

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt. Aneesa.A, Munsiff

Saturday the 15th day of November, 2025/24th Karthika,1947

IA.1/2025 in OS.168/2025

(Filed on 28.05.2025)

Petitioner/ Plaintiff:

Karthika V Nair, aged 34 yrs,
W/o.Girinathan S Nair,
Chittoor House,
Erezha South muri,
Chettikulangara P.O,
Peringala Village,
Mavelikara Taluk.Pin.690106.

(By Advs.S.K.Saji, Ninu Mary Yohannan)

Respondents/1st and 2nd Defendants:

1. Jayakrishnan, aged 27 yrs,
S/o.Gopikrishnan, 'Krishnajaya',
Erazha South muri,
Chettikulangara.P.O,
Peringala Village,
Mavelikara Taluk.
Now residing at 'Gopi Thilakam',
Kaitha North muri,
Near Chettikulangara High School,
Chettikulangara.P.O, Mavelikara.

2. Jayalekshmi, aged 57 yrs,
W/o.Gopikrishnan, 'Krishnajaya',
Erazha South muri,
Chettikulangara.P.O,
Peringala Village,
Mavelikara Taluk.
Now residing at 'Gopi Thilakam',
Kaitha North muri,
Near Chettikulangara High School,
Chettikulangara.P.O, Mavelikara.

(Amendment carried out as per in IA.04/2025 dtd.04.06.2025)

(By Adv.R.Sreenivas)

This petition is coming on for hearing on 15.11.2025 and the court of the same day passed the following.

ORDER

This is a petition filed by the petitioner/ plaintiff under Order XXXIX Rules 1 and 2 r/w. Section 151 of the Code of Civil Procedure, 1908 for temporary injunction.

2. **The gist of averments in the petition are as follows:-**

Petitioner is the plaintiff in the suit. The suit is filed for prescriptive easement right. The 3rd defendant is the husband of the plaintiff. The 1st and 2nd defendants are the neighbours of plaintiff. The plaint A item originally belonged to the husband of the plaintiff by virtue of a

sale deed No.1525 dated 19.10.2017. Thereafter the husband transferred his half right over it in the favour of the plaintiff as per a Settlement deed No.934 dated 04.08.2020. Hence the plaintiff and her husband are the absolute title holders of the plaint A item. Since her husband works in Gulf, he has been formally included as 3rd defendant herein. The plaint B item originally belonged to the father of the 1st defendant named Gopalakrishnan and after his intestate death, it devolved upon the defendants No.1 and 2. The plaint B item situates the opposite eastern portion of the plaint A item. The plaint items and some of the surrounding properties belonged to an ancient Nair family, the Chittoor family. The husband of the plaintiff is also a member of this family. The Laha Junction – Chettikulangara temple public road passes through the northern side of the entire Chittoor family property. Approximately, 45 years ago, a walk way, 01 meter wide existed from this northern public road leading south to the house of the Chittoor family. In the year 1981, this pathway was widened and the property owners on both sides of the pathway surrendered around 01 metre of land from their respective properties and thus the pathway became a road with an average width of 3

metres. The said road starts from the northern Laha Junction to Chettikulangara temple public road proceeds towards south in between the plaint A and B items with an approximately a length of more than 100 metres is scheduled in the plaint as plaint C item. The five families along with the plaintiff and the 1st and 2nd defendants on the southern side of this road are its beneficiaries. The plaint C1 item is a particular portion of way from plaint C item which is exclusively between plaint A and B items, starts from the north-western corner of B item, proceeds towards south in between the plaint A and B items with a width and length of 3 metres and 25 metres respectively. The residential buildings of both parties situate in plaint A and B items. The predecessors of A and B items had surrendered 01 metre of land to widen the already existed 01 metre narrow pathway and thus the present C item and C1 item formed. The family members of the plaintiff and their predecessors have been in use of plaint C and C1 item right from its formation. The surrendered portion of land from plaint B item with a width of 01 metre and length of 25 metres to widen the existed walk way is scheduled in the plaint as plaint C2 item. More particularly, C2 item is a way portion as part and parcel of

