

**IN THE COURT OF THE MUNSIFF, ETTUMANOOR**

**Present: Smt. Sruthy M., Munsiff**

Saturday, the 30<sup>th</sup> day of March, 2024  
10<sup>th</sup> day of Chaithra, 1946

**IA. No. 2/2023 in OS. No. 224/2023**

**Petitioners/Plaintiffs:**

1. Mary John, aged 94 years, W/o. John,  
Varambel House, Amalagiri P.O.,  
Mannanam Kara, Athirampuzha Village,  
Kottayam Taluk, Kottayam District.
2. Thresiamma Sebastian, aged 63 years, W/o. Sebastian,  
Varambel House, Amalagiri P.O.,  
Mannanam Kara, Athirampuzha Village,  
Kottayam Taluk, Kottayam District.
3. Arun V.S, aged 38 years, S/o. Sebastian,  
Varambel House, Amalagiri P.O.,  
Mannanam Kara, Athirampuzha Village,  
Kottayam Taluk, Kottayam District.
4. Anoop Sebastian, aged 36 years, S/o. Sebastian,  
Varambel House, Amalagiri P.O.,  
Mannanam Kara, Athirampuzha Village,  
Kottayam Taluk, Kottayam District.

By adv. Sri.Michael James and  
Rajesh C.Mohan

**Respondents/Defendants:**

1. Joshi Joseph, aged 59 years, S/o. Joseph Joseph,  
Varambel House, Amalagiri P.O.,  
Mannanam Kara, Athirampuzha Village,  
Kottayam Taluk, Kottayam District.

2. C.J.Devasia @ Joseph Sebastian, aged 90 years, S/o. Joseph, Varambel House, Amalagiri P.O., Mannanam Kara, Athirampuzha Village, Kottayam Taluk, Kottayam District.
3. Binu Joseph, aged 33 years, S/o. Joseph Devasia, Varambel House, Amalagiri P.O., Mannanam Kara, Athirampuzha Village, Kottayam Taluk, Kottayam District.

By Adv. P.V.Joseph

This Petition has come up for hearing on 18.03.2024 and the court on 30.03.2024 passed the following:-

### **ORDER**

The application was filed seeking a temporary prohibitory injunction.

**2. The averments contained in the affidavit filed in support of the petition are as follows:** The petitioner was the 2<sup>nd</sup> plaintiff and the application was filed on behalf of the other plaintiffs too. The plaint item no:1 was in the joint ownership of the 1<sup>st</sup> plaintiff and her son V. J. Sebastian as per partition deed no:2419/08 of Ettumanoor SRO. It was the 'B' schedule property in the deed. V. J. Sebastian passed away on 25/12/2020, and 1<sup>st</sup> plaintiff and the other plaintiffs became the joint owners of the property. The plaintiffs were living in the

house in the plaint scheduled property. In the partition deed no: 2419/08, 'A' to 'E' schedules show the division of the property. There was a way of 4m at the northern side of 'B' scheduled property in the deed (plaint scheduled property 1) that moves towards the east. The way was set apart for everyone and no one had the right to obstruct the way. The way began from the public way at the west, and it was of 20m length and 4m width and it was shown as plaint scheduled property 2. The plaintiffs and defendants had to use plaint item no:2 way towards the east and use the 3m wide way towards the other properties in the partition deed. Defendants were the owners of 'A' and 'C' scheduled property in the partition deed and the properties were situated at the east of the plaint scheduled item no:1. The plaint item no:1 was demarcated on three sides except, the part that was lying together with item no:2 way. It was necessary to built a wall demarcating the plaint item no:1 and 2. When plaintiffs tried to built a wall on the north of plaint item no:1, the defendants threatened to trespass into plaint item no:1 and demolish any wall built there. A complaint was raised by the plaintiffs before the District Collector and as per the direction of the Kottayam Tahasildar, Taluk Surveyor had initiated

measuring and demarcation of plaint item 1 and 2. However, defendants had hindered the process. There was never an effort taken by the plaintiffs to encroach into plaint item no:2. None of the other parties to the partition deed, except the defendants, had hindered the plaintiffs from building a wall, and they were not made parties to the suit. The defendants had trespassed into plaint item no:1, and had tried to make a portion of the northern side of plaint item no:1 part of plaint item no:2. Hence, the application was filed seeking temporary injunction.

**3.** The respondents had filed objection stating that the interlocutory application was not maintainable, and was filed without any bonafide intention. The plaintiffs had no cause of action. The plaintiffs had approached the court after making encroachments in item no:2 road on 01.12.2023, and after substantially reducing its existing 4m width, under the guise of constructing a boundary wall on the northern side of item no:1. There were existing boundary stones and an old boundary retaining wall separating item no:1 and 2. The plaintiffs plucked out and removed the boundary stones and dismantled the existing old boundary retaining wall. Then the plaintiff

