

**IN THE COURT OF THE MUNSIFF OF TALIPARAMBA**

Present: Smt. Athulya A, Munsiff

Friday, the 10<sup>th</sup> day of April, 2026

(20<sup>th</sup> Chaitra, 1948)

**I.A.02 OF 2025 in O.S.No.257 OF 2025**

Valiya Veettil Bipin Santhosh, S/o Santhosh,	)	
aged 37 years, Nellikkunnu, Chengalayi P.O.,	)	
Nidiyenga Amsom Desom, Taliparamba Taluk,	)	
Kannur District,. Pin-670631.	)	
Rep.by PA holder Santhosh V.D.,	)	Petitioner/ Plaintiff
S/o K.Damodaran, aged 66 years, Valiyaveettil	)	
House, Nellikkunnu, Chengalayi P.O.,	)	
Nidiyenga Amsom Desom, Taliparamba Taluk,	)	
Kannur District, Pin-670631.	)	
		Vs
Kanayammannath Gopi, S/o Kunjooju, aged 67,	)	
Nellikkunnu, Chengalayi P.O., Nidiyenga	)	Respondent/ defendant.
Amsom Desom, Taliparamba Taluk, Kannur	)	
District, Pin – 670631.	)	

Petition filed Under order 39 Rule 1 of Civil Procedure Code.

This petition coming on 8<sup>th</sup> day of April, 2026 for final hearing before me in the presence Sri.K.Anoop Kumar, Advocate for the petitioner; and of Sri.T.Dileep Kumar, Advocate for the respondent; and the court passed the following:

**ORDER**

This is a petition filed under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

2. The petition averments briefly are as follows: The petitioner contends that the plaint schedule property having an extent of 90 cents originally formed part of a larger extent of 2 acres 47 cents assigned in favour of one Kunjoonju as per Purchase Certificate No.4445/1977 issued by the Land Tribunal, Taliparamba. Upon the death of the said Kunjoonju on 15.01.2014, his legal heirs, namely the respondent and his sister Laila Varghese, succeeded to the property. It is further contended that in the year 2024, the respondent and his sister assigned 90 cents of property in favour of the petitioner as per registered document No.1683/2024 of SRO Sreekandapuram. According to the petitioner, he is in absolute possession and enjoyment of the plaint schedule property. The petitioner would further contend that he has been peacefully possessing and enjoying the property and had commenced preparatory works for the construction of a shed and boundary wall in the plaint schedule property. At that stage, the respondent, without any manner of right, obstructed the construction activities and interfered with the peaceful possession and enjoyment of the petitioner. Hence, the petitioner seeks an order of temporary injunction restraining the respondent from causing obstruction and interference.

3. The respondent entered appearance and filed counter denying the petition averments and contending that the suit is not maintainable. The respondent filed counter statement denying the allegations of obstruction and interference. The plaint schedule property originally belonged to Kunjoonju and upon his death the respondent and his sister succeeded to the property, and admits the execution of registered document No.1683/2024 assigning 90 cents of property in favour of the petitioner. The petitioner is entitled only to the said extent and not beyond. The petitioner, after purchasing the property, has shifted

the western boundary/pathway further towards the west and has thereby encroached into the remaining property belonging to the respondent and his sister. There exists property belonging to him beyond the western side of the plaint schedule property and the petitioner is attempting to annex additional land under the guise of construction. There is a serious dispute regarding the identity, boundary and extent of the property and that without proper measurement and identification, the petitioner is not entitled to any injunction. The respondent has no objection to the petitioner carrying out construction strictly within the actual extent of 90 cents, but opposes any construction beyond the same. The allegations of trespass are denied. For above reasons, the respondent prays as for dismissal of the suit.

4. Based on the rival contentions, the following points are raised for consideration in both these petitions.

1. Whether the petitioner has made out any prima facie case?
2. Whether there is any balance of convenience in favor of the petitioner?
3. Whether any irreparable loss and injury will be caused to the petitioner if no injunction is granted?
4. Reliefs and costs.

