

IN THE COURT OF THE MUNSIFF OF ALATHUR

Present:- Sri.Binu.P., Munsiff, Alathur

Tuesday 04th day of November, 2025

(13th day of Karthika, 1947 S.E)

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INTERLOCUTORY APPLICATION No.02/2025 (1920/2025)

IN

ORIGINAL SUIT No. 309/2025

Subha, aged 45 years, W/o Annathasivan, residing at
Gokulam, Vadakkenchery Gramam, Vadakkenchery Post,
Vadakkenchery amsam desam, Alathur Taluk } Petitioner/
Plaintiff

Vs.

Johnson, aged 49 years, S/o Cheru, residing at Randumpala
Veedu, Vinayaka Street, Vadakkenchery Post,
Vadakkenchery amsam desam, Alathur Taluk } Respondent/
1st Defendant

This petition is coming on this day for hearing before me in the presence of Sri. Shibu Shamsudeen, Advocate for the petitioner and of Sri. K.K. Appukuttan Advocate for the respondent and this court passed the following.

ORDER

The petitioner filed the petition under Order XXXIX Rules 1, 2 and Section 151 of the Code of Civil Procedure.

2. The petition averments in short are as follows:-

The petition schedule properties are the building properties situated in Vadakkencherry Town, originally included in the partition deed bearing No.13/1964 of SRO, Nemmara. The petition 'A' and 'B' schedule properties are included in item No.6 to the 'B' schedule of the said partition deed, and the petition 'C' and 'D' schedule properties are included in the 4th item to the 'A' schedule of the said partition deed. The petition schedule properties are single-storied buildings. The petition schedule property originally belonged to the petitioner's father, Anantharaman. After his demise, the property devolved upon his legal heirs. A company named M/s.Venram Builders and Developers constructed a shopping complex on the property, and also constructed a passage for entering it and a 2 ½ feet wide passage for waste water to flow on the northern side. In such buildings, except for the bank building in the middle, the remaining plots were sold to Venram Builders by the heirs of Anantharaman by virtue of deed No.3036/1998 of SRO, Vadakkencherry. The owners of the building acquired joint ownership of the passage left in the buildings, which is the property included in the petition as 'A' schedule. The petition 'B' schedule property is the upper portion of the ground floor buildings on the south side adjacent to the petition 'A' schedule property. The legal heirs of Anantharaman divided the joint right over the first floor by virtue of deed No.173/2019 of SRO, Vadakkencherry. The 'C' schedule to item No.1 to the said partition deed is the petition 'B' schedule to the present petition. The petitioner claims an absolute right, title over the petition 'B' schedule property. The petition 'C' schedule property is a three-storied commercial building under illegal construction by the first defendant without keeping lawful distance. The said building was constructed without obtaining permission from the authorities concerned. On 30.08.2025, the petitioner and her husband demanded that the first respondent stop the illegal construction, but he was not ready to stop the construction.

Hence the petition.

3. The first respondent filed counter with the following effect :

The respondent denied all the allegations except those which are specifically admitted. The petition is not maintainable. The petitioner does not own any property adjoining the respondent's property shown in the 'C' schedule property. The respondent obtained no objection letter from the owners of the adjacent boundary properties for carrying out the building construction. The construction work does not cause any threat to the petitioner's building, as there is no building situated near the respondent's building. 'A' schedule passage is an imaginary one. The petitioner has to prove petition 'A' to 'D' schedule properties. The third defendant has to issue the building permit. Since the third defendant is not a party to the petition, the petition is not maintainable. The construction was already completed, whereby the petition is infructuous. For the said reasons, the petition is liable to be dismissed with costs.

4. From the side of the petitioner exhibits A1 to A3, C1 and C1(a) were marked. From the side of the respondent, exhibits B1 and B2 were marked.

5. The following points arose for consideration:

1. Whether the petitioner made out a prima facie case and balance of convenience in his favour ?
2. Whether the petitioner will be put in irreparable hardship if the injunction is not granted?
3. Reliefs and costs?

