

IN THE COURT OF THE MUNSIFF, CHANGANACHERRY

Present :- Smt. Sarica A.R, Munsiff

Tuesday 8th day of July, 2025
17th Ashadam, 1947

I.A. No. 1/2024 in O.S. No. 319/2024

Petitioners/Plaintiffs :-

1. Chacko Thomas, 72 years, S/o Thoma,
Vettukuzhiyil House, Vazhappally P.O,
Vazhappally East Village, Changanacherry Taluk.
2. Sali Chacko, 65years, W/o Chacko Thomas,Vettukuzhiyil
House, Vazhappally P.O,Vazhappally East Village,
Changanacherry Taluk.

By Adv.K Pradeep

Counter Petitioners/Defendants: :-

1. Joji Scaria, 48 years, S/o Scaria Thomas,
Vettukuzhiyil House, Kottamuri P.O,
Thrikodithanam Village, Changanacherry Taluk.
2. Beena Victor, 52 years, W/o Joji Scaria,
Vettukuzhiyil House, Kottamuri P.O,
Thrikodithanam Village, Changanacherry Taluk.

Adv.P.C Cherian & Assossiates

This petition is coming up for consideration before this Court on 08.07.2025 and the court on the same day passed the following :-

ORDER

The petition filed for temporary injunction.

2) ***The petition averments are as follows:-*** The plaintiffs are husband and wife. They are senior citizens with health related issues and ailments of old age. The first defendant is the nephew of the plaintiff and the second defendant is his wife. The plaint schedule property devolved upon the father of the plaintiff by virtue of Settlement Deed No.1490/1113 of Changanacherry SRO and upon his death, it devolved upon his legal heirs, his wife and children including the plaintiffs and the father of the defendants. Thereafter the 1/3rd share of the mother and the 1/7th share from the 2/3rd share of the siblings Mariamma and Devasia devolved upon the plaintiff, followed by the 1/7th share of the 2/3rd share of his sibling, Thomas which devolved upon him by virtue of Sale Deed No.1263 of 2007. The plaint schedule property was partitioned and the final decree application is pending before this Court. At this juncture, the first defendant, the son of the deceased sibling Scaria Thomas, who was the first defendant in the suit, has

trespassed upon the plaint schedule property and has obstructed the peaceful possession and enjoyment of the same by the plaintiff. The plaintiff has 15/21 share over the plaint schedule property. The petitioners aver that they have no objection to the respondents residing in the plaint schedule property. However, it is stated that on 28-10-2024, the respondents trespassed into the plaint schedule property, destroyed the locks on the doors, approached the second plaintiff whose mobile phone was smashed off and nighty was torn followed by abuses hurled at her by the second respondent. The 1st respondent who arrived on hearing this information was obstructed from stepping out of his vehicle and hit on his face and back. The respondents are also alleged to have destroyed the household utensils of the petitioners. The respondents have no right to do so. Hence this petition.

3) The respondents stated in their objection that the plaintiffs have approached the court with unclean hands. It is submitted that the plaint schedule property having an extent of 6.32 Ares is the ancestral property of the plaintiffs and defendants with two buildings No.238 which is used as residential building of the defendant and No.328 which is used as the residential building of the plaintiffs of which 5.1 cents has been assigned to the father of the 1st defendant and 10.5

cents is assigned to the plaintiffs in the suit. As per the decree in the partition suit OS 246 of 2010, the defendants who are advocates by profession are functioning in the building No.238 of Ward No.5 of Changanacherry Municipality. The plaintiffs had filed false complaint on 12-01-2024 before the Changanacherry Municipality stating that the defendants are making illegal constructions in the office building. The said complaint was closed after the Municipality was satisfied that no illegal constructions are being done. Several false and vexatious complaints have also been filed before the Changanacherry Police by the plaintiff with the intention to damage the reputation of the defendants and cause prejudice in the pending proceedings before this Court. The plaintiff had also preferred an appeal AS No.11/2012 before District Court, Kottayam wherein IA 51 of 2015 to appoint him as receiver of the residential house in the plaint schedule property was sought for as relief. The District Court had directed the defendant to shift his advocate office to the adjacent building and the defendants and other shareholders were directed to hand over the possession of the residential building and remove their articles from the house. However, the Hon'ble High Court in FAO No.199 of 2015 dated 06-10-2015 was pleased to set aside the above judgment and directed the District Court to

dispose of the appeal within a specified period of time. The plaintiffs under the shelter of the interim order dated 08-11-2024, threatened the staffs of the defendants and have illegally cut and removed standing trees in the plaint schedule property including two teak trees, two jack fruit trees, one coconut tree and many other fruit bearing trees. The defendants have come to know that the teak trees, jack fruit trees and coconut trees being cut, removed and sold by the plaintiffs for an amount of ₹4,50,000/- and by the plaintiffs who have made unjust enrichment and caused loss to the defendants and other shareholders. This suit has been filed for the purpose of committing mischief in this plaint schedule property. In the month of 2024, there was an oral settlement in the presence of the witnesses wherein it was agreed that the first plaintiff will purchase the joint share of the defendant No.1 and other legal heirs of late Scaria Thomas along with the joint share of Smt. Manju Thomas and Shri. Thomas Scaria within a period of 7 months i.e., by end of August, 2024. It was stated that after the said period if the first plaintiff is not able to do so, he will sell his joint share in the plaint schedule property to the 1st defendant. The plaintiffs taking advantage of this position had occupied one room in the residential house in the plaint schedule property. The plaintiffs were not able to purchase the

