

IN THE COURT OF THE PRINCIPAL SUB JUDGE, IRINJALAKUDA

Present:- Rema R K, Principal Sub Judge

Monday, the 30<sup>th</sup> day of March, 2026/9<sup>th</sup> Chaithram, 1948 SE

**CMA 29/2025**

**IA 6/2025 in OS 229/2024 of Munsiff Court, Irinjalakuda**

**APPELLANT/  
PLAINTIFF**

Aravindaksha Menon, 75 years, S/o Panchena Veettil Thangam @ Bhargavi Amma, 'Rohini', Kottappuram road, Kottappuram desom, Thrissur Village and Taluk, Poothole P O-680004

By Adv.Rajesh Thampan

**RESPONDENTS  
/DEFENDANTS**

- 1 Devayani, 70 years, W/o Late Panchena Veettil Balachandra Menon, Kodakara, Manakkulangara desom, Kodakara Village, Manakkulangara P O, Chalakudy Taluk
- 2 Anilkumar Nair, 48 years, S/o Late Panchena Veettil Balachandra Menon, Kodakara, Manakkulangara desom, Kodakara Village, Manakkulangara P O, Chalakudy Taluk
- 3 Bindhu Narayanan, 47 years, D/o Late Panchena Veettil Balachandra Menon, Kodakara, Manakkulangara desom, Kodakara Village, Manakkulangara P O, Chalakudy Taluk

By Adv. K Jagadeesh

This petition having come up before me for final hearing on 17/3/2026 in the presence of counsel for both sides and stood over to this day for consideration the court delivered the following:

**JUDGMENT**

This Civil Miscellaneous Appeal is preferred against the order in IA No. 6/2025 in OS No. 229/2024 dated 31.05.2025 on the file of Munsiff Court, Irinjalakuda.

2. The brief acts are as follows: The suit is one instituted for fixation of boundary, recovery of possession, and for a decree of perpetual injunction. In the said suit, the plaintiff has filed I.A. No. 6 of 2025 under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, seeking an order of temporary injunction. The case of the petitioner is that the plaint schedule properties are traceable to Partition Deed No. 1204/1970 of SRO Kallettumkara, under which the properties were divided among the petitioner, his mother, and siblings. As per the said partition, Item No. 1 of the D schedule was allotted to the petitioner, and the same is described as the plaint A schedule property. Immediately to its north lies Item No. 1 of the C schedule of the partition deed, which had been allotted to late Balachandra Menon, the brother of the petitioner, and is described as plaint B schedule property. Further north lies Item No. 1 of the B schedule, which had been allotted to late Radhakrishna Menon, another

brother of the petitioner, and is described as plaint C schedule property. All these properties have the Aloor–Kodakara tar road as their eastern boundary. To the south of the plaint A schedule property lies Item No. 1 of the E schedule of the partition deed, which had been allotted to Vijayan, another brother of the petitioner. It is stated that a well-defined and longstanding boundary separates the said property from the plaint A schedule property. On the western side of the plaint A schedule property, there existed a compound wall with granite foundation. The partition effected in the year 1970 had divided the properties from A to H schedules in an east-west vertical manner. Defendants 1 to 3 are the legal heirs of late Balachandra Menon and are residing in the house situated in the plaint B schedule property. An extent of 60 cents comprised in the plaint C schedule property, having road frontage, had been assigned by late Radhakrishna Menon and is presently in the possession of the 4th defendant, Sunny, who has constructed a residential building therein and is residing there. To the west of the said property lies the property of the 8th defendant, which she obtained by virtue of a Will executed by late Radhakrishna Menon. The plaintiff is residing at Thrissur, about 25 kilometres away from the plaint schedule properties. Taking advantage of the said circumstance,