5. The three documents produced in this application from the side of the petitioner and the first commission report and the remitted commission report are considered in this application for adjudication. During the pendency of this case this case was advanced as per the application filed by the petitioner herein to remit the first Commission report and to inspect the plant schedule property

with the assistance of Village officer and to get a detailed report and plan. After filing of the remitted commission report this petitioner was contended.

6. Heard the learned counsel for both sides and perused the records.

7. **Point No. 1 to 3.** In order to avoid repetition and for the sake of convenience, point No. 1 to 3 are considered together. This is an application filed by the petitioner/plaintiff seeking temporary injunction restraining the respondent/ defendant and his men from obstructing the construction of a shed and boundary wall in the plaint schedule property and from interfering with the peaceful possession and enjoyment of the same. The case of the petitioner is that the plaint schedule property having an extent of 90 cents originally formed part of a larger extent of 2 acres 47 cents assigned in favour of one Kunjoonju as per Purchase Certificate No.4445/1977 issued by the Land Tribunal, Taliparamba and upon his death on 15.01.2014, his legal heirs, namely the respondent and his sister Laila Varghese, succeeded to the property. It is further contended that in the year 2024, the respondent and his sister assigned 90 cents of property in favour of the petitioner as per registered document No.1683/2024 of SRO Sreekandapuram and that the petitioner is in absolute possession and enjoyment of the same. According to the petitioner, he had commenced preparatory works for construction of a shed and boundary wall and at that stage the respondent obstructed the same without any manner of right. It is also alleged that subsequent to the inspection by the Advocate Commissioner, the respondent trespassed into the plaint schedule property on 14.07.2025 and removed boundary stones and iron poles fixed on the boundaries, thereby interfering with the possession of the petitioner. The respondent filed counter statement admitting the execution of document No.1683/2024 in favour of the petitioner

for 90 cents, but contending that the petitioner is entitled only to that extent and not beyond. The specific contention of the respondent is that the petitioner has shifted the western boundary/pathway further towards the west and has thereby encroached into the remaining property belonging to the respondent and his sister. It is further contended that the respondent has property lying beyond the western side of the plaint schedule property and that the petitioner is attempting to annex additional land under the guise of construction. According to the respondent, there is a dispute regarding the identity, boundary and extent of the property and therefore no injunction can be granted without proper identification of the property, even though he contended that the respondent has no objection to construction strictly within the actual extent of 90 cents. The Advocate Commissioner inspected the property and submitted a report along with a sketch. In the said report, the property was identified based on the plaint schedule description and as pointed out by the petitioner and the Commissioner noted the boundaries and physical features of the property including the existence of rubber trees, the slope of the land and construction activities such as levelling of land and digging of a pit for construction. The Commissioner also noted the presence of boundary stones and iron rods placed at intervals indicating the boundary as pointed out at the site. Subsequently, at the instance of the respondent, the report was remitted and a fresh inspection was conducted with the assistance of the Taluk Surveyor and in the presence of the Village Officer. In the remitted report, the property was identified with reference to available records and survey assistance and a plan was prepared showing the plaint schedule property as ABCDGH having a total extent of 90 cents. The Commissioner has reported that the property lies on the northern side of the

Municipality road and has access from the said road and has also described the physical nature of the property including the presence of rubber trees and terraced levels. It is to be noted that in the remitted report the western side of the property is a rocky area (“Para Sthalam”) and that a portion marked as DEFG does not form part of the plaint schedule property and the petitioner does not claim any right over the same.

