

IN THE COURT OF THE SUB JUDGE, NEDUMANGAD

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

On Wednesday 15th October 2025 / 23rd Aswina 1947

I.A No.1/2024 in O.S 38/2024

Petitioner(Plaintiff)

Peter Sunderadas, S/o. Das, Proprietor, M/s. PSD Construction and Developers, residing at 11E, Heera Crescent, Nanthancode, Kowdiar Village, Thiruvananthapuram.

(By Adv. Sri. M.R. Anandakuttan)

Counter

Petitioner(Defendant)

Shaji Kaniyanattu, S/o. Lali Damodharan, residing at Kaniyanattu House, Vallamkulam, Padinjare Moola, Eraviperoor Village, Thiruvalla, Pathanamthitta.

(By Adv. Sri.G. Jayakumar, Adv. Aneesh.S.R and Adv. Balu Jayan)

This petition having been finally heard on 18/9/2025 and the court on 15/10/2025 passed the following:-

ORDER

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

2. Petition averments, in brief, are stated as follows: Petitioner is the plaintiff in this suit. The suit was filed for specific performance of agreement for sale and for permanent prohibitory injunction. Plaint schedule property is part of 8 acres and 88 cents comprised in different resurvey numbers. 441 1/2, 3, 3/1, 3-2,4, 6-1,7-1, 7-2, 8-2, 9, 15-1, 16, 12, 21, 442/16-1, 17,18,18/1, 33, 443/16, 451/5 452/1, 2, 3-1, 3, 3-3, 4.4/1, 4/4, 5, 6, 7, 7/1, 8,13 and 14 in Block No. 33 of Vattapara Village which were obtained by the father of the respondent Sivarajan Kaniyanattu by virtue of Sale Deed Nos. 2689/2007, 323/2008, 2781/2007, 260/2010, 565/2010, 1308/2010, 688/2011, 4217/2012, 4218/2012 and 1788/2013 of Karakulam Sub Registrar Office. The property was lying in an abandoned state and almost resembling a small forest. There are big rocks, pond and property was lying in different levels and was not easily accessible. The petitioner is a developer and a structural Civil Engineer, who is highly interested in developing plots and constructing buildings. He came across the property and expressed his desire to Sivarajan Kaniyanattu to

develop the property into house sites by putting up modern residential houses in the plots and by providing modern amenities. Petitioner had entered into an agreement with Sivarajan Kaniyanattu on 09.01.2021 with respect to 8 acres and 75 cents of land that was available, fixing the period of performance as 3 years. The property covered by the agreement abuts towards the north-eastern public road and the entire property was lying in different levels. There were hilly terrains and rocky areas towards the further northern portion. That portion was almost 15 metres higher in level than the ground level and was covering an area of 74.90 cents. There is also a pond, on the south eastern corner of the property, which is measuring 67.430 cents. Neither the rock nor the pond was accessible and the same cannot be used for human habitation and cannot be utilized for the purpose of converting the same into residential plots. Knowing this handicap, Sivarajan Kaniyanattu had entered into an agreement with the petitioner for the sale of the property. The petitioner had developed the property and has formed 7 metre road facility throughout the property. Sivarajan Kaniyanattu had allowed the petitioner to sell plots to persons of his choice and had agreed to execute sale deed either in favour of the petitioner or in favour of the person suggested by the petitioner. As per the agreement, Sivarajan had agreed to sell an area of 3 acres and 68 cents out of the entire

properties from the immediate west of the north eastern road at the rate of

₹ 2,50,000/- per cent. Out of the remaining area, regarding the south western portion measuring 1 acre, the rate was fixed as ₹ 1,50,000/- per cent and for the remaining area measuring 4 acres and 20 cents, the rate was fixed as ₹ 2,00,000/- per cent.

