

**THE COURT OF SUBORDINATE JUDGE, ERANIEL.**

**Present : Tmt. D. Asha Kousalya Shanthini, B.Sc., B.L.,  
Subordinate Judge, Eraniel.**

**Wednesday, the 30<sup>th</sup> day of July 2025**

**I.A.No. 1/2024  
in  
O.S.No. 77/2024**

H. Shajahan .... Petitioner/Plaintiff

.Vs.

T. Selvam .... Respondent/Defendant

This petition coming up for final hearing on this day in the presence of Thiru. P. John Xavier, Advocate for Petitioner and Thiru. L.R.Pradeep, Advocate for respondent and upon hearing the arguments of both sides and upon perusing the records and having stood over for my consideration till this day, this court delivers the following:

**ORDER**

1. The Petitioner/plaintiff seeks for an interim injunction restraining the respondent/defendant, his men, power agents or servants not to do any works in the plaint schedule property till the disposal of the suit under order 39 Rule 1 & 2 of the Civil Procedure Code.

2. The petitioner has filed the main suit seeking for declaration, demarcation, putting up boundaries, mandatory and permanent injunctions against the defendant. The written statement filed by the defendant is adopted as the counter in the present I.A. by the respondent. During the enquiry the learned counsel appearing for the petitioner relied on Ex. P1 to P20.

3. Heard both sides. Records perused.

4. On perusal of the petition and counter averments the relevant questions like whether the plaint 'C' schedule property is the integral part of the plaint 'A' schedule

property, where the respondent has no pathway rights ? Whether the 'C' schedule property is found under the long uninterrupted and continuous possession of the petitioner ? Whether the plaint 'C' schedule pathway is a common pathway of the petitioner and the respondent as submitted by the respondent ? Whether the petitioner has made any encroachments ? Whether the consent deed of undertaking dated 29.3.2023 is binding on the parties ? are all can be decided during the main trial when evidence is let in by both the parties.

5. The learned counsel appearing for the respondent who has filed the counter claim raised strong objections for allowing the present petition by stating that as admitted by the petitioner himself as per Ex. P4 sale deed dated 08.12.1999, Ex.P6 sale deed dated 03.11.2000 and Ex.P11 which is the consent undertaking deed he is entitled to claim pathway rights in the 'C' schedule property. During the enquiry the learned counsel appearing for the petitioner did not deny the said consent undertaking deed dated 29.09.2023, which is marked as Ex.P11. The said document is admitted in the petition averments also.

6. It is also pertinent to note here that the petitioner seeks for a declaration regarding the 'C' schedule pathway which is described as having an area of 422 square feet (112.5 feet long and 3.75 feet wide) found in the building bearing door no. 16/11 of the Eraniel Panchayat and hence the discretionary relief of injunction is only a consequential relief in the main suit itself.

7. As the present interim prayer is one of the main prayers in the main suit, the said relief cannot be granted to the petitioner at this premature stage of the trial. Further as counter-claim is filed by the respondent/defendant, issues are framed in the main suit and hence the suit is now ripe for trial, where there is no impediment for both the parties to go on with the main trial itself.

8. Considering the facts and circumstances of the present case, for the above said reasons, this court is not inclined allow the present I.A. as prayed for at this premature stage as prayed for.

In the result, I.A. is dismissed. No costs.

Pronounced by me in open court on this the 30<sup>th</sup> day of July, 2025.

Subordinate Judge,  
Eraniel.