

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Smt. Sushama P., Principal Munsiff, Kannur
Monday, the 06th day of October, 2025 (14th Aswina, 1947)

IA.2/2025 and IA.4/2025 in OS.23/2025

IA.2/2025:-

1. Ameen Abdul Salam.V, S/o.Abdul Salam, aged 25]
years, student, Velikkakath House, P.O.Mattool,]
Kannur, 670302.]
- Supplemental Petitioner:]
2. Shabana Abdussalam @ Shabana Beevi,]
W/o.Abdussalam, aged 46 years, Velikkakath] **Petitioners/**
House, Thekkumbad Kadav, Mattool Central,] **Plaintiffs**
Kannur, Kerala, 670302, through PA holder]
Hashim.P.P, S/o.Ibrahim.K.P, aged 50 years,]
Puthiyapurayil House, Near Kadavu Road,]
Mattool Central, Kannur, Kerala, 670302.]
Impleaded and amended as per order in IA.8/2025]
and IA.12/2025.]

Vs.

Abdul Rasheed.A.C, S/o.Yousuf Haji, aged 40]
years, Business, Angethu Chalil House, Near] **Respondent/**
Nuriya Palli, Mattool Centre, Street No.27,] **Defendant**
Kannur District, Pin.670302.]

IA.4/2025:

Abdul Rasheed.A.C, S/o.Yousuf Haji, aged 40]
years, Business, Angethu Chalil House, Near] **Petitioner/**
Nuriya Palli, Mattool Centre, Street No.27,] **Defendant**
Kannur District.]

Vs.

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| 1. | Ameen Abdul Salam.V, S/o.Abdul Salam, aged 25 years, Student, Velikkakath House, P.O.Mattool, Kannur, 670302. |] | |
| | <u>Supplemental Respondent:</u> |] | |
| 2. | Shabana Abdussalam @ Shabana Beevi, W/o.Abdussalam, aged 46 years, Velikkakath House, Thekkumbad Kadav, Mattool Central, Kannur, Kerala, 670302, through PA holder Hashim.P.P, S/o.Ibrahim.K.P, aged 50 years, Puthiyapurayil House, Near Kadavu Road, Mattool Central, Kannur, Kerala, 670302. Impleaded and amended as per order in IA.8/2025 and IA.12/2025. |] | Respondents/
Plaintiffs |

These petitions coming on this day for hearing before me in the presence of Sri.K.Gopalakrishnan, Advocate for Petitioners in IA.2/2025 and respondents in IA.4/2025; Sri.A.V.Balachandran, Advocate for respondent in IA.2/2025 and petitioner in IA.4/2025 and the court passed the following:-

COMMON ORDER

IA.2/2025

This petition is filed under Order 39 Rule 1 of the Code of Civil Procedure.

2. The petition averments in brief are as follows:- The petition schedule property belongs to the mother of petitioner, Sabana Beebi by virtue of registered Jenmam assignment deed No.788/1998 of SRO, Pazhayangadi. The petition schedule property situates in R.S.No.196/11 in Mattool amsom desom. Sabana Beebi is residing in UAE along with her husband and other children for the last 3 years. Sabana Beebi authorized the petitioner to look after property and pay the tax, etc on time. The petitioner is managing the

petition schedule property. He visit the petition schedule property very rarely as it is away from his residence. The petition schedule property was assigned by Velikkakath Rahima in favour of Sabana Beebi as per deed No.788/1988 of SRO, Pazhayangadi. At the time of preparing the deed, the description and the extend was copied by the scribe from the back document No.2906/1988 by oversight as 10.40 Ares. Later it was realized that prior to the execution of deed No.788/1998, Raheema had assigned 2.02 Ares of property to Hussain at the north east corner of the property as per deed No.2630/1993. So the actual extend transferred as per deed No.788/1998 was 8.38 Ares. Subsequently, Sabana Beebi assigned 0.88 ares of the property to Hameed as per document No.201/2004 on the south eastern side of the property. So the actual extend in possession of Sabana Beebi is 7.50 Ares. Tax is remitted for 7.50 ares. Sabana Beebi has another property near to this petition schedule property by virtue of settlement deed No.789/1998 executed by Muhammed, father of Sabana Beebi. On 15-1-2025 evening the petitioner heard that one Khalid is constructing a house in the petition schedule property. On 16.1.2025, he visited the petition schedule property and found that construction work was in progress. He asked said Khalid about the construction. He told that he is only managing the work and the house is constructing for the respondent. The respondent told that he is working in gulf when the property was purchased and wherein the construction is going on. He telephoned the petitioner's mother and asked about the assignment. His mother Sabana Beebi told that she has not executed any assignment deed or any other deeds or agreements with respect to the petition schedule property to anybody. On hearing this the petitioner asked the respondent to stop the

