

IN THE COURT OF THE MUNSIFF, CHALAKUDY

Present : Parvathy Vijayan, Munsiff, Chalakudy.

Friday, the 6th day of February, 2026/23rd Magha, 1947

I.A.1/2025 in O.S.414/2025

Petitioner/Plaintiff :-

Jose T.K, Aged about 61, S/o Theethayi Kochuvareed,
Velookkara Desom, Pariyaram Village, Chalakudy Taluk.

By Adv. Sunil Jose V.

Respondents/Defendants :-

1. Vinayan, Aged about 61, S/o Moothedan Pinchappan,
Kanjirapilly Desom, Pariyaram Village, Chalakudy Taluk.
2. Jose, Aged 73, S/o Moothedan Kunjuvarkey,
Moozhikkadavu Desom, Pariyaram Village, Chalakudy Taluk.
3. Jibi, Aged about 48, S/o Moothedan Jose,
Moozhikkadavu Desom, Pariyaram Village, Chalakudy Taluk.
4. Dayas, Aged about 46, S/o Moothedan Kunjuvarkey,
Moozhikkadavu Desom, Pariyaram Village, Chalakudy Taluk.
5. Linto, Aged about 44, S/o Moothedan Kunjuvarkey,
Moozhikkadavu Desom, Pariyaram Village, Chalakudy Taluk.

By Adv. K.S. Rosh & Tomy Jacob

This suit is come up before me hearing on this day, the court passed the following :-

ORDER

1. This is a petition filed by the plaintiff under Order XXXIX Rule 1 and Section 151 of CPC
2. The averments in the petition in brief are as follows: Petitioner is the plaintiff in the suit. The suit is for permanent prohibitory injunction. The plaintiff A schedule properties are the properties of the plaintiff. The plaintiff B schedule property is a public way which is used by the plaintiff also. The defendants are attempting to close the B schedule public way and hence the suit is filed. The plaintiff is conducting a travel agency at Indoor. The plaintiff and his wife Biji Jose obtained the plaintiff schedule properties as per gift deed no.9/2021 and sale

deed nos1598/2017 and sale deed no.1599/2007 of the Sub Registry Office, Chalakudy and the properties are in their absolute ownership and possession. The petition schedule properties are situated within four clear boundaries. Nobody other than the plaintiff and his wife Biji has any manner of right over the petition schedule properties. The petition schedule properties having a total extent of 52.96 Ares is comprised in survey no.784/PT 1 783/7 of Pariyaram village. The petition schedule properties are situated within four clear boundaries. The defendants are the property owners on the western side of the way on the western boundary of the petition schedule properties. At the time of construction of protection wall to his properties the defendants requested the plaintiff to construct the same by dragging into the plaintiff's property and the plaintiff had done for the easy access of the vehicles through the way on the western side. On 02.09.2021, when the petitioner reached the petition schedule properties, it was noticed that the defendant had directed his worker one Devassykutty to close the way and to do unauthorized constructions therein and that the said Devassykutty is acting as per the direction of the defendants. The petitioner obstructed the same. The petitioner apprehends that the defendants will close the public way on the western side of the petition schedule property. Hence this petition to restrain the respondents and their men from destroying the B schedule way, from obstructing the petitioners right of ingress and egress to his petition A schedule property through petition B schedule public way.

3. The respondent filed objection contending as follows: The petition is not maintainable either in law or on facts. The petition is filed suppressing true facts and with unclean hands. The conduct of the petitioner is unfair and hence the petitioner is not entitled to the discretionary remedy of injunction. The averments in the petition are false and hence denied. From the documents pro-

