

IN THE COURT OF THE SUB JUDGE, SULTHANBATHERY

Present: Smt.Sreeja Janardanan Nair, Sub Judge

Saturday, the 19th day of July, 2025
 28th day of Ashadha, 1947

INTERLOCUTORY APPLICATION No.2/2025
CIVIL MISCELLANEOUS APPEAL No.6/2025

Harrisons Malayalam Ltd., Arapetta Estate,
 Represented by its Senior Manger and one
 of its Principal officers, Abraham Tharakan,
 Aged 56 years, S/o Poullose, residing at
 Arapetta Estate, Muppainad Village,
 Vythiri Taluk, Wayanad District.

Petitioner
Appellant

V/s.

1. Ajitha, Aged 53 years, W/o Sudhakaran,
 Praveen Nivas, Mappila Thottam,
 Meppadi Post, Kottappadi Village,
 Vythiri Taluk, Wayanad District.
2. Pravitha, Aged 34 years, D/o Sudhakaran,
 Praveen Nivas, Mappila Thottam,
 Meppadi Post, Kottappadi Village,
 Vythiri Taluk, Wayanad District.
3. P.A Sudhakaran, Age about 58 years,
 Praveen Nivas, Mappila Thottam,
 Meppadi Post, Kottappadi Village,
 Vythiri Taluk, Wayanad District.

Respondents

This Interlocutory Application is coming on 16th day of July 2025 for final hearing before me in the presence of Sri.T.J.Sundar Ram, Advocate for petitioner and Sri.M.T.Babu, Advocate for respondents and having stood over for consideration to this day the Court passed the following:-

ORDER

This is an application filed by the petitioner/plaintiff Under Order XXXIX Rule 1 of Civil Procedure Code.

2. **The averments in the affidavit of the petitioner in brief are as follows:-**

The petitioner is the plaintiff in OS 81/22. The suit is one for perpetual injunction restraining the defendants and their men from trespassing upon or entering into the petition schedule property, committing act of waste, harvesting areca or other crops therein or putting up any structures or proceeding with any construction or putting any concrete ring or digging well therein and from interfering in any manner with the plaintiffs' possession and enjoyment of the plaint schedule property and for mandatory injunction to restore status quo ante and for realization of damages.

3. Along with the suit, the petitioner/plaintiff had filed a petition for temporary injunction as IA 3/2022 and an interim order of temporary injunction was granted. After the appearance of the respondent, they have filed counter and the application was heard. The trial court has dismissed the application on 20.05.2025.

4. The case of the petitioner is that the petition schedule property along with other lands belong to the petitioner/plaintiff company as per deed No.2805/1923. The earlier survey number of the property was R.S 251 part and on subsequent resurvey, the resurvey number assigned to the suit property is 223 Block No.27 in Kottapadi Village. The entire extent of 101.2598 hectares in the said resurvey number is in the ownership and possession of the plaintiff company. The petition

schedule property is a portion thereof over which the trespass was made. All sides are surrounded by the petitioner/plaintiff's land and on the southern boundary one Saidu attempted to trespass and a suit against him is pending. The major area of the property in survey No.223 is tea plantation and also includes minor buildings, internal roads, vacant lands, interspersed with other plantations like eucalyptus, arecanut trees etc.

5. On 30.03.2022 at about 08.00 am, the respondents/defendants along with their men cut down 7 arecanut trees from the petition schedule property. Due to the timely intervention by the petitioner's officials, their attempt to take away the felled trees was objected to and they have gone away from there for the time being. A police complaint was filed on the same day. Again on 04.04.2022, the defendants No.1 and 3 along with their men put a temporary shed using the areca tree poles which were illegally cut and lying there and put on top blue plastic sheets. Due to the timely intervention, that attempt was stopped and they went away. Again on 06.04.2022, the 1st respondent attempted to trespass into the plaint schedule property and respondents No.1 and 3 were seen starting to put up a temporary shed and put in the green mesh all around the carved out property and they with their men started to digging up and removed the soil and brought in few numbers of concreted circular rings which were seen brought in a goods carrier. The petitioner has sustained loss of ₹15,000/- in the incident.

6. There have been violation of interim injunction order passed by the trial court and thereby the petitioner had filed petition for mandatory injunction to restore the status quo ante and also petitions for police aid and to punish the respondents for violation of interim injunction order and the said application are pending before the trial court for consideration. The temporary injunction petition

IA 3/22 was heard and the trial court was pleased to dismiss the same on erroneous grounds. As the order of the trial court is erroneous and against settled position of law, the memorandum of the appeal filed by the petitioner to set aside the same.