unauthorized illegal construction and not to enter into the petition schedule property. But the respondent threatened that he had purchased the property from its owner and the petitioner has no right to interrupt. The respondent stopped the construction work for the day, but it is learnt that the respondent is preparing to start the work. It is realized that the petitioner could not resist the illegal construction of the respondent without the intervention of this court. Hence the petition to restrain the respondent and his men or agent or any other person claiming through or under the respondent from trespassing into the petition schedule property and from making illegal construction and commit waste therein.

3. The respondent filed counter statement contending as follows:- The suit is not maintainable. This respondent could not identify the petition schedule property from the description of property given or from the documents attached along with the petition. To that effect the petitioner will have to take out a commission at his expenses to identify the petition schedule property and after filing the report and plan by the Advocate Commissioner this respondent is to be permitted to file additional written statement. The contentions narrated in the 1st paragraph of the petition that petition schedule property belongs to one Sabana Beebi, mother of the plaintiff by virtue of registered assignment deed No.788/98 of SRO Pazhayangadi and petition schedule property is situated in R.S. No.196/11 of Mattool amsom desom and Sabana Beebi is residing in U.A.E. with her husband and children for the last 3 years and authorized the present petitioner to look after her property etc. are falsely fabricated contentions hence those are denied by this respondent. This respondent has got jenm right title and possession over the

property having an extent of 4.05 Are of property in R.S. No.196/11 of Mattool amsom desom Covered by Jenm Assignment Deed No.1817/21 of S.R.O. Pazhayangadi assigned by Farsana Beebi who is none other than the sister of above mentioned Sabana Beebl. The above said property with its larger extent was originally belonged to one Kurukkan Mahamood by virtue of registered jenm assignment deed Nos.647/71 and 2484/72 of S.R.O. Pazhayangadi and Kurukkan Mahamood has assigned 9.2 are of property situated in R.S. No.196/10B and 3.6 ares of property situated in R.S. No.196/10A of Mattool amsom desom in favour of his daughter Farsana Beebi by virtue of settlement deed No.3158/94 of S.R.O. Pazhayangadi. Farsana Beebi has assigned 4.05 ares of property in R.S. No.196/11 in favour of this defendant by virtue of assignment deed No.1817/21 of S.R.O. Pazhayangadi. The above said property has got specific boundaries on all the 4 sides. That property has no connection with the property belonged to petitioner's mother. Both are different properties. But the present petitioner herein has no idea about the property of his mother Sabana and with an ulterior motive and intention to defraud this respondent has shown to the Advocate Commissioner, the property belonged to this respondent covered by jenm assignment deed No.1817/21 of S.R.O. Pazhayangadi. Respondent has purchased the above said property for a total consideration amount of Rs.2,43,000/- and constructing a house in it complying all the legal formalities, Already he had spent Rs.10,00,000/- for constructing a structure up to lintel level. The intention of the petitioner is to obstruct the construction work for which he has no right or authority. The petitioner, his mother, or any other person other than this respondent has no right title and possession over

the property covered by jenm assignment deed No.1817/21 of S.R.O. Pazhayangadi. Petitioner's and his mother's intention is to establish some illegal right over the respondents property covered by jenm assignment deed No.1817/21 of S.R.O. Pazhayangadi for which they have no right or other manner of interest. This respondent is intending to file a counter claim to preserve and protect his property. The present petitioner has no authority for filing the above said suit. He is totally a stranger to the property of Sabana. He will have to prove and establish his authority for filing the above said suit. There is no bonafides and cause of action for the above said suit. Hence the petition is liable to be dismissed.

4. The points arise for consideration are as follows:-

- 1) Whether the petitioner has made out a prima facie case ?
- 2) Whether the balance of convenience is in favour of the petitioner ?
- 3) Whether the petitioner will be put to irreparable loss and injury if an order of injunction is not granted ?
- 4) Reliefs and costs ?

