

IN THE COURT OF THE MUNSIF, VARKALA

PRESENT: Sri. ARAVIND. P., MUNSIF

THURSDAY 22nd JANUARY, 2026

ORDER IN I.A. 1/ 2021 IN O.S. 145/ 2021

PETITIONER/ PLAINTIFF:-

Shylaja, aged 61 years, W/o Rajendran, Chavarupacha
puthen Veedu, Kalathy pacha, Velamanoor P.O., Paripally
Village, Kollam District.

By Adv. Sri. Thattathumala. S. Anilkumar

RESPONDENTS / DEFENDANTS :-

1. Radhakrishnan, aged 55 years, S/o Thankappan Achari,
Kalathipacha Veedu, Paripally Village, Kollam District.
2. Kavitha, aged 51 years, W/o Radhakrishnan, --do---do---

Adv. Smt. Jaina. J.S. Parippally

This petition having been finally heard on 22/12/2026 and the
court on the same day and passed the following.

ORDER

This is a petition filed under Order XXXIX Rule 1 and 2 and s.151 of the C.P.C for getting a temporary injunction.

2. **Brief averments in the affidavit are as follows:-** The petitioner herein is the plaintiff in O.S.145/2021. Petition A schedule property is owned by the petitioner as per sale deed no.48/2015 of S.R.O, Navaikulam. Thereafter, the plaintiff is in possession and enjoyment of the same.

3. Petition A schedule property is situated in Block no.25 in resurvey No. 248/11 in Pallickal village which is having an extent of 6 ares 82 sq.meters along with 1 are 21 sq.meter of property in resurvey No. 246/11/2. The first respondent is the owner of property which is situated in the eastern side of petition A schedule property. Second respondent is the wife of the first respondent. Respondents are residing in the residence in their property. Petitioner is residing in the residential building in petition A schedule property.

4. In front of the respondents' property, there lies Velamanoor-Kattuputhusseri public road. Petition B schedule pathway starts from the said public road and goes towards west on the northern side of property of the respondents and reaches the north-eastern corner of petition A schedule property. Petition B schedule pathway has got 1 meter width and approximately 25 meters of length. petition B schedule pathway is used by the petitioner and nearby residents. There is no other pathway existing other than petition B schedule pathway. Petition A schedule property, petition B schedule pathway and property of the respondents were owned by a common owner Smt.Salma Beevi. Thereafter, due to execution of various deeds, the properties are now owned by the respective parties.

5. Even the predecessors-in-interest of the petitioner were also using petition B schedule pathway for ingress and egress to petition A schedule property. For obstructing the ingress and egress to petition A schedule property and also for annexing petition B schedule pathway along with the property of the respondents, at 9 am on 13.06.2021, the respondents attempted to encroach into the petition B schedule pathway. Due to the timely intervention of the petitioner and local residents, the respondents withdrawn from their attempt. Even then, the respondents have openly declared that they will do any act so as to obstruct petition B schedule pathway.

6. The respondents are having no right to obstruct the ingress and egress to petition A schedule property. If petition B schedule pathway is obstructed, then petition A schedule property will become landlocked. The petitioner obtained easement right by prescription over petition B schedule pathway. The petitioner and her family and their predecessors-in-interest are (were) using the petition B schedule pathway openly, as of right without any interruption.

7. The respondents are having political and financial influence. At the same time, petitioner is having no such influence. So if an interim injunction is not granted, then the petitioner will not be able to prevent the respondents from committing illegal acts. Hence the petition. █

8. The respondents appeared through their learned counsel and filed objection. **Brief averments in the objection are as follows:-** The petitioner purchased petition A schedule property as per sale deed No. 48/2015. The said property is situated on the southern side of Velamanoor-Kattuputhusseri public road. For gaining huge profit, the petitioner sold 3.24 ares of property which was having road access to one Mr. Shibu. For ingress and egress to the

remaining property, there exists one panchayath road on the western side and 'thodu' on the northern side. The above mentioned Mr. Shibu constructed a boundary wall. Thereafter, the petitioner attempted to use the courtyard of the respondents' property as a pathway.

9. The husband of the second respondent purchased 2 cents of property from petition A schedule property in the year 2020. Even at that time, there was no claim with regard to petition B schedule pathway was raised. When the second respondent's husband purchased the property from Smt. Nafooka Beevi in the year 1996, the petition B schedule pathway was not in existence. Moreover, existence of such a pathway was not stated in the deed also. For obtaining huge profit, the petitioner sold property which was having road access in the year 2020. Thereafter, the petitioner tried to use portion of the property which is purchased by the second respondent's husband from the petitioner herself in the year 2015. After a time gap of six years, the petitioner tried to use the said portion as a pathway.

10. The petitioner has instituted the suit for taking vengeance against the respondents. Moreover, the Village officer, Pallickal has prepared a report stating that other pathways are available for ingress and egress to petition A schedule property. Moreover, respondents are residing in the residence in the property along with aged parents. Even during mid-night petitioner attempted to walk through the property of the respondents along with strangers against which respondents filed complaint before the police officials of Pallickal police. They have even suggested to construct a boundary wall. Moreover, the R.D.O concerned has also granted permit to the respondents to construct boundary wall. So the objection of the respondents concluded with a prayer to dismiss the petition.

11. On the basis of the rival contentions, the following points arise for consideration:

1. Is there prima facie case in favour of the petitioner?
2. Does the balance of convenience lie in favour of the petitioner?
3. Would refusal to grant injunction cause irreparable injury to the petitioner?
4. Reliefs and costs?

