili etc present on the plaint A schedule property. It is also noted that the trees in the plaint B schedule property are destroyed by the use of JCB. There are also meter scales affixed on the plaint B schedule property. As per the Ext. C1 report it is clearly noted that by the Advocate commissioner that excavation of soil in the plaint B Schedule property would seriously damage the plaint A Schedule property

and the same will alter the lie and nature of the plaint A schedule property. Ext.C1 clearly establishes the present nature, location and features of the plaint schedule properties. It further supports the petitioner's case and indicates that, there exist a prima facie case in favour of the plaintiff.

10. Upon perusal of the affidavit, plaint, objection and other documents I am satisfied that the petitioner has made out a prima facie case and the balance of convenience is in his favor. If the order is not passed, irreparable injury or hardship will be caused to the applicant. The above points are answered accordingly.

11. **Point No. v**: In light of the above discussions, this court is of the view that the applicant is entitled to have the application allowed in his favour.

In the result the respondents and their henchmen are hereby restrained from trespassing into the plaint A schedule property and from excavating soil and stones causing any obstruction to the applicant's peaceful possession and enjoyment thereof or committing any waste, until the disposal of the suit. No costs.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in the open Court on this the 27th day of August, 2025.)

Sd/-
RESHMA RAJAN
CIVIL JUDGE (JUNIOR DIVISION)

APPENDIX :**Exhibits marked from the side of Petitioner:-** NIL**Exhibits marked from the side of Respondents:-**

- B1 - 15/11/2024 - Permission granted to one shine from state Environment Impact assessment Authority.
- B2 - 28/12/2024 - Certificate issued form Kerala State Pollution Control Board on 28/12/2024.

Court Exhibits:-

- C1 - - - Commission report prepared by Commissioner Advocate Remya.M.S
- C2 - - - Rough sketch prepared by Commissioner Advocate Remya.M.S

Third Party Exhibits:- NIL**Witnesses examined from the side of Plaintiffs:-** Nil**Witnesses examined from the side of Defendants:-** Nil

Id/-

CIVIL JUDGE (JUNIOR DIVISION)

//True Copy//