3. The entire property was surrendered to the petitioner for the purpose of developing villa project. At first the time for the performance of the terms in the agreement was fixed as 3 years. Almost 1 acre and 34 cents were utilized for the 7 meter road was formed through major portions of the entire plots . The plots lying in different levels were developed and properties from the neighbourhood were also purchased for the convenient demarcation of the plots. During the subsistence of the said agreement, Sivarajan Kaniyanattu had settled property measuring an extent of 3 acres and 31 cents in favour of the respondent herein, who is none other than his son, as per the settlement deed 2497/2021 . The defendant herein had accepted the gift. Subsequently, another agreement was executed by the petitioner along with the respondent/ defendant and Sivarajan Kaniyanattu on 11.01.2022, extending the period of performance to another two years with effect from 11.01.2022 for developing the property. The right and authority of the petitioner to demarcate the

plots and for the construction of roads, to develop the property and regarding the construction of buildings, demarcation of plots, apportionment of consideration etc, were reiterated and ratified. After developing the plots, the petitioner had sold properties to buyers who were interested in purchasing property. Being so, on 20.10.2022, Sivarajan Kaniyanattu passed away. After his demise, his brother Shaji Kaniyanattu informed that he died intestate and executed a Will 71/2012 of Sasthamagalam SRO regarding the rest of his properties . In the light of the same, the petitioner and Respondent, Shaji Kaniyanattu had executed renewal agreement on 08.12.2023. As per the renewal agreement, the time for performance of the agreement was extended for 6 months from the date of agreement and the right to demarcate the plots and to construct road to a width of 7 metres subject to the payment of price for 2 metre width road out of the 7 metres and to utilise the road so demarcated for the use of the entire property was reiterated and ratified. The respondent had received an amount of ₹ 7,00,000/- towards consideration for the renewal of agreement. Apart from that, additional renewed conditions were also incorporated and agreed by the parties. It is also incorporated and agreed that if the entire property has not been sold by the petitioner during the subsistence of the agreement period, then the petitioner has to purchase the entire property. The

agreement entered into on 08/12/2023 relates to the sale of a total area of 73.81 ares comprised in survey numbers mentioned above. Infact out of the said area, an area of 67.430 cents is lying as a pond, neither it can be divided into residential plots nor road can be formed through it nor can it be sold. On measurement it is also found that the remaining property out of the legacy allotted to the respondent is only 66.460 cents after leaving the area covered by the pond. So much so the available plot for demarkating the plots come to only 66.460 cents and that too consisting of 37.450 cents comprised in Survey No. 443/33, 20.510 cents comprised in 443/16 and 8.5 cents in 441/4.

4. The petitioner is prepared to purchase any property which can be converted into house sites covered by the renewal agreement dated 8/12/2023, provided that the respondent must be able to prove that any portion out of the property is not sold before the death of Sivarajan Kaniyanattu. The petitioner is always ready and willing to purchase the entire available portion of the property it for developing and converting into house plots as shown by the respondent under his ownership as per the Will. Though the petitioner is always ready and willing to purchase the property the respondent had failed to come forward to convince the matters and to execute the sale deed after receiving the balance sale

consideration. The respondent was insisting for sale of the entire area mentioned in the agreement without even deducting the area of the pond. Due to this unsustainable claim for price for the pond portion of the property measuring 67.430 cents and the price of the entire property covered by the agreement, the petitioner was not able to complete the developments and to form road through the plaint schedule property. The petitioner was not able to arrange purchases also. On 1/6/2024, the petitioner requested the respondent to execute the sale deed and even though the respondent agreed to execute the sale deed before 7/6/2024, he had not come forward to execute the same. Now it is reliably learnt that the respondent is taking hasty steps to sell the property to strangers. The respondent had visited the property with some prospective buyers on 06/06/2024. The plaint schedule property is in the possession of the petitioner and works are progressing in the property. The petitioner had spent huge amount to construct boundaries around the property including the plaint schedule property. If the plaint schedule is left out, then the petitioner is not able to complete the villa project. It is worthwhile to note that the respondent's claim for price for the entire property covered by the agreement dated 8/12/2023 inclusive of the pond portion is illegal and unsustainable. As the respondent is not amenable to execute the sale deed, the

petitioner is left with no any other remedy but to approach the court. Thus, this application is filed seeking a temporary injunction to restrain the respondent from encumbering or alienating any portion of the plaint schedule property in favour of strangers or to induct strangers so as to defeat and destroy the plaintiff's contractual right over the property.

