

**IN THE COURT OF THE MUNSIFF, VAIKOM**

Present: Sri. Atheek Rahman, Munsiff.

**Tuesday the 12<sup>th</sup> day of December 2023**  
**21<sup>st</sup> day of Agrahayana 1945**

**I.A.No. 1/2022 in O.S.No. 192/2022**

**Applicant / Plaintiff:-**

Joby George, 47 years, S/o. George,  
Puthenpurayil House, Kaduthuruthy Village,  
Kaduthuruthy Post, Vaikom Taluk,  
Kottayam, Pin - 686604.

By Adv. Sajith C. George.

**Respondent / Defendant :-**

Soji Joseph Alumpampil,  
aged 55, S/o. Joseph,  
Alumpampil House,  
Parippu Kara, Aymanam Village,  
Cheepunkal Post, Kottayam.

By Adv.S.N. Jayachandran

This petition having been finally heard on 02.12.2023  
and the court on 12.12.2023 passed the following:-

**ORDER**

This petition is filed by the petitioner/plaintiff under Order 39 Rule 1 of CPC. The petition is supported by an affidavit sworn by the petitioner.

2. Brief averments in the affidavit in support of the petition are as follows:- Suit is filed for permanent prohibitory injunction restraining the defendants from trespassing into plaint B schedule road, committing waste therein and from interfering with the use of plaint B schedule road. Petitioner is the owner in absolute possession of the plaint A schedule property lying within well defined boundaries having an extent of 02 Ares 42 square metres comprised in old survey No.492/26 of Vechoor Village. The respondent is taking hasty steps to trespass into plaint B schedule road and obstruct the same by placing obstacles like scrap iron materials and logs etc. to deny access to Panchayat road on the east. Respondent is also attempting to extend the construction of toilet and septic tank into plaint B schedule road. The illegal action to obstruct the plaint B

schedule road was done by the respondent on many occasions and also on 03.04.2022. Hence, the petition to restrain the respondent by a temporary prohibitory injunction order from trespassing on the plaint B schedule road, placing obstacles in the B schedule way and committing waste therein till the disposal of the suit.

3. Brief averments in the objection filed by the respondent are as follows:- The signature of the petitioner in the affidavit in support of the petition and the plaint are not belonging to him. It is not properly verified also. The petitioner is working in U.K. He came to native and returned to U.K on 21.03.2022. At the time of institution of the suit, the petitioner was not in native. Further, petitioner has not authorised anybody to institute the suit. Hence, the petition is not maintainable. The description of the plaint A schedule property is not correct. It is admitted that petitioner is having property and it is lies in well defined boundaries. The correct boundary of the property is not shown in the plaint. The house is situated in the plaint A schedule property. The possession of the said property is also with the petitioner.

Respondent is having no property on the eastern side of the plaintiff A schedule property. The respondent is having property on the southern side of plaintiff A schedule property. There is no way in existence as scheduled in the plaintiff B schedule. Only a portion of way using by the petitioner for the ingress and egress to plaintiff A schedule property is passing through the property of respondent. The petitioner has no right over the portion of way passing through the property of respondent. Respondent is running a boat repairing yard in his property with proper licence. Further, respondent had not done anything to curtail the right of the petitioner and enjoyment of plaintiff A schedule property. The averment that on 03.01.2022 respondent and his labourers threatened the petitioner is false. Respondent never obstructed the way of the petitioner. The petitioner fixed CCTV camera in his property focusing towards the property of respondent. When the petitioner came to native, respondent questioned regarding the same. But, petitioner lodged a false complaint with the police against the respondent. The averment that, on 03.04.2022 respondent

and his man obstructed the way by placing scrap of iron materials and logs is false. Further, respondent had not done any encroachment upon the way belonging to petitioner. The averment that plaint B schedule way is having 3 meter width is false. Respondent is the owner in possession of 38.380 cents of land covered by the document No.912/2006 of SRO, Thalayazham and 8 cents of property covered by 954/2010 of SRO, Thalayazham. Both properties are lying contiguous and in the possession of respondent. One half from the above property sold to Siby Thomas. Both of them jointly conducting dry-dock therein. The said property is lying within well defined boundaries. In the year 2012, respondent constructed a toilet on the northern side of his property. That apart, in the year 2020 a building was also constructed therein as metre room. The petitioner is the son of the brother of the father of respondent. Vijayan who is the neighbour of the respondent filed a suit against dry-dock and it was settled sue to the intervention of mediators and the respondent agreed to co-operate with Vijayan to sell his property and the respondent introduced the petitioner to

