

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
KOTTAYAM**

Present : Sri.Manoj M, Principal District Judge

Friday, the 24th day of April, 2026
4th day of Vaishakha, 1948

C.M.A. Nos.42/2025 and 43/2025
(I.A. No.5/2024 and I.A. No.1/2024 in
O.S. No.149/2024, of the Munsiff's Court, Changanacherry)

I. C.M.A. No.42/2025

Appellants/Petitioners 1 & 2:-

- 1 Geogy Joseph, aged 53 years, S/o. K.V. Joseph,
Kandankary House, Vazhappally East Village,
Vazhappally P.O., Changanacherry, Kottayam - 686101.
Represented by his Power of Attorney Holder
K.C. Thomas, aged 77 years, S/o. Chacko Uthup,
Puthiyedathu House, Kollamula Village,
Venkurinji P.O., Ranni, Pathanamthitta - 686510.
- 2 K.C. Thomas, aged 77 years, S/o. Chacko Uthup,
Puthiyedathu House, Kollamula Village,
Venkurinji P.O., Ranni, Pathanamthitta - 686510.

By Adv. Agi Joseph

Respondents/Counter Petitioners 1 & 2 :-

- 1 Sini Jiji, aged 47, W/o. Jiji George Joseph,
Kandankary House, Vazhappally East Village,
Vazhappally P.O., Changanacherry,
Kottayam - 686101.
- 2 Jiji George Joseph, aged 57, S/o. K.V Joseph,
Kandankary House, Vazhappally East Village,
Vazhappally P.O., Changanacherry, Kottayam - 686101.

R1 & R2 by Adv. K. Madhavan Pillai

II. C.M.A. No.43/2025**Appellants/ Counter Petitioners 1 & 2:-**

- 1 Geogy Joseph, aged 53 years, S/o. K.V. Joseph, Kandankary House, Vazhappally East Village, Vazhappally P.O., Changanacherry, Kottayam - 686101. Represented by his Power of Attorney Holder K.C. Thomas, aged 77 years, S/o. Chacko Uthup, Puthiyedathu House, Kollamula Village, Venkuringi P.O., Ranni, Pathanamthitta - 686510.
- 2 K.C. Thomas, aged 77 years, S/o. Chacko Uthup, Puthiyedathu House, Kollamula Village, Venkuringi P.O., Ranni, Pathanamthitta - 686510.

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Respondents/ Petitioners 1 & 2:-

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- 2 Jiji George Joseph, aged 57, S/o. K.V Joseph, Kandankary House, Vazhappally East Village, Vazhappally P.O., Changanacherry, Kottayam - 686101.

R1 & R2 by Adv. K. Madhavan Pillai

Appeal Memorandums filed under Section XLIII Rule 1 (r) & Section 104 of the Code of Civil Procedure.

These two Civil Miscellaneous Appeals having been jointly tried and finally heard on 31.03.2026 and the Court on 24.04.2026 delivered the following:-

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the appellants, who are defendant Nos.1 and 2 in I.A. No.1/2024 and plaintiffs in I.A. No.5/2024 in O.S. No.149/2024, on the file of the Munsiff's Court, Changanacherry, against the common order dated 30.06.2025 passed in the above said interlocutory applications. The suit was filed for permanent prohibitory injunction restraining the defendants from forcibly evicting the first plaintiff and her children from the plaint schedule item No.4 dwelling house.

2. The parties are referred as per their status in the trial court.

3. I.A. No.1/2024 was filed by the plaintiffs / petitioners seeking temporary prohibitory injunction against forcible eviction from plaint schedule item No.4. I.A. No.5/2024 was filed by the defendants seeking a temporary mandatory injunction for evicting the first plaintiff and her children from plaint schedule item No.4 building and plaint schedule item No.3 property.

