

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY.

Present:- Smt.Aswathy Nair, Munsiff.

Monday, the 16th day of June, 2025/the 26th day of Jyaishta,1947

I.A No.04/2024 & IA 8/2024 in O.S No. 316/2024

Between

Petitioners/

1. Subhadra, aged 74 years,
W/o. Sivadasan,
Pathiyil veedu, Vengara,
Thodiyoor north P.O,
Karunagappally.
2. Gopalakrishnan. R, aged 60 years,
S/o. Raghavan,
Krishna vihar, - do-
3. Prasad, aged 50 years,
S/o. Raghavan,
Chempakam, S P house,
P.V. North, Thazhava P.O,
Karunagappally.
4. Smitha. P.S. aged 42 years,
W/o. Subhash Chandran,
Chandramathi vihar,
Vengara, Thodiyoor north P.O,
Karunagappally

By Adv. Panambil.S. Jayakumar

And

Respondents/

1. Santhoshkumar, aged 58 years,
S/o. Velayudhan,
Puthen veetil,
Thodiyoor north P.O,
Karunagappally
2. Somarajan, aged 65 years,
S/o. Paramu,
Kannetharayil,
Vengara, Thodiyoor north P.O,

3. Athul Raj, aged 25 years,
S/o. Thulasi,
Kavoollathil, - do -
4. Seema,
W/o. Manikuttan,
Puthenveetil, - do-
5. Ramani, aged 56 yeas,
W/o. Remesan,
Remesh bhavanam, - do -

By Adv. S. Prahladan

This petition filed for to take prosecution proceedings against the respondent.

This petition coming on for hearing before me on 16.06.2025 and on the same day the court passed the following.

ORDER

Petitioners are the plaintiffs in this case and respondents are the defendants in this case. Petitioners have filed IA 04/2024 for prosecuting the respondents for violating the temporary injunction order passed by this court in IA 01/2024 and IA 08/2024 has been filed for granting mandatory injunction. Parties are referred to as the plaintiffs and the defendants as the figure in the suit.

2. The averments in IA 04/2024 in brief as follows:- Petitioner is the 3rd plaintiff in this case. Suit has been filed for permanent prohibitory injunction. On 27.09.2024 this court granted a temporary injunction in IA 01/2024, restraining the defendants from trespassing into the plaint schedule property and from constructing any new pathway through the plaint schedule property. By knowing this order, on

27.09.2024 at 12.30 pm respondents and their henchmen removed the iron fencing on the south-eastern boundary of the plaint schedule property. Respondents have also brutally manhandled the 2nd and 3rd plaintiffs on 01.11.2024 at plaint schedule property and Karunagappally Police has registered a FIR in crime No.1537/2024 against the respondents. The Omni-van of the 3rd plaintiff parked in the plaint schedule property has been removed by the respondents using a crane on 02.11.2024 and dumped before the police station compound with the influence of the police officials. Respondents have also taken the materials inside the vehicle. Respondents have also cleaned the pathway which has been used by the petitioners using a mop and other articles. Thereby respondents have violated the order passed in IA 01/2024. Respondents are highly influential persons. Hence petitioners have filed this petition before this court.

3. Respondents have filed objection as follows:-- Petition is not maintainable either in law or on facts. Petitioners have suppressed the material facts before this court. By granting a temporary injunction in IA 01/2024 this court has not restrained the defendants from using the pathway which has been used by them. The pathway which starts from the MalumelKadavu--Chelakkottukulangara PWD road which is situating on the northern side of the house of the 2nd plaintiff and it runs through the western side of the house of the 2nd plaintiff and extending to the southern direction having a width of 3.9 meters and length of 165 meters has been used by the defendants for the transportation to their respective houses. Also said pathway has been used by several people to access the Kavullathil Sree Bhadrakali Devi Temple

