

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Smt. Sushama P., Principal Munsiff, Kannur
Tuesday, the 8th day of July, 2025 (17th Ashadha, 1947)

IA. No.02/2024 in OS. No.283/2024

Ranjith.P, S/o.Unnikrishnan, aged 36 years,]
Souparnika, Valavil Cheleri, P.O.Cherleri, Cheleri] Petitioner/
amsom, Valavil Cheleri desom, Kannur District,] Plaintiff
Pin.670604, Mob: 9400440553.]

Vs.

Leela Kakkoprath, D/o.Kunhiraman, aged 76 years,]
residing at Valavil Cherleri, P.O.Cheleri, Cheleri]
amsom, Valavil Cheleri desom, Kannur District,] Respondent/
Pin.670604. Rep.by PA holder Jaya.K,] Defendant
W/o.Jayarajan.T.C, aged 56 years, Vrindavanam, Boat]
Jetty Road, P.O.Dharmadam, Kannur District, Kerala,]
670106. As per order in IA.4/2024 dated.05.06.2024.]

This petition is filed Under Order 39 Rule 1 of C.P.C.

This petition coming on this day for hearing before me in the presence of S/Sri.K.K.Balaram, K.Babu, K.O.Prathap Nambiar, M.R.Hareesh, Manju.K.N, Anjali.C and Abhijai.E.M, Advocates for the petitioner; S/Sri.Anil.D.Kaithakkal and N.R.Shanavas, Advocates for respondent and the court passed the following:-

ORDER

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 suit is filed for fixing the northern boundary of the plaint A schedule property with reference to

the plaint B schedule property on the basis of title deed of the plaintiff and defendant and for restraining the defendant, her men or agents or any other person claiming through or under her from trespassing into the plaint A schedule property and committing any act of waste in the plaint A schedule property. The petition A schedule property originally belonged to M. Unnikrishnan, the father of the petitioner. Unnikrishnan gifted the petition A schedule property to the petitioner as per the gift deed No. 637/2019 of SRO, Valapattanam. The petition A schedule property was 1st thak in the above said deed. Thereafter, the petition A schedule property is in his exclusive possession. Except the petitioner no other person is having any kind of right, title, interest or possession over the petition A schedule property. The respondent is having property on the northern side of the petition A schedule property. There is no visible demarcating boundary in between the property of the petitioner and respondent. His property is situated in R.S No.4/129 of Cheleri amsom, Valavil Cheleri desom. Property of the respondent is situated in R.S 50/14 of Kolacheri amsom Pattayam desom. Property of the respondent is shown as petition B schedule property. On 25-7-2024 at about 10 a.m the respondent along with her men came to the petition schedule property and tried to construct a compound wall encroaching into the petition A schedule property and tried to annex a portion of the petition A schedule property to her property. That was timely resisted by the petitioner. But the respondent openly proclaimed that he will come with more force and construct compound wall annexing a portion of the petition A schedule property to the property of the respondent. The respondent is having influence on political parties and they are having muscle power also. Meanwhile the respondent has the knowledge of filing of the suit.

So it is just and necessary to pass an order of temporary injunction restraining the respondent her men or agents or any other person claiming through or under her from trespassing into the petition A schedule property and committing any act of waste in the petition A schedule property. If this petition is not allowed, the petitioner will be put to irreparable injury and hardship. Hence the petition.

3. The respondent filed counter statement contending as follows:-The respondent denied the possession and title of the petitioner over the petition schedule property and denied the averment regarding the trespass. The petitioners filed petition suppressing the material facts petition. A schedule property is not identifiable. It is an imaginary property. The petitioner is not in possession of the petition schedule property. The plaintiff is not having property in re survey 4/10 of Cheleri village. The petitioner's father also did not have such property in resurvey 4/10 of Cheleri village. The plaintiff is trying to take advantage of the error in the document by which his father has acquired property. The father of the plaintiff acquired property by registered document number 430/2001 of SRO Valapattanam. In the said document item number one in the document having an extent of 0.81 Ares Survey number was wrongly shown as 4/10 of Cheleri village. On understanding the mistake, the respondent made a detailed enquiry and it is learnt that assignor of property to the plaintiff's father Jameela had made a complaint to the village officer Cheleri and in the said complaint it is alleged that after the mistake in survey number came to the notice of Jameela plaintiff's father decided to execute a correction deed. As directed by the plaintiff's father, assigner, Jameela had gone to the Registrar's Office to execute a correction deed, but the plaintiff and his father made Jameela to execute another sale deed as registered document number 649