constructed a new boundary wall on the eastern half, but when the construction progressed towards west through the northern side of item no:1, plaintiffs encroached into item no:2, and substantially reduced the width of the way so as to make it impossible for the passing vehicle to negotiate through the item no:2 road. The respondents intervened and told the petitioners to construct a new boundary wall towards the north of plaintiff item no:1 leaving the existing 4m way as stated in the partition deed. Enraged by this the petitioners instituted the suit suppressing the material facts and obtained an ex parte interim order. Even in earlier occasions the plaintiff 3 & 4's father had made illegal attempts to annex item no:2 road to their possession. At that time boundary stones were restored by the Taluk Surveyor. The plaintiff item no:2 road was set apart for the beneficial enjoyment of all the sharers in the partition deed 2419/2008. Even the plaintiffs are not entitled to create any obstructions to use of item no:2 road or interfere in the smooth running of vehicles through item no:2. The 1<sup>st</sup> defendant and his sister Elsamma jointly got 'C' schedule in the partition deed and Elsamma executed settlement deed no: 1242/2017 of the SRO Ettumanoor in favour of the 1<sup>st</sup> defendant. Now, 1<sup>st</sup> defendant

was the sole owner of the 'C' schedule property. A schedule property is in the possession and enjoyment of the 2<sup>nd</sup> defendant. 3<sup>rd</sup> defendant was the son of the 2<sup>nd</sup> defendant. The defendant alleged that incorporation of the restrictive covenant on the land was binding on all the sharers and assignees of the land, and hence, it was enforceable against the plaintiffs, who were the owners and in possession of item no:1 property, which is the 'B' schedule in the partition deed. The defendants had no objection in construction of a boundary wall on the northern boundary of plaintiff item no:1 separating it from plaintiff item no: 2 road through the alignment of their northern boundary retaining wall leaving the 4m wide road. But the plaintiffs are trying to reduce the width of the item no:2 way by constructing a boundary wall. As a prelude for committing the mischievous act, the petitioners had dumped heaps of granite stones in item no:2 road and obstructed the plying of vehicles through it. Item no:2 road was used by the 2<sup>nd</sup> defendant who was an ailing old man. Due to the mischievous acts of the plaintiffs vehicles could not be taken into 2<sup>nd</sup> defendant's house. The petitioners have no prima facie case against the respondents. Hence, the application was to be dismissed.

**4. The following points arose for consideration :**

**1.** Are the plaintiffs entitled to a temporary injunction?

**2.** What is the order as to costs?

**5.** The petitioners and respondents were heard. Ext.A1 to A3 and B1 to B3 and Ext. C1 and C1(a) are marked.

**6. Points 1 and 2-** It is evident that there exists a way of 4m width from the public way on the northern side of the 'B' scheduled property and 'C' scheduled property in Ext.A1 document. It was described as schedule E in the partition deed to have an extend of 1.25 ares. Both the plaintiffs and defendants have no right to reduce the width of this said way. This was left for the smooth vehicular access to the properties partitioned as per Ext.A1 deed. In Ext.C1 it is stated that the way was having a width of 10ft. However, that cannot be correct as per Ext.B1 and A1 that is relied upon by both parties. The way was of 4m width cannot be altered by any party including the plaintiffs and defendants. It is also brought out from Ext.A3 that plaintiff had an apprehension that the defendants were trying to encroach into her property that was

scheduled as property no:1 in the plaint. The plaint item no:1 was absolutely in the ownership and possession of the plaintiffs and the defendants had no right to encroach into the said property at the eastern side of the plaint scheduled property 1. However, the plaintiffs also did not have any right to reduce the width of the road on the northern side of plaint item no:1.

7. In the light of the above discussion, it is found that the plaintiffs would suffer irreparable injury if the defendants encroach into the plaint item no:1. As a prima facie case is found in favour of the plaintiffs, the defendants are restrained from encroaching into plaint item no:1 and cause any wastes in plaint item no: 1 property. It is also directed that till the disposal of the suit, the plaint item no:2 way with a width of 4m should not be altered by any means by either parties. No costs is ordered at this stage of the suit.

**In the result, the petition is allowed.**

*Typed, corrected by me and pronounced in open Court on this the 30th day of March, 2024.*

**Sd/-  
SRUTHY M.  
MUNSIFF**

**APPENDIX**

**Exhibits marked for the Petitioners/Plaintiffs:**

A1	14.05.2008	True copy of Partition deed No.2419/08/I from SRO, Ettumanoor.
A2	24.09.2022	Land Tax Receipt of Thandaper No.14434, Re-Survey No.290/2-3, Area 6 Are, 65 M <sup>2</sup> , Block No.27 of Athirampuzha Village, Receipt No.KL05030414701/22.
A3	-	True copy of complaint letter from Thresiamma Sebastian to District Collector, Kottayam.

**Exhibits marked for the Respondents/Defendants:**

B1	14.05.2008	Certified copy of partition deed No.2419/2008 from SRO, Ettumanoor.
B2	26.05.2017	Certified copy of Settlement deed No.1242/2017 from SRO, Ettumanoor.
B3	22.06.2023	Land Tax receipt of Thandaper No.18827, Re-Sy No.290/2-5, Area 16 Are, 15 M <sup>2</sup> , Block No.27 of Athirampuzha Village, Receipt No.KL05030409053/23.

**Third Party Exhibits : Nil**

**Court Exhibits:**

C1	22.12.2023	Commission Report filed by Advocate Commissioner Sruthy.B
C1(a)	22.12.2023	Rough sketch filed along with C1 Commission Report.

**Witness examined for the Plaintiff : Nil**

**Witness examined for the Defendant : Nil**

**Sd/-  
SRUTHY M.  
MUNSIFF**

Copied by :  
Compared by :