

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Sri. Manikandan C.K, Additional Munsiff

Monday, the 07th day of April, 2025

(17th Chaithra, 1947)

IA 02/2025 In O.S 110/2025

Sheena R.K, W/o. Balaji & D/o. Narayanan,)
aged 44 years, Koorthankandy Illam, Kalarivathukkal,) Petitioner
PO Valapattanam, Kannur- 670 010.)

Vs.

Suresh Kumar K, S/o. Narayana Pidarar, aged 60)
years, Private work, Koorthankandy Illam,) Respondent
Kalarivathukkal, PO Valapattanam, Kannur.)

This petition coming on 05th day of April 2025 for final hearing before me in the presence of Sri. K.Gopalakrishnan, Advocate for petitioner; and of Sri. T.M Phalgunan, Advocate for respondent; and having stood over to this day for consideration; and the court passed the following:

ORDER

This petition is filed under Order XXXIX, Rule 1 of CPC.

2. Gist of the averments in the petition is as follows:- Petitioner herein is the plaintiff in the above case. Petitioner is the wife of Balaji, the owner of the petition 'A' schedule property. Petitioner managing the property on his behalf. The petition 'A' schedule property belongs to Koorthankandy Illath Balaji by virtue of registered partition deed No.1677/2013 of SRO, Valapattanam. Balaji is the 4th executant in the deed and 2nd schedule property of the deed is allotted to him. Ever since the partition deed petitioner's husband has been possessing the petition schedule property as his own with absolute title and possession. The said property is shown as petition 'A' schedule property. Petitioner's husband is working in Saudi Arabia. Petitioner managing the property and filing the suit for and on behalf of her husband. Originally the petition 'A' schedule property belonged to Krishna Pidarar, father of Balaji as per registered partition deed No.539/1996 of SRO, Valapattanam. In which 1st schedule property for an extend of 5.96 Ares was allotted to Krishna Pidarar. A sketch plan is attached to deed No.539/1996 and the property is marked in the plan as plot 1A, 1B, 1C, ID, IE, IF. The building situated in the property is described in the schedule as "randu muri eduppum athinte varanthayum athinte meleyulla randumuriyum". The 2

room eduppu has an upstairs portion with two rooms. The said building is in plot 1A in the plan. The eastern side measurement of the building as shown in the plan as 35 feet. The respondent's father Narayana Pidarar got 2nd schedule property of the partition deed No.539/1996. Narayanan Pidarar is no more and the property is in co-ownership possession of the respondent, his brother and sisters. The property is shown as petition 'B' schedule. The respondent is managing the property for and on behalf of other legal heirs of Narayana Pidarar. The respondent is reconstructing the building situated in the petition 'B' schedule. The property of said Narayana Pidarar was shown in the plan attached to deed No.539/1996 as 2A, 2B, 2C, 2D, 2E, 2F and the building in the schedule is described as "Adukkalappura eduppu". The adukkalappura eduppu has no upstairs portion. Between the plot 1A and plot 2A there is a gap of 3 feet. At the time of partitioning the house, in the year 1996, the executants of the partition deed came to a consensus that the owners of the respective building should keep the provisions of the building rule at the time of reconstructing their respective building portion. In the year 2023, the respondent demolished the adukkalappura eduppu and started to reconstruct a building without giving set back from the existing building in the petition 'A' schedule property. Petitioner asked the respondent to give set back as per the building rules from the existing building for the new construction, but the respondent shown deaf ears to the request of

