

IN THE COURT OF MUNSIFF, KARUNAGAPPALLY  
Present: Smt. Aswathy Nair, Civil Judge (Junior Division),  
Karunagappally.  
Tuesday the 07<sup>th</sup> day of April, 2026/ 17<sup>th</sup> day of Chaithra, 1948

**I.A 01/2026 in O.S No.60/2026**

Between

Petitioner/Plaintiff : Sathi Basura, Aged 63 Years, W/o. Krishnanunni,  
Kaattil Thekkathil, Cheriyaazheekkal Thurayil,  
Ward No.10, Alappadu Village, Karunagappally  
Taluk – 690573.

By Adv.Muhammed Thaha K.

And

Respondents/  
Defendants : 1. Banerji, Aged 57 Years, S/o. Ilayakochu,  
Puthuparambil House, Cheriyaazheekkal Thurayil,  
Ward No.10, Alappadu Village, Karunagappally  
Taluk – 690573.

2. Varadarajan, Aged 75 Years, S/o. E. Bhaskaran,  
Suryan Parampil House, Cheriyaazheekkal  
Thurayil, Ward No.10, Alappadu Village,  
Karunagappally Taluk – 690573.

Adv. Vinayakumar.K for D1 & D2.

This petition filed u/o. XXXIX Rules 1 and 2 of CPC for temporary injunction.

This petition having been finally heard on 07.04.2026 and on the same day the court passed the following:-

**ORDER**

This is an application filed by the petitioner, who is the petitioner in the original suit, under Order XXXIX Rule 1 of CPC. Respondents in the application are the respondents in the suit.

2. The petition averments in brief are as follows: – The plaint schedule property belongs to the petitioner by virtue of a sale deed. The respondents have no right, title, interest, easement, or right of way over any portion of the plaint schedule property. The so-called “strip” claimed by them is not a separate property and forms part of the petitioner’s property itself. It is further averred that on 01-02-2025, the respondents illegally trespassed into the plaint schedule property and cut and removed four full-grown mahogany trees aged about 24 years and having about one metre thickness. The respondents also forcibly broke and demolished about 2.5 metres of the boundary wall of the plaint schedule property. It is further averred that on 28-01-2026, between about 3.30 p.m. and 5.00 p.m., the respondents again trespassed into the plaint schedule property and illegally laid concrete along the southern boundary, thereby permanently altering the nature and character of the plaint schedule property. The respondents are now using the illegally created concrete strip and are threatening to continue further trespass and interference with the petitioner’s peaceful possession and enjoyment of the plaint schedule property. The petitioner has a strong prima facie case and the balance of convenience is entirely in his favour. Hence the petition.

3. Respondents filed objection contending as follows:--The petition is not maintainable either in law or on facts. The petitioner is not in possession of the plaint schedule property having the extent as claimed in the plaint. There are specific boundary marks on the northern and southern sides of the plaint schedule property. The description of the plaint schedule property is not correct. As per the description, on the southern side of the plaint schedule property lies the property of Mohanan. However, it is not true, the southern side of the plaint schedule property is a pathway having a width of 2.80 metres and a length of 25 metres, which was originally owned by Mohanan. Later, he gave said portion as a pathway for the transportation of the petitioner and other adjacent owners. The above said pathway does not form part of the property of the petitioner . The petitioner has also planted mahogany trees on the southern side of the plaint schedule property, separating the pathway. The respondents have not encroached upon the plaint schedule property. The respondents did not remove any trees from the property of the petitioner. The plants standing on the southern boundary of the plaint schedule property were causing obstruction to the pathway, and the respondents had requested the petitioner to remove the said trees. Later, the petitioner herself removed some portion of the trees. The respondents have not destroyed any portion of the compound wall of the petitioner, and the respondents never encroached upon the property of the petitioner. The petitioner has filed this petition before this Court by suppressing material facts, with an intention to obstruct the pathway used by the respondents. The respondents have already filed O.S. No. 82/2026 before this Court against the encroachment committed by the petitioner. Hence, the petition may be dismissed.

4. On the basis of the above pleadings the following points are raised for consideration.

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

5. Heard the learned counsel on both sides .

6. Point Nos.1 to 4 :- The specific case of the petitioner is that the plaint schedule property belongs to the petitioner by virtue of a sale deed, and that the respondents are now encroaching upon a portion of the plaint schedule property by claiming it as a pathway. On the other hand, the respondents contended that the description of the plaint schedule property is not correct. According to them, the southern side of the plaint schedule property is a pathway having a width of 2.80 metres, and the same has been used by the respondents for accessing their property from the Panchayat road on the western side. The petitioner is now unnecessarily obstructing the use of the said pathway, and accordingly, this suit has been filed.

7. Here, in this case, admittedly, the plaint schedule property belongs to the petitioner, and the respondents do not claim any right over the plaint schedule property. According to the respondents, there is a pathway on the southern side of the plaint schedule property which has been used by them. The respondents contended that the said pathway is clearly separated from the plaint schedule property having an extent of 4 ares. The respondents also contended that they are not attempting in any way to encroach upon the plaint schedule property and that they are only seeking

permission to use the pathway on the southern side of the plaint schedule property.

8. Here, in this case, no commission has been taken out by petitioner for the identification of the property. However, since the respondents do not claim any right over the plaint schedule property, I am of the view that the petitioner is entitled to the injunction as sought for. I believe that the petitioner has made out a prima facie case and that the balance of convenience is in their favour. If the petition is not allowed, it will cause more irreparable injury and loss to the petitioner than to the respondent. Hence, these points are found in favour of the petitioners. Hence, the petition is allowed.

9. Point No. 5:- In the result petition is allowed and the injunction order dated 06-02-2026 is hereby made absolute as follows:-

(a). The respondents and men claiming under them are restrained from entering into or trespassing upon the plaint schedule property or any portion thereof, from carrying out any construction, alteration, or causing any damage in the plaint schedule property, and from in any manner interfering with the peaceful possession and enjoyment of the plaint schedule property by the petitioner/petitioner until further orders.

(b). There will be 'no order as to costs'.

*(Dictated to the confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 07<sup>th</sup> day of April , 2026)*

Sd/-  
Aswathy Nair,  
Civil Judge (Junior Division)

Appendix : Nil

Id/  
Civil Judge (Junior Division)

//true copy//

Civil Judge (Junior Division)

Typed by: Sujith Kumar.T  
Compared: