

IN THE COURT OF THE MUNSIFF, ADOOR

Present: Smt. Sherin Y.T, Munsiff.

Wednesday the 8<sup>th</sup> day of April, 2026  
18<sup>th</sup> day of Chaitra, 1948 (S.E)

IA No. 1/2022 and IA 6/2025 in O.S. No.220/2022

IA No. 1/2022 in O.S. No.220/2022

Between:-

- |   |  |                  |                            |
|---|--|------------------|----------------------------|
| 1 | Jayasree, aged 65 years,<br>W/o. Muraleedharan Nair,<br>Thonnalloor Muri, Pandalam Village,<br>Adoor Taluk.        | }<br>}<br>}<br>} | Petitioners/<br>Plaintiffs |
| 2 | Sujatha, aged 62 years,<br>W/o. K.S.Sivakumar, Siva Bhavanam,<br>Thonnalloor Mri, Pandalam Village,<br>Adoor Taluk | }<br>}<br>}<br>} |                            |

(By Adv. S.P.Lal)

And:-

Amar Nath, aged 40 years, S/o. Ajithan, Sethika Veedu, Thattayil Muri, Pandalam Thekkekara Village, Adoor Taluk.	} } }	Respondent/defendant
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(By Adv. S.Mohankumar)

IA 6/2025 in O.S. No.220/2022

Between:-

Amar Nath.A, aged 40 years, S/o. C.K. Ajithan, Sethika, Thattayil.P.O, Pandalam Thekkekara Village, Adoor Taluk. Through his Power of Attorney Holder C.K.Ajithan.	} } } } } } }	Petitioner/defendant
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(By Adv. S.Mohan Kumar)

And:-

- |   |   |                                    |
|---|---|------------------------------------|
| 1 | Jayasree, aged 65 years,<br>W/o. Muraleedharan Nair, Thonnalloor Muri,<br>Pandalam Village, Adoor Taluk.            | } Respondents/Plaintiffs<br>}<br>} |
| 2 | Sujatha, aged 62 years,<br>W/o. K.S.Sivakumar, Siva Bhavanam,<br>Thonnalloor Mri, Pandalam Village,<br>Adoor Taluk. | }<br>}<br>}                        |

(By Adv. S.P.Lal)

This petition is coming on for hearing on 08.04.2026 and on the same day the court passed the following:

### ORDER

I.A. No. 1/2022 is a petition filed by the plaintiffs under Order XXXIX Rule 1 of the Code of Civil Procedure seeking a temporary prohibitory injunction. I.A. No. 6/2025 is filed by the defendant to set aside or vary the ad interim injunction granted in I.A. No. 1/2022 dated 04.08.2022.

**2. *Petition averments in I.A. No. 1/2022, in brief, are as follows:*** The plaintiffs claim title and possession over the plaint schedule A and B properties as per Partition Deed No. 748/1979 of the Pandalam SRO, and assert that they have been in continuous possession and enjoyment of the same. According to them, a 10 links wide pathway (plaint schedule C), situated on the eastern side of the properties, is set apart under the said deed for vehicular access of the sharers, over which no third party has any right. It is further stated that a boundary wall has been constructed on the eastern side of the said pathway. The plaintiffs allege that the defendant, who owns property on the south-eastern side, is carrying out construction activities and, taking advantage of their absence, demolished a portion of the boundary wall and

attempted to create access through the plaint schedule pathway by installing a gate, which portion is described as plaint schedule D. The plaintiffs contend that the defendant has no right over the said pathway and has an alternative access to his property. It is further alleged that the defendant and his men are making further attempts to demolish the boundary wall, widen the pathway, and use the same for vehicular access, which would cause irreparable injury to the plaintiffs and may lead to breach of peace. Hence, the suit is filed seeking a decree of permanent prohibitory injunction.