4. The petition averments I.A. No.1/2024 are as follows:-
Item No.1 property in old survey No.280/9A and 280/8A having an extent of 18.03 Ares devolved upon the father of the second plaintiff and the first defendant. Upon his death, this property was partitioned between his legal heirs by virtue of Partition Deed No.4315/1995 of SRO, Changanacherry. As per this deed, 13.98 Ares of property was allotted jointly to the second plaintiff and the first defendant and it is scheduled as plaint schedule item No.2 property. From the 19.25 Ares of property which was in the ownership of the father, 1.22 Ares was transferred by the father to another sibling Rose Rolley by virtue of Settlement Deed No.596/1988 of Changanacherry SRO. This 3 cents is scheduled as plaint schedule item No.3 property. The aforementioned Rose Rolley transferred this property by virtue of Gift Deed No.4224/1995 to the mother of the parties, Aleykkutty Joseph. The partition deed was executed for the rest of the property after excluding this 3 cents. Plaint schedule item Nos.2 and 3 lie contiguously. Before the demise of the mother, plaint schedule item No.3 in the ownership of the mother was transferred to the first defendant by virtue of Settlement Deed No.310/2004 of

Changanacherry SRO. On the basis of the building permit received from the Changanacherry Municipality in the name of the mother, the second plaintiff and the first defendant, a building was constructed in 2001 having an extent of 270/93 m² and has received building No.IV/122 from Changanacherry Municipality in the name of the mother, the second plaintiff and the first defendant. This building is plaint schedule item No.4 property. The mother and the first defendant along with the plaintiffs were residing in plaint schedule item No.4. Plaint schedule item No.4 situating in plaint schedule item Nos.2 and 3 is in the joint possession of the second plaintiff and the first defendant. The plaintiffs were in South Africa for their employment purpose and on the return to their native place they are residing in plaint schedule item No.4. The first plaintiff has her Aadhaar card in the address in plaint schedule item No.4 and the second plaintiff has this address in his passport. The plaintiffs have been residing in plaint schedule item No.4 as family. The second plaintiff has ownership rights over plaint schedule item No.4 and the first plaintiff, his wife has the right to share household over this property. Plaint schedule item No.4 is also the

residence of another sibling of the parties, Celin Rinni Jijan who is residing there along with her children. The first defendant and family is also in South Africa for their employment purpose. The second defendant who is the father in law of the first defendant in the name of managing this property is attempting to usurp the same. The plaintiffs have no other residence apart from plaint schedule item No.4 and are residing in plaint schedule item No.4 with their children. However, the defendants are attempting to evict the plaintiffs from plaint schedule item No.4. Thus, this petition seeking temporary injunction restraining the defendants from forcibly evicting the plaintiffs from plaint schedule item No.4 building.

5. The second defendant filed objection on behalf of himself and the first defendant stating that this petition is not maintainable. Item No.3 property was received by Aleykkutty Joseph by virtue of Gift Deed No.4224 of 1995 and thereafter in 2001, she had applied for construction of a residential building and obtained a building permit. The first defendant and her mother availed a housing loan from HDFC bank and started construction of the building with the entire expenses

borne by the first defendant. Thereafter the said Aleykkutty had transferred plaint schedule item No.3 to the first defendant by virtue of Settlement Deed No.310/2004 of Changanacherry SRO and the construction was completed in 2005. After the execution of the said settlement Deed, the property is mutated in the name of the first defendant who is paying land tax for the same. The building tax of item No.4 is also assessed in the name of the first defendant. The Municipality had issued a demand notice to the first defendant demanding the building tax for the years 2013-2014 and 2017-2018. The entire housing loan amount was paid by the first defendant using cheques. The plaintiffs have been residing in South Africa for more than 12 years as seen from their passport. The first plaintiff came to India only on 16.05.2024. The mother of the parties expired on 23.10.2023. The mother and the sibling of the parties Celin Rinni Jijan with her children had been residing in plaint schedule item No.4. After the death of the mother, Celin Rinni Jijan has been residing in plaint schedule item No.4 on rental agreement with the rent regularly remitted to the account of the first defendant. The first defendant had filed partition suit for

