

IN THE COURT OF THE MUNSIFF, PUNALUR
PRESENT :-Smt. Reshma R.S, Civil Judge, Junior Division
Thursday the 06th day of November 2025, 15th day of Karthika 1947
IA 1/2025 in OS 108/2025

Between

Petitioner/

Plaintiff : Mr.Balan, aged 70, S/o. Govindan, B.S.Bhavan,
Ambalanirappu P.O, Pandithitta, Thalavoor Village,
Pathanapuram Taluk.

(By Adv. S.R.Amrit)

And

Respondents/

Defendants : 1. Mr.Vijayan, aged about 55, S/o. Sarojini,
Pallivadakkethil, Ambalanirappu P.O, Pandithitta,
Thalavoor Village, Pathanapuram Taluk.
2. Mr.Ajayan, aged about 23, S/o. Radhakrishnan,
Pallivadakkethil, Ambalanirappu P.O, Pandithitta,
Thalavoor Village, Pathanapuram Taluk.
3. Mr.Vibi, aged about 28, S/o. Vijayan,
Pallivadakkethil, Ambalanirappu P.O, Pandithitta,
Thalavoor Village, Pathanapuram Taluk.
4. Mr.Mohan, aged about 60, residing at
Ramya Bhavan, Ambalanirappu P.O, Pandithitta,
Thalavoor Village, Dathanapuram Taluk.
5. Mr.Renjith, aged about 30, S/o. Mohan,
Ramya Bhavan, Ambalanirappu P.O, Pandithitta,
Thalavoor Village, Pathanapuram Taluk.

(By Adv. B.Shamnad & Adv. Rijula.T for D1,D2,D4 &D5)

This petition is coming on for hearing before me on 06.11.2025 and on the same day court passed the following.

ORDER

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

2. **The application averments in brief are as follows:** The applicant is the plaintiff in the suit. The suit is filed for a perpetual injunction. The plaint schedule property belongs to the applicant as per settlement deed number 1299/2013 of Pattazhi SRO. The applicant has effected mutation in his name, and he is paying land tax in BTR No. 28246. The applicant is residing in the residential house situated in the plaint schedule property. The defendants have no right over the plaint schedule property. The plaint schedule property is lying as a compact plot with well-defined boundaries. The southern boundary of plaint schedule property is a very old boundary structure constructed in 1981. On all four other sides, there are age-old mud walls. The plaint schedule property is identifiable with its boundaries. The Ambalanirappu-Mosque Junction Road is on the eastern side of plaint schedule property and is demarcated with a mud wall. There is a pathway having a width of 1 meter and an approximate length of 17 feet on the southern side of plaint schedule property. The said pathway is demarcated with an old rubble structure. The defendants are members of ruling political party. The defendants, on several occasions, demanded the applicant to part with the southern portion of plaint schedule property to widen the southern side pathway to a width of 7 metres. The applicant then and there refused the said demand. Thereafter the defendants are in inimical terms with the applicant. On 17.02.2025, the defendants attempted to demolish the southern boundary of plaint schedule property using heavy machineries with a mala fide intention to encroach upon the property to widen the southern side pathway. The defendants could not accomplish their evil attempt due

to the timely intervention of the applicant. Even though applicant filed complaint before the police, no action was taken. On 26.02.2025, the applicant got reliable information that the defendants are taking hasty preparations to demolish the southern boundary of the plaint schedule property to widen the pathway. The plaintiff is a cancer patient. He is not physically able to resist the illegal acts of the defendants. The applicant has a strong prima facie case. The balance of convenience is also in favour of the applicant. If the order of injunction is not granted, it would cause irreparable injury and hardships to the applicant. Hence, this application.