defendants 1 to 3 are alleged to have obliterated the boundary separating the plaintiff A and B schedule properties and to have erected concrete posts encroaching into the plaintiff A schedule property, thereby reducing its road frontage. It is further alleged that, thereafter, the said defendants instituted O.S. No. 1 of 2022 before the Munsiff Court, Irinjalakuda, seeking an injunction against the plaintiff by suppressing material facts and succeeded in obtaining an injunction decree. The appeal preferred by the plaintiff against the said decree is now pending before the Sub Court, Irinjalakuda as A.S. No. 8 of 2024. According to the plaintiff, if the plaintiff schedule properties are measured in accordance with the partition deed, particularly in the east-west direction, the encroachment allegedly effected by the defendants would be clearly revealed. It is also contended that the survey number shown in the partition deed is not correct. It is further stated that when disputes arose regarding the boundary and the plaintiff was allegedly threatened by the defendants, he approached the DySP, Chalakudy, by filing a complaint. It is thereafter, according to the plaintiff, that the defendants instituted the earlier suit after obliterating the boundary. In the above circumstances, the present suit has been instituted for fixation of the boundary between the plaintiff A, B and C schedule

properties, for recovery of possession of the portion encroached upon by defendants 1 to 3 (described as plaint D schedule), and for consequential relief of perpetual injunction. Along with the suit, the plaintiff had also filed I.A. No. 2 of 2024, and since the defendants had lodged caveat, urgent notice was ordered. A commission was issued, and the Advocate Commissioner has already submitted his report. On a perusal of the said report, the plaintiff contends that the defence set up by the defendants is unsustainable. It is in the above background that the plaintiff has filed I.A. No. 6 of 2025, seeking an order of temporary injunction restraining the defendants from carrying out any construction activities in the plaint schedule properties, contending that such acts would result in irreparable injury and prejudice to the rights of the plaintiff.

3. The respondents 1 to 3 filed objection to the petition, raising the following contentions: According to them, both the suit and the present petition are not maintainable. It is contended that the suit is clearly barred by limitation. Further, the petitioner had earlier instituted O.S. No. 1860/2007 before the Additional Munsiff Court, Irinjalakuda, seeking fixation of the boundary of the plaint A schedule property with the assistance of a surveyor, along with other

consequential reliefs. The said suit was dismissed on 12.04.2017. The appeal preferred by the petitioner as A.S. No. 126/2017 was also dismissed on 22.09.2021. It is further contended that, subsequent to the dismissal of the above proceedings, the petitioner attempted to encroach upon the southern boundary of the plaint B schedule property belonging to the respondents. Consequently, the respondents instituted O.S. No. 1/2022 seeking a decree of perpetual injunction restraining the petitioner from trespassing into the plaint B schedule property and from obliterating its southern boundary. The said suit was decreed against the petitioner. Aggrieved thereby, the petitioner preferred A.S. No. 8/2024, which is now pending before the Additional Sub Court, Irinjalakuda. In the said appeal, the petitioner filed I.A. No. 2/2024 seeking temporary injunction, which was dismissed by the Additional Sub Court on 15.03.2024. Thereafter, suppressing all the above material facts, the petitioner instituted the present suit and petition by misleading the Court. Hence, according to the respondents, both the suit and the petition are not maintainable. It is also contended that the suit is barred by Section 11 of the Code of Civil Procedure. The respondents have denied the allegations in the plaint and petition that they have encroached upon the plaint A schedule property and erected

posts reducing its road frontage. They further denied the allegation that O.S. No. 1/2022 was filed by misleading the Court and that a decree was obtained improperly. It is also contended that the respondents had already lodged a caveat. Suppressing the same, the petitioner filed I.A. No. 2/2024 for temporary injunction and initially obtained an order. Subsequently, the said injunction was vacated and notice was issued to the respondents. On 18.05.2024, the respondents filed their counter, but the petitioner was not ready to proceed with the hearing. Thereafter, on 08.08.2024, the respondents filed their written statement, and the interlocutory application was posted along with the suit. The respondents further contend that, while the caveat was in force and without issuing notice to them, an Advocate Commissioner inspected the property in the presence of the petitioner's counsel. According to the respondents, they are not carrying out any construction in the plaint A schedule property; rather, they are constructing a house in their own property, which has already been adjudicated in O.S. No. 1/2022. It is also pointed out that, in the plaint and petition, the western boundary of the defendants' property is described as "Mundakanpadam," whereas in the partition deed it is described as a pathway. The respondents contend that the said pathway

