

**IN THE COURT OF THE MUNSIFF OF KANNUR**

Present: Smt. Sushama P., Principal Munsiff, Kannur  
Saturday, the 31<sup>st</sup> day of May, 2025 (10<sup>th</sup> Jyaishta, 1947)

**IA.No.7/2025 in OS.341/2024**

- |   |   |                            |
|---|---|----------------------------|
| 1. Nabeesa Thayilakandy Puthiyapurayil,               | ] |                            |
| D/o.Ayishumma and W/o.Khalid, aged 61 years,          | ] |                            |
| Thayilakandy Puthiyapurayil House, Azhikode           | ] |                            |
| North.P.O, Azhikal, Boatpalam, Pin.670009,            | ] |                            |
| Kannur, Azhikode amsom, desom.                        | ] |                            |
| 2. Jabbar Thayilakandy Puthiyapurayil,                | ] |                            |
| S/o.Kunhimariyam, aged 60 years, Thayilakandy         | ] |                            |
| Puthiyapurayil House, Azhikode North.P.O,             | ] | Petitioners/<br>Plaintiffs |
| Azhikal, Boatpalam, Pin.670009, Kannur,               | ] |                            |
| Azhikode amsom, desom.                                | ] |                            |
| 3. Shabana.P, W/o.Rasheed, aged 32 years, residing at | ] |                            |
| Pollantavida House, Azhikode North.P.O, Azhikal,      | ] |                            |
| Boatpalam, Pin.670009, Kannur, Azhikode amsom,        | ] |                            |
| desom.  | ] |                            |
| Vs.   |   |                            |
| 1. Subaida.T, W/o.Abdulla, aged 60 years, residing at | ] |                            |
| Thayyil House, Azhikode North P.O, Azhikal,           | ] |                            |
| Boatpalam, Pin.670009, Kannur, Azhikode amsom,        | ] |                            |
| desom.  | ] | Respondents/<br>Defendants |
| 2. Shabeena.T, D/o.Subaida.T, aged 30 years, residing | ] |                            |
| at Thayyil House, Azhikode North P.O, Azhikal,        | ] |                            |
| Boatpalam, Pin.670009, Kannur, Azhikode amsom,        | ] |                            |
| desom.  | ] |                            |

This petition is filed Under Order 39 Rule 1 of Code Civil Procedure.

Court Fee ₹5/-.

This petition coming on this day for hearing before me in the presence of S/Sri.R.Mahesh Varma and Parasheena.V, Advocates for Petitioners; Sri.P.K.Anver, Advocate for respondents and court passed the following:-

**ORDER**

This petition is filed under Order 39 Rule 1 of the Code of Civil Procedure.

2. The petition averments in brief are as follows:- The petitioner is the 1<sup>st</sup> plaintiff in the above suit. The suit is filed for permanent prohibitory injunction restraining the defendants and their men from doing any act of obstruction so as to block the smooth using of the plaint B schedule pathway. The larger extent of the plaint A schedule property was the part of the properties of the partition deed No.3148/1996 of SRO, Valapattanam. The predecessors of the petitioners were in the ownership of the petition A schedule properties from 1931 onwards and using the B schedule pathway for ingress and egress to petition A schedule properties. The respondents obstructed the pathway by digging and putting stones to construct a wall. The petitioner approached the court and obtained an ad-interim injunction order against the respondents as per the order in IA 2/2024. Thereafter, the respondents/ defendants filed IA 4/2024 seeking permission to construct a compound wall to their properties and to install a gate to the compound wall without touching the opening of the B schedule property. This court granted permission to the defendants to construct the compound wall and to install the gate without touching B schedule property and without violating the injunction order passed by this court. Now the respondents are violating the injunction order and have constructed a compound wall including the B schedule pathway and installed a gate across the opening of the B schedule

pathway. Since the gate was locked, the plaintiff could not enter the B schedule pathway from the panchayath road. Hence, the petition for mandatory injunction directs the defendants to restore the original pathway in its original position by removing the newly constructed compound wall and gate for the smooth using of the petition B schedule pathway. Hence the petition.

