

IN THE COURT OF THE MUNSIFF OF OTTAPALAM

Present:- Sri.M.R. Dileep, Munsiff, Ottapalam

Wednesday, 25th day of June, 2025.

4th day of Ashadha, 1947. S.E.

INTER LOCUTORY APPLICATION Nos.01/2024 IN OS.537/2024 & 01/2024 IN
O.S.462/2024

IA.01/2024 in OS.537/2024.

Muhammad Musthafa. K.H., aged 48 years, S/o. Hamsa, Kadavath
Veetil, Cheruthuruthy Puthusseri, Thrissur District. Rep. By his
Power of Attorney holder Moideenkutty, S/o. Abdulla Musaliar,
Nambrath House, Kodikkamkunnu, Kumaranellur. P.O., Kappur,
Palakkad District.

Petitioner

Plaintiff

-Vs-

Preetha Radhakrishnan, aged 51 years, D/o. Radhakrishnan,
Puzhamkudavath veetil, S.R.K. Nagar, Palappuram, Ottapalam
Taluk.

Respondent

Defendant

IA.01/2024 in OS.462/2024.

1. C. Radhakrishnan, aged 84 years, S/o. Ravunnikurup,
Residing at Puzhamkudavath house, S.R.K. Nagar,
Palappuram, Ottapalam Taluk.
2. Preetha Radhakrishnan, aged 51 years, D/o. C. Radhakrishnan,
Residing at Puzhamkudavath house, S.R.K. Nagar,
Palappuram, Ottapalam Taluk.

Petitioners

-Vs-

Musthafa, aged about 50 years, S/o. Late K.A. Hamsa, Residing at
Kadavath House, Pallam, Cheruthuruthi, Puthusseri. P.O.,
Thrissur District.

Respondent

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These petitions are coming on this day for hearing before me in the presence of
Sri. K. Sujithkumar, Advocate for the petitioner and Sri. K.V. Narayanan, Advocate for
respondent in IA 1/2024 in OS 537/2024 and Sri. K.V. Narayanan, Advocate for the
petitioners and Sri. K. Sujith kumar, Advocate for respondent in IA 1/2024 in OS
462/2024, and this court passed the following:-

COMMON ORDER

These are applications for temporary prohibitory injunctions.

The petitioner and respondent in I.A.1/2024 in O.S.537/24 are respectively the plaintiff and defendant in that suit , and the petitioners and respondent in I.A.1/2024 in O.S. 462/2024 are the plaintiffs and defendant in that suit. The plaintiff and defendant in O.S. 537/2024 are respectively the defendant and 2nd plaintiff in O.S.462/2024. These suits involve common questions of law and fact. Hence, the common order in these applications . Unless the context suggests otherwise, the parties are hereinafter referred to according to their status in O.S. 462/2024 and the property of the plaintiff in O.S. 537/2024 is referred to as “the plaint schedule property” .

2. The case of the defendant , in brief, is as follows:-

The property described in the schedule of the plaint in O.S. 537/2024 belongs to the defendant by virtue of deed No.1978/2006 of the Ottapalam Sub Registrar's Office. The 1st plaintiff's property is on the west side of the plaint schedule property. The defendant is constructing a commercial building on the plaint schedule property and has borrowed Rs.2,00,00,000 from the Kerala State Industrial Development Corporation Ltd. for its construction. He has a building permit issued by the Municipality.

3. The plaint schedule property is lower than the 1st plaintiff's property. The plaintiffs allege that the defendant has removed lateral support from the 1st plaintiff's property and are trying to prevent the defendant from building on his property. On 18.12.2024, the 1st plaintiff and her men trespassed onto the plaint schedule property, prevented the defendant's men from unloading building materials onto the plaint schedule property and threatened the defendant's power of attorney holder . Hence, this application for a

temporary prohibitory injunction restraining the 1st plaintiff from interfering with the construction of the building.

4. The allegations in the affidavit in support of I.A.1/2024 in O.S. 462/2024 are false. The defendant has not removed lateral support from the plaintiffs' property. Irreparable injury will be caused to the defendant if I.A.1/2024 in O.S. 462/2024 is allowed.

5. The case of the plaintiffs, in brief, is as follows:-

The property described in the schedule of the plaint in O.S. 462/2024 belonged to the 1st plaintiff's wife Kalyanikutty. On Kalyanikutty's death, the property devolved on the plaintiffs and Kalyanikutty's other children, Premjith and Priya Jude. The plaintiffs have instituted O.S. 462/2024 on behalf of all the co-owners. The defendant's property is on the east side of the plaintiffs' property. The defendant has removed lateral support from the plaintiffs' property by excavating a pit on his property. The defendant is building on his property without a permit from the Municipality. On 28.10.2024, a part of the plaintiffs' boundary wall collapsed due to the illegal excavation on the defendant's property. The building being constructed does not have a sufficient setback from the plaintiffs' boundary wall. The defendant does not have a right to remove lateral support from the plaint schedule property or build on his property without a permit from the Municipality. Hence, this application for a temporary prohibitory injunction restraining the defendant from building on his property until the disposal of the suit.

