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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

THURSDAY, THE 20TH DAY OF MARCH 2025 / 29TH PHALGUNA, 1946

OP(C) NO. 224 OF 2025

CMA NO.37 OF 2022 OF ADDITIONAL DISTRICT COURT & MOTOR ACCIDENT CLAIMS TRIBUNAL , NORTH PARAVUR ARISING OUT OF THE ORDER IN OS NO.253 OF 2022 OF MUNSIFF COURT, NORTH PARAVUR

PETITIONER/S:

JOSE ANTONY, AGED 57 YEARS
S/O.ANTONY, MUKKATH HOUSE, MADAPLATHURUTHKARA, MOOTHAKUNNAM P.O, MOOTHAKUNNAM VILLAGE, PARAVUR TALUK., PIN - 683516

BY ADVS.M.G.JEEVAN
SANIYA JOSE MAMPILLY

RESPONDENT/S:

JOB ANTONY, AGED 54 YEARS, S/O.ANTONY, MUKKATH HOUSE, MADAPLATHURUTH KARA, MOOTHAKUNNAM P.O, MOOTHAKUNNAM VILLAGE, PARAVUR TALUK., PIN - 683516

BY ADVS.
PHILIP T.VARGHESE
THOMAS T.VARGHESE(K/000516/1995)
ACHU SUBHA ABRAHAM(K/001758/1999)
V.T.LITHA(K/278/2006)
K.R.MONISHA(K/915/2013)

OTHER PRESENT:

ADV. ANJALY JAYAKRISHNAN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 17.3.2025, THE COURT ON 20.3.2025 DELIVERED THE FOLLOWING:

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JUDGMENT

(Dated this the 20th day of March 2025)

The petitioner filed O.S. No.253 of 2022 before the Munsiff's Court, North Paravur, for a decree of permanent prohibitory injunction against the respondent, preventing trespass into the petitioner's property, destruction of buildings, waste, and any obstruction to the petitioner's rights. The respondent is the sole defendant therein.

2. The petitioner claims ownership and possession of 27.375 cents of property in Moothakunnam Village, comprised in Sy.No. 305/15, 303/12A, and 313/1/51 by virtue of Settlement Deed No. 7432/1995 and Sale Deed No. 731/2002, both from the Paravur Sub-Registrar's Office (SRO).

3. The property is divided by a Panchayat road: 4 cents lie north, and 23.375 cents lie south. Two buildings, numbered 272/8 and 295/8, are located on the southern portion. A partial demolition

of the ancestral house has resulted in the construction of two new rooms and a kitchen, designated as Building No. 8/273A. The entire 23.375 cent portion south of the road is enclosed by a compound wall with a gate installed by the petitioner, and is the plaint schedule property.

4. The petitioner and respondent are brothers. The petitioner allowed the respondent to reside in the ancestral house situated in 10 cents of property covered by the above-said settlement deed. The respondent, unmarried, resided there with their mother. With the petitioner's consent, the respondent renovated the Tharavad House using government financial assistance.

5. Subsequently, a dispute arose when the respondent made false claims to the said 10 cents of property and he began threatening the petitioner and his family, with demolition of buildings on the property.

6. This constrained the petitioner to file O.S. 253/2022

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before the Munsiff's Court, North Paravur, along with I.A. No.3/2022, for temporary injunction to which the respondent filed a counter-affidavit.

7. In his counter-affidavit, the respondent claimed ownership of the 10 cents of property comprised in Sy.No. 305/15, Settlement Deed No. 7432/95, based on a Will No. 171/2008, executed by their mother and he asserted possession of the same. An Advocate Commission was deputed, he inspected the property and submitted a report and sketch as Exhibits C1 and C1(a).

8. The counter filed by the respondent, to the injunction application, specifically contends the petitioner's ownership and possession of the 10 cents of property. The respondent claimed ownership of Building No. 8/273A, located near the Tharavad House. He acknowledged Building No. 8/272 as being on the property covered by Sale Deed No. 731/2002. He denied ownership of Building No. 295/8 by either party.

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9. The respondent further asserted that the 10 cents of property was bequeathed to him via the aforementioned Will of the year 2008. He stated that he constructed a house using funds from the Indira Vikas Yojana. He alleged that the petitioner filed O.S. 253/2022, when he attempted to demarcate the property with a Taluk Surveyor. The respondent also claims to have effected mutation in the property in his name in the revenue records and pays taxes on it.