is no longer in use due to the existence of a new way. Except for the properties set apart to the predecessor of the respondent and to Radhakrishna Menon, all other properties have “Mundakanpadam” as their western boundary. Hence, the respondents allege that the petitioner has deliberately described the western boundary of the plaint B schedule property as “Mundakanpadam” with the intention of encroaching upon their southern boundary. In O.S. No. 1860/2007, the petitioner had sought partition of the plaint schedule property with equal road frontage on the ground that the properties were not identifiable as per the partition deed. In the said suit, the petitioner had also sought an injunction against respondents 2 to 4 therein with respect to the southern boundary. An Advocate Commissioner, with the assistance of a surveyor, had inspected the property, and after trial, the suit was dismissed. The present suit, according to the respondents, is based on inconsistent pleadings. It is further contended that the southern boundary of the petitioner’s property was in the possession of a third party, which is evident from the commission report in O.S. No. 1/2022. After the dismissal of O.S. No. 1860/2007 and A.S. No. 126/2017, the petitioner attempted to encroach upon the respondents’ property, which necessitated the filing of O.S. No. 1/2022. At the time

of execution of the partition deeds, the southern boundary of the plaint B schedule property was clearly demarcated. In O.S. No. 1860/2007, the dispute raised by the petitioner related to the southern boundary of the plaint B schedule property. However, in that suit, the petitioner did not raise any contention that the present respondents had encroached upon approximately 70 cents of his property. Hence, the present suit is also barred by the principles of constructive res judicata. The respondents assert that the plaint B schedule property is in their absolute ownership and possession, and the decree in O.S. No. 1/2022 continues to be in force. The present suit seeks recovery of possession of about 70 cents of property allegedly encroached upon by the respondents. Therefore, a prayer for temporary injunction in respect of property not in the possession of the petitioner is not maintainable. It is further contended that, as per the averments in the plaint and petition, there is no identifiable boundary between the plaint A and B schedule properties. Hence, a relief of injunction is not maintainable. According to the respondents, the entire attempt of the petitioner is to circumvent the decree in O.S. No. 1/2022. The present suit and petition have been filed without bona fides, suppressing material facts, and by approaching

the Court with unclean hands. In the above circumstances, the respondents pray that the petition be dismissed.

4. Before the trial court, on the side of the petitioner, Ext.A1 and Ext.A2 were marked, and on the side of the respondents, Ext.B1 to Ext.B5 were marked. The commission reports and sketches were marked as Ext.C1, C1(a), C2 and C2(a) respectively, and the photographs accompanying the commission report were marked as Ext.C2 series. Upon an analysis of the pleadings and evidence, the trial court dismissed the Interlocutory Application. Aggrieved by the said order, the petitioner has preferred this Civil Miscellaneous Appeal on the following grounds: The order of the trial court is devoid of merit and suffers from a total mis -appreciation of both factual and legal aspects relating to the petition schedule property. The court below failed to properly evaluate the materials on record. The trial court failed to appreciate that the earlier suit, O.S. No.1860/2007, though involving the predecessors-in-interest of the present respondents, pertained specifically to disputes regarding the southern boundary of the plaintiff's property. The cause of action in the present suit is entirely distinct. Therefore, there is no legal bar (including principles like res judicata) preventing the institution of the present suit. This

crucial distinction was not properly considered. The trial court placed undue reliance on the outcomes in O.S. No.1860/2007 and O.S. No.1/2022, concluding that the balance of convenience lies in favour of the respondents. It is submitted that, the earlier suits arose from different causes of action. The appeal against O.S. No.1/2022 is pending as A.S. No.8/2024 before the Sub Court, Irinjalakuda. Hence, reliance on those decrees to deny interim relief is legally unsustainable. The trial court rightly found that the petitioner had established a prima facie case. However, it failed to grant relief despite such a finding, rendering the decision inconsistent. The trial court correctly rejected the respondents' contention that the petitioner is entitled only to 9.2 metres of road frontage, and the respondents are entitled to 57 metres. Instead, it accepted the total frontage of A, B, and C schedule properties: 99.25 metres, C schedule frontage: 33 metres. Despite this correct factual finding, the court failed to grant protection to the petitioner. The trial court failed to properly appreciate the unauthorized construction carried out by the respondents in the plaint A schedule property, the mala fide intention, particularly the continuation of construction during the court vacation. The commission reports (Ext.C1 & Ext.C2) and accompanying photographs clearly establish

encroachment and ongoing construction. The finding that the balance of convenience favours the respondents is erroneous. On the contrary, continued construction would cause irreparable injury to the petitioner. Granting interim protection would only preserve the property without prejudicing the respondents . Given the existence of a prima facie case and ongoing disputed construction, the trial court ought to have ordered status quo pending disposal of the suit.