3. The respondents filed objection contending the following: This application is not maintainable either in law or on facts. The present suit as well as the application are filed suppressing material facts. The applicant has approached this court with unclean hands. The property scheduled as plaint schedule property in the suit comprises portions of the public pathway which was encroached and annexed by the applicant. Hence the applicant could not claim title over the plaint schedule property. The plaint schedule property is not identifiable. The applicant is not in possession of 4.5 ares of property as alleged. To compensate that deficiency in the extent of property, he has encroached upon the portions of southern side public pathway. It is true that the applicant is residing in the house situated in that property. The respondents have no political influence and the respondents never demanded the applicant to part with his property to widen the pathway. For the last 50 years there is a pathway in existence which has nearly 4 meters to 3 meters width near the property of the applicant, which is used by the public for the ingress and

egress to their properties. In the passage of time, various persons encroached upon the portions of the pathway, and the applicant also encroached and annexed the portions of that pathway with his property. As a result, the width of the public pathway was reduced to 1 meter. The applicant has direct access from the public road. All other users of the public pathway have difficulties in using the pathway due to the illegal encroachment of the applicant. The neighbour of the applicant who is suffering from cancer cannot be brought to the hospital on time due to the narrow width of the pathway. In the assets register of the panchayat, the pathway of the property was described as 2 meters in width at the time of its inclusion in the register. As per the revenue records, the pathway has a width of 4 meters at its beginning and at the portion where it ends, it has a width of 3.2 meters. Now, that pathway is encroached by the local inhabitants, including the applicant and the width was reduced to 1 meter. Hence, the local inhabitants, including the respondents, filed complaints before the Panchayat. The Panchayat member raised that matter in the Panchayat Committee. As per the decision in 11.06.2024 of the Panchayath Committee, a request was given to the Tahsildar to ascertain the purambokku land and to prepare a site plan. Accordingly, on 12.07.2024, the Village Officer, Thalavur, was directed to conduct an enquiry and submit a report along with the revenue list. Accordingly, a report was filed. The revenue officials have found out the encroachment on the public pathway, and the property was surveyed, and boundary stones were laid. The survey revealed that a substantial portion of the plaint schedule property is encroached upon. The revenue officials realised the merit

in the complaint given by the local inhabitants, and hence they evicted the encroachment and widened the pathway with the police assistance. Two electric posts standing on the pathway were shifted to widen the pathway at the expense of the panchayat. Thereafter when the panchayat started the preparations to concrete that pathway, the present suit was filed. The police warned the applicant after realising his illegal acts. Hasty preparations were made to complete the project before 31.03.2025. But when the contractors and workers arrived to widen the pathway, the applicant and his relatives obstructed the work. Thereafter, on 03.03.2025, the Assistant Secretary Panchayath, Assistant Engineer, Overseer and revenue officials, along with the assistance of Kunnikode Police, started the preparations to concrete the pathway. At that time, the applicant openly proclaimed that he had filed a case before the Civil Court, and as the case was pending, the revenue officials did not complete the work. All other averments made in the application are false. The encroachment was recovered by the revenue officials with the police assistance. There is no illegality in the act of the revenue officials. The respondents have never done any illegal acts in the plaint schedule property. They never attempted to encroach upon the property or annex any portion of it to widen the pathway. The applicant does not have a prima facie case. The balance of convenience favours the respondents. If the order of injunction is granted, it would 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, Exhibits A1 to A5 were marked. From the respondents' side, Exts. B1 to B5 documents were marked. Exts. C1 series and C2 series were also marked.

5. Heard both sides.

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. According to the applicant, the plaint schedule property is well-defined and is in the absolute ownership and possession of the applicant. The specific case of the applicant is that the defendant is trying to encroach upon the property after demolishing the southern boundary wall to widen the pathway. Hence, the applicant prayed for allowing the temporary injunction application. On the other hand, the learned counsel for the respondent vehemently objected to the application on the ground that the present application is filed suppressing material facts. According to the respondents, they never encroached upon the portions of the plaint schedule property, and it is the applicant who encroached upon the portions of the public pathway. When the revenue officials

attempted to remove the encroachment, the present suit and application were filed. Hence, the respondents prayed for the dismissal of the application.

