

**IN THE COURT OF THE SUB JUDGE, NEDUMANGAD**

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

**On Wednesday 15<sup>th</sup> October 2025 / 23<sup>rd</sup> Aswina 1947**

**I.A No.1/2024 in O.S 39/24**

**Petitioner(Plaintiff)**

Peter Sunderadas, S/o. Das, residing at 11E. Heera Crescent, Kowdiar Village, Thiruvananthapuram.

**(By Adv. Sri. M.R. Anandakuttan and A.Rahim)**

**Counter  
Petitioner(Defendant)**

Deepak, S, S/o. Late Sivarajan @ Sivarajan Kaniyanattu, residing at Shambala (Avanthika House), T.C 24/3320, Belhaven Gardens, Kowdiar, Thiruvananthapuram.

**(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.

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. Plaintiff 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 defendant Sivarajan Kaniyanattu 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 and a 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 testate and executed a will 71/ 2012 of Sasthamagalam SRO regarding the rest of his properties . In the light of the same, the petitioner and Shaji Kaniyanattu had executed renewal agreement on 08.12.2023. In view of the bequeath made by Sivarajan, a renewal agreement was also executed by the petitioner with the defendant herein. As per the renewal agreement dated 08.01.2024, 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 defendant had received an amount of ₹ 10,00,000/- 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 defendant had sold plots measuring 6 ares and 31 square meters comprised in Re-survey No. 452/1, 452/4-1, 452/5, 452/6, 452/40 in favour of the petitioner by virtue of sale deed 787/2024 dated 30.02.2024 and the plot measuring an extent of 5 ares and 30 square meters comprised in Re-survey No. 452/7 and 452/7-1 in favour of the petitioner by virtue of Sale deed 800/2024 dated 30.04.2024.

4. The remaining property over which the defendant has got right after leaving the other portions already sold comes to 1 acre and 58.34 cents which forms the northern portion of the entire property. Out of the property, the north eastern most 74.9 cents is covered by big rock and it cannot be developed and such plot cannot be used for the construction of building. The remaining utility portion is only 82.59 cents. Out of that portion, in order to provide 7 metres road to get access to 9 plots it would take almost 10.710 cents. Regarding that area, the petitioner is liable to pay price for 2 metres width road portion which comes to 3.02 cents and the total area of 9 plots which can be demarcated is 74.9 cents. The rate fixed for 74.9 cents is ₹ 2,10,000. The petitioner had already paid 10,00,000 as

consideration amount and is liable to pay a total consideration of ₹ 1,57,29,000 (one Crore fifty seven lakhs twenty nine thousand only) as balance sale consideration for the purchase of the remaining land which is scheduled as a plaint schedule property. The petitioner was always ready and willing to purchase a property and has expressed his readiness and willingness to purchase a plaint schedule property at any time according to the convenience of the defendant after paying the balance sale consideration. But unfortunately the defendant demanded price for the rock also and refused to execute sale deed. The rock portion is not suitable for the purpose of constructing the house plot or for the purpose of constructing buildings. The respondent/ defendant is truly aware of this fact and is demanding to include the rock portion also within the property so as to defeat the contractual right of the petitioner to purchase the plaint schedule property. Without the plaint schedule property, the villa project cannot be completed and the whole project will end in failure. The defendant is contractually bound to execute the sale deeds for the remaining 9 plots out of the remaining property. It is reliably learnt that the defendant has inducted new purchasers without the consent of the petitioner and they visited the property on 08.06.2024. The defendant had refused to execute sale deed in favour of the petitioner. The last request was made by the

petitioner on 07.06.2024 and the defendant was not ready to co-operate. As the defendant did not pay any heed to the legitimate request of the petitioner, this application is filed seeking temporary injunction to restrain the defendant from committing breach of his contractual obligation or from encumbering or alienating the property or from abducting strangers or from doing anything which would render the specific performance of the agreement for sale as impossible.

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 father 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 father of the defendant 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 father of the defendant who approached the plaintiff with a proposal to enter into a sale agreement. It was the plaintiff who brainwashed the father of the defendant 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 sale value for 3.68 acres was fixed at the rate of ₹ 2,50,000, 1 acre was fixed at the rate of ₹ 1,50,000 and the remaining 4 acres and 20 cents was fixed as ₹ 2,00,000. That amount was fixed as per the sale agreement dated 09.01.2021. It is true that Sivarajan Kaniyanattu had bequeathed portion of the plaint property coming to 3 acres and 31 cents in favour of the defendant. The plaintiff raising his expenses in developing the plaint property, requested the father of this defendant to reconsider the extent of

the land and the consideration amount fixed for the extent of the land. Accordingly the sale agreement was renewed on 11.01.2022 by the petitioner, defendant and his father reducing the extent of the land fixed at the rate of ₹ 2,50,000 from 3.68 acres to 2.06 acres and the extent of land fixed at the rate of ₹ 2,00,000 from 4.20 acres to 5.69 acres and retaining the value fixed for 1 acre as ₹ 1,50,000. Being so, Sivarajan Kanniyannath expired on 20.10.2022 executing a registered Will, bequeathing his portion of the plaint schedule property in favour of Shaji Kanniyannath, his younger brother and to the siblings of the defendant. On the strength of the Will, the share of the property allowed to each persons were apportioned and mutated. The petitioner/plaintiff had and others executed agreement on 08.01.2024. Retaining all the conditions stipulated in the sale agreement dated 11.01.2022 and re-fixing the sale consideration as ₹ 2,10,000 per cent and receiving an advance amount of ₹ 10,00,000, the time fixed for the execution of the sale agreement was fixed as 6 months from 08.01.2024.