partitioning of plaint schedule item No.2 as O.S No.10/2019 before the Sub Court, Kottayam. The second plaintiff entered appearance and admitted to the averments in the plaint and a preliminary decree was passed. Thereafter, F.D.A. No.38 of 2023 was filed along with the survey commission for demarcating the share of the parties. After the filing of the commission report, the second plaintiff filed a petition to remit back the commission report, which was dismissed by the Sub Court, Kottayam. The specific contention of the first defendant, who was the plaintiff in O.S. No.10/2019 was that the mother had transferred the three cents of property (which is scheduled as item No.3 in this case) to the first defendant who had constructed a residential building therein which is 122/1V (old No.429/XXXI). The second plaintiff had admitted the said contention in his written statement filed in the said former suit. The allegation that the plaintiffs and the mother have been residing in plaint schedule item No.4 is false and denied. The first plaintiff who arrived in India on 16.05.2024 is residing in her paternal house in Chalakkudy and has instituted the suit on 24.05.2024. After obtaining an ad interim order against the defendants she had trespassed into plaint

schedule item No.4 on the cover of this order. The averment that plaint schedule item No.4 is in joint ownership of the second plaintiff and the first defendant is false. The marriage between the first and second plaintiffs were solemnized in September 2012, after which the plaintiffs left to South Africa in October 2012. The first plaintiff came to India only on 16.05.2024 and the second plaintiff has never come so far. The passport of the second plaintiff was issued from Johannesburg, South Africa. The plaintiffs have no ownership or any right on plaint schedule item No.4 and the family of the plaintiffs never resided there. It is the duty of the plaintiffs to make arrangement to find out a building for residence. This suit and the petition is abuse of the process of law and ought to be dismissed.

6. IA No.5/2024 is a petition filed for a temporary mandatory injunction filed by the defendants seeking temporary mandatory injunction for evicting the first plaintiff and her children from plaint schedule item No.3 property and plaint schedule item No.4 plaint schedule building on the ground that after the first plaintiff and her children arrived in

India on 16.05.2024, she obtained an ad interim order of injunction against the defendants and trespassed into plaintiff schedule item No.4 building on 27.05.2024 under the cover of the injunction order. It is contended that the plaintiff item No.4 building is in the joint ownership and possession of the second plaintiff and the first defendant is absolutely false. Plaintiff schedule Item No.3 property and item No.4 building situated in the same is not included in the partition suit O.S. No.10/2019, since the second plaintiff had no right over item Nos.3 and 4. The schedule description is mischievous and item No.4 building is situated in plaintiff schedule item No.3 property. Hence the petition for mandatory injunction evicting the first plaintiff and her children from scheduled property is filed.

7. The plaintiffs / respondents filed objection stating that the petition is not maintainable in law or facts. The first plaintiff / first respondent averred that plaintiff schedule item No.3 was transferred by the sibling Rose Rolley to the mother of the parties by virtue of Gift Deed No.4224/1995 of Changanacherry SRO and that the mother, the second plaintiff

and the first defendant had together obtained building permit, after which plaint schedule item No.4 was constructed on 2001. She averred that plaint schedule item No.4 is the residence of the mother, the second plaintiff and the first defendant. That plaint schedule item No.4 is in the sole ownership and possession of the first defendant is denied. Plaint schedule item No.4 is in the joint possession of the second plaintiff and the first defendant. Plaint schedule item No.3 was transferred to the first defendant by the mother by virtue of Settlement Deed No.310/2004 of Changanacherry SRO. However, the building permit, occupancy certificate and tax of plaint schedule item No.4 was paid by the mother, the second plaintiff and the first defendant. The loan in HDFC bank was availed by using the property which belong to the second plaintiff also as security. It is true that the plaintiffs have been residing in South Africa since long. However, the first plaintiff is as of now in her native and residing in plaint schedule item No.4. The Aadhar card of the first plaintiff and passport of the second plaintiff has the address of plaint schedule item No.4. The first plaintiff after her marriage with the second plaintiff on 2012 October, resided in plaint

schedule item No.4 for a period of 2 years after which she returned to South Africa only in 2014. The plaintiffs are not aware of the rent agreement between the defendants and the sibling residing in the plaint schedule property. The second plaintiff has right ownership over plaint schedule item No.4 and the first plaintiff has the right of shared house hold especially as she has no other residence. Thus, this petition for mandatory injunction is to be dismissed.

