

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh. M., Additional Munsiff

Friday, the 10th day of April, 2026 /20th Chaithram, 1948.

I.A No.02/2025 in O.S. No.652/2025

(Filed on 20-12-2025)

Petitioners/ Plaintiffs:-

1. R. Ganesh Bhat
Aged 60 years, S/o Gangadhara Gokhale, Gokulam House,
near Kalathil Temple Road, Aroor P.O, Aroor Muri, Aroor
Village, Cherthala Taluk, 688534.
2. N. Usha Kumari
Aged 59 years, W/o R. Ganesh Bhat, residing at Gokulam
House, near Kalathil Temple Road, Aroor P.O, Aroor Muri,
Aroor Village, Cherthala Taluk, 688534.

By Adv.C.G.Rajkumar and Adv.Arun.T.R

Respondents/ Defendants :-

Chandran Nair @ Ramachandran Nair @ Balachandran Nair
Aged 62 years, S/o late Kalarickkal Sivaramakaimal,
Chutteekattu House, Aroor P.O, Aroor Muri, Aroor Village,
Cherthala Taluk, 688534.

Kalamol

Aged 50 years, W/o Balachandran Nair Chutteekattu House,
Aroor P.O, Aroor Muri, Aroor Village, Cherthala Taluk,
688534.

By Adv.N.Ratheesh

This petition having been finally heard on 18.03.2026 and the Court on 10-04-2026 passed the following.

ORDER

This is a petition filed by the petitioner under Order 39 Rule 1 and 2 r/w Sec.94(c) and 151 of CPC seeking a temporary injunction till the disposal of suit.

2. Petition averments in brief :-

The petitioner herein is the 1st plaintiff in the above suit. The suit is for Permanent Prohibitory Injunction. The Plaint Schedule item No.1 Property having an extent of 1.75 ares comprised in survey number 20/158/2 of Aroor Village, together with the residential building standing thereon bearing door number XVIII/347 (old) XX/347 (new) of Aroor Grama Panchayath, absolutely belongs to the plaintiffs' by virtue of sale deed No. 1931/2008 dated 23.06.2008 registered at SRO Kuthiathode. The defendants have no manner of any right, title, possession, enjoyment or any interest whatsoever over plaintiff schedule item No.1 property. The defendants are residing further west of plaintiff schedule item No. 1 property. The plaintiff schedule item No.1 property is having well defined boundaries on all of its' side. The eastern boundary wall was reconstructed by the plaintiffs' by removing the slab wall existed there. The existing northern, western and southern boundary walls were constructed by the plaintiffs in 2008 immediately after the purchase by removing the age-old existed stump-fence. An iron bar gate is fixed on the concrete pillars on the north-western extremity of western compound wall and the said gate has an opening width of approximately

3 meters. The plaintiffs' have lawfully modified the existing residential building after its purchase. As per sale deed No. 1931 / 2008 dated 23.06.2008 the plaintiffs have a right of access including vehicular access to and from plaintiff schedule item No.1 property to the panchayath road which lies further north to the plaintiff schedule No.1 property. The said right of access is so provided through the pathway starting from north-western corner of plaintiff schedule item No.1 property and reaching the panchayath road on its southern side. The pathway is having a width of 1 meter and a length of approximately 15-20 meters. The said pathway is scheduled as Plaintiff Schedule item No.2 Property. The said right of way was expressly granted under the said sale deed and is a right of easement of way by grant appurtenant to plaintiff schedule item No. 1 property for its fullest and beneficial enjoyment and the said right is an indivisible and vested right for the beneficial enjoyment of the plaintiff schedule item No.1 property. The plaintiffs' and their predecessors have been using the said right of access including vehicular access openly, peaceably, continuously as an easement and as of right without interruption. The defendants have no manner of any right to obstruct / create any hindrance in plaintiff schedule item No. 2 property against its usage and said right of access by the plaintiffs'. In addition to the usage of plaintiff item No.2 property the 1st plaintiff has purchased the right of access including vehicular access through the pathway having a width of 2.5 meters and an approximate length of 15-20 meters, which lies on the western side of the plaintiff schedule item No.1 property upto the panchayath road and the said pathway was provided by the 1st defendant through his property for the usage of the said pathway by the residents on further south of his property. The defendants residential building situates further west to the said pathway and is facing north. The 1st plaintiff has purchased the right to access including vehicular access

