

IN THE COURT OF THE MUNSIFF OF ALATHUR

Present:- Sri.Binu.P., Munsiff, Alathur

Tuesday 14th day of October, 2025

(22nd day of Aswina, 1947 S.E)

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INTERLOCUTORY APPLICATION No.03/2025 (1918/2025)

IN

ORIGINAL SUIT No. 308/2025

K.E. Hussain, aged 59 years, Company Employee,
S/o Ibrahim Sahib, residing at Karinyankad Kalam,
Kunissery amsam desam, Kunissery Post Alathur Taluk. } Petitioner/
Plaintiff

Vs.

K.E. Musthafa, aged 63 years, Agriculture. S/o Ibrahim,
residing at Karinyankad Kalam, , Kunissery amsam desam,
Alathur Taluk. Now residing at Vembrakode } Respondent/
Koottala Post 1st defendant

This suit is coming on 08th day of October, 2025 for final hearing before me in the presence of Sri.Said Ibrahim A. Advocate for the plaintiff and of Sri. Titus Joseph, Sri Anandadasan, Sri. Jibi. B., Sri. Sathish.T., and Athira P.C., Advocates for respondent and having stood over to this day for consideration and this court delivered the following.

ORDER

The petitioner filed the petition under Order XXXIX Rule 1 the Code of Civil Procedure against the respondents.

2. Petition averments in short are as follows:-

The petitioner is the plaintiff. The suit is one for partition. The petitioner stated that the petition schedule properties along with other properties was purchased by their mother Hajira Umma by virtue of jenmam sale deed No.1804/1972 of SRO, Alathur and after the demise of mother, father and brother Ahammed Kabeer, the properties jointly devolved upon the petitioner and the respondents and that the petitioner is having 4/19 share upon the petition schedule properties. Out of the properties purchase, Hajira Umma had gifted 34 Cents of property in favour of the petitioner in the year 1995 and the petitioner had constructed an RC house therein and residing along with his family. Parents were residing in the tiled house extant in the petition schedule property and due to the lack of maintenance, the cowshed situated on the eastern side of the house was collapsed. Since the first petitioner is not maintaining the property, through mediation talk, the parties fixed the value of the tiled house for ₹ 1,00,000/- and given to the first respondent. Subsequently, the first defendant demolished the house and sold the property for a higher price. As per the mediation agreement, the first respondent agreed to partition the property within six months. The petition schedule property and the petitioner's property situated on the northern side are lying as a single plot. Due to lack of maintenance four boundaries of the properties are not well protected, which causes threat from the wild animals to the petitioner and family. The petitioner put up iron fencing along his property and the property allotted to him as per the mediation in order to prevent the wild animals attack. On 04.09.2025 when the petitioner and his men attempted to put

up fencing on the southern and western boundaries of the properties, the first respondent obstructed the same by threatening and uttering obscene words. The petitioner admits that the parties are entitled to get equal share upon the properties. But if the properties allotted to the petitioner was not properly fenced and protected, the life of the petitioner and family will be in peril due to the fear of the attack of wild animals. Hence the petition.

3. The first respondent filed counter with the following contentions :-

The respondent denied all the allegation except those which are specifically admitted. The ratio of shares mentioned in the plaint are not correct. This defendant admitted that his mother obtained the property as per the sale deed No.1804/1972 of SRO, Alathur and that after the demise of parents and brother, the properties devolved upon the petitioner and the respondents. The petitioner influenced the mother and obtained some portion of the properties from her. There is no house or structures extant in the property allotted as per document No.1322/1995 of SRO, Alathur. Due to the intention to evict the respondent from the property, the petitioner demolished the old structure and due which, the respondent shifted his residence to his son's house at Koottala. The articles of the collapsed house was stored in the property of Kabeer. The petitioner with an intention to grab the western portion, had erected wire fence as per his wish along the east, north and western side of the property by demolishing the old wall and gate. The extent of the petition schedule property is not correct. The petition is filed with the intention to prevent other co-sharers from entering into the tharwad house. The petitioner is not facing any threat from the wild animals. As per the deed No.1804/1972 of SRO, Alathur the southern boundary of the property belongs to the respondent is lying 5 feet higher than other property. Currently, the part where the western wall was stood, which is demolished by the petitioner, is open. Though it is opened, the petition schedule properties can be protected by closing the iron gate. There was no mediation talk held in the family. This

respondent has no objection in erecting fencing on the boundaries of the property obtained to their mother as per deed No.1804/1972. The petitioner filed the petition with unclean hands. For the said reasons the petition is to be dismissed with costs.