10. The Munsiff Court dismissed I.A. 3/2022 (Ext.P23) holding that the respondent is in possession of the disputed property as the respondent's evidence indicated prima facie possession of 4.05 ares of property comprised in Sy. No. 303/2015 and Building No. 273-A/8. The court also noted that the respondent treated the property as his own and the adjudication in respect of the conflicting title claims required further inquiry and evidence, and that the petitioner had admitted the respondent’s possession. The

court also reasoned that it was unlikely for the mother to have mortgaged the property in 2000, if she had already executed a Settlement Deed in favour of the Petitioner. The petitioner filed an appeal before the Additional District Court, N.Paravur againt the order in I.A.No.3 of 2022, as CMA No.37/2022.

11. As per Ext.P24, the Additional District Court dismissed CMA No.37/2022 with costs, concurring with the Munsiff's finding. The appellate court emphasized the petitioner's burden of proof regarding the Settlement Deed and found the petitioner's failure to mutate the property. The appellate court found the balance of convenience in favour of the respondent, and that the Petitioner had not proven his legal possession. Hence, aggrieved by Exhibit P23 and Exhibit P24, the petitioner has filed this OP(C).

12. According to the petitioner, he obtained 4.5 Ares of land in Sy.No.303/2015 and the building by virtue of Ext.A1. He has purchased 17 cents 385 sq. links of property adjacent to Ext.A1

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property by sale deed No.731/2002. Petitioner is residing in the building No.272/8 and the respondent is residing in the building No.295/8. The petitioner has a case that the respondent is residing in the building in the plaint schedule property with his permission. Ext.A1 is a settlement deed No.7432/1995 executed by the mother of the petitioner in respect of 4.05 Ares of land. The respondent bases his title on Ext.B1 registered Will No.17/2008 of Paravur SRO dated 3.6.2008 executed by the mother of the petitioner as well as the respondent. Ext.B2 is the patta in favour of the predecessor of the respondent and Ext.B3 is the possession certificate in favour of the mother. The mother passed away on 19.3.2013. Thereafter, Ext.B1 document came into force and the respondent became the absolute owner in possession of the property covered by Ext.B1. Ext.B5 is the land tax receipt in the name of the respondent dated 11.07.2013 and Ext.B4 is the land tax receipt dated 08.06.2022.

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13. The respondent had executed an agreement in favour of the Secretary of Paravur Block Panchayath as Ext.B9 to get financial assistance for renovation of the building under the Indira Avas Yojana scheme. Ext.B11 is the certificate issued by the Branch Manager of the Kerala Bank, Moothakkunnam, stating that the document in respect of 10 cents of land was deposited in bank for taking loan.

14. It is to be noted that the petitioner places his title on Ext.A1, settlement deed in the year 1995 and the respondent places his title on the will executed by the mother. It is a fact that the petitioner has not effected mutation of the property till date, whereas the respondent, after the death of the mother and after coming into force of the will, has mutated 4.05 ares of land in his name. Ext.B11 certificate would show that even after execution of settlement deed in the name of the petitioner, the mother had mortgaged the property in favour of the bank for getting loan.

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15. The Commissioner, who visited the property, filed Ext.P4 report and plan, which shows that the entire property is bounded by wall and there is a gate on the northern side. The house of the petitioner as well as that of the respondent is inside this property. There is no demarcation separating Ext.A1 and A2 property. Though the petitioner admits that the respondent is residing in a small house inside the property, the same is with his permission. The documents produced from the side of the defendant/respondent shows that after the will came into effect, he had mutated the property in his name and had obtained loan under Indira Avas Yojana treating the same as his own property.

16. The question to be decided in this suit is that who has got title over the 4.05 ares of land. The said question can be decided only after evidence. But for granting an injunction restraining the respondent from trespassing into the plaint schedule property or from demolishing any building situated in the plaint schedule



property and from doing any act which will affect the ownership and possession of the property, the petitioner has to show the court that (i) he has a *prima facie* case in his favour, (ii) that there is balance of convenience and (iii) irreparable injury will be caused, if the same is granted. All these 3 conditions are to be satisfied for granting of temporary injunction. The trial court as well as the lower appellate court has come into a definite conclusion that *prima facie* it shows that 4.05 ares of property is in the possession of the respondent, as he is residing in the building bearing No.273-A/8.

17. If an order of injunction is granted against the respondent, that would be as ousting him from his own house, which is situated in the plaint schedule property. However, there is only one gate for ingress and egress to the property and there is no demarcation of plaint A and B properties. Both the courts found that there is a *prima facie* case in favour of the respondent and balance of convenience also is in his favour. It is also found that no



irreparable injury will be caused to the petitioner, if injunction is not granted.