petitioner. So, she filed a complaint before the Secretary, Valapattanam Grama Panchayath on 07.07.2023 and the Panchayath enquired the matter and realized that it is an unauthorized construction and against the provision of KPB Rules. On 12.10.2023 the Grama Panchayath issued an order against the respondent to stop the illegal construction. Even though the respondent stopped the construction for a short period but he started the work without considering the order of the Panchayath, by trespassing into the petition 'A' schedule property. The respondent completed the concrete work on the top of the building by piercing the northern wall of the petition 'A' schedule building and by that act, rain water entered into the petition 'A' schedule building and caused damages. Petitioner complained the matter before the Panchayath and Valapattanam Police Station about the illegal act of the respondent. Petitioner also requested to the Samudaya Sangham to interfere in the matter. The leaders of the Pidarrar Samudaya Sangam intervened the matter and measured the property as per the deed No.539/1996, with the assistance of surveyor and to settle the dispute. As such they put a blue colour mark on the pillar on northern side. The said pillar is projected towards north than the northern wall of petitioner's building. After the measurement it is realized that the respondent trespassed into the petition 'A' schedule property. The leaders of the sangam asked the respondent to cut and remove the concrete slab, which is constructed by trespassing into the petition 'A'

schedule building. After that the respondent threatened her that he will not obey the direction of the Panchayath or Samudaya Sangam or anyone else and he will continue the construction work. The respondent constructed the upstairs portion of the adukkalappura eduppu without building plan and permit and also without keeping the distance from the petition 'A' schedule building. Since the monsoon season is coming, petitioner apprehends that the rain water will enter into the petition 'A' schedule building house season and it will increase due to the piercing work on the northern wall. The petition 'A' schedule building is an old house, if the respondent continued with the work, the petition 'A' schedule building will collapse. So, it is highly necessary to restrain the respondent from further construction by an order of prohibitory injunction and also by an order of mandatory injunction direct the respondent to cut and remove the encroached area of the concreted portion of the respondent's building shown in the petition 'B' schedule. Hence, petitioner filed the suit for permanent prohibitory injunction restraining the respondent from further construction and mandatory injunction directing the respondent to cut and remove the encroached portion in the petition schedule building. Now the petitioner realized that she could not resist the respondent from illegal construction without the intervention of this court. If an order of temporary injunction is not granted, it will cause irreparable injury, loss and hardship to the petitioner. There is a prima facie case and balance of

convenience is also in the favour of petitioner. Hence, the application.

3. The averments in the counter statement filed by respondent is as follows:- The above petition is not maintainable either in law or on facts. The respondent denied entire allegations and averments in the petition except those which are specifically admitted. The petitioner has not managed the petition schedule property at any point of time and the petitioner has no right to file the above suit. The petitioner has no connection with petition schedule property and the petitioner is a total stranger so far as the petition schedule property is concerned. The respondent is not reconstructing the 'B' schedule property as alleged by the petitioner. The property of said Narayana Pidarar was shown in the plaint attached to deed No.539/1996 as 2A, 2B, 2C, 2D, 2E, 2F and the building in the schedule is described as 'Adukkalappura Eduppu'. But the allegation that adukkalappura has no upstairs portion is a lie. The adukkalappura has upstairs portion at the time of execution of the partition deed No.539/1996. There is no 3 feet gap between the plots 1A and 2A as alleged in the petition. Three feet gap is not mentioned in the partition deed No.539/1996. Respondent contended that the petition 'A' schedule property and petition 'B' property are adjoining properties. The wall of the building in the 'A' schedule and the wall of the buildings in the 'B' schedule property are one and the same. The plaintiff and the defendant are on enmity terms for the last many years. In connection with

performing the upanayanam of the son of the brother of the respondent, the respondent is plastering the house building in the petition 'B' schedule building. The plaintiff and his men tried to prevent this respondent from proceeding with the cement plastering the wall of the house building in the petition 'B' schedule property. The plaintiff and his men have no right to prevent the respondent from plastering the wall of the house building in the B schedule property there is no gap of three feet between the property of the husband of the petitioner and the respondent. If the respondent is aggrieved by any proceedings of the Panchayath the petitioner has equally and efficacious remedy of approaching the Deputy Director of Panchayath instead of approaching this court for a discretionary relief. This respondent has not encroached the petition 'A' schedule property at any point of time. The southern boundary of the petition 'A' schedule property and petition 'B' schedule property is a single wall made of laterite stone. There is no space between these two properties and there is no scope of keeping set back between these two properties before any construction. No construction can be made between the property of the plaintiff and defendant as there is no space available in between. No construction is made by the respondent as alleged by the petitioner. The petitioner has suppressed the material facts and truth and came before this Hon'ble court with unclean hands. The petitioner is not entitled to get any discretionary relief as prayed in the petition. The petitioner has not

made out any prima facie case. If the plastering work carried out in the petition 'B' schedule building is prevented the respondent will be put to irreparable legal injury and hardships and the Upanayanam ceremony scheduled to be held in the month of April 2025 cannot be conducted. In such circumstances the respondent will be put to irreparable legal injury and hardships. The above petition is false, frivolous and vexatious. The above petition is liable to be dismissed with the cost and compensatory cost of the respondent.

4. Heard both sides.

5. From the rival contentions following points arise for consideration:-

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 denial of injunction will cause irreparable loss and injury to the petitioner?
4. Order as to costs?

6. Exts.A1 to A3, C1 and C1(a) marked provisionally.

7. **Point Nos.1 to 3:-** Since these points are each other which are considered together. The contention of the petitioner is that the plaint 'A' schedule property originally belonged to the husband of the petitioner as per the document bearing No.1677/2011 same are marked as Ext.A3 provisionally. Ext.A2 is the property tax receipt in respect of the petition schedule property.

Ext.A1 is the prior partition deed executed in the year 1996. According to the plaintiff, her husband is working in Saudi Arabia and on behalf of him, she has been managing the petition schedule property. There is a sketch plan also attached to Ext.A1 document. Further contention is that the father of the respondent got second schedule of the property in Ext.A1 partition deed and the said property is shown as petition 'B' schedule property. Respondents are the legal heirs of Narayana Pidara and they are in co-ownership possession of said 'B' schedule property. The contention of the petitioner is that the respondent is reconstructing the building situated in the petition 'B' schedule property. Plot 1A to 1F attached a plan to Ext.A1 in the first schedule of the property and plot 2A to 2F attached in the second schedule of the property in Ext.A1. In the year 2023, the respondent had demolished the building in second schedule and started to reconstruct the building without giving set back from the existing building in the plaint 'A' schedule property. Petitioner filed complaint before the Secretary, Valapattanam Grama Panchayath on 07.07.2023, enquired the matter and Grama Panchayath issued an order against the respondent on 12.10.2023 to stop the illegal construction. Now the respondent completed the concrete work on the top of the building by piercing northern wall of the petition 'A' schedule building, rain water entered into the plaint 'A' schedule property and cause damage.

8. Petition 'A' schedule building is an old house and if the respondent

continued with work, the petition 'A' schedule building will collapse. Hence, the plaintiff/petitioner requested to restrain the respondent from continuing the construction work without keeping the said work from the building situated in the plaint 'A' schedule property. The contention of the respondent is that the petitioner is not managing the plaint schedule property and she is a total stranger to the petition schedule property. Respondent admitted that the first schedule property for an extent of 5.96 Ares as per Ext.A1 was allotted to Krishna Pidarar and also admitted the plan attached to Ext.A1 as plot '1A to 1F' and eastern side measurement of building as shown in the plan is 35 feet are also admitted by the respondents. According to the respondents, second schedule property as per Ext.A1 was belonged to Narayana Pidarar, after his death, the said property is the co-ownership possession of the property of the defendant and his siblings. In short, there is no dispute with regard to the petition 'A' and 'B' schedule properties. Further contention of the respondent is that there is no 3 feet gap between plot 1A and plot 2A and 3 feet gap is not mentioned in the Ext.A1.