On the date of execution of the agreement, the defendant and Shaji Kaniyanattu had properly warned the petitioner that the sale deed must be executed within the extended period, that would expire on 07.07.2024 and no further time will be granted. Till date the petitioner had executed only two sale deeds were

executed with respect to the property . The remaining property would come to the extent of 1 acre and 90 cents and not 1 acre and 58.34 cents. The averment that 74.09 cents covered by big rock cannot be developed and utilised for building purpose is absolutely false . There is no restriction in developing any portion of the plaint schedule property in the possession of the petitioner. The petitioner utilized rock in the plaint schedule property till time for constructing the compound walls and for beautifying the area based on the rock built compound walls. The plaintiff himself admits that the plaint schedule property is indispensable for completing the villa project and to provide road facility to all plots as well as the public utility convenience etc. and that without the plaint schedule property the villa project cannot be completed. The petitioner cannot aver that the plaint schedule property is covered with rock and the portion is unsustainable for development.

The respondent/ defendant is always ready to execute the remaining property under his title, strictly adhering to the terms of the agreement dated 08.01.2024. The averment that the respondent visited the plaint schedule property with prospective buyers is absolutely false. As far as there exists a sale agreement with the petitioner till 07.07.2024 and this defendant undertakes that he will never take any hasty steps

to induct new purchasers to the plaint schedule property. This respondent never committed any breach of the agreement. The defendant is always ready and willing to execute the sale with respect to the plaint schedule property either to the plaintiff or to his nominees on or before 07.07.2024. The respondent is also ready to adjust the advance amount with the property he intends to purchase or return the amount in cash. The respondent will never force the petitioner to execute the sale if the petitioner is not ready to execute the sale along with the rocky area. The intention of the petitioner is to have more area than what is covered by the agreement executed between the parties. The agreement will only expire on 07.07.2024 and this application was filed much earlier. The petitioner had approached this court with unclean hands raising false allegations. The respondent will not induct any strangers or create or encumber any charge over the plaint schedule property by inducting strangers till the expiry of the agreement dated 08.01.2024. There is no prima facie case or balance of convenience in favour of the petitioner. The application is only to be dismissed with costs.

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

1. Whether prima facie case exists in favour of the petitioner?
2. Is the balance of convenience in this case lies in favour of the petitioner than to the respondent?
3. Whether refusal to grant injunction would cause irreparable injury more to 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?

Heard both sides.

7. On the side of the petitioner, Ext. A1 to Ext. A5(a) were marked. On the side of the respondent, Exts. B1 and B2 were marked . Ext.C1 was also marked.

8. Point nos. 1 to 5:- The specific case put forth by the petitioner is that the respondent is presently trying to commit breach of the terms of the agreement dated 08.01.2024 and is trying to encumber and alienate the portion of the plaint schedule property or any other portion covered by the agreement. Respondent on the contrary opposed the application stating that the respondent was always ready and willing to execute his part of the contract. However, the petitioner is not ready

to purchase the entire property of the respondent covered by the agreement. Now the petitioner states that only the plaint schedule property can only be utilized for the purpose of developing plots and the remaining property covered by the agreement is a rock area and there was no agreement for the purchase of the same.

9. Certain facts are admitted in this case. It is admitted that Sivarajan Kanyinattu and the plaintiff had executed Ext.A1 agreement for developing the property measuring an extent of 8 acres and 88 cents that includes the plaint schedule property herein. Thereafter, Sivarajan kaniyanattu had settled property in favour of the respondent herein and on 11.01.2022 as per Ext.A2 another agreement was executed by Sivarajan Kaniyanattu, petitioner and the son of Sivarajan, the respondent. The said agreement is Ext.A2 in this case. It is also not in dispute that during the subsistence of Ext.A2 agreement Sivarajan Kaniyanattu expired and the petitioner and the respondent entered into Ext.A3 agreement.

10. The main argument raised is that this suit is a premature one and was filed prior to the expiry of the period within which the plaintiff should get the document executed in his favour. According to the respondent, as the agreement between the petitioner and the respondent was executed on 08.01.2024, the suit ought to have been filed after 07.07.2024 i.e. after 6 months from the date of execution of the

agreement. It is also not in dispute that the time fixed for the execution of Ext.A3 agreement is 6 months, which is evident from the agreement dated 08.01.2024. However, the averment in the petition would disclose that on 08.06.2024 the defendant had inducted strangers to the property who are prospective buyers with intent to sell the property. Apprehending that the property will be sold to third parties, the petitioner herein has preferred the suit, stating that he is ready to get the document executed in his favour. As the document has not so far been executed in favour of the petitioner, I am of the view that the apprehension of the petitioner cannot be brushed aside as unsustainable.