of 2024. The intention of the petitioner is to annex the property of the defendant to his property. The respondents property is lying at least 4 feet lower than the petitioners property and the mud wall served as boundary separating property of plaintiff and defendant. The respondent is not residing near the property hence, taking advantage of absence of the respondent from the property, the plaintiff has levelled a portion of respondents property to make a claim over the respondents property. There is no prima facie case or balance of convenience in favour of the petitioner if injunction is granted. The respondent will be put to hardship and loss and the respondent will not be able to enter his own property. The property of the respondent is not as shown in B schedule. The tax receipt with respect to petition schedule property is produced by this respondent. Hence the petition is to be dismissed.

4. The following points arise for consideration are:-

- 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 ?

5. On the side of the petitioner, Exts.A1 to A3 were marked. On the side of the respondent, Exts.B1 to B5, C1 and C1 (a) were marked.

6. Heard both sides.

7. **Point Nos.1 to 3:-** The case of the petitioner is that he is the owner in possession of petition A schedule property by virtue of Ext.A1 gift deed executed by his father. The petition A schedule property was the 1st thak in the

above said deed. He is in possession and enjoyment of the petition schedule property and remitting land tax. Ext.A3 is the tax receipt. On 25-7-2024 at 10 a.m the respondent with her men trespassed into the petition A schedule property and tried to annex a portion of the petition A schedule property to her property. Ext.A2 is the back document of Ext.A1.

8. The respondent resisted the case of the petitioner and denied the title and possession of the petitioner over petition A schedule property. The property of the respondent is shown as petition B schedule property. The petitioner or his father has no property in R.S No.4/10 of Cheleri Village. On the side of the respondents Exts.B1 to B5 were marked. Ext.B1 is the certified copy of registered deed No.430/2001. Ext.B2 is the certified copy of jenm deed No.1108/2006. Exts.A1 and B3 are one and the same document. Ext.B4 is the registered jenm deed No.649/2024. Ext.C1 is the commissioner's report.

9. The case of the respondent is that the petitioner is trying to take advantage of error in the document by which his father had acquired property by way of Ext.A2 document. In the said document it is shown that the extent of 0.81 Ares is situated in R.S No.4/10 of Cheleri Village. The petitioner is trying to lay false claim over the respondent's property on the basis of said mistake. The assignor of the plaintiff's father made complaint to the village office regarding the mistake in the survey number crept in the document. They decided to execute a correction deed. But instead of executing correction deed Ext.B4 sale deed is with respect to 0.81 Ares in Cheleri village was executed.. The respondent's property is situated in both Cheleri village and as well as in Kolacheri village. The respondent's property is lying atleast 4 feet lower than the petitioner's property and there is a mud wall separating property of the

petitioner and respondent. The plaintiff has levelled a portion of the respondent's property to make claim over the respondent's property.

10. The learned counsel for the respondent would contend that the petitioner has failed to bring out a prima facie case. The respondent being the owner of the property he will be put to hardship and injury if injunction is granted. The respondent could not enter his own property.

11. In Ext.C1 report it is stated that on the north of A schedule property is the B schedule and there is no physical boundary to demarcate A and B schedule properties. The commissioner has noted removal of soil on the extreme northern side of the A schedule property. The case of the petitioner is that the respondent is trying to encroach the petition A schedule property and trying to annex the petition A schedule property with petition B schedule property. Whereas the case of the respondent is that on the strength of Ext. B4 sale deed the plaintiff tried to level the property of the respondent.

