

**IN THE COURT OF THE IV ADDITIONAL DISTRICT JUDGE OF
THRISSUR**

Present:

Sri. ANIL T.P, IV ADDITIONAL DISTRICT JUDGE.
Tuesday, the 31st day of March 2026/ 10th Chaithram 1948 SE

C.M.A 60/2025

(IA04/2025 in OS 409/2025 of 1st Additional Munsiff Court, Thrissur)

- Appellants/
Defendants:
- 1 Sajeewan M.A, aged 60, Elavunnadikkal
Veettil, Thakidipuram Desom, Madakkathara
Village, Thrissur Taluk.
 - 2 Shibu, aged 47, S/o Muttath Ignatious,
Karuvamkode Desom, Madakkathara Village,
Thrissur Taluk.

By. Adv. Jen0 N. Antony.

Respondent/
Plaintiff: Santhakumari, aged 47, W/o Thengun chery
Rajan, Karuvankode Desom, Killannur
Village, Thrissur Taluk.

By. Adv. M.P. Sreekrishnan.

This appeal having been finally heard on 27.03.2026 having stood over for consideration to this day, the Court delivered the following:

JUDGMENT

Appeal filed under Order XLIII Rule 1 CPC.

2. Appellants are the respondents in IA.4/2025 in OS.409/2025 on the file of Ist Additional Munsiff Court, Thrissur. Appeal is filed against the order dated 24.05.2025 by which petition under Order XXXIX Rule 1 CPC was allowed.
3. The petition averments, in brief, is as follows:- The petition schedule

property having an extend of 34.79 cents belongs to petitioner. Petitioner and family are residing in item No.1 of petition schedule property. A four meter width way at a length of 47.67 meters was situated on the western side of item No.1 and this property was given by petitioner for the purpose of way. On the further western side of this way, item No.2 property situated. Both these items of properties described in the schedule are within well defined boundaries. On the western side of item No.2, the mother-in-law of petitioner had assigned 60 cents of property to 2nd respondent as per document No.73/2000 of SRO, Thrissur. Out of that property 17.99 cents was assigned to petitioner by R2 as per document No. 1459/2023. The remaining property was decided to be sold by making it as plots by R2 and for that purpose way was given. All those plots were already sold. So R2 has no property in that area. Meanwhile, R1 and R2 entered in the item No.2 property illegally and they are blasting granite stones. On 20.02.2025 when petitioner approached the 2nd respondent has stated that this property belongs to him. This is an attempt to trespass into the property of petitioner. She is not able to prevent the illegal act of respondents. Hence this petition.

4. Respondents filed counter statement contending as follows:- The averments regarding the lie and nature of properties and the right of the property are not true. The property situated on the western side of the way was already belonging to 2nd respondent. This property was given to third party by R2 as per document no. 1585/2024 of SRO, Thrissur. This petition filed without impleading those assignees is

bad for non joinder of necessary parties. R1 has no property in that area and there is no necessity for him to blast stones. These respondents are unnecessary parties. The petitioner had already sold 10 ½ cents as per document No. 2819/2016. So petitioner was in possession of 39 ½ cents obtained by her as per document No. 921/2001. Out of that 39 ½ cents, she had assigned 4.70 cents as per document No. 2224/2016 for the purpose of way. This way was provided further to the 4 meter way already existed. It was the property of Karunakara Kaimal, R2 was purchased as per document No. 72/2000 and this property was already sold to third party. Petitioner has no prima facie case and the balance of convenience is not in favour of petitioner. Hence the petition may be dismissed.

5. After hearing both sides, the trial court allowed this petition and a temporary injunction was ordered restraining respondents and their men from trespassing to the petition schedule properties or from blasting any rocks and changing the nature and lie thereof. Aggrieved by this order, this appeal is filed contending that the trial court has not verified the documents properly and the order is passed without proper appreciation of the contentions and documents. The report of the commissioner was not appreciated. Hence the order may be set aside.

6. In the trial court, Exts. A1 to A5 were marked on the side of respondents in this Appeal, whereas Exts. B1 and B2 were marked for appellant

7. The trial court records were called for and the same was received.

8. Both sides were heard.
9. Now the points that arise for consideration are:
 1. Whether the trial court went wrong in ordering temporary injunction?
 2. Whether the order of the trial court is liable to be set aside?
 3. Reliefs and Costs?