5. Based upon the above facts, the following points arose for consideration:-

1. Whether the appellant/plaintiff could prove a prima facie case in his favour?
2. Whether the appellant/plaintiff could prove that balance of convenience is in his favour?
3. Whether the appellant/plaintiff could prove that irreparable injury will be caused to him if injunction is not allowed rather than refusing the same to the respondent/defendants?
4. Whether the finding of the trial Court needs any interference? If so, to what extent?

5. What is the finding?

6. For the sake of convenience, the parties will be herein after referred to as per their rank before the trial Court.

7. **Point No.1:-** According to the petitioner, the plaint A schedule property belongs to him by virtue of Partition Deed No. 1204/1970 of SRO Kallettumkara, wherein it is described as Item No. 1 of the D schedule, having an extent of 1 acre and 30 cents. Item No. 1 of the C schedule under the said partition deed, having an extent of 1 acre and 31 cents, lies immediately to the north of the plaint A schedule property and was allotted to the petitioner's deceased brother, whose legal heirs are the respondents herein. Further to the north lies another property, having an extent of 1 acre and 31 cents, allotted to late Radhakrishna Menon, another brother of the petitioner, which is described as plaint C schedule. On the eastern side of the plaint A, B, and C schedule properties runs a PWD road, and the total average road frontage of these properties is stated to be 99.25 metres, with each schedule property having approximately 33 metres frontage. However, the petitioner alleges that, taking advantage of his residence at Thrissur, the respondents unlawfully encroached into the plaint A

schedule property and erected concrete posts, thereby reducing its road frontage to a mere 9.2 metres. It is further submitted that the respondents had earlier instituted O.S. No. 1/2022 before the Munsiff Court and obtained a decree. The respondents contend that the concrete posts were erected to demarcate the boundary between their property and that of the petitioner. However, the petitioner relies on the findings of the trial court, which, based on Exhibits A1 and A2, recognized that the plaintiff has ownership and possession over 130 cents of land and is remitting tax accordingly. There is no contention from the defendants disputing the plaintiff's entitlement to the said extent. As per the Commissioner's report, the road frontage of the plaintiff C schedule property is 33 metres, leaving a balance of 66.25 metres for the plaintiff A and B schedule properties together. Logically, the petitioner is entitled to half of the said frontage, i.e., 33 metres. However, as per Exhibit C1(a), the petitioner's actual road frontage is shown as only 9.2 metres, whereas the respondents are found to be in possession of 57.05 metres. Thus, the trial court has already found a prima facie case in favour of the petitioner. However, the sole ground on which the trial court declined to grant the injunction, as argued by the petitioner, is the existence of the decree in O.S. No. 1/2022. On that

basis, the court held that it could not grant an injunction, found the balance of convenience in favour of the respondents, and concluded that no irreparable injury would be caused to the petitioner, thereby dismissing the petition.

8. According to the petitioner, O.S. No. 1860/2007 was not instituted on the same cause of action as the present suit. The said suit was filed against eleven siblings of the plaintiff, and the primary dispute therein related to the properties situated on the southern side. The present Commission Report and sketch, marked as Exhibit C1 and Exhibit C1(a), reveal that there exist well-defined boundaries separating the plaintiff schedule properties from the properties lying to the south. As per the title deed (Exhibit A1), the plaintiff was allotted 130 cents as D Schedule, Item No. 1. Immediately to the north of the plaintiff's property lies the property allotted to Balachandra Menon, having an extent of 131 cents as C Schedule, Item No. 1. Further north lies the property of Radhakrishna Menon, described as plaintiff C Schedule, having an extent of 130 cents. The total road frontage of these properties, as per Exhibit C1 and Exhibit C1(a), is 99.25 metres. The northernmost portion, originally belonging to Radhakrishna Menon and presently assigned to defendant No. 4, is enclosed within