18. The counsel for the petitioner relied on **Ambujakshyamma v. Kesavan Kamalasanan** [2010 (3) KLT SN 10], wherein this court held that when a gift is not onerous, only slight evidence is sufficient for its acceptance. Reliance was also placed on **Joosa v. Simon** [2024 (6) KLT SN 7] to contend that mutation in favour of the donee is not essential to prove that the donee has accepted the gift. The decision in **Balakrishnan Nambeesan v. Meenakshyamma** [2014 (2) KLT Suppl. 1996 (Ker.), was cited as the authority to contend that when title has passed on to the donee "on acceptance of the gift, it has to be presumed that possession over the property also passed with such title and the person challenging the title must establish his antecedent title to such property.

19. These authorities relied on by the counsel for the petitioner

cannot be taken into account as it deals with the question as to when does a gift is said to be accepted. That is a different aspect to be considered after taking the evidence in the suit. Hence, have no application in the case at hand.

20. The counsel for the respondent relied on a decision by the Apex court in **Ramakant Ambalal Choksi v. Harish Ambalal Choksi** (2024 SCC OnLine SC 3538), wherein the court has held in paragraph Nos.33 and 34 as follows:

> "33. In the case of Anand Prasad Agarwal v. Tarkeshwar Prasad [(2001) 5 SCC 568, it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction**.**
>
> 34. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that noninterference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in

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> favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. The Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See: Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719.)"

21. In **Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker** [(1997) 2 SCC 255], the apex court held that acceptance by or on behalf of the donee must be made during the lifetime of the donor and while he is still capable of giving. It would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property.

22. The counsel also relied on the decision of the apex court in **Tehsildar, Urban Improvement Trust and another v. Ganga**

Bai Menariya (dead) through Lrs. [(2024 SCC Online SC 169] in which in paragraph No.23 it was held as follows:

> "A suit simplicitor for injunction may not be maintainable as the title of the property of the plaintiff/respondent was disputed by the appellants/defendants. In such a situation it was required for the respondent/plaintiff to prove the title of the property while praying for injunction. xxx xxx xxxx"

23. As mentioned earlier, when the petitioner admits that the respondent is residing in a house inside the plaint schedule property, an injunction cannot be granted against the respondent. Both the courts have concurrently found on facts, that the petitioner is not entitled to an injunction order.

24. Moreover, the Apex Court in **Estralla Rubber v. Dass Estate (P) Ltd. [**(2001) 8 SCC 97], has observed thus:

> "6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship

or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

Therefore, I am of the considered view that Ext.P23 order in I.A.No.3 of 2022 and Ext.P24 judgment in C.M.A. No.37 of 2022 do not suffer from any perversity or illegality and hence, no interference is warranted with the same.

Accordingly, this O.P.(C) is dismissed.

