

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. 1/2025 and I.A. 5/2025 in O.S. 139/2025

I.A. 1/2025

Petitioner/ Plaintiff :

Jibi, aged 50 years, S/o. Padmanabhan,
Valiyaveetilkudiyil House, Kayanadu Kara, Memury
Village, Muvattupuzha Taluk

By Adv. N. Ramesh

Respondents/ Defendants :

1. Paulose, aged about 72 years, S/o. Issac, Ponnal House,
Ooramana Kara, Memury Village, Muvattupuzha
Taluk
2. Saramma, aged about 67 years, W/o. Paulose, Ponnal
House, Ooramana Kara, Memury Village,
Muvattupuzha Taluk
3. Saji Varkey, aged about 50 years, S/o. Varkey,
Kalckethy House, Karyanadu Kara, Memury Village,
Muvattupuzha Taluk

By Adv. A.C. Thomas Adhikaram

I.A. 5/2025

Petitioners/ Defendants :

1. Paulose, aged 77 years, S/o. Issac and residing at
Ponnal House, Ooramana Kara, Memmury Village,
Muvattupuzha Taluk

2. Saramma, aged 72 years, W/o. Paulose and residing at Ponnal House, Ooramana Kara, Memmury Village, Muvattupuzha Taluk
3. Saji Varkey, aged 50 years, S/o. Varkey and residing at Valiyaveetilkudiyil House, Karyanadu Kara, Memmury Village, Muvattupuzha Taluk

By Adv. A.C. Thomas Adhikaram

Respondent/ Plaintiff :

Jibi, aged 50 years, S/o. Padmanabhan and residing at Valiyaveetilkudiyil House, Karyanadu Kara, Memmury Village, Muvattupuzha Taluk

By Adv. N. Ramesh

This petition came up for hearing on 27.11.2025 and this Court on 11.12.2025 delivered the following:-

COMMON ORDER

I.A. 1/2025

This is a petition filed under Order XXXIX Rule 1 read with section 151 of the Code of Civil Procedure, 1908, seeking an order of temporary prohibitory injunction.

2. Petitioner/ plaintiff states that A schedule property is owned and possessed by himself. The B schedule is the road portion from the western panchayath road to the A schedule property, which runs through

puramboke land. Concerning the dispute with respect to a strip of land on the southern side of A schedule property, petitioner had instituted O.S. 531/2013 before this Court against the respondents/ defendants. The said suit was dismissed on the ground that A schedule property is not identifiable. Thereafter, petitioner obtained possession of A schedule property. Now, respondents are threatening the petitioner that they will not allow him to use the B schedule road. Respondents have no manner of right over the said road and they are not entitled to obstruct the user of the said road. There is no other way to A schedule property. Hence, the above petition is filed seeking an order of temporary prohibitory injunction restraining the respondents from obstructing the user of B schedule road by the petitioner to access A schedule property and from altering the nature and lie of the said road and from doing any act that prejudices enjoyment of the said road by the petitioner.

3. Respondent no. 1 to 3/ defendants 1 to 3 filed counter-affidavit through the first respondent, stating that A schedule property is not correctly described in the plaint. The boundaries shown in the said schedule are not correct. The averment that the said property belongs to

the petitioner, is not correct. It is not correct to say that there is access from B schedule road to the A schedule property. On 07.10.2013, the father of petitioner had requested the respondents to give some portion of their property to construct a road through their property to the property obtained as per deed no. 263/1986. Since the said request was refused, the petitioner is not in good terms with the respondents. The father of petitioner had instituted O.S. 531/2013 before this Court in respect of the suit properties, claiming the very same reliefs. The said suit was dismissed on 21.11.2019. The appeal against the said decree, was also dismissed in the year 2023. The B schedule road is lying far away from A schedule property. The said road is passing through the properties of the respondents and as such, petitioner has no right to use the said road. Petitioner has no bona fides. Hence, it is prayed to dismiss the petition with compensatory cost.

I.A. 5/2025

This is a petition filed under section 151 of the C.P.C. seeking an order of temporary prohibitory injunction.

4. The first petitioner/ first defendant states that the above suit

is one for injunction to restrain the petitioners/ defendants from obstructing use of B schedule road to reach A schedule property and from altering the nature and lie of the said road and from doing anything prejudicial to the enjoyment of B schedule road by the respondent/ plaintiff. The plaint schedule property is not correctly described in the plaint. There is no motorable road access to the property of the respondent. On 07.10.2013, the father of respondent approached the petitioners and requested a portion of their property for constructing a road. The same was refused. Hence the respondent is not in good terms with the petitioners. After the institution of O.S. 531/2013 before this Court, the respondent destroyed the northern boundary *kayyala* of the property of petitioners and constructed a new way from the motorable road passing through the property of petitioners. The above-said suit was dismissed on 21.11.2019. The appeal was also dismissed in the year 2023. The plaint B schedule road is passing through the property of petitioners. The respondent or his father never used the said road. The property of respondent is far away from the B schedule road. The respondent has no right to use the said road. Respondent has threatened

to transport trees through the B schedule road. Hence, the above petition is filed seeking an order of temporary prohibitory injunction restraining the respondent and his men from transporting timber through B schedule road and from committing any waste in it.

