

IN THE COURT OF THE MUNSIF, KOLLAM

Present : Smt. Ragi.S., Principal Munsiff

On Wednesday, the 27th day of November, 2024/6th day of Aghrayana, 1946.

IA.No.01/2020 in OS. 848/2018

Between

Petitioner/Plaintiff:-

Arya Arjunan, aged 30 years,
W/o Lalu, Chittilakattuthodiyil Veedu,
Mathilil Cherry, Mathilil P.O,
Thrikkadavoor Village, Kollam Taluk.

By Adv.V.Vinayachandran.

And

Respondents/Defendants:-

1. Raju, aged 48 years, S/o Balachandran,
Sree Nilayam, Mathilil Cherry,
Mathilil P.O, Thrikkadavoor Village,
Kollam Taluk.
2. Rajesh, aged 44 years, S/o Balachandran,
Chittilakattuthodiyil Veedu, Mathilil Cherry,
Mathilil P.O, Thrikkadavoor Village,
Kollam Taluk.
3. Saji, aged 39 years, S/o Balachandran,
Chittilakattuthodiyil Veedu, Mathilil Cherry,
Mathilil P.O, Thrikkadavoor Village,
Kollam Taluk.
4. Usha, aged 54 years, D/o Balachandran,
Manu Nivas, Mathilil Cherry, Mathilil P.O,
Thrikkadavoor Village, Kollam Taluk.
5. Sobhanakumari, aged 52 years, D/o Santha,
Chittilakattuthodiyil Veedu, Mathilil Cherry,
Mathilil P.O, Thrikkadavoor Village,
Kollam Taluk.

By Adv. Sicin.G.Mundakkal.

This petition is filed by the Petitioners/plaintiffs u/o XXXIX Rule 1 and Sec.151 of the Civil Procedure Code for Interim Mandatory Injunction and this petition coming on for hearing before me on 19-10-2024 and the court on 27-11-2024 passed the following:-

ORDER

This IA has been filed by the petitioner U/o.39 R.1 of Code of Civil Procedure for an interim mandatory injunction order.

2. **The Petition averments is brief are as follows:-** The petitioner is the plaintiff in the above numbered suit. Petitioner's husband named Lalu is the owner of plaint schedule property, having an extend of 2.20 ares of land in resurvey No.480/12 in block No. 2 of Thrikkadavoor Village, as per sale deed No. 1031/2010 of Anchalumoodu SRO. He purchased the said property from his mother named Santha. Smt. Santha and her husband Radhakrishnan were the prior owners of 8 cents of land in resurvey No. 480/2012 in block No.2 of Thrikkadavoor Village, as per settlement deed of the year 1963 of Kollam SRO. Subsequently, the said Santha became the sole owner of the plaint schedule property which is a part of the said 8 cents of land. Said 8 cents of land situates on the western portion of 14 cents of land in old survey No. 7406 of Thrikkadavoor Village. Smt. Sumathi, mother of the said Santha owned 6 cents of property from the above stated 14 cents of land. She sold out 4 cents at its eastern side to strangers and the 2 cents of land remained with the western side of 8 cents of property. Petitioner's husband purchased the eastern portion of the said 8 cents of land. There exist a way having a width of 2 metres from the northern public

road to the properties of D1 and D4. The said way and the plaint schedule property were demarcated by boundary stones. The petitioner along with the defendants are using the said way as a cartable way for the ingress and egress to their respective properties. An iron gate having two wings was installed at the entrance portion of the said way from the northern public road.

3. On 01/08/2020, the 1st and 4th defendants obtained consent from petitioner's husband to construct boundary wall on the eastern boundary of plaint schedule property. On 03/08/2020, they started the construction work by encroaching the eastern portion of the plaint schedule property at a width of 1½ metre. The respondents threatened the petitioner and constructed boundary wall on the eastern portion of plaint schedule property leaving some area at the northern side. The respondents widen the way at a width of 3½ metres by annexing 1½ metres of the eastern side of plaint schedule property. Thereafter, the respondents removed the iron gate installed at the northern portion of the said way and replaced it on the northern side of the newly constructed boundary wall in north south direction as entrance to plaint schedule property from the private way. One wing of the said gate is affixed at the eastern part of the existing northern boundary of the plaint schedule property and other wing is affixed at the iron pillar installed on the northern portion of the newly constructed compound wall. They further installed another gate at the said way of their own use. Defendants act obstructed the free vehicular access of the petitioner to the plaint schedule property. Now it is not possible to open the southern wing of gate installed for the plaint schedule property without unlocking the gate installed for the

defendants and it is also not possible to unlock the gate installed for the defendants from the plaint schedule property.

4. Respondents have no right to construct boundary wall and installed a gate on the plaint schedule property. The installation of this gate is to be removed, hence the IA is filed to give direction to the 1st and 4th respondents by a mandatory injunction to remove the new iron gate installed on the northern portion of the way situated on the east of the plaint schedule property or direct them to connect the southern end of the said gate with the northern part of the newly constructed boundary wall in the eastern portion of the plaint schedule property till the disposal of this suit. Instead of any part of the iron gate installed for the plant schedule property and implement the said order through the Station House Officer of the Anchalumoodu Police Station if the said respondents are not willing to comply the order.

5. The 1st respondent filed objection by contending that the petitioner is alleging violation not on his plaint schedule property, but on the property lying at the eastern side of the plaint schedule property measuring around 2 cents which belonged to late Sumathi, the grandmother of the petitioner and the 1st respondent. The petitioner has encroached upon the said property and constructed a compound wall by blocking the pathway granted to the 1st respondent by his mother Santhamma. First respondent obtains title to the extend of 5 cents of property by virtue of sale deed No. 1317/2002 of Anchalumoodu SRO purchased from his mother Santhamma and the 1st respondent is paying taxes under resurvey No. 480/14 in block No. 2 of Thrikkadavoor Village. When the 1st respondent purchased the property from his

mother, a pathway was reserved through the eastern side of the remaining property having 2 links width. Said remaining extend of 5 cents was later transferred by the mother to the petitioner in the year 2010 by executing sale deed No. 1031/2010 of Anchalumoodu SRO. Thus the eastern boundary of the petitioner's property is the pathway reserved for the 1st respondent by his mother. The petitioner has encroached the said pathway and also the property lying further east to his property which is not at all the plaint schedule property. The eastern boundary of plaint schedule property has no compound wall and the petitioner admits a pathway having 2 metre width for the 1st and 4th respondents for their ingress and egress. The petitioner has no property beyond the eastern pathway. As per the commission report, there is compound wall for the plaint schedule property at the eastern side. This will go to show that the petitioner has created changes in the plaint schedule property after the institution of suit.

6. After the institution of suit the petitioner had altered the plaint schedule property by encroaching upon the property of Late Sumathi, who passed away and her legal heirs are out of Kerala. Using the said opportunity, the petitioner has increased the area of his property by encroaching upon the pathway of the 1st respondent as well as the property of Late Sumathi. Presently, the 1st and 4th respondents are constrained to have their passage through the narrow portion of the property of their grandmother Sumathi after encroachment made by the petitioner. The petitioner has blocked and encroached the pathway of the 1st respondent which is an easement by grant. The petitioner has failed to preserve the subject matter of the

suit and hence no interim mandatory injunction could be granted. The position of the plaint schedule property and suit has been changed by the petitioner itself and hence there cannot be a violation of injunction. The injunction order passed in this suit also has become infructuous. The plaint schedule property was only 5 cents at the time of filing the suit, but now it is more than 5 cents by encroachment. The alleged construction and fixing of gate are taken up in the property of Sumathi and as such there is no violation of injunction as alleged. The 1st respondent has not encroached upon any portion of the plaint schedule property. The entire plaint schedule property is having panchayath road frontage at northern side and hence the petitioner has nothing to do with the property lying further east of his property after the pathway of 1st and 4th respondents. In fact, it is the plaintiff who has close down the pathway of the 1st respondent by his illegal actions. First respondent shall also filed Survey Commission to determine the boundaries and for restoring the pathway. The petitioner is not at all having any prima facie case or balance of convenience in his favour. Hence prayed for the dismissal of the IA with the cost of the 1st respondent.

7. Based on the above rival contentions, the following points are raised for consideration:

1. Whether the petitioner entitled to get an order of interim mandatory injunction as prayed for?
2. Reliefs and costs?

8. For the purpose of IA, Exts. A1 and A2 and C1 series were marked.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

10. **Point No. 1:** The extract of the relief sought in this IA is depicted as here under “.....the Hon’ble Court may kindly be pleased to direct the 1st and 4th respondents/defendants by a mandatory injunction to remove the new iron gate installed on the northern portion of the way situated on the east of the plaint schedule property or direct them to connect the southern end of the said gate with the northern part of the newly constructed boundary wall in the eastern portion of the plaint schedule property till the disposal of the suit instead any part of the iron gate installed for the plaint schedule property and implement the said order through the Station House Officer of the Anchalumoodu Police Station if the said respondents are not willing to comply the order”. In **Dorab Caswasji Warden Vs Coomi Sorab Warden** and others, 1992 SCC 117 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. That is, 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 or complete or absolute rules, and there may be exceptional circumstance needing action, applying them as pre requisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion”.

