

IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind S.J, Munsiff, Thiruvalla.

Thursday the 25th day of September 2025/ 03rd day of Aswina 1947 SE.**IA 01/2025 in OS 194/2025 & IA 01/2025 in OS 219/2025.****IA 01/2025 in OS 194/2025**

BETWEEN

P.V.Shaji, aged 58, S/o V.Varghese, Memana Veedu, Pulladu P.O, Pullad Muri, Koipuram Village, Thiruvalla Taluk.	}	<u>Petitioner/ Plaintiff</u>
(By Adv. P.K.Ravi)		-

AND

Jose George, aged 48, S/o Georgekutty, Valliyil Veedu, Vazhoor East P.O, Vazhoor Village, Changanassery Taluk.	}	<u>Counter petitioner Respondent</u>
(By Adv. Shijimol.M.Mathew & Adv. Sindhu.T.C)		

BETWEEN

IA 01/2025 in OS 219/2025

Jose George, aged 48, S/o Georgekutty, Valliyil Veedu, Vazhoor East P.O, Vazhoor Village, Changanassery Taluk.	}	<u>Petitioner/ Plaintiff</u>
(By Adv. Shijimol.M.Mathew & Adv. Sindhu.T.C)		

AND

P.V.Shaji, aged 58, S/o V.Varghese, Memana Veedu, Pulladu P.O, Pullad Muri, Koipuram Village, Thiruvalla Taluk.	}	<u>Counter petitioner Respondent</u>
(By Adv. P.K.Ravi)		

These petitions are filed u/o XXXIX Rule 1 of Civil Procedure Code.

These petitions are having been finally heard on 23.09.2025 and stood over for consideration on 25.09.2025 and on the same day the court passed the following:-

COMMON ORDER

These petitions are filed by the plaintiffs in the respective suits for an order of temporary injunction under O XXXIX R 1 of the Code of Civil Procedure, 1908.

IA No 1/2025 in OS No 194/2025

2. The petition averments in IA No. 1/2025 in OS No 194/2025 in brief are as follows:- The petitioner is the plaintiff in the suit. The suit is filed for declaration of title, recovery of possession, fixation of boundary and permanent injunction. The plaint schedule item No.1 property was obtained by the petitioner by virtue of sale deed No. 1453/2009 of the Vennikkulam SRO and the sale certificate obtained from the Thiruvalla Sub Collector on 29-05-2008. The properties obtained by the said documents are lying contiguously and the plaintiff is paying tax for the same. The plaint schedule item No.2 property belonging to the respondent is situated at the immediate southern side of the plaint schedule item No.1 property. The plaint schedule item No. 3 is the compound wall constructed by the petitioner at the southern side of the plaint schedule item No. 1 property in east-west direction at an average height of 8 feet and length of 52 feet by expending an amount of Rs. 6,50,000/-. The private way at the western side of the plaint schedule item No.1 property is scheduled as item No.4 and the portion of item No.1 property annexed by the respondent to the plaint schedule item No.4 property at a width of 5 ½ feet and length of 68 feet is scheduled as plaint schedule item No.5. Misusing the absence of the petitioner from the plaint schedule properties, the respondent had excavated soil at a depth of 6 feet at the southern extremity of item No. 1 and 3 properties and had caused serious harm to plaint schedule item No.1 and 3 properties. The respondent is thereafter using the plaint schedule item No. 5 portion also for plying the vehicles to remove the soil excavated from item No. 2 property. The respondent has no right or authority to use the plaint schedule item No. 5 portion for more convenient access to his property through item No. 4 property. The respondent is an influential person. Hence the

petitioner is entitled to an order of temporary injunction restraining the respondents from excavating soil from item No. 2 property, causing loss of lateral support to plaintiff schedule item No. 1 and 3 properties and from using the plaintiff schedule item No. 5 portion of the pathway till the boundary of the plaintiff schedule item No. 4 pathway and the property of the petitioner is fixed through process of court. The petitioner has a prima facie case. The balance of convenience is in favour of the petitioner. Hence the petition.