12. On perusal of Ext.A1 it is seen that Unnikrishnan, father of petitioner executed gift deed with respect to 1st and 2nd thaks. The property in R.S No.4/10 having thandaper account No.2019/21806/13 in R.S 4/129 is the 1st thak. Ext.A2 is the back document of Ext.A1. Father of the petitioner purchased the property from Jameela by virtue of Ext.A2. Ext.A3 is the tax receipt in the name of the petitioner.

13. The plaint A schedule property marked in red ink in Ext.C1 (a). On the east of plaint A schedule property Cheleri Kolacherrymukk Road, on the west property in possession of Jameela, on the north the B schedule in the possession of the defendant and on the south property in possession of the plaintiff situates. There is no boundary to demarcate the plaintiff's property

with the plaint B schedule property on the northern side. East of the plaint schedule property is the road and on the west there is a stone wall. The commissioner has noticed loose soil on the boundary of A schedule property abutting the B schedule property and loaded laterite stone on the road side.

14. The contention of the respondent is that the plaint A schedule property is not identifiable. The plaintiff does not have any right, title, interest or possession over the property shown as plaint A schedule property. The plaintiff has to prove the identity of his property by taking out a commission. The plaintiff is not having property in R.S 4/10 of Cheleri Village. The plaintiff tried to take advantage of the error in the document by which his father has acquired property. In the document No.430/2001 of SRO, Valapattanam survey number was wrongly shown as R.S 4/10 of Cheleri Village.

15. From the affidavit averments, Exts.A1 to A3 documents and loose soil and loaded stones noted by the commissioner in Ext.C1 report the petitioner is able to make out a prima facie case of possession of plaint schedule property. The contentions of the respondent that on realizing the mistake in the survey number Jameela has filed complaint before the village officer, instead of executing correction deed a sale deed was executed by the father of the petitioner and the petitioner has no property in survey No.4/10 of cheleri village can be considered at the time of full fledged trial. The status quo of the property is to be maintained till the disposal of the suit. Inorder to fix the northern boundary of plaint A schedule property the suit was filed. If the injunction is not granted the petitioner will be put to hardships and thus balance of convenience is in favour of the petitioner. Hence the ad interim injunction granted restraining the respondent from trespassing into plaint A schedule

property and committing any act of waste in the plaint A schedule property is made absolute till the disposal of the suit. Hence these points are answered in favour of the petitioner.

16. **Point No.4:-** Based on the finding on point Nos.1 to 3, this point is also answered in favour of the petitioner.

In the result, this petition is allowed and the respondent and his men or agents are restrained by a temporary injunction from trespassing into the plaint A schedule property and committing any act of waste in the plaint A schedule property till the disposal of the suit.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 8th day of July, 2025).

Sd/-
PRINCIPAL MUNSIFF

Plaintiff's Witnesses:- Nil.

Plaintiff's Exhibits:-

- A1 : 14.03.2019 : Copy of document No.637/2019 of SRO,
Valapattanam.
- A2 : 25.04.2006 : Copy of document No.1421/2006 of SRO,
Valapattanam.
- A3 : 15.02.2024 : Copy of basic tax receipt.

Defendant's Witnesses:- Nil.

Defendant's Exhibits:-

- B1 : 07.02.2001 : Certified copy of document No.430/2001 of SRO, Valapattanam.
- B2 : 01.04.2006 : Certified copy of document No.1108/2006 of SRO, Valapattanam.
- B3 : 14.03.2019 : Certified copy of document No.637/2019 of SRO, Valapattanam.
- B4 : 14.03.2024 : Certified copy of document No.649/2024 of SRO, Valapattanam.
- B5 : 12.08.2024 : Copy of application and information obtained under Right to Information Act.

Court Exhibits:-

- C1 : : Commission report submitted by Aswathi Digesh.C, Advocate Commissioner.
- C1(a) : : Draft sketch plan submitted by Aswathi Digesh.C, Advocate Commissioner.

Sd/-

PRINCIPAL MUNSIFF

// True Copy//

PRINCIPAL MUNSIFF

ae/

Fair/Spare Order in IA. No.02/2024 in
OS. No.283/2024 dated: 08.07.2025.