well-defined concrete walls and has a road frontage of 33 metres. Consequently, the remaining available road frontage is 66.25 metres, which is also reported by the Advocate Commissioner in response to Query No. 7 in Exhibit C1. Further, in response to Query No. 9, the Advocate Commissioner has reported that the road frontage is 33 metres to 'C' schedule and in response to Query No. 10, it is stated that defendants Nos. 1 to 3 have a road frontage of 57.05 metres. It is also reported in Exhibit C1 that, apart from the concrete posts erected by the respondents, there are no distinct boundaries separating the plaintiff A and B schedule properties. A prima facie reading of the Commission Report indicates that the respondents are in possession of 185.5 cents of land, thereby suggesting an excess possession of 54.5 cents. The property lying to the south of the concrete posts measures approximately 30 cents. According to the plaintiff, he is in possession of only this 30 cents on the southern side. Further, Exhibit C2 report and plan disclose that new construction activities are being carried out on the northern side of the concrete posts. This would place the construction within 15 metres from the southern boundary, which prima facie appears to form part of the plaintiff's property. It is also contended that in O.S. No. 1/2022, the injunction granted against the

petitioner was only to the extent of restraining him from encroaching beyond the concrete posts. The present relief sought is not in violation of the said injunction. On the contrary, the petitioner seeks to restrain the respondents from making permanent constructions in the disputed property, for which recovery of possession is claimed. In such circumstances, there appears to be no legal embargo in granting the relief sought in the present petition.

9. On the side of the respondents, it is contended that the petitioner had earlier instituted O.S. No. 1860/2007 before the Munsiff Court on 04.12.2007. The reliefs sought in the said suit were for fixation of boundaries and for allotment of properties in such a manner as to secure proportionate road frontage. In the said suit, the petitioner had specifically pleaded that the properties covered by Partition Deed No. 1204/1970 of SRO, Kallettumkara were not identifiable and that it was impossible to demarcate the same based on the descriptions contained in the schedule. The allegations in that suit were directed against defendants Nos. 2 to 4,(in that suit) and it was specifically averred that the plaint schedule properties had no clear boundaries and that defendants 2 to 4 were attempting to alienate the same. It is further pointed out that the properties of defendants 2 to 4 in the said suit were

situated on the southern side of the petitioner's property, whereas the property of the present respondents lies on the northern side. The predecessor of the respondents, namely Balachandra Menon, was arrayed as the first defendant in the said suit. However, no allegation was raised against him, nor was any dispute regarding the northern boundary involved in that suit. The said suit was dismissed by the Munsiff Court on 12.04.2017, and the appeal preferred therefrom as A.S. No. 106/2017 was also dismissed. In support of these contentions, the respondents have produced Exhibit B1 (certified copy of the plaint in O.S. No. 1860/2007), Exhibit B2 (certified copy of the judgment therein), Exhibit B3 (certified copy of A.S. No. 166/2017), and Exhibit B4 (certified copy of A.S. No. 126/2017), by which the appellate court dismissed the appeal preferred by the petitioner. In O.S. No. 1860/2007, an Advocate Commissioner, with the assistance of a surveyor, had measured the property and submitted a report. It was specifically noted therein that an indoor shuttle court existed in Survey No. 1183/2002 allotted to the petitioner, and that in Survey Nos. 1175, 974, and 1183/1, the respective parties had constructed residential buildings and were residing therein. The commission report further recorded the existence of boundary stones and concrete posts

demarcating the properties. According to the respondents, after dismissal of the said suit, instead of taking appropriate steps to recover possession, if any, from the owners on the southern side, the petitioner attempted to trespass into the property of the respondents by demolishing the existing boundary on the northern side. Consequently, the predecessor of the respondents instituted O.S. No. 1/2022 before the Munsiff Court against the petitioner, and Exhibit B5 is the certified copy of the plaint in the said suit. The petitioner contested the matter alleging that the respondents had trespassed into his property and unlawfully erected a boundary therein. He further contended that the existing boundary on the northern side of his property does not represent the true boundary. However, in the said proceedings, after recording evidence, a decree of prohibitory injunction was passed against the petitioner. Aggrieved by the same, he preferred an appeal as A.S. No. 8/2024, which is presently pending before the Sub Court.