3. Notice was duly served on the respondent. The respondent entered appearance and filed objection contending as follows: The petition is not maintainable either under law or on facts. The petitioner is put to proof regarding his title over the plaintiff schedule item No. 1 property. It is false to allege that the entire property at the southern side of plaintiff schedule item No. 1 property belongs to the respondent. The petitioner is not the owner of the entire plaintiff schedule item No. 2 property as alleged. It is true that there is a boundary wall at the southern side of the plaintiff schedule item No. 1 property. However the length, width and the amount expended for constructing the same are to be proved by the petitioner. The plaintiff schedule item No.4 description is false. The pathway having a width of 10 feet and length of 20 feet and the remaining 10 feet width private way is used for access to the property of the respondent. The said pathway at its bell mouth portion has a length of 10 feet and a width of 25 feet and the pathway thereafter has a width of 20 feet. The respondent had purchased his property along with the said right of way from one Dr. Varghese Isow by virtue of deed No. 1245/2024 of the Vennikkulam SRO. The said Varghese Isow purchased the said property from one Varghese by virtue of deed No. 541/2003. They were also using the said pathway for access to the property. The respondent has obtained easement right by prescription over the bell mouth portion of the pathway. The plaintiff schedule item No. 5 is only imaginary. The respondent has not annexed any portion of item No. 1 property unauthorizedly to item No. 4 property. The soil was excavated from the property of the respondent after leaving sufficient space from the southern boundary of item no. 1 property. The same was done for construction work

in the property of the respondent. After removal of the soil, the respondent had constructed concrete belt at a height of 6 feet at the northern extremity of his property and therefore no harm or damage is caused to the plaint schedule item No. 1 property. The petitioner and the respondent are engaged in the same business. The intention of the petitioner is only to cause obstruction to the construction work in the property of the respondent. The plaint schedule item No. 4 and item No. 1 are situated at the same level. The petitioner had taken the vehicle through the plaint schedule item No. 4 property. No vehicle was plied through any portion of the plaint schedule item No. 1 property. The plaint schedule item No. 4 pathway is used by the other persons in the locality also. Soil was excavated from the property of the respondent after obtaining all the necessary permissions and it is false to allege that the lateral support of the plaint schedule item No. 1 property was lost due to the acts of the respondent. The petitioner has no prima facie case. The balance of convenience is in favour of the respondent. If an order of injunction is passed, it will cause irreparable loss and injury to the respondent. Hence the petition is liable to be dismissed.

4. Points that arose for consideration are:-

1. Whether there exists a prima facie case in favour of the petitioner?
2. Whether balance of convenience tilts in favour of the petitioner?
3. Whether refusal to grant injunction would cause irreparable injury to the petitioner?
4. What is the order as to costs?

B. IA No 1/2025 in OS No 219/2025

5. The petition averments in IA No 1/2025 in OS No 219/2025 in brief are as follows:- The petitioner is the plaintiff in the suit. The suit is filed for declaration of prescriptive easement right and perpetual prohibitory injunction. The plaint schedule item No.1 property was obtained by the petitioner by virtue of sale deed No. 1245/2024 of the Vennikkulam SRO. The said property is in the absolute possession and enjoyment of the petitioner and he is paying tax for the same. The petitioner has

property at the southern side of the plaint schedule item No.1 property as well. The plaint schedule item No. 2 property belonging to the respondent is situated at the immediate northern side of the plaint schedule item No.1 property. There is a private pathway emanating from the northern panchayat road through the western side of the plaint schedule item No.2 property till item No.1 property and the same is scheduled as item No. 3. The plaint schedule item No. 3 pathway has a width of 25 feet and length of 10 feet at its bell mouth portion and thereafter the pathway has a width of 10 feet and length of 130 feet. The petitioner has obtained easement right by grant over the 10 feet width portion at the bell mouth portion and has obtained easement right by prescription over the remaining width of 10 feet through the plaint schedule item No. 2 property. The said portion is scheduled as item No. 4. The plaint schedule item No. 3 pathway and item No. 2 are situated at same level. The petitioner has purchased item No. 1 property inclusive of the right to use the plaint schedule item No. 3 pathway. The petitioner has also obtained easement right by prescription over the plaint schedule item No. 4 pathway. The plaintiff had purchased the property from one Varghese Isow and he has obtained the property from one Varghese by virtue of deed No. 541/2003. The plaint schedule item No. 3 pathway inclusive of the plaint schedule item No. 4 portion is being used by the plaintiff and his predecessor in interest for the past 20 years openly, peaceably, as of right contiguously and without interruption. The plaintiff has purchased the plaint schedule item No. 1 property inclusive of the easement right obtained over the item No. 3 pathway. The plaintiff thus has absolute right over the plaint schedule item No. 3 pathway inclusive of the plaint schedule item No. 4 portion. The petitioner has commenced construction work in the plaint schedule item No. 1 property and the respondent with the intention to cause obstruction to the said construction work had instituted O.S. 194/2025 before this court. The predecessor in interest of the petitioner was using the plaint schedule item No. 3 pathway inclusive of item No. 4 pathway portion even before the respondent purchased the plaint schedule item No. 2 property. There is no way other than the plaint schedule item No. 3 pathway for access to the plaint schedule item No. 1 property. The respondent has

no right to cause any obstruction to the said pathway. The petitioner has a prima facie case. The balance of convenience is also in favour of the petitioner. Hence the petition.

