

IN THE COURT OF THE MUNSIFF, KOTTARAKKARA
Present :- Sri.Fazil Rahiman., Munsiff.
Tuesday, 17th day of June, 2025/ 27th day of Jyaishta, 1947

IA 1/2025 in OS 107/2025

Between

Petitioner/Plaintiff:-

Badarudheen, aged 52 years,
S/o.Shamsudheen, Puthuvalil Veedu,
Nedumpacha, Mulaykkonam Muri,
Nilamel Village, Kottarakkara Taluk

By.Adv.D.Anilkumar

And

Respondents/Defendants:-

1. Ruksana, aged 22 years,
D/o.Noushad, Nedumpachayil Veedu,
Veykkal, Kaithodu Muri,
Nilamel Village, Kottarakkara Taluk
2. Sanooja, aged about 45 years,
W/o.Noushad, Nedumpachayil Veedu,
Veykkal, Kaithodu Muri, Nilamel Village
Kottarakkara Taluk

This petition filed by the counsel for the Petitioner under Order XXXIX Rule 1 and Section 151 of the code of Civil Procedure Code 1908 for injunction. This IA have been finally heard on 17.06.2025 and on the same day the court passed the following:-

ORDER

The petition is filed under Order XXXIX rule 1 and Section 151 of the Code of Civil Procedure, 1908 for injunction. The petitioner is hereinafter referred as the plaintiff and the respondents as the defendants as they appeared in the suit.

2. The petition averments in nutshell is that:- The plaint A schedule property is 50.41 Ares of land comprised within resurvey Block No.40, Survey No.115/10 of

Nilamel Village. The plaintiff obtained the same by virtue of a partition deed No.2531/23 dated 25.10.2023, executed between the plaintiff, his mother and siblings. The 1st schedule in the same was allotted to the plaintiff. The plaintiff has effected mutation of the plaint A schedule property and the tax for the same is being paid as per thandaper No.16532 of Nilamel Village. The plaint A schedule property is in the possession and enjoyment of the plaintiff since the date of partition deed in his favour. The plaint B schedule property is 16.59 Ares of land comprised within the resurvey Block No.40, Sy.No.115/10-2-2 of Nilamel Village. It belongs to Smt.Shemila, the wife of the plaintiff's brother Mr.Shanavas. Both Shanavas and Shemila are working at Gulf countries. The plaintiff is managing the affairs of the said property, the same is described as the plaint B schedule property. The plaint C schedule property is 19.40 Ares of land comprised within resurvey Block No.40, Sy.No.137/16 of Nilamel Village. It belongs to the brother of the plaintiff Mr.Shanavas. She is working in Gulf countries. So the plaintiff is managing the property for and on behalf of his brother. The plaintiff is filing this suit as agent by necessity for the plaint B and C schedule properties for and on behalf of his brother and his wife. The plaint D schedule is a pathway, which starts from the Panchayath road passing through the south-eastern corner of A schedule property towards east, starting from the southern PWD road. The D schedule property starts from the south-eastern corner of the A schedule property, going towards west through the southern side of A schedule property and then turns towards north and again turns towards west and proceeds to the C schedule property on its south and defendant's property

on its north and ends there. It is having a present width of 4.2 mtrs and a length of about 150 mtrs. There was only a way having a width of 4 feet (1.2 mtrs) years back. The defendant has purchased 3 mtr wide portion from the southern property and joined the same with the pre-existed 4 feet way making the present width of 4.2 mtrs. The said pathway is scheduled as D schedule. There is a mobile tower situated on the southern portion of A schedule property towards the middle. The way to the tower is also the D schedule property. The D schedule property is being used by the plaintiff, defendant, Shemila, Shanavas, Shyni etc. for ingress and egress to their respective properties. The only way to the plaintiff B and C schedule properties is the plaintiff D schedule property. The defendants are having property on the western side of A and B schedules and northern side of C schedule property. Now the defendants are intending to install a gate at the starting point of the plaintiff D schedule property in order to make the entire way as his private way. The plaintiff got reliable information regarding the same on 19.02.2022. He has no right to do so. The already existed way of 4 feet is for the common use of all the parties including the plaintiff, defendants and the above mentioned parties. So the defendants have no right to close the same by installing gate. If they succeed in doing so, the only way for ingress and egress to the plaintiff B and C schedule properties will be blocked. The defendants may be restrained from doing so. The plaintiff is not in a position to obstruct the evil acts of the defendants physically. Hence the plaintiff is constrained to institute this suit for a permanent prohibitory injunction against the defendants.

3. The defendants filed objection which is in brief is as follows:- This petition is not maintainable either on facts or on the basis of law. This petition is filed solely with the intention of causing disturbance to the marriage of defendant No.1 Ruksana, which is scheduled to be conducted on 12.04.2025. The description of D schedule pathway is incorrect and misleading. The defendant No.1 is having property at the western side of A, B schedule properties. A narrow pathway having a width of 2 feet was used for ingress and egress to the western side property of 1st defendant. The said pathway is exclusively used by the defendants. A,B,C schedule property owners are not using the said way and there is no need for it. For making the said way more convenient 1st defendant has purchased 7 cents of property from the southern property from its owners Nazeer and Sajeena Beevi as per deed No.2232/2016 and broaden the existing pathway. As stated in the plaint and injunction petition the D schedule way is having 4.2 meter width at present. The plaintiff do not have any sort of right over it. The said pathway starting from the eastern panchayath road and ends at the south-eastern corner of 1st defendant's property. The contrary averments in the affidavit is false. The defendants have nothing to do with mobile tower in A schedule property. An attempt was made by the mobile tower company and the plaintiff to draw underground heavy power cables in the D schedule way. The attempt was foiled by the defendants. The D schedule way is their private way. The plaintiff has no right to question it. The plaintiff do not have a prima-facie case. The balance of convenience is not in favour of granting the injunction to the plaintiff.

