

IN THE COURT OF THE MUNSIF, TIRUR
PRESENT: Sri. SANU C., MUNSIF.
Wednesday, the 19th day of November, 2025
the 28th day of Karthika, 1947
INTERLOCUTORY APPLICATION No. 02 OF 2024 IN
ORIGINAL SUIT No.198 OF 2024

Between:

Kadeeja, 56 years,
W/o. Khader Khalid, Pallivalappil House,
Valavannur amsom desom, Valavannur P.O.,
Tirur Taluk, Malappuram District, Pin – 676551. } Petitioner
Plaintiff

And:

1. Hamzakutty, 56 years,
S/o. Muhammed, Padikkal House,
Valavannur amsom desom, Valavannur P.O.,
Tirur Taluk, Malappuram District, Pin – 676551.
 2. Salam, 52 years,
S/o. Muhammed, Padikkal House,
Valavannur amsom desom, Valavannur P.O.,
Tirur Taluk, Malappuram District, Pin – 676551.
 3. Safiya, 58 years,
D/o. Kunhipocker, Padikkal House,
Valavannur amsom desom, Valavannur P.O.,
Tirur Taluk, Malappuram District, Pin – 676551.
 4. Fayas, 40 years,
C/o. Safiya, Padikkal House,
Valavannur amsom desom, Valavannur P.O.,
Tirur Taluk, Malappuram District, Pin – 676551.
 5. Mayyeri Ismail, 60 years,
S/o. Kunhutty Haji, Mayyeri House,
Valavannur amsom desom, Valavannur P.O.,
Tirur Taluk, Malappuram District, Pin – 676551.
 6. Alnas, 28 years,
S/o. Hamzakutty, Padikkal House,
Valavannur amsom desom, Valavannur P.O.,
Tirur Taluk, Malappuram District, Pin – 676551.
- } Respondents
Defendants

This petition having been finally heard on 29-10-2025 before me in the presence of Sri.Mehroof Shihab and of Sri.P.Santhosh Kumar, Advocates for the petitioner and of Sri.M.P.Hussain and of Smt.Shaibanusbi.N.C., Advocates for the respondents and the Court on 19-11-2025 passed the following;

ORDER

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

2. The case of the petitioner is as follows: Plaint schedule property belongs to the petitioner by virtue of document No.796/2016 of Kalpakanchery SRO. The property at the northern boundary of petition schedule property belongs to respondent No. 1 & 2 and at the western side belongs to respondent No.3. Respondent No.5 also residing 100 metre away and at the western portion of the petition schedule property. There is a Panchayath road originating from Vailathur -Puthanathani public road and ends at south-west boundary of petition schedule property. The construction of a new road from the south-west point of the petition schedule property towards the property of respondent No.1&2 is also in progress. The petitioner has surrendered the land for road construction on the assurance that compensation of ₹3,00,000/-(Rupees Three Lakh only) would be paid. However, the said amount has not been received so far. Respondent No.3 and respondent No.4 are residing at the northwest boundary of the petition schedule property. There is a 3 feet non-motorable way is existing in order to access the said property, and it passes through at the western side of petition schedule property. Whereas on 21.03.2024, respondent Nos.1 to 6 trespassed into the petition

schedule property and made an attempt to widen the said 3 feet non-motorable way into a motorable way by using JCB. The respondents desisted from the said act due to the timely intervention of the petitioner. However, the threat is prevailing. Hence the petitioner seeking injunction restraining the respondents from demolishing the boundary or making any construction or committing waste in the property at the western side of petition schedule and the same is marked as J-K in the sketch annexed along with the petition.

3. Respondents filed counter and contended as follows: The application is not maintainable. It is contented that the sketch annexed along with the petition is not correct. Moreover, the width of the way at the point JK in the sketch is not 3 feet as stated, instead it has 3.25 meter width. The above way initially has only 3 feet width. But by overtime, it has widened to a 3.25 metre and the same has been used for the past 35 years in order to reach the respondent's property from Vailathur-Puthanathani road. It is further contended that the surrender of land for the said impugned way by the petitioner is a false statement. The respondents are not bound to pay the said ₹3,00,000/-(Rupees Three Lakh only) to the petitioner as stated. The cause of action stated in the petition is also denied. Hence, the petition is liable to be dismissed.

4. On the basis of the above, the following points arise for consideration :-

- I. Whether the petitioner has prima facie case in his favour?
- II. Whether there is balance of convenience in favour of the petitioner?
- III. Whether any irreparable injury will be caused to the petitioner, if the

relief of injunction is not granted in favour of the petitioner?

IV. Relief and costs?

5. The report and sketch of the commissioner are marked as Ext. C1 and C2.

6. Heard both sides. Perused affidavit and documents.

7. **Point Nos. I to III:** The case of the petitioner herein that, there is a 3 feet non-motorable pathway at the western side of petition schedule property and the same is marked as 'FK' in the commissioner's report and sketch. The respondents herein made an attempt to widen the said way into a motorable way by using a JCB. The act of the respondents was failed due to the timely intervention of the petitioner. The petitioner also admitted that the said way has been used by the respondent No.1 to 3 in order to access their properties. *Per contra*, the respondent contended that though the said pathway has originally 3 feet width, the same is widened by passage of time into 3.25 metres, and the same way has been used by the respondents for the past 35 years.

8. The learned counsel for the petitioner argued that, if the respondents make any alteration to the said pathway, it will cause an irreparable injury to the petitioner as the widening of the way will results into encroachment of the petition schedule property. However, the case of the respondent is that the said pathway has 3.25 meters wide and same has been used by the respondents for the past 35 years. The said fact can only be decided after taking evidence in the suit, and not at this stage. It is true that, widening the said way by the respondents will result encroachment in to the petition

schedule property, and it will cause irreparable injury to the petitioner. Hence, point number 1 to 3 answered in favour of the petitioner.

9. However, the learned counsel for the respondents argued that, if any obstructions over the impugned way are made by the petitioner, it will cause irreparable injury and the same will also obstruct the access to the properties of the respondents. The petitioner also agreed that they will not make any obstructions or constructions over the said pathway. It is also conceded by the both parties that the physical condition of the impugned way as seen by the commissioner in Ext. C1 and Ext. C2 is not changed so far.

10. **Point No. IV** : In the light of the findings of point Nos.I to III and the submissions made by the learned counsel for both parties, this Court is inclined to allow the petition.

In the result, IA allowed as follows :

1. Respondent Nos. 1 to 6 are restrained from demolishing the boundary or altering the way by making any constructions or improvements over the Pathway at the western boundary of the petition schedule property, and the same is marked as 'JK' by the commissioner in its Ext. C1 and Ext. C2 sketch and report; and
2. Both parties are directed to maintain *status quo* of the impugned way at the western portion of the petition schedule property and the same is

marked as in between the point 'J' and 'K' as seen by the commissioner
in Ext. C1 and Ext. C2 sketch and report.

3. 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 19th day of November,
2025).

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Appendix :

Petitioner's Witnesses : Nil.

Respondents' Witnesses : Nil

Petitioner's Exhibits : Nil.

Respondents' Exhibits : Nil

Court Exhibits :

C1 : 18-06-2024 : Commission report submitted by Adv.T.Prabitha.

C2 : 18-06-2024 : Plan submitted by Adv.T.Prabitha.

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Typed by: Krishnakumari.V

Compared by: 1) 2)

Fair Order in IA 02//2024 in
OS 198/2024 Dated.19-11-2025

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