

IN THE COURT OF THE MUNSIFF, CHALAKUDY

Present : Parvathy Vijayan, Munsiff, Chalakudy.
Friday, the 27th day of June, 2025/13th Ashada, 1947

I.A.1/2025 in O.S.11/2025

Petitioner:-

Asokan, Aged 70, S/o Kattukandathil Kumaran,
Mambra Desom, Erayamkudi P.O, Kallur Thekkumuri Village,
Chalakudy Taluk.

By Adv. P.R.Anandhan

Respondent:-

Martin, Aged 57, S/o Nedungadan Kunjuvareed,
Mambra Desom, Erayamkudi P.O, Kallur Thekkumuri Village,
Chalakudy Taluk.

By Adv. Tomy Jaicob

The petition is having come up before me for hearing on this day the court passed the following:

ORDER

This is a petition filed by the plaintiff under Order XXXIX Rule 1 of CPC.

2. The averments in the petition in brief are as follows: The petitioner is the plaintiff in the suit. The suit is for injunction. The petitioner obtained the petition A schedule item no.1 property as per sale deed no.1652/1983 of the Sub Registry Office Mala and the petitioner along with his family is residing in the house constructed therein. For ingress and egress to the petition A schedule item no.1 property from the western panchayath road, there was only a 1 kole width way portion and the petitioner widened the width of the said way by purchasing 3 cents of properties as per sale deed no.396/1995 of the Sub Registry Office, Annmanda from the southern boundary of the properties of Karthikeyan, Devaki and Haridas by paying sufficient consideration. The said 3 cents of property is scheduled as plaintiff A schedule item no.2 property. No-

body other than the petitioner has any manner of right over the petition A schedule item no.2 property which is lying within four clear boundaries. The petition B schedule property is the 5 links way p which starts from the western panchayath road which proceeds towards east which the petitioner obtained as per deed no.1652/1983 of the Sub Registry Office, Mala. The petition A schedule item no.2 property and petition B schedule property reaches the property of the petitioner. The properties of the respondents which is schedule as plaint C schedule properties situate on the eastern side of the said properties. The respondents are having no right over the petition A schedule item no.2 properties.. The respondent has no right of vehicular traffic through the plaint A schedule property. During 2019 August-September, the respondent purchased property from the petitioner's brother. At the time of purchase 5 links (1 meter) width way is shown in the document . The said 1 meter width way is a public way. The defendant or any other person has no right over the petition A schedule item no.2 property on the western side of the petition C schedule which is the private property of the petitioner. A temporary permission was granted to the respondents for 8 months to take materials for the house construction and after completion of the house no permission was given to the defendant or anybody to use the petition A schedule item no.2 as a private way. On 16.12.2024, the plaintiff obstructed the defendant when he came in a car through the plaint A schedule item no.2. Then the respondent threatened the petitioner that he will again take his car through the petition A schedule item no.2 property. Hence the petition for temporary injunction restraining the petitioner from using the petition A schedule item no.2 private way, from doing vehicular traffic through the same, from converting the petition A schedule property into a public way and from trespassing into

the petition A schedule item no.2 and annexing the same to the petition B schedule property.

3. The respondent appeared and filed counter contending as follows: The petition is not maintainable either in law or on facts. The petitioner has approached the court with unclean hands and suppressing material facts. The conduct of the petitioner is unfair and hence the petition is liable to be dismissed. The description of the petition A schedule property and its boundaries is not correct. The plaint A schedule item no.1 property is not identifiable as per boundaries and the petitioner is not in possession of 8.04 Ares of properties as described in the schedule. IN fact the proeprties in the eastern side of petition A schedule item no.1 was the proeprties of the plaintiff's father and mother and after their death the property was partitioned as per deed no.2054/1998. As per the said partition deed the A schedule was allotted to the petitioner and the B schedule was allotted to his brother Vijayan and the C schedule is allotted to their sisters. At the time of partition 7 ¼ width way was set apart along the southern boundary of petition A schedule item no.1 property in continuation of the 12 feet width way on the western side of petition A schedule item no.1 way which proceeds towards east along the southern and eastern boundary of partition deed C schedule properties. It is clearly stated in the deed that the parties have right to use the way and thus the respondents have right of easement by grant over the 7 ¼ feet width way. The respondents are using petition A schedule item no.2 proeprty and the plaint B schedule way and the 7 ¼ feet width way in continuation of the same from 1998 on wards and nobody had obstructed the same. The respondents had been using the petition A schedule item no.2 way, the petition B schedule way and the 7 ¼ width way in continuation of the same for vehicular traffic without any obstruction.