6. Notice was duly served on the respondent. The respondent entered appearance and filed objection contending as follows: The petition is not maintainable either under law or on facts. It is false to allege that the petitioner has obtained prescriptive easement right over the plaint schedule item No. 4 pathway. The petitioner has annexed a portion of the property belonging to the respondent having an average width of 15 feet and had annexed the same to item No. 3 portion. The petitioner is thereafter plying heavy vehicles including Torres through the said pathway. The petitioner has only obtained right to use the pathway portion having a width of 10 feet as per his title deed. He has now annexed a portion of the plaint schedule item No. 2 property into item No. 3 pathway. The respondent had thus preferred O.S. No. 194/2025 before this court for recovery of possession of item No. 4 portion and for declaration of title over the same. The petitioner has filed the present suit only as a counter blast to the aforesaid suit claiming easement right by prescription over the said pathway. The plaint schedule item No. 4 was not in existence before June 2025. The plaint schedule item No. 3 pathway was never being used for access to item no 1 as alleged. Therefore there was no need to annex any portion of plaint schedule item No. 4 pathway to item No. 3 portion. The petitioner has never obtained easement right by prescription over the plaint schedule item No. 4 portion. None of the reliefs sought for can be allowed. The petitioner has a pathway having a width of 10 feet for access to his property. Hence the petition is liable to be dismissed.

7. Points that arose for consideration are:-

1. Whether there exists a prima facie case in favour of the petitioner?
2. Whether balance of convenience tilts in favour of the petitioner?
3. Whether refusal to grant injunction would cause irreparable injury to the petitioner?

4. What is the order as to costs?

8. Heard both sides.

9. As per the order of this court in I.A. No. 4/2025 in OS No. 219/2025, both these petitions are consolidated and considered together. The parties shall hereinafter be referred to as per their status in O.S. 194/2025 unless otherwise required. On the side of the petitioner, Ext. A1 to A3 were marked for the purpose of this petition. The documents produced by the respondent are marked as Ext. B1 to B3. The commission report in O.S. No. 194/2025 is marked as Ext. C1 and the commission report and rough sketch in O.S. No. 219/2025 are marked as Ext. C2 and C2(a).

10. **Point No. 1 to 3 in I.A. No. 1/2025 in O.S. No. 194/2025:** These points are considered together for brevity and for the sake of convenience. The sum and substance of the case of the petitioner is that the plaint schedule item No. 1 property belongs to him and that item No. 2 property situated at its southern side belongs to the respondent. It is contended that there is a compound wall scheduled as item no 3 separating the plaint schedule item No. 1 and 2 property and that there is a private way from the northern panchayat road at the western side of the plaint schedule item No. 1 property for access to the property of the respondent and the same is scheduled as item No. 4. The bone of the contention of the petitioner is that the respondent had annexed a portion of the plaint schedule item No. 1 property into item No. 4 pathway and the said portion annexed from item No. 1 property at a width of 5 ½ feet and length of 68 feet is scheduled as item No. 5. It is also contended that the respondent is attempting to remove the lateral support of the plaint schedule item No. 1 property by excavating soil from item No.2 property. Per contra, the respondent had contended that he had obtained right of way over the private way having a width of 10 feet and had obtained easement right by prescription over the remaining width of the pathway at the bell mouth portion of the plaint schedule item No. 4 pathway. It is contended that the

intention of the petitioner is only to cause obstruction to the construction work being conducted in the plaint schedule item No. 2 property.

11 There is no dispute regarding the title of the petitioner over the plaint schedule item No. 1 property. It is stated that the petitioner obtained title over the same by virtue of deed No. 1453/2009 of the Vennikkulam SRO and also by virtue of sale certificate issued by the Thiruvalla Sub Collector on 29-05-2008. The said documents were produced and marked as Ext. A1 and A2. Ext. A2 is the tax receipt with respect to the plaint schedule item No. 1 property. The documents produced would show that the petitioner has title over the plaint schedule item No. 1 property. The learned counsel for the petitioner during the course of his argument contended that the respondent had excavated soil from the plaint schedule item No. 2 property and thus the relief pertaining to restraining the respondent from removing soil from the plaint schedule item No. 2 property has become infructuous. The respondent had averred in his objection that he has constructed a concrete belt at the northern extremity of his property and he has no intention to cause any loss of lateral support of the plaint schedule item No. 1 property.