IA.4/2025

5. This petition is filed under Order 39 Rule 4 of the Code of Civil Procedure.

6. The petition averments in brief are as follows:- The petitioner is the respondent in the above case. This respondent could not identify the petition schedule property from the description of property given or from the documents attached along with the petition. To that effect the petitioner will have to take out a commission at his expenses to identify the petition schedule

property and after filing the report and plan by the Advocate Commissioner this respondent may be permitted to file additional written statement. It is denied that the petition schedule property belongs to Sabana Beebi, mother of the plaintiff by virtue of registered Jenmam assignment deed No.788/1998 of SRO, Pazhayangadi, the petition schedule property situates in R.S.No.196/11 in Mattool amsom desom. This respondent has got jenm right , title and possession over the property having an extent of 4.05 ares of property in R.S No.196/11 of Mattool amsom desom covered by jenm assignment deed No.1817/21 assigned by Farsana Beebi who is none other than the sister of Sabaha Beebi. The boundary of the property is as follows:- East – land in possession of Hameed and Sajid, north- land in possession of Muthalib, west- land in possession of Muthalib and south balance property in possession of Farsana Beebi (assignor). The above said property with its larger extent was originally belonged to one Kurukkan Mahamood by virtue of registered jenm assignment deed Nos.647/71 and 2484/72 of SRO, Pazhayangadi. Kurukkan Mahamood has assigned 9.2 are of property situated in R.S. No.196/10B and 3.6 ares of property situated in R.S. No.196/10A of Mattool amsom desom in favour of his daughter Farsana Beebi by virtue of settlement deed No 3158/94 of S.R.O. Pazhayangadi. Farsana Beebi has assigned 4.05 are of property in R.S. No.196/11 in favour of this defendant by virtue of assignment deed No.1817/21 of S.R.O. Pazhayangadi. The above said property has got specific boundaries on all the 4 sides. That property has no connection with the property belonged to petitioner's mother. Both are different properties. But the present petitioner herein has no idea about the property of his mother Sabana and with an ulterior motive and intention to

defraud this respondent has shown to the Advocate Commissioner is the property belonged to this respondent covered by jenm assignment deed No.1817/21 of S.R.O. Pazhayangadi. Respondent has purchased the above said property for a total consideration amount of Rs.2,43,000/- The intention of the petitioner is to obstruct the construction work for which he has no right or authority. The petitioner's mother's property is covered by jenm assignment deed No.788/98. It is a different property and has no connection with respondent's property. Its boundaries are east-nilavum parambum, north-Nafeesa's property, west-Farsana's property and south- Farsana's property. Its prior title deed was 2906/88. The petitioner, his mother, or any other person other than this respondent has no right title and possession over the property covered by jenm assignment deed No.1817/21 of S.R.O. Pazhayangadi. Petitioner's and his mother's intention is to establish some illegal right over the respondents property covered by jenm assignment deed No.1817/21 of S.R.O. Pazhayangadi The petitioner will have to prove and establish his authority for filing the above said suit. Respondent has obtained an injunction order against him suppressing the very important materials act. He has already spent more than Rs.35 lakhs for purchase of land and for construction of the structure upto lintel level. Balance of convenience is in favur of him. The plaintiff/respondent has no right or authority for obstructing the construction in his property. Due to the erroneous order passed by this court this respondent/petitioner is suffering hardship. This court may be pleased to vacate the injunction order passed against him. Hence the petition.

7. The respondent/plaintiff filed counter statement contending as follows:- The petition is not maintainable either in law or on facts. An

application under Order 39 Rule 4 of CPC is permissible only if in the application seeking temporary injunction or in the affidavit supporting such application, a party has made false and misleading statement in respect of material particular and injunction was granted without notice of the opposite party. Second proviso is that where an order of injunction has been passed after giving to a party an opportunity of being heard, said order shall not be discharged, varied or set aside except where such, discharge variations or setting aside has been necessitated by a change in the circumstances or unless the court is satisfied that the order has caused undue hardship to that party. In this case ad interim injunction was passed by this court on 21-1-2025 as per IA 2/2025 in OS 23/25. The respondent/plaintiff has not made false or misleading facts submitted in the affidavit in support of IA 2/25 to get an order. As such the petition has to be dismissed in limine. The respondent/defendant admitted in the affidavit that the assignor of the petitioner/ defendant had property in R.S 196/10A and 10B. The assignor had no property in R.S No.196/11. But the petitioner/defendant is trespassed into R.S No.196/11 and constructing a building there which belongs to the respondent/plaintiff. So on perusal of the affidavit it is proved before the court that the petitioner/ defendant trespassed into the property of the respondent/plaintiff and committing waste therein. The respondent/plaintiff has somehow manage to stop the illegal construction and the act of trespass by the order of this court passed in IA 2/2025. If the order of this court will be varied or modified or set aside this respondent/plaintiff will be put to great hardship and loss. The Advocate Commissioner appointed in this case has filed a report and eye sketch plan in this case. The eye sketch plan clearly