For the purpose of vehicular access the electric post in the way was re-installed to the northern boundary 12 years back and four wheeler vehicles are entering the petition C schedule property through the said way. The petition A schedule item no.2 property and the B schedule way is lying together as a way and it is not possible to identify the two properties. The averment that the petition A schedule item no.2 property and the B schedule way reaches the property of the petitioner is false. The way proceeds further towards east and turns towards north and reaches the property of Kaippillikkattil Ratheesh and is suitable for vehicular traffic. The respondent had obtained right of easement by grant over the petition A schedule item no.2 properties for ingress and egress to petition C schedule property. Hence prays for dismissal of the petition.

4. Heard both sides. Ext.A1 to A3 marked from the side of the petitioners. Exts.B1 and B2 are marked from the side of the respondents. Ext.C1 also marked.
5. The only point that arise for consideration is:
6. Whether the petitioner is entitled to a temporary injunction as prayed for?
7. The point: The learned counsel for the petitioner had submitted that the plaint A schedule item no.1 property is in exclusive title and possession of the plaintiff. Plaint schedule item no.2 is purchased by the plaintiff for the widening of the pathway which existing on the eastern side of plaint schedule item no.2. The learned counsel for the petitioner submitted that the defendants are residing on the eastern side of the plaint B schedule property and plaint A schedule property. The learned counsel of the petitioner had submitted that the plaint B schedule property is a

pathway which starts from the western panchayath road. The learned counsel of the plaintiff had submitted that the 3 cents of property was purchased to widen the pathway and is in the exclusive possession of the plaintiff. The defendant has no right over the plaint schedule item no.2 property.

8. The learned counsel for the petitioner had submitted that the defendant had purchased the property from his brother during 2019 August-September and has only right over 5 links of pathway which will be of 1 meter width. The case of the plaintiff is that the defendants are trying to widen the petition schedule item no.2 way for their ingress and egress.
9. The learned counsel for the respondent vehemently opposed the arguments of the petitioner. The learned counsel of the respondent submitted that this petition is filed suppressing material facts and came before the court with unclean hands. The learned counsel for the respondent submitted that the way which is scheduled as plaint schedule item no.1 is not identifiable. The learned counsel of the defendant had submitted that the plaint schedule item no.2 which is purchased by the plaintiff is lying along with the plaint B schedule property and there is no identifiable boundaries. As per the learned counsel of the defendant, there is a pathway on the southern side of plaint A schedule item no.1 which is of 7 ¼ feet moving towards the eastern side and reaching the southern side of plaint C schedule property as per the partition deed and provides a pathway on the eastern side of plaint C schedule property. The learned counsel of the defendant had also submitted that the defendant had acquired right of easement by grant in plaint B schedule property as per the partition deed. More over the plaint A schedule item no.2 property and the plaint B schedule way is not identifiable.

10. Ext.A3 is the document which shows that the plaintiff has right over the plaint A schedule item no.2. In Ext.A3 it is noted that the western side and southern side of the property is shown to be pathway. On perusal of Ext.B2 partition deed it is noted that the western side of A,B schedule proeprty and eastern and southern side of plaint C schedule property towards western side there is a 12 feet width pathway. The specific case of the defendant is that the plaint A schedule item no.2 and B schedule property are lying together and there is no identifiable boundary for separating both these properties.
11. On perusal of Ext.C1 report it is categorically noted that the property lying on the eastern side of plaint schedule item no.2 property is the plaint A schedule item no.1 and on the western side it is a pachayath way and on the southern side there is a 1 meter way which is the plaint B schedule property. The southern side of the said property is the plaint A schedule item no.2 property which is lying as one plot and there is no boundary seen to be reported. There is no boundary to differentiate the plaint A schedule item no.2 property and plaint B schedule property. Hence from the commission report it is noted that there is no specific boundary separating the plaint A schedule item no.2 property and plaint B schedule property. Hence there is no prima facie case, balance of convenience and irreparable injury in favour of the petitioner. Hence I.A. dismissed.

In the result, petition dismissed. No costs.

(Dictated to the Confdl.Asst., transcribed by her , corrected by me and pronounced in open court, this the 27th day of June, 2025.)

Parvathy Vijayan,
Munsiff

APPENDIX**Petitioners Exhibits:-**

- A1 - 13/05/83 - Copy of deed No.1652/83 of SRO Mala
- A2 - 09/12/24 - Copy of Caveat Petition
- A3 - 03/02/95 - Copy of Deed No.396/95 of SRO Mala
- A4 - 09/08/24 - Tax Receipt

Respondents Exhibits:-

- B1 - 28/12/06 - Copy of deed No.11863 of SRO Annamanada
- B2 - 10/08/98 - Copy of deed no.2054/98 SRO SRO Annamanada

Court Exhibits:-

- C1 - 04/01/25 - Commission report filed by Adv. Litha C.M.

Munsiff