

IN THE COURT OF THE ADDITIONAL MUNSIFF, KOLLAM.

Present: Smt. Sofia.T.A., Additional Munsiff.

On Thursday the 20th day of March, 2025 /29th day of Phalgunam, 1946.

IA 01/2024 in OS.No.620/2024

Between

Petitioners/Plaintiffs:-

1. Shameer, aged 40 years,
S/o. Abdul Azeez, Alayil Veedu,
Murunthal Cherry, Thrikkadavoor Village,
Perinad.P.O., Kollam Taluk, Pin: 691601.
2. Abdul Azeez, aged 68 years,
S/o. Abdul Rahman Kunju, Alayil Veedu,
Murunthal Cherry, Thrikkadavoor Village,
Perinad.P.O., Kollam Taluk, Pin: 691601.
3. Thajunnisa@ Sajuma Beevi, aged 64 years,
W/o. Abdul Azeez, Alayil Veedu,
Murunthal Cherry, Thrikkadavoor Village,
Perinad.P.O., Kollam Taluk, Pin: 691601.

By Adv. Sri. A.R.Laiju

And

Respondent/Defendant:-

Manek Sha John @ Roy, aged 50 years,
S/o. P.J.John, Poovam Vettathu Veedu,
Murunthal Cherry, Thrikkadavoor Village,
Perinad.P.O., Kollam Taluk, Pin: 691601.

By Adv. K.Satheesan Cherumoodu.

This petition filed by the petitioners/plaintiffs for Injunction U/O.39 Rule 1 of the Code of Civil Procedure. This petition coming before me for final hearing on 15.03.2025 and the court on 20.03.2025 passed the following:-

ORDER

This petition is filed by the petitioners/plaintiffs under Order 39 Rule 1 of the Civil Procedure Code.

2. The petition averments, in brief, are as follows:- 1st Petitioner is the absolute owner and possession of plaint A and B schedule properties. The first petitioner obtained plaint A schedule property by virtue of settlement deed No.372/2022. Thereafter he mutated the property in his name. The 2nd and 3rd petitioners have the right to reside and enjoy the plaint schedule property. There is a pathway existing on the north-western side of plaint A scheduled property having 20m length and 1.20 m width used by them for the last 25 years. This is scheduled as Plaint B scheduled property. A boundary exists on the northern and southern sides of the Plaint B schedule property. The remaining portion leads to the plaintiff's property without any boundary. B scheduled property is the only way for the plaintiff to ingress and egress to plaint A scheduled property. In the plaint B scheduled property there is a step situated that is used to enter into the plaint A scheduled property. After the surgery of the 3rd plaintiff, he is unable to use the above-mentioned step due to his health conditions. Subsequently, the plaintiff demolished the step and that place created a slop on 26/07/2024. The acts of the plaintiff created enmity by the defendant. The defendant trespassed into plaint A scheduled property and used abusive words against the plaintiffs. And the defendant was directed to demolish these slops. The act of defendant informed the police and they gave a warning to the defendant. Due to that enmity against the first plaintiff, the defendant closed the B

scheduled way. This defendant's act only obstructs the enjoyment and use of the plaintiff A scheduled property. The petitioner got reliable information from one Mr. Anzar regarding the conspiracy of the defendant concerning the closure of the pathway on 10/08/2024. The plaintiff has no other way to ingress and egress to the plaintiff A scheduled property. If the defendant has succeeded in his acts, it will cause irreparable loss and injury to the plaintiffs. Hence, the petition.