C1 item, starts from the north-western corner of plaintiff B item, ends at its south-western corner, situates on the eastern part of C1 item and immediate west to plaintiff B item in north-south direction with a width of 3 metres and a length of 25 metres. C2 item was formed in the year 1981 along with C1 item as its part. The plaintiff, the 3rd defendant and their predecessors have been in use and occupation of the plaintiff C2 item way portion towards A item openly, without interruption, without permission and force, peaceably, continuous and uninterruptedly, as of right and as an easement for the last more than 40 years and as such the plaintiff and the 3rd defendant have got the right of prescriptive easement over plaintiff C2 item. So far as the plaintiff C2 item concerned, the plaintiff B item is the servient tenement and the defendants No.1 and 2 are the servient owners. The C2 item is essential for the beneficial enjoyment of plaintiff A item as it formed part of C1 item covering entire eastern side of plaintiff A item. The plaintiff has no other alternative pathway for the ingress and egress to plaintiff A item. In the midst of the year 1981, their predecessors and after then, the plaintiff and the 3rd defendant have been in occupation of C2 item. The enjoyment of A item is not possible without C1 and

C2 items. C2 is an integral part of C1 item. The plaintiff has prescribed her prescriptive easement right over C2 item. There is a clear boundary demarcations with plaint B item and C2 item. There were fencing stones separating plaint B ad C2 items. The boundary in between them was visible in all respects. But on 26.05.2025, the 1st defendant and his men removed the existing boundary fencing stones situated on the western side of plaint B item separating it from C2 item, moved them towards west and placed about 01 metre into the C1 ittem and thereby encroached the C2 item way portion as a whole. Resultantly, the width of C2 item was reduced to 01.5 metres and thereby the plaintiff was unable to properly moved vehicles out of her house or use C1 and C2 items way properly. The C1 and C2 items situate contiguously. The plaintiff had caused to intervene the police and due to their effective interference, the 1st and 2nd defendants removed some fencing stones which were placed encroaching C2 item, but some of them are still there obstructing the enjoyment of the plaintiff in C1 and C2 items. The plaintiff along with the 3rd defendant have proprietary right over the western part of C1 item and they have the right of prescriptive easement over C2 item as a whole.

They have been enjoying the plaint C2 item along with C1 item for decades and the plaintiff is entitled to get declared right of prescriptive easement over the plaint C2 item. The defendants No.1 and 2 have no right to obstruct the enjoyment and occupation of plaint C2 item, which is old and matured enough to get prescriptive easement right as per its physical representation as well. Again on 27.05.2025, the 1st defendant tried to create further mischief and obstruction in C2 item. Thus, this petition is filed for an ad interim injunction restraining the respondents/ 1st and 2nd defendants and their henchmen from creating any alteration in the present lie and position of C1 and C2 items and also from committing any waste therein or from causing any type of obstructions to the peaceful enjoyment of the plaint C items till the disposal of the suit. Thus, this petition.

3. Respondent Nos. 1 and 2 appeared and filed objection contending *inter alia* as follows:- The petition is not maintainable either in law or on facts. The allegation stated in paragraph No.1 of the affidavit is admitted. But these respondents are quite unaware of the allegations narrated in paragraph No.2 of the affidavit and hence

the petitioner is to be put to strict proof of the same. It is admitted that the B item property originally belonged to the father of the 1st defendant and the husband of the 2nd defendant and since he died intestate, as his sole legal heirs, it devolved upon the respondents and they were residing in the residential building therein. The father of the first defendant was an employee of a co-operative society and for some liabilities of the father of the first defendant, the co-operative department had conditionally attached that property and hence the defendants are now residing in a newly constructed house situated from that property. The B scheduled property was will demarcated on all its four sides and a false fencing was also put upon the western boundary of the B scheduled for its production. The allegation that the Lahayil -Chettikulangara road is passing through the northern side of the entire Chittoor family property please absolutely false and misleading. This road is situated far away from the Chittoor family property and in between the Chittoor family property and the Lahayil - Chettikulangara road, there are property belonging to so many other families also. The description of the plaint schedule properties are also false. There is no pathway as alleged in C, C1 and