8. The grievance of the applicant is that the respondents demanded to part with certain portions of the plaint schedule property to widen the southern side pathway. When the applicant denied the same, the respondent attempted to trespass upon the plaint schedule property and to destroy the southern side boundary. Hence, the applicant approached this court. On the other hand, the respondents contend that the applicant encroached upon portions of the southern side pathway and annexed those encroached portions to his property, thereby reducing the width of the pathway. Now, upon the complaints filed by the local inhabitants, the Panchayat and the revenue officials have initiated action against the illegal encroachments, and now, with the assistance of the police, those illegal encroachments have been removed. When the revenue officials and the Panchayat Authorities, along with police aid, attempted to widen the pathway and to concrete the same for the beneficial enjoyment of the people. The applicant filed the present suit and the application after suppressing relevant and material facts. The first and foremost thing to consider is whether there exists any prima facie case in favour of the applicant.

9. The applicant produced Exhibits A1 to Exhibit A5 documents to substantiate his contentions. Exhibit A1 is the photocopy of settlement deed No.1299/2013. Exhibit A2 is the land tax receipt dated 24.02.2025. Exhibit A3 is the location sketch dated 01.10.2013. Exhibit A4 is the receipt issued by Kunnikode Police Station. After receiving a complaint, Exhibit A5 is the receipt issued by the Kollam Rural

Police District Office along with a copy of the complaint. A perusal of Exhibit A1 makes it clear that on the southern side, there is a pathway. There is no dispute about that aspect. Now the width of that pathway is in dispute. According to the applicant, the pathway only has a width of 1 meter whereas according to the respondents, the pathway originally had a width of 3 to 4 meters and eventually the nearby adjoining property owners encroached upon the portions of the pathway and reduced its width. The respondents also contented that now the revenue officials started preparations to recover the engrossed portions from the property owners and to widen the pathway. To substantiate the contentions of the respondents, they produced Exhibits B1 to Exhibit B5 documents. Exhibit B1 is a copy of the letter issued by the Tahsildar Land Records to the Secretary, Grama Panchayath. Exhibit B2 is a copy of the revenue list dated 03.02.2025. Exhibit B3 is a copy of the letter dated 12.07.2024. Exhibit B4 is a copy of the complaint given to SHO Kunnikodu. Exhibit B5 is a copy of the complaint given to Secretary Thalavur Grama Panchayath.

10. The advocate commissioner identified the plaint schedule property and filed a detailed report mahazar and rough sketch before the court. The commission report filed on 04/03/2025 were marked as Exhibit C1 series. The advocate commissioner reported that “ടി പട്ടിക വസ്തുവിന്റെ തെക്ക് ഭാഗവും നടവഴിയും തമ്മിൽ വേർതിരിക്കുന്നത് കൽക്കെട്ട് അതിർത്തി കൊണ്ടാണ്. ടി കൽക്കെട്ട് അതിർത്തിയും അന്യായ പട്ടിക വസ്തുവിന്റെ തെക്ക് ഭാഗത്ത് കാണപ്പെടുന്ന നടവഴിയിൽ നിന്നും ഒരടി ഭാഗത്തോളവും ഇടിച്ചിട്ടതായി കാണപ്പെടുന്നു. ടി അതിർത്തിയുടെ തെക്ക് മുതൽ

പടിഞ്ഞാറ് ഭാഗം വരെയും കിഴക്ക് ഭാഗത്തും ഇടിച്ചിട്ടതായി കാണപ്പെടുന്നു. പഴയ കൽകെട്ടിന്റെ ഭാഗങ്ങൾ ഇടിച്ചിടിരിക്കുന്ന മണ്ണിന്റെ അടിയിലായി കാണപ്പെടുന്നു.”