through the said pathway from the 1st defendant by virtue of sale deed No.2211 / 2010 dated 13.09.2010 registered at S.R.O Kuthiathode. The pathway provided under sale deed No.2211/ 2010 is scheduled hereunder as Plaint Schedule item No.3 Property. The plaintiffs' have been using the said right of access including vehicular access through plaint schedule item No.3 property openly, peaceably, continuously as an easement and as of right from 13.09.2010 and continues thereafter. The defendants have no manner of any right to obstruct the plaintiffs' in using plaint schedule item No.3 property for vehicular access. The plaintiffs have an easement right of way by grant including vehicular access over plaint schedule item No.3 property and the said easement right of way by grant is binding on the defendants. The plaintiffs' have the right to do those acts to secure the enjoyment of easement right of way by grant over plaint schedule item No. 2 and 3 properties and the defendants have no manner of right to obstruct those acts to secure its enjoyment. The plaint schedule item No.2 and 3 properties lies contiguously as a pacca pathway for vehicular access from the plaint schedule item No.1 property on its north-western corner upto the panchayath road. The plaintiffs' use to ply their car through item No.2 and 3 properties to and from item No.1 to the panchayath road since 2010. The defendants have no right to obstruct the plying of plaintiffs' car through item No.2 and 3 properties. After purchase of vehicular access over plaint schedule item No.3 property the plaintiffs have been continuously using the said pathway for taking their vehicles to and from plaint schedule item No.1 property to the panchayath road. The plaintiffs' were initially using a car, of make Maruti 800 bearing registration number KL.7 AE 6201 and thereafter in continuation another one, make of Maruti Wagon-R bearing registration number KL 32 J 5370 from 12.04.2016 onwards both registered in the name of 1st plaintiff, through the plaint schedule

item No.2 and 3 properties. In addition to the right of access over plaintiff item No.2 property, 1st plaintiff purchased the right of vehicular access over plaintiff schedule item No.3 property specifically for using his car to and from plaintiff schedule item No.1 property to the panchayath road. The defendants have full knowledge and notice of plaintiffs' use of the said pathway and are estopped from denying or obstructing the plaintiffs' lawful easement right of vehicular access by grant. The plaintiff schedule item No.3 property has bell-mouths in its lie both at its terminals near the panchayath road and towards the iron gate which is on the western compound wall of the plaintiff schedule item No.1 property. The bell-mouths are in existence since the laying of that pathway. Matters being so the defendants with deliberate and mala-fide intention to defeat plaintiffs' lawful easementary right of vehicular access by grant over plaintiff item No.3 property, have attempted illegally to obstruct the plying of plaintiffs' car through plaintiff schedule item No.3 property. On 18.12.2025 the defendants illegally fixed an iron strap embedded to the ground inside the width of plaintiff schedule item No.3 pathway, standing up-right to height of about 15 cm above the ground level, thereby intending to reduce the effective width of the pathway and causing obstruction to free and unhindered vehicular movement. The said illegal act /obstruction has been purposefully, intentionally and malafidely placed so as to damage the tyres and under-body of the plaintiffs' car and to prevent the plaintiffs' from using the pathway as of right and plying of their car. The defendants have no manner of right to erect the iron strap or any structures or obstruction within the pathway or to alter its width, lie or nature. In addition thereto, the defendants have dumped waste, dried leaves, cow manure, plastic wastes and debris of solid waste on and near the plaintiff item No.3 pathway and adjacent to the plaintiffs' residence and are burning the said waste intentionally