3. Respondent filed an objection, contending as follows:- This petition is not legally maintainable. The suit is defective for non-joinder of necessary party. The description of Plaintiff B scheduled property is not correct. The plaintiff has only the right to use Plaintiff B scheduled property only to the extent of about 8 meters from the northern starting point up to the southern boundary of Plaintiff A's scheduled property. And the defendant has the absolute right to enjoy the pathway. The plaintiffs have no right to obstruct the B scheduled with step and slope on the B schedule for ingress and egress to the plaintiff A scheduled property. Originally, the plaintiff scheduled property belonged to the father of the defendant by virtue of partition deed No.1299/1969 of Kollam SRO. The total extent of the property is 36 cents. On the northern side of the property with Anchalumoodu - Kundara Public Road, about 18 cents were transferred to the present title holders Rajeev and Anzar. A pathway with 1meter width was provided in between the shop rooms of above said Rajeev and Anzar as access to the remaining 17 cents of landed property. The said access starts from the above-mentioned public

road in the north-south direction. Later the defendant's father settled 10 cents of landed property in favor of his daughter Beena John (sister of defendant) and her husband Kennady Joseph on the eastern side by virtue of Deed No.1381/1994. The said 10 cents is about 1 meter above the ground level of the remaining land. Out of the 10 cents 7 cents on the northern side of said property was purchased by one Ismail Kunju by virtue of sale Deed No.1002/1995 of Anchalumood SRO and the remaining 3 cents was transferred to the defendant's younger sister Bismi John by virtue of Sale deed No.1003/1995 of Anchalumood SRO. Later by virtue of Sale Deed No.669/1999 of Anchalumood SRO the said 3 cents was transferred to the joint title of the defendant and his wife Sherly Vargheese. It is submitted that the 1 meter pathway in the north-south direction is reserved for the said 3 cents of property situated on the southern side of plaintiff's A scheduled property and the defendant's 6½ of property. On the western side of the B scheduled property, the defendant holds title over 6½ cents of land and family house by virtue of the settlement deed No.1990/2007 executed by his father John Vaidyan, and in the said document the 1-meter pathway from the northern public road is specifically stipulated. The 2nd and 3rd plaintiffs obtained title over 7 cents by virtue of Sale deed No.1549/1999 of Achalumoodu SRO executed by the above said Ismail Kunju and the 2nd and 3rd plaintiffs, in turn, Settled the 7 cents by virtue of Deed No.372/2022 infavor of 1st plaintiff. To sum up, the pathway in question is reserved for the beneficial enjoyment of Plaintiff (up to about 8 meters), the defendant, and

the defendant's wife Sherly Vargheese. As such the plaintiffs have no manner of right to obstruct the pathway with step and slope:- instead they ought to have installed step and slope inside the northern side of the A schedule property. The defendant and his wife intend to take steps for getting remove the steps and slope installed by the plaintiffs on the pathway, encroaching the portion of the front yard of the defendant's house, recently. Admittedly the plaintiff on 26/07/2024 installed a slope misusing the absence of the defendant and family on that day and so in the evening the defendant questioned the illegal act of the plaintiff and demanded to remove the obstruction. The 1st plaintiff employed in Kerala Fire Force, lodged a false complaint before the Anchalumoodu Police, who came to the spot and directed the plaintiff to remove the obstruction. The defendant had not entered the plaintiff's house and abused the plaintiff and hence denied. Plaintiffs do not have a prima facie case and the balance of convenience is in favour of the defendant. Hence, the petition is liable to be dismissed.

4. The following points arise for consideration

1. Do the petitioners have a prima facie case in their favor?
2. In whose favour the balance of convenience lies?
3. In the event of declining the relief, does it cause any irreparable injury to the petitioners?
4. Whether the relief of temporary injunction as sought for is grantable?
5. Reliefs and Costs?

5. On the side of the petitioner, Ext.A1 and A2 are marked. Exts. B1 to B3 were marked from the side of the respondent. The Commission report marked as Ext. C1 series.

6. Heard both sides.

7. **Points Nos. 1 to 4:-** For the sake of convenience, these points are considered together.

I deem it appropriate at this juncture to consider the relevant statutory provision. R.1 O.39, CPC reads as under: -

“O. 39 R. 1. Case in which temporary injunction may be granted. -
Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to (defrauding) his creditors,

[(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]
the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders”.

