

**IN THE COURT OF THE MUNSIFF, IRINJALAKUDA**  
**Present: Sri..Eldos Mathew Principal Munsiff.**  
**Monday, 25<sup>th</sup> day of May 2026/4<sup>th</sup> Jyeshta, 1948**

**E.P. 1685/2024 in OS 1824/2012**

**Decree Holders:-**

1. Lalithamani, 70 years, D/o Kannath Parambil Krishnan and W/o Muppilly Chandrasekharan, Chittissery Desom, Nenmanikkara Village, Mukundapuram Taluk.
2. Geetha, 59 years, W/o Pullanikkal late Subran and Sister of 1<sup>st</sup> Decree Holder Lalithamani, Chittissery Desom, Nenmanikkara Village, Mukundapuram Taluk. Residing at Thaikkattussery.
3. Sarath Chandran, 47 years, S/o Muppilly Chandrasekharan, Chittissery Desom, Nenmanikkara Village, Mukundapuram Taluk. Rep. by Power of Attorney Holder Mother Lalithamani, 70 years, W/o Muppilly Chandrasekharan, Chittissery Desom, Nenmanikkara Village, Mukundapuram Taluk.  
By Adv. V. G. Subash Chandra Babu

**Judgment Debtors:-**

1. Kochammini, 77 years, W/o Kundeparambil Damodharan, Eravakkad Desom, Nenmanikkara Village, Mukundapuram Taluk.
2. Girija, 55 years, D/o Kundeparambil late Damodharan, Eravakkad Desom, Nenmanikkara Village, Mukundapuram Taluk.
3. Sindhu, 52 years, D/o Kundeparambil late Damodharan, Eravakkad Desom, Nenmanikkara Village, Mukundapuram Taluk and W/o Pattathuparambil Subramanian.

4. Sundari, 50 years, D/o Kundeparambil late Damodharan, Eravakkad Desom, Nenmanikkara Village, Mukundapuram Taluk.
5. Baby Anil, 45 years, D/o Kundeparambil late Damodharan, Eravakkad Desom, Nenmanikkara Village, Mukundapuram Taluk and W/o Machampilly Anil, Parakkadavu Village, Aluva Taluk.
6. Sreekala, 62 years, D/o Kundeparambil late Damodharan, Eravakkad Desom, Nenmanikkara Village, Mukundapuram Taluk and W/o Panikkaveetil Binu, Vellangallur Desom, Vadakumkara Village, Mukundapuram Taluk.
7. Sethulakshmi, 42 years, D/o Kundeparambil late Damodharan, Eravakkad Desom, Nenmanikkara Village, Mukundapuram Taluk and W/o Vadakkethil Pradeep.

By Adv. Shaju M. A

This petition coming on 26.05.2026 for hearing and the court delivered the following:-

### **ORDER**

This is a petition to appoint an Advocate Commissioner to execute the decree in the above suit.

2. Petitioners are the decree holders. They filed the above suit by which the defendants are restrained by way of permanent prohibitory injunction from widening the plaint B schedule pathway and from plying vehicles through the same. Against which, judgment debtors/defendants filed Appeal- A.S.10/2017 which was dismissed

with costs confirming the judgment and decree passed in O.S.1842/2012. Against which, judgment debtors filed RSA No.838/2021 before the Hon'ble High Court which is pending consideration of the court. No stay was ordered by the Hon'ble High Court till date. While so, violating the injunction order, judgment debtors are trying to widen the B schedule pathway. Hence, the decree holder has the right to execute the decree in mandatory form. Another suit (O.S No.53/2021) filed for restraining the defendants from doing any act obstructing the construction of compound wall on the northern side of the B schedule pathway is also allowed. Against which also defendants filed appeal. The Execution Court has power to enforce the order of permanent prohibitory injunction in mandatory form. Hence prays to appoint an Advocate commissioner.

3. The judgment debtors/respondents filed detailed counter stating that the petition is not maintainable. According to them, in O.S.53/2021 and O.S.1824/2012, the parties and facts of the case are same. Actually, the judgment in O.S.53/2021 is against the decree holders. The judgment in O.S.53/2021 is passed not in accordance with the reliefs in the suit. Decree holders/ defendants in

O.S.53/2021 filed appeal-A.S 28/2024 against the judgment and decree and a stay was granted in the appeal. The decree holder filed the petition concealing the existence of the stay and the execution petition is filed to overturn the stay order. The judgment debtors have right to execute the decree in mandatory form and the Execution Court has power to enforce the order of injunction decree are not correct. They pray to dismiss the petition.

4. The points for consideration is:

1. Whether petition can be allowed?
2. Costs?

5. Heard both sides

6. **Point Nos.1-2:-** The decree holder/plaintiff has filed 2 suits against the same defendants- one O.S No.1824/2012 and the other O.S.No.53/2021. The dispute with respect to the B schedule pathway is the subject matter in both suits. The former suit was decreed in favour of plaintiff restraining the defendant from widening B schedule pathway by way of a perpetual injunction. The width of pathway as per the decree schedule is 3 feet. Though defendant preferred appeal as A.S No.10/2017, lower court judgment was confirmed in appeal. Now defendant has preferred 2<sup>nd</sup> appeal- RSA

No.838/2021 which is pending before the Hon'ble High Court.

7. In the 2<sup>nd</sup> suit (O.S.No.53/2021), the prayer was to restrain defendant not to obstruct construction of compound wall on the southern side of plaint A schedule property. It was decreed as follows:

Defendants are restrained by way of permanent prohibitory injunction from obstructing the construction of compound wall on the southern side of plaint A schedule property without encroaching the B schedule way, the width of which shall be subject to the decision of Hon'ble Apex Court.

8. In O.S.No.53/2021 the court did not enter into a finding as to the width of B schedule pathway as it is yet to be decided by the Hon'ble High Court in RSA 838/2021.

9. Another important fact is that defendant has preferred appeal against this judgment in AS 28/2024 and has obtained a stay in IA 1/2024 against the operation of above decree. Then AS 28/2024 is pending before this Hon'ble Sessions Court and RSA 838/2021 is pending before the Hon'ble High Court. The width of B schedule pathway is under challenge and yet to be decided finally. So, the EP to execute the decree in O.S.1824/2012 which is under

challenge, cannot be proceeded with at present. Point is answered against the decree holder.

In the result, EP is dismissed without costs.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and revised by me and pronounced in open court on this the 26<sup>th</sup> day of May, 2026)

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

**APPENDIX:-** Nil

Sd/-  
**Principal Munsiff**

**//True copy//**

**Principal Munsiff**

Copied by: rh

Com. by:

Order in EP 1685/2024  
in OS 1824/2012  
Dated 26.05.2026