and malafidely to cause discomfort to the plaintiffs' and due to such burning causes thick smoke and fumes with foul and obnoxious smell. Owing to the west-to-east breeze, the smoke and fumes enters the plaintiffs' residential building and fumes stuck inside the rooms causing serious discomfort, health hazard and air pollution amounting to actionable nuisance. Above all these illegal acts the defendants use to utter filthy words and languages immediately when the plaintiffs' steps out of their residential building to create hatred, grinning sheepishly and awkwardly and those filthy words embraces the plaintiffs'. The defendants have threatened the plaintiffs on 19.12.2025 that they will illegally obstruct the user of plaint schedule item No.3 pathway by dumbing granite stones within its width and reduce its width immediately and further threatened that they are backed by political goons of the locality and accomplish the said illegal act within a short span of time. The defendants have no manner of right to do the illegal acts as threatened. The petitioners have a strong prima facie case and balance of convenience. If the petition is not allowed then the petitioners will be put to irreparable injury. Hence this petition

3. Respondents filed objection as follows -

The petition is neither maintainable in law nor instituted in good faith. The above suit, filed solely for a decree of permanent injunction, also seeks an interim mandatory injunction. Such a petition is not maintainable under any circumstances. It is admitted that the schedule item No.1 property was obtained by the petitioner under Document No.1931 of 2008. However, the averments in paragraph 6 of the affidavit are incorrect and hence denied. The property described as item No.1 in the schedule was allotted to the first defendant's

brother, Vijayan Nair, under Partition Deed No.2561 of 2004, as item 'A' therein. The property described as item No.2 in the schedule is one in which Vijayan Nair has no right or authority. Though the deed recites a larger extent, in reality only about 41¼ cents existed on the ground. Likewise, the shares allotted to the first defendant and another brother, Mohanan Nair, were also deficient in extent. The property allotted to Vijayan Nair under Partition Deed No.2581 of 2004 was conveyed by him to the petitioner's predecessor, Daini Devassy, under Sale Deed No.2772 of 2005. After such conveyance, no property remained to the west in Vijayan Nair's possession. The alleged right of way claimed through property not belonging to Vijayan Nair is a fabricated recital in the said Sale Deed. In fact, the right of way is falsely shown through the property of the first defendant. Under the said Sale Deed, neither Daini Devassy nor the petitioner acquired any right of way through item No.2. The provisions of the deed do not bind the defendants, and no easementary right accrues to the petitioner through item No.2. It is admitted that a Sale Deed No.2211 dated 13.09.2010 was registered. However, several recitals therein are erroneous. The deed purports to grant a right of way of 2.5 meters width through the property allotted to the first defendant under Partition Deed No.2581 of 2004. In reality, such a way could not be granted through that property. The right of way of 2.5 meters width was in fact granted under Partition Deed No.1835 of 1984, through the property allotted to the first defendant therein. Under that deed, the petitioner was granted a right of way from the western side of item No.1 up to the public road, for ingress and egress including vehicular traffic. Ownership of the soil remains vested in the first defendant. The right conferred is only of passage. The way lies contiguous to item No.1 on its western side, having a width of 2.5 meters. There is no way through item No.2 as alleged. The description of item No.2 is imaginary. The

petitioner has acquired right of way only through the 2.5 meter stretch adjoining item No.1. The defendants have never obstructed the petitioner from using the said 2.5 meter wide way for vehicular traffic. The petitioner has no right or authority to use any other property for ingress or egress. The allegation that item No.3 property has bell mouth arrangements at both terminals is false. No such facility was ever granted by the first defendant, either under the deed or otherwise. There exists no way as described under item No.2. The description is wholly fictitious. The description of item No.3 and its boundaries are erroneous. In reality, the 2.5 meter wide way lies contiguous to item No.1. Its eastern boundary is item No.1 and the property of Johnny. No obstruction has ever been caused by the defendants. However, the persons in possession of Johnny's property have constructed a wall encroaching about half a meter into the way. The allegation that the defendants unlawfully fixed an iron plate within the way on 18.12.2025 is false. The iron plate was fixed by surveyors during the ongoing digital survey in Arur Village, marking the 2.5 meter wide way granted to the petitioner. It was not fixed within item No.3. It lies on the western margin of the 2.5 meter way, barely 10 cm above ground level, and does not obstruct vehicular traffic. The allegation of dumping waste is also false. No manure, plastic, or solid waste was ever dumped or burnt by the defendants. The defendants never abused or threatened the petitioner on 19.12.2025 or on any other day. The defendants are ordinary villagers engaged in cattle rearing, with no connection to politicians or anti social elements. The petition has been filed maliciously to harass the defendants. The petitioner has no prima facie case. The balance of convenience is in favour of the defendants. No irreparable injury will be caused to the petitioner if the petition is dismissed. On the contrary, if granted, it would result

in widening the way through the defendants' property, causing grave hardship and prejudice to them. Hence the petition is liable to be dismissed.