situating on the western side of the pathway and a pathway which starts from the northern end of the above said pathway having length of 65 meters extended in a southern direction and runs through the eastern side of the plaint schedule properties. Plaint schedule properties belong to plaintiffs 1 to 3 and also belong to the husband of the 4th plaintiff Subash Chandran and the relatives of Karthiyayani. The above said Karthiyayani did not have any children. Hence she executed a will giving the rights of the plaint schedule properties to plaintiffs, 4th plaintiff's husband and one Mr.Raghavan. Subsequently the right of the above said Raghavan has been purchased by the 2nd plaintiff. Further plaintiffs have attempted to destroy the existing pathway which has a width of 3.9 meters and attempted to annex the same to the property of the 2nd and 3rd plaintiff. But the same was obstructed by the defendants. Defendants have not committed any mischief on the plaint schedule property and there is no need to create a new pathway over it. On the eastern side of the plaint schedule property in south-north direction there is a pathway having width of 3.9 meters and the said pathway has an age of 100 years. The said pathway has been used by the defendants and also used by the family members of Kavullathil and Puthen Veetil and also by the public in that locality. On 02.11.2024, 3rd plaintiff parked his omni-van on the above said pathway and thereby obstructed the transportation of the defendants. The 2nd and 3rd plaintiffs also manhandled a boy named Adarsh who traveled through the said pathway and this was intervened by the public and they called the police. Subsequently police came and took the omni-van to the police station using a crane and the above said Adarsh filed a complaint against

the plaintiffs which was numbered as Karunagappally Police Crime No.1536/24. Further under the influence of the plaintiffs, Karunagappally Police also registered a crime against the defendants which is a false one. Defendants have not removed any iron fencing as claimed by the plaintiff. IA 01/2024 has not restrained the defendants from using the pathway. Plaintiffs who are aware of the facts that the above pathway is also a part of the plaint schedule property and with an intention to destroy the pathway is attempting to annex the same to the plaint schedule property. They have filed these petitions to cause difficulties to the defendants. Defendants have not committed any mischief on the plaint schedule property. They never intended to violate the order of this court passed in IA 01/2024. Hence the petition may be dismissed.

4. Brief facts of IA 08/2024 is as follows:- The suit has been filed for permanent prohibitory injunction. On 27.09.2024 at 12.30 pm defendants and their neighbours removed the iron fencing on the south-eastern corner of the plaint schedule property and they have manhandled the plaintiffs. Karunagappally police have registered a crime against them. They have also illegally taken the omni-van of the 3rd plaintiff parked at the plaint schedule property. Petitioners have filed a petition before the Judicial First Class Magistrate Court, Karunagappally for the release of the vehicle. Hence this petition has been filed for mandatory injunction directing the respondents to re-instate the iron fencing removed by the respondents from the south-eastern corner of the plaint schedule property.

5. Respondents submitted objection as follows:-- Petitioners have

suppressed the material facts before this court. By granting a temporary injunction in IA 01/2024 this court has not restrained the defendants from using the pathway which has been used by them. The pathway which starts from the Malumel Kadavu--Chelakkottukulangara PWD road which is situating on the northern side of the house of the 2nd plaintiff and it runs through the western side of the house of the 2nd plaintiff and extending to the southern direction having a width of 3.9 meters and length of 165 meters and said pathway has been used by the defendants for the transportation to their respective houses. Also said pathway has been used to access the temple Kavullathil Sree Bhadrakali Devi Kshethram situating on the western side of the pathway and a pathway which starts from the northern end of the above said pathway having length of 65 meters extended in a southern direction and runs through the eastern side of the plaint schedule properties. Now the plaintiffs are attempting to destroy the existing pathway which has a width of 3.9 meters and attempted to annex the same to the property of the 2nd and 3rd plaintiff. But the same was obstructed by the defendants. Defendants have not committed any mischief on the plaint schedule property and there is no need to create a new pathway over it. On the eastern side of the plaint schedule property in south-north direction there is a pathway having width of 3.9 meters and the said pathway has an age of 100 years. The said pathway has been used by the defendants and also used by the family members of Kavullathil and Puthen Veetil and also public in that locality. Defendants have not removed the iron fencing as claimed by the plaintiff. IA 01/2024 has not restrained the defendants from using the pathway. Plaintiffs who are aware of the facts that the above pathway

is also a part of the plaint schedule property and with an intention to destroy the pathway is attempting to annex the same to the plaint schedule property. Respondents have not removed any fence. Hence they are not bound to reinstate the iron fencing to its original position. Therefore the petition may be dismissed.

6. On the basis of the above pleadings of both the IAs, the following points are raised for consideration.

- (1) Whether the respondents violated the temporary injunction order passed in IA 4/2024 dated 27.09.2024?
- (2) Are the petitioners entitled to an order of mandatory injunction as prayed for?
- (3) Order and costs?

