

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

**IA.1/2026 in OS.82/2026**

**Between**

Petitioner/Plaintiff : Dr.E.Banerji,  
Aged 57 years,  
S/o Ilayakochu,  
Puthumangalathu Veedu,  
Cheriyazheekkal P.O  
Cheriyazheekkal Thura,  
Alappadu Village,  
Karunagappally Taluk.  
Pin 690 573.  
  
By Adv.K.Vinayakumar,  
C.S.Muhammed shine & Jtyohi.R.Nath.

And

Respondents/Defendants :1. Sathibhasura, Aged 63 years,  
W/o Krishnanunni,  
Kattilthekkal Veedu,  
Cheriyazheekkal P.O  
Cheriyazheekkal Thura,  
Alappadu Village,  
Karunagappally Taluk.  
  
2. Krishnanunni, Aged 70 years,  
S/o Kochupillai,  
- do -  
  
3 Anu, Aged 36 years,  
W/o Shibu Krishnanunni,  
- do -  
  
By Adv.Muhammed Thaha.K for R1 to R3

This petition filed u/o. XXXIX Rule 1 of Civil Procedure Code for temporary injunction.

This petition coming on for hearing on 07.04.2026 and on the same day this court ordered 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 averments in the petition are as follows: – Petitioner is the plaintiff in this case. The petitioner and respondents are neighbours. Plaintiff A schedule property belongs to the petitioner by virtue of Partition Deed No. 2886/96. Plaintiff B schedule pathway belongs to the petitioner's brother, Mohanan, having a width of 2.80 metres and a length of 25 metres. The petitioner has been using the plaintiff B schedule pathway, which starts from the Panchayath road on the western side, proceeding towards the eastern direction, and reaches the north-western side of the plaintiff A schedule property. The plaintiff B schedule pathway has been used by the petitioner and also Sri. Varadarajan, who is the owner of the property on the eastern side of the plaintiff A schedule property, and other neighbouring property owners. The plaintiff B schedule

pathway has been given by his brother for the transportation to the plaint A schedule property. Plaint C schedule property belongs to the 1<sup>st</sup> respondent, which is situated on the northern side of the plaint B schedule pathway. The respondents have no manner of right over the plaint B schedule pathway. There exists fencing and old trees separating the plaint C schedule property from the plaint B schedule pathway on its southern boundary. The petitioner is residing at Trivandrum for the educational purpose of his children, and he used to visit the plaint A schedule property only on weekends. Being so, the respondents obstructed the use of the plaint B schedule pathway by the petitioner and raised unnecessary claims over the boundary separating the plaint C schedule property and the plaint B schedule pathway. Accordingly, the respondents filed an application before the survey authorities for measuring out the southern boundary, and thereby the authorities have fixed the southern boundary of the plaint C schedule property. Being so, on 08.02.2025, the respondents obstructed the entry of the petitioner's car to the plaint B schedule pathway by tying two buffaloes in the pathway. Further, on 15.02.2026 also, the respondents obstructed the use of the B schedule pathway by the petitioner. The respondents will again attempt to obstruct the use of the pathway by the petitioner. The respondents have also filed O.S. No. 60/2026 before this Court to restrain the petitioner from entering into the plaint C schedule property. After obtaining a

temporary injunction order in that case, the respondents are now again attempting to obstruct the use of the plaint B schedule pathway by the petitioner, which cannot be resisted by the petitioner. The petitioner has no other pathway other than the plaint B schedule for his transportation. Hence this petition.

3. 1<sup>st</sup> respondent filed objection contending as follows:-- The 1<sup>st</sup> respondent filed an objection contending that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are respectively the husband and daughter-in-law of the 1<sup>st</sup> respondent. The real dispute, if any, is only between the petitioner and the 1<sup>st</sup> respondent in relation to the disputed southern side portion already covered by the earlier suit, O.S. No. 60/2026. It is further contended that the present suit and the above interlocutory application are not bona fide and are only a counter-blast and retaliatory proceeding instituted by the petitioner after the petitioner came to know of the interim order already obtained by the 1<sup>st</sup> respondent herein in the earlier suit, O.S. No. 60/2026. According to the 1<sup>st</sup> respondent, the subject matter of the present suit substantially overlaps with the subject matter already pending in O.S. No. 60/2026, namely, the very same disputed strip lying on the southern side of the 1<sup>st</sup> respondent's property, which the petitioner has now artificially described as B schedule pathway. It is further contended that the petitioner's own pleadings disclose a serious and substantial dispute regarding

the identity of the disputed strip, whether it forms part of the respondents' property, whether it is an independent pathway at all, and whether the petitioner has any title, possession, easement, or other enforceable legal right over the same. In such circumstances, it is contended that a mere suit for injunction without seeking proper declaratory and consequential reliefs is not maintainable in the manner now attempted by the petitioner. Therefore, the petitioner has no clear prima facie legal right capable of protection by an order of temporary injunction. According to the 1<sup>st</sup> respondent, the petitioner carved out a strip from the southern side of the respondents' property and falsely labelled the same as a separate B schedule pathway. It is also contended that the petitioner, instead of contesting the earlier suit on merits, has instituted the present suit as a later counter-proceeding. The petitioner cannot be permitted to secure, in a later suit, an order which would effectively undermine or render nugatory the protection already granted in the earlier suit. The 1<sup>st</sup> respondent further contends that the petitioner may attempt to rely on the Advocate Commissioner's report filed in the present suit. The said report only records visible physical features and is not based on scientific survey measurement. Significantly, the Commissioner himself has noted that the alleged B schedule has no separate boundary marks. Therefore, according to the 1<sup>st</sup> respondent, the report cannot establish title, easement, or separate legal identity of the alleged B schedule and

cannot form the basis for grant of temporary injunction. It is finally contended that the petitioner has failed to establish a clear, strong, and legally protectable prima facie case and that the balance of convenience is overwhelmingly in favour of the respondents. Hence, the respondents pray that the interlocutory application may be dismissed with costs.

