

IN THE COURT OF THE MUNSIFF, PUNALUR
PRESENT :-Smt. Reshma R.S, Civil Judge, Junior Division
Tuesday the 7th day of April 2026, 17th day of Chaithra, 1948.

IA 01/2026 in OS 49/2026

Between

Petitioner: Lekshmi. A, aged 34 years, D/o Viju. A
Plaintiff Residing at B-18, Lakshmi Nagar,
Pattom P.O, Thiruvananthapuram- 695004,
Represented by her duly constituted
Power of Attorney Holder, Viju. A,
aged 64 years, S/o Appukuttan Nair (Late),
residing at B- 18, Lakshmi Nagar,
Pattom P.O, Thiruvananthapuram- 695004,

(By Adv. Pradeep Kumar C.M)

And

Defendants: 1. K. Ani, aged 58 years,
Counter-Petitioners S/o Karthikeyan Nair (Late),
Residing at Anil Bhavan, Manchalloor,
Pathanapuram P.O, Kollam-689695.
2. Sriram, aged 34 years, S/o K. Ani,
Residing at Anil Bhavan, Manchalloor,
Pathanapuram P.O, Kollam-689695.

(By Adv. T.K. Firoze Khan)

This petition is coming on for hearing before me on 07.04.2026 and on the same day court passed the following.

ORDER

Application filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908.

2. **The application averments, in brief, are as follows:** The applicant is the plaintiffs in the suit. The respondents are the defendants. The suit is filed for a perpetual injunction. The plaint A schedule property belongs to the applicant as per the settlement deed No. 185/2025 executed by her mother, Smt. Anila. Anila

obtained title over that property from her mother, Indira Devi, as per the settlement deed No. 861/2009. There exist residential buildings and a shop room. Since the date of execution of the settlement deed the plaintiff has been in the possession and enjoyment of the plaint A schedule property. Plaint B and C schedule properties belongs to the respondents, which is situated on the northern boundary of plaint A schedule property. The plaint A schedule property lies from east to west from the road. The shop building has its northern wall along the northern boundary, which starts at the eastern side road and has an approximate length of 25 meters. After the said building, a basement for the boundary wall, measuring 45 meters in length, lies from east to west along the southern boundary of the defendant's property. The basement for the compound wall and the shop building was constructed by the applicants' grandparents more than 45 years ago. On 26/01/2026, the applicant started to construct the compound wall above the basement and also necessary repairs of the shop building. On 26/01/2026, the respondents, without any right over the plaint A schedule property, trespassed into the plaint A schedule property and unlawfully obstructed the construction and repair works. They have no right to do so. The applicant has a strong prima facie case. The balance of convenience favours the applicant. If the respondents are not restrained, that will cause irreparable injury and hardships to the applicant. Hence, this application.

3. **The respondent objection contending the following:** The suit is not maintainable either in law or on the facts. It is filed suppressing material facts. The extent of the plaint A schedule property is erroneous. The plaint A schedule property does not have an extent of 31.16 Ares, as the applicant lost a substantial portion of

her property for the widening of the southern side road. Originally, there was a narrow ridge; now, the road is 12 feet wide. The mother of the plaintiff and the 1st respondent voluntarily contributed land from their properties for the formation of that road. At the time of execution of the settlement deed No. 961/2009, no proper survey was conducted, and the land already surrendered for widening the road was not excluded from the total extent. There is no shop building in plaint A schedule property. The respondents dispute the boundaries of plaint A schedule property. The northern boundary of plaint A schedule property, the basement, forms part of the respondents' property. The applicant has no right over that basement, which belongs to the respondents and lies at the same level as that of plaint B and C schedule properties. The applicant has no right to construct anything in that basement. If the applicant wants to construct her northern boundary, she is at liberty to do so south of the existing basement, within her own property. The southern boundary of respondents' property comprises the foundation situated on its southern side. The applicant has no right, title or authority to encroach on the said southern boundary. The respondents are entitled to prevent trespass on their property and to take all lawful measures to safeguard it. The applicant does not have a prima facie case. The balance of convenience favours the respondents. The respondents never committed any illegal activities. If this application is allowed, it will cause irreparable injury and hardship to the respondents. Hence, this application is liable to be dismissed with costs.

4. From the side of the applicant, Exts. A1 to A5 documents were marked. From the side of the respondents, Exts. B1 to B4 documents were marked. Ext. C1 series was also marked.

5. Heard both sides and perused all the available records.

6. The points that arise for consideration in this application are as follows:

- i. Whether the applicant has a prima facie case in her favour?
- ii. Whether the balance of convenience is in favour of the applicant, and whether the denial of the injunction will cause irreparable injury and hardships to the applicant?
- iii. Relief and costs?