5. The respondent filed written objection contending as follows: The petition is not maintainable either in law or on fact. The injunction petition is filed with malicious intent to harass the respondent. The petitioner has no genuine cause of action to file the application. The elder brother of the respondent, late Sivarajan Kaniyanattu, was a NRI businessman and has acquired very many properties under his hard earned money. Impressed on the nature and life of the plaint schedule property and with the intent to develop a farm therein, he acquired the property from various persons. The plaint schedule property was never a forest area as averred in the petition. The plaint schedule property was a hilly terrain with rock and pond. Sivarajan Kaniyanattu had developed the plaint schedule property to a farm with cattles, goats, country chicken, fish etc. While so, impressed with the terrain, resources of rock and water body in the plaint schedule property, the plaintiff introducing himself to be an architect approached Sivarajan Kaniyanattu with a

business proposal to develop the residential property into a residential villa. Impressed by the idea, on 09.01.2021 Sivarajan kaniyanattu entered into a sale agreement with the petitioner. No prudent man will believe that a person will purchase any property without knowing the property and its extent. The brother of the respondent handed over the total station sketch of the plaint schedule property with the extent and corresponding survey number to the plaintiff before entering into the agreement for sale. It is not the brother of the respondent who approached the plaintiff with a proposal to enter into a sale agreement. It was the plaintiff who brainwashed the brother of the respondent with attractive proposal for making benefit from the terrain of the plaint schedule property and the agreement for sale was executed on 09.01.2021 and was renewed on 11.01.2022. The averment that one acre of property excluding pond area was valued is absolutely false. The renewed sale agreements on two occasions after execution of the first agreement does not exclude the pond area. The petitioner requested the respondent's brother to reconsider the extent of the land fixed for an amount of ₹2,50,000/- and ₹ 2,00,000/-. It was accordingly that sale agreement was renewed on 11/01/2022 by the respondents's brother and his younger son Deepak Shivarajan. The extent of the property was reduced from 3.68 acres to 2.06 acres while valuing the

property at the rate of ₹ 2,50,000/- and the extent of the property fixed at the rate of ₹ 2,00,000/- was enhanced from 4.20 acres to 5.69 acres and with respect to 1 acre of land, the amount was retained as ₹ 1,50,000/- . Shivarajan Kanianathan died on 20/10/2022 and he has bequeathed portion of the plaint property in favour of his children and another portion in favour of the respondent. On the strength of the Will, the share of the properties allowed to each person was apportioned and mutated. It is true that the petitioner had executed a sale agreement with this respondent and Deepak Shivarajan. But the averments that any sale agreement was renewed with this respondent on 8/12/2023 is not correct. It was renewed on 08/1/2024. All the renewed agreement with the respondent as well as Deepak Sivaraajan was executed on 8/1/2024, retaining all the conditions stipulated in the agreement dated 11/01/2022 and refixing the sale consideration amounts.

6. It is also true that the period of execution of the sale was extended to 6 months from 08/01/2024. On execution of the sale agreement, the respondent as well as Deepak Shivarajan had properly warned the petitioner that the sale deed must be executed within the extended period, which would expire on 07/07/2024 and no further time will be granted. Till date, the petitioner had not executed sale deed over any portion of the land. Only 2 sale deeds with respect to the property of

Deepak Sivarajan was executed. It is true that the extent of the property remaining under the title of the respondent comes to 73.81 acres. Area of pond comprising in Survey No. 441/16, 441/17, 441/21-1, 441/7-2 is not 67.430 cents as averred and instead is 40.65 ares coming to 1 acre. Deducting 1 acre property, the balance property is not 66.460 cents but is 81.95 cents. The averment that the scheduled property with pond is unsuitable to make development and divide into residential plot is without any bonafides. The petitioner was convinced with the nature of the plaintiff schedule property and had agreed to purchase the property. Till this day the plaintiff has not taken efforts to execute sale deed with respect to the plaintiff schedule property. The sale agreement between the petitioner and the counterpetitioner is still alive and is expected to expire only on 7/7/2024. The respondent has not taken any steps to sell the plaintiff schedule property to strangers. The respondent never stepped out of the contractual obligation. The respondent has never demanded the petitioner to purchase any portion of the land not suitable for his development and if the plaintiff finds difficulty in developing the alleged area with pond area, this respondent will never force him to execute any document on it. The plaintiff will be having all privilege to leave that area and can execute sale over the balance plot. The respondent is even ready to adjust the advance

amount of ₹ 7,00,000/- with any property he intends to purchase. The plaintiff has filed the present suit knowing that he is not financially sound to execute the sale over the plaint property within the time stipulated. This application is filed with a malicious intent. The petitioner had approached this court with unclean hands. Thus, this application is only to be dismissed with costs.

7. Based on the aforesaid pleadings, the following points were formulated for consideration.

1. Is there any prima facie case in favour of the petitioner?
2. Whether balance of convenience in this case lies in favour of the petitioner than to the respondent?
3. Whether irreparable injury is likely to be caused more in favour of the petitioner than to the respondent?
4. Is the petitioner entitled to get an order of temporary injunction prayed for?
5. What is the order as to costs?
8. Heard both sides.