6. Heard both sides.

7. Points No.1 and 2 :- The petitioner sought the relief of permanent prohibitory injunction restraining the respondent from continuing the construction in the petition 'C' schedule property.

8. The case advanced by the petitioner is that the respondent, without obtaining a proper licence from the authorities concerned, illegally constructed a

three-storied building in the petition 'C' schedule property.

9. In this case, an Advocate Commissioner was appointed to inspect the property in question. According to the Commissioner's report, it is evident that the construction of the building on the 'C' scheduled property has made substantial progress, with more than half of the structure already completed.

10. Upon consideration of rival contentions from both sides, the primary question to be considered is whether the petitioner has established a prima facie case warranting the grant of an interim injunction.

11. In the present case, from the report of the Commissioner, it is evident that the petitioner does not own or possess any property immediately adjacent to the petition 'C' scheduled property. When the petitioner has no adjoining property the alleged construction does not directly affect petitioner's right.

12. The petitioner mainly relied on Exhibit A3, which was issued by the panchayat. But the panchayat is not a party to the present petition, even though the Panchayat is arrayed as the third defendant in this case. Without the panchayat being before this court in the present petition, it is not possible to ascertain the circumstances under which the Exhibit A3 document was issued, whether any subsequent proceedings were initiated based on it. And also to ascertain that after the issuance of the Ext.A3, any subsequent construction was done in violation of Ext.A3. Ext.A3 also made clear that further proceedings should be started only after obtaining the building permission from the panchayat secretary.

13. Further, as stated earlier, the construction in question has almost reached completion. If the petitioner has any grievance, an equally efficacious remedy is available under the Kerala Panchayat Raj Act and the relevant building rules to approach the competent authority.

14. Most importantly, the commission report, which forms the factual

basis of the petitioner's claim, does not contain any details of the measurement, extent or nature of construction. There is no discussion regarding the distance of the building from the adjacent properties. The report is vague and cannot be relied upon to establish a prima facie case.

15. The balance of convenience must be considered by weighing the comparative hardship to the parties. Here, the construction has already progressed substantially, and stopping the same at this stage would cause considerable loss and inconvenience to the respondent. Hence, the balance of convenience clearly lies in favour of refusing the injunction.

16. To succeed, the petitioner must also establish that the refusal of interim relief would cause an irreparable injury. In this case, no such injury is shown. Thus, the condition of irreparable injury is not satisfied.

17. Based on the above discussion, this court is of the view that the petitioner has failed to establish a prima facie case. The balance of convenience is also not in favour of granting any interim relief. Hence, the points are answered against the petitioner.

18. Point No.3 :- In the light of the findings under points No.1 and 2, this point is also answered against the petitioner.

In the result, the petition is dismissed without costs.

Dictated to Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 04th day of November, 2025.

Munsiff

APPENDIX:-

Petitioner's Witness Examined:- NIL

Petitioner's Exhibits Marked :-

- A1 01.07.2019 : Photo copy of Partition deed
No.1730/2019 of SRO.,Vadakkenchery entered
among Chandra @ Visalakshy and others.
- A2 26.11.1998 : Photo copy of Assignment deed
No.3036/1998 of SRO.,Vadakkenchery
- A3 22.03.2025 : Photo copy of Stop Memo issued by the
Vadakkenchery Grama Panchayth

Respondent's Witness Examined :- NIL

Respondent's Exhibits Marked :-

- B1 29.05.2025 : No objection certificate issued by Ajeesh in the
name of Johnson.
- B2 27.05.2025 : No objection certificate issued by Benny George
and Rani Benny in the name of Johnson.

Court Witness Examined :- NIL

Court Exhibits Marked :-

C1 15.10.2025 : Commission Report Submitted by
Nikhilkumar A., Advocate Commissioner.

C1(a)15.10.2025 : Rough sketch submitted by
Nikhilkumar A., Advocate Commissioner.

Munsiff

Typed by :- Sudhakala
Compared by :- Sivadarsini

Fair/ Copy of Order in

IA. No.02/2025

in O.S.No.309 /2025

Dated: 04.11.2025

