

IN THE COURT OF THE MUNSIFF, IRINJALAKUDA
Present: Sri. Eldos Mathew., Principal Munsiff.
Thursday, 4th day of December, 2025/ 13th Agrahayana 1947
IA No. 5/2025 in OS 195/2024

Petitioners

1. Rose Mary, 26 years, W/o Mangalan Jackson, Kalltumkara Desom, Village and P.O., Chalakudy Taluk, Pin- 680 683.
 2. Ethan Look Jackson, 6 years, S/o Jackson, represented by mother and next friend, Rose Mary, 26 years, W/o Mangalan Jackson, Kalltumkara Desom, Village and P.O., Chalakudy Taluk, Pin- 680 683.
 3. Emma Mariyam Jackson, 2 1/2 years, D/o Jackson, represented by mother and next friend, Rose Mary, 26 years, W/o Mangalan Jackson, Kalltumkara Desom, Village and P.O., Chalakudy Taluk, Pin- 680 683.
- By Adv. Alphonsa Antony

Respondents

1. Joshy, 61 years, S/o Mangalan Antony, Kalltumkara Desom, Village and P.O., Chalakudy Taluk, Pin- 680 683.
 2. Kochuthresia, 59 years, W/o Mangalan Joshy, Kalltumkara Desom, Village and P.O., Chalakudy Taluk, Pin- 680 683.
 3. Jaison, 39 years, S/o Mangalan Joshy, Kalltumkara Desom, Village and P.O., Chalakudy Taluk, Pin- 680 683.
 4. Josmy, 28 years, W/o Mangalan Jaison, Mangalan Joshy, Kalltumkara Desom, Village and P.O., Chalakudy Taluk, Pin- 680 683.
- By Adv.K.V.Raghuthaman

This petition coming on this day for hearing and the court on 04.02.2025 passed the following:-

ORDER

Petition filed u/s.151 of CPC, to construct a gate in front of the house of petitioners.

2. Petitioner is the 1st plaintiff in the suit. 2nd and 3rd petitioners are minor children of 1st petitioner. According to them, the petition A schedule property is in the absolute possession of the petitioners and they have filed this suit for declaration and consequential injunction against respondents. The husband of the 1st petitioner died in an accident on 22.01.2023. His parents are arrayed as defendants in the suit.

3. As per oral settlement, her husband-Jackson obtained petition A schedule property and he constructed a house therein and started residing there along with petitioners. After his death, they continued residing there. The 2nd petitioner is aged 6 years and the 3rd petitioner is aged 2½ years. Their compound is enclosed by a boundary wall on three sides, except on the eastern side, which abuts the PWD road, beyond which lies a canal. Since her house faces the eastern side, there is a risk that her children, while playing carelessly in front of the house near the road, may fall into the canal. This poses a constant danger and is a persistent source of anxiety for her. Therefore, she seeks permission to construct a gate in front of her house to protect the lives of her children. She undertakes that if any decision is ultimately made against her in the case, she will not claim any right over the compound wall or the gate installed along the eastern boundary pursuant to the order passed in this I.A. So she prays for a favourable order.

4. The learned counsel for respondents filed detailed objection. According to them, this petition is devoid of merit. The petitioners have no right over the petition A schedule property. The respondents were daily wage labourers and using the amount so collected and disposing the ornaments obtained by the 2nd respondent, they purchased the petition schedule property as well as adjacent property in which they are now residing. They have two sons-Jaison and Jackson and after the death of Jackson, his family members are residing in the petition schedule property. They also denied the petitioners claim of having constructed a

house therein. In fact, it was constructed by respondents and his son-Jackson started residing there as a licensee. There was no oral family settlement as alleged by the petitioners. They are continuing in the petition schedule property as per the order obtained under the PWDV Act from the Magistrate Court, Chalakudy. The respondents herein have filed another O.S.703/2023 for evicting the petitioners from the petition schedule property. While so, she has inducted her parents also in the petition schedule property. At the same time, she does not permit the respondents herein entering into the petition schedule property and taking income from there. She has now turned up with this suit raising false and frivolous allegations. She has no right to erect compound wall along the eastern side of her property as the property absolutely owned by the respondents herein. So, this petition is devoid of any merit. Hence, it may be dismissed.

5. The points for adjudication are:

1. Whether the petitioners have made out a *prima facie* case in their favour for getting an order as prayed for?
2. Whether the balance of convenience lies in favour of the petitioners?
3. Would he be put in irreparable loss or injury, if injunction is not granted?
4. Reliefs and costs?

6. Heard both side

7. **Point No.1 to 4:-** The petitioners are admittedly residing in the petition A schedule property along with the minor children. Whether their possession is based on ownership, settlement or licence is a matter to be adjudicated in the

main suit. However, for the purpose of the present petition, their physical residence and custody of two very young children are undisputed facts. The petition A schedule property abuts a PWD road on the eastern side, and immediately beyond the road lies a canal. It is not disputed that the eastern side lacks a boundary wall. The risk posed to the minor children, who are aged 6 years and 2½ years respectively, is apparent from the nature of the property and its surroundings. The petition is filed not to alter the nature of the property or to prejudice the rights of the respondents but merely to secure the safety of the minor children. The petitioners have also undertaken that if the suit is ultimately decided against them, they will not claim any right over the boundary wall or gate erected pursuant to this order. This undertaking safeguards the respondents from any prejudice.

8. The act sought-installation of a gate-is minimal, temporary, and reversible. It does not affect the title or major structural nature of the property. On the other hand, refusal of permission will continue to expose the minor children to the risk of accident due to the open access to the PWD road and the canal. The inconvenience caused to the respondents, if any, is negligible because the petitioners have undertaken not to claim any rights over the structure in future. The safety of children outweighs the objections raised by the respondents. The risk involved is not merely monetary but relates to the life and safety of two minor children. An accident, once occurred, cannot be remedied by compensation. Therefore, denying the requested relief would expose the

petitioners to irreparable loss and injury. Erecting a gate is a preventive measure vital for safeguarding life and safety, and the harm apprehended is of an irreversible nature. So Point Nos.1-3 are found in favour of the petitioners.

9. In the result, petitioners are entitled to have an order as follows:-

1. The petitioners are permitted to construct a gate along the eastern side of the petition A schedule property in front of their house for the limited purpose of ensuring the safety of the minor children.
2. The entire cost of erecting the gate or any supporting structure is to be borne exclusively by the petitioners, and no liability of any kind-financial or otherwise-shall fall upon the respondents.
3. The permission granted shall be purely provisional and subject to the final outcome of the suit.
4. The petitioners shall abide by their undertaking that if the suit is decided against them, they shall not claim any right over the gate or any portion of the compound wall erected pursuant to this order.
5. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and revised by me and pronounced in open court on this the 4th day of December, 2025)

**Sd/-
Eldos Mathew,
Principal Munsiff.**

APPENDIX : Nil

**Sd/-
Principal Munsiff**

//True copy//

Principal Munsiff

Order in IA No. 5/2025
in OS 195/2024
Dated: 04.12.2025.