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 A schedule property belongs to him by virtue of Partition Deed No. 2886. The petitioner has been using the plaint B schedule pathway for the transportation to the plaint A schedule property from the Panchayat road on the western side. According to the petitioner, the plaint B schedule pathway originally belonged to her brother, and her brother had given the said portion as a pathway for the petitioner and other adjacent property owners. The plaint C

schedule property belongs to the defendant. The petitioner contends that the respondents are now obstructing the use of the plaint B schedule pathway, claiming that it forms part of the plaint C schedule property. It is further contended that the plaint B schedule pathway is separated from the plaint C schedule property. Hence, the respondents have no manner of right to obstruct the same. On the other hand, the respondents contended that the petitioner is using a portion of their property as a pathway by encroaching upon it. According to them, the petitioner has no manner of right over the property belonging to the respondents. The respondents have already filed O.S. No. 60/2026 before this Court seeking to restrain the petitioners from encroaching upon the property of the respondents. This Court has already granted an order in favour of the respondents, restraining the petitioners from encroaching upon the plaint C schedule property. In such a scenario, if this petition is allowed, it will cause irreparable injury and loss to the respondents. Since there is a boundary dispute between the petitioner and the respondents, this petition cannot be allowed.

7. Here, in this case, admittedly, the plaint A schedule property belongs to the petitioner and the plaint C schedule property belongs to the respondents. The dispute is regarding the extent and ownership of the plaint B schedule pathway. According to the petitioner, the plaint B schedule pathway is

separated from the plaint C schedule property, and the respondents have no manner of right over it. However, the respondents vehemently opposed said contention and argued that the pathway claimed as the plaint B schedule pathway is a portion of the plaint C schedule property. The petitioner is now using that portion of the plaint C schedule property as a pathway without the consent of the respondents. In this case, the petitioner has taken out a commission for local inspection, and the advocate commissioner has filed Ext. C1 report. The Advocate Commissioner has clearly identified a pathway having a width of 2.80 meters, and he has also stated that the said pathway has been used by the petitioner for accessing the plaint A schedule property. Admittedly, the plaint B schedule pathway is situated on the southern side of the plaint C schedule property, and as per Ext. C1 report, both the properties share a common boundary. The Commissioner has also reported that the plaint B schedule pathway is the only pathway for transportation to the plaint A schedule property and for the adjacent property owners from the Panchayat road on the western side. However, the Commissioner has not reported any boundary marks separating the plaint C schedule property and the plaint B schedule pathway.

8. The learned counsel for the petitioner contended that, as per the plaint description, the plaint C schedule property has an extent of 4 ares, and as per the plaint description in O.S. No. 60/2026, the same property has been

mentioned as plaint schedule property having an extent of 4 ares. The learned counsel further contended that they will not encroach upon the above said 4 ares of property, and this Court may permit them to use the plaint B schedule pathway without encroaching upon the plaint C schedule property having an extent of 4 ares.

9. Upon perusal of the contentions of both sides, it is seen that the existence of a pathway has been clearly identified by the Advocate Commissioner through Ext. C1 report. Ext.C1 report shows that plaint B schedule pathway is clearly identifiable one and it exists separated from plaint C schedule property though no specific boundary marks reported by the advocate commissioner. Moreover, commissioner also reported that pathway has a width of 2.8 meter as per plaint description. Since the Advocate Commissioner has also reported that the plaint B schedule pathway is the only means of transportation to the petitioner's property, if the injunction is not granted, it will cause irreparable injury and loss to the petitioner.

10. The respondents have not specifically denied the existence of the plaint B schedule pathway. The only contention raised by the respondents is that, while using the pathway, the petitioner has also encroached upon the plaint C schedule property. As the learned counsel for the petitioner contended that the

petitioner may be permitted to use the pathway without encroaching upon the plaint C schedule property. Petitioner argued that plaint B schedule property is in no way a part of the 4 ares of property owned by the respondents. Considering the facts and circumstances of the case, I am of the view that the petitioner can be permitted to use the plaint B schedule pathway till the disposal of the suit; otherwise, it will cause irreparable injury and loss to the petitioner. At the same time, it is also made clear that the petitioner shall not encroach upon the plaint C schedule property having an extent of 4 ares owned by the respondents. I believe that the petitioners have 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.

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

(a). The respondents and men claiming under them are restrained from obstructing the petitioner/petitioner and others from using the plaint B schedule pathway, including for vehicular traffic, and from trespassing into the said pathway or causing any obstruction therein or committing any other acts of interference. It is further made clear that petitioner shall not encroach upon the plaint C schedule property having an extent of 4 ares.

(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 7<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 by: