

IN THE COURT OF THE MUNSIFF, KATTAPPANA
PRESENT: FELIX JOHN, MUNSIFF
Wednesday the 11 th day of February, 2026/22 nd day of Magha, 1947

**IA1/2025 IN OS 204/2025 and IA 01/2025 IN
OS438/2025**

IA1/2025 IN OS 204/2025

<u>Petitioner</u> Plaintiff	:	Jeeja L., D/o Unnikrishnan Nair, aged 37 years, residing at Lekshmi Bhavan, Anniyartholu P.O., Anniyartholu Kara, Pampadumpara Village, Udumbanchola Taluk.
		By Adv: Jomon K Chacko and Adv. Ajay M.
<u>Respondent</u> Defendant	:	Sureshkumar, aged about 53 years, Geethabhavan, Anniyartholu P.O., Anniyartholu Kara, Pampadumpara Village, Udumbanchola Taluk.
		Vinodini, W/o Sureshkumar, aged 48 years, Geethabhavan, Anniyartholu P.O., Anniyartholu Kara, Pampadumpara Village, Udumbanchola Taluk.
		By Adv:K.G. Shajimon

IA1/2025 IN OS 438/2025

<u>Petitioner</u> Plaintiff	:	Vinodini, aged 47 years W/o Sureshkumar, residing at Geetha Bhavan, Anyartholu Kara, Anyartholu P.O., Pampadumpara Village, Udumbanchola Taluk, Idukki District. Pin - 685515
		By Adv:K.G. Shajimon
<u>Respondents</u> Defendants	1	Jeeja L, aged about 37 years, D/o Unnikrishnan Nair, residing at Lakshmi Bhavan, Anyartholu Kara, Anyartholu P.O., Pampadumpara Village, Udumbanchola Taluk, Idukki District. Pin - 685515.

	2	Unnikrishnan Nair, aged about 65 years, residing at Lakshmi Bhavan, Anyartholu Kara, Anyartholu P.O., Pampadumpara Village, Udumbanchola Taluk, Idukki District. Pin – 685515.
		By Adv: Saji Augustine

Both petitions are filed under Order 39 Rules 1 and 2 of the Civil Procedure Code and coming before me for hearing on 10-02-2026 and having been stood over for consideration till 11-02-2026 in the presence of the above counsel and the Court on the same day passed the following :

COMMON ORDER

The IA 1/25 in OS 204/25 and IA 1/25 in OS 438/25 are for permanent prohibitory injunction and IA 4/26 is for appointing an advocate commissioner.

2. **The averments in IA 1/25 in OS 204/25 and the counter affidavit in IA 1/25 in OS 438/25 in brief are as follows:** Petitioner is the plaintiff in the above suit. The present suit is filed for declaration of title and for a consequential decree of permanent prohibitory injunction against the defendants. The plaint schedule property is an extent of 2.02 Ares of patta land comprised in Sy. No.196/5 of Block No. 54 of Pampadumpara Village, Udumbanchola Taluk. The plaint schedule property was obtained by the plaintiff by virtue of sale deed No. 575/15 of Udumbanchola SRO. The property was duly mutated in the name of the plaintiff, and she has been remitting land tax regularly. The plaintiff is in absolute ownership and possession of the property. The plaint schedule property is clearly demarcated and distinguishable from neighboring lands.

3. The boundaries of the plaint schedule property are, east-Puliyannamala-Balagram road, south - property of the defendants, west-property of George Kochuvadavanal and north - property of Ramachandran Nair. The defendants own some extent of land on the southern side of the plaint schedule property. It is learned that the said property is purchased by the defendants from one Ramakrishna Pillai. The boundary between the plaintiff's property and that of the defendants is clearly demarcated by stone markers. The 1st defendant is running a barber shop in an old building situated on the northern side of the defendants' property. Being aware that the plaintiff's property is in a prime location and would fetch a handsome return, the defendants expressed their intention to purchase the property, which the plaintiff did not accept.