3. The respondents filed counter statement contending as follows:- In the petition the description of the plaint B schedule property is mentioned as a pathway having 8 feet width and 20 metres length lying in the properties of the respondents and the petitioner claimed easement of prescription over that pathway. The respondents denied the said allegation. When the petition scheduled property and other properties covered by the partition deed were a single plot, their pathway was on the northwestern side. Whereas the properties of the respondents are entirely different, which have no connection with the properties of the petitioners, and the same is situated on the southern side. Even if the petitioners and their predecessors have partitioned their properties, they ought to have set apart a portion of their own properties. The petition B schedule property was specifically shown in the plaint as the one starting from the public road on the southern side in the property of the 1st respondent, which moves towards north for 10 metres within the 1st respondent's property, then turns towards west for another 10 metres within the 2<sup>nd</sup> respondent's property. In compliance with the order in IA 4/2024, the respondent No.2 has constructed a compound wall on the southern side and installed a gate in her property. On 7-2-2025 at about 8 p.m the petitioners children and the 3<sup>rd</sup> petitioner's husband trespassed into the 2<sup>nd</sup> respondent's property and demolished the compound wall and dismantled the wall and the

gate causing loss of Rs.26,000/- to the 2<sup>nd</sup> respondent. The respondents have not violated the ex parte injunction order or constructed compound wall and gate in the alleged B schedule property. The petitioners have no right to take law into their hands and commit illegal act and mischief in the properties of the respondents. There is no such pathway as shown in the B schedule. If at all such a pathway is carved out, that will enter into the house of the respondents. Hence the question of removing the compound wall or restoring the alleged B schedule road does not arise at all. Hence the petition is to be dismissed.

4. **The points for consideration :-**

- 1) Whether the petitioners are entitled to get mandatory injunction as sought for?
- 2) Reliefs and costs ?

5. On the side of the petitioners, Exts.A1 to A6, A7 series, C1, C1 (a), C2 and C2 (a) were marked. On the side of the respondents, Exts.B1 series were marked.

6. Heard both sides.

7. **Point No.1:-** Case of the petitioners is that the petition B schedule property is a pathway having width of 8 feet and around 20 metre length lying in the properties of the respondents used by the petitioner and the general public for the last more than 80 years. This pathway is used for plying motorable vehicle like bike and auto etc. The predecessor of the petitioner was in the ownership of the petition A schedule property from 1931 onwards, using this pathway for ingress and egress to the petition A schedule property. The photocopy of partition deed No.3148/1996 is marked as Ext.A1. Ext.A2 is the land tax receipt. Ext.A3 is the copy of partition deed No.703/2016.

Ext.A4 is the land tax receipt dated 26-8-2024. Ext. A5 is the land tax receipt dated 22-5-2019. Ext.A6 is the copy of settlement deed. Commissioner's report and plan are marked as Exts.C1, C1 (a), C2 and C2(a). Photographs are marked as Exts.A7 series.

8. Case of the respondents is that the petitioners cannot claim pathway in another property belonging to third parties. Neither the petitioners nor their predecessors had at any time used the respondents property as a pathway to their properties. The respondent cannot give large extent of properties to the petitioners and the respondents properties shall be divided into 2 pieces. The petitioners aim is to cause hardship to the respondents and thereby compel them to assign the properties to them. Since the respondents are residing far away from the properties the petitioners are causing damage to the properties . Photographs produced by the respondents are marked as Exts.B1 series.

9. In Ext.C1 commissioner has stated that the plot shown as A1 in Ext.C1(a) is in possession of the plaintiff No.1, A2 is in possession of plaintiff No.2 and A3 is in possession of the plaintiff No.3. The plot B schedule is shown in green ink. In Ext.C1 the commissioner has reported that B schedule is starting from Boatpalam Kappakadavu Juma Masjid Road and proceeding through the property of the respondent No.1 upto 9 metres and then through the property of the respondent No.2 upto 16.50 metres and the total length of B schedule is 25.50 metres. At the starting point the width of the B schedule is 8 feet and the width of way in the property of 2<sup>nd</sup> respondent is 6 to 7 feet. This B schedule property is proceeding to the property of Sabiya and then further to the property of the plaintiffs 1 and 3. From the property of the plaintiff No.1 there is a way to the property of the plaintiff No.2. This way is proceeding further towards north. The B schedule is being used by the