11. The advocate commissioner again visited the plaint schedule property and filed the second commission report, and it was marked as Exhibit C2 series. A perusal of Ext. C1 series makes it clear that the advocate commissioner identified the plaint schedule property and the southern side pathway. The advocate commissioner noted down the changes made in the plaint schedule property after her first visit in Ext. C2 series. The advocate commissioner reported that the width of the pathway was widened to an extent of 16 inches, and to widen the pathway, earth was deposited to the level of the rubble wall. The advocate commissioner further reported that the width and height of the pathway were increased and now it is situated at the level of plaint schedule property. The advocate commissioner further reported that “ടി നടവഴിയുടെ വീതി കൂട്ടുന്നതിലേക്കായി നടവഴിയുടെ ഇരുഭാഗത്തായി കാണപ്പെടുന്ന കൽക്കെട്ട് അതിർത്തി പൂർണ്ണമായും ചെമ്മണ്ണ് ഉപയോഗിച്ചു മൂടിയതായി കാണപ്പെടുന്നു. ടി നടവഴിയുടെ വീതി ഒരു മീറ്ററിൽ നിന്നും മൂന്ന് മീറ്ററായി ഉയർന്നിട്ടുണ്ട്. ടി പട്ടിക വസ്തുവിന്റെ ഉദ്ദേശം 16 inch ഭാഗത്തോളം ടി നടവഴിയിലേക്ക് ചേർന്നിട്ടുള്ളതായി കാണപ്പെടുന്നു. ഇപ്പോൾ കൽക്കെട്ട് അതിർത്തി വ്യക്തമായി കാണാനാകുന്നില്ല. തെക്കുവശത്തെ പാത്തുമുത്തവിന്റെ വസ്തുവിലേക്ക് മണ്ണ് നിക്ഷേപിച്ചതായി കാണപ്പെടുന്നു. ടി പട്ടിക വസ്തുവിന്റെ തെക്ക് ഭാഗത്തായി കാണപ്പെടുന്ന മരങ്ങളുടെ വേരുകൾ പുറത്തായി തെളിഞ്ഞ് കാണപ്പെടുന്നു. ചില ഭാഗങ്ങളിൽ മണ്ണ് കൂട്ടിയിട്ടിരിക്കുന്നതായി കാണപ്പെടുന്നു. നടവഴിയിൽ നടന്ന നിർമ്മാണ പ്രവർത്തനങ്ങളുടെ ഫലമായി നശിച്ചുപോയ മരങ്ങളെയും വേരുകളെയും നടവഴിയുടെ ഇരുവശങ്ങളിലും കൂട്ടിയിട്ടിരിക്കുന്നതായി കാണപ്പെടുന്നു ”.

12. From the documents produced by the plaintiff, it is not possible to ascertain the exact width of the pathway. In the location sketch, the pathway is shown. On the other hand, from the records produced by the respondents, it can be seen that the Tahsildar Land Records filed a report to the effect that the Tahsildar issued a letter dated 20.02.2025 stating that the Work to ascertain the purambokku land to widen the pathway was completed and the survey stones were laid, and hence the boundary fixation was completed. The revenue list prepared by the Village Officer dated 03.02.2025 makes it clear that the pathway has a width of 4 meters at its beginning, and 3.2 meters at its end. The letter authorising the Village Officer to conduct an enquiry and file a report, along with the revenue sketch, is also produced. From the records, it can be seen that the revenue officials surveyed the properties, ascertained the purambokku land and laid survey stones to widen the pathway. It is to be noted that the present application is filed against certain respondents only. The applicant has not disclosed the proceedings before the revenue officials or the panchayat or the decision made by the panchayat committee to widen the pathway and to file a request before the revenue officials and the Tahsildar. Here, the dispute is regarding the width of the pathway. From the materials produced by the respondent, it can be seen that the pathway had a width of 4 meters and there was an encroachment of the purambokku land. As there was an encroachment, the purambokku land was acquired to widen the pathway. It can be seen that the Village officer and the panchayat authorities were involved in these activities. But the present suit is filed against certain local inhabitants using the

pathway. The applicant has not disclosed any proceedings before the panchayat or the revenue authorities.