7. After the dismissal of the temporary injunction application, the respondents are attempting to proceed with the illegal construction in the plaint schedule property though the matter is sub judice and regardless of the legal position that the subject matter of the suit is to be preserved till the disposal of the suit. On 23.06.2025 the defendants are attempting to proceed with the illegal construction in the plaint schedule property. Therefore, it is just and necessary that the court may be pleased to grant temporary injunction restraining the respondents from trespassing upon or entering into the petition schedule property, committing any act of waste, cutting down trees and from proceeding with further digging well and from putting up any structures and from interfering in any manner with the petitioner's right to peaceful possession and enjoyment of the property. Hence, the petition.

8. **The respondents have entered appearance and filed counter with the following contentions:-** They have denied all the averments in the petition and contented that the plaintiff company is not in absolute owner and possession of the suit property. Their specific contention is that the 2nd respondent had agreed to purchase an extent of 0.0810 hectares of land comprised in S.No.223 of Kottappady Village from Mr.Madathailkandiyil Anil Kumar being represented by his power of attorney holder vide sale agreement 12.01.2018. The 2nd respondent has been put in possession of the plaint schedule property and she is in absolute possession and enjoyment thereof. She is residing in a temporary shed in the property which was therein in the property at the time of purchase. The said Anil Kumar is the absolute

owner of the property and he is a necessary party in the suit. The petitioner/plaintiff company is not the absolute owner and in possession of the suit property. The property possessed by the respondent is not involved in the writ petition and the respondents are not parties to the said petition. The petitioner who is claiming only possessory title over the property is covered by the title deed referred in the plaint cannot usurp or repel the legal and paramount title of the Sri.Anil Kumar. The 2nd respondent is residing in the property with her aged mother. The 2nd respondent has no other place of abode. She has no other land in her ownership and possession. The 1st respondent had been terminated from the service of the petitioner's company illegally and without affording an opportunity of being heard. The charges levelled against her were false and fabricated. The fact that the petitioner is not in possession of the petition schedule property is clear from the report submitted by the Advocate Commissioner. As there is no merit in the application, prays to dismiss the same.

9. **The points arose for consideration are as follows:-**

1. Is the petitioner made out a prima facie case in favour of him?
2. Are the balance of convenience and irreparable injury lie in favour of the petitioner?
3. Is the petition allowable?
4. Relief and costs?

10. On the side of petitioner, Exts.A1 to A10 were marked. No document was marked on the side of defendant.

11. Heard both sides.

12. **Points No.1 to 3:-** As these points are inter-connected, they can be considered together for the sake of convenience, for brevity and to avoid repetition. The case of the petitioner is that the petition/plaint schedule property along with other property belongs to the petitioner as per deed No.2805/1923. The earlier survey number of the property is 251 part and the new resurvey number is 223 in block No.27. The entire extent in the said survey number is in the ownership and possession of petitioner. According to the petitioner, the respondents trespassed into the property and started to construct building in the property. Per contra, the case of the respondent is that the 2nd respondent agreed to purchase an extent of 0.0810 hectares of land comprised in S.No.223 of Kottapadi Village from Mr.Madathaikandiyil Anilkumar, who is being represented by power of attorney holder vide sale agreement dated 12.01.2018. She is residing in a temporary shed in the property which was there in the property at the time of purchase. According to the respondent, the said Anilkumar is the owner of the property.

13. On the side of petitioner, Exts.A1 to A10 were marked. Ext.A1 is the judgment of of Honourable High Court of Kerala in WP (C) No. 26937/2018 dated 27.03.2024, Ext.A2 series are the photographs of the property, Ext.A3 is the judgment of Honourable High Court of Kerala in WP (C) No.25481/2008 dated 09.09.2013. Ext.A4 is the judgment of Honourable High Court of Kerala in WP(C) No.4529/2014 dated 07.01.2016. Ext.A5 is the fresh certificate of incorporation of consequent on change of name, Ext.A6 is the basic tax receipt with respect to the property extending 101.259 hectares in R.S 223. Ext.A7 is the copy of complaint filed by the petitioner against respondents for the loss sustained by them after trespassing into the property, dated 31.03.2022. Ext.A8 is the

another complaint dated 06.04.2022 infurtherance to Ext.A7 complaint. Ext.A9 is the commission report as per the order in IA 4/22 with sketch and Ext.A10 is the copy of second commission report with photograph.