C2 schedule and by its description itself, it is well evidence that the claim of the plaintiff is a false one. Even from the allegation of the petitioner in paragraph No. 4 of the affidavit, it is clear that the pathway lying in between the plant A and B scheduled property is having a width of less than 3 metres, only a boundary wall in existence on the eastern side of this pathway, where in the pathway is having width of only about 2.50 metres. Therefore, the allegation that the pathway is having a width of 3 metre is absolutely false. The plaintiff together with all the other persons residing near by the plaintiff scheduled property was using this pathway. While so, very recently, the petitioner had constructed a new residential building in their property. But they could not ply car to the A schedule without encroaching into the part of the B schedule due to the presence of two coconut trees on the eastern boundary of the plaintiff A scheduled property. In between the plaintiff A scheduled property and that of the defendants property, the width of the pathway is less and 3 metres. The respondents came to know that the false boundary fencing put up by them on western boundary of their properties has been dismantled by somebody and uprooted the boundary stones put up on the

boundary and hence the respondents visited their property on 20.05.2025 and attempted to restore the boundary fencing. The petitioner and her husband had obstructed them from restoring the boundary fencing alleging that there is no sufficient width for the pathway for taking cars to her property through that pathway and hence the boundary fencing will be put up by the respondents, it will be impossible for them to take cars to their property. There are two coconut trees standing on the eastern side of the property of the petitioner causing obstruction to her in taking cars to her property. Therefore, the attempt of the petitioner is to take car by trespassing into the property of these respondents so as to save her coconut trees. Since the respondent had not consented to her illegal demand, she had threatened the respondent that she will not allow the respondents to put up the fencing on the western boundary of the defendant and will widen the width of the pathway by annexing part of the defendant property with the pathway. Since the respondents are residing far away from this property and apprehended that the petitioners will attach the part of the respondent property illegally with the pathway by taking law into her hand, the respondents had

filed a complaint before the Deputy Superintendent of Police, Kayamkulam against this threat. The Deputy Superintendent of Police had accepted the complaint and after making an enquiry, required the respondents and the petitioner to appear before him. Hence the respondents had appeared before him, but the petitioner did not turn up and then they had filed this suit. The respondents had apprehended that the petitioner may at any time will dismantle the remaining boundary demarcation and will widen the width of the pathway by annexing portion of the defendant property so as to satisfy her requirements of taking cars to their property through the defendant property. These respondents had instituted O.S. 170/2025 for a decree of permanent prohibitory injunction. The petitioner is having the right to use the pathway lying in between the A and B scheduled property which is having a width of below 3 metres only and there is no pathway as described under C1 and C2 so also the width of the C item pathway is also wrong. The pathway is lying in north south direction with an average width of below 3 metre and the petitioner together with all other people residing on either side of this pathway is using it as a matter right and therefore, the petitioners are

not entitled to claim any prescriptive easement against the respondents. After the destroyal of boundary demarcations of the respondents' property by the petitioner and her husband, the respondents had filed O.S.170/2025 and a commissioner was also appointed vide order in I.A.2/2025. The learned advocate commissioner filed a mahazar and report together with a rough sketch of the alleged pathway. From the report and rough sketch, it is well evident that the entire pathway lying on the either sides of the A scheduled property is having an average width of less than 3 metres, but whereas, no pathway in between the petitioner's property and the respondents' property is having more than 3 metres. It is also found by the advocate commissioner that the boundary stones on the western boundary of the respondents property has been uprooted very recently. Thus it is proved that the allegation of the respondents in the suit filed as O.S.170/2025 that the petitioner herein had dismantled the boundary fencing and destroyed the boundary demarcation of the defendant property is true and a correct and it is after committing this mischief, they had filed this suit. Thus the petitioner had approached this court with unclean hands and

therefore she is not entitled to get any reliefs from the court. There is absolutely no bonafides in the petition. The balance of convenience is also in favour of the respondents and the petitioner is not having any prima facie case. Hence this petition is to be dismissed with the costs of the respondents.

