

**IN THE COURT OF THE MUNSIF, KANJIRAPPALLY**  
***Present : Smt. Smitha Susan Mathew, Munsiff***

Tuesday 7<sup>th</sup> day of April 2026  
17<sup>th</sup> day of Chaithra 1948

**I.A 1/2026 in O.S 9/2026**

**Petitioner/ Plaintiff:-**

Biju P.S., Aged 53 years, S/o Sekharan,  
Vakathanath House, Chittady P.O., Pin - 686512,  
Edakkunnam Kara, Edakkunnam Village,  
Kanjirappally Taluk.

**By Adv. K.S. Ninan.**

**Respondents/Defendants:-**

- 1) Baiju B., Aged 45 years, S/o Balan A.N.,  
Puthenparambil House, Chennakkunnu P.O  
Pin - 686 506, Vadakkumbhagom Kara,  
Chirakkadavu Village, Kanjirapally Taluk.
- 2) Soumyamol. K.D., Aged 37 years, W/o Baiju B.,  
Puthenparambil House, Chennakkunnu P.O  
Pin - 686 506, Vadakkumbhagom Kara,  
Chirakkadavu Village. Kanjirapally Taluk.
- 3) Sharaj K.K., Aged 48 years, S/o Kunju Muhammed,  
Kakkattu House, Edavanakkadu Village, Edavanakkadu  
Kara, Edvanakkadu P.O., Pin 682 502, Kochi Taluk.

**R1 and R2 - By Adv. George Kurian.**

**R3- By Adv. T.B.Ragesh,**

**Adv. Yedhu Krishnan V.J.**

**Adv. Dilsha A.A & Adv. Premchand R.**

This petition having been finally heard on 01.04.2026 and the court on 07.04.2026 passed the following:-

### **ORDER**

This petition is filed under O.XXXIX, R.1 of Code of Civil Procedure for temporary prohibitory injunction.

**2. Petition averments in brief, are as follows;** Petitioner/plaintiff and 1<sup>st</sup> defendant/respondent are friends. 2<sup>nd</sup> defendant is the wife of 1<sup>st</sup> defendant. Plaintiff and, defendants 1 and 2 entered into an agreement dated 04.07.2024 that defendants 1 and 2 would exchange, plaint schedule item No.1 property having an extent of 3 ares belonged to them by virtue of sale deed No.225/2020 with plaint schedule item No.2 having an extent of 4.35 ares of property belonged to plaintiff. Defendants 1 and 2 agreed to pay Rs.11 Lakhs in addition to plaint schedule item No.1 property for the compliance of said agreement. Plaintiff received Rs.50,000/- as advance on the date of agreement. Later, 3<sup>rd</sup> defendant intended to buy plaint schedule item No.1 property. Defendants 1 and 2, and the 3<sup>rd</sup> defendant entered into an agreement on 27.11.2024 regarding the purchase of plaint schedule item No.1 property, as per the direction of plaintiff. Plaintiff is a witness therein. A sale deed was executed on 25.04.2025 with respect to plaint schedule item No.1 property. Though the sale deed was executed the property was not measured and the boundaries were not fixed. Hence Rs.6,38,000/- out of the total consideration was retained with the 3<sup>rd</sup> defendant and an agreement was executed on 25.04.2025 in this regard. Plaintiff is a witness to that agreement too. This amount is the balance sale

consideration and is to be paid to plaintiff. When the property was measured there was an excess land of 300 sq. metres. The 3<sup>rd</sup> defendant, and 1<sup>st</sup> and 2<sup>nd</sup> defendants are liable to pay Rs.1,32,000/- as the sale consideration of this excess land. Plaintiff is entitled to get a total sum of Rs.7,70,000/- from the defendants. They are not ready to pay the amount to plaintiff and committing waste therein. Hence the petition.

