

IN THE COURT OF THE MUNSIFF, VARKALA

PRESENT: Sri. ARAVIND. P., MUNSIFF

WEDNESDAY 26<sup>th</sup> MARCH, 2025

I.A. 6/ 2025 IN O.S. 40/ 2019

**PETITIONERS/ PLAINTIFFS:-**

1. Sarasamma, aged 67 years, D/o Saradha ,  
Olippuvilapanil Veedu, Elakamon Desom,  
( Kizhakkepuram P.O.). Ayiroor Village.
2. Prashobha, aged 47 years, D/o Sarasamma  
---do--do---
3. Velayudhan, aged 80 years, S/o Neelakandan,  
---do---do---

**By Adv. Sri. Sabir. F. Haq**

**RESPONDENTS / DEFENDANTS:-**

1. Sobhana, aged 55 years, W/o Preman,  
Olippuvilapanil Veedu, Elakamon Desom,  
Ayiroor Village.
2. Pradeep, aged 29 years, S/o Preman,  
Olippuvilapanil Veedu, Elakamon Desom,  
Ayiroor Village.

**By Adv. Sri. Gires. G. P.**

This petition having been heard on 26/03/2025 and the court on the same day passed the following:-

## ORDER

This is a petition filed under Order XXXIX Rule 1 and s.151 of the C.P.C for getting a temporary injunction restraining the respondents from constructing building or structures in petition B schedule property till the disposal of the suit.

2. **Brief averments in the affidavit are as follows:-** Petitioners are the plaintiffs in O.S. 40/2019. The suit is instituted for declaring the ownership and possession over plaint A schedule property and also for fixation of boundary between plaint A and B schedule properties and also for consequential injunction.

3. Along with the suit injunction petition I.A. 370/2019 was filed. That was allowed and the respondents are restrained from encroaching into petition A schedule property and committing any act of waste therein. They were further restrained from making any constructions by encroaching portion of petition A schedule property.

4. Things are being like this, at 10 am on 15.01.2025 and 9 am on 18.02.2025, the respondents encroached into petition A schedule property and made some constructions in petition B schedule property by annexing some portion of petition A schedule property. Moreover, by depositing earth in petition A schedule property, the extent of petition B schedule property was also extended. Against which the petitioners have filed petition before the S.H.O, Ayiroor police station and Dy. S.P., Varkala. Due to the influence of the respondents, police didn't take action.

5. Thereafter, on 24.02.2025, the petitioners had filed a complaint before the Elakamon Grama Panchayath with copy of the interim injunction order passed in this suit. On the basis of the complaint the Panchayath officers visited the petition A and B schedule properties and

issued a stop memo against the constructions in the petition B schedule property.

6. Thereafter, at 9 am on 16.03.2025, the respondents started to make some constructions in the petition B schedule property. The respondents are making constructions by encroaching upon a portion of petition B schedule property and also in violation of the building rules. So the present petition is filed for preventing the respondents from making any construction in the petition B schedule property. Hence the petition.

7. The respondents appeared and filed objection. **Brief averments in the objection filed by the respondents are as follows:-** The petition is not maintainable either in law or on facts. The petition is filed with malafide intention to harass the respondents.

8. It is true that the suit has been filed for fixation of of the boundary in respect of plaint A and B schedule properties. Respondents have already filed a written statement by consenting for fixation of boundary through due process of law. The respondents had filed a consent statement in the above suit agreeing to fix the boundary of plaint A and B schedule properties and thereafter the respondents have not been participating in the proceedings of the suit since 2020 as there was no further necessity for their presence.

9. Despite filing of the consent statement, the petitioners have failed to take any steps to have the boundary fixed by appointing a survey commissioner. The allegation that the respondents violated any injunction order from this court is completely false, baseless and misleading. The respondents have not trespassed in to petition A schedule property at any time.

10. It is pertinent to note that I.A.370/2019 was filed by the petitioners along with the plaint. This court has not passed any order on the said application. There is no binding or enforceable injunction order against the respondents. The present petition is filed with an intention to

restrain the respondents from constructing the residential building.

11. It is further stated that the government has sanctioned financial assistance to the first respondent under Life Mission Project for constructing a residential building. Moreover, the first installment is already allotted to her. Moreover, the construction of the residential building is being carried out in the respondents' property.

12. At the time of applying for and availing the benefit under the Life Mission Project, there was no injunction order passed by this court restraining the respondents from constructing the residential building. So the objection of the respondents concluded with a prayer to dismiss the petition.

13. On the basis of the rival contentions, the following points arise for consideration:

1. Is there a prima facie case in favour of the petitioners?
2. Does the balance of convenience lie in favour of the petitioners?
3. Would refusal to grant injunction cause irreparable injury to the petitioners?
4. Reliefs and costs?

14. From the side of the petitioners, Exts.A1 and A6 were marked. Ext. C1 also marked. No evidence from the side of the respondents.