Sd/-

BASANT BALAJI
JUDGE

dl/

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APPENDIX OF OP(C) 224/2025

PETITIONER EXHIBITS

Exhibit P1	**TRUE PHOTO COPY OF PLAINT IN O.S.253/2022 ON THE FILE OF MUNSIFF'S COURT, NORTH PARAVUR.**
Exhibit P2	**TRUE PHOTO COPY OF I.A.3/2022 IN O.S.253/2022 ON THE FILE OF MUNSIFF'S COURT, NORTH PARAVUR.**
Exhibit P3	**TRUE PHOTO COPY OF COUNTER AFFIDAVIT DT.29.6.2022 FILED BY RESPONDENT IN O.S.253/2022 ON THE FILE OF MUNSIFF'S COURT, NORTH PARAVUR.**
Exhibit P4	**TRUE PHOTO COPY OF COMMISSIONER'S REPORT AND ROUGH SKETCH DT.25.6.2022 FILED IN O.S.253/2022 OF MUNSIFF'S COURT, NORTH PARAVUR.**
Exhibit P5	**TRUE PHOTO COPY OF REGD. SETTLEMENT DEED NO:7432/1995 DT.18.11.1995 OF PARAVUR SRO.**
Exhibit P6	**TRUE PHOTO COPY OF REGD.SALE DEED NO:731/2002 DT.5.2.2002 OF PARAVUR SRO.**
Exhibit P7	**TRUE PHOTO COPY OF ENCUMBRANCE CERTIFICATE DT.14.3.2022 ISSUED FROM PARAVUR SRO.**
Exhibit P8	**TRUE PHOTO COPY OF WILL DEED NO:17/2008 DT. 3.6.2008 OF PARAVUR SRO.**
Exhibit P9	**TRUE PHOTO COPY OF PURCHASE CERTIFICATE NO:5000 DT.4.3.1970 ISSUED BY TAHASILDAR, NORTH PARAVUR, ALONGWITH TYPED COPY OF THE SAME.**
Exhibit P10	**TRUE PHOTO COPY OF DEATH CERTIFICATE SOOSA ANTONY DT.3.4.2013 ISSUED FROM NORTH PARAVUR MUNICIPALITY**
Exhibit P11	**TRUE PHOTO COPY OF TAX RECEIPT DT.11.7.2013 ISSUED FROM MOOTHAKUNNAM VILLAGE OFFICE ISSUED FROM NORTH PARAVUR MUNICIPALITY**
Exhibit P12	**TRUE PHOTO COPY OF TAX RECEIPT DT.8.6.2022 ISSUED FROM MOOTHAKUNNAM VILLAGE OFFICE**
Exhibit P13	**TRUE PHOTO COPY OF CERTIFICATE DT.7.6.2022 ISSUED FROM VADAKKEKARA GRAMA PANCHAYATH**
Exhibit P14	**TRUE PHOTO COPY OF DEMAND NOTICE DT.10.2.2021 ISSUED FROM VADAKKEKARA GRAMA PANCHAYATH.**
Exhibit P15	**TRUE PHOTO COPY OF BUILDING TAX RECEIPT NO:10439 ISSUED FROM VADAKKEKARA GRAMA PANCHAYATH**
Exhibit P16	**TRUE PHOTO COPY OF REGD.AGREEMENT NO:2050/2017**

	DT.21.7.2017 EXECUTED BY RESPONDENT IN FAVOUR OF SECRETARY, BLOCK PANCHAYATH.
Exhibit P17	**TRUE PHOTO COPY OF NOTICE DT.28.5.2022 ISSUED BY TALUK SURVEYOR, NORTH PARAVUR TO THE RESPONDENT.**
Exhibit P18	**TRUE PHOTO COPY OF CERTIFICATE DT.18.6.2022 ISSUED FROM KERALA BANK, MOOTHAKUNNAM BRANCH**
Exhibit P19	**TRUE PHOTO COPY OF MORTGAGE DEED NO: 2596/2000 DT.8.5.2000 OF PARAVUR SRO WITH TYPED COPY OF THE SAME.**
Exhibit P20	**TRUE PHOTO COPY OF REGD.RELEASE DEED NO:2642/13 DT.30.5.2013 OF PARAVUR SRO.**
Exhibit P21	**TRUE PHOTO COPY OF THANDAPER NO:18211 OF MOOTHAKUNNAM VILLAGE.**
Exhibit P22	**TRUE PHOTO COPY OF CERTIFICATE ISSUED BY KERALA BANK, MOOTHAKUNNAM BRANCH, DT.30.6.2022.**
Exhibit P23	**TRUE COPY OF ORDER DT.29.7.2022 IN I.A. 3/2022 IN O.S. 253/2022 ON THE FILE OF MUNSIFF COURT, N.PARAVUR**
Exhibit P24	**TRUE COPY OF JUDGMENT DT.9.9.2024 IN CMA 37/2022 ON THE FILE OF ADDITIONAL DISTRICT JUDGE, N.PARAVUR.**
Exhibit P25	**TRUE PHOTO COPY OF ACKNOWLEDGMENT DT.21.7.2022 SIGNED BY THREE SISTERS OF PETITIONER, ACKNOWLEDGING THE EXECUTION OF REGD.SETTLEMENT DEED NO:7432/1995**
Exhibit P26	**TRUE PHOTO COPY OF FORM NO:1 FOR MUTATION SIGNED BY MOTHER IN CONNECTION WITH REGD.SETTLEMENT DEED NO:7432/95, WITH TYPED COPY OF THE SAME.**
Exhibit P27	**TRUE PHOTO COPY OF THANDAPER LEDGER OF MOOTHAKUNNAM VILLAGE REGARDING PAYMENT OF TAX OF 4.05 ARES IN SY.NO:303/15**
Exhibit P28	**TRUE PHOTO COPY OF REPORT DT. DT.15.7.2022 PREPARED BY VILLAGE OFFICER, MOOTHAKUNNAM.**