

IN THE COURT OF MUNSIFF, MUVATTUPUZHA

Present : Sri. Tony T. Thadathil, JMFC-III Muvattupuzha,

In Charge of Munsiff, Muvattupuzha

Thursday, the 11th day of December 2025/ 20th Agrahayana, 1947

I.A. 2/2025 in O.S. 115/2025

Petitioners/ Plaintiffs :

1. K.J. Mathew, S/o. Ouseph Mathew, aged 82 years, residing at Kochumuttom House, Mullapuzhachal P.O., Enanelloor Kara, Enanelloor Village, Muvattupuzha Taluk, Ernakulam District
2. Gracy Mathew, W/o. K.J. Mathew, aged 76 years, residing at Kochumuttom House, Mullapuzhachal P.O., Enanelloor Kara, Enanelloor Village, Muvattupuzha Taluk, Ernakulam District

By Adv. S. Asokan and Adv. Premji Sukumar

Counter petitioners/ Defendants :

1. Georgekutty D. Kochumuttom, S/o. Dominic, aged about 36 years, residing at Kochumuttom House, Mullapuzhachal P.O., Enanelloor Kara, Enanelloor Village, Muvattupuzha Taluk, Ernakulam District
2. Dolphy Ajo, W/o. Ajo, aged about 40 years, residing at Mekkunnel House, Paingottoor P.O., Paingottoor Kara, Kadavoor Village, Muvattupuzha Taluk, Ernakulam District

3. Alphy D. Kochumuttom, D/o. Dominic, aged about 35 years, residing at Kochumuttom House, Mullapuzhachal P.O., Enanelloor Kara, Kadavoor Village, Muvattupuzha Taluk, Ernakulam District

By Adv. Paul Mathew

This petition came up for hearing on 25.11.2025 and this Court on 11.12.2025 delivered the following:-

ORDER

This is a petition filed under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908, seeking an order of temporary prohibitory injunction.

2. The first petitioner/ first plaintiff states that A schedule property is mutated in the name of the second petitioner/ second plaintiff. Petitioners are in possession and enjoyment of the said property. The B schedule property belongs to Sri. K. J. Dominic, brother of the first petitioner. The A schedule property has no road access. The B schedule property is abutting Enanelloor-Kothara road. Hence petitioners entered into an agreement with Sri Dominic on 20.03.1988 whereby Sri Dominic allowed the petitioners to construct a road having

an average width of 10 feet and length of around 100 metres from the Enanalloor-Kolchira road through the eastern portion of B schedule property towards the A schedule property. The road so constructed is shown as C schedule road. Petitioners have thereby acquired a right of easement by grant over the said road. The respondents/ defendants are the children of Sri Dominic. On 28.03.2025, the respondents made an attempt to destroy the C schedule road using a JCB. The same was resisted by the petitioners in time. The respondents threatened that they will destroy the C schedule road and reduce the same into their possession. Hence the above petition is filed seeking an order of temporary prohibitory injunction restraining the respondents and their men from obstructing the C schedule road and from committing any act of waste therein and from doing any other act detrimental to the peaceful enjoyment of the said road by the petitioners.

3. The Power-of-Attorney of the first respondent/ first defendant filed counter-affidavit stating that the description of B schedule property is not correct. It is not correct to say that petitioners had entered into an agreement with Sri Dominic on 20.03.1988 for

construction of a road. Sri. Dominic never executed any document on that day or on any other day, allowing the petitioners to construct a road through the eastern portion of B schedule property. The document produced by the petitioners is a forged one. The further claim of the petitioners that they have acquired a right of easement by grant over the C schedule road, is incorrect. There is a 3 feet wide public way on the eastern side of B schedule property. The said property extends up to A schedule property. Petitioners were using the said way for ingress and egress. Subsequently, a canal was constructed across the said way, by acquiring the property of the of Sri. Dominic. The authorities concerned constructed a bridge across the canal, in continuation of the way. Petitioners and other public are using the said 3 feet wide way. After the construction of the canal, petitioners got direct access from the canal bund road to A schedule property. The C schedule road is not in existence. The allegation that respondents had attempted to destroy the C schedule road, is not correct. It is the petitioners who are attempting to form a new road through the property of respondents. Hence, it is prayed to dismiss the above petition with cost.

4. The second and third respondents/ second and third defendants filed a counter-affidavit through the third respondent reiterating the contentions in the counter-affidavit of the first respondent.

5. Heard the learned counsel for both sides. Perused the records.

6. Petitioners have produced an agreement dated 20.03.1988 allegedly executed by the predecessor of the respondents namely Sri. K. J. Dominic, whereby a right of way is granted to the first petitioner through the eastern boundary of the property of Sri. K.J. Dominic, comprised in survey no. 142/1B, in a width of 10 feet and length of 100 metres. There is a clause in that agreement for construction of *kayyala* on the western side of the road. The respondents contend that it is a forged document. The truth of the said fact cannot be ascertained at this stage.

7. The commission reports on record reveal that the C schedule road is presently having varying widths. There is a canal bridge across the way at the northern portion. The width of the said bridge is

only 3.6 feet. As per the commissioner, the said bridge is an old one. The commissioner's reports further indicate that there have been excavations in the western portions of C schedule way. It is sufficient to observe that the C schedule road is at present not maintaining 10 feet width at every point.

8. Although the description of C schedule road is such that it is stated to start from Enanalloor-Kolchira road, the second commissioner's report reveals that it is commencing from a sub road which commences from Enanalloor-Kolchira road. The said difference is not material. The second commissioner's report also reveals that at present, petitioners have motorable road access to A schedule property through the canal bund road.

9. The respondents have admitted the existence of a 3 feet wide way through the eastern side of B schedule property. They also admit the fact that petitioners have been using the said way. Considering the entire materials on record, this Court thinks it fit and proper to restrain the respondents by way of temporary prohibitory injunction from altering the present lie and nature of the way as reported in the

commission reports.

10. **In the result**, the petition is allowed in part and the respondents are restrained by an order of temporary prohibitory injunction from altering the present nature and lie of the C schedule road as reported in the commission reports.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in the open court on this the 11th day of December, 2025.

Tony T. Thadathil.
JMFC -III Muvattupuzha,
(In Charge of Munsiff)

APPENDIX:- NIL

Munsiff

I.A.2-2025 in O.S. 115-2025

- 8 -

**ORDER in
I.A. 2/2025 in O.S. 115/2025
Dated: 11.12.2025**