

IN THE COURT OF THE MUNSIF, KOCHI

Present :-

Smt. Simi P Siju, Additional Munsiff

Thursday the 19th day of June 2025/ 29th Jaishtha, 1947

IA No. 12/2025 in O.S. No. 184/2024

Petitioners/Plaintiffs:-

- 1 Muraleedhara Pai K R, S/o.V Rama Pai, aged 58 years, Cook, r/o Door No.4/1009, North Cherlai, Mattancherry, Kochi-2
- 2 G Jaya, W/o.Muraleedhara Pai K R, aged 48 years, House wife r/o Door No.4/1009, North Cherlai, Mattancherry, Kochi-2
- 3 Lakshmi Priya K M Pai, D/o.Muraleedhara Pai K R, aged 23 years, student, r/o Door No.4/1009, North Cherlai, Mattancherry, Kochi-2

By Advs. A Anilkumar, Balamuralikrishna & Mary Crescent

Respondents/Defendants:-

- 1 Geetha Anand, W/o.Anand V Shenoy, aged 70 years, House wife, r/o. Door No.CC 8/150, South Cherlai, West of TD Temple, Mattancherry, Kochi-2
- 2 Vinod Anand, S/o.Anand V Shenoy, aged 46 years, r/o. Door No.CC 8/150, South Cherlai, West of TD Temple, Mattancherry, Kochi-2

By Adv. Raju Joseph

This petition come up for hearing before me on 17.06.2025 and the court on 19.06.2025 passed the following:-

ORDER

This is an application filed under Order XXXIX Rule 1 of code of civil procedure 1908 seeking temporary prohibitory injunction against the respondents.

1. **The averments in the petition in brief are as follows:-**

The petitioners are the plaintiff's in the suit. The Suit is filed for mandatory and prohibitory injunction against the defendants. The Petitioner submitted that this court was pleased to allow IA 1/2024 and thereby respondents were directed to remove the lock of the Plaintiff C schedule gate and further directed them to keep close the lid of the Plaintiff D schedule chamber till disposal of the suit. Aggrieved by the order, respondents have preferred Civil Miscellaneous Appeal No.78/2024 before the District Court Ernakulam. The Hon'ble District Court, after considering the matter, was pleased to dismiss the aforementioned appeal. Subsequently, when the petitioners filed an application to advance the suit for the purpose of deputing Amin to execute the mandatory injunction order passed by this court, the defendants reported that they had complied with the order. The petitioners contend that the Plaintiff schedule property has been

purchased by them for constructing a house in it. After the issuance of building permit from the Kochi Corporation, the MSC bank had sanctioned the loan of Rs.15,00,000/- in favour of the petitioners for constructing residential building in the Plaint A schedule property. Subsequent to the opening of the gate, petitioner started construction work in the A schedule property. When the construction began, the respondents started to obstruct the pathway and also started to violate the mandatory injunction. The petitioners further contend that they together have undivided half right in the plaint B schedule pathway. By disregarding their joint ownership, the 1st defendant is creating all sorts of obstruction while taking construction materials through the B schedule pathway. They also contend that the window panes of the windows abutting the northern boundary of the B schedule pathway of the residential building of the defendants are deliberately kept open for obstructing their passage through B schedule pathway. The present width of the pathway is hardly 2-3 feet. If the respondent keeps opening the window panes into the B schedule property, the petitioners cannot make use of the same for

accessing to the Plaint A schedule property. Therefore, to enjoy the fruit of the order of mandatory injunction also, the respondents are to be restrained by a temporary prohibitory injunction. Hence the petition.

3. The respondents entered appearance and filed an objection contending that the respondents are not obstructing the construction by sitting in the B schedule pathway and keeping the lid open of the D schedule chamber. The 1st respondent was peacefully observing the activities of the petitioners by sitting in front of her residence in a chair. The petitioners without any warning had threatened and even physically manhandled the first respondent, which prompted the 1st respondent to file a complaint before the police authorities and the police authorities had given warning to the petitioners. It was the 2nd and the 3rd petitioner manhandled the first respondent with dire consequences. The building owned by the respondent was constructed in the year 1991 with building permit approved by Kochi Corporation in the year 1987. The windows are provided in the southern side of the building so that there is air circulation in the building and the same is in existence from 1990

