

IN THE COURT OF THE MUNSIFF, VARKALA.

PRESENT : Sri. ARAVIND. P, MUNSIFF

THURSDAY 19th JUNE, 2025

IA. 1/2023 IN OS NO. 320/ 2023

PETITIONER/ PLAINTIFF:-

Shafeela Beegum (Shafeela Beevi), aged 56 years, D/o
Muhammed Musthafa, Ansari Building, Reghunathapuram,
Palachira P.O., Cherukunnam Desom, Varkala Village,
Varkala Taluk, Thiruvananthapuram District.

By Adv. Sri. Shajilal. S.

RESPONDENT/ (1st DEFENDANT) :-

Muneera, aged 67 years, W/o Nazar, Shyra Manzil, Palachira,
P.O., Cherinniyoor Village, Varkala Taluk,
Thiruvananthapuram District.

By Adv. P. S. Jobin

This Petition having been heard on 19.06.2025 and the court on the same day, passed the following.

ORDER

This is a petition filed for passing a temporary injunction.

2. **Brief averments in the affidavit are as follows:-** The petitioner herein is the plaintiff in O.S. 320/2023. The petition schedule properties were owned by the petitioner's mother's sister late Majida Beevi and her husband late Jalaludeen who were having no issues. Both of them

considered the petitioner as their daughter. Both late Majida Beevi and late Jalaludeen couple gifted the petition schedule property to the petitioner on 06.05.1988. Thereafter, the petitioner was enjoying the property openly and without any interruption. Since the petitioner is in possession and enjoyment of the petition schedule properties, even though the defendants 2 to 7 were having any kind of right over the said property, those rights are lost by the principle of adverse possession.

3. Things are like this, on getting information regarding the right of claim raised by the defendants 2 to 7 over petition schedule property, the respondents approached the petitioner long with a male child and informed that late Majida Beevi and late Jalaludeen have adopted the minor child. Such claim was raised with an intention to obtain the petition schedule properties. The adoption of the said minor child by late Majida Beevi and late Jalaludeen are not known to anyone. They have not submitted any kind of adoption petition. Now the respondent is engaging in activities which affects the possessory right of the petitioner over petition schedule properties.

4. Now the petitioner is residing in her husband's house. So the respondent attempted to encroach into the petition schedule property and tried to take the usufructs from petition schedule properties. On getting information from some local residents with regard to the encroachment of the respondent, the petitioner reached the spot. Then the respondent withdrew temporarily from the spot. At the same time she has threatened and raised some baseless claims. Nobody is having no kinds of right to object the right of the petitioner over petition schedule properties. Respondent is having money and muscle power. So the respondent may infringe the right of the petitioner over petition schedule property. So the present suit is

instituted. Along with the suit, the petition is filed for getting a temporary injunction. Hence the petition.

5. The respondent 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. Petitioner do not have any possessory right over the petition schedule properties. Majida Beevi and Jalaludeen couple was having an adopted son with name Jouhar, who is a mentally retarded child. Mr.Jalaludeen, Majida Beevi and Jouhar resided together in their residence till 2003. After the death of said Majida Beevi, Mr.Jalaludeen who is none other than the brother of the respondent started to reside along with respondent in her house. At that time, Jouhar was also with them. Till the death of Mr.Jalaludeen, the respondent, Mr.Jalaludeen and Jouhar were resided in Shaira Manzil. During the lifetime of Jalaludeen, he has executed a will deed with regard to the petition schedule properties in favour of Jouhar. The respondent was managing the properties for and on behalf of Jouhar. After the death of Majida Beevi and Jalaludeen, as per the National Trust Act, 1999, the District Collector, Thiruvananthapuram has appointed the respondent as the guardian of minor Jouhar and guardianship certificate is also issued. At the time of issuance of guardianship certificate to the respondent, the mother of the petitioner and some other defendants raised some objections. Those objections were rejected by the District Collector and issued guardianship certificate to the respondent. The petitioner has suppressed the material facts. Respondent is managing the petition schedule properties for and on behalf of Jouhar. The petition schedule properties were never in the possession of the petitioner as stated in the petition. Respondent is taking usufructs from the petition schedule property and those are used for the

welfare of Jouhar. So the objection of the respondent concluded with a prayer to dismiss the petition.

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

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

7. The court heard the learned counsel for the petitioner, learned counsel for the respondent and perused the records.

8. **Point Nos.1 to 3:-** The case of the petitioner is that the petition schedule properties were gifted to the petitioner by late Majida Beevi and Jalaludeen couple on the basis of oral gift. So in that way from 06.05.1988 the petitioner is in possession of the petition schedule properties. The learned counsel of the petitioner submitted that the granting of oral gift with regard to the petition schedule properties are known to everyone in the locality. So the learned counsel prayed for allowing the petition.

9. At the same time, the learned counsel for the respondent vehemently objected and argued that Jouhar was adopted by late Mr.Jalaludeen and Majida couple in the year 1993. This fact was known to everyone. Jouhar was residing along with Majida Beevi-Jalaludeen couple and after the death of Majida Beevi, Jalaludeen and Jouhar were residing along with the respondent. Jalaludeen executed a will deed in favour of Jouhar. Moreover, the learned counsel further submitted that land tax for the petition schedule properties are remitting in the name of Jouhar and possession certificate is

also issued which would go show that Jouhar is possessing the petition schedule properties. Moreover, it is further submitted that the petitioner has not taken out an advocate commission so as to prove petitioner's possession over petition schedule properties. So the learned counsel prayed for dismissing the petition.

10. This court considered the contentions in detail.

11. As far as a temporary injunction is concerned, possession is the material to be considered. Here, the learned counsel for the respondent has pointed out that the petitioner has not taken out an advocate commission to show her act of possession. Here the case of the petitioner is that show is possessing the properties from 1988 onwards. If that be so, the petitioner ought to have taken an advocate commission so as to establish her act of possession over the properties. That is not done. No documents are produced by the petitioner to show that petitioner is possessing the petition schedule properties from 1988 onwards. At this juncture, this court is of the view that in the absence of failure on the part of the petitioner to establish her act of possession over petition schedule properties, a temporary injunction can't be granted. Moreover, petitioner failed to establish the prima facie case and balance of convenience. Moreover, if the petition is allowed, irreparable injury will be caused to the respondent and if the petition is not allowed, no such injury will be caused to the petitioner. Point nos.1 to 3 were found against the petitioner and found in favour of the respondent.

12. **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 19th day of June, 2025)

Sd/-
ARAVIND.P,
MUNSIFF

Appendix : Nil

Id/-
MUNSIFF

// True copy/

MUNSIFF

Typed by : David. D.
Compd. by: Saritha Beegum

COPY OF ORDER IN I.A. 1/2023 IN OS NO. 320/ 2023

Dated. 19/06/2025