joint share of the 1st defendant and other co-owners and when the 1st defendant asked the plaintiff to come forward and fulfill his word, he withdrew from the same. The defendants' address in the suit does not belong to them and they have never resided in the address mentioned in the cause title. The allegations that the defendants are creating troubles for the plaintiffs is false and denied. It is the plaintiffs who are causing trouble for the defendants and not permitting them to reside peacefully in the residential house or function in their advocate office from the adjacent building. In the absence of the defendants the plaintiffs are constantly threatening the staffs of the defendants. The plaintiffs have no furniture or articles or any belongings in the residential house except the clothes and some utensils in one room occasionally occupied by them. The defendants and children are peacefully residing in the plaint schedule property. The plaintiffs have not made a prima facie case nor is there any balance of convenience or irreparable injury in their favour. Hence the petition ought to be dismissed.

4) Heard both sides.

5) The points which arose for consideration are: -

- 1) Is there a prima facie case in favour of the petitioners?
- 2) Will the petitioners sustain irreparable

injury if an order in this IA has not been granted?

3) Whether the balance of convenience tilts in the petitioners' favour?

4) Can the petition be allowed?

5) Order as to costs ?

6) **Points 1 to 5 :-** In a petition regarding temporary injunction, the first aspect to be considered is whether the petitioner has a prima facie case for seeking an interim relief. The case of the petitioner is that he has devolved a share upon the plaint schedule property by virtue of deed No. 246 of 2010 and that his peaceful possession and enjoyment of the same is obstructed by the 1st defendant who was also received a share in the plaint schedule property. From the pleadings of the defendants, it is stated that there was an oral family agreement between the parties which was withdrawn by the plaintiffs who have violated its terms and is causing hindrance for the defendants' enjoyment in the plaint schedule property. The pleadings are itself an answer to the question that there is a prima facie case between the parties.

7) Secondly, with respect to the injunction being denied, on perusal of the commission report, it is seen that there are several locks destroyed in the house. It is also stated that the

television set in the house is destroyed and that almost all the doors in the house are also destroyed. It is also seen that towards the north of the living room is one locked room with the board of the 1st and 2nd defendants. It is crucial to note that in the commission report, it is stated that “ടി കെട്ടിടത്തിൽ വാദികൾ താമസിച്ചു വരുന്നതായി അറിയുവാൻ സാധിച്ചു. ” It is also reported about the existence of an adjacent building in the plaint schedule property which is stated as the office building of the defendants. The said building was also locked. Thereafter in the 3rd point it was stated that there was a lorry parked before the residential building of the plaintiffs with one wheel removed and that there were also a lot of wastes dumped around the residential house. The Final Decree Application is pending and as averred by the defendants, the defendants have been entitled to 5.1 cents. The plaintiffs are allotted to 10.5 cents in the plaint schedule property as per the decree in OS 246/2010. The defendants themselves have stated that they are advocates by profession functioning in the office building in the plaint schedule property and are residing in the residential house therein. At this juncture, if the injunction is denied, there is likelihood of the interference of the respondents to evict the plaintiffs or obstruct their peaceful possession and enjoyment of the plaint schedule property. The commission report is prima

facie a proof to the fact that sufficient damage has caused to the plaint schedule property. Such being the situation, if an interim injunction order is denied, there is high probability for obstruction to the peaceful possession and enjoyment of the plaint schedule property by the petitioners/plaintiffs who are entitled to 10.5 cents therein. This can cause irreparable injury to the petitioner. Thus, the second factor of irreparable injury tilts in favour of the petitioners. Whether there is a violation of the rights of the plaintiffs, whether there has been an oral family settlement between the parties which was later not abided by the plaintiffs or as to whether there has been mischief or waste committed by either party on the plaint schedule property are matters that has to be considered in trial. Though the respondents have stated that the plaintiffs have cut down trees from the plaint schedule property, no mention of the same is seen in the commission report. The respondents have not taken any steps to prove that at this stage either. In this situation, the plaintiffs being age old persons residing in the plaint schedule property, the balance of convenience shifts in their favour.

In the result, the temporary injunction is allowed. The respondents and men under are restrained from obstructing the peaceful possession and enjoyment of the plaint schedule property by the plaintiffs or from committing any mischief or waste on the plaint schedule property until further orders.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced by me in open court on this the 8th day of July, 2025.)

Sd/-
Sarica A.R
MUNSIFF

APPENDIX:- NIL

Id/-
MUNSIFF

//True Copy//

Sd/-
Sarica A.R
Munsiff

Copied by:
Compared by:

