IN THE COURT OF THE MUNSIFF, TIRUR
PRESENT: Sri. SANU C., MUNSIFF.
Friday, the 18th day of July, 2025
the 27th day of Ashadha, 1947
INTERLOCUTORY APPLICATION No.2 OF 2021
IN ORIGINAL SUIT No.102 OF 2021

Between:

1. Santha Nechikkatt, 65 years,
   W/o.Krishan,
2. Sneha, 49 years,
   W/o.Prabhakaran Kalarikkal,
3. Sahira, 45 years,
   W/o.Angathil Hameed,
4. Susheela, 34 years,
   W/o.Thachillathu Parambil Parameswaran
5. Rineesha, 35 years,
   W/o.Nechikkattil Muraleedharan,
   (Petitioners are residing at Omachapuzha amsom,
   Karingappara desom, Omachapuzha P.O.,
   Tirur Taluk, Pin – 676320).

Petitioners
Plaintiffs

And:

1. K.C.Hassan, 40 years,
   S/o.Kaduvakkanchery Mayinkutty,
2. K.T.Alavi, 61 years,
   S/o.Kunnathodi Rayinkutty,
   (Respondents are residing at Omachapuzha amsom,
   Karingappara desom, Omachapuzha P.O.,
   Tirur Taluk, Pin – 676320).

Respondents
Defendants

This petition having been finally heard on 27-06-2025 before me in the presence of Sri. P.P. Basheer, Advocate for the petitioners and of Sri.M.A.M.Rafeek and of Sri.Muthasim Shad.P.P. and of Smt.Athira.M, Advocates for the respondent No.1 and respondent No.2 called absent set exparte and the Court on 18-07-2025 passed the following;

O R D E R

The petition is filed under Order XXXIX Rule 1 and 2 of the Civil Procedure Code, 1908 for temporary injunction.

2. **The case of the petitioner is as follows:** Petitioner is 1st plaintiff in the suit and filed this petition for and on behalf of the other petitioners also. The suit is one for declaration and consequential prohibitory injunction. The northern boundaries of plaint A schedule is 'നാൽക്കവല - പള്ളിപീടിക റോഡ് '. Long before it was a narrow pathway and the same was a public way. There was an another narrow pathway towards the south from the former. Some portion of the later was widened and made the road. The same was also a public way. The widened portion of the later road is schedule as plaint A. Whereas, the petitioner has decided to widen plaint B schedule and it is a continuation of plaint A schedule. As because without widening the same, vehicular access to the properties of the petitioners cannot be enjoyed. This is the sole way inorder to access properties of the petitioners. Inorder to widen plaint B schedule way, the petitioners purchased some extent of land by virtue of document No. 580/2021 of Tanur SRO. The adjoining land owners of plaint B schedule also willing to release their land inorder to widen remaining part of plaint B schedule way. Whereas, on 15.02.2021 and 01.03.2021 respondents obstructed the husband of 1st petitioner and relatives of 3rd petitioner while using the said way. On 31.03.2021, while negotiating with petitioners they demanded money inorder to use the said way.

Hence, the petitioners seeking temporary injunction restraining the respondents from obstructing the use of petition A and B schedule way, and also restraining the respondents from making any obstruction to widen petition B schedule way by the petitioners. Hence the petition.

3. **Respondents filed counter and contended as follows:** The petition is not maintainable. The petition A schedule is not a public way. The same was obtained by the respondents by virtue of document Nos. 2799/1984 and 3055/2005 of Kalpakanchery SRO. Meanwhile the father of the respondent granted a right to use the said way in favour of the neighbours i.e., Hamzakutty, Paredath Pathummu and Thachillath Parambil Vasu by virtue of document No.730/2006 of the same sub registry. The said neighbours are not parties to the suit. The said way is a private way. The pleading of the petitioners to the effect that plaint A and B schedule is the exclusive way to the petitioners' property is also false. There is an alternative way available from Vailathur–Tirur road. The same can be evident from the report of the commissioner dated 02.02.2022. The petition is only an experiment to grab some undeserving right over the plaint schedule property. Hence the petition is liable to be dismissed.

4. Ad-interim order of injunction against the defendants has already passed by this court as per the order dated 08.04.2021.

5. Points for consideration:-

I. Whether the petitioners have made out a prima facie case for a temporary prohibitory injunction?

II. In whose favour the balance of convenience exists?

III. Whether the petitioners shall be put to irreparable loss and hardship, if an injunction is not granted?

IV. Whether the petitioners are entitled to get an order of temporary injunction, as prayed for?

V. What is the order as to costs?

6. On the side of the petitioners, Ext.A1 to A4 were marked. On the side of the respondents, Ext.B1 to B10 and B11series were marked. Ext.C1 to C6 are marked as court exhibits.

7. Heard both sides. Perused the records and affidavit.

8. **Points No. I to III:** For the sake of convenience, points No.I to III considering together. The suit is one for declaring plaint A and B scheduled ways are public ways and consequential prohibitory injunction restraining the defendants from making any obstruction using the said ways by the plaintiffs and also restraining the defendants from making any obstruction from widening plaint B schedule way by the plaintiffs. The petitioners seeking injunction in this application is the very same relief is prayed in the suit.

