

In Court of the District Munsif Cum Judicial Magistrate No.1, Kodaikanal
Present: Thiru. R. Arun Pandian., B.A., B.L., (Hon's) M.L.,
District Munsif Judicial Magistrate No.1 Kodaikanal.
Tuesday, this is the 17th day of March – 2026
IA.No.02/2025
in
O.S. No.69/2025

E.J. Davis ... Petitioner

/versus/

Mr.Salik ... Respondent

This petition is heard in the presence of Mr.N.Ramchandran, the Learned counsel for the Petitioner and Mr.A.Mohammed Mydeen, the Learned counsel for the Respondent. Enquiry heard on both sides and having stood over for my consideration till this day, this court delivered the following,

ORDER

1. This Petition preferred by the Petitioner under Order 39 Rule 1 and 2 of the Code of Civil Procedure (In short, 'the Code').

2. The Petitioner is the Plaintiff and the Respondents are the Defendants in the main suit respectively. For the sake of convenience, the parties are referred to as their status in the present petition.

3. The petitioner's case in brief is that:-

The petitioner E.J.Davis is a resident of Ernakulam, Kerala. The petitioner accounts to own the suit schedule property specified as "Town Survey Number 4/2B" comprised in Kodaikanal Town, measuring 20 cents. The petitioner asserts that he purchased the suit schedule property from transferor named Vijie Devanagayam and 5 other persons, by mode of sale, through four different sale deeds in the year 1995. Thereupon the suit schedule property, petitioner accounted to have erected a Hotel structure in the name and style as " Hotel Cooker's Tower", after obtaining due permit in the year 1995. It is the assertion of the petitioner that, there exists a compound wall surrounding the suit scheduled property which was placed to erected by his transferors 50 years

before. The factum being so, the defendant who purchased the adjacent suit property, proceeded with construction work, and has undertaken deep excavation (about 30 feet), which poses a serious threat to the structural safety of the petitioner's building and violates hill station building norms. Further, on 08.08.2025 and 11.08.2025 the respondent, along with his workers, attempted to demolish the petitioner's compound and revetment wall and encroach upon a portion of the Plaintiff's property. Even after the petitioner having placed his cause to the respondent, and objection being raised with other officials seeking the cessation of the construction work, the construction is not stopped. In the said backdrop, the respondent alleged to have interfered in the possessory right of the plaintiff, and attempted to encroach upon the suit property and endeavoured to destroy the revetment wall. Being aggrieved the petitioner has preferred this petition.

4. The respondent being put on notice filed a counter, and its summarised contention is as follows :-

The averment set out in the petition was contended to be false and frivolous. Denied the allegation that he attempted to excavate or demolish the petitioner's compound or revetment wall, stating that such claims are baseless and imaginary. The respondent asserted that the petitioner has violated multiple building regulations under the Kodaikanal Master Plan. Specifically, the petitioner allegedly constructed a commercial building without complying with minimum plot extent, setbacks, floor limits, height restrictions, and permissible plot coverage, thereby not approaching the Court with clean hands. It is further contended that the compound/revetment wall in question is more than 80 years old and in a dilapidated condition. The respondent claims that he had lawfully obtained all necessary approvals from competent authorities for construction on his adjacent property. During construction, he noticed cracks in the petitioner's old wall and informed the petitioner, requesting repairs due to safety concerns. However, the petitioner failed to take any action. The respondent submits that he has even approached authorities regarding the dangerous condition of the wall. He denies any attempt to damage the wall and asserts that, in fact, any collapse would adversely affect his own property and workers. Further, the respondent contends that primary relief as pursued in the main suit, cannot be sought as an interim relief, and prayed the interlocutory application be dismissed