9. The contention of the respondent is that petition 'A' schedule property and 'B' schedule properties are adjoining property and the wall of the building in 'A' schedule property and wall of the building is the plaint 'B' schedule property are one and the same. The petitioner and respondents are on enmity terms for the last many years. According to the respondent, the respondent is plastering

house building in connection with the Upanayanam of the son of brother of the respondent. According to him, the petitioner has no right to prevent the respondent from plastering the wall of the house building in the plaint 'B' schedule property and the petitioner has equally and efficacious remedy of approaching Deputy Director of Panchayath. No construction is made by the respondent as alleged in the petition. Now the upanayanam ceremony schedule to be held in the month of April 2025 and it cannot be conducted, if the plastering work is prevented.

10. At the time when the suit filed, this court was pleased to issue emergent notice to the respondent and case was posted to 27.03.2025. Thereafter, a fresh emergent notice issued to the respondent after the amendment. This suit was filed on 20.03.2025. Respondent filed caveat petition as caveat No.17/2025 before this court on 21.03.2025. The main contention of the respondent is that there is no gap between petition 'A' and 'B' schedule property and the wall of the plaint schedule properties are one and the same. The advocate commissioner inspected the property and filed report and eye sketch before this court and same was marked as Exts.C1 series provisionally. Learned commissioner categorically reported that the building bearing No.IV/129 of Valapattanam Grama Panchayath is in the plaint 'A' schedule property and the house bearing No.IV/130 owned by the respondent and the said building is on the northern side of plaint 'A' schedule

property. There is no dispute with regard to the same. Learned advocate commissioner reported that the building in the plaint schedule property and building on the north and eastern side of the same divided with one wall. Learned commissioner reported that the house in the plaint schedule property partly concreted one. Learned commissioner also reported that the construction upon the upper floor of the house of the respondent is now under construction. Learned commissioner also reported that the commissioner could found that the old wall of the house of the plaint schedule property and new top beam concreted to the old wall.

11. From the report of the advocate commissioner, it can be seen that the construction upon the top floor of the respondent's building is under construction. At the very same time, learned commissioner categorically reported that the wall of the plaint 'A' schedule house and building on the north and southern side are same. The main relief sought by the plaintiff is to direct the defendants to cut and remove the encroached slab in the plaint 'B' schedule property. As per the report of the advocate commissioner, the construction is going on and about finish. Now the present petition is to restraining the respondents from continuing the construction work without keeping the set back. But the advocate commissioner reported that the wall of the building is one and the same. Hence, I am of the view that no injunction can be granted against the

respondent. But considering the fact that the subject matter in the suit is the building and relief sought in the plaint is to cut and remove the encroached portion of concrete slab, I am of the view that the plaint schedule properties are to be preserved till the final adjudication of the case. So, I find that it is just and proper to direct both parties to maintain status-quo of the plaint schedule properties as reported by the commissioner in Exts.C1 and C1(a). The point Nos. 1 to 3 are found accordingly.

12. Point No.4:- In view of finding on point Nos.1 to 3, this petition is allowed. No order as to costs.

In the result,

1. Both the petitioner and respondent are directed to maintain status quo of plaint schedule properties as reported by the commissioner in Exts.C1 and C1(a).
2. 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 7th day of April, 2025).

ADDITIONAL MUNSIFF

Petitioner's Exhibits:

- A1 09.02.1996 Partition deed No. 539/1996 of SRO Valapattanam, executed by Krishna Pidarar and others
- A2 21.05.2024 Property Tax Receipt
- A3 21.05.2013 Partition deed No. 1677/2013 of SRO, Valapattanam, executed by Gopinathan and others

Court Exhibits:

- C1 01.04.2025 Commission Report submitted by Ambili K.C, Advocate
Commissioner
- C1(a) - Draft Sketch plan submitted by Ambili K.C, Advocate
Commissioner

ADDITIONAL MUNSIF

Pk/-

Fair/Spare/ Copy of Order
In IA 02/2025 In O.S.110/25
Dated: 07-04-2025