

IN THE COURT OF THE MUNSIFF, VARKALA.

PRESENT : Sri. ARAVIND. P, MUNSIFF

WEDNESDAY 4th JUNE, 2025

IA. 8/2024 IN OS NO. 271/ 2017

PETITIONERS/ DEFENDANTS:-

1. Nazeer, S/o Abdul Samad, Nabeel Manzil, Nadayara, Varkala.
2. Shahidha Beevi, W/o Nazeer, Nabeel Manzil, Nadayara, Varkala.

By Adv. Sri. F. Nahas

RESPONDENTS/ PLAINTIFFS:-

1. Shahjahan, S/o Muhammmmed Iliyas, Konathu Veedu, Nadayara, Varkala.
2. Sheeba, W/o Shahjahan, Konathu Veedu, Nadayara, Varkala.

By Adv. Sri. H. Sumanas

This Petition having been heard on 04.06.2025 and the court on the same day, passed the following:

ORDER

This is a petition filed u/s 10 of the C.P.C., 1908.

2. **Brief averments in the affidavit are as follows:-** The petitioners herein are the respondents in the above numbered suit. Petitioners have constructed a shop room in the property which is owned by them. Thereafter, they have obtained license from the municipality and conducting a grocery shop. Things are being like this, the petitioners have transferred their entire property to their son Mr.Nabeel as per settlement deed No.1427/2017 and 471/2017 of Varkala S.R.O. Even then the petitioners are possessing the property including the property in which the shop room is situated.

3. The respondents/plaintiffs attempted to encroach into the property and tried to take possession against which the petitioners have instituted a suit before this court on 19.06.2017. Thereafter the petitioners have obtained injunction order and advocate commissioner visited the property and submitted commission report and rough sketch.

4. On getting information regarding the suit O.S.258/2017, the respondents/plaintiffs by suppressing the details of the above suit, instituted the present suit. The subject matter in O.S.258/2017 and

O.S.271/2017 and the parties in both suits are one and the same. Prior to the listing of O.S.258/2017 this suit is included in the list for adducing evidence. If the evidence in this suit is taken, then the valuable judicial time will be wasted. Moreover, chance for conflicting decisions also.

5. So the further proceedings in this suit is to be stayed or otherwise the irreparable injury will be caused to the petitioners. So the present petition is filed for staying the further proceedings in this suit. Hence the petition.

6. The respondents appeared and filed objection. **Brief averments in the objection filed by the first respondent are as follows:-** The petition is not maintainable either in law or on facts. The properties in this suit and O.S.258/2017 are two different properties. The petitioners have filed a petition for joint trial and the same was dismissed by this court. The plaint schedule properties are owned by the respondents/plaintiffs herein. Moreover, an interim injunction order is subsisting in this suit against the petitioners/defendants. Moreover, the plaint schedule property in this suit is comprised in resurvey no.81 of Varkala village. The property in O.S.258/2017 is comprised in resurvey no.103. The subject matter properties are not same properties and are two different properties. So there is no need to stay the further proceedings in the suit. So the

objection of the respondents concluded with a prayer to dismiss the petition.

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

1. Are the petitioners entitled to get an order for staying the further proceedings in the suit?
2. Reliefs and costs?

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

9. **Point No.1:-** The case of the petitioners is that the subject matter in this suit and O.S.258/2017 are one and the same. So the further proceedings in the suit is to be stayed. The learned counsel for the petitioners submitted that if this petition is not allowed irreparable injury and hardships will be caused to the petitioners.

10. At the same time, the learned counsel for the respondents vehemently objected and argued that the suits are with regard to two different properties. So the subject matter is entirely different. So there is no need to allow this petition and stay the further proceedings in the suit. So the learned counsel for the respondents prayed for dismissal of the petition.

11. This court considered the contentions in detail.

12. The present petition is filed u/s 10 of the C.P.C. Section 10 of the C.P.C specifically provides that, the courts shall not proceed

with the trial of any suit in which the matter in issue is directly or substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating etc. Here as pointed out by the learned counsel for the respondents, the properties are comprised in two different resurvey numbers of Varkala village. So it can't be stated that the subject matter is one and the same. It is true that parties are same but that can't be considered as a ground to allow the petition and stay the further proceedings in the suit. So this court is of the view that the present petition is devoid of merit and liable to be dismissed. Point no.1 is found against the petitioners and found in favour of the respondents.

13. **Point No.2:-** Considering the facts and circumstances of the petition, parties are 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 4th day of **June, 2025**)*

Sd/-
ARAVIND.P,
MUNSIFF

APPENDIX:- NIL

Id/-
MUNSIFF

// True copy//

MUNSIFF

Typed by : David. D.
Compd. by

COPY OF ORDER IN I. A. 8/ 2024 in O. S.271/2017

Dated: 4th JUNE, 2025