12. The court heard and perused the records. From the side of the petitioner, Exts.A1 and A2, Ext.C1 and C1(a) were marked. From the side of the respondents, Ext.B1 to B6 were marked.

13. **Point Nos.1 to 3:-** The learned counsel for the petitioner submitted that petition A schedule property is owned and possessed by the petitioner. Petition B schedule pathway is the only pathway available for ingress and egress to petition A schedule property. If petition B schedule pathway is obstructed, then petition A schedule property will become landlocked. The respondents attempted to close down petition B schedule pathway. The same was prevented by the petitioner in time. So the learned counsel prayed for allowing the petition.

14. At the same time, the learned counsel for the respondents vehemently objected and argued that petitioner never used petition B schedule pathway for ingress and egress to petition A schedule property. Originally, the petitioner was having a property which was having road access. She sold that property to one Mr.Shibu. Respondents' side has produced encumbrance certificate which would go to show that the petitioner has sold property to one

Mr.Shibu. The said Shibu constructed boundary wall and obstructed that pathway which was already available. Thereafter, the petitioner tried to use portion of the property owned by the respondents for ingress and egress. So the learned counsel for the respondents prayed for dismissing the petition.

15. This court considered the contentions in detail.

16. Case of the petitioner is that petition B schedule pathway is the only pathway available for ingress and egress to petition A schedule property. The petitioner and predecessors-in-interest are using the said pathway for so many years. Now the attempt of the respondents is to close down the pathway so as to obstruct the ingress and egress to petition A schedule property.

17. At the same time, the argument of the learned counsel for the respondents would go to show that the petitioner was having property with road access. Petitioner has sold the property to one Mr.Shibu. The learned counsel for the respondents submitted that Ext.B6-encumbrance certificate would prove that the petitioner sold property to one Mr.Shibu. Thereafter, the petitioner started to use the property of the respondents for ingress and egress. Originally, the petitioner is having no right to do so.

18. Ext.B1 is the report submitted by the Village Officer, Pallickal to the Sub Collector, Thiruvananthapuram. In Ext.B1 report, it is stated that the petitioner herein has got a separate pathway for ingress and egress. On the basis of Ext.B1 report, Ext.B3-letter is issued to the second respondent by the Sub Collector, Thiruvananthapuram. Thereafter, the respondents obtained Ext.B4-permit from Pallickal Grama Panchayath for the construction of boundary wall so as to protect the property of the respondents.

19. At the same time, it is important to note that as per Ext.C1(a), on the eastern side of petition A schedule property, the property of the

respondents is situated and further east of respondents' property, Kattuputhusseri-Velamanoor public road is situated. The advocate commissioner has identified petition B schedule pathway specifically as per Ext.C1 and C1(a). Moreover, the advocate commissioner has reported that petition B schedule pathway is the only pathway available for ingress and egress to petition A schedule property.

20. It is true that in Ext.B1, existence of another pathway is stated. At the same time, proving the same through records alone is not sufficient. Respondents have not taken any steps to establish the physical existence of alternative pathway by taking out a commission or through any other means. In the absence of such evidence, this court is helpless to come to a conclusion that even though alternative pathway is existing, the petitioner is trying to use portion of the property of the respondents as a pathway.

21. At this juncture, this court is of the view that if a temporary injunction is not granted then the petition B schedule pathway will be obstructed. If that be so, petition A schedule property will become landlocked. Hence prima facie case and balance of convenience are also in favour of the petitioner. If the injunction is not allowed, the petitioner will be put into irreparable injuries and hardships. At the same time, no injury will be caused to the respondents, if injunction is allowed. So point nos.1 to 3 are found in favour of the petitioner and found against the respondents.

22. **Point No.4:-** Considering the facts and circumstances of the petition, both parties can be directed to suffer their respective costs. Hence this point is found accordingly.

In the result, the petition is allowed as follows:

1. A temporary injunction is granted in favour of the petitioner and respondents are restrained from obstructing the petition B schedule pathway which is the ingress and egress to petition A schedule property till the disposal of the suit.
2. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in Open Court, this the 22nd day of January, 2026)

Sd/-

**ARAVIND.P,
MUNSIFF**

APPENDIX:-

EXHIBITS FOR THE PETITIONER

- A1. - Original Sale deed No. 48/2015 of S.R.O. Navaikulam dated 07/01/2015.
- A2. - Tax Receipt dated 18/01/2021 of Village Office, Pallickal.

EXHIBITS FOR THE RESPONDENT:-

- B1. - Copy of Receipt dated 05/07/2021 of Pallickal Village Office.
- B2. - Copy of sale deed No. 343/ 2020 of Navaikulam S.R.O. dated 27/02/2020.

- B3, - Order No.1/51822/ 2021 of Revenue Divisional Office, Thiruvananthapuram.
- B4. - Permit, Sketch and Plan issued by the Pallickal Grama Panchayath dated 22/03/2021.
- B5. - Copy of Sale deed No. 2665/ 1996.
- B6. - Encumbrance on property certificate.

COURT EXHIBITS:-

- C1 - Commission Report submitted by the Advocate Commissioner Sri. S.V. Shinu, dated 03/06/2021.
- C1(a)- Rough sketch prepared and submitted by the Advocate Commissioner Sri. S. V. Shinu, dated 03/06/2021.

Id/-
MUNSIFF

// True copy//

MUNSIFF

Typed by: David. D.
Compd. by:

**COPY OF ORDER IN I.A. 1/ 2021 IN O.S. 145/ 2021
DATED 22nd JANUARY, 2026.**