Vijayan. Thereby, the petitioner purchased the plaint A schedule property from Vijayan. But, respondent is unaware about the stipulation in the sale deed executed in between the petitioner and Vijayan. As requested by the petitioner, respondent signed in the sale deed as a witness. At the time of purchasing the property by respondent there was a way having 5 feet width. In the year 2012, respondent widened the way into 9 feet till his property to facilitate to bring vehicles to his property. After widening the way, respondent constructed a wall using sheets in his property. The remaining way is still lying in 5 feet width and the petitioner and other neighbouring property owners are using the said way. All these material facts are suppressed by the petitioner. Hence, respondent prayed to dismiss the petition with his costs.

4. Both sides were heard.

5. From the rival contentions following points raised for consideration:-

1. Has the petitioner made out a prima facie case?

2. Is the petitioner will be put to irreparable loss and injury in the event of not allowing the petition?
3. Is the balance of convenience in favour of the petitioner?
4. Order as to costs?

6. For the purpose of reference, from the side of the petitioner, Ext. A1 and A2 documents were marked. The commission reports were marked as Ext.C1, C1(a), C2 and C2(a). No documents were marked from the side of respondent.

7. **Point Nos. 1 to 3:-** For the purpose of convenience and to avoid repetition these points are considered together. The suit is instituted through the power of attorney holder of the petitioner. The power of attorney is produced. So, the challenge regarding the authority of the agent of petitioner raised by the respondent has no due force.

8. According to petitioner, the plaint A schedule property belongs to him by virtue of Ext. A1 document. Ext. A2 is the land tax receipt with respect to said property.

The said fact is not disputed by the respondent. Respondent would contend that he had introduced the petitioner to the prior owner of the plaint A schedule property and petitioner purchased the same. Respondent is one of the witnesses to Ext. A1 sale deed. This is also not in dispute.

9. Petitioner would contend that he has every right to use the plaint B schedule way for ingress and egress to plaint A schedule property as per Ext. A1 sale deed. The respondent is conducting dry-dock in his property and he is dumping scrap and logs into plaint B schedule property. Further, he is taking hasty steps to extend the construction of toilet and bathroom into the said way. As per Ext. A1 sale deed, the width of plaint B schedule way is 10 feet. In the plaint B schedule the width is mentioned as 3 metres. Plaint B schedule way is starting from the Ambika Market-Swamikallu Panchayat road and proceeding towards west and terminus on the plaint A schedule property.

10. Per contra, the case of the respondent is that only a portion of the plaint B schedule way is passing through his

property. The width of the way stated in the plaint is not correct. The lie of the way shown by the Advocate commissioner in Ext. C1 (a) rough sketch is also not correct. So, the respondent filed commission application and as per the order in the said commission application same Advocate commissioner was deputed. She had inspected the property and filed Ext. C2 report and C2 (a) sketch. No objection is filed by the petitioner to said report and sketch. According to respondent, the way is passing through the northern side of his property and proceeds towards west and then turns into south and proceeds through the property of Renjith and reaching the same in the plaint A schedule property. The way is having only 5 feet width. After purchasing the property by the respondent in the year 2012, he widened the portion of way through his property into 9 feet and separated the way and his remaining property by constructing a tin sheet wall to facilitate the entry of vehicles to his property. The width of the remaining portion of the way towards west is having only 5 feet. Respondent also would contend that he had never

done any act obstructing the above mentioned way of the petitioner.

