

IN THE COURT OF THE MUNSIFF, ETTUMANOOR

Present: Miss. Annu Mary Jose., Munsiff

Thursday, the 23rd day of October, 2025
1st day of Karthika, 1947

IA.12/2024 in OS. No. 211/2022

Petitioner/Plaintiff:

P.K.Sajeevan, aged 46 years,
S/o. Late Achuthan Kuttappan, from
Poovamnilkkunnathil House,
Kurumulloor Kara, Kurumulloor P.O.,
Kanakari Village, now residing at
Rented House No.13/385, Kallampara Kara,
Kanakari Village, Meenachil Taluk, Kottayam.

By Adv. Gopakumar R, Adv. Jagan James,
Adv. P.T.Kunjachan & Adv. Abhilash P.Nair.

Respondents/Defendants:

1. Vijayamma, aged 51 years, W/o. Late Balakrishnan,
Poovamnilkkunnathil House, Kurumulloor Kara,
Kurumulloor P.O., Kanakary Village, Meenachil Taluk.
2. Akhila, aged 30 years, D/o. Late Balakrishnan,
Poovamnilkkunnathil House, Kurumulloor Kara,
Kurumulloor P.O., Kanakary Village, Meenachil Taluk.

3. Anusha, aged 27 years, D/o. Late Balakrishnan,
Poovamnilkkunnathil House, Kurumulloor Kara,
Kurumulloor P.O., Kanakkary Village, Meenachil Taluk.
4. Divya, aged 23 years, D/o. Late Balakrishnan,
Poovamnilkkunnathil House, Kurumulloor Kara,
Kurumulloor P.O., Kanakkary Village, Meenachil Taluk.
5. P.K.Jayasree, aged 53 years, W/o. Sreekumar,
Saikripa House, Poonthoppu Ward,
Avalookunnu P.O., Alappuzha.
6. P.K.Kusumakumari, aged 59 years,
D/o. Achuthan Kuttappan, Kunnel Puthenpurackal (H),
Elanji P.O., Piravam, Ernakulam.

R1, R5 & R6 by Adv. K.Vinod Kumar
R2, R3 and R4 No Vakalath

This Petition has come up for hearing on 24.09.2025 and
the court on 23.10.2025 passed the following:-

ORDER

This application is filed by the plaintiff under Order 39
Rule 1 r/w Section 151 of the Code of Civil Procedure.

2. The averments in the affidavit filed in support of the application in brief are as follows:- The petitioner is the plaintiff in the above case. The suit is for declaration and permanent prohibitory injunction. The petitioner's father Achuthan Kuttappan died on 03.10.2015 after executing a settlement deed and a Will. The properties devolved upon the plaintiff within schedule one of the registered Will 67/III/2015 is scheduled in the plaint as plaint schedule item nos.1 and 2 properties. By the said registered Will, the petitioner obtained 6.171 Ares with cartable way on the east southern part of the total property having an extent of 40.80 Ares. The said total property of 40.80 Ares was lying without any cartable way facility from the Panchayat road. The petitioner's father during his life time purchased property in between the Panchayat road and the total property of 40.80 Ares for the purpose of developing a cartable way to the total property. Even though the property was instructed to be purchased by the father in his name, the same was purchased by the name of Balakrishnan as the nominee vide sale deed no.426/2002 fraudulently. The property under the sale deed no.426/2002 is scheduled as plaint schedule item no.3 property which is used as a cartable

way from the Panchayat road to the plaint schedule item nos. 1 and 2 properties. The said property was happened to be purchased in the name of eldest son Balakrishnan as a nominee and using the income derived from the total family property. All the legal heirs of Achuthan Kuttappan have joint interest and ownership over the said property. Accordingly, the title deed no.426/2002 is to be declared as nominal and joint ownership is to be declared as provided under the law. The said Balakrishnan is no more. For the beneficial enjoyment of total properties belong to all the shares, the said item no.2 property should be jointly owned and possessed by all. The above way used as a cartable way as a way granted and was continuously and openly used without any obstruction from the date of its purchase. The fact that the plaint schedule item no.3 property is being used as a way to the entire property is admitted by all defendants in an affidavit and application for survey commission filed in O.S. 7/2016 regarding the same property before the Hon'ble Sub Court Kottayam. During the pendency of the suit and after urgent commission report, the defendants obstructed the plaint schedule item no.3 way using heavy black stone. Hence, it is prayed to issue an order of interim mandatory injunction

directing the defendants to remove the obstruction created in
plaint schedule item no.3 way.

3. The respondents 1, 5 and 6 filed objection contending as follows:- The application is not maintainable. I.A 2/2022 filed by the petitioner was dismissed by this court finding that the claim in the temporary prohibitory injunction is false. The devolution of the property as per Will as mentioned in plaint is false and hence denied. The property through which the alleged pathway passes does not belong to the father of the plaintiff. The above said property which is scheduled as plaint schedule item no.3 property is now owned and possessed by the legal heirs of late Balakrishnan who are arrayed as respondents no.1 to 4. The late Achuthan Kuttappan did not spend any amount for purchasing the property covered by sale deed no.426/2002. The petitioner or respondents no.5 and 6 have no right to trespass into the property covered by sale deed no.426/2002. No way exist through the above said property prior to the filing of the suit. Balakrishnan during his life time and his legal heirs after his death have not permitted any person to construct a pathway through that property or use any