7. Heard the learned counsel for both sides .

8. For the purpose of IA PW1 to PW4 were examined and Ext.A1 will deed, Ext.A2 tax receipt dated 14.06.2024, Ext.A3 tax receipt dated 23.09.2024, Ext.A4 tax receipts dated 04.06.2024, Ext.A5 tax receipt dated 07.08.2023, Ext.A6 copy of FIR No.1536/24 of Karunagappally Police Station, Ext.A7 copy of FIR No.1537/24 of Karunagappally Police Station, Ext.A8 Wound Certificate dated 11.11.2024, Ext.A9 Discharge Summary of AM Hospital, Karunagappally, Ext.A10 Pendrive, Ext.A11 photos, Ext.A12 65 B certificate dated 17.02.2025 were marked. Ext.X1 is the authorisation from the Kerala State Remote Sensing and Environment Centre, Thiruvananthapuram, Ext. X2 is the Letter dated 27.03.2025 from the Director Kerala State Remote Sensing and Environment Centre, Thiruvananthapuram. Ext. X2(a) is the Report on Land Use Change Ext.X2(b) and X2(c) are the satellite photos (8 Nos.) No. A-172/2015/KSREC/000549/25. Ext.X2

(d) is the description relating to Survey Number 720, Block No.13, Limitations, and Observations & Conclusion signed by the Dr.S.Jane Mithra Scientist, KSREC were marked from the side of the petitioner . From the side of the respondent RW1 and RW2 were examined and Ext.B1, the mahazar and commission report in OS 332/2024 is marked subject to proof since it is a photocopy. However subsequently respondent did not produce the certified copy or the copy received by the parties, hence it cannot be admitted in evidence.

9. Point Nos. 1 & 2 :- Since these both points involve common evidence, both the points are considered together to avoid repetition. Here in this case petitioners have filed these petitions contending that the respondents have violated the temporary injunction order passed by this court on 27.09.2024 by demolishing the iron fence on the south eastern side of the plaint schedule property and creating a new pathway through it. Petitioners also contended that on 01.11.2024 2nd and 3rd plaintiffs were assaulted by the defendants when 3rd plaintiff attempted to cultivate plants and trees on the plaint schedule property. Defendants were specifically restrained from constructing a new pathway through the plaint schedule property, but in violation to that they cut open a new pathway on the plaint schedule property on the same day when injunction order was granted. At the same time respondents contended that they have not violated the order of the court and they have been using the pathway which is already existing on the eastern side of the plaint schedule property and plaintiff has filed this suit on an experimental basis to obstruct the pathway used by the defendants

10. In order to prove the contention of the petitioner, the 3rd plaintiff is

examined as PW1 and his wife is examined as PW2. PW1 and PW2 categorically deposed that on 27.09.2024 even after passing a temporary injunction order restraining the defendant from constructing a new pathway, in violation to the same respondents cutting open a new pathway through the plaint schedule property. PW3 is the advocate commissioner who conducted local inspection and prepared Ext C1 and Ext C1(a). PW4 is the scientist of Kerala State Remote Sensing who was summoned to produce cartosat images of the plaint schedule property. From the side of the respondent, 2nd defendant is examined as RW1 and the advocate commissioner in OS 332/24 which has been filed by the defendant is examined as RW2.

11. Now the question to be considered is whether petitioners succeeded in proving that respondents have violated the temporary injunction order granted by this court by creating a new pathway through the plaint schedule property by demolishing the iron fencing on the south eastern side of the plaint schedule properties. The suit is for permanent prohibitory injunction restraining the defendants/respondents from trespassing into the plaint schedule properties and creating a new pathway or causing any damage to the plaint schedule properties. According to the plaintiffs, plaintiffs have obtained the right of the plaint schedule properties by virtue of will deed No.46 -III/2011 and respondents are the property owners of the southern and eastern side of the plaint schedule properties. Defendants have no right over the plaint schedule properties. There is a small pathway on the eastern side of the plaint schedule properties, which is exclusively used by the petitioners as per the will deed. However, now the defendants are attempting to cut open a new pathway with the aid

