

**IN THE COURT OF THE PRINCIPAL MUNSIFF, CHERTHALA**

**Present: Sri. Rovin Rodrigues, Principal Munsiff.**

**Saturday, the 10<sup>th</sup> day of April, 2026/ 20<sup>th</sup> Chaithram, 1948.**

**IA No.01/2026 in O.S. No. 41/2026**

(Filed on 29.01.2026)

**Petitioner /Plaintiff:-**

Dineshan, aged 59,  
S/o.Krishnan, Kochuvattathara Veetil,  
Panavally P.O, Panavally Muri,  
Panavally Village, Cherthala Taluk

***By Adv.N,Ratheesh.***

**Cr.Petitioners /Defendants:-**

Sarasan, aged 70,  
S/o.Purushothaman, Thalayanatharayil,  
Panavally.P.O, Panavally Muri,  
Panavally Village, Cherthala Taluk

***By Adv.Joy varghese***

This petition having been finally heard on 10.04.2026 and the court on the same day passed the following:-

**ORDER**

This is a petition filed by the plaintiff under Order XXXIX Rules 1 & 2 read with Sections 94(e) and 151 of the Code of Civil Procedure.

**2. The petition averments, in brief, are as follows:**

The petitioner is the plaintiff in the original suit. The suit has been instituted seeking a decree of permanent prohibitory injunction. The plaint A schedule property originally belonged to the petitioner's father, Kuttan Krishnan, who obtained a Kudikidappu certificate in O.A. 726/1976 dated 29/10/1976. He

thereafter possessed and resided in the house situated therein. After his death, the petitioner along with siblings – Ravindran (now deceased, represented by his legal heirs), Sadanandan, Supran, and Sharada – became co-owners in possession of the plaint A schedule property, where the ancestral house is situated, though presently unoccupied. To the east of the plaint A schedule property lies the MLA road. From the junction known as “S curve” on the said road, a tarred road called Kinnattukara road runs westward. From that road, a Panchayat road known as C.K. Chandrappan Road runs northward, which was formerly a public pathway. From Kinnattukara Road, after about 78 metres north, the Panchayat road turns west, and on its northern side lies the property of the defendant. From that turning point, a public pathway continues northward for about 25 metres along the eastern boundary of the defendant’s property, then further north through other properties, crossing a bridge over a canal, and finally eastward to join the MLA road. This pathway has existed from ancient times and is used by the petitioner and other residents. The portion of the pathway measuring about 25 metres along the defendant’s property is described as B-schedule property. The B schedule pathway is the only access to and from the plaint A schedule property. It has been continuously used by the petitioner and co-owners. The defendant has no right or authority to obstruct the said public pathway. However, on 25/01/2026, the defendant unlawfully dug up and damaged the B schedule pathway and attempted to erect fencing across it, thereby obstructing access. When the petitioner objected, the defendant threatened further obstruction and warned that he would return with reinforcements to block the pathway permanently. These illegal acts compelled the petitioner to approach this Court for relief. Unless restrained, the defendant’s unlawful acts will cause the petitioner irreparable hardship and injury. The petitioner has a prima facie case, the balance of convenience is in his favour, and

therefore a temporary injunction restraining the defendant from interfering with the B schedule pathway is necessary. Hence, the petition.