6. I.A.1/2024 in O.S. 537/2024 is being treated as the lead application. The documents produced in court by the defendant were marked as Exts.A1 to A6, and the documents produced in court by the Municipality was marked as Ext.X1. The advocate Commissioners' reports were marked as Exts.C1 and C2.

7. Heard the counsel for the defendant and the counsel for the plaintiffs.

8. The points that arise for consideration are:-

1. Is the defendant entitled to a temporary prohibitory injunction?
2. Are the plaintiffs entitled to a temporary prohibitory injunction ?
3. What orders shall be passed?

9. Point nos.1 and 2 :- These points are discussed together for convenience. The plaintiffs accuse the defendant of removing the lateral support from their property. The advocate commissioners' reports show that the defendant has removed soil from near the plaintiffs' boundary wall. The advocate Commissioner in O.S. 537/2024 has reported that there are cracks in the boundary wall. One of the plaintiffs' allegations is that the defendant has excavated a pit on his property for the foundations of the building. The report of the advocate commissioner in O.S. 537/2024 shows that the trenches dug for the foundations of the building have been filled in and that the foundations are now level with the ground. The plaintiffs' apprehension is not that the defendant's subjecting his property to artificial pressure will cause subsidence of that property . Their fear is that the removal of soil from the defendant's property will cause their land to subside. The commissioners' reports show that the damage to the wall was caused by the removal of soil from near it. The trenches dug for the foundations of the building have been filled in, so there is no risk of those trenches causing subsidence on the plaintiffs' land. Ext.X1 contains proceedings pertaining to complaints made against the defendant to the Ottapalam Municipality by the 1st plaintiff and a certain Mubarak . In paragraph 4 of file no. 1735498 -2024, the Assistant Engineer of the Municipality wrote that it was not clear what the required setback was . The notes written by the officers of the Municipality

and the notices issued by the Municipality's Assistant Engineer show that the officers of the Municipality think that it is necessary to build a retaining wall on the boundary line .

10. The other allegation against the defendant is that the building does not have a sufficient setback from the plaintiffs' boundary wall. Ext.C1 shows that the building has a setback of 1 metre from the plaintiffs' boundary wall. Ext.A4 is a copy of the building permit issued to the defendant . It shows that he is constructing a commercial building with a plinth area of 1488.19 square meters. Rule 26 of the Kerala Municipality Building Rules, 2019 says that the minimum setback required from the properties on the sides of a commercial building with a built-up area exceeding 200 square meters is one metre. It appears that the defendant's building has a sufficient setback from the plaintiffs' boundary wall. I have already explained why the trenches dug for the foundations of the building do not pose a threat to the plaintiffs' property anymore. The plaintiffs do not have a claim that the defendant's subjecting his property to artificial pressure will cause that property to subside. Therefore, I find no reason to restrain the defendant from building on his property . However, there shall be a restraint on further excavations because the defendant appears to have caused damage to the plaintiffs' wall by removing soil from near it. The plaintiffs' pleadings show that they want to prevent the defendant from building on his property. Constructing a commercial building is a capital-intensive endeavor. Therefore, the balance of convenience is in the defendant's favour and irreparable injury will be caused to him if the injunction is denied. In view of the above findings, I hold that the plaintiffs are entitled to a temporary prohibitory injunction restraining the defendant from making further excavations on his property but are not entitled to a restraint on the construction of the commercial building. Since the plaintiffs have made it clear that they want to prevent the defendant from building on his property,

they shall be restrained from preventing the defendant from completing the construction of the commercial building. Point nos.1 and 2 are answered accordingly.

11.Issue no.3 :- In view of the answers to the foregoing points , the following orders are passed :-

1. The defendant is restrained by a temporary prohibitory injunction from making further excavations on the plaint schedule property until the disposal of O.S.462/2024.
2. The plaintiffs are restrained by a temporary prohibitory injunction from preventing the defendant from completing the construction of the commercial building in accordance with Exts.A3 and A4.
3. There is no order as to costs.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court, on this, the 25th day of June, 2025.

Munsiff

APPENDIX:

Petitioner's witness Examined: NIL.

Petitioner's Exhibits Marked:

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| A1 | : 18.05.2006 : | Photocopy of assignment deed. |
| A2 | : 06.01.2023 : | Photocopy location sketch. |
| A3 | : Nil : | Photocopy of commercial building plan. |
| A4 | : 12.04.2023 : | Photocopy of building permit. |
| A5(a-d): | Nil : | Photocopy of photos. |
| A6 | : 04.01.2024 : | Photocopy of loan sanction letter. |

Respondents' Witness and Exhibits : NIL.

Court Witness Examined : NIL

Court Exhibits Marked:

C1 : 13.11.2024 : Commissioner's report submitted by Advocate
Commissioner Avinash.K.

C1(a) : 13.11.2024 : Plan submitted by Advocate Commissioner Avinash.K.

C2 : 13.01.2025 : Commissioner's report submitted by Advocate
Commissioner Nitheesh Krishna.

C2(a) : 13.01.2025 : Plan submitted by Advocate Commissioner
Nitheesh Krishna.

Third party Witness Examined : NIL

Third party Exhibits Marked:

X1 : 17.06.2025 : The document produced by the Municipality.

Munsiff.