

In the Court of the Principal Munsiff, Nedumangad

Present:- Smt. Radhika S Nair, Principal Munsiff.

Friday 11th July, 2025/ 23rd Ashadha, 1947

IA.No.01/2024 IN OS.No.249/2024

Petitioner(s)/ Plaintiff(s):-

1. Suseelan, aged 52 years, S/o. Sukumaran, Thiruvonam, Kottakkam muri, Parandode P O, Aryanad village, Nedumangad Taluk.
2. Sajitha, aged 43 years, D/o. Gomathi, Thiruvonam, Kottakkam muri, Parandode P O, Aryanad village, Nedumangad Taluk.

(By Adv.: Sri. D. Muraleedharan)

Respondent(s)/ Defendant(s):-

Muraleedharan Pillai, aged 57 years, S/o. Chellappan Pillai, Karthika, Mullukallu, Kottakkakam muri, Parandode P O, Aryanad village, Nedumagnad Taluk.

(By Adv.: Sri. V P Vipin Kumar)

This petition is having been finally heard on 11.07.2025 and the court on the same day passed the following:

ORDER

This petition is filed by the petitioners/plaintiffs under Order XXXIX Rule 1 of the Code of Civil Procedure for temporary injunction. For the sake of

convenience, the parties shall be referred to as “the plaintiffs” and “the defendants” according to their status in the original suit.

2. The petition averments, are as follows:- The plaint A schedule property belongs to the plaintiffs by virtue of sale deed No.2236/2008. The plaintiffs are the absolute owners in possession and enjoyment of the plaint A schedule property. The plaint B schedule is a pathway having a width of 3.4 metre and a length of 30 metres which starts from Aryanad-Parandodu road on the northern side and goes towards south and reaches the plaint A schedule property. As per the recitals in sale deed No.2236/2008, the plaintiffs have easement by grant over the plaint B schedule pathway. The plaint C schedule property belongs to the defendant, which is situated on the eastern side of the plaint A and B schedule properties. The plaint C schedule property is situated at the same level of the plaint A and B schedule properties and is providing lateral support to the plaint A and B schedule properties for more than 100 years. The plaintiffs have easement by prescription over 3 metre width of the plaint C schedule property on the eastern side, following their predecessors. While so, the defendant started excavating soil from the plaint C schedule property for constructing a building. The defendant assured that, the defendant will provide lateral support to the plaint A and B schedule properties. Hence the plaintiff consented to excavate soil from the plaint C schedule pathway. On 15.03.2024, the defendant excavated soil up to 22 feet depth from the plaint C schedule

property adjacent to the boundary of the plaintiff B schedule pathway. On 22.03.2024, the defendant and his laborers reached the properties and attempted to encroach into the plaintiff B schedule pathway to excavate soil. The defendant attempted to close the plaintiff B schedule pathway by constructing a granite structure. The defendant also attempted to destroy the plaintiff B schedule pathway and obstruct the plaintiffs' access towards the plaintiff A schedule property. The illegal act of the defendant was defeated due to the timely intervention of the plaintiff and the neighbouring property owners. Thereafter, the defendant threatened that he would destroy the plaintiff B schedule pathway. The plaintiffs have a prima facie case in their favour and balance of convenience is in favour of the plaintiffs. Therefore, the defendant is to be restrained from trespassing into the plaintiff B schedule pathway, from destroying the plaintiff B schedule pathway, from constructing any boundary wall encroaching into the plaintiff B schedule pathway and from removing soil from the plaintiff B schedule pathway. Hence the I.A.

3. **The defendant filed objection to the I.A contending as follows:-**

The I.A is not maintainable either in law or on facts. As per the plaintiff schedule description, the width of the plaintiff B schedule pathway is 3.4 metre. But as per the commission report and the present lie, the width of the plaintiff B schedule pathway is 2.6 metre. The plaintiff C schedule property is having an extent of 5.30

Ares. After obtaining permit from the panchayath, the son of the defendant started constructing a building in the plaint C schedule property. However, the panchayath stopped the construction of the building in the defendant's property in view of the order of injunction passed by this court. The property of the defendant is situated at a height of 4 feet from the pathway having a width of 2.6 metres. The defendant's son had obtained title over the plaint C schedule property by virtue of settlement deed No.1352/2023 of SRO,Aryanadu. Since the date of execution of settlement deed, the son of the defendant has been in possession and enjoyment of the plaint C schedule property. The plaint C schedule property is situated within well-defined boundaries. The plaint B schedule pathway is having a width of approximately 2 ½ metre which is situated on the western side of the plaint C schedule property and is comprised in resurvey No.330/3. The property of the plaintiff is situated on the western side of the plaint C schedule property. The plaint C schedule property is not the lateral support of the plaint B schedule pathway. For more than 100 years the plaint C schedule property is the family property of the defendant, which was obtained by Usha, the wife of the defendant as per settlement deed No.804/2021. The plaintiffs purchased the plaint A schedule property from one Praji Kumar. The said Prajikumar obtained the plaint A schedule property from one Surendran and Vimala Devi as per sale deed No.2932/2007. The defendant has no relation with Surendran, Vimala Devi or Praji Kumar and they belong to

separate religion. Hence the plaintiff has no right of easement by grant over the plaintiff B schedule pathway. The plaintiffs approached the defendant in March 2024 and requested to give some portion of the plaintiff C schedule pathway for widening the plaintiff B schedule pathway. The defendant refused their demand. Thereafter the present suit and injunction petition have been filed stating false allegations. Now the defendant's son wants to construct building in the plaintiff C schedule property. Hence the ad interim order of injunction is to be altered or set aside.