**3. *The respondent filed objection contending as follows:*** The respondent alleges that the ex parte injunction was obtained by the petitioners by suppressing material facts and misrepresenting the plaint schedule C pathway as a private way, whereas it is in fact a Municipal road maintained by the Pandalam Municipality. The apprehensions raised by the petitioners are stated to be baseless and false. It is further contended that, due to the injunction, the respondent's construction activities have come to a standstill, causing hardship and loss. The respondent submits that access through the eastern side is not feasible for transportation of construction materials and that he requires permission to install a gate on the western boundary and to use the plaint schedule C road for access. According to the respondent, the injunction has caused irreparable injury and has unjustly restricted his lawful use of the property. Hence, it is prayed that the interim injunction be vacated or suitably modified, and the application be dismissed with costs.

**4. *The brief averments in I.A. No. 6/2025 are as follows:*** The petitioner contends that the averments in the affidavit filed in support of I.A. No. 1/2022 are false and fabricated, and that the injunction was obtained by misrepresenting the nature of the plaint schedule C way as a private pathway, whereas it is in fact a public road vested in and maintained by the Pandalam

Municipality. The apprehensions raised by the petitioners are stated to be baseless. It is further submitted that, due to the injunction, the petitioner's construction activities have been stalled, resulting in loss and inconvenience. According to the petitioner, access through the eastern side is not feasible for transportation of construction materials, and he requires permission to install a gate on the western boundary and to use the plaint schedule C road for access. The petitioner asserts that the injunction has caused irreparable injury and unjustly restricted his use of the property. Hence, it is prayed that the ad interim injunction be set aside or suitably modified permitting installation of a gate and use of the plaint schedule C road, and granting unhindered access thereto.

**5. *The 1st and 2nd respondent filed objection contending are as follows:***

The petitioner has filed I.A. No. 6/2025 only to delay the proceedings, without disclosing any real urgency or hardship, especially when construction is already completed. The claim over the C schedule pathway is baseless, and no supporting documents are produced. The pathway is not a municipal road, and the respondents have rightful access over it. Granting the relief will cause prejudice to the respondents. The petitioner has approached the court with unclean hands, and the balance of convenience is in favour of the respondents. Hence, the petition is liable to be dismissed with costs.

6. Heard both sides.

**7. Points for consideration:**

- 1 *Whether the plaintiff/petitioner has a prima facie case?*
- 2 *Whether the balance of convenience is in favour of the plaintiff/petitioner?*
- 3 *Whether irreparable injury would be caused to the plaintiff/petitioner if injunction is refused?*
- 4 *Whether the plaintiff/petitioner is entitled to temporary injunction as prayed for?*

5 Whether the prayer in I.A. No. 6/2025 is allowable?

6 **Relief and costs?**

8. On the side of the petitioner, Exts. A1 to A3 and C1 series were marked. On the side of the defendant, Exts. B1, B2 series, B3 and B4 were marked.

9. **Point Nos. 1 to 4:** The case of the petitioner/plaintiffs is that the plaint schedule A and B properties belong to them and are in their possession and enjoyment. The plaint schedule A property was obtained by the first plaintiff by virtue of the property scheduled as item No. 4 in Partition Deed No. 748/1979. The plaint schedule B property was obtained by the second plaintiff by virtue of the property scheduled as item No. 3 in the said partition deed.

10. The defendant, in the objection, has not specifically denied the title and possession of the plaint schedule A and B properties of the plaintiffs, though in the written statement it is contended that the averments of the plaintiffs regarding title and possession are false.

11. The petitioners/plaintiffs have produced Exts. A1 to A3 to prove their title and possession. Ext. A1 is the certified copy of Partition Deed No. 748/1979, which shows that the first plaintiff was allotted the property scheduled therein as item No. 4 and the second plaintiff was allotted the property scheduled therein as item No. 3. They have also produced Exts. A2 and A3 land tax receipts, which show that they have been paying land tax in respect of the plaint schedule A and B properties. Thus, Exts. A1 to A3 prima facie establish that the plaintiffs have title and possession over the plaint schedule A and B properties.