8. The Hon'ble Supreme Court in **Maria Margarida Sequeira Fernandes and Others v. Erasmo Jack De Sequeira through L.R.s**, (2012) 5 SCC 370. It was held therein that: *"Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Judicial officers and judges must bestow due care, caution, diligence, and attention while granting or refusing the injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost care and seriousness."*

9. The main contention raised by the plaintiff is that there is no other way to ingress or egress to the plaint scheduled property.

10. The main contention raised by the counsel for the respondent is that the suit is not maintainable. The plaintiff is not the absolute owner of the plaint scheduled pathway. The plaintiff and defendant are using the B scheduled pathway together and it is admitted in the plaint.

11. On the perusal of Ext. C1, on the commission report also stated that the defendant property also situated adjacent to the plaint scheduled pathway property it is stated in the Ext. C1 on page no:5 & 6. The description of plaint B schedule property in commission report is that, "അന്യായ എ പട്ടിക വസ്തുവിൽ പ്രവേശിക്കുന്നതിനായി അഞ്ചാലുമുട് - കണ്ടറ റോഡിൽ നിന്നും തെക്കോട്ടു തുടക്കത്തിൽ 1 മീറ്റർ വീതിയിലുള്ള വഴിയാണ്. ടി വഴിയുടെ തുടക്കഭാഗത്തു പടിഞ്ഞാറു വശം A .R. ഫ്രണ്ട്സ് കട നടത്തുന്ന അൻസറിന്റെ ഫ്രണ്ട്സ് കടയാണ്. കിഴക്കു വശം ഒരു മീറ്റർ

ഭാഗം ഡോക്ടർ റോയിയുടെ വക കടമുറി കെട്ടിടത്തിന്റെ പടിഞ്ഞാറേ അറ്റത്ത് മതിൽ ഭാഗമാണ്. അന്യായം ബി പട്ടിക വഴിയുടെ 1.59 മീറ്റർ കഴിയുന്ന ഭാഗത്ത് ഗേറ്റ് സ്ഥാപിച്ചിരിക്കുന്നു. ടി ഭാഗം കഴിയുന്ന ഭാഗം ടി വഴിക്ക് 1.20 മീറ്റർ വീതിയുള്ളതായി കാണുന്നു. ടി ഭാഗത്തു കിഴക്ക് ഗ്ലാസ് കട നടത്തുന്ന രാജീവിന്റെ വക ഗോഡൗൺ കെട്ടിടവും സ്ഥലവുമാണ്. ടി വഴിക്ക് കിഴക്ക് വശം ഒഴിഞ്ഞു കിടക്കുന്ന സ്ഥലം അടിസ്ഥാനം കെട്ടി അന്യായം ബി പട്ടിക വഴിയുമായി വേർതിരിച്ചിരിക്കുന്നു. അന്യായം ബി പട്ടിക വഴിയുടെ പടിഞ്ഞാറുവശം മേൽ വിവരിച്ച A .R. ഫ്രണ്ട്സ് കട നടത്തുന്ന അൻസറിന്റെ കടകെട്ടിടത്തിന്റെ കിഴക്കേ മതിലാണ്. ടി കട കെട്ടിടത്തിന്റെ കിഴക്കേ മതിലിനു 7.95 മീറ്റർ നീളം ഉള്ളതായി കാണുന്നു. ടി കട കെട്ടിടത്തിന് തെക്ക് വശം അന്യായം ബി പട്ടിക വഴിയും ബാക്കി ഭാഗം പ്രതിയുടെ വക വസ്തുവും ടി ഭാഗം ഒഴിഞ്ഞു കിടക്കുന്നതായി കാണുന്നു.