5. The point to be decided as to whether the petition is liable to be allowed or not?

6. The Honble apex court in the case **Dalpat Kumar And Another v. Prahlad Singh And Others** has delineated the aspect of interim injunction, and specified that such relief being

discretionary, and hinges on three cumulative tests i.e. Prima Facie Case: The plaintiff must show a bona fide, substantial question requiring trial, not a proven title, Irreparable Injury: The applicant must demonstrate likely injury that cannot be adequately compensated by damages, Balance of Convenience: Comparative hardship must favour the grant of injunction. Here, neither the possession nor the title of the petitioner is disputed. Likewise the respondent being an adjacent land holder, and owner of the said land is not disputed. The term 'ownership' in law is meant the right of an individual or a body corporate to possess a thing to the exclusive use of it, to alienate it, and even to destroy it in such manner that he does not disturb the right of other people. The dispute between the parties centres on the question 'whether the act of the respondent in constructing a structure on his land, and in the course thereof excavating the top layer of soil, has resulted in the infringement of the petitioner's rights. The act complained of by the petitioner is that the respondent, while undertaking excavation of the top layer of soil in his own land, as part of construction, has, as a consequence thereof, caused damage to the petitioner's revetment wall. It is necessary to state that the respondent has commenced construction only after obtaining due permission and requisite approvals from the competent authorities. Hence, the characterization of the respondent's construction activity as 'illegal' in this interim application is premature, particularly at the stage of prima facie consideration. Further venturing into the aspect whether the act of the respondent proceeding with the construction on his parcel of land by virtue of permits obtained, amounts to violation of petitioner rights, would amount to conducting a mini trial at the stage of consideration regard temporary injunction. The Honble Apex court in the case **Anand Prasad Agarwalla vs Tarkeshwar Prasad And Ors 2001 (5) SCC 568** has held that "*It may not be appropriate for any Court to hold mini trial at the stage of grant of temporary injunction*". It is herein specified that, to elucidate the matter in dispute even an advocate commission, with assistance of expert, having been appointed, and the advocate commissioner adduced a preliminary report that "*I also unable to find out the exact reason for the damages caused to the petitioner's building*".

7. The contention of the Petitioner is that the construction activity undertaken by the Respondent has caused damage to his compound revetment wall. Conversely, the Respondent contends that no such damage has been caused at his instance and further asserts that, in the event of any collapse of the revetment or compound wall, it is the Respondent and his construction workers who would be at greater risk. This contention of the Respondent appears to be logical from the standpoint of a prudent person. The Respondent further submits that he had duly intimated the Petitioner regarding the weakened condition of the revetment wall; however, the same has not been addressed or attended to by the Petitioner. It is also to be noted that the compound revetment wall,

being more than 50 years old and situated in a cold and damp environment, is naturally susceptible to deterioration and weakening over time. In such circumstances, the primary responsibility to prevent any damage rests with the occupier of the property, while the duty of undertaking necessary preventive measures, including reinforcement and maintenance of the structure, squarely lies with the owner/occupier of the property. The imputation of building violation alleged against the petitioner that he having erected an additional floor, and lack of set back area in the petitioners premises is not venture into, at this stage. In the considered opinion the balance of convenience tilts in favour of the respondent.

8. When excavation work for the basement has already been undertaken, any direction ordering cessation of such work would place both the respondents' and the petitioners' constructions in peril. The respondent has produced the requisite permit documents pertaining to the construction. In such circumstances, directing cessation of work, particularly after the respondent has complied with the preliminary legal requirements by obtaining the necessary permits, would be unjustified. A mere order of cessation, without affording further opportunity or without clearly imputing any violation on the part of the respondent, would result in undue and irreparable injury to him. This being so, this Court is of the view that the three-fold test of establishing (i) a prima facie case, (ii) balance of convenience and (iii) irreparable harm." was not sufficiently placed. This court is of the considered view that the debatable issues could be adjudicated only when the parties let in evidence in the trial.

9. It is also expressly made clear that the above observations made by this Court are not on the merits of the case.

Accordingly, the point is answered in negative.

In the result, the petition is dismissed. No Cost.

Dictated by me to the Steno-Typist directly and typed by computer and corrected and pronounced by me in the open court on the 17th day of March 2026.

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Kodaikanal**

Evidence and Documents:-

1. Petitioner Side Evidence and Respondents Side Evidence : Nil
2. Petitioner side documents and Respondents side documents: Nil

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