**3. 3<sup>rd</sup> defendant/3<sup>rd</sup> respondent filed objection and the crux of the objection is as follows;** 3<sup>rd</sup> defendant was working and residing temporarily at Australia. During April 2025, he purchased 3 ares of property in resurvey No.163/3 of Vazhoor Village and mutated the property in her favour and started construction of a building therein after obtaining permit from Vazhoor Grama Panchayath. There was no contract between the petitioner and 3<sup>rd</sup> respondent. The petitioner is only a witness to the agreement. The petitioner has no title and possession over the property. 3<sup>rd</sup> respondent is having title and possession over the property. Petitioner suppressed the fact that 3<sup>rd</sup> respondent has obtained a building permit. During last quarter of 2024, 3<sup>rd</sup> respondent approached the respondents 1 and 2 to purchase the plaint schedule item No.1 property and an agreement was executed between 3<sup>rd</sup> respondent and respondents 1 and 2. The plaintiff/petitioner was a witness to the said agreement. Petitioner was also a witness to another agreement between 3<sup>rd</sup> respondent and respondents 1 and 2. No notice was given to the 3<sup>rd</sup> respondent regarding the existence of any charge over plaint schedule item No.1 property at the time of its purchase. By executing the agreement as a witness in the agreement dated 27/11/2024 and 25/04/2025, the petitioner had already

extinguished his entire claim over plaint schedule item No.1 property by virtue of unregistered agreement dated 04/07/2024. Respondents 1 and 2 agreed to remove the electric posts and stay wires at their expenses as per agreement dated 25/04/2025 in favour of 3<sup>rd</sup> respondent. But they failed to do so. No amount is due to the petitioner from 3<sup>rd</sup> respondent. Respondents 1 and 2 sold only 3 ares of property and the extent was found only 300 sq. links not 300 sq. metres. The said 300 sq. links that was found in excess in the schedule property has been taken away for the public road and 3<sup>rd</sup> respondent never encroached upon the public road and took possession of the property. The petitioner has no locus standi to file this petition and he has not made a prima facie case in his favour. Hence 3<sup>rd</sup> respondent seeks dismissal of the petition with costs.

4. Heard both sides. Perused the case records.

**5. Following points arose for consideration;**

1. Whether the petitioner/plaintiff is entitled for an order of temporary prohibitory injunction as prayed for.
2. Reliefs and costs.

6. Four documents produced from the side of plaintiff/petitioner are marked as Exts.A1 to A4 and four documents produced from the side of defendants are marked as Exts.B1 to B4 for reference.

7. **Point No.1:** - The plaintiff is the prior owner of plaint schedule item No.1 property. According to him, he and defendants 1 and 2 entered into Ext.A1 agreement on 04.07.2024 that plaint schedule item No.1 property having an extent of 3 ares comprised in resurvey No.163/3 of Vazhoor Village, belonged to them by virtue of sale deed No.225/2020 with

plaint schedule item No.2 having an extent of 4.35 ares of property belonged to plaintiff. Defendants 1 and 2 agreed to pay Rs.11 Lakhs in addition to plaintiff schedule item No.1 property for the compliance of said agreement. He received Rs.50,000/- as advance sale consideration. The period of performance of the agreement was till 04.09.2024. It can be seen from the petition itself that defendants 1 and 2 executed Ext.A2, another agreement on 27.11.2024 with the 3<sup>rd</sup> defendant that they would transfer plaintiff schedule item No.1 property to the 3<sup>rd</sup> defendant for Rs.4,40,000/- per cent on or before 25.03.2025. They received Rs.8 Lakhs from 3<sup>rd</sup> defendant on the date of execution of the agreement. This transaction was with the knowledge of plaintiff. Plaintiff is a witness to that agreement. It can be seen from Ext.A2 that the property was handed over to the 3<sup>rd</sup> defendant on the date of agreement itself and he was permitted to develop the property and make constructions therein. The 1<sup>st</sup> defendant agreed to remove the posts and stay wires in plaintiff schedule item No.1 property before the expiry of period of agreement.

8. It can be seen from the petition itself that even before measuring the property and removing the posts and stay wires in plaintiff schedule item No.1 property defendants 1 and 2 executed sale deed in favour of 3<sup>rd</sup> defendant on 25.04.2025. Copy of the said sale deed is Ext.B1. The petition and counter petition would show that another agreement was executed on the same date. The copy of the said agreement is Ext.A3. This would show that 3<sup>rd</sup> defendant retained Rs.6,38,000/- with him till measurement of the property and removal of posts and stay wires in plaintiff schedule item No.1 property. Plaintiff was a witness there, too. Now the plaintiff claims that he

is entitled for this Rs.6,38,000/- and Rs.1,32,000/-, the value of 300 sq. metres of property. His right of claim not specifically stated in the petition.