4. The plaintiff had earlier filed a suit for injunction as O.S. No. 213/2015 before this court seeking to restrain the defendants from trespassing into her property. After filing the said suit, the defendants ceased their attempt. However, while matters stood thus, on 06.04.2025, the defendants made a fresh attempt to trespass into the plaintiff's property, falsely claiming that a portion of the property belongs to them and is included in Survey No. 196/8. In reality, the plaint schedule property is comprised entirely within Survey No. 196/5, and not in 196/8 as falsely claimed. The defendants' attempt to trespass was successfully thwarted by the plaintiff and nearby residents. Although they retreated from the scene, they have openly declared their intention to forcefully enter the property again. These continuous threats and claims by the defendants have necessitated the present suit for declaration of title.

5. The plaintiff is the absolute owner in possession of the plaint schedule property. The defendants have no manner of right title, interest, or possession over the same.

6. It is stated that the suit itself is not maintainable as, as per the plaint claim the plaint schedule property is well demarcated and the question of demarcation of boundary doesn't arise at all. In fact the property of the 1st defendant is demarcated from the property of the plaintiff by aluminum sheet panels fitted on metal pipes. In fact the plaintiff is having larger extent of property there and so the plaint schedule property is not identifiable. The property of the 1st defendant which is having an extent of 2.02 Ares is clearly identifiable and is in possession of that extent alone. The averment that the part of the 1st defendant and that of Ramachandran Nair are held as a single plot is denied and it is submitted that both are specifically separated piece of land.

7. In fact the petitioner along with her husband Sri. Suresh Kumar tried to trespass into the property of the 1st defendant destroying the hibiscus fencing. Hence, the 1st defendant filed O.S. No. 204/2025 before this court against the plaintiff herein and her husband. Sri. Suresh Kumar and this court was pleased to grant an order of interim injunction. In the above case advocate commissioner deputed by this court visited the property and has filed commission report clearly stating the boundary demarcation between the property of the 1st defendant and the plaint schedule property. In the above case despite several adjournments and opportunities, neither the plaintiff nor her husband filed a counter in the said suit. Consequently, this court was pleased to make the interim injunction order absolute. Meanwhile the 1st defendant on

06.05.2025, approached the Tahsildar Udumbanchola, and filed application for measuring and demarcating the boundary of the property of the 1st defendant and subsequently on 14.05.2025, also filed an application before the respectful District Collector, Idukki for the same cause.

8. The averments in IA 1/25 in OS 438/25 and counter affidavit in IA 1/25 in OS 204/25 in brief as follows: The plaint schedule property is situated on the side of the Puliyanmala-Cumbummettu road and it is a commercial plot situated in Anyartholu Junction. The plaint schedule property is lying within well defined boundaries. The 2nd defendant is the father of the 1st defendant. The 1st defendant is having property on the eastern boundary of the plaint schedule property. The Puliyanmala - Cumbummettu road is passing through the southern boundary of the plaint schedule property. The property on the western boundary of the plaint schedule property is also owned by the plaintiff. The property of K.V. George Kochuvalavanal is situated on the northern boundary of the plaint schedule property. The property on the east of the plaint schedule property which is presently owned by the 1st defendant along with other properties having a total extent of 4.20 Ares of land was previously owned by one Mr. Ramachandran Nair of Kallooppambil House. Though the patta was issued was in favour of Ramachandran Nair the same jointly held by the second defendant and Ramachandran Nair. Subsequently Ramachadran Nair conveyed 02.02 Ares of land out of the in favour of the 1st defendant in the year 2015 lying adjacent to the eastern boundary of the plaint schedule property. Though the property was thus conveyed the entire property was held single plot.

9. Recently Ramachandran Nair died and even before his death the defendants approached Ramachandran Nair and the revenue authorities getting the boundary of their fixed separately. Thereafter, she had filed a civil suit O.S. No. 204/2015 before this court against this plaintiff herein and her husband claiming that she is in ownership over 4.20 Ares of land. In fact 1st defendant herein obtained over an extent of 02.02.Ares of land only. The 1st defendant by misrepresenting the court obtained an order of interim injunction in the above O.S. No. 204/2015. Even after the filing of the said there was no overt act from the side of the defendants and hence there was no threat to the plaint schedule property.