duced by the petitioner itself it is clear that on the entire northern and eastern side of the petition schedule property is way. The petitioner had not produced any documents to show that the B schedule way is a public way and the said way is in existence. There is no way identifiable as per petition B schedule. The boundary description of plaint A schedule property is not correct. The property description and four boundaries stated is false. On the western portion of the plaint A schedule property, the properties of the predecessors of the defendants were in existence and out of the same some properties were sold to Puthussery family. Later in 1993 the father of the 1st defendant purchased the said properties. Thus the entire properties on the western side of the A schedule properties devolved on the family of the defendants. There is panchayath road on the northern side of the properties of the 2nd defendant having an extent of 96 ½ cents. The properties of the 1st defendant situate on the southern portion of the property of the 2nd defendant. The tharavadu house was in the property which belongs to the 1st defendant. No 10 feet width way was in existence on the northern portion of the property of the 1st defendant as stated in the plaint B schedule. The averment that the plaintiff had relinquished land from plaint A schedule properties for enhancing the width of the plaint B schedule way is false. The plaintiff is not having any right over the B schedule property. B schedule way is not a public way. The said way is not in existence. The plaintiff had constructed wall on the western boundary of A schedule properties by providing a gap to the properties of the 2nd defendant and in continuation of the same the defendant nos.2 and 3 had installed iron pipes with hooks on the eastern and western portion on the initial portion of the way on the eastern portion of the properties belonged to the 2nd defendant. At the time of construction of boundary on the western boundary of plaint A schedule property the plaintiff had constructed the wall and installed the tin sheets encroaching into the properties of the defendants on 02.09.2025 and the gate

also was installed at that time. Thereafter the petitioner had tampered the evidence and by cutting and removing the improvements on the western side of the plaintiff A schedule properties in continuation of the existing way towards south and obtained an interim injunction order by stating false facts. The defendants are the owners of the way on the western side of the petition schedule properties. The averment that the defendants requested the plaintiff to construct the boundary dragging into their property and that the plaintiff constructed the boundary dragging into the petition schedule property is false. The averment that the way on the eastern side of the petition A schedule property is puramboke property and used by the public for the last more than 100 years is false. The electric line is drawn through the properties of the defendants and not through the way. The public had never used the properties of the defendants as a way and hence the averment that the public is not using the way for about one year is also false. The averment that the petitioner had constructed the wall dragging into his property on the assurance that the B schedule way will be beneficial to the petitioner and respondent is false. The petitioner had not relinquished any land for the way and there was no understanding between the petitioner and respondents about the use of the way. The plaintiff has no manner of right over the way which belongs to the respondents. The previous owner of the A schedule property has set apart way on the eastern portion of the A schedule property and from that itself it is clear that there is no public way scheduled as B schedule on the western side of the plaintiff A schedule property. Hence prays for dismissal of the petition.

4. From the side of petitioners Exts.A1 to A9 marked. Ext.B1 to B 3 marked from the side of respondents. Commission reports Ext C1 and C2 marked.
2. The point to be decided is whether the prayer in the application need be allowed or not.

3. The Point: The learned counsel of the petitioner had submitted that petitioner is in exclusive title and possession of plaint A schedule property acquired as per Exts.A1 to A3 deed nos.29/2021 and sale deed nos1598/2017 and sale deed no.1599/2007 of the Sub Registry Office, Chalakudy. The western side of the plaint schedule property is a pathway which is used by the plaintiff and all other inhabitants as a public way. The learned counsel of the petitioner had submitted that the B schedule property is a public way having 10 feet width which is in the survey no.783 and 784 of Pariyaram Panchayath. The learned counsel of the petitioner also had submitted that the defendants are trying to close this way which is also seen reported as per the commission reports.
4. The learned counsel of the respondent had submitted that there is no such B schedule way existed in the plaint schedule property. The said way is not identifiable and not a public way. The learned counsel of the respondent had submitted that this suit is filed with unclean hands. The western side of plaint A schedule property is possessed by the predecessors of the defendants and some of the properties were given to the family of Puthussery. Thereafter the father of the 1st defendant had bought A schedule proeprty ad is in the possession and title of the defendants. The southern side of the 96 cents of property possessed by the 2nd defendant is the property of 1st defendant which consists of the tharavadu house. The eastern side boundary was used for the accessibility of the property of the 2nd defendant which is given as a pathway by the father of the 2nd defendant. The said pathway was used by the defendants and their family for access to the river. Thereafter the pathway was widened and erected the fencing. As now the eastern side of 2nd defendant is not used as pathway and is lying as parambu. There is no B schedule property existing as alleged by the plaintiff. The defendants had constructed the boundary wall and other tin sheets in the property of the defendant.