4. From the side of the plaintiff, ExtS. A1 to A6 and Ext. C1 to C3 were

marked. From the side of defendant, Ext.B1 was marked.

5. Heard both sides. Perused the records.

6. The following points arise for consideration:-

1. Has the plaintiff shown a prima-facie case for trial?
2. Whether the balance of convenience is in favour of the plaintiff?
3. Whether the irreparable injury and loss would be sustained to the plaintiff, if injunction is not granted?
4. Is the plaintiff entitled to an order of temporary injunction as prayed for?
5. Order.

7. Point Nos. 1 to 4:- The bone of contention between the parties with respect to the right of the plaintiff to use the plaint D schedule pathway. According to the plaintiff, the D schedule property is being used by the plaintiff, defendants, the owners of the B and C schedule properties and by one shyni etc. The D schedule way is the only way for the plaint B and C schedule properties. The defendant vehemently contended that the pathway as claimed by the plaintiffs are in the exclusive use of the defendants. The plaintiff or the owners of the B and C schedule properties are not using the the pathway. Infact the defendants purchased 7 cents of properties from the southern property owners named Nazeer and Sajeena Beevi as per Sale Deed No: 2232/2016 for widening the existing pathway.

8. The moot question to be considered is what is the right of the plaintiff over the plaint D schedule pathway. The pleadings and the petition shows that the plaintiff did not specifically claimed any right over the plaint D schedule pathway. The

plaintiff is the owner of the plaint A schedule property. Admittedly the owners of the plaint B and C properties are not made parties in the suit. Though the plaintiff claimed that the suit is filed on behalf of the owners of the plaint B and C schedule properties as an agent by necessity, nothing has brought on record to substantiate the said fact. Moreover, the pleading itself shows that the suit itself is an experimental one seeking relief on behalf of the owners of the plaint B and C schedule properties. No reasonable explanation has been offered by the plaintiff for not making the owners of B and C schedule properties as the parties in the suit. The perusal of Exts. C1 to C3 commission report, mahazar and rough sketch shows that the plaintiff is in no need for the plaint D schedule pathway. The plaintiff is having direct access to the A schedule property from the eastern Panchayath Road, there is no access from the D schedule pathway to the mobile tower situated in the A schedule property. The commissioner categorically reported that the A schedule property comprising the mobile tower is separated with the D schedule pathway with boundary wall. The said fact and the fact shows that the plaintiff is not using the D schedule way and also shows that the plaintiff is absolutely having no right over the D schedule pathway. The said fact evinces the lack of bonafides from the part of the plaintiff in not claiming any right over the D schedule pathway. This court is of the considered view that the owners of B and C schedule properties are necessary parties in the suit and on that ground the suit is not maintainable.

9. In order to substantiate the right of the defendants over the D schedule pathway, the defendant brought on record Ext.B1 Sale Deed. The perusal of Ext.B1

shows that the defendants purchased the schedule properties as per Ext.B1 to widen the existing way towards the property of the defendants. The eluka description of the schedule properties in Ext.B1 substantiate the case of the defendants that they purchased property from the southern property owners named Nazeer and Sajeena Beevi to widen the earlier 2 feet width way. It is pertinent to note that the plaintiff himself admitted that the defendants have purchased 3 meter wide portion from the southern property and join the same with the pre-existing 4 feet way making the present width of 4.2 meter. Ext B1 categorically negating the case of the plaintiff. The plaintiff failed to show any right over the plaint D schedule way. The plaintiff has no authority to seek any relief on behalf of the owners of B and C schedule properties. The suit is bad for non-jointer of necessary parties. At present the plaintiff is not having any right to make any claim over the B schedule pathway. The plaintiff has no reasonable explanation for not producing the original Title Deed of the owners of B and C schedule properties. Ext.B1 substantiating that the defendants are the exclusive users of the D schedule pathway. In the right of the above discussions, this court is view that the plaintiff failed to establish the prima facie case in favour the plaintiff. The commission report shows that the pathway reaches to the property of the defendants as per Ext.B1 is having clear boundaries on both sides. The said fact prima facie establishing the exclusive user of the D schedule pathway by the defendants. Since the plaintiff failed to establish the prima facie case, the consideration of balance of convenience and irreparable injury are out of question. The petition is liable to be dismissed,

10. Point No.5:- In the result, the petition is dismissed.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 17th day of June, 2025.

**FAZIL RAHIMAN
MUNSIFF**

APPENDIX :-

Exhibits marked for the Plaintiff/Petitioner:-

- A1 : 25.10.2023 : Photocopy of Partition Deed No.2531/1/23
 A2 : 29.06.2024 : Tax receipt No.KL02042404651/2024
 A3 : 20.02.2025 : Tax receipt No.KL02042401174/2025
 A4 : : Tax receipt No.KL02042401171/2025
 A5 : 22.12.1997 : Photocopy of Sale deed No. 4828/1997
 A6 : 23.07.2004 : Photocopy of Sale deed No.3260/2004

Exhibits marked for the Respondents/Defendants:-

- B1 : 05.09.2016 : Sale deed No.2232/2016

Court Exhibits:-

- C1 : 07.03.2025 : Commission Report Prepared by Adv. Arya Lekshmi.S
 C2 : 07.03.2025 : Mahazar Prepared by Adv. Commissioner Arya Lekshmi.S
 C3 : 07.03.2025 : Rough Sketch Prepared by Adv. Commissioner
 Arya Lekshmi.S

Witness of both sides:- NIL

Id/-Munsiff

Typed by : Sobhy.N
 Compared by :

MUNSIFF