13. It is a matter of significance that the applicant has approached this court seeking equitable relief. It is a settled point of law that one who seeks equity must do equity. The Hon'ble Apex court in **Arivananda v. Satyapal**, reported in **AIR 1977 SC 2421**. It is a settled position of law that one who seeks equity must do equity. The Hon'ble High Court of Kerala in **T M Aysha Jasmitha v. C P Abdul Rasheed**, reported in **AIR 2021 Ker 2**, in which it was held that *"It is trite that a plaintiff who approaches the Court, seeking an equitable relief of injunction, must make true and correct statements in the plaint or in the application seeking such interim relief. Suppression of any material fact would be sufficient to decline the discretionary relief of injunction. A party seeking discretionary relief has to approach the court with clean hands and is required to disclose all material facts which may, one way or the other, affect the decision. A person deliberately concealing material facts from court is not entitled to any discretionary relief. A person seeking relief of injunction is required to make honest disclosure of all relevant statements of facts otherwise it would amount to an abuse of the process of the court."*

14. Here, despite the fact that the width of the pathway and the pathway itself are the subject matter of the dispute, the applicant did not care to disclose the proceedings of the revenue authorities in this suit or in the application. The proceedings of the revenue authorities were initiated on 02.02.2025, which is

evident from the records; the present suit was filed on 28.02.2025. But the applicant did not disclose those facts before this court. The applicant failed to prove the existence of a prima facie case in his favour. It is a settled point of law that if the applicant fails to establish the existence of a prima facie case, then the other two essential ingredients need not be looked into. Apart from that, the applicant has approached this court seeking an equitable relief of injunction. Hence, he is bound to disclose all material facts before this court, and he must approach the court with clean hands. Here, he has failed to do so. In light of the above decision and the above discussion, this court is of the view that the applicant is not entitled to get the equitable relief of an injunction.

In the result: This application is dismissed. There shall be no order as to costs.

Pronounced in open court on this the 6th day of November, 2025.

Sd/-

Civil Judge (Junior Division)

Appendix:

Exhibits for the Petitioner

A1	13.09.2013	Photocopy of settlement deed No.1299/2013
A2	24.02.2025	The land receipt and Thalavoor Village Office
A3	01.10.2013	Location sketch
A4	17.02.2025	Receipt issued by Kunnikodu Police station.
A5	21.02.2025	Receipt issued by Kollam Rural District Office, along with a copy of the complaint.

Exhibits for the Respondents

B1	20.02.2025	Copy of the letter issued by the Tahsildar Land Records to the Secretary, Grama Panchayath, Thalavoor.
B2	03.02.2025	Copy of the Revenue list.
B3	12.07.2024	Copy of the letter
B4	---	Copy of the complaint given to Secretary, Thalavoor Grama Panchayath.
B5	---	Copy of the complaint given to Secretary, Thalavoor Grama Panchayath.

Court Exhibits

C1	04.03.2025	Commission Report prepared by the Advocate Commissioner Athira Krishna
C1(a)	01.03.2025	Mahazar prepared by the Advocate Commissioner Athira Krishna
C1(b)	04.03.2025	Rough sketch prepared by the Advocate Commissioner Athira Krishna
C2	24.05.2025	Commission Report prepared by the Advocate Commissioner Athira Krishna
C2(a)	24.05.2025	Mahazar prepared by the Advocate Commissioner Athira Krishna
C2(b)	24.05.2025	Rough sketch prepared by the Advocate Commissioner Athira Krishna

Id/-

Civil Judge (Junior Division)

//True Copy//

Typed by : Saranya V S

Compared by :

CIVIL JUDGE (Junior Division)