8. The trial court vide Common Order dated 30.06.2025 considered the contentions of both sides, relied on the commission report which states that the first plaintiff and her children were residing in item No.4 building ; that the balance of convenience is in favour of the first plaintiff ; that the first plaintiff cannot be deprived of her alleged rights of shared household over item No.4 property and hence allowed I.A. No.1/2024 granting temporary prohibitory injunction against forcible eviction in her favour and dismissed the petition for temporary mandatory injunction.

9. Against the impugned common order, CMA No.42/2025 is filed by the defendants alleging the main grounds. (all of the grounds are not stated and only the main grounds of challenge are stated). The decision of the trial court is contrary to law, documentary evidence, and probabilities of the case; that the trial court misdirected itself in law and arrived at erroneous conclusions; that the trial court failed to note that the plaintiff did not claim absolute right over item No.4 building and only sought protection from forcible eviction; that the trial court failed to consider that the plaintiff had clear knowledge of their liability to vacate the building; that the trial court failed to consider the binding precedents cited by the appellant; that the trial court failed to find that the first plaintiff trespassed into the building after the suit and under cover of the ad-interim injunction; that the trial court failed to appreciate that the defendant has a strong case, irreparable injury would be caused, and balance of convenience is in favour of the appellants; that the trial court failed to note absence of title documents from the plaintiff and the defendant's documentary proof of ownership; that the trial court failed to consider the admission of ownership by the second plaintiff in earlier

proceedings; that the trial court failed to consider that the first plaintiff was abroad and trespassed into the property after obtaining injunction; that the trial court failed to consider that tenants were residing in the building under a valid rent agreement; that the trial court ignored the settled law that a trespasser cannot seek injunction against the true owner; that the trial court failed to consider suppression of material facts and inequitable conduct by the plaintiffs; that the trial court failed to apply the principles of prima facie case, irreparable injury, and balance of convenience ; that the trial court failed to consider material evidence regarding the plaintiff's presence abroad and passport details; that the trial court failed to consider relevant documents including title deed, tax receipt, possession certificate, rent agreement, and bank statements; the findings of the trial court are contradictory and biased; that the trial court ought to have granted temporary mandatory injunction in favour of the appellants.

10. Against the impugned common order, C.M.A. No.43/2025 is filed by the defendants alleging the main grounds. (all of the grounds are not stated and only the main grounds of challenge

are stated). The decision of the trial court is contrary to law, documentary evidence, and probabilities of the case; that the trial court misdirected itself into an erroneous line of reasoning and conclusions; that the trial court failed to note that the plaintiff produced no document to prove ownership of plaintiff schedule item No.4 building, while the defendant produced documents establishing title; that the trial court failed to consider the admission of ownership by the second plaintiff in O.S. No.10/2019 before the Additional Sub Court, Kottayam; that the trial court failed to find that the first plaintiff was residing in South Africa for over 12 years, came to India only on 16.05.2024, obtained an ad-interim injunction on 24.05.2024, and thereafter trespassed into the building on 27.05.2024 and procured a commission report; that the trial court failed to consider that tenants are residing in the building under a valid rent arrangement and rent is being paid to the first defendant; that the trial court ignored the settled legal principle that a trespasser cannot seek injunction against the true owner ; that the trial court failed to consider suppression of material facts, fraud, and inequitable conduct of the plaintiffs; that the trial court failed to find absence of prima

facie case, irreparable injury, balance of convenience, and bona fides in favour of the plaintiffs; that the trial court failed to consider material evidence including passport details, the plaintiff's presence abroad, and rejection of the petition for mobile location data; that the trial court failed to consider relevant documents including title deed, tax receipt, possession certificate, rent agreement, bank statements, and prior pleadings; the findings of the trial court are contradictory and biased; and the trial court ought to have dismissed the temporary injunction petition.