9. On the side of the petitioner, Ext. A1 to Ext. A5 were marked. Ext. C1 and Ext. C1(a) were marked. On the side of the respondent, no documents were marked for the consideration of this application.

10. Point nos. 1 to 5:- The specific case put forth by the petitioner is that the respondent is presently trying to commit breach the terms of the agreement for the sale dated 08/12/2023 trying to encumber and alienate the portion of the plaint schedule property. Respondent on the contrary opposed the application stating that there is no agreement dated 8/12/2023. According to him, the agreement which is alleged to have been executed is dated 08/1/2024.

11. To substantiate the claim of the petitioner, the petitioner has produced Ext.A3 which is the agreement executed between the petitioner herein and the respondent on 08.12.2023. The respondent on the contrary has not produced the agreement dated 08.01.2024. As per Ext.A3 agreement, it is evident that there were earlier agreements for sale executed between the petitioner and Sivarajan Kaniyanattu with respect to 8 acres and 88 cents, fixing amount for each cent and subsequently that agreement was renewed on 11.01.2022 extending the period of execution for another 2 years. Thereafter, the present agreement is executed between the parties. On persual of the terms of the agreement, it is seen that within 6 months the

petitioner herein should take all honest effort to sell all the plots and if he is unable to sell the plots, he is liable to purchase the property without fail. According to the petitioner, there is pond in the property remaining and he is not possible to purchase a pond which is situated in the property as it cannot be developed.

12. There is no dispute regarding the fact that the plaintiff is an engineer who has entered into a contract with Sivarajan Kaniyanattu for developing the plot for the purpose of a villa project. Subsequently, that agreement was rescinded and another agreement was executed in the year 2021 and later after the death of Sivarajan Kaniyanattu, Ext.A3 agreement was executed. Though the existence of Ext.A3 agreement was challenged, no other agreement was produced by the respondent to substantiate his contention. On perusal of Ext.A3 agreement, it is evident that it is executed by Shaji Kaniyanattu in favour of Peter Sundar das, the petitioner. From the recitals of the document, it is evident that Sivarajan Kaniyanattu had executed a Will bequeathing his property in favour of the first party, Shaji Kaniyanattu. There is a clause in the agreement that would go to show that after the expiry of 6 months from 08.12.2023, the agreement cannot be extended by the second party, who is the petitioner herein. It is also stated in the agreement that when the plots are registered, the second party, who is a petitioner herein is bound to pay

consideration amount and that amount shall be deducted from the amount of Rs.7,00,000/- which is paid to the respondent on the date of execution of this agreement. Either the sale deed should be executed in the name of the petitioner/plaintiff or to any person instructed by him. There is also a clause in Ext.A3 that if document is not registered with respect to the plots within 6 months, and if the petitioner is not able to find prospective buyers, except the property which he has sold to prospective buyers/third party and after excluding the portion set apart for a 5 metre width pathway, the entire property shall be purchased by the second party, who is the petitioner/plaintiff herein after paying the balance sale consideration. The date of execution of the agreement in this case, which is disputed in the objection, cannot be considered for the reason that no such document is produced by the respondent to substantiate his contention. On the other hand, the document produced by the petitioner would go to show that it was executed on 08.12.2023. On considering the date of execution of the document and the date fixed in the document, it is evident that this suit is filed after the expiration of the period of execution narrated in Ext.A3. The apprehension of the petitioner is that the respondent is trying to alienate the property. Petitioner is not ready to purchase the property where pond is situated and is ready to purchase the property

scheduled as the petition schedule property/plaint schedule property. Though such a contention has been taken by the petitioner, there is no mention in the agreement regarding the pond and it is not specifically mentioned in the agreement that the pond has been excluded.