11. In an application of this nature, the court is supposed to examine the existence of a threefold test provided under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. The plaintiff is bound to establish the existence of a prima facie case and also should show that the balance of convenience is more in his favour than in favour of the respondent. Moreover, the plaintiff has to show that irreparable injury is likely to be caused to him than to the respondent if injunction is refused. This is a case where the petitioner has produced Ext.A3 agreement which is admitted by the respondent . Based on that agreement the petitioner has moved the suit seeking specific performance of the agreement. Now the only prayer

is that the respondent should be restrained from making further alienation or encumbering the property which affects the contractual right of the petitioner. It is true that the time fixed for the execution of the document was 6 months and the time has elapsed in this case. The affidavit filed by the petitioner would disclose that he is ready to execute the document and in the objection the respondent has also admitted the fact that he is not intending to alienate the property. The only dispute is with respect to exclusion of some property which is claimed by the petitioner as not part of the property covered by the agreement and which is denied by the respondent. It is true that there is no clause in the agreement produced by the petitioner dated 08.01.2024 which excludes the exclusion of rocks. However on perusal of the matters which is admitted by the parties and the averments in the petition it can be seen that the subject matter of this suit is covered by Ext.A3. Petitioner had developed the plots based on Ext.A1 to Ext.A3 agreements and it is also evident from the affidavit that the plaint schedule property.

It is true that when parties have entered into an agreement, they are definitely bound by the terms of the agreement. Whether the parties have intended to exclude property where rock is situated from the purview of the agreement are

matters that needs adjudication at the time of trial. To put it differently whether the specific performance has to be granted with respect to the plaint schedule property or with respect to the whole of the property including rocky area is a matter to be adjudicated at a later stage after considering the terms of the agreement and the conduct of the parties. Now at this juncture this Court is only inclined to consider the existence of a prima facie case. There is no doubt that the petitioner has got a fair case in his favour. The petitioner has produced the agreement which is admittedly executed by the petitioner and the respondent. Moreover the commissioner's report in this case would go to show that the property has been developed by the petitioner. That means, huge amount has been spent by the petitioner for beautifying the property. Even the respondent in the objection has admitted the fact that the property has been beautified by the petitioner by utilising the natural resources within the property, which includes the rocks. Negating these aspects, this Court cannot disallow the prayer of the petitioner. The prayer of the petitioner is only to prevent the respondent from further alienating or encumbering the property, affecting his right.

Considering the fact that this suit is for specific performance and the subject matter of the property has to be preserved and taking into account the fact that

there is definitely a prima facie case in favour of the petitioner, I am of the view that the petitioner is entitled to get an order in his favour. Now the question is regarding the existence of balance of convenience. Here the petitioner had spent lakhs of rupees for beautifying the property and he has even paid advance amount which is admitted by the respondent. Even according to the respondent an amount of ₹ 10,00,000 was received by him on the date of execution of Ext.A3 agreement between the plaintiff as well as the respondent. It is also admitted that the petitioner had purchased some plots from the respondent after the execution of Ext.A3. So, if the plaint schedule property is alienated to third parties, then it will be difficult for the petitioner to realise the money which he had spent for developing the property. In short, irreparable injury will be caused more to the petitioner than to the respondent, if injunction is declined.

Taking into consideration the admissions made by the respondent in his objection, the averments in the affidavit and the documents produced, I have no hesitation to hold that the petitioner has succeeded in establishing the three fold test contemplated under Order XXXIX Rule 1 of the Code of Civil Procedure and is entitled to get an order of temporary injunction prayed for. In the light of these reasons, these points are found in favour of the petitioner.

12. 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 temporarily restrained from alienating or encumbering the plaint schedule property or from committing any acts of waste or damage in the plaint schedule property affecting the contractual right of the petitioner, until further orders.

b) There is no order as to costs.

*(Prepared through Adalat AI, corrected by me and pronounced in Open Court on this, the 15<sup>th</sup> day of October, 2025).*

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

Appendix:

Exhibits marked on the side of Petitioner:-

A1	9/01/2021	Copy of Agreement
A2	11/1/2022	Copy of Agreement
A3	8/1/2024	Copy of Agreement
A4	21/04/2015	Copy of the Will

A5                      30/04/2024              Photocopy of the Sale deed

A5(a)                      30/04/2024              Photocopy of the Sale deed

Exhibits marked on the side of Counter Petitioner:-

B1                      --                      Survey plan prepared by Vimal Kumar. R

B2                      11/4/2024              Tax Receipt

Exhibits marked onn the side of Court:-

C1                                      Commission Report prepared by  
Commissioner Advocate Lekshmi Mohan

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**