shows that A plot belongs to the plaintiff, wherein the illegal construction is going on and the D plot belongs to Farsana Beebi, who is the assignor of the petitioner/defendant. From the report and plan it is proved that the petitioner/defendant committed waste in the plaint schedule property by trespassing into the plaint schedule property. Hence the petition is liable to be dismissed.

8. The points arise for consideration are as follows:-

1. Whether the petition to dismiss or vary or modify the injunction order passed against the petitioner/ defendant is maintainable?
2. Reliefs and costs?

9. On the side of the petitioner, A1 to A8 were marked. On the side of the respondent, Exts.B1 to B8, C1 and C1(a) were marked.

10. Heard both sides.

11. **Point Nos.1 to 3 in IA 2/2025 and point No.1 in IA 4/2025:-**

Petitioner in IA 2/2025 and respondent in IA 2/2025 are referred hereinafter as petitioner and respondent respectively. IA 2/2025 is a petition to restrain the respondent and his men or agent or any other person claiming through or under the respondent from trespassing into the petition schedule property and from making illegal construction and commit waste therein. IA 4.25 is filed to vacate the ad interim order passed in IA 2/25. The case of petitioner is that the petition schedule property belongs to the mother of petitioner, Sabana Beebi by virtue of registered jenm assignment deed No.788/1998 of SRO, Pazhayangadi. assigned by Velikkakath Raheema. The petition schedule property situates in R.S.No.196/11 in Mattool amsom desom. The cause of action alleged is that on 16.1.2025, the petitioner visited the petition schedule property and found that construction work was going on in the

petition schedule property. When he asked the respondent over phone, he told that he is working in gulf when the property was purchased wherein the construction is going on.

12. The case of respondent is that the petition schedule property and respondent's property are different. The respondent purchased land from Farsana Beebi by virtue of Exhibit B1 document. The boundaries of plaint schedule property and property in Exhibit B1 are different. The respondent contends that their predecessor Farsana Beebi obtained property by virtue of deed No.3158 of 1994 in survey Nos.196/10B and 196/10A and Farsana Beebi assigned 4.05 ares of property in Re-survey 196/11 in favour of this respondent by virtue of jenm assignment deed No.1817/2021 of SRO Pazhayangadi and the property has specific boundaries and has no connection with the property belonged to petitioner's mother.

13. The learned counsel for the petitioner would contend that the plaint schedule property situated in Re-survey 196/11 in Mattool desom belongs to the 2nd plaintiff, the mother of 1st plaintiff in jenm by virtue of deed No.788/1998. (Exhibit A2). Originally, the property belonged to Kurukkan Mahamood in jenm by virtue of deed No.647/1971 (Exhibit A7) and deed No.2489/1972 (Ext.A8) documents. There are 3 items of properties in Exhibit A7 and A8, one in Re-survey 236/3 and other in Re-survey 196/10B and the third item is in Re-survey 196/11. Mahamood assigned the property to his daughters by separate registered deeds. The property in Resurvey 196/11 was gifted to Raheema as per deed No.2906/1988 (Exhibit A4) and property in 196/10A and 196/10B gifted to Farsana Beebi the predecessor of the defendants as per deed No.3158/1994(Ext.B2). The boundaries of

property in Re-survey 196/11 is detailed in Exhibit A7. East Nilavum Parambum, North Kunhabdullayude bharya makkalude ohari, west second item i.e. property in Re-survey 196/10B and South first item property in Re-survey 236/3. So it is clear that the property in Re-survey 196/ 10B is on the western side of the property of Re-survey 196/11 and the property in Re-survey 236/3 is on the southern side of the property in Re-survey 196/11. On perusal of report of the Commissioner and sketch plan, it can be seen that the plaintiff schedule property is on the eastern side of the property belongs to Farsana Beebi the predecessor of the defendant.