portion of property as a pathway. Since the Will itself is a forged document, no question of allotment of shares as per the document arise for consideration. Achuthan Kuttappan, father of the plaintiff did not challenge the sale deed no.426/2002 during his life time. No co-ownership or right of way exist over the property owned by Balakrishnan. A document which is registered as per the Registration Act cannot be declared as nominal. The filing of commission application in O.S 7/2016 is nothing to do with the facts of this case. The legal heirs of deceased Balakrishnan are the actual owners of disputed land. The plaint schedule item no.3 property cannot be used for the beneficial enjoyment of the property owned by Achuthan Kuttappan. No grant is ever made with respect to plaint schedule item no.3 property by Balakrishnan at any point of time. The respondent 1 to 4 who are the actual co-owners of plaint schedule item no.3 property have every right to do legal activities in the plaint schedule property. Hence, it is prayed to dismiss the application.

4. The points that arise for consideration are:-

1. Whether the application is to be allowed?
2. Reliefs and costs?

5. Heard both sides. Perused the records.

6. **Point no.1:-** The case of the petitioner is that the plaint schedule item nos. 1 and 2 properties belong to him which he obtained as per the Will. 67/III/15 executed by his father late Achuthan Kuttappan. The plaint schedule property purchased under sale deed no.426/02 which is scheduled as plaint item no.3 is used as the cartable way from the Panchayat road to plaint schedule item nos. 1 and 2 properties and properties of other sharers under the Will. It is further stated that the above property was instructed to be purchased by his father in his name, but the same was purchased by Balakrishnan who is the eldest son in his name fraudulently. So the sale deed no.426/2002 is only a nominal one. It is also contended that the above property was openly and continuously used without any obstruction and the respondents caused obstruction to the same. On the other hand the respondents would contend that Balakrishnan purchased the property as per sale deed no.426/2002 using his income. The petitioner and respondents 5 and 6 have no right over the property covered by sale deed no.426/2002. It is also stated that they are not

allowed to construct a pathway through the property.

7. The learned counsel for the petitioner submitted that the commission reports dated 16.01.2023 and 24.05.2023 would prove that the plaint schedule item no.3 property exists as a way. The counsel further submitted that the second commission report would show that heavy stones were placed along plaint schedule item no.3 way and thereby caused obstruction in the way. The counsel relied on the judgments of the Hon'ble Apex Court in **Dorab Cawasji Warden v. Coomi Sorab Warden and Others (1990 KHC 756)** and **Samir Narain Bhojwani v. M/S Aurora properties and investments and another (2018 KHC 6615)**. Per contra the learned counsel for the respondents submitted that I.A 2/2022 filed by the petitioner restraining the respondents from committing any act of waste in plaint schedule item no.3 property was dismissed. Hence the petitioner is not entitled to an order of interim mandatory injunction as prayed for.

8. I have gone through the contentions of the learned counsel for the petitioner, learned counsel for the respondents

and perused the records in the above case. The suit is filed to declare joint title of the plaintiff over the plaint schedule item no.3 property with other legal heirs of late Achuthan Kuttappan, to set aside the sale deed no.426/02 of Kuravilangadu SRO as nominal and not binding on the plaintiff. It is also prayed to grant a permanent prohibitory injunction. It can be seen that two commission reports were filed in this case. The commission report dated 16.01.2023 and 24.05.2023 would show that plaint schedule item no.3 property exists. It can be seen from the second commission report that granite stones were placed across plaint schedule item no.3 property causing obstruction to the way. It is true that the first commission report would not show that there was obstruction in plaint schedule item no.3 property. The learned counsel for the petitioner vehemently argued that since the condition of plaint schedule item no.3 property way was altered by the respondents, the petitioner is entitled to order of interim mandatory injunction. It is pertinent to note that the petitioner filed an temporary injunction application in I.A 2/2022 restraining the respondents from committing any act of waste in plaint schedule item no.3 property and the same was

dismissed. It can be also seen that the petitioner did not prefer appeal against the order, but review petition was filed as I.A 8/2024, and same was also dismissed. Since the petitioner has not challenged, the order in I.A 2/2022 has become final. It is pertinent to note that the very case of the contesting respondents is that the petitioner and respondents 5 and 6 have no right over the plaint schedule item no.3 property and the same is not used as a way to the plaint schedule 1, 2 properties. It is also the case of the respondents that plaint schedule item no.3 property was purchased by late Balakrishnan using his income and the same is not a nominal one. Whether the sale deed no.426/02 is liable to be set aside or not is a matter of evidence. To be more precise, whether the petitioner has got any right over the plaint schedule item no.3 property or not is a matter of evidence.

9. It is true that both commission reports would point out that plaint schedule item no.3 way exists. It is pertinent to note that contesting respondents specific case is that they have exclusive right over the plaint schedule item no.3 property as the legal heirs of Balakrishnan and the property was purchased

by their father Balakrishnan using his income. So, the materials on records would show that the court cannot direct the respondents to remove the alleged obstructions in plaint schedule item no.3 pathway without proving that the petitioner has got right over item no.3 way. The materials on record would not warrant passing of an order of temporary mandatory injunction. Hence, the application is liable to be dismissed.

10. Point no.2:- In the result, the application is dismissed. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her corrected by me and pronounced in open Court on this the 23rd day of October, 2025)

**Sd/-
Annu Mary Jose
Munsiff**

APPENDIX : NIL

**Sd/-
Annu Mary Jose
Munsiff**

Copied by :
Compared by :