10. However, on 06.10.2025 at about 6 p.m. the defendants along with their henchmen made an attempts trespass into the plaint schedule property and appropriate the same after destroying the eastern boundary of the plaint schedule property. The above said act of the defendants was thwarted by the timely intention of the plaintiff and her family members. The defendants while retiring had openly declared they would come with more force to appropriate and annex the plaint schedule property with the property of the 1st defendant. According to the defendants a portion of the plaint schedule property would come under the title of the 1st defendant. Since, the defendants are disputing the boundary of the plaint schedule property it is necessary to fix the northern boundary of the plaint schedule property with the assistance of Taluk Surveyor.

11. Averments in IA 4/26 in OS 204/25 in brief are as follows:-

The suit is for declaration of title, and for consequential decree of permanent

prohibitory injunction and other incidental reliefs. The case of the plaintiff is that she had obtained title over an extent of 2.02 Ares of land in Sy. No. 196/5 of Pampadumpara Village by way of Sale Deed No. 575/2015 of S.R.O. Udumbanchola executed in her favor by on Sri. K.M. Ramachandran Nair. Sri. K.M. Ramachandran Nair, in turn obtained tile over an extent of 4.20 Ares of land by way of Patta No. 46/11 issued in L.A. No. 3/2011. Out of which he had transferred 2.02 Ares of land in favour of the plaintiff, which is the plaint schedule property herein.

12. The 2nd defendant herein had filed a suit as O.S. No. 438/2025, before this court for fixation of boundary and permanent prohibitory injunction and other incidental and consequential reliefs. The plaint schedule property in the said case is an extent of 1 Are 40 Sq. Meters of land comprised in Sy. No 196/8 of Pampadumpara Village. The petitioner has obtained tile over the plaint schedule property vide Patta No. 2166 issued in her favour by the Special Tahasildar (LA) Nedumkandam as per the proceeding in L.A No. 2213.

13. The petitioner has filed a petition for joint trial of both the cases. Since the above suit is for declaration of the title and other reliefs and O.S. No. 438/2025 is for fixation of boundary and other reliefs it is necessary to conduct the survey of both properties owned by the plaintiff as well as the second defendant on the basis of the title deeds of the plaintiff and defendants and other revenue records. Hence the petition.

14. **The respondent filed objection in IA 4/26 in OS 204/25averring as follows:** The above suit, O.S. No. 204/2025, is filed by the plaintiff for

declaration of title, permanent prohibitory injunction and consequential reliefs, based on clear title deeds, revenue records, and settled possession. The relief sought in the present application is wholly alien to the scope and nature of the suit, and the same is filed with the sole intention of delaying the proceedings and confusing the real issues involved in the suit.

15. The defendants have never disputed the identity of the plaint schedule property in the manner now suggested in the application, and the plaint schedule property is clearly identifiable and well demarcated with reference to the plaintiff's title deed bearing sale deed No. 575/2015 of S.R.O., Udumbanchola, the prior title deeds, Patta No. 46/11, and the connected revenue records, leaving no scope or necessity for appointment of an Advocate Commissioner.

16. It is highly relevant that the 2nd defendant herself has already instituted O.S. No. 438/2025, which is specifically a suit for fixation of boundary in respect of alleged adjacent properties. Having chosen to file a separate suit for fixation of boundary, the 2nd defendant cannot be permitted to seek the very same relief indirectly through a survey commission application in the present suit.

17. The points to be considered are:-

- (i) Whether the petitioner in IA.1/25 in OS 204/25 made out a prima facie case in his favour ?

- (ii) Is the balance of convenience goes in favour of the petitioner in IA.1/25?
- (iii) Will it cause irreparable injury to the petitioner, if the injunction is not granted ?
- (iv) Whether the petitioner in IA.1/25 in OS 438/25 made out a prima facie case in his favour ?
- (v) Is the balance of convenience goes in favour of the petitioner in IA.1/25 in OS 438/25?
- (vi) Will it cause irreparable injury to the petitioner, if the injunction is not granted ?
- (vii) Whether IA 1/25 and IA 4/26 in OS 204/25 and IA 1/25 in OS 438/25 are allowable?
- (viii) Orders, if any ?

