

IN THE COURT OF THE MUNSIFF OF PARAPPANANGADI
Present:- Smt. Aswani Nalin, Munsiff

Wednesday, the 15th day of October, 2025
the 23rd day of Aswina, 1947

INTERLOCUTORY APPLICATION NO. 05 OF 2025
IN ORIGINAL SUIT NO: 100 of 2025

Between:-

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| 1. Shamsudheen Chirakkal, 44 years, S/o Moosa
Neduva amsom desom, Tirurangadi Taluk. | } | <u>Petitioners</u>
Plaintiffs |
| 2. Jaseera Chirakkal, 28 years, W/o Ansheer
P.O.Mankavu- 673007, Kozhikkode District. | | |
| 3. Fathima Chirakkal, 28 years, W/o Basheer
Attathangadi, P.O.Neduva- 676303. | | |
| 4. Mariyambeevee Chirakkal, 42 years, W/o Anwar Sadath
Kolathay House, Moozhikkal, P.O.Mamburam | | |

And:-

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| 1. Suharabi.K.C, 54 years, W/o Pallikandi Hamzakoya | } | <u>Respondents</u>
Defendants |
| 2. Manzoor Pallikandi, 34 years, S/o Pallikandi Hamzakoya | | |
| 3. Sainaba.K.C, 52 years, W/o Basheer | | |
| 4. Ramla.K.C, 50 years, W/o Basheer
(Neduva amsom desom, Tirurangadi Taluk) | | |

This petition coming on the 13th day of October , 2025 for final hearing before me in the presence of Sri.K.P.Chandran, Advocate for the petitioners and of Sri.U.V.Surendaran and Sri. Arun.U.V, Advocates for the respondents and having stood over to this day for consideration and the Court passed the following:-

ORDER

This is the petition filed under Order 39 Rule 1 and Section 151 of CPC.

2. The petition averments in brief are as follows:-

The suit is for declaration of right of petitioners over plaint B schedule way to access their plaint A schedule along with mandatory injunction. IA 2/2025 was dismissed against which the petitioners had preferred CMA 19/2025, which was allowed by the Hon'ble Sub Court and it was directed that the respondent should

keep open the iron gate that was installed on the western terminus of plaint B schedule way. The respondent is attempting to defy the order of Hon'ble Sub Court. They had unloaded a lorry-load of laterite stones on the B schedule way, thereby completely blocking the entrance through which the petitioner access the way. In the circumstances, it is highly necessary to restore the status quo ante as it existed immediately prior to obstruct on 02/08/2025 of plaint B schedule way.

3. The petition is not maintainable either in law or on facts. The order of the Appellate court is only to keep the iron gate open. The petitioners have not taken any steps to show that there is in fact any such way either at the time of filing IA 2/2025 or filing of this petition. The petitioners have also not taken out any commissioner. There is nothing before the court to show what was the state of things in the plaint schedule property. The respondents have complied the order of Appellate court and has kept the gate open. The contention of the petitioners that the respondents have unloaded laterite stones blocking their way is not true. There was no way through the respondent's property either at the time of filing OS 34/2025 or prior to that. After filing of suit, the petitioners had closed the way that had been in use. The petitioners had way through the western and southern side of their property. Eastern side entrance have been closed after filing the OS 34/2025. Western side entrance has also been closed with a net. After filing of suit the second defendant had unloaded stones in his property to construct a house. That was not to violate the order of the Appellate court or to block the way. It was 2 months back and not on 02/09/2025. The relief sought for is the status quo as on 02/09/2025 but the petitioners have not proved what was the status as on 02/09/2025 without which no order of status quo has been passed by this court. The petitioners have not come before the court with clean hands. The petition has been filed only on 07/09/2025. If the contention was true, the petition would have been filed on the very next day a commission was would have been also taken by the petitioners. The petitioners have not even taken out a commission as to report whether the stones were unloaded recently or on an earlier occasion. Hence the

petition is to be dismissed with costs.

4. Based on the aforesaid rival contentions, the following points came up for consideration:-

1. Whether the IA is allowable?
2. Relief and costs?

5. Heard both sides.

6. The documents were already marked while considering IA 2/2025. They are taken into account for considering this IA also. Exhibit C1, C1(a) were also marked while considering this IA.