4. Heard both sides.

5. The following points are raised for consideration;

- (1) Whether this petition is allowable or not?
- (2) What is the order?

6. Point No.1 –

The petitioners contend that plaint item no.1 property absolutely belongs to them, and plaint item nos.2 and 3 pathways are used by them for ingress and egress to their property from the public road. The right of way over plaint item nos.2 and 3 pathways was purchased by the petitioners through two different deeds. According to the petitioners, plaint item no.2 pathway has a width of 1 meter, and item no.3 pathway has a width of 2.5 meters. They allege that the respondents are now attempting to obstruct their use of plaint item no.3 pathway. On the contrary, the respondents argue that there is no such pathway as item no.2. It is merely fictional. None of the prior owners of the petitioners had any right over the portion of land described as item no.2 pathway. Therefore, even if a deed was executed granting a right of way over item no.2 pathway, it has no legal effect, as the person who executed the deed had no right over the property. The respondents further contend that the prior deed referenced in the document conferring rights to the petitioners over item no.3 property is also incorrect. On a careful consideration of the rival contentions advanced by both sides, the first issue that falls for determination is whether the petitioners have established a prima facie case. It is pertinent to note that there

is no dispute regarding the title and possession of the petitioners over plaintiff item no.1 property. The controversy essentially relates to the usage of plaintiff item nos.2 and 3 pathways. The respondents contend that plaintiff item no.2 pathway is not in existence and is merely a fictional creation. The question as to whether such a pathway exists or not is a matter of evidence, which can only be conclusively determined after proper measurement of the properties. It is significant to note that the Advocate Commissioner, who inspected the plaintiff schedule properties after the institution of the suit, has identified both plaintiff item nos.2 and 3 pathways. At this stage, the question as to whether the prior owner of the petitioners had any right over item no.2 pathway can only be decided after adducing evidence. The commission report, however, prima facie indicates that item no.2 pathway does exist. Turning to the apprehensions raised by the petitioners, it is evident that they have not alleged any interference with respect to plaintiff item no.2 pathway. A perusal of the affidavit filed along with the petition reveals that no apprehension of hindrance has been pleaded regarding item no.2 pathway. This clearly indicates that the petitioners do not have a case that their alleged right over item no.2 pathway is being interfered with. The apprehension raised is confined solely to their use of plaintiff item no.3 pathway. In view of the above, as the petitioners themselves have not raised any apprehension regarding item no.2 pathway, this Court is of the considered opinion that no prima facie case has been made out by the petitioners in respect of plaintiff item no.2 pathway.

7. Coming to the case of plaintiff item no.3 pathway, it is evident that the right of way, including vehicular access, was expressly granted in favour of the petitioners by the 1st respondent himself under deed no.2211/2010. Both sides

admit that the width of item no.3 pathway is 2.5 meters. Although the respondents contend that the prior deed referred to in deed no.2211/2010 is incorrect, they nonetheless acknowledge that a right of way, inclusive of vehicular access, was conferred by them upon the petitioners. Thus, the right of the petitioners over the 2.5 meter wide item no.3 pathway stands undisputed. It is further noted that even in their objections, the respondents have admitted that they do not intend to create any obstruction to the petitioners' use of item no.3 pathway. The existence of item no.3 pathway is prima facie established through the commission report and the rough sketch prepared therein. The right of the petitioners over item no.3 pathway is also prima facie proved through the admission of the respondents as well as the original deed no.2211/2010. The apprehension raised by the petitioners is that the respondents are attempting to obstruct their right of way through item no.3 pathway. This pathway constitutes the only means of access available to the petitioners to reach the public road. Therefore, the right conferred upon the petitioners under deed no.2211/2010 requires protection until the final disposal of the suit. In light of the above, this Court is of the considered view that the petitioners have successfully established a prima facie case with respect to plaint item no.3 pathway.