18. Heard both sides.

19. Points 1 to 6 :- The petitioner in IA 1/25 in OS 204/25 is the 1st respondent in OS 438/25. The 2nd respondent in IA 1/25 in OS 204/25 is the petitioner in IA 1/25 in OS 438/25. Both the suits are connected and the same are considered together. For the sake of the convenience, parties are referred to their status as IA 1/25 in OS 204/25. IA 4/26 in OS 438/25 is filed for appointing an advocate commissioner to survey the plaint schedule property therein. All the IAs are considered together and the documents are marked as per the status in IA 1/25 in OS 204/25.

20. Ext.A1 is the copy of sale deed No. 575/2015 of SRO, Udumbanchola in favour of the petitioner. Ext.A2 is the land tax receipt dated 10.06.2015 (documents produced in OS 204/25). Ext.A3 is the land tax receipt dated 08.04.2025. Ext.A4 is the notice issued by the Taluk Surveyor, Udumbanchola. Ext.A5 is the RTI Act received copy of report of Taluk Surveyor, Udumbanchola. Ext.A6 is the site approval and building permit dated 05.01.2026 from the Pampadumpara Grama Panchayat. Ext.A7 is the survey plan of the plaint schedule property. Ext.A8 is the copy of patta in LA 3/11 in favour of the petitioner. (Exts.A3 to A7 are produced in OS 438/25).

21. Ext. B1 is the copy of patta in LA 22/13 in favour of the 2nd respondent. Ext.B2 is the copy of order of assignment of registry. Ext.B3 is the survey plan of the property of the 2nd respondent. Ext.B4 is the land tax receipt dated 03.02.2025. (These documents were produced in OS 438/25).

22. The case of the petitioner is that the respondents are disputing their title to the plaint schedule property which is an extent of 2.02 ares of patta land. OS 204/25 was filed for declaration of title and consequential injunction. It is stated that the respondent's property is situated on the southern side of the plaint schedule property and is clearly demarcated by stone markers. OS 438/25 is filed by the 2nd respondent for fixation of boundary with that of the petitioner and for consequential injunction. It is alleged that the petitioner tried to trespass the plaint schedule property therein. It is pleaded that property of the petitioner is situated on the eastern boundary of the plaint schedule property therein.

23. Ext C1 is the commission report filed in OS 204/2025. The commissioner inspected the property on 23.04.2025. The plaint schedule

property is vacant land. On the east of the plaint schedule property lies Pulianmala-Balagram road without any boundary demarcation. On the southern side, lies the property of the 2nd respondent with incomplete hibiscus fencing and partial boundary demarcation. A survey stone was found at the south eastern corner of the plaint schedule property. On the western side of the plaint schedule property lies the property of Kochuvadavanal George with boundary of hibiscus. On the northern side of the plaint schedule property lies the property of Ramachandran without any boundary demarcations.

24. The counter affidavit filed by the petitioner in OS 438/2025 reveals that after the passing of the injunction order in OS 204/25, officers deputed from the Taluk office Udumbanchola along with the Taluk Surveyor surveyed the property of the Petitioner and demarcated the same and so as to confirm the existing hibiscus fencing. The petitioner has also pleaded that after the Taluk authorities marked the property on ground by stumping metal plates he replaced the hibiscus fencing with aluminum sheet panels. The petitioner has argued that the respondents willfully avoided their presence. Ext. C2 is the commission report filed in OS No. 438 /2025. It is reported that at the time of inspection, the plaint schedule property was not properly fenced on the southern and northern boundary. The commissioner noted that mud leveling works were done by the petitioner in the plaint schedule property. The commissioner noted that the western boundary of the plaint schedule is the property of the 2nd respondent Vinodini. It is also reported that the eastern boundary of the plaint schedule property was demarcated by roofing sheets with the property of the petitioner fenced all along the said boundary. The western boundary of the plaint schedule property was demarcated by plastic ropes.