12. Ext. C1 would show that the plaint schedule item No. 2 property is situated at a higher level than the plaint schedule item No. 1 property. The Advocate commissioner has also identified the plaint schedule item No. 3 compound wall. Ext. C1 would also show that there is boundary wall constructed at the northern extremity of plaint schedule item No. 2 property and it is reported that the same was constructed recently. The materials on records would prima facie show that the plaint schedule item No. 1 property is entitled to lateral support from plaint schedule item No. 2 property. The respondent is not entitled to do any acts affecting the lateral support of plaint schedule item No. 1 property from item No. 2 property. Therefore this court is of the opinion that the petitioner has a prima facie case in that regard and is entitled to an order of temporary injunction restraining the respondent from doing any acts affecting the lateral support of the plaint schedule item No. 1 and 3 properties from item No. 2 property.

13. The petitioner has also sought for a decree of prohibitory injunction restraining the defendants from using the western portion of the plaint schedule item No. 1 property till the boundary separating the plaint schedule item No. 1 and 4 properties are fixed through process of court. As already stated, the case of the petitioner is that the respondent has annexed a portion of the plaint schedule item No. 1 property at its western portion at a width of 5 ½ feet and is using the same as a pathway along with item no 4 pathway. There is no dispute to the fact that the respondent is entitled to use the pathway having a width of 10 feet at the western side of item no 1 property from the northern panchayat road. The dispute is regarding the 5 ½ width pathway portion at the bellmouth which the petitioner alleges that the respondent had annexed from item no 1 property to item no 4 pathway. Ext. C2 and C2(a) would show that the pathway at the northern bell mouth portion has a width of 15.75 feet and the said pathway portion is lying as a single compact pathway. It is also reported that the width of the pathway reduces to 10 feet after a length of 10 feet.

14. The respondent has claimed easement right by prescription over the portion of pathway excluding the 10 feet width portion at the bell mouth portion of the pathway. It is admitted that the respondent has right to use the pathway having a width of 10 feet emanating from the northern panchayat road till his property. The dispute is regarding the portion of pathway at its eastern side. Even though the respondent has contended that the said pathway portion has a width of 10 feet and is scheduled as plaint schedule item No. 4 in O.S. No. 219/2025, Ext. C2 and C2(a) would show that the said pathway portion has a width of only 5.75 feet and not 10 feet as alleged. Any how, when the petitioner is claiming easement right by prescription over the said portion of pathway and it is evident from the materials on record that the said pathway is in existence on the date of institution of the suit, this court cannot adjudicate upon the said disputed fact at this juncture. More over it is also evident that the said portion of pathway and the remaining extent of the plaint schedule item No. 4 pathway are lying contiguously without any demarcating boundaries. Therefore it is also not practicable to pass an order of temporary injunction restraining the respondent from

using the disputed portion of pathway. Therefore this court is of the opinion that the petitioner is not entitled to an order of temporary prohibitory injunction regarding the same. Thus point No. 1 to 3 are found accordingly.

15. **Point No. 1 to 3 in I.A. No. 1/2025 in O.S. No. 219/2025:** These points are considered together for brevity and for the sake of convenience. The respondent had filed the aforesaid petition to restrain the petitioner from causing any obstruction to his user over the plaint schedule item No.3 pathway herein inclusive of the plaint schedule item No. 4 pathway herein, causing any obstruction to the plaint schedule item No. 4 pathway herein, reducing the width of item No. 3 pathway herein, altering the same and from making any constructions therein. It is already found that the pathway emanating from the northern panchayat road has a width of 15.75 feet at present and that the said width reduces to 10 feet after a length of 10 feet. The existence and lie of the said pathway is ascertained in Ext. C2 and C2(a). The petitioner has contended that he has obtained easement right by grant as per his title deed over the portion of plaint schedule item No. 3 pathway having a width of 10 feet.