14. The learned counsel for the plaintiff would contend that Exhibits B4 and B5 produced by the defendants are fraudulently created and issued by the Village Officer, who dishonestly signed and affixed the seal in the documents. Exhibit A6 is the FMB, which shows that there are separate properties in Re-survey 196/10A, 196/10B and 196/11 and 236/3. The survey number in Exhibit B1 is falsely entered as 196/11 with an ulterior motive. The plaintiff strongly believes that the certificate issued by the Village Officer in favour of Farsana Beebi with respect to survey number has obtained by way of misrepresentation of facts or obtained by way of illegal means. The plaintiff's predecessor Raheema assigned 2.02 ares of property to Hussain as per Exhibit A1 and second plaintiff assigned 0.88 ares of property to Hameed as per Exhibit A5 document. The remaining property in resurvey. 196/11 is only having an extent of 7.50 ares which is within the possession of plaintiff No.2 by paying land tax which is marked as Exhibit A3. It is further contended that from the written statement and counter statement filed by the defendant/ respondent it clearly shows that the defendant purchased property

from Farsana Beebi as per Exhibit B1, who had property in Re-survey 196/10B. The plaintiff never assigned property to the defendant or anybody else and the resurvey number shown in Exhibit B1 is wrong and no way disturb the possession and title of the plaintiff. So it is crystal clear that Exhibit B1 is a created document with the help of land mafia and obtained certificate from Village Officer by way of misrepresentation and by illegal means. The act of Farsana Beebi , the assigner in Exhibit B1 and then Village Officer amounts to forgery. The plaintiff sent a lawyer notice to the then Village Officer who is now working as Village Officer at Kollam West Village and the defendant to show cause the reason to issue Exhibits B4 and B5, without any authority. The defendant received the notice on 21.06.2025 and the Village Officer on 24.06.2025, but no reply received so far. The plaintiff has not suppressed any material facts from this court. The petitioner has proved that the plaint schedule property is in Re Survey 196/11 in Mattool Amsom Desom belongs to the plaintiff as per Exhibit A2 and in possession of the plaintiff as considered by Exhibit A3.

15. The learned counsel for the respondent would contend that the commissioner's report and plan reveals that an incomplete house is there in the plaint schedule property. A house of that nature reported by the commissioner cannot be constructed within a couple of months. The defendant purchased the property in the year 2021 and gradually started the construction of house out of his hard earned money. The 2nd plaintiff through her power of attorney holder as well as brother namely Nisar had filed a suit for recovery of possession, prohibitory injunction and mandatory injunction against the assignor of the defendant namely Farsana Beebi and her husband

before this court as OS 116/22. Served copy of plaint in OS 116/22 is marked as Ext.B8. The plaint comprises the plan of the plaint schedule property in that suit. The plaint pleadings in that suit and the plan annexed with that plaint are sufficient to prove that the case of the plaintiff in this suit is totally false and baseless and her aim is only to harass the defendant who purchased property from her sister who is in enemical terms with her. The plaintiff's application to withdraw the suit with liberty to file fresh suit was allowed on 26-3-2025 and the suit was dismissed. Relying upon the same title deed the plaintiff claims A schedule property in OS 116/22 which is plot B in the plan annexed to that plaint and the extent shown is 4.08 cents. The boundaries of the plaint A schedule property shown in OS 116/22 and the present suit are different. The extent and boundaries are entirely different. The lie and nature of the land is evident from the commissioner's sketch plan. The property shown to the commissioner as plaint schedule property is lying on the north of the road. The plaintiff is holding property on the south of the road as plot C. This road is newly formed one as revealed from the Ext.B7 agreement executed by the power of attorney holder in favour of Muthalib.A.P which is narrated and reiterated in the first sentence of para 4 of the plaint in OS 116/22. So the plaintiff's property lying on the south and in between these properties the road is formed which establishes that the claim of the plaintiff is baseless and false. Injunction being an equitable relief the parties who seek equity must come before the court with clean hands. The plaintiff miserably failed to establish a prima facie case. There is no irreparable injury to the plaintiff when the construction of defendant's house which is in halfway is completed in his own property, which is fairly admitted by the plaintiff in OS

116/22. Balance of convenience is also in favour of the defendant. The defendant has purchased this property from Farsana as per Ext.B1 and the construction of the house is in progress. A considerable amount has already been spent by the defendant. If the incomplete structure is allowed to be exposed to rain and sun, it will ruin within a short span of time. The plaintiff will not lose anything because of it. The plaintiff is not entitled for the relief as prayed in IA 2/25.