12. The case of the petitioners/plaintiffs is that a pathway is provided in Ext. A1 for use by the allottees to whom the properties were allotted. It is a cartable pathway having a width of 10 links, and the said pathway is described as plaint schedule C. According to the plaintiffs, no

one other than the allottees of the properties has any right over the said pathway. It is further stated that on the eastern side of the pathway there exists a boundary wall constructed by the property owners to whom the properties were allotted.

13. The petitioners/plaintiffs rely on the recitals in Ext. A1 partition deed to substantiate their case that a pathway is provided along the eastern side of the properties for access to the properties allotted under Ext. A1. It is specifically stated in Ext. A1 that along the eastern side of the properties allotted therein, there exists a pathway having a width of 10 links running in the north-south direction, and the allottees of the properties have the right of passage through the said pathway.

14. In the objection filed by the defendant, the existence of the said pathway along the eastern side of the plaint schedule A and B properties is not specifically denied. However, in the written statement, it is contended that the said pathway is a road vested in the Pandalam Municipality and, therefore, a public road, and that the petitioners/plaintiffs have no right or authority to claim it as a private pathway exclusively belonging to them.

15. It is further contended in the written statement that the said road is known as the CM Hospital–Mannukala Road, having a width of 4 metres and a length of 1.20 kilometres. It is also stated that the said road passes through the properties comprised in Field Nos. 170 and 171, and whether it has been formed by taking extent from either or both fields can be ascertained only through a proper survey. However, no such specific contention is seen in the objection filed by the defendant.

16. It is also to be noted that the case of the defendant/counter petitioner is that he has no property adjacent to the plaint schedule A and B properties and that the property situated on the eastern side belongs to his sister. He has no case that he is using the plaint schedule C

pathway for access to his property. It is true that the defendant/counter petitioner has produced three documents, marked as Exts. B1, B2 series and B3, to prove his case regarding the existence of a pathway which, according to him, is the CM Hospital–Mannukala Road owned by the Pandalam Municipality.

17. Ext. B1 is the copy of the Asset Register of the Pandalam Municipality. It shows that there exists a road starting from Aradhanapadi and terminating at Mannukala. Its length is shown as 110 metres and its width as 3 metres. Ext. B2 series consists of copy of re-survey file maps of Field Nos. 170 and 171. It is true that the re-survey plan of Field No. 170 shows a pathway on the southern side of the property in Re-survey No. 170/3, and the re-survey plan of Field No. 171 shows a pathway on the eastern side of the property in Re-survey No. 171/3. However, from Ext. B2 series, it cannot be found that there exists any pathway or road on the eastern side of the plaint schedule A and B properties, which are comprised in Re-survey Nos. 171/12 (A schedule property) and 171/10 and 171/18 (B schedule properties). Ext. B3 relates to the detailed estimate for concreting the Mannukala road in Division No. 26 of the Pandalam Municipality. A rough sketch of the road is also attached thereto, which shows that the proposed Mannukala road starts from the Pandalam–Adoor Road and its concreting is shown as 36.5 m × 3 metres. An abstract estimate for the concreting work is also produced, showing an estimated amount of ₹1 lakh.

18. However, from Exts. B1 to B3, it cannot be concluded that they relate to a pathway existing on the eastern side of the plaint schedule A and B properties. At present, there is no material to prima facie establish the case of the defendant/counter petitioner that Exts. B1 to B3 relate to a public pathway or road situated on the eastern side of the plaint schedule A and B properties. The defendant/counter petitioner has also failed to prima facie prove that the said

pathway is being used by him for access to his property.

19. The petitioners/plaintiffs, in order to prove the existence of the plaint schedule C pathway, took out a commission, and the Advocate Commissioner inspected the plaint schedule properties and submitted Ext. C1 series report, mahazar and rough sketch. The recitals in Ext. C1 series, read along with Ext. C1(b) rough sketch, clearly support the case of the petitioners/plaintiffs that there exists a plaint schedule C pathway on the eastern side of the plaint schedule A and B properties, and they negate the case of the defendant that the C schedule pathway is a public road vested in the Pandalam Municipality and not a private pathway belonging exclusively to the plaintiffs.