7. **Point Nos. 1 to 3:** - These points are considered together for brevity, convenience, and to avoid repetition of facts. Here, there is no title dispute between the parties. The defendants do not challenge the applicant's title over the plaint A schedule property. The only challenge in that regard was that the plaint schedule description was incorrect. It is the specific case of the respondents that the plaintiff lost a substantial portion of her property due to the widening of the road on the southern side. However, that contention cannot be considered at this stage of the proceedings, as a proper survey is essential to identify anomalies in the plaint schedule description. However, the respondents did not dispute the applicant's title.

8. The plaint B and C schedule properties belong to the respondents, and they are situated on the northern side of the plaint A schedule property. Here, the only grievance of the applicant is that the respondents are interfering with the

construction of the compound wall on the basement, which was built 45 years ago by the applicant's grandparents. The disputed portion is the northern boundary and the basement on that side. According to the applicant, her grandparents constructed the basement. However, it is the specific case of the respondents that the northern side boundary wall of plaintiff A schedule property forms part of the respondent's property, and if the plaintiff wants to construct a compound wall on that side, she is at liberty to construct a compound wall on her property and not on the basement.

9. As there is no other dispute between the parties, the only thing to be considered is whether the applicant is entitled to construct a boundary wall on the basement on the northern side of plaintiff A schedule property. Here, the defendants are disputing the applicant's right over that basement. Now, it is important to verify whether the applicant produced any documents before the court that show her right over the northern side basement. The applicant produced a copy of the power of attorney dated 30.05.2025, which was marked as Exhibit A1. Exhibit A2 is the copy of the Settlement deed number 185/2025. Exhibit A3 is a copy of the settlement deed executed by Indira Devi in favour of Anila, Exhibit A4 is the possession certificate dated 12.03.2025. Exhibit A5 is the Land Tax receipt dated 06.03.2025. Exhibit A6 is the Building Certificate dated 08.05.2025. Exhibit A7 is the proceedings of the Survey Superintendent.

10. A perusal of Exhibit A1 to A7 makes it clear that there are no materials on the record that substantiate the plaintiff's case regarding her right over the northern side of the basement. There is no dispute that the basement was old. The advocate commissioner deputed by this court visited the plaintiff schedule properties and filed

the commission report before the court. None of the parties filed any objection to the commission report. The advocate commissioner identified the plaint schedule properties. The advocate commissioner identified the shop room. It can be seen that there is a definite boundary separating plaint A, B, and C schedule properties. However, the dispute now concerns the applicant's right to construct a compound wall on the existing northern side basement. As there is a specific challenge regarding the applicant's right over that basement and as the applicant failed to establish her right over the northern side basement at this stage, this Court is of the view that the applicant failed to establish a prima facie case in her favour. Hence, point number 1 is answered accordingly.

11. It is a settled point of law that if the applicant fails to establish a prima facie case in her favour, then the other two essential ingredients of Order XXXIX Rule 1 need not be considered. Thus all the points are answered accordingly.

In the result; this application is dismissed. There shall be no order as to costs.

Pronounced in open court on this, the 7th day of April 2026

Sd/-
CIVIL JUDGE (Junior Division)

Appendix:

Exhibits for the Plaintiff

A1	30.05.2025	Copy of the Power of Attorney.
A2	06.02.2025	Copy of the settlement deed No.185/25.
A3	08.06.2009	Copy of the settlement deed executed by

		Indira Devi in favour of Anila.
A4	12.03.2025	Possession Certificate.
A5	06.03.2025	Land Tax receipt receipt No.KL 02050501738.
A6	08.05.2025	Building Certificate.
A7	05.06.2025	Proceeding of the survey superintendent.

Exhibits for the Respondents

B1	16.09.2015	Copy of the Settlement Deed No. 1341/1/2015.
B2	20.06.2009	Copy of the Settlement Deed No. 990/1/2009.
B3	03.04.2025	Land Tax receipt.
B4	14.05.2025	Land Tax receipt.

Court Exhibits

C1	12.03.2026	Report prepared by the Adv. Commissioner Adv. Baiju Krishnan.
C1(a)	05.02.2026	Mahazar prepared by the Adv. Commissioner Adv. Baiju Krishnan.
C1(b)	05.02.2026	Rough sketch prepared by the Adv. Commissioner Adv. Baiju Krishnan.

Id/-
Civil Judge (Junior Division)

//True Copy//

Typed by : Praseena. M.L
Compared by :

Civil Judge (Junior Division)