**9.** It is true that Ext.A1 was executed between plaintiff and defendants 1 and 2. After the expiry of period of performance of agreement for sale, Ext.A2 was executed with the knowledge of plaintiff. Thereafter, plaint schedule item No.1 property was transferred to 3<sup>rd</sup> defendant by executing Ext.B1 sale deed. This is also with the knowledge of plaintiff. On the very same date of execution of Ext.B1, defendants 1 and 2, and 3<sup>rd</sup> defendant executed Ext.A3. Plaintiff was a witness to this agreement also. Ext.B1, Ext.A3 or Ext.A2 does not contain any stipulations regarding any type of liability existing in favour of plaintiff. Prima facie, plaintiff could not prove the liability of defendants 1 to 3 to pay Rs.7,70,000/- to plaintiff. Ext.A2 was executed after the expiry of Ext.A1. Plaintiff was well aware of execution of Ext.B1 sale deed. He could have raised contentions regarding the liability of defendants at the time of execution of Ext.B1. He did not raise any claim over the amount at the time of execution of Ext.B1 or Ext.A3. Ext.B1, the title deed of 3<sup>rd</sup> defendant is undisputed. Ext.B2 is the land tax receipt with respect to plaint schedule item No.1 property in favour of 3<sup>rd</sup> defendant. Ext.B3 is a possession certificate in favour of 3<sup>rd</sup> defendant and Ext.B4 is a cite approval and building permit issued in the name of 3<sup>rd</sup> defendant. These documents prima facie show that 3<sup>rd</sup> defendant is in title and possession of plaint schedule item No.1 property. Ext.A4 is a tax receipt dated 21.04.2025. This would show that the property was in the name of 1<sup>st</sup> defendant and he remitted the land tax. It can be seen that prior to execution of Ext.B1 on 25.04.2025, 1<sup>st</sup> defendant was in

possession of plaint schedule item No.1 property. No documents available before the court would prima facie support the case of plaintiff that he is entitled to get Rs.7,70,000/- in the alleged exchange of properties between himself and defendants 1 and 2.

**10.** From the above discussion, it can be seen that plaintiff failed to bring a prima facie case against defendants 1 to 3. Presently, the 3<sup>rd</sup> defendant is in possession and title of plaint schedule item No.1 property. If a temporary order of injunction is granted preventing him from developing his property and make constructions therein, it may cause irreparable injury. The entire revenue records produced in this case are admitted by plaintiff. These documents would prima facie show that the balance of convenience is in favour of 3<sup>rd</sup> defendant. Hence the plaintiff failed to establish his claim and the points are answered against him. The temporary injunction granted on 13.01.2026 in IA 01/2026 is vacated. Intimate the SRO and Village Office concerned if the order of the injunction is already communicated to them.

**11. Point No.2:- In the result,** IA 1/2026 is dismissed.

Dictated to the Confidential Assistant, typed by him, corrected by me and pronounced in open court on this the 7<sup>th</sup> day of April, 2026.

**SMITHA SUSAN MATHEW  
MUNSIFF**

**APPENDIX :-****Exhibits marked for the petitioner:-**

A1	04.07.2024	True copy of agreement.
A2	27.11.2024	True copy Agreement
A3	25.04.2025	Copy of Agreement
A4	21.04.2025	True copy of Tax Receipt Thandaper No. 7885, issued from Village Office, Vazhoor.

**Exhibits marked for the Respondents:-**

B1	25.04.2025	True copy of Sale deed No. 335/2025.
B2	21.05.2025	Copy of Tax Receipt Thandaper No. 9125, issued from Village Office Vazhoor.
B3	19.08.2025	Possession Certificate
B4	16.10.2020	Site Approval and Building permit issued from Vazhoor Grama Panchayat, Kottayam.

**Court Exhibits:-** Nil**Third party Exhibits:-** Nil**Witness examined for the petitioner:-** Nil**Witness examined for the Respondents:-** Nil***Id/-*****MUNSIFF**

Typed By : Sheeba C N

Compd. By : Sheeba M.K.

**MUNSIFF**