11. The learned counsel for the appellants/defendants contended that the proceeding before the trial court is an abuse of process of court and that the plaint schedule item No.3 was assigned to the first defendant by his mother Aleykkutty Joseph by virtue of settlement deed No.310/2004 of Changanacherry SRO. The plaint item No.4 building is exclusively situated in plaint item No.3. The plaint item No.2 which was in the joint ownership of first defendant and first plaintiff was ordered to be partitioned into two equal shares as per the decree in O.S. No.10/2019. The second plaintiff had

admitted the above said contention in the said previous suit and did not object to the contentions of the defendant in the said suit that no other person has any right over the building situated in plaint item No.3 property. It was contended that the plaint item No.4 building was constructed exclusively in plaint item No.3 property. The plaintiffs were in South Africa, the first plaintiff and her children came to their native place recently, and after obtaining the Ad interim injunction, they barged into the plaint item No.4 building and misled the Advocate Commissioner. It was contended that the mobile phone tower location of the first plaintiff would reveal her location just before the filing of the suit. It was contended that at present the plaintiff and her children are not in occupation of the building and sought to set aside the impugned common order. The learned counsel for the defendants relied on the previous proceedings in O.S. No.10/2019 for partition pending before the Additional Sub Court, Kottayam in support of his contentions.

12. Per contra the learned counsel for the plaintiff contended that the impugned order is passed after considering the

commission report in which it is clearly stated that the first plaintiff and children are residing in the plaint item No.4 building. The plaint item No.4 building is constructed in plaint item Nos.2 and 3 properties and it is in joint ownership of the second plaintiff and first defendant. The said building is the shared house hold of the first plaintiff also. Therefore, according to the learned counsel for the plaintiff the impugned order warrants no interference.

13. Heard both sides and perused the trial court records.

14. The points which arise for consideration are:

1. Whether the impugned order dated 30.06.2025 in I.A. No.1/2024 in O.S. No.149/2024 is legally sustainable ?
2. Whether the impugned order dated 30.06.2025 in I.A. No.5/2024 in O.S. No.149/2024 is legally sustainable ?

15. Point Nos.1 and 2 :- Admittedly, the plaint schedule item No.3 property is in the ownership of the first defendant by virtue of settlement deed No.310/2004 executed by the mother.

Plaint schedule item No.2 property is in the joint ownership of the first defendant and the second plaintiff, who are brothers. The first plaintiff is the wife of the second plaintiff. The plaintiffs contended that the plaint schedule item No.4 building is constructed jointly by the second plaintiff and his mother and it is situated in plaint schedule item Nos.2 and 3 properties. The defendants contended that the plaint schedule item No.4 building was constructed exclusively by the first defendant and it is situated only within the plaint schedule item No.3 property. To prove the said aspects the defendants relied on the proceedings in O.S. No.10/2019 pending before the Additional Sub Court, Kottayam, which is a partition suit filed by the first defendant against the second plaintiff.

16. A perusal of the order in I.A. No.5/2023 and the preliminary decree in O.S. No.10/2019 would reveal that the first defendant had specifically contended the plaint schedule item No.4 building is exclusively situated in plaint schedule item No.3 property owned by him and it was not denied by the second plaintiff in the said suit.

17. A perusal of order dated 02.03.2024 in I.A. No.5/2023 (filed by the second plaintiff) in O.S. No.10/2019 produced by the first defendant before the trial court in the suit would reveal that the second plaintiff has not denied the contentions of the defendants in the said suit that the plaint schedule item No.3 property and the plaint schedule item No.4 building are exclusively owned by the first defendant.

18. It is apposite to refer to the said order in I.A.No.5/2023 in O.S. No.10/2019 and the contention of the plaintiff that the defendant has filed written statement admitting the plaint claim and no claim was made by the plaintiff over the building on the property covered in gift deed No.310/2004 of SRO, Changanacherry. Though, the said I.A. was filed by the second plaintiff in this case for setting aside a commission report pertaining to passing final decree in a partition suit, the said order is relevant since the subject matter is the very same property.

19. In paragraph No.3 of the above said order it is stated as follows:

“The plaintiff had pleaded absolute ownership and possession of the building. House was constructed by the plaintiff by availing loan from HDFC Bank after execution of gift deed No.310/2004 by the mother in his favour. It was pleaded that no other person has any right over the 1.22 ares of property and the building constructed by the plaintiff.”