14. Let me, begin with the status of the property as on the date of filing IA 3/22 before the trial court. To know the status of the petition schedule property, Ext.A9 is before the court. Ext.A9 is the commission report filed as per the order in IA 4/22, which was filed along with the IA 3/22. As per Ext.A9 document, the four boundaries of petition schedule property are the properties of the petitioner. That means the petition schedule property surrounded by the property of petitioner. It was separated with a green net and having arecanut trees in the plaint schedule property. The commissioner could see a shed in the property made of areca tree pieces and on the top of it a plastic sheet was covered and a green net was covered on all four sides of the shed. Advocate Commissioner further reported that the same was constructed days ago as the construction materials are seen not so old. Further, it is reported in Ext.A9 report that, at about 12 arecanut trees were cut and removed from the property and the stumps and pieces of trees were seen in the property. The said pieces were used for the construction of the shed. Further, the commissioner could see a well in the property. The well was seen constructed 2-3 days back. The mud which was removed from the well was dumped nearby the well. Here the importance of the case setup by the petitioner in the petition. According to the petitioner, the entire extent of the property in R.S 223 in Kottappadi Village is in the ownership and possession of plaintiff and the major area of the properties is tea plantation, vacant land, building, internal road and, interspersed with other plantations like eucalyptus, arecanut trees etc..

15. The specific case of the petitioner is that on 30.03.2022 at about 8.00 am, the respondents along with the men cut down 7 arecanut trees from the petition schedule property and on 06.04.2022, they again trespassed into the property and started to put up a temporary shed and putting a green mesh all around the carved out property, digging up and removed soil from the property. Ext.A9 document, clearly shows the activities done in the property recently which tally with the cause of action narrated in the petition.

16. Now, the most important aspect to be considered is the possession of the property as on the date of the petition. According to the petitioner, the entire property having an extent of 101.2598 hectors in R.S No.223 is in the ownership and possession of petitioner/plaintiff. On the other hand, the claim of respondents over the plaint schedule property is on the basis of a sale agreement in which 2nd respondent agreed to purchase the property from Mr.Anil Kumar, who being represented by power of attorney holder vide sale agreement dated 12.01.2018. In this context, the learned counsel for the petitioner would argue that the legal right of the said Anil Kumar over the suit property was already discussed in detail before the Honourable High Court of Kerala in the year 2014 itself, in which it was found that the possession of the property lies within the petitioner. The learned counsel invited the attention of the court into Exts.A1 and A4 documents. Ext.A4 is the judgment of the Honourable High Court of Kerala in WP (C)No.4529/2014, filed by Mr.M.K.Anilkumar against the state of Kerala, District Collector, District Survey Superintendent, Tahasildar, Village Officer and the petitioner herein, in which the grievance of the petitioner is that the Tahasildar rejected his request to effect mutation and to receive basic tax of the property from him. In the said judgment, it is stated that, it is stated in the Order of the Tahasildar that the land is in possession of the 6th respondent who is the petitioner herein. Further, the

Honourable court held that, the issue can not be resolved without adjudicating the right and title of the petitioner (Mr.Anil Kumar). Ext.A1 is the judgment in WP(C) No.26937/18 dated 27.03.2024 which was preferred by the said Anil Kumar M K against the state of Kerala, District Collector, Sub Collector, Tahasildar, Village Officer and the petitioner herein in which his prayer is to direct the Tahasildar to conduct an enquiry regarding effecting of mutation of the property covered by a sale deed on which he claims, right over the property. While hearing the said matter, it was brought into the notice of Honourable Court that on the same facts, the petitioner in WPC had approached the Honourable Court in WP (C) No.4529/14(Ext.A4), in which the Honourable declined the prayer of the petitioner for a directon to the Tahasildar to effect mutation, especially when the possession of the property itself was disputed and that the order impugned therein refers to the possession of Harrison Malayalam (Petitioner herein) in respect to the property.

17. Further, the Honourable Court directed in that order that, the petitioner (Anil Kumar) will have to establish his legal rights and title over the property before seeking for a direction against the Tahasildar to effect mutation of the property concerned. So, in the light of the judgments of the Honourable Court, the learned counsel for the petitioner herein has argued that the Honourable Court already found that the property is in the possession of petitioner and Mr.Anil Kumar from whom the 2nd respondent agreed to purchase the property had not established his legal right or title over the property so far as ordered by the Honourable court. Respondent has no case that the owner of the property had established his title as ordered in Ext.A1 & A4 judgments, especially in the circumstance, in which they have no objection to the said documents. Their claim over the property is only on the basis of a sale agreement. Respondent has no case that the petitioner in Ext.A1 & A4 judgments is not the owner of the property from

whom second respondent agreed to purchase the property. They have also no case that the said Anil Kumar is having another property in the same survey number than the property covered in Ext.A1 and A4 documents.

