

IN THE COURT OF THE MUNSIF-MAGISTRATE MANANTHAVADY

Present : Sri.Anand Parathara, Munsiff-Magistrate, Mananthavady

Wednesday, the 18th day of June – 2025

(The 28th day of Jyaishta – 1947)

INTERLOCUTORY APPLICATION No.08/2024

In OS.No.196/2024

Between:

Bobby.S.Robert, Aged 54 years, S/o.C.P.Swamy Das,
Residing at “Cheriyapurayil”, Kurushingal,
Kammana Post, Mananthavady Village and Taluk,
Wayanad District, Pin: 670 645.

Petitioner/
Plaintiff

And

1. Vilma Juliet, Aged about 50 years,
W/o.Santhosh Lawrance and D/o.M.M.Jose,
Maravettikkal House, Pathivayal, Mananthavady
Post and Village, Mananthavady Taluk,
Wayanad District, Pin: 670 645.
2. Santhosh Lawrance, Aged about 55 years,
S/o.not known to plaintiff,
Maravettikkal House, Pathivayal, Mananthavady
Post and Village, Mananthavady Taluk,
Wayanad District, Pin: 670 645.
3. Mary Jose, Aged about 75 years,
W/o.M.M.Jose, Residing at Maravettikkal House,
Pathivayal, Mananthavady Post and Village,
Mananthavady Taluk, Wayanad District,
Pin: 670 645.

Respondents/
Defendants

This petition coming on this day for hearing before me in the presence of Sri.Sundar Ram and Sri.Saranya.P.Sajeev, Advocates for the Petitioner/Plaintiff, Sri.Midhun Babu, Advocate for the Respondents/Defendants, the Court delivered the following:

ORDER

Petition filed under Rule 1 of Order XXXIX and s. 151 of the Code of Civil Procedure seeking temporary mandatory injunction.

2. The petitioner claims absolute ownership and possession of the plaint A schedule property, acquired through a registered sale deed and inheritance. Thereafter, a residential house was constructed by the predecessor of the petitioner in the plaint A schedule property and was residing therein along with his family. None other than the petitioner has any manner of right or interest over the plaint A schedule property which is in the absolute possession and enjoyment of the petitioner who is paying the land revenue for the plaint A schedule property and building tax for the residential house therein. Plaint B schedule property is the pathway situated between the Plaint A schedule and the properties of the respondents. It is the only access to the plaint A schedule property. The respondents No.1 and 3 have properties towards the northern boundary of the plaint A schedule property. Plaint B schedule property is a mud and stone paved pathway 4 to 5 feet wide and 15 meters long. The said pathway goes further west alongside the northern boundary of the plaint A schedule property and reaches the public Panchayath well situated on the western aspect. The plaint B schedule pathway passes inside and through the property of the respondents 1 and 3. The petitioner has the right of easement by necessity over the B schedule road. The plaint B schedule pathway is used by the petitioner as well as his predecessor in interest from time immemorial, openly and uninterruptedly as of right as access, for more than 30 years and the petitioner has perfected the right of easement by prescription over the plaint B schedule pathway. Now the respondents are obstructing the usage of plaint B schedule pathway by the petitioner. They are also committing waste therein. The incident which led to the institution of the suit took place on 20/09/2024. In the instant suit,

an interim ex parte injunction was allowed in IA.2/2024. Thereafter, the petitioner complied with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure. The respondents were served with the relevant copies on 25-09-2024. Thereafter, on 26-09-2024, when the advocate commissioner inspected the plaint schedule property, it was seen that under the instigation of the respondents, some of their workers, were putting up a new fence along the southern boundary of the B schedule pathway, and thereby obstructing the ingress and egress of the petitioner from the plaint A schedule property. The respondents also have dug up and ploughed portions of the plaint B schedule road and dug holes inside and within the plaint B schedule road. They have also removed 2 steps from the pathway. This is in violation of the order dated 23/09/2024, in IA No. 2/24 by which this court had passed the ad interim injunction against the respondents. The photographs of the said acts by the respondents are also produced. By that act of the respondents, the petitioner is devoid of an access to the plaint A schedule property. Hence this petition seeking an order of temporary mandatory injunction, directing the respondents to restore status quo existing as on date of suit, by removing forthwith the illegal fencing done by them as noted by the advocate commissioner in her report dated 23-10-2024 and also to restore the plaint B schedule road to its original state by filling up the holes illegally dug by the respondents and reinstating the stone steps and to restore the plaint B schedule road to its original state, within a time period to be fixed by this Hon'ble Court and in the event of the respondents' failure to comply with the order allowing the petitioner to do so and to recover the costs thereof from the respondents.