20. In Ext. C1(a) mahazar, it is clearly stated that there exists a C schedule pathway and that it is a private pathway. It is further stated therein that the plaint schedule C pathway starts from the MC Road on the north-eastern side of the plaint schedule properties, runs along the eastern side of the plaint schedule properties towards the south, and ends in the western property of Surendran Nair. It is also noted that the pathway has an approximate width of more than 8 feet.

21. Ext. C1(b) rough sketch also shows the plaint schedule C pathway on the eastern side of the plaint schedule A and B properties. It further shows that the said pathway starts from the Pandalam–Adoor MC Road on the north-eastern side and terminates in the property of Surendran Nair on the western side of the plaint schedule properties. The property of the defendant is shown on the eastern side of the plaint schedule A and B properties, and the hostel building under construction in the defendant's property is also marked therein. The same clearly indicates that the defendant has direct access to his property from the Pandalam–Adoor MC Road.

22. The case of the petitioners/plaintiffs is that on 25.07.2022, taking advantage of their absence, the defendant, with the help of his employees, demolished the southern corner portion of the boundary wall of the plaintiff schedule properties, measuring about 5½ feet in height and 11 feet in width. On coming to know of the same, the petitioners/plaintiffs reached the spot and obstructed the said act, and the employees of the defendant assured them that no gate would be installed. According to the petitioners/plaintiffs, the defendant carried out the said act with a view to install a gate for taking vehicles into his property, and in fact, the employees of the defendant installed a gate on the very same day. The said portion is described as plaintiff schedule D.

23. The defendant/counter petitioner denied the above allegations. In the written statement, it is contended that the wall on the western boundary of his sister's property was constructed by her father, and that necessary arrangements, including installation of a gate by removing the earlier rusted gate, were made to facilitate access for bringing construction materials, with which the plaintiffs have no concern.

24. However, the above contention of the defendant cannot be accepted in the light of the recitals in Ext. C1(a) and Ext. C1(b). As already noted, the recitals in Ext. C1(a), read along with Ext. C1(b), clearly show that the defendant has direct access to his property from the eastern Pandalam–Adoor MC Road. Ext. C1(a) further states that the wall constructed for the protection of the C schedule pathway has a width of 4 feet and that the pathway is presently being used only by the plaintiffs and the property owners on the south-western and southern sides of the plaintiff schedule A and B properties.

25. It is also specifically stated in Ext. C1(a) that the wall on the south-eastern portion of the C schedule pathway was demolished to a width of about 10 feet and that a gate of about

6 feet height was newly installed there, and that the said installation was only about one week old at the time of inspection. It is further clearly stated that the defendant has a convenient access to his property from the MC Road.

26. The above recitals in Ext. C1(a) clearly show that the defendant demolished a portion of the wall on the eastern side of the C schedule pathway and thereafter installed a new gate at the demolished portion, and that there is no necessity for the defendant to use the C schedule pathway for access to his property. In Ext. C1(b) also, the D schedule portion where the gate is installed is clearly shown. Therefore, I find that the petitioners/plaintiffs have prima facie established the existence of the plaintiff schedule C pathway on the eastern side of the plaintiff schedule properties and that the said pathway originates from the north-eastern MC Road. The balance of convenience is also in favour of the petitioners/plaintiffs, and if the temporary injunction prayed for is not granted, it would result in irreparable injury and loss to them. Issue No.1 to 4 found in favour of the petitioners/plaintiffs.

27. **Issue No.5** :- The defendant/counter petitioner has filed I.A. No. 6/2025 seeking to set aside the order dated 04.08.2022 in I.A. No. 1/2022 or to vary or discharge the said order, permitting him to protect his property by installing a gate in the open portion of the western boundary, to transport construction materials and other articles to his property through the plaintiff schedule C Municipal road, and to have unhindered use of the said pathway.