8. It is contended by the respondent that the petitioner, after obtaining the property as per document No.1683/2024, has shifted the western boundary/pathway further towards the west and encroached into the remaining property of the respondent. However, on a perusal of the remitted commission report, it is seen that the western side of the plaint schedule property is shown as a rocky area (“Para Sthalam”) and a portion marked in the plan is specifically stated to be not forming part of the plaint schedule property. The report does not clearly indicate that the said rocky portion forms part of the respondent’s property or that any identifiable portion of the respondent’s property lies immediately beyond the same. Thus, while the report shows that the plaint schedule property does not extend into the rocky area, the allegation of encroachment as contended by the respondent remain fatal. At the same time, the exact boundary alignment on the western side remains uncertain, giving rise to a boundary dispute which requires adjudication in trial. On a comparison of the two reports, it is seen that the first report indicates boundary demarcation based on physical markings such as stones and rods as pointed out by the petitioner, whereas the remitted report introduces a distinction by identifying a rocky portion on the western side as lying outside the plaint schedule property. This variation gives rise to a genuine dispute regarding the exact boundary,

particularly on the western side. It is also to be noted that though the petitioner has alleged that subsequent to the initial inspection the respondent trespassed into the property and removed boundary stones and iron poles, the remitted commission report and other evidence prima facie show does not any such act of trespass or removal of boundary marks and only describes the existing lie and physical features of the property. Hence, the allegation of trespass remains unsubstantiated.

9. It is true that the respondent has alleged that the petitioner has encroached into the property on the western side and that the burden to establish such encroachment lies on the respondent. It is also to be noted that the remitted commission report does not record any act of trespass or removal of boundary marks as alleged by the petitioner. Further, the respondent has stated that he has no objection to the petitioner carrying out construction within the actual extent of 90 cents. Though the remitted commission report prepared with the assistance of the Taluk Surveyor identifies the plaint schedule property as having an extent of 90 cents and indicates that the western side abuts a rocky area which does not form part of the said property, the dispute between the parties with respect to the exact boundary alignment and alleged encroachment on the western side is not prima facie resolved. The report does not show, whether any portion of the respondent's property has been encroached upon. Hence, the boundary dispute raised by the respondent cannot be considered at this stage.

10. The remitted commission report prepared with the assistance of the Taluk Surveyor identifies the plaint schedule property as having an extent of 90 cents and the same is demarcated in the plan. The Commissioner has also noted

that the western side of the property abuts a rocky area which does not form part of the plaint schedule property. However, the contention of the respondent is that the petitioner has shifted the boundary towards the west and has encroached into the remaining property even prior to the inspection. Therefore, though the property is identified as lying on the ground, the dispute regarding the correctness of the boundary as contended by the respondent remains to be adjudicated on evidence at trial. Here the document No. 1 also is silent as the western boundary being the rocky area. While the title of the petitioner over 90 cents is not seriously disputed, the dispute between the parties essentially relates to the boundary and the allegation of encroachment raised by the respondent.

11. In the above circumstances, though the petitioner has established title over 90 cents of property, the materials on record disclose that the dispute regarding the boundary, particularly on the western side, remains unresolved. In such a situation, permitting the petitioner to proceed with construction even within the said extent may result in alteration of the existing boundaries and may cause prejudice to the respondent. On the other hand, if the petitioner is restrained from proceeding with construction for the present, no inconvenience will be caused.

12. In the above circumstances, this Court is of the view that the petitioner has not made out a case for granting the relief of temporary injunction as prayed to the fullest.

13. Though the petitioner has established title and possession prima facie over 90 cents, a clear prima facie case for granting an injunction permitting construction, in the face of a subsisting boundary dispute, cannot be said to have been made out. In such a situation, the petitioner cannot be said to have

established a clear prima facie for permitting construction, especially when the correctness of the boundary itself is under challenge. Therefore, it can be said that the balance of convenience lies in favour of preserving the present existing status. The discussion also shows that the refusal of relief of injunction at this stage does not cause any irreparable loss or injury to the petitioner.

14. **Point No.4:-** In view of the finding in the above points, both parties are directed to maintain status quo from the date of this order with respect to the petition schedule property till the disposal of the suit.

**In the result,** Both parties are directed to maintain status quo from the date of this order with respect to the petition schedule property till the disposal of the suit.

(Dictated to the Confidential Assistant transcribed by her, corrected and pronounced by me in open court on this the 10<sup>th</sup> day of April, 2026.)

Sd/  
**MUNSIF**