4. From the side of the petitioner exhibits A1 to A10, C1, C1(a) were marked. From the side of the respondents, exhibit B1 was marked.

5. The following points arose for consideration:

1. Whether the petitioner has made out a prima facie case and balance of convenience in his favour ?
2. Whether the petitioner will be put in irreparable hardship if the injunction is not granted?
3. Reliefs and costs?

6. Heard both sides.

7. Points No.1 and 2 :- The petitioner sought the relief of temporary prohibitory injunction restraining the respondents and their men from erecting fencing on the east, west and southern boundaries of the petition schedule properties and also from forcibly evicting the petitioner from the petition schedule property.

8. The petition schedule property is having an extent of 17 Cents comprised in re-survey No.622/19. The eastern boundary of the petition schedule property is the property of Rajan, the western boundary is the property of Balan, southern boundary is the property of the first defendant who is the respondent herein and the northern boundary is the property of the petitioner's house and compound.

9. The case advanced by the petitioner is that the petition schedule property and the house and compound of the petitioner are lying as a contiguous plot. The petitioner has been facing attacks from the wild animals. The petitioner partly erected fencing on the north and east boundaries, and partly on

the western boundary, of the plaint schedule property. The respondent obstructed the construction of fencing on the western and southern boundaries. The respondent, on the other hand, opposed the petition by contending that the petitioner erected fencing on the petitioner's property as per her wish. The respondent disputed the extent of the petition schedule property and contended that the present petition is filed for the purpose of grabbing the joint property and also to obstruct the respondent from entering the Tharwad house. The respondent specifically disputed the present boundaries of the petitioner's property.

10. From the side of the petitioner exhibits A1 to A10 documents were marked. Exhibit A1 is the copy of deed No.1804/1972 of SRO, Alathur. Exhibit A2 is the copy of the deed No.1322/1995 of SRO, Alathur. Exhibit A3 is the photocopy of aadhaar card of Hussain.K.E. Exhibit A4 is the copy of aadhaar card of Soudha.M.S. Exhibit A5 is the copy of aadhaar card of Navas.K.H. Exhibit A6 is the copy of aadhaar card of Thevarakalam Naseer Shameema. Exhibit A7 is the copy of aadhaar card of Niyas.K.H. Exhibits A8 to A10 are the property tax receipts (3 Nos.)

11. The learned counsel for the petitioner filed detailed notes of argument by relying decision reported in KK Dewan v. District Judge reported in AIR 1993 SC 196, Ponnuswami v. Kaliasammal reported in 2005 (2) KLT 102, Dorab Cawasji Warden v. Coomi Sorab Warden reported in (1990) 2 SCC 117, Dalpat Kumar v. Prahlad Singh reported in (1992) 1 SCC 719, Wander Limited v. Antox India (P) Ltd. Reported in 1990 Supp SCC 727 and Mohd. Baqar v. Naim-un-Nisa reported in AIR 1958 SC 548. The learned counsel for the petitioner argued that the petitioner is constrained to approach this court in view of the continuous and illegal obstruction caused by the respondent despite the fact that the petitioner is a co-owner in lawful possession of the property and entitled to protect his enjoyment and safety. The learned counsel stated that petition schedule property adjoining to the southern boundary of the petitioner's property

and residence are lying open and unprotected. The wild animals frequently enter the petitioner's compound and cause a serious threat to the life, safety and peaceful residence of the petitioner and his family. The learned counsel by relying on the above said decisions stated that the petitioner has established prima facie case for protection, the balance of convenience is entirely in favour of the petitioner and likelihood of irreparable loss and injury in the absence of injunction.

12. The learned counsel for the respondent vehemently opposed the argument advanced by the petitioner and submitted that the respondent disputing the present boundaries of the petitioner's house and compound and also disputing the southern boundaries of the petitioner's house and compound and also submitted that the petitioner is not entitled to get the relief sought for.

13 Upon consideration of the rival contentions, the first question to be considered is whether the petitioner has established a prima facie case against the respondent. The Advocate Commissioner reported that the petition schedule property is a vacant property and there is no physical boundary on the northern boundary of the petition schedule property to demarcate the petition schedule property and house and compound of the petitioner. But instead of fencing, cement hollow bricks are paved along the east-west direction on the northern boundary of the petition schedule property.

14. Upon consideration of reliefs sought in this IA it is to be considered that whether there is any prejudice caused to the respondent.