13. The prayer in the application is to restrain the respondent from encumbering or alienating the plaint/petition schedule property or to induct strangers to defeat or destroy the petitioner's claim. It is to be noted that the plaint/petition schedule property as such shown as a property measuring 66.460 cents excluding the pond portion that extends to 67.430 cents. The extent of the property which is covered by Ext.A3 agreement is 73.81ares, which is equivalent to 182.311 cents. Even though it is mentioned in the schedule that pond is excluded, there is no clause in Ext.A3 which would show that the pond is excluded from the agreement. Anyhow the petition schedule property which is shown herein is part and parcel of the property that falls within Ext.A3 agreement. As per the terms of Ext.A3, the petitioner is entitled to get that property. Whether he can exclude the portion of pond is a matter to be adjudicated at the time of trial and not at this stage. However with respect to the property which is shown in the petition, Ext.A3 document covers the same and the respondent is liable to execute the document in favour of

the petitioner as he is ready to purchase the property. From Ext.A3 agreement and the affidavit filed by the petitioner, it is evident that there is a prime facie case in his favour of the plaintiff. Considering the fact that the period fixed by Ext.A3 agreement has elapsed and the petitioner apprehends that the respondent would sell the property to strangers, I have no hesitation to hold that there is a prima facie case in favour of the petitioner. If the property is alienated to third parties, then definitely irreparable injury would be caused to the petitioner as he had spent lakhs to develop the plot into residential area. It is an admitted fact that the respondent had developed the plot to residential plots and beautified the plots. In that case, which the argument that the petitioner requires the petition schedule property for the completion of his project assumes significance.

14. At this juncture, let me consider the report filed by the Commissioner. The Commissioner has noted that the respondent has formed a road through the property for the development of the plots. It is also seen that the Board as PSD construction development is installed at the gate, showing that development has also been made in the property by PSD construction. The commissioner has noted a water-locked area and has stated that it might have been formed after excavating rock. According to the commissioner, the waterlogging area is having a depth of

almost 60 feet. The commissioner has noted the height on the northern, eastern and southern side of the waterlogging area 25 metres each and has specifically reported that rocks have been excavated from the said plots. The commissioner has noted the cultivation of plantains on the southern side of the waterlogging area. The learned counsel for the petitioner submitted that it is not possible to purchase the waterlogging area as it will not be of any use for him. The question whether he can purchase the property or not are all matters depends on the terms of the agreement and by the conduct of parties, which can only be ascertained after elaborate trail.

15. It is not in dispute that at first 8 acres and 88 cents of property that belonged to Sivaranjan Kaniyanattu was handed over to the petitioner for development of the project. From the report of the Advocate Commissioner, it is evident that the petitioner had made several developments in the plot and even formed roads for the purpose of developing the plots. It is prima facie evident and not disputed by the respondent that from 9.01.2021 onwards substantial money, time and efforts have been expended by the petitioner for the development of the plots, it can only be said that the balance of convenience in this case is more in favour of the petitioner. As the petitioner apprehends further alienation with respect to the property and had

spent lakhs for the development of plot, I have no hesitation to hold that the suit property has to be preserved as irreparable injury is more likely to be caused to him than to the respondent as his project will be affected and it may not be later possible to compensate him in terms of money.

16. It is true that the parties are bound by Ext. A3 agreement, which is the latest agreement executed by them, As the time specified in Ext. A3 has elapsed and as the petitioner has succeeded in establishing the threefold test. I am of the view that the suit property has to be preserved. In the light of these discussions, I have no hesitation to hold that the petitioner is entitled to get an order of temporary injunction prayed for. Thus these points are found in favour of the petitioner/plaintiff.

16. Point No.6: parties are directed to bear their respective costs.

In the result, This application is allowed as follows:-

a) Respondent, his men or agents are restrained by an order of temporary injunction from alienating or encumbering the plaint/petition schedule property or from committing any acts of waste or damage affecting the contractual right of the petitioner over the said property until further orders.

b) There is no order as to costs.

(Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in Open Court on this, the 15th day of October 2025).

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

Appendix:

Exhibits marked on the side of the Petitioner:

A1	9/1/2021	Copy of the Agreement
A2	11/1/2022	Copy of the Agreement
A3	8/12/2023	Copy of the Agreement
A4	21/4/2015	Copy of the Will

A5

23/7/2022

Copy of the Sale deed

Exhibits marked on the side of Counter Petitioner: NIL

Exhibits marked on the Side of Court:-

C1	--	Commission Report prepared by Commissioner Advocate Hareeth. S. Nair
C1(a)	--	Rough plan prepared by the Advocate Commissioner Hareeth. S. Nair

Witness Examined on the Side of Petitioner: NIL

Witness Examined on the side of Counter Petitioner: NIL

Civil Judge, Senior Division

Typed by :BR

Compd by :

Copy of Order in I.A.1/2024 in OS. 39/2024

15/10/2025