16. Properties including the plaint schedule property originally belonged to Mahamood, the father of the plaintiff No.2 by virtue of Exts.A7 and A8 documents. Her father assigned property in favour of his three daughters namely Raheema, Shabana Beebi and Farsana Beebi. The property of Mahamood were comprised in R.S No.236/3, 196/10B and 196/11. He he property in R.S No.196/11 gifted to Raheema as per Ext.A4, property in R.S No.196/10B is gifted to Farsana Beebi as per Ext.B2 and the property in R.S No.236/3 was gifted to Shabana Beebi by virtue of document No.789/1998. Thereafter Raheema assigned her property in R.S No.196/11 to Shabana Beebi as per Ext.A2 document. The plaint schedule property is the 3rd item in Ext.A7 document. The boundaries of property mentioned in Ext.A7 is east- nilam paramba, north- Kunhabdullayude bharya makkalude ohari, south- first item in R.S No.236/3 west-2nd item in R.S 196/10B. So the 2nd plaintiff obtained property in R.S No. 236/3 and 196/11 on the strength of document No.788/1998 (Ext.A2) and 789/1998. So the property belongs to Farsana who is the predecessor in interest of the defendant is on the west of property in R.S No.196/11. The commissioner's report shows that plot shown as B belongs to Farsana Beebi is on the west and the property in R.S No.236/3 shown as C

plot situates on the south of plot A. Prior to the assignment in favour of the plaintiff No.2 Raheema had assigned 2.02 Ares of property to Hussain at the north east corner of the property as per deed No.2630/1993. So the actual extend **trans** Ext.A6 is the FMB containing Field Resurvey 196. On perusal of Ext.A6 it is seen that the property in 196/10B situates on the west of property in Resurvey 196/11.ferred as per deed No.788/1998 was 8.38 Ares. Subsequently, Sabana Beebi assigned 0.88 ares of the property to Hameed as per document No.201/2004 on the south eastern side of the property. In the commissioner's report the property of Hameed is shown as 'G' plot having an extent of 2 cents. So the prior title deeds produced before the court shows that Farsana Beebi who is the predecessor in interest has no property in R.S No. 196/11 which belongs to the 2nd plaintiff as per Ext.A2 document. The north and west boundaries shown in Ext.A7 is tallying with the commissioner's sketch. The sketch shown by the commissioner probabilise the case of petitioner that Farsana Beebi has no property in R.S No.196/11. The four boundaries of property of the defendant covered by Exhibit B1 are East land in possession of the Hameed and Sajid, North land in possession of Muthalib, West land in possession of Muthalib and South balance property in possession of Farsana Beebi. But the commissioner has noted property of Farsana Beebi on the st of plaint schedule property.

17. The main argument of the learned counsel for the defendant/ respondent is based on the pleadings in the plaint in OS 116/22 (Ext.B8). It has come out that that suit was withdrawn by the plaintiff due to defects in the pleading and suit was dismissed as withdrawn. So the contentions based on Ext.B8 cannot be given much importance while deciding the question of

prima facie case. The contentions raised regarding the fabrication of documents by incorporating false survey number and the challenge against Exts.B6 and B7 can only be decided after a full fledged trial.

18. The petitioner has alleged encroachment by creating false documents. It is to be noted that owner of the property (2nd plaintiff) is residing abroad for the last three years and his son who is residing away from the plaint schedule property visit the property rarely. Hence there is no possibility of knowing the encroachment at earlier point of time. The argument of the learned counsel for the respondent that respondent is in possession of plaint schedule property and possession is to be protected cannot be accepted in the present factual situation because the suit property is to be preserved till the disposal of the suit.