16. The respondent has obtained title over the plaint schedule item No.1 property herein by virtue of deed No. 1245/2024 of the Vennikkulam SRO. The said document was produced and marked as Ext B1. It is also stated that the prior owner of the petitioner obtained the plaint schedule item No. 1 property herein by virtue of deed No. 541/2003. The said document was produced and marked as Ext. B2. A perusal of Ext. B1 and B2 would show that the respondent has obtained right over the pathway having a width of 10 feet. The right of the respondent to use the said portion of pathway is also admitted by the petitioner. The only dispute is regarding the remaining extent of the plaint schedule item No. 3 pathway which is scheduled as item no. 4. As already stated it is contended that the respondent has obtained easement right by prescription over the pathway portion having a width of 10 feet at the bell mouth portion of the plaint schedule item No. 3 pathway. It is already found that the remaining width of the pathway at the said portion is only 5.75 feet as is evident from Ext C2 and C2(a).

17. At the cost of repetition, it is to be considered that when the petitioner has claimed easement right by prescription over the said pathway and the said pathway is in existence on the date of institution of the suit and the entire pathway is lying contiguously, this court cannot adjudicate upon the disputed claim at this juncture. The existence of the pathway would bring out a prima facie case in favour of the respondent. The undisputed pathway having a width of 10 feet and the disputed pathway portion having a present width of 5.75 feet as reported by Advocate commissioner are lying contiguously. The respondent is entitled to claim right over the said width of the pathway as reported in Ext C2 and C2(a) as the said width is in existence and not the width as alleged by the respondent. Thus balance of convenience is in favour of the respondent and irreparable loss and injury would be caused to the respondent if an order of temporary injunction is not granted in I.A. 1/2025 in O.S. No. 219/2025. Therefore this court is of the opinion that the petitioner in I.A. No. 1/2025 in O.S. No. 2019/2025 is entitled to an order of temporary injunction as sought for. Thus point No. 1 to 3 are found accordingly.

18. **Point No. 4 in I.A. No. 1/2025 in O.S. No. 219/2025 and O.S. No. 194/2025:-** Based on the discussions made above, I.A. No. 1/2025 in O.S. No. 194/2025 is liable to be allowed in part and I.A. No. 1/2025 in O.S. No. 219/2025 is liable to be allowed. There is no order as to costs.

In the result these petitions are allowed as follows:-

- 1. The respondent in I.A. No. 1/2025 in O.S. No. 194/2025 is restrained by an order of temporary injunction from doing any acts affecting the lateral support of the plaint schedule item No. 1 and 3 properties therein.**
- 2. The relief with respect to plaint schedule item No. 5 pathway in IA No. 1/2025 in OS 194/2025 is hereby dismissed.**
- 3. The respondent in I.A. No. 1/2025 in O.S. No. 219/2025 is restrained by an order of temporary injunction from causing any obstruction to the user of the respondent over the plaint schedule item No.3 pathway therein inclusive of the plaint schedule item No. 4 pathway therein as reported in**

Ext C2 and C2(a), causing any obstruction to the plaint schedule item No. 4 pathway therein as reported in Ext C2 and C2(a), reducing the width of item No. 3 pathway therein as reported in Ext C2 and C2(a), altering the same and from making any constructions therein.

3. There is no order as to costs.

Dictated to the Confidential Assistant, typed by her, corrected, and pronounced by me in open court, this the 25th day of September, 2025.

Sd/-
ARAVIND S.J.
MUNSIFF

APPENDIX

Exhibits marked for the petitioner:-

A1-Copy of deed No. 1453/2009 dated 05.10.2009 of Vennikulam SRO.
A2-Copy of sale certificate issued by Thiruvalla Sub Collector on 29.05.2008
A3-Tax receipt No. KL 03050607267/2025 dated 11.06.2025 issue by
Koipuram Village Officer.

Exhibits marked for the Respondents:-

B1-Copy of deed No. 1245/2024 dated 15.11.2024 (Filed by the petitioner in OS 219/2025).
B2-Deed No. 541/2003 dated 29.04.2003 of Aranmula SRO (Filed by the petitioner in OS 219/2025).
B3-Tax receipt KL03050604430/2025 dated 02.05.2025 of Koipuram Village Office.

Court Exhibits:-

C1-Commission report filed by the Advocate Commissioner in OS 194/2025.
C2 & C2(a)-Commission report & Rough Sketch filed by the Advocate Commissioner in OS 219/2025.

Id/-
MUNSIFF

Fair/Copy of order in I.A. 1/2025 in
OS 194/2025 and IA No. 1/2025 in
OS No 219/2025, Dated 25/09/2025