of the police. Hence, they filed the suit and obtained a temporary injunction restraining the respondents from cutting open a new pathway. On perusal of the records it is seen that suit has been filed on 27.09.2024 and on the same day petitioners have obtained a temporary injunction order in favour of them. According to petitioners on the same day at 12. 30 pm respondents have violated the injunction order by trespassing into the plaint schedule properties by demolishing the iron fencing on the south- eastern side of the plaint schedule properties. It is to be noted that in order to prove the violation of an injunction order, firstly petitioners have to prove that the order of injunction has been properly communicated to the respondents and even after getting the knowledge of the same respondents purposefully violated the order then only prosecution proceedings will lie against the respondents. But, here in this case PW1 and PW2 categorically deposed that at 12.30 pm on 27.09.2024, respondents demolished the iron fencing. It is pertinent to note that this court has granted injunction on 27.09.2024. On perusal of records, it is seen that notice in injunction order has been served to the respondents on 01.10.24. Furthermore any report of the amin is also not seen produced stating that order of injunction has been communicated to respondents on 27.09.24. Petitioner herein has also not produced any evidence to prove that the order of injunction has been communicated to the respondents before 12.30 pm on 27.09.2024. Without proving the same it cannot be said that the prosecution will lie against the respondents. Moreover, another contention of the petitioners is that on 01.11.2024, 2nd and 3rd plaintiffs were assaulted by the respondents when the 3rd plaintiff entered into the

plaint schedule property to cultivate plants and trees. Petitioner contented that against the said incident he has filed a complaint against the respondents before Karunagappally Police Station and police has registered a crime No.1537/2024 against the respondents, alleging that plaintiffs were assaulted by the respondents. Petitioner has produced certified copy of the FIR as Ext A7 to prove his contention. At the same time respondents contended that on 02.11.2024, 3rd petitioner had placed his omni-van across the pathway used by the respondents to obstruct the pathway. Moreover the 2nd and 3rd plaintiffs have also manhandled a boy named Adarsh, who used the pathway during that time and it was intervened by the public and they informed the police. Subsequently police came and took away the omni- van of the 3rd plaintiff as the 3rd plaintiff had refused to remove the omni-van from the pathway on the instruction of the police. Thereafter the above said Adarsh has filed a complaint against the petitioners before the Karunagappally Police and registered crime No. 1536/2024 against the plaintiff and in that enmity with the aid of the police, petitioner has subsequently registered crime No.1537 against the respondents. From the petitioner's side itself has produced the copy of the FIR in Crime No. 1536/24 as Ext A6. In this case though the petitioner has claimed that on 01.11.2024 he was assaulted by the respondents, apart from the oral testimony of PW1 and PW2 no independent evidence has been adduced to prove that he was assaulted by the respondents and they have trespassed into the plaint schedule property. PW1 has produced Ext A8 to prove that he sustained injury in the assault. However in the wound certificate it is not mentioned who has assaulted the 3rd plaintiff. Since the 3rd

plaintiff and respondents are neighbour, he could have given their name to the doctor. Ext A8 wound certificate and Ext A9 discharge summary proves that he sustained some injuries on 01.11.2024. But no evidence before this court to prove that respondents assaulted the 3rd plaintiff. Petitioners have produced the FIR of the crime registered against the respondents. But on perusal of Ext A6 and Ext A7, it can be seen that Ext A6 is the crime which has been registered against the petitioners is the earlier one and other is a counter one. Hence in the present scenario it cannot be said that 3rd plaintiff is assaulted by respondents since it is pending before the appropriate forum for the trial. Here in this case, apart from the oral testimony of PW1 and PW2, petitioners have not adduced any evidence to prove that respondents have removed the iron fencing and cut open a new pathway through the plaint schedule properties. In the Ext.C1 commission report which has been prepared by the PW3 on the application of the petitioner itself reported that there is a pathway through the eastern side of the plaint schedule properties. Moreover the commissioner has also clearly stated that said pathway having a width of 3.90 meter has been extending towards the Kavullathil Sree Bhagavathy Kshethram. Commissioner has also stated that she has seen the Iron fencing on plaint schedule properties as demolished. But there is no whisper in the commissioner's report that respondents have demolished the same. The Ext.C1 report also does not disclose the existence of any newly created pathway through the eastern side of the plaint schedule properties. RW2 the commissioner in the original suit filed by the respondent also deposed the existence of a pathway through the eastern side of the plaint schedule properties. Plaintiff has

