

IN THE COURT OF THE MUNSIF, ADIMALY

Present: Sri. AYYAPPALAL, MUNSIF.

On Friday the 27th day of March, 2026 / 6th day of Chaitra 1947

Common Order in I.A No. 1/2025 in O.S.73/2025 and I.A.1/2025 in O.S.74/2025

I.A.1/2025 in O.S.73/2025

Petitioner/Plaintiff:

Mini Geohry @ Annamma aged 52, W/o Geohry.M.Varghese, Mekkattil house, Senkulam Kara, Senkulam.P.O., Kunjithanny Village, Devikulam Taluk.

By Advs. Sri. Martindas.V.James, Smt.Jeeja Mulavana, Sri.Vaishnavan.E and Joby.C.Joy.

Respondents/Defendants:

1. Sunilkumar, aged about 63, S/o Vasudevan, Kanicheerakath house, Senkulam.P.O., Senkulam Kara, Kunjithanny Village, Devikulam Taluk.
2. Girija aged about 58, W/o Sunilkumar, Kanicheerakath house, Senkulam.P.O., Senkulam Kara, Kunjithanni Village, Devikulam Taluk.

By Adv. Sri. Pratheesh Prabha.

IA.No.1/2025 in O.S.74/2025

Petitioner/Plaintiff:

Sunilkumar, aged 62 years, S/o Vasudevan.S, Kanicheerakathu house, Sengulam Kara, Sengulam .P.O., Kunchithanny Village, Devikulam Taluk, Pin-685565.

By Adv. Sri. Pratheesh Prabha.

Respondents/Defendants:

1. Geohry.M.Varghese, aged about 63 years, S/o late Varghese, Mekkattil house, Sengulam Kara, Sengulam.P.O., Kunchithanny Village, Devikulam Taluk, Pin-685565.
2. Mini Goehry @ Annamma aged about 52 years, W/o Geohry.M.Varghese, Mekkattil house, Sengulam Kara, Sengulam.P.O.,Kunchithanny Village, Devikulam Taluk, Pin-685565.

By Advs. Sri. Martindas.V.James, Smt.Jeeja Mulavana, Sri.Vaishnavan.E ,

Joby.C.Joy and Tasni Shihab.

These petitions I.A.1/2025 in O.S.73/2025 filed under Order XXXIX Rule1 of C.P.C and I.A.1/2025 in O.S.74/2025 filed under order XXXIX Rule 1,2,3 of the C.P.C and coming before me for hearing on 17/03/2026 and having been stood over the consideration till 27/03/2026 in the presence of the above counsels and the court on the same day passed the following.

COMMON ORDER

1. These are applications filed under Order XXXIX Rule 1 of the Code of Civil Procedure seeking temporary prohibitory injunctions in two cross-suits involving the same parties and subject matter.
2. The averments of the plaintiff/petitioner in O.S. No. 73/2025, in brief, are as follows: The suit is for permanent prohibitory injunction. The plaintiff claims ownership and possession of 1.0787 Hectares of land (Plaint A Schedule) and a residential building therein. She claims exclusive possession of a 10-foot wide mud road (Plaint B Schedule) and 3.75 cents of land (Plaint C Schedule) based on an oral agreement of exchange dated 01/12/2008 with a neighbour, late Sri. Antony. She states that O.S. 23/2025 is pending for the specific performance of said exchange. It is alleged that on 04/10/2025 and 31/10/2025, the defendants attempted to trespass and drive vehicles through these properties, threatening to concrete the same.

3. The respondent/defendant in O.S. No. 73/2025 filed an objection contending that the suit is frivolous. They deny the oral agreement and assert that the B schedule road is not an end to the plaintiff's property but extends to the properties of the defendants and other families who have used it as a matter of right since 2009.
4. The averments of the plaintiff/petitioner in O.S. No. 74/2025, in brief, are as follows: The plaintiff claims ownership of 1.10 Acres of land (Plaint A Schedule). He asserts a right to use the road (Plaint B Schedule) based on a written agreement dated 30/06/2009 executed by the late Sri. Antony for a consideration of ₹50,000. He claims the road is used by more than 10 families and creates a public right/easement. He alleges that on 30/10/2025, the defendants attempted to reduce the width of the road and destroy the boundary fencing using machinery.
5. The respondent/defendant in O.S. No. 74/2025 filed an objection contending that the agreement produced by the plaintiff is forged and fabricated. They argue that even if the agreement is accepted, the description therein does not match the alignment of the road claimed by the plaintiff.
6. Heard the learned counsel on either side and perused the records.