11. It is admitted that respondent is conducting dry-dock in his property. As per Ext. C2 (a), the Panchayat road is passing through the eastern side of the property of respondent. In Ext. C1 report, the Advocate commissioner reported that the way is having 3 metre width and it starts from the Ambika Market-Swamikallu road and proceeds towards west and reaches in the plaint A schedule property. As per Ext. C1 (a) sketch, the toilet and the metre room of the respondent is shown on the northern side of the way. But, in Ext. C2 (a) sketch the way is shown on the northern side of the said toilet and metre room. As per Ext. C2 (a) sketch, the way turns to south from the south western corner of the property of respondent and proceeds towards south direction and through the northern side of the property of Renjith it is reaching the plaint A schedule property. In both commission reports, the width of the entrance portion of the way is shown as 2.80 metres.

12. In Ext. C2(a) commission report, it is reported that after the property of respondent, the portion shown as way is covered by grass there is way in existence having 5.11 feet width to plaint A schedule property. The said way is shown in Ext.C2(a) through the eastern side of the property of Renjith. But, in the answer to the query No.7 in Ext.C2 report the Advocate commissioner reported that there is 3 metre way portion is in existence and it is terminus on plaint A schedule property. The said answer is tallying with the way shown in Ext.C1(a) rough sketch.

13. The title document of the respondent is not produced. In Ext. A1 title document, it is stated that the petitioner has the right to use a way having width of 10 feet. In the said document, there is no mention that the way is passing through the property of respondent. According to respondent, the way reported in Ext. C2 is passing through the property of Renjith. Petitioner has no such case. Prima facie, from the evidence adduced in this case, it can be seen that a way is identified by the Advocate commissioner in Ext.C1 in accordance with the plaint B schedule description.

From Ext.C2 it can be seen that a portion having 5.11 feet through the southern side of the property of Renjith is set apart as a way. But, the said portion is covered by grass. But, in Ext.C1 report the Advocate commissioner clearly reported that she saw tyre marks in the way. So, prima faice, from the evidence adduced, it can be seen that the plaint B schedule way is the way shown by the Advocate commissioner in Ext.C1(a) rough sketch. The petitioner would contend that respondent is trying to obstruct the plaint B schedule way. From the above discussed facts and evidence, it can be seen that petitioner has made out a prima faice case and in the event of not allowing the petition he will be put to hardships. The fact that the entrance portion of the plaint B schedule way is using by the respondent is not seen disputed. Hence, I am of the view that the petitioner is entitled to get a temporary injunction order restraining the respondent from causing obstruction in plaint B schedule way reported in Ext.C1 and C1(a), and committing waste therein till the disposal of the suit. These points are answered accordingly in favour of the petitioner.

14. **Point No.4** :- In the result, the petition is allowed as follows:-

The respondent is restrained from causing obstruction in plaint B schedule way reported in Ext.C1 and C1(a), and committing waste therein till the disposal of the suit.

*Dictated to Confidential Asst., transcribed and typed by her, corrected and pronounced by me in the open Court on this the 12<sup>th</sup> day of December, 2023.*

**Sd/-  
ATHEEK RAHMAN  
MUNSIFF**

**APPENDIX :-**

**Exhibits Marked for the Petitioner :-**

- A1 : 07.11.2019 : Copy of Sale deed  
S.R.O., Thalayazham.
- A2 : 04.08.2022 : Tax receipt No.KL05051508391/2022 of  
Vechoor Village.

**Exhibits Marked for the Respondent :- Nil.**

**Court Exhibits :-**

- C1 : 03.11.2022 : Commission report.
- C1(a) : 03.11.2022 : Rough Sketch.
- C2 : 12.04.2023 : Commission report.
- C2(a) : 12.04.2023 : Rough Sketch.

**Third Party Exhibits:- Nil.**

**Witness Examined for the Petitioner :- Nil**

**Witness Examined for the Respondent :- Nil.**

**Id/-  
MUNSIFF**

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**Sd/-  
ATHEEK RAHMAN  
MUNSIFF**