11. Based on the case law mentioned above, examine the facts of the instant case. Petitioner’s case is that the 1st and 4th respondents constructed a boundary wall on the eastern boundary of plaint schedule property encroaching 1½ metres of property from the eastern side and thereby they widen the way at a width of 3½ metres. Thereafter, the respondents remove the iron gate installed at the northern portion of the said way and replaced it on the northern side of the newly constructed boundary wall in north south direction an entrance to plaint schedule property from

the private way. According to the petitioner, one wing of the said gate is affixed at the eastern part of the existing northern boundary of the plaint schedule property and the other wing is affixed at the iron pillar installed at the northern portion of the newly constructed compound wall. They further installed another gate at the said way for their own use. By the above said acts of the respondents the vehicular access of the petitioner to the plaint schedule property was obstructed. Now it is not possible to open the southern wing of the gate installed for the plaint schedule property without unlocking the gate installed for the respondents and it is also possible to unlock the gate installed for the respondents from the plaint schedule property. Hence the installation of the gate is to be removed. On the other hand, the respondents contended that it is the petitioner constructed a compound wall by encroaching the eastern 2 cents of property which belonged to Late Sumathi, the grandmother of the petitioner and the 1st respondent and thereby blocked the pathway granted to the 1st respondent by his mother Santhamma. According to the 1st respondent he purchased the property from his mother, a pathway was reserved through the eastern side of the remaining property having 2 links width. The remaining extend of 5 cents was later on transferred by the mother to the petitioner in the year 2010 by executing a sale deed No. 1031/2010 of Anchalumoodu SRO. Thus the eastern boundary of the petitioner's property is the pathway reserved for the 1st respondent by his mother. The petitioner has encroached the said pathway and also the property lying further east to his property which is not all the plaint schedule property.

12. Ext. A1, copy of sale deed No. 1031/2010 and Ext. A2 copy of land tax receipt would shows that the petitioner's husband is the title holder of the plaint schedule property, having 2.02 ares (5 cents of property) and thereby the petitioner is in possession and enjoyment of the same. The eluka description of A1 deed and the plaint schedule description also shows that on the eastern side of plaint schedule property there is a pathway having a width of 2 metre. In Ext. C1 series, the commission advocate reported that on the eastern boundary of the plaint schedule property, a 2 wings gate of 6 feet in length has been installed starting from the north eastern corner towards south. Subsequently, a wall has been constructed around it towards the south and west. On the western side of the disputed property, approximately in the middle, a gate has been constructed that opens towards the west. On the eastern side of the disputed property, a folding gate of 6 feet in length has been installed on the northern boundary of the road. The main issue is that the respondents gate is built in a way that blocks part of the petitioner's gate, making it difficult to access the plaint schedule property.

13. On perusal of plaint averments, it is observed that the petitioner claims that there is no compound wall on the eastern boundary of the property. However, the commission report shows that a compound wall has been constructed after the institution of this suit. This suggest that the petitioner has made alterations to the property. According to the respondent, the petitioner constructed compound wall on the eastern side of plaint schedule property by encroaching some portions of the property belonging to Mrs.Sumathi, the grandmother of both the petitioner and the 1st

respondent. The aforesaid allegation only can be determined after taking evidence in this case. It is settled that temporary mandatory injunction can be granted only in cases of extreme hardship and compelling circumstance, and mostly in those cases when status quo existing on the date of institution of the suit is to be restored. In **Mohammad Mehtab Khan and others Vs Khushnuma Ibrahim and others**, AIR 2013 SC 1099 the Hon'ble Supreme Court held that "*grant of mandatory interim relief requires the highest degree of satisfaction of the Court, much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power, the governing principles were of would hardly require a reiteration in as much as the same which has been evolved by this Court in **Dorab Caswasji Warden Vs Coomi Sorab Warden and others** has come to be firmly embedded in our jurisprudence*".

14. Therefore, it is the burden of the petitioner to prove before the Court that the petitioner has a strong case for trial, ie, it shall be of a higher standard than a prime faice case ie, normally required for a prohibitory injunction. Here in the instant case, C1 series itself made clear that the position of the plaint schedule property ante suit has been changed by the petitioner itself and hence there cannot be a violation of injunction. In **Sadasiva Panicker and others Vs Suresh Kumar**, 2012(3) KLT 670, the Hon'ble High Court held that "*it is trite law that interim mandatory injunction can be granted only to restore the status quo ante as on the date of suit*". Here in the instant case, the petitioner has failed to preserve the subject matter of the suit and hence interim mandatory injunction couldn't be granted at this stage. Therefore, it is

concluded that the petitioner is not entitled to get an order of interim mandatory injunction as sought for. Thus, Point No. 1 found against the petitioner.

Point No.2: In the result, IA dismissed. No costs.

(Dictated to the C.A, transcribed and typed by her, corrected and pronounced by me in open court on this, the 27th day of November, 2024).

Sd/-
Ragi.S.,
Principal Munsiff.

APPENDIX :

Exhibits marked from the side of the Petitioner/Plaintiff:-

A1	13-05-2010	Copy of Sale Deed No. 1031/2010
A2	10-03-2017	Land Tax Receipt

Exhibits marked from the side of the Respondent/Defendant:- Nil

Court Exhibits : -

C1 Series:-

C1	Commission report
C1(a)	Mahazar
C1(b)	Plan and Rough Sketch.

Witness from both sides :- Nil

Id/-
Principal Munsiff

// True copy//

Ragi.S.,
Principal Munsiff

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