4. The following points were formulated for consideration:-

1. Is there a prima facie case in favour of the petitioner ?
2. Is the balance of convenience in favour of the petitioner ?
3. Is the petitioner would suffer irreparable injury and loss, if order of injunction is refused ?
4. What is the order as to Reliefs and costs?

5. The commission report and rough sketch filed as per the order in IA No. 2 / 25 got marked as Exhibit C1 and Exhibit C1(a).

6. Heard both sides.

7. **Point Nos. 1 to 3**:- For the sake of convenience, these points are considered together. According to the petitioner, the plaint A item property is in the possession and ownership of her and her husband. The plaint B item originally belonged to the father of defendant No. 1 and 2

after his death it devolved upon defendant No. 1 and 2. Plaintiff B item situates on the opposite eastern portion of plaintiff A item. The plaintiff items and some of the surrounding properties belonged to an ancient Nair family, the Chittoor family. The petitioner's husband is also a member of the said family. Laha Junction- Chettikulangara Temple Public Road passes through the northern side of the entire Chittoor family property. Approximately 45 years ago a walkable way 1 metre width existed from this northern public road leading south to the house of Chittoor family. In the year 1981, this pathway was widened and the property owners on both sides of the pathway surrendered around 1 metre of land from their respective properties and thus the pathway became a road with an average width of 3 metres. The said road starts from the northern Laha Junction - Chettikulangada Temple Public Road, proceeds towards south in between plaintiff A and B schedule properties with an approximate length of more than 100 metres and it is the C schedule item. Approximately, 5 families along with the petitioner and the first and second defendants on the southern side of this road are its beneficiaries. Plaintiff C1 item is the particular portion of way from plaintiff C1 item which is exclusively between A and B items, starts from the north western corner

of B item, proceeds towards south in between plaint A and B items with a width and length of 3 metres and 25 metres respectively. The residential buildings of both petitioners and respondents are situated in plaint A and B items. The predecessors of A and B items had surrendered one metre of land to widen the already existed one metre narrow pathway and thus the present C item and C1 item formed. The surrendered portion of land from plaint B item with a width of 1 metre and length of 25 metres to widen the existing walkable way is scheduled in the plaint as Exhibit C2. More particularly, C2 item is a way portion as part and parcel of C1 item, starts from the north western corner of plaint B item, ends at its south western corner, situates on the eastern part of C1 item and immediate west to plaint B item in north south direction with a width of 3 metres and a length of 25 metres. C2 item was formed in the year 1981 along with C1 item as its part. The petitioner and the defendant No. 3 and their predecessors have been in use and occupation of plaint C2 item way portion towards A item openly, without interruption, without permission and force, peacefully, continuous and uninterrupted, as of right and as an easement for the last more than 40 years and as such, defendant No. 1 and defendant No. 3 have got the right of prescriptive easement over

plaint C2 item. As the plaint C2 item concerned, plaint B item is the servient tenement and the defendant No. 1 and 2 are the servient owners. The C2 item is essential for the beneficial enjoyment of plaint A item, as it formed part of C1 item covering entire eastern side of plaint A item. The petitioner has no other alternative pathway for the ingress and egress to A item. According to the petitioner, there is clear boundary demarcations with plaint B and C2 items. There were fencing stones separating plaint B and C2 items. The boundary in between them was visible in all aspects. The petitioner contended that on 26.05.2025, the first defendant and his men removed the existing boundary fencing stones situated on the western side of plaint B item separating it from C2 item. They moved the boundary stones towards west and placed about 1.5 metre into the C1 item and thereby encroached the C2 item way portion as a whole. Resultantly, the width of C2 item was reduced to 1.5 metres and thereby the petitioner is unable to properly move vehicles out of her house or use C1 and C2 items way properly. According to the respondents, the B schedule property was well demarcated on its four sides and a false fencing was also put upon the western boundary of B schedule for its protection. There is no pathway as alleged C1 and C2 schedule. In

