

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.170/2025

(Filed on 29.05.2025)

Petitioner/ Plaintiff:

1. Jayalekshmi Kunjamma, aged 58 years,
W/o.K.K.Gopikrishnan,
Now residing at Gopi Thilakom, Kaitha North,
Chettikulangara P.O, Mavelikara.
From Krishnajaya, Erezha South P.O,
Erezha, Perungala Village.
2. Jayakrishnan, aged 28 years,
S/o.K.K.Gopikrishnan,
Now residing at Gopi Thilakom, Kaitha North,
Chettikulangara P.O, Mavelikara.

(By Adv.R.Sreenivas)

Respondents/Defendants:

1. Girinath, aged about 40 years,
S/o.Ambukakshi Amma,
Chittoor House,
Erezha South P.O,
Chettikulangara, Perungala.

2. Karthika, aged about 38 years,
W/o.Girinath,
residing at Chittoor House,
Erezha South P.O,
Chettikulangara, Perungala.

(By Adv.S.K.Saji)

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 petitioners/ plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 for temporary injunction.

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

Petitioners are the plaintiffs in the suit. The 1st plaintiff is the wife of Gopalakrishnan, who died intestate. The 2nd plaintiff is the son of the 1st plaintiff. The plaint scheduled property belonged to the husband of the 1st plaintiff by virtue of family partition deed No.1358/2006 and Settlement deed No.1359/2006 of Bharanickavu S.R.O which are lying together. They are residing together in the house in the plaint scheduled property and her husband was employed in a Co-operative society. The mother of the husband predeceased him and after the

death of her husband, the first plaintiff and her son being his only legal heirs succeeded to his estate. While so, by alleging some financial liability of her husband with the society, the Co-operative department made conditional attachment order over the plaint scheduled property. Thereafter, the second plaintiff got an employment and hence by using his earnings, he obtained a bank loan and he had constructed a residential building in the property purchased by him and the plaintiffs are residing in that house. The first defendant is the husband of the second defendant who are residing now in the newly constructed house in the property lying just on the western side of the plaint scheduled property. The plaint scheduled property is lying well demarcated on all its four sides and since we had shifted our residence to the newly constructed house. For the protection of the plaint scheduled property, the plaintiffs had a put up a false fencing on its western boundary. In between the plaint scheduled property and that of the defendants property, there exists a pathway having a width of about 2 metres. The plaintiffs came to know that the false boundary fencing put up by them on western boundary of the plaint scheduled property has been

dismantled by somebody and hence the 1st plaintiff visited the plaint scheduled property on 20.05.2025 and attempted to restore the boundary fencing. But the 2nd defendant obstructed the 1st plaintiff 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 defendant causing obstruction to her in taking cars to her property. Therefore, the attempt of the defendant is to take car by trespassing into the plaint scheduled property so as to save her coconut trees. Since the 1st plaintiff had not consented to her illegal demand, she had threatened her that she will not allow the 1st plaintiff to put up the fencing on the western boundary of the plaint scheduled property and will widen the width of the pathway by annexing part of the plaint scheduled property with the pathway. Since the 1st plaintiff was residing far away from the plaint scheduled property and apprehended that the 2nd defendant will attach the part of the plaint scheduled property illegally with the pathway by taking law into her hands, the 1st plaintiff 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 1st plaintiff and the 2nd defendant to appear before him. Hence the 1st plaintiff had appeared before him, but the 2nd defendant did not turn up. Now the 1st defendant had returned from his place of employment and the 1st plaintiff apprehended that the defendant may at any time will dismantle the remaining boundary demarcation and will widen the width of the pathway by annexing portion of the plaint scheduled property so as satisfy his requirement of taking cars to her property through the plaint scheduled property. Therefore, the defendants are to be restrained by an order of ad interim injunction from causing any destruction or removal of boundary demarcation on the western boundary of the plaint scheduled property or trespassing into any portion of the plaint scheduled property or widening the width of the pathway lying adjacent on its western side by attaching any portion of the plaint scheduled property or causing any obstruction in putting up the temporary boundary fencing till the disposal of the suit. Thus, this petition.

3. Respondent No.2/ 2nd defendant appeared and filed objection contending *inter alia* as follows:- The petition is not maintainable either in law or on facts. As a matter of fact, the original suit is an experimental one and as such the ancillary petition for ad interim injunction is also unsustainable in law and facts. The affidavit is uninformative to get an equitable relief. Pertinently, the 2nd respondent has instituted O.S.168/2025 before this court against the petitioners herein and in I.A.1/2025, an ad interim injunction has been granted restraining the respondents from creating any alterations in the lie and position of the way portion and also from causing any obstruction to the plaintiffs peaceful enjoyment of the way portion. The present suit is an outcome of the conspiracy to circumvent to the previously instituted suit by the 2nd respondent herein. O.S.168/2025 is a suit for declaration of prescriptive easement right over the way portion and mandatory injunction as well. In I.A.2/2025, the commissioner deputed and ascertained the facts. The present suit is for injunction simplicitor restraining the respondents/ defendants from trespassing upon the plaint item. The plaintiffs in the suit dubiously incorporated their residential property