7. **Point Nos.1** :- The case of the petitioners is that the respondents had violated the order of the Hon'ble Sub Court passed on 20.08.2025 by placing laterite stones at the entrance of plaint B schedule and thereby blocking the access of the petitioners through plaint B schedule way. Therefore the prayer of the petitioners is to restore the status quo ante as it existed immediately before the obstruction of plaint B schedule way on 02/08/2025, by removing the laterite stones placed by the respondents. Respondents contended that there is no commission taken out by the petitioner to show what was the status on filing of the suit. It is also contended that without such a commission report status quo cannot be ordered.

8. From the rival contentions of both parties the short question that is to be answered is whether the respondents have blocked the way after filing of the suit. It is true that the petitioners herein has not taken out the commission at the institution of the suit but the petitioners had filed the commission report in OS 35/2025, which is marked as A3 and A3(a). In the said commission report there was no such blockage with any laterite stones in the entrance to the plaint B schedule way from the petitioners' plaint A schedule property. The commissioner had inspected the property on 25/01/2025 then subsequently the petitioners have taken out a commissioner. The commission report is marked as Exhibit C1, C1(a). The advocate commissioner has clearly reported that “അന്യായം എ പട്ടിക

വഹകളുടെ വടക്ക് അതിരിലായും ബി പട്ടിക വഴിയിലുമായി ചെങ്കല്ല് അടുക്കി വച്ചതായി കാണുവാൻ സാധിച്ചു.” Thus it is clear that the respondents have unloaded stones there and stacked thereby at the entrance of blocking plaint B schedule way. The learned counsel for the respondents contended that the order was to keep the iron gate open and that have been complied by the respondents. It is important to note that even though the Hon'ble Sub court has ordered to keep the gate open the spirit of the order itself is not to cause any obstruction in plaint B schedule way. From the two commission reports placed before the court the court is of the view that there is a blockage in plaint B schedule way subsequent to the institution of the suit. So it is highly necessary that the blockage has to be removed. Therefore this court is inclined to allow the petition.

9. **Point No.2:-** Considering the facts and circumstances of this case, parties shall bear their respective costs.

In the result, IA allowed.

1. The petitioners are directed to remove the blockage created by them by placing laterite stones in the 'GOPQRG' portion as shown in the Exhibit C1(a) within 2 weeks.

2. Parties shall bear their respective costs.

(Dictated to the Confidential Assistant, transcribed by her corrected and pronounced by me in open court to on this the 15th day of October, 2025.)

Munsiff

Appendix

Petitioner's witnesses: Nil

Petitioner's Exhibits:

A1- 28.09.1992 Photo copy of Jenm Assignment deed No. 2257/1992
SRO, Parappanangadi

A2- 04.09.2020 Photo copy of Jenm Assignment deed No. 1109/2020
SRO, Parappanangadi

A3- 01.02.2025 Certified copy of Commissioner's report in O.S 34 of 2025

A3(a)-01.02.2025 Certified copy of Commissioner's plan in O.S 34 of 2025

Respondent's Witnesses Nil

Respondents' Exhibits:-

B1- 19.11.1981 Certified copy of Jenm assignment deed No.3060/1981,
SRO, Parappanangadi

B2-28.05.2009 copy of Jenm assignment deed No.1542/2009,
SRO, Parappanangadi

B3- 28.05.2009 copy of Jenm assignment deed No.1544/2009,
SRO, Parappanangadi

B4- 28.05.2009 copy of Jenm assignment deed No.1541/2009,
SRO, Parappanangadi

B5- 29.10.2009 Copy of Jenm assignment deed No.3129/2009,
SRO, Parappanangadi

B6- 22.01.2019 Copy of Jenm assignment deed No.182/2019,
SRO, Parappanangadi

B7- 07.01.2025 Copy of reply from Parappanagadi Municipality to 1st defendant

B8- 18.02.2025 Application (Form No.8) given by 1st defendant for Resurvey
division- Tirurangadi Taluk

Court's Exhibits:-

C1-24.09.2025 Commissioner's report by adv. Sajna Manakkadavath

C1(a)24.09.2025 Commissioner's plan by adv. Sajna Manakkadavath

Munsiff