3. The respondent/defendant filed an objection and contended as follows: The petition is neither legally nor factually sustainable. The petition averments are incorrect and insufficient to grant the relief sought. In reality, the plaintiff's property includes an old house and adjoining land of more than 60 cents, which has long been fenced with plastic sheet and protected. From that property, there has always been a direct access eastward to the MLA road, which continues to exist and is used by the defendant as well. To the east of the plaintiff A schedule property lies the MLA road, and from there an ancient pathway runs westward along the southern side of the plaintiff A schedule property, continuing further west. That is the oldest and only traditional access route. The plaintiff himself constructed fencing along the southern boundary of the plaintiff A schedule property, thereby blocking the alleged pathway. The southern side of the property is bounded by a canal. Efforts by local residents to convert the ancient pathway into a proper road failed due to the plaintiff's opposition. The plaintiff intended to purchase nearby land cheaply and feared that a road would prevent such acquisition. Consequently, the defendant and other residents filled the land, removed old fences, and constructed the present C.K. Chandrappan road under the leadership of the local Panchayat member. Prior to that, no public road existed on the southern side of the defendant's property. The defendant resides near Kinnattukara Road, which was extended northward only in 2018. The alleged B schedule pathway never existed at any time, nor was it ever required. The only access to the plaintiff A schedule property is eastward to the MLA road. The claim that the plaintiff and co-owners used the B schedule pathway is false. In fact, there are wide roads and a Panchayat bridge east of the A schedule property, and the KPMS office is located nearby. The plaintiff

deliberately excluded his siblings from the case. The assertion that the defendant obstructed any public pathway is false. The defendant has cultivated his property and fenced it lawfully for construction purposes, including unloading materials and erecting a temporary shed. The plaintiff and his associates unlawfully destroyed and removed the defendant's fencing, causing a loss of more than Rs.20,000, for which the defendant lodged a police complaint. The defendant has never threatened the plaintiff. The plaintiff, with unclean hands and suppression of material facts, has fabricated the claim to create a new pathway through the defendant's land. The alleged cause of action is baseless, and the plaintiff has no prima facie case or balance of convenience in his favour. The only genuine access to the plaintiff A schedule property is the old pathway leading east to the MLA road. The so-called B schedule pathway is fictitious and never existed. The plaintiff himself, during his son's marriage, temporarily erected a makeshift bridge with the defendant's permission for guests to pass, which was a one-time arrangement and not evidence of any permanent pathway. The plaintiff has misused that temporary permission to claim rights over the defendant's land. In truth, the plaintiff and his associates unlawfully removed the defendant's fencing even after an ex parte injunction was obtained, thereby causing damage. Therefore, the petition is frivolous, malicious, and intended to harass the defendant. The petition may be dismissed with costs.

**4.** The following points arise for consideration:

1. Whether a prima facie case is made out in favour of the petitioner?
2. Whether the balance of convenience lies in favour of the petitioner?
3. Whether irreparable injury will be caused to the petitioner if this petition is not allowed?

4. Is the petitioner entitled to an interim injunction as prayed for?

5. Reliefs and costs.

5. For the purpose of this petition, Exhibit A1 was marked from the side of the petitioner and Exhibits B1 to B5 (series) were marked from the side of the respondent. Exhibits C1 and C1(a) were also marked.

6. Heard both sides. Perused the records.

7. **Points 1 to 4:**

These points are considered together for brevity. The petitioner claims to be a co-owner of the plaintiff A schedule property. He seeks a permanent prohibitory injunction against the defendant, who unlawfully obstructed the plaintiff B schedule property, a portion of a public pathway providing the only access to the petitioner's property. It is argued that the defendant, who has no right to the pathway, damaged it and threatened further obstruction. Exhibit-A1 is the photocopy of purchase certificate in OA 726/1976 dated 29.10.1976 which shows that the petitioner's father Kuttan Krishnan had obtained 4.05 ares of land in survey no. 161/12 of Panavally village.

8. The defendant argued that the plaintiff's property includes an old house and over 60 cents of land that has always had eastward access to the MLA road, which the defendant also uses. The defendant, with local support, constructed a road on his property, as no public road existed prior on the southern side. The plaintiff's claim regarding the B schedule pathway is false. Allegations of obstruction by the defendant are unfounded. In fact, the plaintiff has unlawfully damaged the defendant's property. The plaintiff misused the temporary permission granted for his son's marriage to assert claims over the defendant's property. Exhibit B1 is a photocopy of a location map issued by the

village officer, Panavally. It shows that the most direct route to the defendant's house is along the western pathway originating at the MLA road. Exhibit B2 is the photocopy of the land relinquishment application signed by the defendant on 27.11.2017. It shows that the defendant surrendered a 1.5-meter-wide portion on the southeastern corner of his property for the formation of a public road toward the west. Exhibit B3 (series) contains 15 photographs which show that some individuals are dismantling a blue plastic sheet fence. Exhibit B4 is a photocopy of the wedding invitation of the plaintiff's son. It indicates that the wedding reception was arranged at the plaintiff's house on 04.01.2026 at 6 pm. Exhibit B5 (series) contains two photographs that allegedly indicate the plaintiff spraying herbicide on the defendant's property to remove the grass.