4. The following points are raised for the consideration of this IA:

- (1) Whether the plaintiffs have made out a prima facie case in their favour ?
- (2) Whether the balance of convenience is in favour of the plaintiffs?
- (3) Whether irreparable injury will be caused to the plaintiffs if an order of injunction is refused?
- (4) Relief and costs?

5. For the purpose of this I.A, Ext. A1 and A2 are marked from the side of the plaintiff. No documents were marked from the side of the defendant. The commission report and rough sketch dated 05.04.2024 were marked as Ext. C1 and C1(a). The commission report and plan dated 03.06.2025 were marked as Ext. C2 and C2(a).

6. Head both sides.

7. **Point No.1 to 3:-** To avoid repetition and for the sake of convenience, these points are considered together. According to the plaintiff, the plaintiff A schedule property belongs to them, by virtue of Ext. A1 sale deed. Ext. A2 is the tax receipt pertaining to the plaintiff A schedule property. The plaintiffs got easement right by grant over the plaintiff B schedule pathway as per Ext.A1. The plaintiff A and B schedule properties are situated at the same level as that of the plaintiff C schedule property of the defendant on its eastern side. The plaintiff A and B schedule properties have lateral support from the plaintiff C schedule property. The specific case of the plaintiffs is that the defendant is excavating soil from the plaintiff C schedule property and is attempting to encroach into the plaintiff B schedule pathway for removing earth and to construct a boundary therein.

8. On the other hand, the defendant contended that the plaintiffs are not entitled to easement by grant over the plaintiff B schedule pathway. According to the defendant, the width of the plaintiff B schedule pathway is 2.6 meters and not 3.4 meters as alleged by the plaintiffs. It was contended that the plaintiff C schedule property is situated in a higher level than the plaintiff A and B schedule properties and the plaintiffs are not entitled to claim lateral support of the plaintiff C schedule property. According to the defendant, building construction was started in the plaintiff C schedule property after obtaining permit from the

panchayat concerned. However, in view of ad interim injunction order, the panchayat stopped the defendant from carrying out building construction therein. According to the defendant, the plaint C schedule property was settled in favour of his son and he wants to complete the construction.

9. Ext.C1 shows that except the plaint B schedule pathway, there are no other pathways to access the plaint A schedule property. The plaint B schedule pathway is having a width of 2.45 meters and a length of 30 meters. The plaint A and B schedule properties were properly identified by the commissioner. It is reported that during her visit, the soil in the plaint C schedule property was seen levelling. However, no encroachment over the plaint B schedule pathway was noted by the commissioner.

10. In Ext. C2(a), the plaint A schedule property is shown in letters OPQRO. The plaint B schedule pathway is shown in letters GHIMNORG. As per the present lie, the width of the plaint B schedule pathway is 2.8 meter at the north and then it reduced to 2.6 meters at south-eastern side of the plaint A schedule property. The plaint C schedule pathway is shown in letters IJKLM.

11. Now the defendant wants to complete the construction of the building in the plaint C schedule property. The plaintiffs apprehend that the defendant may encroach upon the plaint B schedule pathway and construct a boundary. Even though the defendant denied the easement right of the plaintiffs over the

plaint B schedule pathway, it is a matter of evidence and full-fledged trial is necessary to decide the same. Since Ext.A1 shows the right of the plaintiffs over the plaint B schedule pathway, this court is of the view that the plaintiffs have an arguable case. The object of granting injunction is the preservation of subject matter till the disposal of the suit. As far as plaint B schedule pathway is concerned, the comparative mischief or inconvenience which is likely to be caused to the plaintiffs by refusing injunction will be greater than that is likely to be caused to the defendant. Hence the balance of convenience is in favour of the plaintiff. If the order of injunction is vacated irreparable injury would be caused to the plaintiffs. The three points are so answered in favour of the plaintiffs. Hence this court is of the view that the plaintiffs are entitled to get an Order of injunction in respect of the plaint B schedule pathway. Needless to say, this order will not stand in the way of the defendant to carry out construction in the plaint C schedule property in accordance with the building rules.

In the result, I.A allowed as follows:-

The defendant is restrained from destroying the plaint B schedule pathway, from constructing a boundary encroaching into the plaint B schedule pathway and from excavating soil from the plaint B schedule pathway until the disposal of the suit. Needless to say, this order will not stand in the way of the defendant to carry out

construction in the plaint C schedule property in accordance with the building rules.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court this the day of 11th July, 2025.)

Sd/-
RADHIKA.S.NAIR,
PRINCIPAL MUNSIFF

APPENDIX:-

Exhibits marked from the side of the Petitioner(s):

A1	dated: 01..09..2008	Copy of Sale Deed No. 2236/2008
A2	dated: 06..03..2024	Copy of Tax receipt

Exhibits marked from the side of the Respondent(s): NIL

Court Exhibits:

C1	dated: 05..04..2024	Commission Report filed by Adv. Commissioner Krishnendu
C1(a)	dated: 05..04..2024	Rough plan prepared by Adv. Commissioner Krishnendu
C2	dated: 03..06..2025	Commission Report filed by Adv. Commissioner Aswathy P S
C2(a)	dated: 03..06..2025	Plan prepared by B B Suresh

Id/-
PRINCIPAL MUNSIFF

//True Copy//

Typed by: Apsara L V
Compared by:

PRINCIPAL MUNSIFF