

IN THE COURT OF THE MUNSIF, KOTTARAKARA.
Present :- Sri. Fazil Rahiman, Civil Judge (Junior Division)
Friday the 19th day of September, 2025/ 28th day of Bhadra, 1947.

IA.No.11/2025 in OS.No.474/2022

Between

Petitioner/Plaintiff:-

Ruby John, aged 48 years, W/o Joy Kochumman,
Kizhakkidathu Kizhakkathil Veedu,
Ambalakkara P.O, Valakom Village,
Kottarakara Taluk.

By Adv. Shine Prabha

And

**Respondents/
Defendants:-**

1. Bony Samuel, aged 38 years, D/o Samuel,
White House, Valakom P.O,
Valakom Village, Kottarakara Taluk.
2. Samuel @Baby, aged 72 years,
White House, Valakom P.O,
Valakom Village, Kottarakara Taluk.

By Adv. D.S.Sonu

This petition filed by the counsel for the plaintiff under Order 39 Rule 1 and Section 151 of CPC 1908 for injunction. This petition have been finally heard on 19.09.2025 and the court on the same day 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 petition is preferred by the plaintiff. 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 suit is filed for injunction. The plaintiff and the defendants are near relatives. The plaint A schedule property belongs to the plaintiff by virtue of settlement deed No.612/I/2014 and by virtue of

sale deed No.310/2005 of Additional SRO, Kottarakara. The plaintiff schedule property is totally having the extent of 48.35 Ares. The rubber trees are cultivated in the A schedule property and the plaintiff is collecting yield from the same. The A schedule property lies within well defined boundaries. The plaintiff B scheduled way is starting from Mercy Hospital junction Valakom -Ambalakkara Panchayath road and ends at the property of Renji after proceeds with the western side of the A schedule property. The plaintiff and his predecessors are using the B schedule property without any interruption continuously and as a matter of right for the ingress and egress to the A schedule property. The B schedule way is a cartable road. The B schedule way lies within very old boundaries. The property of the defendants situates on the beginning portion on the western side of B scheduled way. The Mercy Hospital junction-Ambalakkara road passing through the northern side of the property of the defendants. The defendants also having another property on the eastern side of the B schedule way and they are using the B schedule way to reach the said property. The defendants are having no right to reduce the width of the B schedule way and causing obstruction to the user of the plaintiff over the same. The defendants demanded the plaintiff to sell the A schedule property to the defendants. But the plaintiff was not amenable for the sale price offered by the defendants. From there onwards the defendants are in enmity towards the plaintiff. On the beginning portion of the B schedule way the defendants caused obstruction by erecting iron pipe across the B schedule way. On 31.10.2022 the defendants repeated their demand to sell the A schedule to them. On the denial of the plaintiff, the defendants reduced the width of the B

schedule way by erecting a mud kassala in the B schedule way. The defendants are attempting to cause obstruction in the B schedule way by digging pit over the same with JCB. If the same is happened it will curtail the right of the plaintiff over the B schedule way. The husband of the plaintiff is a cancer patient and now paralyzed due to stroke. Hence this petition.

3. The defendant resisted the petition and filed objection as follows:- The petition is not maintainable. The plaintiff failed to state his specific right or the type of right which the plaintiff claiming over the B schedule way. The plaintiff B schedule way is an imaginary one and the plaintiff never used the same at any point of time. The plaintiff is keeping mum regarding the resurvey number and other revenue details of the B schedule way. The B schedule pathway is the part of the defendants' property and the defendants are using the part of their property to reach their other properties. The plaintiff has no right to claim any right over the defendants' property. The defendants never demanded the A schedule property. By this suit the plaintiff is attempting to carve out a way through the property of the defendants. After the institution of the suit the plaintiff demanded to trespass into the property of the defendants. The mandatory injunction filed at the time of the institution of the suit was not pressed by the plaintiff and amended the description of the plaintiff schedule properties. The defendants prayed for the dismissal of the petition.

4. From the side of the plaintiff, Exts.A1 to A4 and Exts.C1 to C3 were marked. From the side of the defendants Exts.B1 and B2 were marked.