onwards when the building was constructed. The averments that the petitioners failed to note that there is only a two to three feet gap between the southern boundary wall and the residential building of the first respondent cannot be a reason to put the blame on the first respondent. By the interlocutory petition, the petitioners are trying to get the final order before evidence is taken in this suit. Respondents submitted that Kochi Thirumala Devasom have properties in the B and C schedule properties. Unless and otherwise the title and possession is fixed by this court for the additional property which belongs to Thirumala Devasom, the controversy or dispute in the present suit cannot be finalised. The respondent further submitted that she has not committed any act which calls for intervention of this court through a mandatory injunction and also submitted that petitioner's by their act cause extensive damage to the tiles laid around the house by these respondents. The respondents are entitled for the damages for the loss suffered by them. Hence the petition is liable to be dismissed.

4. Heard both sides.

5. The points that arise for consideration are :

1. Whether the petitioner has made out a prima facie case?
2. Whether the balance of convenience is in favour of the petitioner?
3. Whether the petitioner will suffer irreparable injury, if the temporary injunction is not granted?
4. Whether the petitioner is entitled for temporary prohibitory injunction as prayed for?
5. Reliefs and cost.

6. **Point no. 1 to 3**:-For the sake of convenience point no.1 to 3 are considered together. The petitioners are the plaintiffs in the suit. Initially the petitioners herein had preferred IA 1/2024 seeking mandatory injunction to remove the lock of plaint C schedule gate and also to keep close the lid of the plaint D schedule chamber. This court after hearing allowed the said application and thereby granted mandatory injunction against the respondents. Assailed by the said order the respondent had preferred Civil Miscellaneous Appeal before Hon'ble District Court Ernakulam. On consideration, the appeal was dismissed. Thereafter the respondents complied with the mandatory injunction order granted by this court. Now the petitioner contends that the respondents are blocking plaint B schedule pathway admittedly construction is going on in plaint A

schedule property. The petitioners have to bring the construction material through this plaint B schedule pathway. Though the respondents contended that they are not blocking the pathway, but the respondents are sitting in the pathway so as to block the usage of the same. The same is evidenced from the photograph produced by the petitioners. The pathway only having a width of 2-3 feet. If the respondents are sitting in the said 2-3 feet width pathway as evidenced in the photograph the same would be a disturbance to the peaceful enjoyment of plaint B schedule pathway for the petitioners. The petitioners contend that the respondents open window panes of their residential house abutting the northern boundary of plaint B schedule pathway. According to the respondents window panes are open for free air passage to the residential house but on the other hand the petitioners had produced photographs which clearly shows the hardship caused to the petitioners due to the opening of windowpane. It is very difficult for the ingress and egress of the petitioners through this pathway when window panes are open. It is also equally important to note that the petitioners have half of the undivided right in plaint b schedule pathway and thus they have every right to use the pathway without

any obstruction and in a free manner. On consideration of the facts and circumstances of the case it can be seen that the petitioners have prima facie case. If the pathway is blocked, then it may cause irreparable injury to the petitioners, particularly it is admitted even by the respondents that construction is going on the plaint A schedule property. Moreover they have to bring the construction material through this pathway. Thus balance of convenience is also in favour of the petitioners. Accordingly, point no. 1 to 3 are found in favour of the petitioners.

7. **Point no. 4**:-As point No.1 to 3 are found in favour of the petitioners, the petitioners are entitled for a temporary prohibitory injunction.

8. **Point. 5**:- As point nos. 1 to 4 are found in favour of the petitioners, this point is also found in favour of the petitioner.

In the result, the petition is allowed as follows:-

(1) The respondents are hereby restrained from creating any disturbance or obstruction or hindrance to the peaceful enjoyment of plaint B schedule pathway and further the respondents are hereby restrained from kept open the

windowpanes of their house in such a manner obstructing the peaceful enjoyment of plaint B schedule pathway, till the disposal of the suit.

(2) Considering the facts and circumstances of the case no order as to cost.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the open Court on this the 19th day of June , 2025).

**Sd/-
Simi P Siju
Additional Munsiff**

APPENDIX : Nil

**Id/-
Additional Munsiff**

//True Copy//

Additional Munsiff

O R D E R

I.A. No.12/2025

O.S. No. 184/2024

Dated : 19.06.2025