20. In Paragraph 12 of the said order, after considering the rival contentions, the court held as follows:

“Even though the extent of plaint schedule description is more, the actual extent of land available on conducting measurement is shown in the plan. The petitioner has no case that he has any right over the 1.22 ares of property obtained by the plaintiff as per gift deed. There is also no claim by the petitioner over the house constructed by the plaintiff. It is observed that for convenience of parties and considering the lie and nature of the plots, the commissioner has shown the 1/2 share of the plaintiff clubbed with the 1.22 ares in the plan. The plan was prepared in a manner causing least inconvenience to the parties. It is satisfied that the advocate commissioner has effected partition in an equitable manner. There is no ground or reason to set aside the plan prepared by the advocate commissioner. It is not satisfied that any prejudice

was caused to the petitioner on account of the commission report and plan dated 22.02.2023.”

21. It needs to be noticed that the petitioner in I.A. No.5/2023 in O.S. No.10/2019 on the files of the Additional Sub Court, Kottayam, is the second the plaintiff in this case. Thus, it is evident that in the suit for partition filed by the first defendant as early as on 2019 against the second plaintiff with respect to partition of plaint schedule item No.2 property, a specific contention was raised that the building scheduled as item No.4 was exclusively situated in plaint schedule item No.3 property owned by the first defendant in this suit. In the earlier proceedings the second plaintiff had not raised any challenge against the said claim and in fact, he had merely admitted the joint ownership of plaint schedule item No.2 property.

22. In this case, even as per the averments in I.A. No.1/2024 the first plaintiff has admitted that herself and her family wherein South Africa. It is admitted that a sister of the first defendant and the second plaintiff is residing in the building scheduled as plaint item No.4 property. The first defendant has specifically contended that his sister and children residing in

plaint schedule item No.4 building on a rental arrangement. The first plaintiff has not stated the date on which she returned from South Africa and started residence in plaint schedule item No.4 building. This assumes significance in view of the contention of the first defendant that under the cover of ad-interim order passed by the trial court, the first plaintiff and her children barged into the plaint schedule item No.4 building. According to the first defendant, the first plaintiff misled the Advocate Commissioner and the trial court had relied on the commission report to find that the first plaintiff and her children are in occupation of the building.

23. I have perused the commission report. The commissioner has merely stated that according to the statement of the first plaintiff herself and her children and the sister of the first defendant and the second plaintiff and her children are residing in the plaint schedule item No.4 building. The Advocate Commissioner has not independently ascertained the facts by enquiring with the sister of the first defendant and the second plaintiff who is admittedly in possession/occupation of the scheduled building. Therefore, the reliance placed by the

trial court on the commission report to come to a conclusion that the first plaintiff and her children are occupying the plaintiff schedule item No.4 building is improper. Since, in a partition suit instituted in the year 2019 by the first defendant against the second plaintiff, contentions were already taken that the plaintiff schedule item No.4 building was situated in plaintiff schedule item No.3 property and the second plaintiff has not challenged the same, the contention of the first defendant that the first plaintiff and her family were not in occupation of the plaintiff schedule item No.4 building prior to the institution of the suit appears to be probable. It is also to be noted that the first plaintiff has not mentioned the date on which she returned from South Africa and started residence in plaintiff schedule item No.4. Moreover, admittedly another sister of the second plaintiff and the first defendant and her family are already residing in the plaintiff schedule item No.4 building. Thus, the case of the plaintiffs / petitioners appears to be improbable regarding their residence in plaintiff schedule item No.4 building. The petitioner/ first plaintiff does not have a prima facie case and the balance of convenience is also not in her favour.

24. While considering an application for injunction, it is well settled that the courts would pass an order thereupon having regard to:

- (i) Prima facie
- (ii) Balance of convenience
- (iii) Irreparable injury.

25. In a matter of temporary injunction, the court does not adjudicate on the subject matter or any part of it on merits. The court considers the application in the light of the well known principles and then excises its discretion, weighing all relevant considerations without any express of opinion on the merits of the matter.

