

IN THE COURT OF THE MUNSIF, PEERMADE

PRESENT: SHRI. KARTHIK SARANGAN, MUNSIF

Monday the 11th day of August, 2025 / 20th day of Sravana, 1947.

IA No. 2/2024 IN O.S No.262/2024

Petitioner:-
Plaintiff

Sindhu Mathew, aged 48 years, W/o late Arun Jacob Mathew, Nellickal House, Thannikkanam Kara, Elappara. P.O., Elappara Village, Peermade Taluk, Pin – 685501.

By Adv. Shine Varghese, Adv. Subymol K. J
& Adv. Surya Sadan

Respondent:-
Defendant

K. J. Joseph, aged about 69 years, S/o Ittyavira, Thekkattil House, Elappara. P.O., Elappara Kara, Elappara Village, Peermade Taluk, Pin – 685501.

By Adv. A. V. George & Adv. Jose Kappan

This Petition is filed under order 39 Rule 1 of the Code of Civil Procedure, and coming on for final hearing before me on 07.08.2025 in the presence of the above counsel for both sides and having been stood over for consideration till 11.08.2025 and the court on the same day passed the following:

ORDER

1. The petitioner/plaintiff's case, in essence, is that she is the absolute owner in exclusive possession of the plaint A schedule property, an extent of 02 Ares and 02 Sq. Meters in Sy. No. 34/1-1-2-16 of Elappara Village, which

includes buildings bearing Nos. 13/233 and 13/1037. This property was acquired vide Sale Deed No. 2948/2023 dated 03.10.2023 and has been mutated with T.P. No. 13072.

2. The plaint B schedule is described as a passage situated within the A schedule, measuring 5 feet wide on the eastern side and 3 feet wide on the western side, with a length of 37.6 meters (0.6 cents). The petitioner asserts this is the only access to the ground floor and western portion of her building. She alleges that the defendant, who was previously licensed by the former owner to use the passage, carried out unauthorized constructions on it on December 20, 2023. She further alleges that on November 21, 2024, the defendant installed a 4-foot high iron handrail that divides the passage and blocks her access. Following this, she lodged a complaint with the SHO, Peermade, on November 22, 2024. The petitioner contends that the defendant subsequently filed a false suit (O.S. 240/2024) asserting ownership over the very same passage.

3. Upon receiving notice, the respondent/defendant appeared and filed a counter-affidavit. In it, he disputes the petitioner's claims, referring to his own suit (O.S. 240/2024) and contending that the constructions mentioned are on his own property. He denies causing any obstruction or committing any unauthorized acts.

4. During the hearing, the petitioner produced six documents, which were marked as **Exhibits A1 to A6**, and the respondent produced four documents, which were marked as **Exhibits B1 to B4**. These documents have been marked only for the purpose of this interlocutory application. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

From the above pleadings and materials on record, the following points arise for consideration:

5. Points for Consideration:

1. Whether the plaintiff has made out a prima facie case for the grant of temporary injunction and mandatory relief?
2. Whether the balance of convenience lies in favour of granting the interim relief?
3. Whether the plaintiff would suffer irreparable injury if the interim relief is not granted?
4. Whether the grant of interim relief would amount to decreeing the suit at the interlocutory stage or prejudicing the trial on merits?

Point 1

6. Upon scrutiny of the averments, affidavits, and materials, it is clear that the dispute mirrors that in the connected suit O.S. 240/2024, involving overlapping claims on title, boundaries, and the passage (B schedule). Both parties produce documents supporting their respective purchases, but there are contradictions on the exact extents, prior licenses, and the nature of constructions. The allegations of unauthorized acts are reciprocal, with cross-complaints to the police and references to the defendant's prior suit.

7. Applying the principles in *Preston v. Luck* (1887) 27 Ch D 497, a prima facie case requires a serious question to be tried with reasonable prospects for the plaintiff. Here, while the plaintiff's 2023 deed supports her claim to the A schedule, the defendant's objections and documents from earlier transactions (including his 1988 base deed and the plaintiff's alleged predecessor links) create substantial doubt on exclusive title to the passage. The constructions' ownership and the alleged blocking require evidentiary

probe not feasible at this stage. Thus, no unequivocal prima facie case emerges for the plaintiff.

Point 2.

8. The balance of convenience also does not favour interim relief. Granting a mandatory injunction to remove the iron handrails would alter the existing structures prematurely, potentially inconveniencing the defendant if he succeeds, whereas denial preserves the current position, allowing both access pending trial.

Point 3

9. As to irreparable injury, the plaintiff's claims of blocked access can be quantified and compensated if proven, and no non-compensable harm is shown beyond the dispute itself.

10. Crucially, the interim relief sought removal of structures, and prohibition on interference substantially overlaps with the final reliefs in the suit. Per *V.T. Thomas v. Malayala Manorama Co. Ltd.*, Cochin AIR 1988 Ker 291, where the scope of the interim petition aligns closely with the suit and the controversy is narrow, it is preferable to resolve the substantive issues at trial. Likewise, *Metro Marins and Another v. Bonus Watch Co. Pvt. Ltd. and Others* 2004 KHC 1511 cautions against interim orders that effectively decree the suit pre-trial. Granting relief here would prejudice the title and possession questions, especially amid the boundary dispute and connected litigation.

11. Therefore, the plaintiff fails the requisite tests for interim relief.

12. Accordingly, this interlocutory application is dismissed.

However, both parties are directed to maintain the status quo as on date with respect to the disputed B schedule structures (handrails, steps, and verandah) until the disposal of the suit, to prevent escalation.

The suit shall be posted for trial on priority, and the parties are directed to complete pleadings within two weeks and adduce evidence expeditiously.

No costs.

Dictated to the Adalat Ai software, typed by it, corrected by me and pronounced in the open Court on this day, the 11th day of August, 2025.

SD/-
KARTHIK SARANGAN
MUNSIFF

APPENDIX

Petitioner's Exhibits:-

- | | | |
|----|------------|---|
| A1 | 03.10.2023 | : Certified copy of sale deed No. 2948/1/23 SRO, Peermade |
| A2 | 13.11.2023 | : Copy of Land Tax receipt No. KL06020506104/2023 issued from Village Office, Elappara. |
| A3 | 14.11.2023 | : Copy of possession certificate No. 1240/23 issued from Elappara Grama Panchayat. |
| A4 | 07.12.2024 | : Copy of Building tax receipt No. 6062211004109 issued from Elappara Grama Panchayat. |
| A5 | 17.12.2024 | : Copy of ownership certificate of Building No. 13/233 of Elappara Grama Panchayat. |

A6 22.11.2024 : True copy of complaint and Acknowledgment of Peermade Police Station.

Respondents' Exhibits:-

B1 03.03.1988 : Copy of sale deed No. 632/1/1988 issued from SRO, Kattappana.

B2 02.04.2025 : Copy of Tax receipt No. KL06020501503/2025 issued from Village Office, Elappara.

B3 -- : Certified photo copy of Survey Sketch No. 34/1 of Village Office, Elappara.

B4 28.06.2025 : Photos (2 nos) produced by respondents.

Court Exhibits:- : NIL.

Petitioner's Witness:- : NIL.

Respondents' Witnesses:- : NIL.

Court Witness:- : NIL.

Sd/-
KARTHIK SARANGAN
MUNSIFF

//True Copy//

MUNSIFF

Typed by: Sreekala.S.P.
Com. By: Sijimol.P.R.