15. The suit is one for partition and the petitioner is claiming 4/19 share upon the petition schedule property. Exhibit C1 (a) report clearly shows that the petition schedule property is lying without any fencing on four sides, except for a small portion of the eastern boundary. The specific prayer in the petition is to permit the petitioner to erect fencing on the east, west and southern boundaries of the petition schedule property. Going by exhibit C1(a), there are no boundary

marks or any other sign showing the southern boundary of the petition schedule property, demarcating it from the property of the respondent. If the fencing is permitted as prayed for the petition schedule property becoming part and parcel of the petitioner's own property on the northern side, bringing the entire extent within one definite boundary and his exclusive possession. Consequently, other co-sharers will be practically prevented from entering the plaint schedule property or exercising their right over it. This would defeat the very nature of the property as joint property pending partition and adversely affect the rights of other sharers. The prayer in this petition also shows that the petitioner is intending to get the exclusive possession of the petition schedule property. That is the reason there is a specific relief sought by the petitioner restraining the respondent from forcefully evicting the petitioner from the petition schedule property

16. Going by the averments in the affidavit, even though the petitioner stated the purpose of fencing is to protect his property. But no undertaking is with respect the fencing is a temporary nature and he is ready and willing to remove the fencing as and when directed. The petitioner has stated that the intention behind the petition is to protect his life and the property from the wild. If the purpose was merely protection of his undisputed property, he could have sought permission to put up fencing the southern boundary of his own property. Instead, he has sought permission to put up fencing on the southern boundary of the plaint schedule property, which is disputed and the subject matter of the partition suit. The relief, as framed, therefore goes beyond what is necessary for mere protection and would amount to an assertion of exclusive possession over joint property.

17. The petition schedule property shares its eastern and western boundaries, with the third parties who are not parties to the suit. Granting permission to put up fencing in the absence of those boundary sharers could lead to further boundary dispute and multiplicity of proceedings. Any fencing erected

without their participation may directly or indirectly affect their right. The interim order should not affect the rights of third parties who are not before the court.

18. The very question of boundary and the extent is contested and is to be finally determined. If the fence is erected and it later transfers that the line is different. It would be difficult to restore the physical situation, and the respondent may suffer great prejudice.

19. For the foregoing reasons this court is of the considered view that the petitioner has not made out a prima facie case for the relief sought and the balance of convenience is also lies against the petitioner. Accordingly the points No.1 and 2 are answered against the petitioner.

20. Point No.3 :- In the light of the findings under points No.1 and 2, this point is also answered against the petitioner.

In the result, the IA is dismissed. No costs.

Dictated to Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 14th day of October, 2025.

Munsiff

APPENDIX:-

Plaintiff's Witness Examined:- NIL

Plaintiff's Exhibits Marked :-

A1 29.09.1972 : Photo copy of Kanam Assignment deed No.1804/1972 of SRO.,Alathur executed by Narayanaswami Iyer and Krishnan in favour of Hajira Umma.

- A2 19.04.1995 : Photo copy of money settlement deed No.1322/1995 of SRO.,Alathur executed by Hajira Umma in favour Hussain
- A3 : Photo copy of Aadhar Card of Hussain K.E.
- A4 : Copy of Aadhar Card of Soudha. M.S.
- A5 : Copy of Aadhar Card of Navas K.H.
- A6 : Copy of Aadhar Card of Thevarakalam Naseer Shameema.
- A7 : Copy of Aadhar Card of Niyas K.H.
- A8 14.05.2020 : Copy of Property tax receipt issued by the Secretary Erimayur Grama Panchayath. In the name of Hussain
- A9 04.07.2023 : Copy of Property tax receipt issued by the Secretary Erimayur Grama Panchayath. In the name of Hussain
- A10 19.04.2025 : Copy of Property tax receipt issued by the Secretary Erimayur Grama Panchayath. In the name of Hussain

Defendants Witness and Exhibits :- NIL

Defendants Exhibits Marked :-

- B1 19.04.1995 : Photo copy of money settlement deed No.1322/1995 of SRO.,Alathur executed by Hajira Umma in favour Hussain

Court Witness Examined :- NIL

Court Exhibits Marked :-

C1 24.09.2025 : Commission Report Submitted by
Shijin Joseph., Advocate Commissioner.

C1(a)24.09.2025 : Rough Plan Submitted by Shijin Joseph.,
Advocate Commissioner.

Munsiff

Typed by :- Ssudhakala M
Compared by :- Sabitha

Fair/ Carbon/Copy of Order

in IA. No.03/2025

in O.S.No.308 /2025

Dated: 14.10.2025