**9.** According to the Exhibit C1 report, the commissioner stated that the plaintiff B schedule property consists of a 24-metre-long pathway located along the eastern side of the defendant's property. At the beginning the width of the pathway was 60-70 centimetres. From the middle of the B schedule property up to its northern end, the grass was cleared, and hence the width could not be ascertained. The commissioner also reported that the wooden bridge across the canal on the north of the B schedule property that led to the plaintiff's property appeared to be 2 years old. The commissioner reported that the plaintiff A schedule property could not be properly identified, as it had no definite boundaries. The commissioner also noticed another pathway from the plaintiff A schedule property that reached the MLA road on the east. The said pathway began from the southeastern corner of the plaintiff A schedule property proceeded eastward for 9.80 metres to reach a concrete bridge. It proceeded 86 metres further east to reach the MLA road. The commissioner further reported that since the pathway was through a paddy field, it was likely to be flooded during the rainy season.

**10.** The petitioner mainly relies on the Exhibit A1 purchase certificate

to establish title over the plaint A schedule property. However, the said document only evidences the title of the petitioner's father and does not by itself establish the existence of the alleged B schedule pathway or the petitioner's right over the same. On the other hand, the respondent has produced Exhibit B1 location map and other materials to show that there exists an alternative access from the plaint A schedule property to the MLA road on the eastern side. In the Exhibit-C1 report, the Commissioner has reported the existence of a pathway leading from the southeastern portion of the plaint A schedule property to the MLA road through a concrete bridge. The report also notes that the plaint A schedule property itself could not be clearly identified due to the absence of definite boundaries. Though the commissioner has noted a stretch of land described as a B schedule pathway along the eastern side of the defendant's property, the report does not conclusively establish that it is an established public pathway or the only access to the plaint A schedule property. On the contrary, the report indicates the existence of an alternate access route to the east. The presence of such an alternative pathway substantially weakens the petitioner's contention that the B schedule pathway is the sole means of access. In such circumstances, a clear prima facie case in favour of the petitioner cannot be said to have been established. Further, when an alternative access is available, the balance of convenience cannot be said to tilt in favour of granting an injunction as prayed for. Admittedly, the petitioner is not residing in the house situated on the plaint A schedule property. The petitioner has not demonstrated that denial of an interim injunction would result in irreparable injury which cannot be compensated. Hence, I am of the considered opinion that the petitioner has failed to establish the essential ingredients for granting a temporary injunction. Thus, points 1 to 4 are answered against the petitioner.

11. **Point 5:**

In view of my findings on the above points, the petition is liable to be dismissed.

As a result, the petition is dismissed with costs to the respondent/defendant.

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open Court on this the 10<sup>th</sup> day of April, 2026 )*

Sd/-  
Rovin Rodrigues  
Principal Munsiff

**Appendix :-**

**Exhibits for the petitioner:-**

A1 Photocopy of purchase certificate in OA 726/1976  
issued from Land Tribunal, Thycattussery dated 29.10.1976.

**Exhibits for the Respondent:-**

B1 Photocopy of location map issued by Village Officer, Panavally.  
B2 Photocopy of land relinquishment application dated 27.11.2017.  
B3 series Photographs (15 in Nos.)  
B4 Photocopy of wedding invitation of plaintiff's son.  
B5 series Photographs (2 in Nos.)

**Court Exhibits:-**

C1, C1(a) 03.02.26 Commission report and Rough plan filed by  
Adv.Meathew V.J

Sd/-  
Principal Munsiff