26. The principles of law relating to temporary injunctions are laid down by the decision of the Hon'ble Apex Court in ***Dalpat Kumar v. Prahlad Singh*** [AIR 1993 SC 276], the relevant portion of the observation of the Hon'ble Apex Court extracted hereunder :

"...It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to

the Court satisfying that :

(1) there is a serious disputed question to be tried in the suit, and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff / defendant ;

(2) the Court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and

(3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

The Hon'ble Supreme Court further observed : -

..Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non - interference by the Court would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there

must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that 'the balance of convenience must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject - matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

The Court continued :

...The phrases 'prima facie' case. "balance of convenience ;and 'irreparable' loss are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice..."

27. The decision of the Hon'ble Apex Court in the case of **Mandali Ranganna and others v. T. Ramachandra and others**, reported in 2008 (11) SCC 1 : (AIR 2008 SC 2291) and **Kishorsinh Ratansinh Jadeja v. Maruti Corpn.** [2009 (11) SCC 229 : (AIR 2009 SC 2882)] discussed the principles of considering the conduct of the parties while exercising its discretion.

28. The Hon'ble Supreme Court in **M. Gurudas and Others v. Rasaranjan and Others**, [2006 (8) SCC 367] noticed as follows:

"19. A finding on "prima facie case" would be a finding of fact. However, while arriving at such a finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhavan that the decision of the House of Lords in American Cyanamid Co. v. Ethicon Ltd. would have no application in a case of this nature as was opined by this Court in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. and S.M. Dyechem Ltd. v.

Cadbury (India) Ltd. but we are not persuaded to delve thereinto."

29. In Seema Arshad Zaheer and Others v. Municipal Corpn. of Greater Mumbai and Others, [2006 (5) SCC 282 : 2006 KHC 744 : 2006 (5) SCC 282 : 2006 (2) KLJ 752 : 2006 (4) KLT 65], the Hon'ble Supreme Court held as follows:

"30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."

30. The Hon'ble Supreme Court in **Dorab Cawasji Warden Versus Coomi Sorab Warden and Others**, [1990 (2) SCC 117] has had occasion to consider the circumstances warranting grant of interlocutory mandatory injunction. In paragraphs 16 & 17, after analysing the legal precedents on the point as noticed in paragraphs 11-15, the Court went on to observe as follows:

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non - contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

31. In this case, the first plaintiff has not specifically pleaded when she returned from South Africa and started living in plaintiff schedule item No.4 building. This assumes significance in view of the fact that in the earlier suit for partition, the second plaintiff, her husband had not raised any contention regarding ownership or possession of plaintiff schedule item

No.4 building. It is admitted that plaint schedule item No.3 property is in the ownership of the first defendant. Since, in the earlier suit for partition no claim was raised by the second plaintiff regarding the ownership of plaint schedule item No.4 building and it was not contended that the said building is situated jointly in plaint schedule item Nos.2 and 3, such a contention taken in the subsequent suit is not tenable. Thus, the case of the first defendant that the first plaintiff has altered the status quo ante and after filing the suit she barged in to the plaint schedule item No.4 building appears to be probable. Thus, I hold that the points are to be decided in favour of the first defendant / appellant. The impugned common order of the trial court warrants interference.

32. In the result, the impugned common order dated 30.06.2025 in I.A. No.1/2024 and I.A. No.5/2024 in O.S. No.149/2024 passed by the Munsiff's Court, Changanacherry, is set aside and both the Civil Miscellaneous Appeals are allowed as follows:

- I.A. 1/2024 in O.S. No.149/2024 is dismissed.

- I.A. No.5/2024 in O.S. No.149/2024 filed for a temporary mandatory injunction to evict the first plaintiff and her children from plaint schedule item No.3 property and item No.4 building, is allowed and a temporary mandatory injunction is passed directing the first plaintiff and her children to vacate from plaint schedule item No.3 property and item No.4 building.
- No costs.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected by me and pronounced in open Court, on this the 24th day of April, 2026.

Sd/-
Manoj M.
District Judge

APPENDIX : NIL

Id/-
District Judge.

// True Copy //

Copied by :

Compared by :

By Order,

Sd/-
Sheristadar