between the plaintiff A schedule property and that of the defendant's property, the width of the pathway is less than 3 metres. According to the respondents, they came to know that the false boundary fencing put up by them on the western boundary of their property has been dismantled by somebody and uprooted the boundary stones put up on the boundary and hence the respondents visited their property on 20.05.2025 and attempted to restore the boundary fencing. But the petitioner and her husband obstructed them from restoring the boundary fencing, alleging that there is no sufficient width for the pathway for taking cars to her property through that pathway. There are two coconut trees standing on the eastern side of the property of the petitioner causing obstruction to her in taking cars to her property. Therefore, the attempt of the petitioner is to take car by trespassing into the property of respondents so as to save her coconut trees.

8. In Exhibit C1 report, the commissioner reported that when she visited the site, there was a clear boundary encroachment at C2 schedule. It is reported that the plaintiff B schedule property has a clear boundary with plaintiff C schedule property and that boundary is formed by fence and that fence stones were placed to the west of it in an area that can be

considered as C2 schedule, stones were later moved. It is clearly evident that after five fencing stones from the south-west corner of the property to north, the remaining stones have been uprooted and moved. The fencing stones to the south of plaint A schedule property were also seen to have been moved northwards. The commissioner reported that a pit of about 6 stones could be clearly seen and a pit of 3 stones could be partially seen. It was reported that stones were placed approximately 1 meter further west of the boundary of B schedule property by encroaching C schedule property. From Exhibit C1 report, it is prima facie evident that there is encroachment in plaint C2 item property. Here, the petitioner has made out a prima facie case. Balance of convenience is also in his favour. In **Dalpat Kumar and Another v. Prahlad Singh and Others, AIR 1993 SC 276** 'The Hon'ble Apex Court held that 'In temporary injunction, rule 1 primarily concerns with the preservation of the property in dispute till the legal rights are adjudicated. Prima facie case by itself not sufficient to grant injunction. Court must be satisfied that non interference by the court would result in irreparable injury. Irreparable injury means one that cannot be adequately compensated by way of damages'. Here also, if injunction is not granted the petitioner will suffer irreparable injury. In

this IA, on 28.05.2025, this Court granted an ad interim injunction restraining the respondents from making any alteration in the present lie and position of plaint schedule C1 and C2 items and from committing any waste therein and from causing any obstruction to the peaceful enjoyment of plaint C items until further orders. This IA is allowed and the ad interim injunction granted on 28.05.2025 made absolute, till the disposal of the suit. Thus, point Nos. 1 to 3 are answered in favour of the petitioner.

9. **Point No. 4:-** In view of my discussions and findings on point Nos. 1 to 3, the petition is liable to be allowed.

In the result, the petition stands allowed. The ad-interim injunction granted by this court on 28.05.2025 made absolute. The respondents and men are prohibited from creating any alteration in the present lie and position of C1 and C2 items and also from committing any waste therein or from causing any type of obstructions to the peaceful enjoyment of the plaint C items, till the disposal of the suit. There is no order as to costs.

(Dictated to the confidential assistant, typed by her, corrected and pronounced by me in open court on 15th day of November, 2025)

Sd/-
ANEESA.A,
MUNSIFF

APPENDIX:

Court Exhibits:

C1, C1(a).

: Commission report, Mahazar and Rough Sketch prepared by Adv. Commissioner, Gayathri.V.Sudhakaran.

Sd/-

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Typed by:Shafeek

Compd.by