plaintiffs and other inhabitants of the place. A new compound wall is seen constructed on the northern side of the property of the 2<sup>nd</sup> respondent upto 10.20 metres length and 20 c.m height with laterite stones and on the way a dip is made of 1.10 metres length and laterite stone is laid and a basement of 6.90 metres is made to the remaining place. Loose soil is found there at the time of inspection. The plaintiffs told the commissioner that in order to block the way a wall is being constructed by the respondents. The commissioner has seen two lorry of laterite stones loaded in the property of the respondents. It is also reported that she could not see any other way to the property of the plaintiffs. The respondents allege that on 7-2-2025 at about 8 p.m the petitioners children and the 3<sup>rd</sup> petitioner's husband trespassed into the 2<sup>nd</sup> respondent's property and demolished the compound wall and dismantled the wall and the gate causing loss of Rs.26,000/- to the 2<sup>nd</sup> respondent. The respondents have not violated the exparte injunction order or constructed compound wall and gate in the alleged B schedule property

10. Alleging violation the petitioner has filed IA 8/2025 and emergent commission was taken out . The report and sketch filed before the court are marked as Exts.C2 and C2 (a). It is reported that a new wall is being constructed on the northern and southern sides of the respondents' property. It is mentioned in Ext. C2, that compound wall is seen constructed at FE and GF, and about 1 metre was left out at the GF point. On the southern side of the respondent's property, at points AB and CD, a laterite stone wall is constructed at a height of 20 metres. In order to put up a gate, the wall is built at a height of 20 metres at the BC point. At the time of her inspection, the gate was not fixed, and she inspected the property by removing the gate. DE is the boundary line on the eastern side of the property of the respondent

No.2. It is reported in Ext.C2 that in case a gate is to put up a point BC it is difficult to enter the petition schedule property through this way.

11. The learned counsel for the respondents would contend that gate is put up by the respondents with the permission of the court and without touching the B schedule as described in the petition. Per contra, learned counsel for the petitioners would contend that under the guise of order in IA 4/2025, the respondents have violated the ad-interim injunction order and put up a gate blocking the passage through the B schedule property.

12. On perusal of Exts.C2 and C2(a), it could be seen that the gate was put up at BC point which is part of B schedule shown in Ext.C2(a). As per the description in the petition, B schedule pathway has a width of 8 feet and around 20 metre length. In the petition it is pleaded that the petition B schedule property starts at southern side of the 1<sup>st</sup> respondent's property from the panchayath road moves towards north for 10 metres within the 1<sup>st</sup> respondent's property and then a slight deviation to west for another 10 metres within 2<sup>nd</sup> respondent's property. Thereafter goes towards Boatpalam and also to the properties of the petitioners and further moves towards Mosque which is behind the property of the petitioners.

13. In Ext.C1 the commissioner has mentioned that B schedule is starting from Kappakadavu Juma Masjid Road and proceeding through the property of the respondents 1 and 2 and Sabiya and then reaching the properties of the petitioners. The way starts from the property of the 1<sup>st</sup> respondent up to 9 metres, having width of 8 feet. Then moving towards the property of the 2<sup>nd</sup> respondent up to 16.50 metres having 6 to 7 feet width. The total length of B schedule is 25.50 metres as per Exts.C1 and C1 (a).

14. The petitioners had filed this petition for mandatory injunction to remove the newly constructed compound wall and gate and to restore the B schedule pathway in its original position. In Ext.C1 (a) the commissioner has mentioned that the compound wall is being constructed in the property of the respondents 1 and 2 and 2 loads of laterite stones are collected in the property of the respondents. After passing the ad-interim injunction order the respondents filed IA 4/2024 seeking permission to construct a compound wall to their properties and to install a gate to the compound wall without touching the opening of the B schedule property. Accordingly, this court has granted permission to the respondents to construct a compound wall and to install a gate without touching the B schedule property and without violating the ad-interim injunction order.