5. Heard both sides. Perused the records.

6. The following points arose 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:- In order to establish the identity of the plaintiff schedule properties Exts.C1 to C3 were brought on record. The specific case of the plaintiff is that the plaintiff and the predecessors are using the B schedule way to reach the A schedule property and the B schedule which is a very old one. According to the defendants, the B schedule is the part of their property and the B schedule pathway is an imaginary one. The plaintiff never used the B scheduled way. In Exts.C1 to C3 the commissioner reported that the plaintiff B schedule way situates on the western side of the A schedule property. The boundary on the western side now covered with bushes and boundary stones are there. In Ext.C2 mahazar the commissioner reported regarding the existence of the B schedule way as a way commencing from the Valakom Mercy Hospital junction - Ambalappuram Panchayath road and proceeds through the eastern side of the defendants' property having a width of 3 mtr and at a length of 250 mtrs and passing through the western side of the A schedule property and ends at the property of one Ranji.

On the beginning portion of the B schedule way a boundary wall was constructed separating the same from the property of the defendants and on the eastern side of the B schedule way boundary stones were erected. After the beginning portion at a length of 30 mtrs the B schedule way passing through the property of the defendants and thereafter proceeds through the property of one Pappachan and thereafter reaches the western side of the A schedule property and ends at the property of Renji. The commissioner further reported that the B schedule way seems to be very old one. Ext.C2 mahazar further shows that the commissioner reported the obstruction in the B schedule way as the erection of iron pipes into the iron pillar and the iron pipe was fixed by locking the same. The said obstruction seems made of recently and now only a pedestrian can pass through the B schedule property. The commissioner further reported that there are tyre marks in the B schedule way. On the part portion of the B schedule property situates through the property of the defendants. There is mud kassala erected to separate the B schedule way with the property of the defendants and the same seems to be very old one. Now soil are deposited in the B schedule way from the property of the defendants and it is very difficult to use the B schedule way even by a pedestrian due to the said obstruction made by the defendants and the said obstruction is a recent one. Thereafter the B schedule way lies clearly in a width of 3 mtrs. Ext.C2 shows that due to the obstruction made in the beginning portion of the B schedule now transportation of vehicles through the same is not possible. Exts.A1,A2 and A4 prima-facie substantiating the right of the plaintiff over the A schedule property. Exts.C1 to C3 categorically establishing the identity of the

plaint schedule properties and the existence of the B schedule way on the western side of the A schedule property. Exts.C1 to C3 probalising the case of the plaintiff regarding the obstruction made by the defendants in the B schedule way. In order to appreciate the right of the plaintiff over the plaint B schedule way, the same required further proof. The boundary between the B schedule and the property of the defendants probalising the case of the plaintiff. Since Exts.C1 to C3 prima-facie establishing the existence of the B schedule way to reach the A schedule property, this court is of the considered opinion that the right of usage of the plaintiff over the plaint B schedule way is to be protected. The obstructions made in the B schedule way shows that the defendants came with unclean hands. The commission report establishing that the B schedule way having boundaries on its either side. This court is of the considered opinion that the plaintiff successfully establish a prima-facie case in favour of him. If the plaintiff is denied with the user of the plaint B schedule way, the same will cause inconvenience and irreparable injury and loss to the plaintiff. The balance of convenience is in favour of the plaintiff. Hence this court is of the view that the petition is to be allowed.

8. Point No.5:- In the result, the petition is allowed as follows:-

The defendants and men under them are restrained from causing any obstruction in the B schedule way and from causing obstruction to the user of the way by the plaintiff till the disposal of the suit.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 19th day of September, 2025.

Fazil Rahiman,
Civil Judge (Junior Division)

APPENDIX:-**Exhibits marked for the Plaintiff/Petitioner:-**

- A1: 10.03.2014: Photocopy of settlement deed No.612/1/2014.
 A2: 27.05.2022: Tax receipt No.KL02041704538/2022 issued from
 Village Office, Valakom.
 A3: 20.09.2022: Copy of Agreement.
 A4: 31.01.2005: Photocopy of sale deed No.310/2005.

Exhibits marked for the Respondents/Defendants:-

- B1(Series): Copy of photographs.
 B2(Series): Copy of plan.

Court Exhibits:-

- C1: Commission report prepared by Adv. M.R.Sreejith.
 C2: Mahazar prepared by Adv. Commissioner M.R.Sreejith.
 C3: Rough sketch prepared by Adv. Commissioner
 M.R.Sreejith.

Witness of both sides:- NIL

Id/-
 Civil Judge (Junior Division)

Typed by : Sibi Sreekumar
 Compared by :

Civil Judge (Junior Division)