5. Respondent/ plaintiff filed counter-affidavit stating that his father had obtained possession of the plaint schedule property under the cover of Sale deed no. 263/1986. He had planted rubber trees in the said property. Now, the respondent is in possession of the said property. The B schedule road is running through *puramboke* land. It is false to say that the said road passes through the property of petitioners. Respondent and other adjacent property owners are using the B schedule road as of right. The averment that respondent is proposing to cut and remove the rubber trees in A schedule property, is not correct. Hence, it is prayed to dismiss the above petition with costs.

6. For the sake of convenience, defendants are referred in this order as the petitioners and the plaintiff is referred as the respondent. From the side of the petitioners, exhibits A1 and A2 were marked. From the side of the respondent, exhibits B1 and B2 were marked.

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

8. The father of respondent had instituted O.S. 531/2013 before this Court seeking a decree of declaration of easement right over the B schedule road and permanent prohibitory injunction. From Ext. A1 which is the copy of judgment in that suit, it is revealed that the allegations in the plaint in O.S. 531/2013 included one that petitioners herein (defendants 2 to 4 in that suit) and two others (defendants 1 and 5) are attempting to make obstructions in B schedule way and that they have threatened that they will not permit the plaintiff to use the way. However, the injunction prayed in the suit was only against trespass into A schedule property and destruction of its boundaries. The father of respondent could have claimed an injunction against obstruction to user of B schedule road by him, in O.S. 531/2013. The same was not done.

9. Now, the respondent filed the present suit seeking a decree of injunction against obstruction in user of B schedule road and from altering its lie and nature and from doing anything prejudicial to his enjoyment of the said road. The cause of action for the suit is the alleged obstruction made by the petitioners to use of B schedule road by the

respondent.

10. Thus, the father of respondent had omitted to sue the petitioners for the relief of injunction against obstruction to user of the B schedule road, though he was entitled to claim the said relief based on the cause of action in O.S. 531/2013. Having omitted to sue for the said relief in O.S. 531/2013, the present suit is, in the prima facie opinion of this Court, hit by Order II Rule 2(3) of the C.P.C., notwithstanding the fact that the present suit is filed by the respondent by projecting 30-3-2025 as the date of accrual of cause of action on which date a threat was allegedly raised by the petitioners about obstruction to user of the road.

11. Also, the claim of the father of the respondent in O.S. 531/2013 was about prescriptive easement right over the B schedule road. A declaratory decree was prayed in that suit to establish the said right. However, the said relief was relinquished during trial by filing a memo. Now, the respondent is claiming that the B schedule road is running through puramboke land, whereas the petitioners are claiming that the said road is passing through their property. This variation in stand of the respondent vis-a-vis his predecessor-in-interest, is pertinent.

12. Yet another material fact is the assertion in paragraph no. 2 in the plaint that O.S. 531/2013 came to be filed in the background of a dispute between the father of the respondent and petitioners with respect to a strip of land on the southern side. Ext. B2 plan also reveals such a strip of land, based on which, this Court, in Ext. A1 judgment, observed that only the south-western corner of A schedule property is touching the B schedule road. The said fact also challenges the claim of respondent that the B schedule road is abutting A schedule property on its southern side.

13. Considering all of the above, this Court is inclined to hold that the respondent has no prima facie case.

14. The prayer of petitioners for injunction is based on an apprehension that the respondent may use the B schedule road for transporting timber. Petitioners have no case that any such transportation of timber will destroy the road. They are maintaining that respondent has no right to use the way. It is for them to file a suit or raise a counter-claim for the appropriate relief in this regard. The relief of temporary injunction cannot be granted to prevent user of a way, when such user

Exhibits for the Petitioners :

| Exhibit numbers | Date of Document | Name of Document |
|-----------------|------------------|---|
| A1 | 21.11.2019 | Certified copy of judgment in O.S. 531/2013 of Munsiff Court, Muvattupuzha |
| A2 | 20.03.2023 | Certified copy of judgment in A.S. 25/2020 of the hon'ble Sub Court, Muvattupuzha |

Witnesses for the Respondent :- **NIL**

Exhibits for the Respondent :

| Exhibit numbers | Date of Document | Name of Document |
|-----------------|------------------|--|
| B1 | 21.01.1986 | Copy of sale deed no. 263/1986 of Muvattupuzha S.R.O. |
| B2 | 11.09.2014 | Commission report, rough sketch and plan filed by Adv. Ritamma Mathew in O.S. 531/2013 |

Munsiff

I.A. 1-2025 and I.A. 5-2025 in O.S. 139-2025

- 12 -

COMMON ORDER in
I.A. 1/2025 and I.A. 5/2025 in
O.S. 139/2025
Dated: 11.12.2025