15. The allegation of the respondents is that on 7-2-2025 at about 8 p.m the petitioners children and the 3<sup>rd</sup> petitioner's husband trespassed into the 2<sup>nd</sup> respondent's property and demolished the compound wall and dismantled the wall and the gate, causing loss of Rs.26,000/- to the 2<sup>nd</sup> respondent. The commissioner has inspected the property on 7.2.25 at 4pm. On the basis of that inspection, the Ext.C2 report was filed. In the report it is stated that gate is not fixed and removing the gate she inspected the property. If that be so dismantling of gate as alleged by the respondent cannot be accepted without reliable material. Ext.B1 series photographs are not sufficient to prove the dismantling of the gate and the demolition of the gate.

16. On perusal of Ext.C2 (a) It can be very well seen that at the starting point of the B schedule, a gate was put up by the respondents. BC point is part of B schedule as evident from Ext.C2 (a) sketch. The case of the petitioners is that the predecessors of the petitioners were in the ownership of

the petition A schedule properties from 1931 onwards, and using the B schedule pathway for ingress and egress to the petition A schedule properties. They are claiming easement by prescription over the B schedule way as the way has been used for more than 80 years without any obstruction as of right peacefully and openly. The existence of Pathway is evident from the report and plan submitted by the commissioner. Hence, I am of the view that the petitioners have made out a prima facie case, and if the way is blocked, they will be put to hardships. In this case balance of convenience is also found in favour of the petitioners. The contention of the respondents that if the way is granted, it will divide their property into two and the petitioners have no right of way through their property, can be considered during full-fledged trial.

17. It is very settled that mandatory injunction pending suit can be granted in exceptional circumstances. The purpose of filing the suit will be defeated, if the user of B schedule way is blocked. It has come out that the construction is made in the petition schedule property blocking the user of B schedule property. Hence the defendants/respondents are to be directed to restore the plaintiff B schedule pathway as noted in Ext. C1 (a) to its original position by removing the newly constructed compound wall and gate in the plaintiff B schedule property. Hence this point is answered accordingly.

18. **Point No.2:-** Based on the finding on point No.1 , this point is answered in favour of the petitioners.

**In the result,** this petition is allowed as follows:-

1. The respondents are directed to restore the plaintiff B schedule pathway in its original position by removing the newly constructed compound wall and gate in the plaintiff B schedule property within one month from the date of order at their costs.

2. If the respondents failed to remove the obstruction as directed above, petitioners are at liberty to remove the obstruction through the process of the court at the expense of the respondents.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 31<sup>st</sup> day of May, 2025).

Sd/-  
PRINCIPAL MUNSIFF

Plaintiff's Witnesses:- Nil.

Plaintiff's Exhibits:-

- A1 : 04.10.1996 : Copy of Partition deed No.3148/1996 of SRO, Valapatanam
- A2 : 26.10.2023 : Copy of basic tax receipt.
- A3 : 10.03.2016 : Copy of Partition deed No.703/2016 of SRO, Valapatanam
- A4 : 26.10.2023 : Copy of basic tax receipt.
- A5 : 22.05.2019 : Copy of basic tax receipt.
- A6 : 17.02.2018 : Copy of Money settlement deed No.386/2018 of SRO, Valapatanam
- A7 : ..... : Photograph.
- A7(a) : ..... : Photograph.
- A7(b) : ..... : Photograph.
- A7(c) : ..... : Photograph.
- A7(d) : ..... : Photograph.
- A7(e) : ..... : Photograph.
- A7(f) : ..... : Photograph.
- A7(g) : ..... : Photograph.
- A7(h) : ..... : Photograph.

Defendant's Witnesses :- Nil.

Defendant's Exhibits:-

B1 : ..... : Photograph.

B1(a) : ..... : Photograph.

B1(b) : ..... : Photograph.

Court Exhibits:-

C1 : 10.09.2024 : Commission report submitted by Muhasina.O.P,  
Advocate Commissioner.

C1(a) : ..... : Draft Sketch Plan submitted by Muhasina.O.P,  
Advocate Commissioner.

C2 : ..... : Commission report submitted by Muhasina.O.P,  
Advocate Commissioner.

C2(a) : ..... : Draft Sketch Plan submitted by Muhasina.O.P,  
Advocate Commissioner.

Sd/-

PRINCIPAL MUNSIFF

// True Copy//

PRINCIPAL MUNSIFF

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Fair/Spare Order in IA.No.7/2025 in  
OS.341/2024 dated: 31.05.2025.