10. It is pertinent to note that, in the earlier suit, the petitioner did not take any steps to have his property measured. In an attempt to substantiate his allegation of encroachment, he filed I.A. No. 2/2024 in the appeal, seeking a temporary injunction restraining the respondents from making any alterations to the property. The said application was

dismissed by the Sub Court. Thereafter, the petitioner instituted the present suit along with I.A. No. 6/2024, seeking substantially the same relief as that claimed in I.A. No. 2/2024 in O.S. No. 1/2022. Although the Munsiff Court initially granted an ex parte injunction, it was subsequently found that the petitioner had obtained the order by suppressing the filing of a caveat petition. Consequently, the injunction was vacated. Instead of pursuing the matter further in that proceeding, the petitioner has now filed the present petition as I.A. No. 6/2024. In the present suit, the petitioner has taken a stand that the property on the southern boundary of the plaint A schedule belongs to his younger brother, Vijayan, and that there exists a clear and old boundary separating the two properties. This contention is in stark contrast to his earlier position in O.S. No. 1860/2007, wherein he had asserted that no such boundary existed between his property and that of Vijayan Menon. Further, the respondents have produced a sketch along with the appeal, prepared by a surveyor. The said sketch indicates that the respondents are in possession of only 130.814 cents of land, whereas the extent allotted to them under the partition deed is 131 cents. This discrepancy clearly disproves the allegation of encroachment. Therefore, it is evident that the allegation of encroachment is

unfounded and a mere pretext. The conduct of the petitioner reveals an intention to obstruct the construction of a residential building in the property allotted to the third respondent, who has duly obtained a valid building permit, possession certificate, land tax receipts, site plan, and all other requisite approvals from the competent authorities.

11. The respondents contended that the learned counsel for the appellant argued, based on the commission report, that the respondents' property has a width of 57.05 meters and a length of 170 meters, thereby suggesting that the extent in their possession exceeds what they are legally entitled to. However, the respondents pointed out that the sketch produced on their side clearly indicates that, although the width on the eastern side measures 57.2 meters, it narrows to only 17 meters after a distance of 71.8 meters, with the remaining length extending to 83.8 meters. Hence, the contention that the respondents are in possession of excess land is not sustainable. The respondents further argued that the documentary evidence produced by them establishes their lawful possession of property having an extent of 130.814 cents. It was also contended that the petitioner has approached the court by suppressing material facts, particularly the outcome of prior litigation, wherein it was found that the appellant's property had

been encroached upon by property holders on its southern side. According to the respondents, the present petition has been filed with the mala fide intention of obstructing them from proceeding with the construction of a residential building for the 3rd respondent. Moreover, the respondents submitted an undertaking before the court stating that, in the event any portion of the construction is found to have encroached upon the petitioner/appellant's property, they would unconditionally demolish such portion.

12. I have carefully analyzed the evidence on record and considered the rival contentions advanced by both sides. As rightly argued by the learned counsel for the petitioner/appellant, Ext.A1 establishes that the property allotted to the petitioner is Item No.1 of the D schedule therein, having an extent of 1 acre and 30 cents. By producing Ext.A2 tax receipt, the petitioner has further substantiated his possession and enjoyment of the said property. Notably, there is no dispute from the side of the respondents regarding the extent of the property allotted to the petitioner under Ext.A1 partition deed. In order to substantiate his case, the petitioner caused local inspection through an Advocate Commissioner on two occasions, and the reports along with sketches have been marked as Exts.C1, C1(a) and C2, C2(a). As

