

IN THE COURT OF THE MUNSIFF, TIRUR
PRESENT: Sri. SANU C., MUNSIFF.
Wednesday, the 18th day of March, 2026
the 27th day of Phalguna, 1947
INTERLOCUTORY APPLICATION No. 13 OF 2025 IN
ORIGINAL SUIT No.315 OF 2022

Between:

Anusha,
W/o. Manikandan, Malayil House,
Keraladheeswarapuram amsom desom,
K.Puram P.O., Tirur Taluk, Pin – 670307.

} Petitioner
3rd Defendant

And:

Gangadharan, 45 years,
S/o. Govindan, Malayil House,
Keraladheeswarapuram amsom desom,
K.Puram P.O., Tirur Taluk, Pin – 676307.

} Respondent
Plaintiff

This petition having been finally heard on 26-02-2026 before me in the presence of Sri.S.Hariharan, Advocate for the petitioner and of Sri.E.K.Noushad, Advocate for the respondent and the Court on 18-03-2026 passed the following;

ORDER

This petition is filed under Order XLVII Rule 1 of Civil Procedure Code (*hereinafter 'CPC'*) to review the order dated 13.11.2023 in IA No.2/2022.

2. The petition averments are as follows:- The petitioner is the defendant No.3 in the suit. In the above case, ex-parte order was passed on 13-09-2023 against the petitioner and the same was set aside on 08.10.2025. The counter was filed in IA 2/2022. However, IA 2/2022 was allowed and the injunction order was

made absolute while this petitioner was ex-parte. Considering the facts, it is necessary to hear both the parties and get a decision on IA 2/2022 and for that, the order in the petition 1A 2/2022 should be reviewed. Hence the petition.

3. Respondent entered appearance and filed counter denying the averments in the petition. The order given above is not reviewable. There are limitations on the review of the order issued in absolute by the court and an appeal must be filed in the higher court. In the above petition, the summons notice was served on the petitioner personally and the petitioner was then given sufficient time to file counter. However, since the counter was not filed, the above petition was dismissed as 'No-counter filed by the respondent'. The respondent was not made an ex-party in the above petition. The petitioner and others have been harassing the respondent, who is a cancer patient, by not paying the amount of Rs. 5,00,000 (Rupees Five Lakh only) from the proceeds of the sale of the properties, as decided by the family members and mediators. Hence, the petition is liable to be dismissed.

4. Heard. Perused the records and affidavit.

5. The point arise for determination:

Whether the petitioner is entitled to get relief, as prayed for?

6. It is pertinent to note that, the petitioner is the 3rd defendant in the suit. Petitioner was set ex-parte in the suit. However, on 13.11.2023 an interim

injunction restraining the respondent from alienating the property assigned by defendant No.1, by recording no counter of the petitioner. The ex-parte order in the suit against the petitioner was set aside as per the order in IA 10/2025 dated 18.08.2025. According to the petitioner, since the petitioner was set ex-parte in the suit, the injunction was made absolute as per the order in IA 2/2022 dated 13.11.2023. The order was passed without affording him an opportunity of being heard. Hence the petition has to be reviewed.

7. The learned counsel for the respondent contended that, the order was passed on 13.11.2023 and the present application is filed on 04.11.2025. An application for review has to be filed within 30 days and the application is barred by limitation. However, this court is of the view that as there is no apparent error on the face of record or for any other reason, this application does not fall within the purview of review. However, the petition has to be decided on merits.

8. It is true that, on the date of the impugned order, the petitioner was remained absent and the order was passed without him being heard is nothing short of an ex-parte order, though it was omitted to record to set him ex-parte. For the said reason, this court is of the view that the said application can be considered and also pass an appropriate order by invoking under section 151 of CPC. Besides, Order IX Rule 7 mandates where the court has adjourned the hearing of the suit *ex-parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non -appearance, he may, upon such

terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance. In the case in hand, the ex-parte order against the petitioner was set aside as per the order in IA 10/2025 dated 18.08.2025. Hence, as the Order IX, Rule 7 mandates, he shall be heard in answer to the suit as if he had appeared on the day fixed for his appearance. If he had appeared on the day, the impugned order in IA 2/2022 shall not be passed without affording an opportunity of hearing to him. For the above said reasons, this court is of the view that by abiding the principle of natural justices, an opportunity of hearing and contesting the matter shall be granted.

9. Moreover, by virtue of Order XXXIX Rule 4 of CPC any order for an injunction may be discharged, varied, or set aside by the court, on application made thereto by any party dissatisfied with such order subject to the provisos incorporated under the rule. The case in hand does not fall within the ambit of the provisos to Rule 4. On the said aspect also the said application can be considered.

10. By considering all the above aspects and by invoking Order XXXIX Rule 4 and Order IX Rule 7, this court inclined to set aside the impugned order dated 13.11.2023 in IA 2/2022. However, by considering the grievance of the respondents, an ad-interim injunction restraining the respondent in IA 2/2022, from alienating the petition schedule property until further orders is passed hereby. The petitioner is permitted to file counter and to contest IA 2/2022.

In the result, IA allowed as follows:

- I. The order of injunction passed by this court dated 13.11.2023 in IA 2/2022 is set aside.
- II. The petitioner in this application is permitted to file counter and to contest IA 2/2022.
- III. Meanwhile, by way of an ad-interim injunction, the respondent in IA 2/2022 are hereby restrained from alienating petition schedule property until further orders.
- IV. There is 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 18th day of March, 2026).

MUNSIFF

Typed by: Krishnakumari.V
Compared by: 1) 2)

Fair Order in IA 13/2025 in
OS 315/2022 Dated 18-03-2026

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