5. Exts.A1 to A3 and other documents would show that the western side of plaintiff A schedule property is shown as pathway. Even though the petitioner had stated that it is a public way used by the public but there are no documents produced by the plaintiff to prove that it is a public way. It is also pertinent to note that the said pathway is alleged to be of 10 feet width but as per Ext.C1 report the said pathway is of different feet of width ranging from 3-4meter. As per Ext.C1 commission report, Advocate Commissioner had categorically reported that there is construction of compound wall and gate on the western side of plaintiff A schedule property. It is also reported by the Advocate Commissioner in Ext.C2 report that the eastern side boundary of D1 to D3 not identifiable and is covered with grass and in some parts, there is cultivation of Koova and Chembu which are seen to be cut and the remnants are there. It is also categorically reported by the Advocate Commissioner that the pathway is not identifiable from the eastern side of property of D2 and D3. The Advocate Commissioner in Ext C2 had reported that the teak tree which on the eastern side of defendant's property is 1.2 meter away from the western side boundary of the plaintiff A schedule property which would also show that it is of 15-20 years of age. On perusal of Ext.C1 Commission report, it is seen that Advocate Commissioner had categorically noted that there is hindrance caused to use the B schedule pathway by erecting pipe and chain. As per Exts.A1 to A3, the western side of plaintiff A schedule property is a pathway for their ingress and egress. But there is no specific extent shown in any document of plaintiff with regard to plaintiff B schedule pathway. It is stated by the petitioner that the said pathway is a public pathway used by the public and the petitioner. But there are no documents produced from the side of the petitioner to show that it is a public pathway. It is also pertinent to note that the pathway is not clearly identifiable in all areas from the northern panchayath road till the river end and the width alleged is also found to be different in different areas. It is also reported

by adv commissioner in Ext C2, that from the southeast of defendants property to river is slop and not possible to enter river .It is also reported that after 1 1/2 feet one the western side of plaint A schedule property is a 4 feet slop. Thus from the above circumstances there is no prima facie case and balance of convenience in favour of petitioner. Moreover only after conclusion of trial the width of pathway and right of parties can be decided .In order to preserve the subject matter of suit and for the fair adjudication of matter in dispute the properties are to be preserved. Hence both parties shall maintain status quo with regard to plaint B schedule way and shall not commit waste in the property until disposal of suit. No costs.

(Pronounced in open court, this the 6th day of February, 2026)

Parvathy Vijayan,
Munsiff

APPENDIX

Petitioners Exhibits:-

- A1 - 14/06/17 - Copy of deed No.1598/17
- A2 - 14/06/17 - Copy of deed No.1599/17
- A3 - 27/12/21 - Copy of deed No.29/21
- A4 - 18/09/95 - Copy of deed No.5896/95
- A5 - 18/09/95 - Copy of deed No.5897/95
- A6 - 02/09/25 - Copy of Petition
- A7 - 02/04/25 - Copy of Tax Receipt
- A8 - 08/06/15 - Copy of deed No.1988/15
- A9 - 28/11/05 - Copy of deed No.6326/05

Respondents Exhibits:-:-

- B1 - Partition Deed No.48/1976

B2 - Photocopy of deed No.3084/1993

B3 - Photocopy of Survey Sketch

Court Exhibits:-

C1 - Commission Report

C1(a) - Commission Report

Munsiff