25. The plaint schedule property in OS 204/25 is under the ownership of the petitioner while the plaint schedule property in OS 438/2025 is owned by the 2nd respondent/petitioner in OS 438/2025. In OS 204/2005, it is stated that the respective plaint schedule properties are facing north and south while in OS No. 438 /2025, it is stated that they are facing east and west. In this regard, it is to be noted that Ext. A6 plan indicates that the properties are lying in north east direction and south-west direction. The parties also have no dispute with regard to the direction set out in their respective title deeds. Ext. C1 commission report shows the status of the plaint schedule property in OS 204/2025 when the suit was instituted. It can be seen that there was no clear boundary at that time between the properties of the petitioner and the 2nd respondent. It is clearly reported by the commissioner that the properties are partially demarcated by incomplete hibiscus fencing. So it is clear that when the suit was instituted, the plaint schedule property was not lying in well defined physical boundaries. The counter affidavit of the petitioner in OS 438/25 revealed that upon her application, boundary was fixed by the Taluk Surveyor. Thereafter, they replaced the hibiscus fencing with aluminium sheet panels. The commissioner in Ext C2 report has stated that the eastern boundary is the property of the petitioner and is demarcated by aluminium sheets. Thus the present demarcation between the properties of the petitioner and 2nd respondent are Aluminum sheets.

26. It can be seen that after filing the suit, the petitioner approached the revenue authorities for fixing the boundary. It necessarily implies that there was no boundary between the properties of the parties. The respondents have alleged that they received no notice from the revenue authorities and all the process were done without the concurrence of them. In this regard, it is to be noted that

approaching the revenue authorities may not be illegal, but it was wholly inappropriate on the part of the petitioner to approach the revenue authorities as the matter was pending before this court. The petitioner could have filed a commission application and prayed for fixing the boundary. Ext. A3 notice issued from the Taluk Surveyor indicates that the notice was issued as per the Survey manual. It is not clear whether the notice was served on the respondents. Ext A4 report indicates that Taluk surveyor went to the property and shown the boundary of the property. Ext. A4 report further indicates that the boundary owners were not present. It is not clear from the report whether any survey plan was made after fixing the boundary. It is also clear not from the proceedings whether the Taluk surveyor proceeded under the relevant provisions of the Survey and Boundaries Act, 1961 to fix the boundary of the property.

27. As already mentioned as on the date of suit, there was no clear boundary between the properties of the parties. OS 438/2025 is filed for fixing the boundary between the properties of the petitioner and the 2nd respondent. It is true that in the above suit it is pleaded that the plaint schedule property therein is lying within well defined boundaries. But it is further pleaded that the petitioners are disputing the boundary of the plaint schedule property and therefore it is necessary to fix the boundary. The events occurred after the institution of OS 204/2025 indicates that there is serious boundary dispute between the petitioner and the 2nd respondent. It is settled law that a suit is to be decided after considering the state of affairs as on the date of institution of the suit. It is also settled that the court can mould the relief after considering the subsequent events happened in the suit. In this case, the petitioner has caused to alter the boundary marks of the disputed side.

28. The 2nd respondent/petitioner in IA 1/25 in OS 438/25 has disputed the boundary demarcation. The above suit is for fixation of the boundary. As already noted it is not clear under what provisions of law the survey authorities have proceeded. So it is appropriate that an advocate commissioner with the assistance of Taluk Surveyor be deputed to survey the properties of both parties to settle the matter between the parties. The first respondent has filed an application as IA 6/24 in OS 204/25 for surveying the property. An objection has been filed stating that the plaint schedule property is clearly identifiable and there is no scope for appointing advocate commissioner. Further the 2nd respondent has already instituted OS 438/2025 which is specifically a suit for fixation of boundary. In this regard, it is to be noted that the 2nd respondent has filed a petition for joint trial of both the case. It is to be noted that the parties are common and the plaint schedule properties are also connected. So it may be appropriate that a joint trial of the case is conducted for fair adjudication of the dispute between the parties. Hence even if the survey commission application is filed in OS 204/25 it will not prejudice the case of the petitioner. Hence the petition is liable to be allowed.