28. According to the defendant, when he attempted to develop his property by constructing a building, the plaintiffs approached the Court and obtained an injunction. It is contended that there was a gate on the western boundary of his property and that it is not feasible for him to transport construction materials through the eastern side, as the same is narrow and curved. It is further stated that, consequent to the injunction, his construction

activities came to a standstill, and he temporarily stopped the work. Though he closed the gate portion with iron sheets, the same were damaged due to rusting, and the property has now become a resting place for stray dogs and anti-social elements.

29. However, the above case of the defendant/counter petitioner cannot be accepted as true and correct. As already stated, Ext. C1(a), read along with Ext. C1(b), clearly shows that the defendant demolished a portion of the eastern boundary wall and thereafter installed a new gate. The said conduct clearly indicates that the defendant intends to use the plaint schedule C pathway for access to his property, even though he has no right or authority to do so.

30. It is also pertinent to note that the defendant has not filed any objection to Ext. C1 series. On the other hand, the present application has been filed after a lapse of about three years from the date of the order dated 04.08.2022. No satisfactory explanation is forthcoming from the side of the defendant for the delay in filing the application. If, in fact, he was aggrieved by the order in I.A. No. 1/2022, he ought to have taken steps to challenge the same at the earliest point of time.

31. Further, if it is his case that the plaint schedule C pathway is a public road vested in the Pandalam Municipality and not a private pathway, he ought to have taken steps to have the Advocate Commissioner re-inspect the property and report on the nature of the pathway. No such steps have been taken. Therefore, on this ground also, the prayer of the defendant/counter petitioner cannot be allowed. Moreover, it has already been found that the plaintiffs/petitioners have made out a prima facie case and that the balance of convenience is in their favour. In the above circumstances, there is absolutely no necessity to set aside the order dated 04.08.2022 in I.A. No. 1/2022 or to vary or discharge the same in the manner sought by the defendant. Hence, I.A. No. 6/2025 is devoid of merits and is liable to be dismissed. Issue

No.5 is found against the petitioner in IA 6/2025/defendant.

***In the result, I.A. No. 1/2022 is allowed, and the ad interim temporary injunction granted by order dated 04.08.2022 is made absolute till the disposal of the suit. The defendant, either directly or through any person claiming under him, is hereby restrained from trespassing upon or forcibly encroaching into any portion of the plaint schedule A, B, and C properties, or from altering their nature or causing any change thereto; from forcibly encroaching upon the plaint C schedule pathway and using the same for vehicular traffic; from widening the said pathway; from demolishing the protective wall of the pathway and permitting entry of vehicles through the plaint schedule D property; from causing any damage to the existing protective wall; or from committing any other acts of waste or mischief.***

***I.A. No. 6/2025 is dismissed. No costs.***

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 8<sup>th</sup> day of April, 2026.

Sd/-  
SHERIN. Y.T,  
MUNSIFF.

#### Appendix

##### Exhibits marked for the Petitioner/Plaintiff:-

A1	03.03.1979	Certified copy of Partition deed No. 748/1979.
A2	16.04.2021	Tax Receipt.
A3	16.04.2021	Tax Receipt

##### Exhibits marked for the Respondent/Defendant:-

B1	Copy of Asset register of the Pandalam Municipality.
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B2 Copy of Resurvey file map of filed No. 170  
B2(a) Copy of resurvey file map of filed No.171

B3 Detailed estimate for concreting the Mannukala Road in Division No. 26 of Pandalam Municipality.

B4 Power of Attorney.

Court Exhibits marked : -

C1 12.08.2022 Report prepared and submitted by Commissioner Advocate Vineeth.V

C1(a) 04.08.2022 Mahazar prepared and submitted by Commissioner Advocate Vineeth.V

C1(b) 04.08.2022 Rough Sketch prepared and submitted by Commissioner Advocate Vineeth.V

Id/-  
MUNSIFF.

Typed by: Saji.K  
Compared by:

Fair/Copy of Order in  
IA No. 1/2022 and IA 6/2025  
in O.S. No.220/2022  
Dated: 08..04..2026.