15. The court heard the learned counsel for the petitioners, learned counsel for the respondents and perused the records.

16. **Point Nos.1 to 3:-** The case of the petitioners is that petition A schedule property is owned and possessed by the petitioners. At the same time, petition B schedule property is owned by the respondents. Now it is alleged that the respondents are trying to encroach into petition A schedule property and making some constructions. So the present petition is filed for restraining the respondents from making any construction in petition B schedule property.

17. At the same time the learned counsel for the respondents

submitted that the respondents have never encroached into petition A schedule property. Moreover, the respondents have filed consent written statement and they have no objection in fixing the boundary between petition A and B schedule properties. Now the government has granted financial assistance to the first respondent for constructing a residential building under the Life Mission Project. If the prescribed construction is not completed before 31.03.2025, the concerned authority can't sanction the amount. So the respondents will not be able to construct the residential building. So the learned counsel prayed for dismissing the petition.

18. This court considered the contentions in detail.

19. The present petition is filed for granting a temporary injunction restraining the respondent from constructing any residential building in the petition B schedule property. At the same time, it is important to note that the respondents are constructing the residential building in the petition B schedule property under the Life Mission Project. Another important aspect is that it, is specifically stated that no injunction order was passed against the respondents. At the same time, on perusal of the records this court is of the view that the statement of the respondents are not correct because this court has allowed I.A. 370/2019 as per order dated 25.07.2023 and interim injunction is granted in favour of the petitioners against the respondents.

20. It is further argued that now the residential building of the respondents are constructed by encroaching into petition A schedule property. Petitioners filed complaint before the concerned Panchayath and Panchayath secretary has issued Ext. A2 stop memo dated 01.03.2025. the Panchayath officials inspected the property and found that the respondents have encroached into petition A schedule property. On perusal of Ext. A2 stop memo it is revealed that it was having validity till 05.03.2025. The learned counsel for the petitioners has submitted that the stop memo was extended but no order is produced to prove that aspect.

21. It is important to note that the main relief sought in the plaint is for fixation of boundary between plaint A and B schedule properties and also for permitting the petitioners to construct a permanent boundary wall. Since this is being the main prayer, it is crystal clear that admittedly there is no boundary separating the petition A and B schedule properties. So it can be safely concluded that petition A and B schedule properties are lying contiguously.

22. As per Ext. C1-commission report, the advocate commissioner has specifically reported that from the boundary portion of petition A and B schedule properties loose earth is there and the advocate commissioner has further reported that the petitioners informed that the respondents have encroached into petition A schedule property and made constructions. The advocate commissioner further reported that assistance of a surveyor is required for reaching a conclusion with regard to the encroachment. So this would go to show that there is no boundary available for separating the petition A and B schedule properties.

23. Initially I.A. 371/2019 was allowed by this court on 02.02.2019 Adv: Mr. G. Krishna kumar is appointed as the advocate commissioner who has prepared Ext. C1. At the same time, Adv: Mr. G. Krishna kumar has filed a memo dated 04.02.2020 stating that due to the non co-operation from the side of the petitioners, the advocate commissioner was unable to inspect the property and submit commission report. So that would go to show that even though I.A. 371/2019 was allowed as per order dated 02.02.2019, the petitioners were not ready to provide the necessary assistance to the advocate commissioner for inspecting the property and filing report. So the lie and nature of the properties as on the date of suit is not available before the court because of the laches on the part of the petitioners. So as discussed earlier, in the absence of boundary separating petition A and B schedule properties it is not practically possible to pass an interim injunction order restraining the respondents from making

any construction in the petition B schedule property. So this court is having no hesitation to hold that petitioners are having no prima facie case and balance of convenience in their favour. Moreover, if this petition is allowed irreparable injury will be caused to the respondents. Point Nos.1 to 3 are found in favour of the respondents and found against the petitioners.

24. **Point No.4:-** Considering the facts and circumstances of the petition, both parties can be directed to suffer their respective costs. Hence this point is found accordingly.

**In the result, petition is dismissed. No order as to costs.**

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court, this the 26<sup>th</sup> day of March, 2025)*

**ARAVIND.P,  
MUNSIFF**

**APPENDIX:-**

**EXHIBIT FOR THE PETITIONER:-**

- |           |   |
|-----------|---|
| A1.       | Stop memo issued by Elakamon Grama Panchayath dated 18/03/2025.             |
| A2.       | Stop memo issued by Elakamon Grama Panchayath dated 01/03/2025.             |
| A3.       | Receipt issued by Varkala Sub Divisional Office of Police dated 29/01/2025. |
| A4 Series | Photography.  |
| A5        | Compact Disc.   |
| A6.       | Bill No. 3789 of Gulf digital studio dated 22/02/2025.                      |

**EXHIBIT FOR THE RESPONDENT:- NIL**

**COURT EXHIBIT:-**

C1 - Commission report filed by the Adv. Commissioner G. Krishna kumar dated 18/03/2025.

**MUNSIFF**