

IN THE COURT OF THE MUNSIF, KOLLAM**Present : Smt. Ragi.S., Principal Munsiff**On Monday, the 22nd day of September, 2025/31st day of Bhadra, 1947.**IA.No. 6/2024 in OS.349/2024**BetweenPetitioners/Defendants: -

1. Anil Kumar.R., aged 57 years,
S/o Rajappan, Ananthapuri ,
Uliyacovil Nagar 158, Uliyacovil, Kollam
2. Disha, aged 52 years, W/o Anil Kumar,
Ananthapuri, Uliyacovil Nagar 158,
Uliyacovil, Kollam

By Advs. Pallimon S.Sreekumar &
Asha Sreekumar.AndCounter Petitioners/
Plaintiffs:-:-

1. D. Satheeshan, aged 72 years,
D/o Damodaran, Lekshmi Parvathi House,
Uliyacovil PO, Kollam
2. Ashok Kumar, aged 62 years,
S/o Arjunan, Theramthodam, Vempalakara,
Kuttikada PO, Mayyand , Kollam. Residing
at Annuvilla, Ulliyakovil.P.O, Kollam.
3. Smitha.S, aged 44 years,
W/o Late Sineesh Lal, Harisree,
Uliyacovil PO, Kollam

By Advs. A.Shanavaskhan & Nithin.G.R.

This petition is filed by the petitioners/defendants u/o 39 Rule 1 and Sec. 151 of the Code of Civil Procedure for injunction. This petition is coming on for final hearing before me on 20-09-2025 and the court on 22-09-2025 passed the following:-

ORDER

This IA has been filed by the petitioner/defendant U/O.39 R.1 of Code of Civil Procedure, for interim mandatory injunction.

2. The petitioner/defendant contends that the suit has been filed for a permanent prohibitory injunction restraining the defendants from committing waste in the plaint D schedule pathway, from trespassing upon it, from erecting any compound wall or gate across the pathway, from keeping vehicles obstructing the pathway, or from doing any act detrimental to the peaceful possession of plaintiff's property. The defendants had installed a gate on their western boundary to use the D schedule pathway for ingress and egress. The plaintiffs obstructed this by constructing a wall across the said gate while defendants were out of station. The defendants allege that plaintiffs suppressed material facts in the suit. They state that the Kollam Corporation had granted sanction to install the gate and to access the corporation road (D schedule) on the western side. However, the plaintiffs constructed a wall across the defendants' gate, thereby obstructing their access to the corporation road on the western side. The defendants claim that the plaintiffs have no right to construct such a wall. The defendants are willing to demolish the wall across the gate at their own expense but reserve the right to recover the costs from the plaintiffs. Hence, the present IA has been filed seeking interim mandatory injunction to demolish the wall constructed by the plaintiffs across the gate and to restore the defendants' access to the corporation road (D schedule).

3. The respondents/plaintiffs filed objection contending that all the averments and allegations in the petition are false hence denied. They argue that the proceedings are based on unilateral, misleading assertions, rendering the claim untenable in law and fact. According to them, the D schedule property has been used by the plaintiffs as a pathway. The area has remained closed for a long period, and a KSEB post has also been erected at the same spot. The respondents/plaintiffs maintain that there is no motive to make false statements. They further state that the D schedule property is the only access to their property. In the light of these facts, the respondent/plaintiff prays for dismissal of the entire claim and the present proceedings.

4. The only point that arise for consideration is:

1. Whether the petitioner/1st defendant is entitled to an order of interim mandatory injunction to remove the wall built by the respondents/plaintiffs, across the gate installed by the petitioners/defendants and thereby denied the petitioners/defendants lawful access to the corporation road lying on the immediate western side of the petitioners/defendants properties as prayed for?

5. Heard the learned counsel for the petitioners/defendants and the learned counsel for the respondents/plaintiffs.

6. **The Point:** The relief sought in this IA is to pass an interim mandatory injunction directing removal of the wall built by the plaintiffs across the gate installed by the defendants, which obstructed the defendants lawful access to the corporation

road situated on the immediate western side of their property. The plaintiffs, on the other side, have instituted the present suit seeking a permanent prohibitory injunction restraining the defendants from committing waste in the D schedule pathway, from trespassing upon it, from erecting any compound wall or gate across it, and from placing vehicles or committing any acts that would obstruct the pathway or interfere with the peaceful enjoyment of the D schedule properties. The plaintiffs claim that the defendants' actions are unlawful and detrimental to their property rights and enjoyment, and therefore seek injunction relief along with consequential remedies. Conversely, the defendants contend that they had installed the gate on their western boundary to use the D schedule pathway for ingress and egress, with the sanction of Kollam Corporation. They allege that the plaintiffs unlawfully obstructed the pathway by constructing a wall across the gate while the defendants were away, thereby suppressing material facts in their suit. The defendants maintain that the plaintiffs have no legal right to interfere with their access, and that the D schedule pathway is their only means of access to the corporation road lying to the west of their property. They argue that the wall erected by the plaintiffs should be demolished under mandatory orders of the court, since, the obstruction causes irreparable loss and hardship to them. They further submit that they are willing to demolish the wall at their own expense while reserving the right to recover costs from the plaintiff, and contend that the balance of convenience lies in their favour.