per Ext.C1 report, it is noted that along the southern boundary of the plaintiff A schedule property, there exists a compound wall to a certain extent, along with a clearly identifiable boundary demarcated by a granite basement. Proceeding northwards from the said southern boundary, a series of concrete posts have been erected. The Commissioner has reported the presence of eight such concrete posts, spaced at distances of 8.75 meters, 8.25 meters, 7.65 meters, 7 meters, 6.40 meters, 5.90 meters, and 5 meters respectively. It is further reported that the total road frontage of plaintiff A, B, and C schedule properties measures 99.25 meters. The C schedule property, belonging to the 4th defendant, lies within a compound wall and has an independent road frontage of 33 meters. From the southern boundary of the 4th defendant's property to the southern boundary of the respondents' property, the road frontage measures 57.05 meters. The Advocate Commissioner has also specifically reported that, apart from the concrete posts noted above, there exists no other distinct boundary separating the properties of the plaintiff and the defendants . In the above circumstances, it can be reasonably concluded that the petitioner has succeeded in establishing a prima facie case in his favour. Thus, point No.1 is answered in favour of the appellant.

13. **Point No 2 and 3:-** In order to establish that the respondents commenced construction in the plaint schedule property subsequent to the first inspection conducted by the Advocate Commissioner, the petitioner caused a second commission to be issued. The Advocate Commissioner, pursuant thereto, submitted a report marked as Ext.C2. In Ext.C2, it is specifically reported that construction activity is in progress in the plaint schedule property, covering an area measuring 6.04 metres in length and 3.07 metres in width, and that the structure has been completed substantially up to the roofing stage. It is further noted that the said construction lies at a distance of 6.30 metres northwards from the concrete boundary post. The specific case advanced by the petitioner is that, as per the commission report, the total road frontage of the respondents' property measures 57.05 metres, whereas the petitioner's property has only 9.2 metres of road frontage. According to the petitioner, the frontage attributable to the plaint C schedule property is 33 metres. Considering that the extent of the plaint A schedule property is 131 cents and that of the respondents' property is 130 cents, it is contended that both properties ought to have substantially equal road frontage. On this basis, it is alleged that the respondents have encroached upon a portion

of the plaint A schedule property and have commenced construction thereon. It is further apprehended that, if the suit is ultimately decreed in favour of the plaintiff, the respondents may set up a false claim over the disputed portion relying upon the structure already put up.

14. Per contra, the respondents have strongly contended that the suit is barred by the principles of res judicata. It is argued that the petitioner has taken a completely inconsistent stand in the present proceedings as compared to the earlier suit. The earlier suit instituted by the petitioner was dismissed by the Munsiff Court, Irinjalakuda, and Ext.B2 is the judgment in that suit. The appeal preferred therefrom was also dismissed, and Ext.B4 is the order in A.S. No.126/2017 of the Sub Court, Irinjalakuda. It is also pointed out that the respondents had obtained an order of injunction against the petitioner in O.S. No.1/2022, against which an appeal preferred by the petitioner is presently pending. It is pertinent to note that the plea of res judicata involves a mixed question of law and fact and can be conclusively determined only upon appreciation of evidence at trial. Moreover, as rightly contended by the learned counsel for the petitioner, the earlier suit pertained to the southern boundary, whereas the present cause of action arises with respect to the northern boundary. From Ext.C2

commission report, it is evident that the respondents have already commenced construction of a residential building. The respondents have also filed an unconditional undertaking before this Court stating that, in the event of the suit being decreed against them and it being found that any portion of the construction encroaches upon the plaint A schedule property, they shall demolish the same without demur. In view of the said unconditional undertaking, it can be held that granting an injunction at this stage would cause greater irreparable injury to the respondents than the refusal of such relief would cause to the petitioner. As already observed, the respondents have substantially progressed with the construction of their residential building. Consequently, the balance of convenience is also in favour of the respondents. Accordingly, Point Nos. 2 and 3 are answered against the petitioner.

15. **Point No.4:-** In view of my finding on point No.1 to 3, the finding of the trial court does not warrant any interference, though on different aspect. Hence, I do not find any reason to interfere with the finding of the trial court in I.A.6/2025 in OS.229/2024 of the Munsiff Court, Irinjalakuda. Thus, point No.4 is answered accordingly.

16. **Point No.5:-**

In the result, CMA dismissed. Parties shall bear their respective costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the Open Court, this the 30<sup>th</sup> day of March, 2026).

Sd/-  
Rema R K  
Principal Sub Judge

APPENDIX : NIL

Id/-  
Principal Sub Judge.

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