

IN THE COURT OF THE SUB JUDGE OF MANJERI.

Present:- Smt. Beena Gopal, Sub Judge.

Thursday, the 18th day of September, 2025

INTERLOCUTORY APPLICATION No. 8/2025
in OS 02/2022

Between:-

P. Muhammad Shafi, S/o Seethi, Pananilath House,
Thejas residency, Cross No.13, Chakkalakuth,
Nilambur amsom desom and P.O., Nilambur Taluk.

} Petitioner/
Plaintiff

And:-

1. Shihab Thangal Educational and Charitable trust,
Rep. by its Working Secretary, P. Abdul Kareem,
S/o Kayamar, Punnappala House, Meempadam P.O.,
Mampad Amsom Desom, Nilambur Taluk.
2. Sayyad Sadikhali Shihab Thangal,
S/o Sayyad Pookkoya Thangal, Puthiya Maliyekkan House,
Panakkad Amsom desom, Ernad Taluk.
3. Rehamathulla, S/o Hamsa Musliar, Moothodan House,
Meembadam, Edakkara amsom, Moothodam Desom,
Nilambur Taluk.
4. K. Muhammadali, S/o Alavi, Kamburath House,
Mambad Amsom Desom, Nilambur Taluk.
5. P. Abdul Kareem, S/o Koyammar, Punnappala House,
Meembadam, Mambad Amsom Desom, Nilambur Taluk.
6. Muhammad Musthafa K.P., S/o Muhammedkutti, Kozhiparamban,
Meembadam, Mambad Amsom Desom, Nilambur Taluk.
7. C.M. Aboobacker, S/o Muhammed, Chakkumukhath House,
Mambad Amsom Desom, Nilambur Taluk.
8. K. Maharroof, S/o Muhammadali, Kuppanath House,
Mambad Amsom Desom, Nilambur Taluk.

} Respondents
Defendants

This petition coming on this day for hearing before me in the presence of Sri. Anil Thomas K, Advocate for the petitioner and of Sri. Azad Aryadan, Advocate for R1, R2, R4, R5, R6 & R7 and of Sri. E.P. Sajeev, Advocate for R3 and R8, and having stood over to this day for consideration, the court delivered the following:-

ORDER

This is a petition is filed by the plaintiff under Order 26, Rule 9 CPC. The petition is to ascertain the details of the building situated in the plaint schedule property, details of the building under construction, its age and such other matters as pointed out by the plaintiff at the spot.

2. The learned counsel for the petitioner contended that as per the order in IA 7/24 the respondents have submitted the audit reports till 31.3.2023 to the trust before this Court. It is revealed from the said records that the then cash balance in hand is inly Rs.1,46,512/-. Now it is learned that several building constructions are going on in the trust property. It sheds light upon the fact that the audit report submitted before Court till 31.3.2023 as per the order in IA 7/2024 was not correct. Hence the petition.

3. Respondents / defendants 1, 2, 4, 5, 7, 8 filed detailed objection stating that the petition is not maintainable. Respondents denied all the contentions alleged against them. It is stated that the petitioner was expelled from the Governing Body due to his misconduct. The petitioner had put his signature in the Trust Deed dated 30.9.2011. Some documents were lost in 2019 flood season and an affidavit has been filed to that effect. Since the petitioner was not a member of the trust board he has no locus standi to file this petition. Hence prayed for the dismissal of the petition.

4. Heard both sides.

5. Learned counsel for the plaintiff placed reliance on *Payani Achuthan, Petitioner v. Chamballikundu Harijan Fisheries Development Co-operative Society and others, respondents* (AIR 1996 Kerala 276). It is observed that "I agree with the above view. The Court cannot prevent a party from adducing the best evidence, if such evidence can be gathered with the help of a Commissioner. Refusal of the request of the party to appoint a Commissioner under O.26, R.9, C.P.C. to make a local investigation in an appropriate case amounts to failure of exercise of jurisdiction vested in it. In this view of the matter, I find that the impugned order cannot be sustained."

6. Heard both sides.

7. Perusal of the case records show that it is a scheme suit regarding the management of Shihab Tangal Educational and Charitable Trust. The plaintiff was one of the board members of the said trust. Plaintiff has alleged serious complaints against the the mismanagement of the trust properties by the present Governing Body of the Trust and stated that accounts of the trust was not properly maintained by them and they even misappropriated the funds for their personal use. After the formation of The Trust Board on 30.9.2011, no board meeting was conducted. No proper auditing of the accounts also.

8. It is noticed that some documents have been produced before the Court as per the order in IA 7/2024. Since it is a scheme suit evidence is required regarding the assets, liabilities and management of the said Trust. At present plaintiff is not a member of the Trust Board or Governing Body so it is crystal clear that the plaintiff's intention is to collect evidence to support his case. Therefore I find no merit in the petition, hence petition stands dismissed.

Dictated to the Confidential Assistant, typed by him, corrected and pronounced by me in open Court, this, the 18th day of September, 2025.

Sd/-
Sub Judge,

Typed by – Sheeja T.P.
Compared by: 1. Sheeja
2. Divya Das

Fair order in I.A. 8/25 in O.S.No. 2/2022
Dated: 18.09.2025.