29. I have considered materials before this court. OS 204/25 is filed for a decree of declaration of title and for permanent prohibitory injunction restraining the defendants therein for trespassing into the plaint schedule property therein. OS 438/25 is filed by the 2nd respondent in OS 204/25 disputing the boundary and for fixation of boundary between the properties of petitioner and the 2nd respondent. Both the parties were able to project a prima facie case in their favour. A prima facie case means a serious dispute and a probable case for the parties. It is seen that the petitioner is constructing a

commercial building in her plaint schedule property. She has also filed an undertaking not to trespass into the plaint schedule property of the 2nd respondent (plaint schedule property in OS 438/25) and had further undertaken to remove any constructions if made at her own costs. The petitioner and 2nd respondent are entitled to protect the possession of their plaint schedule property. After the consideration of balance of convenience and irreparable injury that will cause to both parties, there shall be a temporary injunction in favour of both parties to the effect that each of them shall not trespass into other's property. It will also help preserve the status of the plaint schedule properties in both the suits. Thus point Nos. 1 to 6 accordingly answered.

30. Point No.7:- In view of the finding in Point Nos. 1 to 6, IA 1/25 in OS 204/25 and IA 1/25 in OS 438/25 and IA 4/26 in OS 204/25 are allowable. Point No.7 is answered accordingly.

In the result,

IA 1/25 in OS 204/25 and IA 1/25 in OS 438/25 and IA 4/26 in OS 204/25 are allowed as follows:-

- i) IA 1/25 in OS 204/25 - respondents are restrained by a temporary injunction from trespassing into the plaint schedule property which is comprised in Sy.No. 196/5 of Block No. 54 of Pampadumpara Village, Udumbanchola Taluk until further orders.
- ii) IA 1/25 in OS 438/25- the respondents therein are restrained by a temporary injunction from trespassing into the plaint

schedule property which is comprised in Sy. No. 196/8 of Pampadumpara Village until further orders.

- iii) The petitioner in IA 1/25 in OS 204/25/the 2nd respondent in OS 438/25 has filed an undertaking that she will not construct any part of her building in the plaint schedule property comprised in Sy.No. 196/8 of Pampadumpara Village and further undertake to dismantle any structure if constructed in the above mentioned property at her own costs. The above undertaking is recorded.
- iv) The petitioner in IA 1/25 in OS 204/25 is directed not to construct any building in the plaint schedule property therein in violation of the Building Rules.
- v) The IA 4/26 is allowed and advocate commissioner with the Assistance of Taluk Surveyor is appointed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open court on this the 11th day of February 2026.

**FELIX JOHN,
MUNSIFF, KATTAPPANA**

APPENDIX

<u>Plaintiff's Exhibits :</u>		
A1	-	Copy of sale deed No. 575/2015 of SRO, Udumbanchola.
A2	10.06.2015	Land tax receipt (documents produced in OS 204/25).

A3	08.04.2025.	Land tax receipt.
A4	-	Notice issued by the Taluk Surveyor, Udumbanchola.
A5	-	RTI Act received copy of report of Taluk Surveyor, Udumbanchola.
A6	05.01.2026	Site approval and building permit from the Pampadumpara Grama Panchayat.
A7	-	Survey plan of the plaint schedule property.
A8	-	Copy of patta in LA 3/11 in favour of the petitioner.
		(Exts.A3 to A7 are produced in OS 438/25).
<u>Defendant's Exhibits :</u>		
B1	-	Copy of patta in LA 22/13 in favour of the 2 nd respondent. Ext.A3 is the
B2	-	Copy of order of assignment of registry.
B3	-	Survey plan.
B4	03.02.2025.	Ext.A4 is the land tax receipt.
<u>Court Exhibits :</u>		
C1	24-05-2025	Commission report filed by the Adv. Aliya Mathew.
C2	10-12-2025	Commission report filed by the Adv. Timothy Dal.
<u>Plaintiff's Witnesses :</u>		NIL
<u>Defendant's Witnesses :</u>		NIL
<u>Court Witnesses :</u>		NIL

MUNSIFF

Typed by : Simi
Compd. by : Lekha

**FAIR COMMON ORDER IN
IA 01/2025 IN OS 204/2025 and IA
01/2025 IN OS 438/2025
DATED: 11-02-2026**