produced Ext.X2 series plans of the plaint schedule properties through PW4. PW4 has produced the cartosat plan of the plaint schedule properties. PW4 also deposed that in re-survey No.720/2, the length of pathway from the road to the property is having a length of pathway 55 meters PW4 also deposed that there is no pathway on the southern side of the plaint schedule property in resurvey No. 720/2. He has also produced the satellite image of the plaint schedule properties in the year 2008 to 2023. The testimony of the PW4 only shows that there is no pathway on the southern side of the plaint schedule property in resurvey No.720/2. But the testimony of PW4 does not reveal that respondents have cut open a new pathway through the plaint schedule properties. PW3 commissioner also not deposed that she has seen any newly constructed pathway on the plaint schedule properties. On perusal of entire evidence adduced before this court it can be seen that petitioner has not produced any evidence to prove that the order of temporary injunction has been properly communicated to the respondents and that even after the communication of the order respondents have violated the injunction order by creating a new pathway. Even otherwise, the petitioners have not produced any cogent and reliable evidence to prove that respondents have demolished the iron fencing on 27.09.2024 at 12.30 pm. Though the petitioners have produced CCTV footage and photographs, it does not reveal that defendants demolished the iron fencing. In a prosecution petition, petitioners have to adduce their contentions with strict proof. Petitioners could not even produce a single independent witness to prove that petitioners have demolished the iron fencing and created a new pathway. As rightly pointed out by the learned

counsel for the respondents, this court has only restrained the respondents from cutting open a new pathway and not restrained them from using the pathway. Whether any pathway exists on the eastern side of the plaint schedule properties can be ascertained only through a full-fledged trial and said question cannot be considered at this stage. Here in these petitions, petitioner has sought for prosecution against the respondents and to direct them to reinstate the iron fencing which has been allegedly demolished by them. As stated earlier petitioner has not produced any evidence to prove that respondents have violated the temporary injunction order by demolishing the iron fencing and creating a pathway. In the absence of any such evidence that the respondents have demolished the iron fencing they cannot be compelled to reinstate the same at their expense. Hence from the entire evidence produced before this court, I am of the view that petitioners have miserably failed to prove that the respondents have violated the temporary injunction order by demolishing iron fencing and cutting open a new pathway. Hence both petitions are liable to be dismissed. Point Nos.1 and 2 are found against the petitioner.

12. Point No. 3:- In the result, both IAs are dismissed. Considering the nature of the petition, no costs is ordered.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 16th day of , 2025)

Sd/-
Aswathy Nair
Munsiff.

AppendixExhibits marked for the petitioners/plaintiffs:-

- A1 - Will deed
- A2 14.06.2024 Tax receipt
- A3 23.09.2024 Tax receipt
- A4 04.06.2024 Tax receipt
- A5 07.08.2023 Tax receipt
- A6 Copy of FIR No. 1536/24 of Karunagappally police station
- A7 Copy of FIR No. 1537/24 of Karunagappally police station
- A8 11.11.2024 Wound certificate
- A9 Discharge summary of AM Hospital, Karunagappally
- A10 Pendrive
- A11 Photos
- A12 17.02.2025 65 B certificate

Exhibits marked for the Respondents/Defendants:-

- B1 - Mahazar and commission report in OS 332/2024

Court Exhibit:-

- C1 - Commissioner report

Other Exhibits

- X1 - Authorization from the Kerala state Remote Sensing and Environment centre, Thiruvananthapuram
- X2 - Letter dated 27.03.2025 from the Director Kerala state Remote Sensing and Environment centre, Thiruvananthapuram

X2(a) - Report on land use change

X2(b) - Satelite photos

X2(c) Satelite photos

X2(d) Description relating to survey number 720 Block No. 13 limitation and observation conclusion signed by the Dr. S. Jane Mithra Scientist KSREC

Witness examined for the petitioners:-

PW1	24.02.2025	Prasad
PW2	03.03.2025	Sheena
PW3	05.03.2025	Afeeta Azim
PW4	27.03.2025	Dr. S. Jane Mithra (Scientist)

Witness examined for the respondent:-

RW1	01.04.2025	Somarajan
RW2	04.04.2025	Sreeja Vimalan

Id/-
Munsiff.

//True Copy//

Examiner.

Copied by : Hareesh
Compared by :