9. The case of the petitioner is that petition A and B schedule ways are public ways. They have been using the same from the time immemorial inorder to access petitioners' properties. By relying Ext.C1 and C2, the counsel argued that the commissioner has clearly identified petition A and B schedule ways. The commissioner also observed that the mud boundary wall at the norther-south of the petition B schedule is having an age of 90 years approximately. The commissioner also reported that the houses near by petition B schedule also seems very old. From the report of the commissioner itself is evident that these ways have been using from the time immemorial as a public way. Moreover, the commissioner also reported in Ext.C1 that there is no alternative way by connecting petition B schedule has been not found.

10. *Per contra,* the learned counsel for the respondents argued that petition A schedule purchased by them through various documents and the same is a private way. The relevant documents also marked as Ext.B1 to B11. Moreover, there is no dedication to the public over petition A schedule is not made so far. Hence, the claim of public way will not lie.

11. It is pertinent to note that, the suit is one for declaring petition A and B schedule as a public ways. Hence, answering to that question can only be made after taking evidences in this regard and considering the merit of the suit and not possible at this stage. The prayer for temporary injunction in this application and permanent prohibitory injunction in the suit are one and same and at two fold.

First one is for using plaint A and B schedule ways by the petitioners. The other one for widening petition B schedule way. By relying Ext.C2, it is evident that petition B schedule way is originating from the extreme south-west of petition A schedule way. Till the originating point of petition B schedule way at the northern side there is a lateriate basement. The case of the petitioner is that there is a portion of land purchased by them at the immediate north of petition B schedule. By demolishing the above said lateriate boundary wall they can widen petition B schedule. Hence, in other words, they seeking permission to demolish the said boundary basement. In the above circumstances, this court is holding a view that without establishing their right after considering the merit in the suit, if such a permission is granted it will cause much hardship and irreparable injury to the respondents.

12. With regarding using petition A and B schedule as a way the primary contention of the respondents is that petition A schedule is a private way rather than public and the same was obtained to the respondents by a valid purchase. It is pertinent to note that, if there is a right of way over petition A and B schedule, in what so manner the same will not extinguish mere on the purchase of the dominant heritage. Moreover, by relying the reports of the commissioner, the proposed petition B schedule way seems very old and it suggests existence of the ways prior to long before. Though an alternative way is found by the commissioner in its subsequent report Ext.C3 and C4, the right of the petitioners

to use the same has yet to be established. Though the question of public way can only able to answer at the end of the suit, an apparent existence of petition A and B schedule way is evident from the commissioner's report. At this juncture, if use of the ways are obstructed, the same will cause much hardship and irreparable injuries to the petitioners than the respondents. Thereby the petitioners established a prima facie a case in their favour in this regard. The point regarding balance of convenience also holding in favour of the petitioners regarding usage of the scheduled ways.

13 .**Point No. IV and V:**

In the result, the IA is partly allowed as follows:

I. The respondents or their men are hereby restrained by way of a temporary prohibitory injunction from interfering with free access through petition A and B schedule ways by the plaintiffs/petitioners to their properties.

II. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 18th day of July, 2025).

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Appendix :
Petitioners' Exhibits :
A1 : 01-02-2021 : Jenmam Assignment Deed No.580 of 2021.
A2 : 13-08-2009 : Notary attested copy of Kanam Assignment Deed No.3203/09.
A3 : 29-05-2009 : Notary attested copy of Kanam Assignment Deed No.2194/09.
A4 : 01-01-2009 : Certified copy of Partition Deed No.49 of 2009.

Respondents' Exhibits :
B1 : 20-11-1984 : Jenmam Assignment Deed No.2799/1984.
B2 : 08-09-2005 : Agreement.
B3 : 06-09-2005 : Jenmam Assignment Deed No.3055/2005.
B4 : 22-06-2021 : Tax receipt.
B5 : 04-04-2023 : Tax receipt.
B6 : 01-04-2024 : Tax receipt.
B7 : 16-11-2024 : Tax receipt.
B8 : Conversation print between Hasssan and Kunhimoidu Haji.
B9 : Compact Disk.
B10 : Compact Disk.
B11(a) : Photograph.
B11(b) : Photograph.
B11(c) : Photograph.
B11(d) : Photograph.
Court Exhibits :
C1 : 04-10-2021 : Commission report submitted by Adv.Saranya.K.V.
C2 : 04-10-2021 : Plan submitted by Adv.Saranya.K.V.
C3 : 02-02-2022 : Commission report submitted by Adv.Saranya.K.V.
C4 : 02-02-2022 : Plan submitted by Adv.Saranya.K.V.
C5 : 19-02-2022 : Commission report submitted by Adv.Saranya.K.V.
C6 : 19-02-2022 : Plan submitted by Adv.Saranya.K.V.

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Typed by: Krishnakumari.V
Compared by: 1) 2)

Fair Order in IA.2/2021
in OS.102/2021 Dated.18-07-2025