7. The following points arise for determination:

1. Whether the respective petitioners have established a prima facie case?
2. Whether the balance of convenience lies in favor of the petitioners?
3. Whether irreparable injury will be caused if the injunction is refused?
4. What order?

8. **Points 1 to 3:** Regarding the legal principles governing interlocutory relief, in **P. Muthukoya v. M. Muthukoya [1988(1) KLT 664]**, it was held that:

"There must be some material on record in support of the claim of legal right put forward by the person who seeks interlocutory relief of injunction: such material must, either by itself or in the light of material placed before the court by the opposite party, satisfy the court that it could, at that stage and under those circumstances act on it. This is precisely what can be comprehended by the expression "prima **facie case**". Furthermore, the Hon'ble High Court of Kerala in **Sankara Pillai v. Inez Rosario (AIR 1971 Ker. 27)** held that; "before a temporary injunction is granted, therefore a court must be satisfied that (1) the applicant has a prima facie case, (2) protection is necessary from the species of injury known as irreparable, before legal right can be established, and (3) the mischief or inconvenience

likely to arise from the withholding of injunction is greater than granting it".

9. The learned counsel for the plaintiff in O.S. 73/2025 argued vehemently that the plaintiff has title over the property described in the schedule, while the defendant in that case has no rights to it. Conversely, the counsel for the defendant in O.S. 73/2025 argued passionately that the plaintiff does not have any rights and that her claim is based on litigation (O.S. 23/2025) that has not yet been adjudicated, meaning she cannot claim a right that has not been decided by a court. In O.S. 74/2025, the counsel for the plaintiff argued that he has title and the right to use the way as per the agreement dated 2009. However, the counsel for the defendant in O.S. 74/2025 argued that, even if the 2009 agreement is accepted, it only grants the right to use the property in a north-south direction via the western side of Antony's property, and not in an east-west direction through the northern side.
10. Upon adjudicating these rival contentions, it is observed that both parties claim rights flowing from the same predecessor-in-interest, late Sri. Antony, but based on different documents and alignments. The plaintiff in O.S. 73/2025 admits that her rights are currently the subject of a pending specific performance suit (O.S. 23/2025). As argued by the defense, a right that is

yet to be established through a decree cannot prima facie support a claim of exclusive possession to the exclusion of others who hold a written agreement for usage. Conversely, the dispute regarding the alignment under the 2009 agreement indicates that the exact geography of the right of way is a matter for trial. At this interlocutory stage, neither party has established an absolute and undisputed right to alter the current nature of the property.

11. As regards the balance of convenience and irreparable injury, allowing any party to change the physical nature of the road (such as by concreting or extracting soil) before the alignment is fixed would lead to irreparable injury. Similarly, blocking the existing mode of access would cause greater hardship than maintaining the status quo. Following the dictum in *Sankara Pillai*, the court finds that preserving the current state of the property is necessary to prevent further mischief.

12. **Point No4:** In the result, I.A. No. 1/2025 in O.S. No. 73/2025 and I.A. No. 1/2025 in O.S. No. 74/2025 are disposed of with the following directions:

1. Both parties are hereby directed to maintain the **status quo** regarding the physical nature, width, and alignment of the disputed pathway as it exists today, until the final disposal of the suits.
2. Neither party shall commit any act of waste, extract soil, or alter the

nature of the B and C schedule properties (in O.S. 73/2025) or the B schedule road (in O.S. 74/2025) by way of concreting or tarring.

3. The parties are restrained from obstructing the existing mode of passage used by either side until the rights are fully adjudicated.

4. Parties shall bear their respective costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on the 27th day of March, 2026.

**AYYAPPALAL,
MUNSIFF.**

**AYYAPPALAL,
MUNSIFF.**