3. The respondents filed counter contending that the plaint B schedule pathway is not a public pathway. There is no easement right for the petitioner over the said property. The said pathway is made by the respondents and the pathway is included in the property of the respondents. The said fact would be revealed from a survey commission. The aforementioned gate was fixed by the respondents only. In fact, it was the petitioner who destroyed the hibiscus rosa fencing which separated the properties of the respondents from that of the petitioner. Thereafter only the respondents put up a fencing in that boundary. The earlier commission report was based on the commissioner being misunderstood by the false statements of the petitioner alone as the respondents had no participation during the commission inspection. Hence further steps in the suit are necessary to bring in the real facts in the case and the respondents propose to take steps for another commission inspection. The petitioner has other access to his property. This fact was suppressed. The notice of the order in IA 2/24 was received by the respondents at 5pm on 26/09/2024. The commission inspection was at 12.45 pm on that day. What the commissioner reported was that the work was being completed at the time of the inspection. This was with regard to the fencing which was destroyed by the petitioner himself. The respondents have not violated the order of the court. Only when the situation prevalent before the institution of the suit is proved, the order to maintain a status quo can be granted. In this case, there is no such record before the court to grant the status quo as prayed for. Hence if the petition is allowed, the respondents would be put to irreparable loss and hardships.

4. Heard.

5. The point arising for consideration is : -

1. Whether the petitioner is entitled to an order of temporary mandatory injunction, directing the respondents to restore status quo existing as on date of suit, by removing forthwith the illegal fencing done by them as noted by the advocate commissioner in her report dated 23-10-2024 and also to restore the plaint B schedule road to its original state by filling up the holes illegally dug by the respondents and reinstating the stone steps and to restore the plaint B schedule road to its original state, within a time period to be fixed by this Hon'ble Court and in the event of the respondents' failure to comply with the order allowing the petitioner to do so and to recover the costs thereof from the respondents?

6. Point No. 1 : - The learned counsel for the petitioner argued that the petitioner has produced the acknowledgement cards proving that the petitioner served the notice of the injunction order in IA No. 2/24 in compliance with O. XXXIX, R3 of the Code of Civil Procedure. Accordingly, the respondents had the notice of the said order as on 25/09/2024. The respondents are influential persons. Though the petitioner complained before the police, they did not take any action. The acts of the respondents are in blatant violation of the injunction orders of the court. By this act, the petitioner is devoid of the access to his property.

7. The learned counsel relied on the decision of the Hon'ble High Court of Kerala in Rejeev D. v. D. Sunil reported as 2024 KHC 319 to argue that the injunction can be sought for under s. 151 of the Code of Civil Procedure if the same is not provided for, under Order 39. In this case, the situation is covered under O. 39 and the petition as IA No.2 /24 is filed seeking the injunction. The petitioner avers that the said order is violated and as a result, the access to their property is blocked. Under either of the aforesaid provisions of law, the question before the court is whether a mandatory injunction can be granted at this stage in the case. In order to arrive at that finding, there has to be an adjudication with regard to the violation of the injunction order as averred.

8. The learned counsel for the petitioner argued that when any party to the suit has done something to alter the nature of the property pending the suit or the order of injunction, the court is duty bound to preserve the property as it was at the date of the institution of the suit. He relied on the decision of the Hon'ble High Court of Kerala in Balakrishnan v. Sumaja reported as 2024 KHC 37. Hence the court has to issue an order of mandatory injunction as sought for. He also relied on the decision of the Hon'ble High Court of Kerala in Thomas T. K. and Another v. Antony K. V. @ Jose and Another reported as 2018 (4) KHC 320 to argue that in such exceptional circumstances the court is bound to grant orders of mandatory injunction in order to maintain status quo and to preserve the property as it was at the time of the institution of the suit. The learned counsel for the respondents replied that at this stage, there is no evidence on record regarding the above averments. The petitioner has also filed a petition under Order 39 Rule 2A of the Code of

Civil Procedure alleging breach of injunction order. There has to be an adjudication in that petition in order to attribute the liability upon the respondents. Upon that finding only, the mandatory injunction can be directed against the respondents. Hence at this stage, the petition is filed only to harass the respondents. On that point, it is found that the court is bound to preserve the property. At this stage of the suit, there is no evidence or record before the court so as to arrive at a finding regarding the relief sought for in this petition. The petitioner seeks mandatory injunction directing the respondents to revert the plaint B schedule property as it was at the time of the institution of the suit. The commission inspection was two days after the institution of the suit. In the light of that admitted fact, I find that the argument of the learned counsel for the respondents holds good at this point.