19. The case of petitioner that the respondent encroached into the plaint schedule property and construction of house is done can be accepted as believable. In **Ezhuthachan National Academy and Others Vs. R. Gopinathan Nair and Others reported in 2019 (1) KHC 798** it is held that the Power to grant temporary injunction u/s 94 and Order 39 Rule 1 and 2 is a procedural law and section 141 CPC makes it applicable to all proceedings in a court of civil jurisdiction. The object of granting temporary injunction is preservation and protection of subject matter without any alteration or change until further order or disposal of the suit or proceedings as the case may be. In otherwards, the power to grant temporary injunction is given to the court to prevent the frustration of suit or proceedings, as the case may be, by subsequent events or conduct of the parties, during the pendency of the proceedings. There is no declaration of any kind of rights. The order of

temporary injunction shall have effect till the specified time or further order or the disposal of the suit or proceedings and it will merge in the final judgment. In short, it is an enabling provision only to keep the subject matter alive, as such, to adjudicate the dispute on merits, completely and effectively. The entitlement of temporary injunction as described u/s 94 (c) r/w Order 39 Rule 1 and 2 is not a substantive right but it is a procedural right which can be granted at the discretion of the court. A substantive right cannot be at the discretion of the court and it must be one that can be claimed as of right. So by applying the dictum laid down in the above decision it is made clear that the object of granting temporary injunction is to preserve the subject matter of the suit till the disposal of the suit or other proceedings.

20. From Exts.A1 to A8 documents and Exts.C1 and C1 (a) marked on the side of petitioners and from the affidavit averments the petitioner has established a prima facie case and if any construction in the plaint schedule property is continued the petitioner will be put to hardships and hence the balance of convenience is also in favour of the petitioner. In this circumstances there is no need to alter modify or vacate the order passed in IA 2/2025. Hence these points are answered in favour of the petitioner.

21. **Point No.4 in IA.2/2025 and point No.2 in IA.4/2025**:- Based on the finding on above points, these points are also answered accordingly.

In the result,

1. I.A 2/2025 is allowed and the respondent and his men or agent or any other person claiming through or under him are restrained by an order of ad-interim injunction from trespassing into the petition schedule property,

from making illegal construction and committing any waste therein till disposal of the suit

2. I.A 4/2025 is dismissed.

3. Parties shall bear their respective costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 6th day of October, 2025).

Sd/-
PRINCIPAL MUNSIF

Petitioner's Exhibits:-

- A1 : 17.09.1993 : Certified copy of Jenm Assignment deed No.2630/1993 of SRO, Pazhayangadi.
- A2 : 02.03.1998 : Certified copy of Jenm Assignment deed No.788/1998 of SRO, Pazhayangadi.
- A3 : 01.01.2025 : Copy of basic tax receipt.
- A4 : 12.12.1988 : Certified copy of document No.201/2004 of SRO, Pazhayangadi.
- A5 : 13.01.2004 : Certified copy of document No.2906/1988 of SRO, Pazhayangadi.
- A6 : 27.03.2025 : Copy of FMB field No.196 in Mattool amsom, issued by Village Officer, Mattool.
- A7 : 23.03.1971 : Certified copy of document No.647/1971 of SRO, Pazhayangadi.
- A8 : 18.12.1972 : Certified copy of document No.2489/1972 of SRO, Pazhayangadi.

Respondent's Exhibits:-

- B1 : 15.07.2021 : Copy of document No.1817/2001 of SRO, Pazhayangadi.
- B2 : 22.11.1994 : Copy of document No.3158/1994 of SRO, Pazhayangadi.
- B3 : 23.01.2025 : Copy of basic tax receipt.
- B4 : 12.07.2021 : Copy of certificate issued by Village Officer, Mattool
- B5 : 12.07.2021 : Thandapper account.
- B6 : : Photograph.
- B7 : 12.11.2021 : Agreement executed between Shabana Abdul Salam and Muthalib.a.P.
- B8 : : Copy of plaint in OS.116/2022 filed before the Munsiff Court, Kannur.

Court's Exhibits:-

- C1 : : Commission report submitted by Muhsina.O.P, Advocate Commissioner.
- C1(a) : : Draft sketch plan submitted by Muhsina.O.P, Advocate Commissioner.

Petitioner's Witnesses:- Nil.

Respondent's Witnesses:- Nil.

Sd/-
PRINCIPAL MUNSIFF
// True Copy//

PRINCIPAL MUNSIFF

Fair/Spare of Common Order in
IA.2/2025 and IA.4/2025 in OS.23/2025,
dt: 06.10.2025.