18. Here it is pertinent to note that, the petitioner claims right over the entire extent of the property in Survey number 223 in Kottapadi Village. The petition schedule property also lies in S.No.223 of Kottapadi Village. The respondents claim right over the property on the basis of a sale agreement executed by the power of attorney holder of AnilKumar. The Said Anilkumar has not established his legal right over the property as ordered by the Honourable High Court of Kerala in Ext.A1 & A4 documents. The respondent has no case that there is specific clause in the agreement of sale regarding the handing over of the possession. The respondent has nowhere asserted as to when she has come in possession of the suit property. The agreement of sale does not confer any right, title or interest in favour of the respondent and it only gives her a right to enforce the agreement.

19. Apart from Ext.A1 & A4 documents, the petitioner has produced Ext.A6 basic tax register to prove his possession of the property. Ext.A6 would shows that the owner of the entire extent of 101.2598 hectors of property in R.S No.223 is Harrison Malayalam Ltd. Ext.A1, A4 &A6 would probablise the case of the petitioner that the petition schedule property is in the possession of petitioner.

20. Further the nature and lie of the petition schedule property as narrated in the petition and as reported by the advocate commissioner in Ext.A9 report would also probablise the case of the petitioner. According to the respondent No.2, after the sale agreement, possession was given to her and she is residing in that property

by constructing a shed. That contention can't be believable in the light of Exts.A1 and A4 documents and the commission report. Sporadic act of trespass by respondents to put up new structure can not constitute possession of respondents.

21. The learned counsel for the petitioner has further argued that after disposal of the injunction application the respondent continued the construction work very fastly, without preserving the status of the property as on the date of the suit and produced Ext.A2 photographs to show the same. Ext.A2 photographs would show that the respondents continued the construction after the inspection of the advocate commissioner, regardless of the legal position that the subject matter of the suit is to be preserved till the disposal of the suit. It is to be noted that, absolutely, no document was produced by the respondents with respect to the construction of building in the property before the trial court and this court. Further, the learned counsel has argued that the ownership certificate dated 07.12.2024 produced by the respondents before the trial court was issued only for the purpose of electricity connection which was provided as per the Order of the Govt of Kerala vide G.O.(Ms)No.22/2016/PD dated 06.10.2016 and that would not confer any title or possession to the respondents over the property and produced the said G.O. for perusal.

22. On analysing the documents produced by petitioner, this court finds that the petitioner has established a prima facie case in favour of him. In that circumstance, if the petition is not allowed, it would cause much loss and hardship to the petitioner, especially in the circumstance in which the respondents are not ready to preserve the suit property till the disposal of the suit. So the balance of convenience and irreparable injury are also lie in favour of petitioner. As the petitioner has established a prima facie case, balance of convenience and irreparable

injury in his favour, these point are found in favour of him. Hence the petition is allowed.

23. **Point No.4:-** In view of the findings on points No.1 to 3, the petition is allowed.

In the result, the petition is allowed as follows:-

1. Restraining the respondents from trespassing into the petition schedule property, committing any acts of waste, doing construction work in the petition schedule property and interfering in any manner with the petitioner's right to peaceful possession and enjoyment of the petition schedule property until the disposal of the Civil Miscellaneous Appeal.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this the 19th day of July, 2025).

SUB JUDGE

Appendix:

Petitioner's Witness: Nil.

Petitioner's Exhibits:

A1	-	27.03.2024	-	Judgment of Honourable High Court of Kerala in WP(C) No.26937/2018.
A2	-	-	-	Photograph
A2(a)	-	-	-	Photograph
A2(b)	-	-	-	Photograph

A2(c) -	-	-	Photograph
A2(d) -	-	-	C.D.
A3	-	09.09.2013	- Judgment of Honourable High Court of Kerala in WP(C) No.25481/2008.
A4	-	07.01.2016	- Judgment of Honourable High Court of Kerala in WP(C) No.4529/2014.
A5	-	-	- Fresh Certificate of Incorporation consequent on change of name.
A6	-	-	- Copy of Basic Tax Register.
A7	-	31.03.2022	- Copy of complaint filed by the petitioner.
A8	-	06.04.2022	- Copy of complaint filed by the petitioner.
A9	-	-	- Copy of commission report with sketch and photographs.
A10	-	-	- Copy of commission report with photographs.

Respondents' Witness and Exhibits: Nil.

SUB JUDGE

Typed by : Mini S.
Compared by : Preethi P.B.