7. In **Kishore Kumar Khaitan and Another V. Praveen Kumar Singh** 2006

(3) SCC 312 the Hon'ble Supreme Court held that "*an interim mandatory injunction*

is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie materials clearly justify the finding that the status quo has been altered by one of the parties to the litigation and the interest of justice demanded that the status quo and be restored by way of an interim mandatory injunction”. Furthermore, in **Purshottam Vishandas Raheja and Another V. Shrichand Vishandas Raheja (D) through Lrs. and Others** in 2011 (6) SCC 73 the Hon’ble Supreme Court held that “the relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

1. The plaintiff has a strong case for trial. ie, it shall be of a higher standard than a prima facie case ie, normally required for a prohibitory injunction.
2. It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

3. *The balance of convenience is in favour of the one seeking such relief. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing actions, applying them as pre-requisite for the grant or refusal of such injunctions would be sound exercise of a judicial discretion”.*

8. The plaintiffs’ case is that the plaintiff A, B and C schedule properties are owned and possessed by plaintiffs 1 to 3, respectively. For ingress and egress of the aforesaid properties from the panchayath road, a pathway having 3.5 metres in width in east-west direction is provided in their title deeds, which is the plaintiff D schedule way. According to the plaintiffs, the defendants are the owners of the adjoining property on the eastern side of the plaintiff A, B, C schedule properties, as well as on the eastern side of the D schedule pathway. The plaintiffs’ properties and the defendants’ properties are separated by well defined boundaries. The plaintiffs assert that the plaintiff D schedule pathway is only used by them, whereas the defendants have their own rightful pathway with a width of 3 metre lying on the eastern side of their property, which gives them direct road frontage. However, on 15/04/2024, the 1st defendant, along with his men demolished the eastern boundary compound wall of the plaintiffs’ property, and they continue to keep it open, thereby trespassing into the

plaint D schedule pathway. Hence, the present suit is filed by the plaintiffs to restrain the defendants and their men from committing any waste in plaint D schedule pathway and from trespassing or erecting any compound wall or gate across the D schedule pathway or keeping any vehicles by obstructing the pathway and from doing any act which is detrimental to the peaceful enjoyment of the plaint schedule properties owned by the plaintiffs.

9. The defendants filed a written statement along with a counterclaim, contending that the D schedule pathway is maintained by the Kollam Corporation and that is included in the asset register of the corporation. The D schedule pathway is used by all family members owning properties on both the eastern and western sides. The pathway was interlocked using corporation funds. According to the defendants, they obtained permission from the corporation to install a gate in front of the eastern side of their property, providing access to the D schedule pathway. The defendants installed a gate on the aforesaid western boundary of their property and began to use the public corporation road for the conveyance of their vehicles as a matter of right. However, the plaintiffs constructed a compound wall across the gate, thereby obstructing the entry to the D schedule pathway in the absence of the defendants on 24/04/2024. As a result, the defendants' vehicles are now parked on the road. The defendants contend that the D schedule pathway is unquestionably a corporation road, and therefore, the plaintiffs have no right to obstruct their use of it.

10. The commissioner advocate visited the plaint schedule properties on 11/05/2024 and again on 08/03/2025, and filed reports along with a mahazar and

rough sketch. In the report, the commissioner identified and demarcated the plaint A, B and C schedule properties, as well as the plaint D schedule pathway. As per the commission report, the D schedule pathway commences from the Uliyakkovil-Pallikkal road and runs in a south-north direction. The pathway has a total length of 54.58 metres, with a width of 3.87 metres at the starting point and 3.16 metres at the northern end. It is further reported that the pathway is paved with interlock tiles and that one electric post is situated on the north-eastern side of the pathway, another slightly to the south, and yet another on the public road. The commissioner also noted that, on the western side of the defendants' property, a newly constructed wall of 4.27 metres length exist, near the 1st electric post, which has been installed 1.30 metres northward from the southern end of the said wall.

11. However, the report does not clarify whether the newly constructed wall was put up by the plaintiffs or the defendants nor whether it was constructed prior to or after the filing of the present suit. No evidence has been produced by the defendants before this Court in this regard. It is also pertinent that the relief sought in the counterclaim filed by the defendants is identical to the relief claimed in the present IA. If, at this preliminary stage itself, the same relief is granted in this IA, it would amount to deciding the counterclaim prematurely, without recording any evidence, thereby causing serious prejudice and injustice to the plaintiffs. In view of the facts and circumstances stated above, it can be concluded that the relief sought by the defendants through their counterclaim is identical to the relief claimed in the present IA. Granting such relief at the preliminary stage, without benefit of evidence,

would amount to prejudging the counterclaim and would inevitably result in prejudice and injustice to the plaintiffs. Hence, it is just and necessary that the relief prayed for by the defendants at this stage be rejected, and the matter be proceeded with in accordance with law after recording evidence. Thus, the point is found against the petitioners/defendants accordingly.

In the result, IA is dismissed. No costs.

(Dictated to the C.A, transcribed and typed by her, corrected and pronounced by me in open court on this, the 22nd day of September, 2025).

Sd/-
Ragi.S.,
Principal Munsiff.

APPENDIX :- Nil

Id/-
Principal Munsiff

// True copy//

Sd/-
Ragi.S.,
Principal Munsiff

Typed by : Marybindu. C.
Compared by : Sandhya.S.