The learned counsel for the petitioner further argued that as held by the Hon'ble High Court of Kerala in the case Paruthikkattuparambil Ayisha v. Permbra Abdul Nassar and Others, reported in 2015 (4) KHC 76, the parties are not to be allowed to flout the order of the court and the court has the power to protect the might of the law and even to restore the status quo ante. As discussed above, the facts in the aforesaid case are not applicable to this case, especially at the present stage of the suit.

9. The learned counsel for the plaintiff pointed out that in the case of Antony v. Padmavathy Amma reported as 2010 (1) KHC 794, the Hon'ble High Court of Kerala was pleased to hold that an interim mandatory injunction can be granted to restore the status quo of the last

non-contested status which preceded the pending controversy. The learned counsel for the petitioner added that the facts of the said case is squarely applicable in this case also were the respondents completely sealed off the petitioner from accessing his property by constructing the fencing along the southern boundary of the B schedule property. The said fact is reported by the commissioner in her report in which the commissioner stated that she saw that the construction of a fencing being completed. The learned counsel also added that in the case of Appukuttan Nair v. Hydrose, reported in 2004 KHC 60, in the Hon'ble High Court also held that mandatory injunction can be granted even for restoring status quo anterior to the date of the suit if it is found that it is absolutely necessary.

10. The learned counsel for the respondents replied that the property depicted as the B schedule in fact belongs to the respondents. The commissioner reported the lie of the properties as told to her by the plaintiff and as stated in the plaint only. Further steps need to be taken in order to bring in the real facts before the court. The petitioner seeks an order to maintain the status quo prevalent at the time of the institution of the suit. As of now, there is no record before the court depicting what the status quo ante was. Hence the facts of the aforesaid case also is not at all applicable in this case at this stage. There is no exceptional circumstance proved in this case. The commission report concluded stating that a survey sketch is needed to ascertain the actual lie and extent of the plaint schedule properties. It is admitted by the petitioner that the B schedule pathway passes through and inside of the property of the respondents. It is also discernible from the petition itself

that the said pathway is a public one. If the petitioner has any right by easement, it has to be proved by cogent evidence.

11. The learned counsel for the respondents further argued that in fact the petitioner attempted to encroach the B schedule pathway using force. Regarding this, a criminal case is pending before the Hon'ble Judicial First Class Magistrates Court II at Mananthavady. The respondents also produced documents to prove that aspect. The final report in that case is produced. The petitioner has approached the court with unclean hands and suppressing material facts. The learned counsel for the respondent also relied on the decisions reported as 2021(1) KHC 766, 2018 KHC 6615 and in 2023 KHC 10016 to argue that the relief of mandatory injunction is only to be granted in exceptional circumstances and that it is an order that is passed only in circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. Hence it shall be granted with utmost caution. It shall not be granted in a suit seeking permanent prohibitory injunction. The learned counsel added that at this stage, if the petition is allowed, the respondents would be put to irreparable loss and hardships.

12. From the above arguments and the records before the court it is seen that the petitioner seeks an order directing the parties to maintain status quo anterior, that was existing as on date of suit and also to direct the respondents to restore the property in such a way as to restore the same to the status quo anterior. At this stage of the suit, the records before the court are insufficient to arrive at a finding to that

regard. The commissioner inspected the property on 26/09/2024. The date of the suit was on 23/09/2024. The petitioner alleges that the respondent made a fencing on the southern side of the B schedule property. What the commissioner stated in the report was that she saw that the work of a fencing was being completed at the time of the inspection. The respondents deny having made any construction after the receipt of the order. The respondents also seek steps to be taken in order to prove their version regarding the petition averments. Further, in order to arrive at a finding whether the mandatory injunction is to be passed at this stage, there needs to be records before the court establishing that the respondents acted as alleged by the petitioners and in violation of the ad interim injunction order. At this stage of the suit, the court is devoid of sufficient records and evidence to arrive at a finding in that regard. Accordingly, the point is found against the petitioner. Hence upon these reasons I could find no reason to allow the petition at this stage.

As a result, the petition is dismissed.

(Pronounced by me in open court on this the 18th day of June, 2025)

MUNSIFF-MAGISTRATE

APPENDIX : NIL

MUNSIFF-MAGISTRATE

Typed by : Sreelathika.V.M.

Compared By : Shiji.M.T