10. **Point No.1 & 2:** Petitioner is stated to be the owner of item No.1 and item No.2 property described in the petition schedule. As per the contention of petitioner, item No.1 is situated on the eastern side of a 4 meter way and item No.2 is situated on the western side of a 4 meter way. The way is stated to be a private way. The contention of the petitioner is that respondents have trespassed into the item No.2 of the petition schedule and blasting rocks. The prayer in the petition is that respondents may be prevented from trespassing into the petition schedule property and blasting rocks from item No.2 of the petition schedule and changing lie and nature of the item No.2 of the petition schedule property.

11. Ext.A1 was the title deed so far as both items of property along with properties which are sold by Ext.A2 and A3 are concerned. Ext.A1 was the assignment deed dated 12.02.2001 executed by Mariyam with respect to 20.25 Ares of property in survey 1156/4. That means the total extent of property will come to 50 cents. From that property on 26.07.2016, 10 ½ cents of property was given to Jose as per Ext.A2. That shows that this property situated on the northern side of 4 meter

private way. Before that petitioner on 18.06.2016, assigned 10 cents + 4.70 cents of property to Jijoy as per Ext.A3 document. The description shows that it was on the western side of the private way and all other sides properties belongs to Rajan, who was the first executant in Ext.A3. The prior title deed of Ext.A3 was Ext.A1 and document No. 3599/2009. It was the second item in the document having an extent of 4.70 cents which is the part and parcel of Ext.A1. That means, petitioner is in possession of the property after deducting the property sold as per Ext.A2 relating to 10 ½ cents and Ext.A3, which is 4.70 cents. The respondents are claiming that petitioner has no property on the western side of 4 meter way. Ext.B1 is the title deed of R2, which is dated 05.01.2000. It was Mariyam herself, who executed Ext.B1. The eastern boundary of Ext.B1 property is the remaining portion of land and 1 ½ meter way. Ext.A1 was executed after more than one year of Ext.B1 document. The western boundary is shown as remaining property and the property of R2 in Ext.A2. The survey number of both the properties in Exts. A1 and A2 are same and shown as 1156/4. As per the averments in the counter, the property situated on the western side of the way belongs to R2. But there is no case that how and under what document this property belongs to R2. Ext.B1 cannot be the basis for that claim, as eastern boundary was shown as remaining portion of property 1 ½ meter width way. At the same time, in Ext.A1 also nothing is stated regarding a private way of 1 ½ meter width way. On the eastern side of Ext.A1, it was described as Peechi canal bund way. Ext.A1 is not showing the property has two items situated on both sides of the 4

meter way. So there is necessity for identifying the property described as per Ext.A1, Ext.A2, Ext.A3 as well as Ext.B1. Then only it can be ascertained that through which property, a 4 meter way was created and whether the property as per Ext.A1 will be on both sides of 4 meter way. Similarly, if a 4 meter way was created through the Ext.A1 property, then the total extent will not be available as shown in Ext.A1. The Commissioner's report which is available as of now cannot sustain the claim of both parties. But the report of Commissioner can help only in supporting the contention of respondent that there was blasting of rocks. This cannot be done by any of the respondents especially when there was no permission from Geology department. Since the property in which blasting of rocks took place is identified by respondents as item No.2 of the plaint schedule, it is not possible to allow blasting of rocks from that property. However, as the identity of the property is not clear from the pleadings or the documents to support the contention that this item No.2 of property situated on the western side of 4 meter way and is covered by Ext.A1, it is not possible to grant an equitable relief of temporary prohibitory injunction from trespassing in that property. In that circumstances, it is necessary to modify the temporary injunction order and thereby confine to prevent the respondents from blasting rocks or changing the lie and nature of the property. Points No.1 and 2 answered partly in favour of appellants.

12. **Point No.3:** In view of my findings on Points No. 1 & 2, I find that appellants are partly entitled for the relief. There is no order as to costs.

In the result, Appeal is partly allowed and the order of temporary injunction in IA.4/2025 in OS.409/2025 is modified. The respondents are prevented by an order of temporary injunction from blasting any rocks and changing the lie and nature of item No.2 of the petition schedule property. There is no order as to costs.

(Dictated to the Confidential Assistant, transcribed by him, corrected and pronounced by me in open court this the 31st day of March, 2026).

Sd/-
ANIL T.P
IV ADDL. DISTRICT JUDGE
THRISSUR.

APPENDIX
NIL

Sd/-
IV ADDL. DISTRICT JUDGE
THRISSUR.

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By Order

Sheristadar