8. Another principal contention raised by the petitioners is that the respondents are allegedly dumping waste materials such as dry leaves, cow manure, plastic waste, etc., near plaint item no.3 property and intentionally burning the same to cause discomfort to the petitioners. With regard to this allegation, it is to be noted that the petitioners do not have a case that such waste materials are being dumped or burned within the plaint item no.3 pathway. From the very wording of the allegation, it is clear that the alleged acts, if at all

committed, are said to have occurred near the pathway and not inside it. As long as the alleged acts are not carried out within the pathway itself, the petitioners cannot claim that their right of way has been violated. It is further pertinent to note that the Advocate Commissioner, in her report, has specifically recorded that there were no traces of burning of waste materials at the spot during her inspection. Thus, there are no materials before this Court which prima facie establish that the acts alleged by the petitioners were committed by the respondents. In the absence of any prima facie proof, this Court is of the considered view that an order of temporary injunction restraining the respondents from burning waste materials near plaint item no.3 pathway cannot be granted.

9. Coming to the aspects of balance of convenience and irreparable injury, it is evident that the right of the petitioners over plaint item no.3 pathway has been expressly acknowledged by the respondents. In such circumstances, if the said right is left unprotected, it would cause substantial inconvenience and irreparable injury to the petitioners. On the other hand, if an injunction is granted in respect of item no.3 pathway, no inconvenience or injury would be caused to the respondents, since they themselves have conferred such a right upon the petitioners under deed no.2211/2010. With regard to plaint item no.2 pathway, as already observed, the petitioners have not raised any apprehension of obstruction or violation of their alleged right. In the absence of such a plea, this Court is not duty bound to examine the said claim at this stage, as an order of temporary injunction can only be granted when there is either a violation of right or a reasonable apprehension of violation of right. In the present case, the petitioners have not alleged any interference with respect to item no.2 pathway. Therefore,

this Court is of the considered view that only the right claimed by the petitioners over plaint item no.3 pathway requires protection by way of an order of temporary injunction. Such protection is necessary to safeguard their access to the public road until the final disposal of the suit, and the balance of convenience as well as the element of irreparable injury clearly weigh in favour of the petitioners in respect of item no.3 pathway. Point no.1 is answered accordingly.

10. Point No.2 –

In view of the findings in point no.1, the petition is partly allowed as follows.

The respondents or anyone acting under them are restrained from causing any obstructions to the petitioner and his family in using the plaint item no.3 pathway and also from making any hindrances therein till the disposal of the suit.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 10th day of April, 2026.)

Sd/-
MAHESH.M
ADDITIONAL MUNSIFF

APPENDIX:-

Documents produced/relied from the side of the petitioner

- (1) Sale deed No. 1931/2008 dated 23.06.2008 on the files of SRO Kuthiathode.
- (2) Sale deed No. 2772/2005 dated 11.11.2005 on the files of SRO Kuthiathode.

- (3) Sale deed No. 2211/2010 dated 13.09.2010 on the files of SRO Kuthiathode.
- (4) Tax receipt dated 28.04.2025 bearing receipt No.KL 04020204492/2025 issued from Aroor Village office.
- (5) Building tax receipt dated 05.02.2025 bearing receipt No. 1240104619/G040207 issued from Aroor grama Panchayath.
- (6) Photo copy of RC particulars of Car bearing Reg No. KL 32 J 5370 dated 12.04.2016
- (7) Photo copy of RC particulars of two-wheeler bearing Reg No. KL 32 U 4501 dated 05.09.2023.
- (8) Copy of FIR in Crime no.61/2026 of Aroor police station
- (9) Commission report and rough sketch by Adv.Namma K.M.

Sd/-
ADDITIONAL MUNSIFF