alone as plaintiff item. They have omitted to incorporate the way portion in the plaintiff as a separate item. Such an omission is fatal so far as their pleadings are concerned. Moreover, there are some clear suppression of material facts in the plaintiff. Considering the nature of the present suit and the reliefs sought in O.S.168/2025, the present nature of the way portion has to be maintained intact. No prejudice would be caused to the petitioners in maintaining statusquo in the plaintiff item as well as the western way portion. Moreover, the rough sketch of the commissioner in I.A.2/2025 depicts the nature of encroachment committed by the petitioners over the way portion. In such a scenario, the properties to be kept intact till the final disposal of both the suits. Admittedly, the plaintiffs are far away residents from plaintiff item and they have no hurdles in enjoying their plaintiff item by maintaining the statusquo of the properties. On the other hand, if the petitioners continue their acts of installation of boundary stones protruding upon the western way portion as they have tried to do earlier that will cause unparalleled hardships to the 2nd defendant. She is residing in the residential house which is sharing its eastern boundary with the way portion along with her kinds and aged ailing

mother. Any act of causing obstruction to the vehicular traffic through the way portion would adversely affect her. Hence the balance of convenience absolutely favours the 2nd respondent. The petitioners have in fact no prima facie case. The schedule of properties are misleading. The vital aspects have been suppressed in the plaint. Approximately, 45 years ago, a walk way, 01 meter wide existed from the northern common public road leading south to the house of the 1st respondent's 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 plaintiffs' and the defendants' property with an approximate length of more than 100 metres. The plaintiffs herein conveniently omitted to plead the factum of the said way portion. Since the defendant herein acquired prescriptive easement right over the said way portion with a width of 3 metres, any encroachment over the way portion curtailing the right is liable to be deprecated. Both

parties are liable to maintain the statusquo as on the date of the visits of the commissioners in both the suits. Hence this petition is to be dismissed with the costs of the 2nd respondent.

4. The following points were formulated for consideration:-

1. Is there a prima facie case in favour of the petitioners ?
2. Is the balance of convenience in favour of the petitioners ?
3. Are the petitioners 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 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. The plaint schedule property belonged to the husband of the petitioner and in the possession of the petitioner and her husband. Defendant No. 1 and 2 are residing in the newly constructed house in the property lying just on the western side of the plaint schedule

property. The plaint schedule property is lying well demarcated on all its four sides and since the plaintiffs have shifted their residence to the newly constructed house, for the protection of the plaint schedule property they had put up a false fencing on its western boundary. In between the plaint schedule property and that of defendant's property there exists a pathway having width of about 2 metres. The petitioners came to know that the false boundary fencing put up by them on the western boundary of the plaint schedule property has been dismantled by somebody and hence visited the plaint schedule property on 20.05.2025 and attempted to restore the bounded boundary fencing. But the second defendant obstructed the petitioner 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 defendant, causing obstruction to her in taking cars to her property. Therefore, the attempt of the defendant is to take the car by trespassing into the plaint schedule property so as to save the coconut trees. Since the petitioner is residing far away from the plaint schedule property and she is apprehending that

the second defendant will attach the part of the plaint schedule property illegally with the pathway by taking her property.

8. According to the respondents, the second respondent has instituted OS. 168/2025 before this court against the petitioners herein and in IA No.1/2025 an ad interim injunction has been granted restraining the respondents from creating any alteration in the lie and position of the way portion and also from causing any obstruction to the plaintiff's peaceful enjoyment of the way portion. OS 168/2025 is for declaration of prescriptive easement right over the way portion and mandatory injunction. In IA No.2/ 25, the Commissioner deputed and ascertained the facts. The present suit is for injunction simplicitor restraining the respondents from trespassing upon the plaint item. The petitioners in the suit incorporated their residential property alone as plaint item. They have omitted to incorporate the way portion in the plaint as separate item. Such an omission is fatal so far as their pleadings are concerned. According to the respondents, there are some clear suppression of material facts in the plaint. Considering the nature of the present suit and the reliefs sought in O.S.168/2025, the present nature of the way portion has to be maintained intact. No prejudice would be

caused to the petitioners in maintaining status quo in the plaint item as well as in western way portion. Moreover, the respect of the commissioner in IA No.2/ 2025 depicts the nature of encroachment committed by the petitioners over the way portion. In such a scenario, the property is to be kept intact till the final disposal of both suits.

9. In Exhibit C1 report, the commissioner has reported that the width of the pathway between plaint schedule property and the property of the defendant is different and that the width of pathway from the south eastern corner of the defendant's property to the fence of plaint schedule property is 3.50 metres. But the width there to the fence stone is 2.50 metres. In the middle portion, the distance between the boundary of the defendants' property and the fencing stone of plaint schedule property is 2.40 metres and the distance to the fencing is 3.40 metres. Then on the north side, stones were removed so that they could not be measured accurately. It is approximately 3.50 metres upto the fence. In IA 1/2025 in the connected suit OS 168/ 2025, already it was found that there was some encroachment into the pathway portion. It is also evident in Exhibit C1 report. Here, the petitioners have failed to make out a prima facie case. The balance of convenience is also not in their favour. If injunction

is granted, it would cause irreparable injury to the respondents. Hence, I am not inclined to allow this petition. Thus, point numbers 1 to 3 are found against the petitioners.

9. **Point No. 4**:- In view of my discussions and findings on point Nos. 1 to 3, the petition is liable to be dismissed. Thus, point No.4 is also answered against the petitioners.

In the result, the petition stands dismissed. 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, Santhoshkumar.D.

Sd/- MUNSIFF

// True copy //

MUNSIFF

Typed by:Shafeek
Compd.by