

IN THE COURT OF ADDL. DISTRICT JUDGE-IV, KOTTAYAM

Present : Dr. Satheesh Kumar. V, Addl. District Judge-IV, Kottayam

Tuesday the 31st day of March, 2026/10th day of Chaithra 1948

CMA No.88/2022

(IA. No.1/2021 & IA 3/2022 in OS No.127/2021 of Munsiff's Court, Vaikom)

Appellant :

P M Thomas, aged 73, S/o Mathew, Parampil House,
Muttuchira Village, Paramparam Kara, Muttuchira P O, Kottayam

By Adv. Jose Joseph K & Adv. Sharath P S

Respondents :

1. Saji Chacko, aged 46, S/o Chacko, Kochupunchayil House,
Muttuchira Village, Paramparam Kara, Muttuchira P.O, Kottayam
2. Biju Chacko, aged 44, S/o Chacko, Kochupunchayil House,
Muttuchira Village, Paramparam Kara, Muttuchira P. O, Kottayam

By Adv. P S Vishnu

This appeal having been finally heard on 27.03.2026 and the court on 31.03.2026 delivered the following:

JUDGMENT

1. This Civil Miscellaneous Appeal is filed under Order XLIII Rule 1 of the Code of Civil Procedure against the common order in I.A. No.1/2021 and I.A. No.3/2022 in O.S. No.127/2021 dated 11.10.2022 on the file of the Munsiff's Court, Vaikom.
2. The Appellant is the Plaintiff in the above suit, who filed I.A. No.1/2021 seeking a temporary prohibitory injunction to restrain the respondents from trespassing into the plaint scheduled property, committing waste, or opening a new road therein. He further filed I.A. No.3/2022 seeking permission to reconstruct a demolished portion of the northern compound

wall under the supervision of an Advocate Commissioner. Both petitions were dismissed by the learned Munsiff.

3. The Plaintiff contends that his son, Smithesh, holds absolute title over 88 square meters in Survey No. 897/3A/1 and an undivided one-half right over 1.74 Ares in Survey No. 897/3A/2. He asserts he has managed this property since 2015 and constructed a cartable road to access his residence. He alleges the respondents intentionally demolished 12 feet of his compound wall to gain access to their properties. He maintains that he is entitled to a prohibitory injunction to prevent the defendants from trespassing and from opening a road, and to a mandatory injunction permitting him to reconstruct a demolished section of a compound wall.
4. The respondents contend that the plaintiff lacks locus standi as the property belongs to his son, and no authorisation was produced. They argue the land is held in joint ownership (Oodukkoor) and is a shared access pathway used by the public for years. They assert that the appellant suppressed terms of the sale deed (Ext. A1), which recognise shared rights for utilities and passage. They further argue that the failure to implead K.V. George, who continues to pay land tax on a portion of the property, is a fatal defect.
5. After evaluating the case records and the arguments from both sides, the learned Munsiff dismissed both applications on October 11, 2022. The trial court's decision was based on the finding that the plaintiff failed to satisfy the three essential requirements for an injunction: a strong prima facie case, the balance of convenience, and the proof of irreparable injury. A significant factor in this conclusion was the court's interpretation of the plaintiff's own title deed, Ext. A1. The court

observed that while the document granted rights over the land, it specifically described the 1.74 Ares portion as an undivided interest intended to be used as a shared pathway with common rights to utilities such as water and electricity. Because the property was held as a joint "Oodukkoor" holding, the court reasoned that the plaintiff could not legally claim an exclusive right to the exclusion of the defendants at this interlocutory stage.

6. Furthermore, the court found substantial ambiguity regarding the identity of the property. Due to ongoing resurvey proceedings and discrepancies between the old survey numbers mentioned in the plaint and the current revenue records, the court was not satisfied that the boundaries were sufficiently defined to grant an injunction. This ambiguity was compounded by the non-joinder of K.V. George, the predecessor-in-interest. The court held that since revenue records showed Mr. George still paying land tax for a portion of the area in question, he was a necessary party whose absence was a fatal defect to the petitions.
7. Regarding the request to reconstruct the wall (I.A.3/2022), the court found the evidence to be inconclusive. In the A4 series of photographs alleging intentional damage by the defendants, the court noted that the photographs did not clearly pinpoint which part of the boundary was demolished or provide sufficient evidence to identify the responsible person.
8. Finally, the court found that, by omitting the specific clauses in the sale deed that recognised the shared nature of the path and attempting to mischaracterise it as a private road, the plaintiff was found to have

suppressed material facts. Consequently, the Trial Court dismissed both Ias.

9. Points for Consideration:

1. Whether the appellant established a prima facie case of exclusive possession to warrant an injunction?
2. Whether the trial court erred in finding the property identity unclear?.
3. Is the impugned order liable to be interfered with?

10. Point No. 1: The appellant's claim of absolute exclusive possession is contested by the terms of his own title deed, Ext. A1, which stipulates that the 1.74 Ares portion be used as a way with shared rights for utilities. Revenue records from 2024 further show that a previous sub-division was cancelled because the land remains part of a joint Oodukkoor holding. Thus, the appellant failed to establish a prima facie case of exclusive possession to warrant an injunction.

11. Point No.2 : The trial court correctly identified K.V. George as a necessary party, as revenue records (Ext. B5, B6) show he continues to pay tax for 2.2 Ares in resurvey No.107/16, which overlaps with the disputed area. As per **Shahulhameed v. Abdul Latheef [2025 KHC OnLine 135]**, while a full survey commission isn't always needed, precise identification via a commissioner's sketch is essential when boundaries are genuinely disputed. The existing discrepancies between old survey numbers and finalised resurvey data reinforce the trial court's finding that identity is not sufficiently clear at this stage. Hence, the trial court correctly found that the property's identity was unclear.

12. Point No.3: Regarding the wall reconstruction (I.A.3/2022), the commission report and photographs (Ext.A4) do not show who

demolished the wall or where exactly the wall stood. Granting a mandatory injunction for reconstruction on a shared pathway would alter the status quo before a full trial.

13. The three pillars of injunction, prima facie case, balance of convenience, and irreparable injury, are not found in favour of the appellant. Granting an exclusive injunction over a path historically used by the public and co-owners would cause greater hardship to the respondents than its continued shared use would cause to the appellant.
14. In these circumstances, this Court finds no illegality or perversity in the trial court's reasoned order. All disputed facts regarding the nature of the "Oodukkoor" right and exact property boundaries must be adjudicated through a full-fledged trial.
15. In the result, the appeal is dismissed. No costs. The common order of the trial court is confirmed. The parties shall appear before the trial court on 25th May 2026.

(Dictated to the Dictation Software, corrected by me and pronounced in open court on this, the 31st day of March, 2026)

Sd/-
Dr. Satheesh Kumar V
Addl. District Judge - IV

Appendix – Nil

Id/-
Addl. District Judge - IV

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Copied by:
Compared by:

Sd/-
Dr. Satheesh Kumar V
Addl. District Judge - IV