അന്യായം ബി പട്ടിക വഴിക്ക് മൊത്തത്തിൽ 14.04 മീറ്റർ നീളം ഉള്ളതായി കാണുന്നു. അന്യായം ബി പട്ടിക വഴിയിൽ ഗേറ്റ് സ്ഥാപിച്ചിട്ടുള്ള ഭാഗത്ത് നിന്നും വാദിയുടെ വക വസ്തുവിന്റെ വടക്ക് പടിഞ്ഞാറേ മൂലഭാഗം വരെ 6.40 മീറ്റർ നീളവും അവിടെ നിന്നും വാദിയുടെ വക അന്യായം എ പട്ടിക വസ്തുവിലേക്ക് പ്രവേശിക്കുന്നതിനുള്ള ഗേറ്റ് വരെ 6.05 മീറ്റർ നീളവും അപ്രകാരം 14.04 മീറ്റർ നീളം ടി അന്യായം ബി പട്ടിക വഴിക്കു ഉള്ളതായി കാണുന്നു.”

On the perusal of Ext.C1, it is clearly stated that plaint B scheduled way is the only opening for the plaintiff to ingress and egress to plaint A scheduled property. It is stated in the page No.7 that “അന്യായം എ പട്ടികയിൽ പ്രവേശിക്കുന്നതിന് അന്യായം ബി പട്ടിക വഴിയല്ലാതെ മറ്റു യാതൊരു മാർഗവും ഇല്ലാത്തതാണ്.”

12. In the light of the discussion made afore, prima facie, the parties are placed at an equal pedestal, so far as the right over the Plaint B Schedule pathway is concerned. But, the question of how the Defendant can enforce his right by demolishing the slop or step that hedges the Plaint B

Schedule pathway is to be debated. Till that question is resolved by a full-fledged trial, the subject matter structures are to be protected. So the scale of balance of convenience leans towards the order, as sought for, on that score. As the said controversy is very much there to be bailed out, the dismantling of the structures present at the site pendente lite, may cause inextinguishable loss to the Plaintiffs. In that perspective, the element of irreparable injury also favours allowing of this application.

13. Reckoning the relevant factual and forensic facets, it has to be concluded that till the controversy regarding Plaint B Scheduled Property , there shall be a direction to both parties to maintain status quo at the site as reported in Ext. C1 Report. This application has to be allowed in such terms, by invoking powers of this Court under O. XXXIX R. 1 of the Code.

Points are answered accordingly.

14. **Point No.5:-** Ex consequenti, this petition is allowed under O. XXXIX R. 1 of the Code. Both parties are directed to maintain status quo of the Plaint B Schedule pathway, as reported by the Commissioner in Ext. C1 Series Report, till the disposal of the suit.

There is no order as to costs.

(Dictated to the Confdl. Assistant, transcribed and typed by her corrected and pronounced by me in the open court on this the 20th day of March, 2025.)

Sd/-
Sofia.T.A.,
Additional Munsiff

Appendix:-**Exhibits marked from the side of the Petitioners/Plaintiffs:-**

- A1 : 17.03.2022 : Certified copy of Settlement deed No.372/22 of Anchalumoodu Sub Registrar Office.
- A2 : 22.04.2022 : Land Tax receipt issued from Thrikkadavoor Village Office.

Exhibits marked from the side of the Respondent/Defendant:-

- B1 : 06.04.1999 : Photocopy of Sale deed No.669/99.
- B2 : 29.08.2024 : Land Tax receipt issued from Thrikkadavoor Village Office.
- B3 : : Photograph.

Court Exhibits:-

- C1 : Commission Report prepared and submitted by Advocate Commissioner Smt. Sumayya.M.
- C1(a) : Mahazar prepared and submitted by Advocate Commissioner Smt. Sumayya.M.
- C1(b) : Rough Sketch.

//True Copy//

Id/-
Additional Munsiff

Sofia.T.A.,
Additional Munsiff

Typed by : Resmi.S.G.
Compared by : Marybindu.C.

