

IN THE COURT OF THE SUB JUDGE, NEDUMANGAD

Present : Smt.Rajasree C.R, Civil Judge (Senior Division)

On Wednesday 06th August 2025 / 15th Sravana 1947

I.A No.42/2018 in A.S 09/2018

Petitioner/ Appellant E.S. Shajikumar, S/o. Sadanandan Nair, Erathu
Veedu, Mithirmala, Anakudi Muri, Kallara Village.

(By Adv.Sri.P. Sreekumar)

**Counter Petitioner/
Respondent** Kallara Grama Panchayath, represented by its
Secretary, Kallara.

(Exparte)

This petition having been heard on 06/08/2025 and the court on the same day passed the following:-

ORDER

This application is filed seeking injunction under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908.

2. Petition averments, in brief, are stated as follows: The petitioner is the appellant in the suit. The suit is filed before the Trial Court for a permanent prohibitory injunction to restrain the respondent from trespassing into the plaint schedule property. The plaint schedule property originally belonged to Sadanandan Nair. Sadanandan Nair executed a Will deed 29/2002 in favour of the plaintiff and others. Sadanandan Nair died on 08.03.2004. After his demise, the property devolved upon the petitioner. The petitioner mutated the property and is paying land tax. 15 ¼ cents of land was sold by

the petitioner and the remaining property is scheduled as the plaint schedule property. The respondent herein had raised a contention that the plaint schedule property was dedicated to public and the said property is in the possession of the respondent. The respondent is conducting a public market in the property. So, the petitioner has no right or possession over the plaint schedule property. The judgment of the Trial Court is unsustainable. The execution of the Will deed 29/2002 is not denied by the respondent. Even otherwise the respondent had admitted that the property originally belonged to Sadanandan Nair, the father of the plaintiff. After the demise of Sadanandan Nair, the property devolved upon the petitioner, his brothers and sisters. When the plaintiff is the co-owner, the finding of the Trial Court that the plaintiff has no right over the plaint schedule property is not correct. The Trial Court has dismissed the suit stating that notice contemplated under section 249 of Panchayath Raj Act has not been complied within this case. The Trial Court failed to enter into a finding regarding the right of the petitioner. The finding that the suit is bad for notice under section 249 is not proper. The Commission appointed by the Trial Court filed Ext.C1, C1(a), C2 and C2(a) reports and plans. The present possession of the plaint schedule property has been reported by the Commissioner. Since the Court below has dismissed the suit, the respondent is trying to trespass into the plaint schedule property and is attempting to cut and remove the trees standing therein and is also attempting to alter the present lie of the plaint schedule property. Such an attempt was made by the respondent on 08.01.2018. Due to the interference of the relatives of the petitioner, the respondent could not succeed in the attempt. Thus, this petition is filed seeking an order of injunction.

3. Though the notice was served on the respondent, the respondent failed to appear and there is no representation for the respondent. So the respondent was called absent and set ex parte for the consideration of this application.

4. Heard the counsel for the appellant.

5. This appeal is preferred by the appellant challenging the common judgment and decree in OS.932/2013 of the Court of Additional Munsiff, Nedumangad. On perusal of the common judgment passed in OS.724/2011 and OS.932/2013, it is evident that both the suits were dismissed. Aggrieved by the judgment and decree in OS.932/2013, this appeal has been preferred. The affidavit filed by the petitioner would

disclose that after the dismissal of the suit, the respondent is trying to encroach upon the plaint schedule property. It is true that the petitioner apprehends that the respondent would trespass into the plaint schedule property. The suit was dismissed for the reason that the Will deed has not been proved and no notice as contemplated under section 249 of the Kerala Panchayath Raj Act was issued in the case prior to the institution of the suit. According to the petitioner, there is no necessity for the compliance of a notice under section 249 of the Panchayath Raj Act due to the reason that the act done by the respondent panchayath is not in accordance with the discharge of the official duty. I have gone through the affidavit filed and I am satisfied that after the dismissal of the suit the respondent panchayath is attempting to trespass into the plaint schedule property in OS.932/2013 and is attempting to cut and remove trees standing therein and is attempting to alter the present lie of the plaint schedule property. The appellant apprehends that prior to the disposal of the appeal the respondent will cause loss and damage to the property, which is the subject matter of the appeal. For the consideration of this appeal, the subject matter of the property should be preserved. For this reason, I am of the view that an order of injunction can be passed directing the respondent not to commit any waste or damage in the plaint schedule property or to alter its lie or nature.

6. The prayer to restrain the respondent from trespassing into the property was the relief that was sought by the plaintiff in the suit and the Trial Court after considering the pleadings and the evidence was not inclined to grant injunction. At this juncture, passing an order of injunction restraining trespass would be like interfering with the finding of the Trial court at an earlier stage, without considering the grounds stated in the appeal memorandum, the pleadings and the evidence in this case. There is absolutely no doubt that the subject matter of the litigation should be safeguarded for the consideration of the appeal. The other prayer sought for in this application other than the prayer for trespass is sufficient to preserve the subject matter of the suit. Having satisfied with the reason stated in the affidavit and based on the aforesaid reasons, I am inclined to allow this petition in part granting a prayer for temporary injunction not to commit waste or damage in the plaint schedule property or to alter the present lie or nature of the plaint schedule property.

In the result, this application is allowed in part as follows.

(a)The respondent is temporarily restrained from committing any acts of waste or damage therein or from altering the present lie and nature of the plaint schedule property as noted by the Advocate Commissioner in the reports submitted in the suit.

(b)Both the petitioner and the respondents are directed to maintain status quo as noted by the Advocate Commissioner in Ext.C1, Ext.C1(a), Ext.C2 and Ext.C2(a) reports and plans.

(c)There is no order as to costs.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 6th day of August, 2025).

Sd/-

RAJASREE.C.R,
Civil Judge(Senior Division).

Appendix:- NIL

Id/-

Civil Judge, Senior Division

(True Copy)

Typed by :BR

Compd by :

Civil Judge, Senior Division

Copy of Order in
IA.42/2018 in AS.9/2018
Dated:06.08.2025.