

IN THE COURT OF THE MUNSIFF OF KANNUR  
Present: Sri. Manikandan. C. K., Additional Munsiff, Kannur  
Tuesday, the 27<sup>th</sup> day of May, 2025 (6<sup>h</sup> Jyayshta, 1947)

**I A 03/2024 in ORIGINAL SUIT No. 322/ 2020**

Bappinatakath Suharabhi, W/o Hussain Kunhi, aged 60 years, Ummal Quara, Jayanthi Road, PO.Chalad, Kannur. ]  
] Petitioner/  
] Plaintiff

Vs.

1 Sooraj Kumar, father's name is not known, aged 79 years, Manamanthra, Near Kunnathukavu, Jayanthi Road, Chalad PO., Kannur-670014. ]  
] Respondents/  
] Defendants

2 Silja Sooraj Kumar, W/o Sooraj Kumar, aged 45 years, Manamanthra, Near Kunnathukavu, Jayanthi Road, Chalad PO., Kannur-670014. ]  
]

3 Prajith @ Kuttan, S/o Bhaskaran, aged 43 years, Manamanthra, Near Kunnathukavu, Jayanthi Road, Chalad PO, Kannur-670014. ]  
]

4 Supplemental defendant No.4, Kannur Corporation represented by its Secretary. ]  
]

This petition coming on the 21<sup>st</sup> day of May, 2025 for final hearing before me in the presence of S/Sri. P K Naushad and Sarith K P , Advocates for the petitioner/plaintiff; of Sri. K Mahesh, Advocate for R1 to R3; Sri. C K Rathnakaran, Advocate for R4; and having stood over for consideration to this day; the court passed the following:-

**ORDER**

This petition is filed under order XXVI, Rule 10 of CPC.

2. Gist of the averments in the petition is as follows:- Petitioner herein is the plaintiff in the above suit. The above suit is filed for a prohibitory injunction restraining the defendants from proceeding with the construction in their

property in violation of the approved plan and building permit and also to demolish the illegal construction already made in their property. The defendants appeared and filed the written statement denying the contentions raised in the plaint and further contented that the construction is according to the approved plan and permit by the Corporation. Further they have produced the approved plan and permit before the court. Hence, it has become highly necessary to remit the report and plan already submitted in this case to the same commissioner and she may be asked to inspect the property again with the approved plan and permit produced by the defendants. Hence, the application is filed remitting the report and plan to the same advocate commissioner to report the following things:-

a) The present lie and condition of the properties belongs to the plaintiff and defendants respectively.

b) To inspect the property of the defendants and the construction made in it with the approved plan and permit and report whether there is any deviation in the construction from the approved plan.

c) To prepare a plan and mark the illegal construction made by the defendant with measurements.

3. Respondents 1 to 3 filed counter. The averments in the counter is as follows:- The above petition is not maintainable either in law or on facts. These defendants submitted that earlier the petitioner has filed a petition as I.A. No. 2/2021 and accordingly this Court was pleased to remitted back the commissioner's report and plan to the same advocate commissioner and she inspected the petition schedule property and the respondents' property on 09.04.2021 and filed her report and plan. During the inspection of the commissioner, the counsel of these respondents duly showed the commissioner as well as the surveyor the approved plan and permit and

they measured the property of these respondents on the basis of the same. The advocate commissioner has prepared a plan with the help of the surveyor deputed by this Court. The surveyor and advocate commissioner have taken the measurement in between the newly constructed building and the boundaries of the property on all sides. From the plan produced by the advocate commissioner, it is very clear that this respondent has reduced the plinth area of the building from the approved building permit and plan. Therefore, there is no need to remit the report and plan to the advocate commissioner for the very same purpose. The petitioner is trying to prolong the matter by filing petitions one by one in the above case. Hence, the application is to be dismissed with costs.

4. Heard both sides.

5. The sole question to be considered is whether the application is allowable or not?

6. **The Point** :- The main contention of the petitioner/plaintiff is that the present suit is filed for injunction restraining the defendant/respondent from proceeding with the construction in their property in violation of approved plan and building permit and to demolish illegal construction already made in the property. Further contention is that the defendant took a plea that the construction is according to the approved plan and permit issued by the Corporation. Hence, this application to direct the commissioner to inspect the property again with the approved plan and permit produced by the defendant. Contention of the respondents/defendants is that respondents had shown the approved plan and permit to the commissioner as well as the surveyor and they measured the property of the respondents on the basis of the same. As per the plan produced by the commissioner, these respondents had reduced the plinth area of the building from the approved

permit and plan. Therefore, there is no need to remit back the report and plan to the commissioner.

7. Admittedly, the adjacent eastern side of the plaint schedule property belonged to the defendant No.1. The present suit is filed to restrain the defendants from further construction of work carried out in the property by deviating the approved plan and permit. The contention of the respondents/defendants is that the 1st defendant is constructing a residential building in the property belonged to him in accordance with the building permit and approved plan issued by Kannur Municipal Corporation and the construction work of the building is at present in the occupancy stage. Defendant No.4, Secretary, Kannur Municipal Corporation filed written statement by stating that Corporation had issued a building permit to defendant No.1 to construct a building in a property having an extent of 7.83 cents in RS No.106/134 and defendant No.1 had completed the construction of the building as per building permit dated 30.12.2022 and defendant No.4 had issued an occupancy certificate to the defendant No.1 on 29.03.2023. Further contention of the defendant No.4 is that the building was constructed after leaving required set back as per Kerala Municipalities Building Rules. In order to prove the case, the plaintiff had taken out an emergent commission and commissioner filed report before this court on 18.12.2020. Learned advocate commissioner reported that the concrete building which is under construction with ongoing work stands 14 metre tall and consists of three floors with additional basement for parking. Thereafter, learned commissioner again inspected the plaint schedule property and filed report before the court on 11.08.2021. Learned advocate commissioner also reported that there are changes made in the construction as compared to the inspection done in the month of

December. Commissioner also reported that there are huge horizontal crack on the southern wall of the building and also found the vertical cracks on the eastern side of the house wall. Defendants 1 to 3 had produced the plan on 27.03.2024 as per order in IA 2/2024 dated 15.09.2024. Now the point to be decided in the present suit is that whether the construction done by defendants 1 to 3 in their property in accordance with the approved plan issued by defendant No.4 or not. Hence, I am of the view that there is a merit in the application and therefore same is liable to be allowed. Hence, application allowed.

In the result,

1. The application is allowed.
2. Same commissioner is appointed to inspect the plaint schedule property and file report within two months.
3. Petitioner shall pay Rs.4,000/- as commission batta directly.
4. No order as to costs.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open court, this the 27<sup>th</sup> day of May, 2025).

Sd/-

ADDITIONAL MUNSIFF

Fair/Copy of judgment in  
IA.03/2024 in OS. No.322/2020  
Dated: 27-05-2025

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