

IN THE COURT OF THE SUB JUDGE, CHERTHALA

Present: Ms. Lakshmy.S, Sub Judge

Tuesday, the 24th February 2026 / 5th Phalguna 1947

IA.1/2026 in AS.2/2026

(Filed on 19.01.2026)

Petitioners/:
Appellants

1. Thama Dineshan, aged 57 years,
W/o. Late Dineshan, Vadakke Pulikkal,
K.R. Puram.P.O, Chennam Pallippuram Muri,
Pallippuram Village
2. Abhijith, aged 28 years, S/o. Late Dineshan,
Vadakke Pulikkal, K.R. Puram.P.O,
Chennam Pallippuram Muri, Pallippuram Village

By Adv. Gurudas. H. Mallan, Adv. Sudheer. P.
Adv. P.M. Rahila, Adv. K.P. Jayakumar,
Adv. V.H. Nandakumar & Adv. Parvathy. M.P

Respondents

- :1. Jith. V.R, Vadakke Pulikkal, K.R. Puram.P.O,
Chennam Pallippuram Muri, Pallippuram Village
Cherthala Taluk, Alappuzha District
2. Akhila, aged 29 years, D/o. Late Dineshan,
Vadakke Pulikkal, K.R. Puram.P.O,
Chennam Pallippuram Muri, Pallippuram Village

By Adv. Thomas. J. Panat

This petition coming on for final hearing on 24.02.2026 and the court
on the same day passed the following:

ORDER

This petition is filed by the appellants/plaintiffs under S.94, 151 and O.39 R.1 CPC for an interim injunction to preserve the status of plaint schedule properties.

2. The contentions of the petitioners are as follows:

The suit was for declaration of prescriptive easement and for injunction. Plaint A schedule property belongs to the plaintiffs and the B schedule property belongs to the defendant. C schedule is the pathway, in B schedule, being used by the plaintiffs to reach the public road from A schedule. Plaintiffs have acquired prescriptive easement over C schedule pathway. Defendant tried to complete D schedule constructions over C schedule pathway. The defendant disputed the right and user of C schedule pathway by the plaintiffs which forced the plaintiffs to institute the suit. The trial court did not consider the pleadings and evidence of the plaintiffs and dismissed the suit. The pathway through B schedule is the only means for the petitioners to reach the public road from A schedule. If the first counter petitioner succeeds in making obstructions across the C schedule the petitioners would be put to great hardships. Hence the petition to preserve status quo.

3. The 1st respondent filed objections as follows: The petition is not maintainable either in law or on facts. There is no 'C Schedule' way as

alleged. Plaintiff B Schedule belongs to the first respondent where he resides with family. The allegation that petitioners have right of prescriptive easement over C Schedule is false. The plaintiffs have no right whatsoever in the B Schedule property. The petitioners have no allegation as to when the toilet was constructed obstructing their alleged right over C schedule and the same shows their malafides. The petitioners have suppressed their access through a different way. The same is reported by the Commissioner also. Hence the petition is to be dismissed.

4. Heard and perused the records.
5. The following points arise for consideration :
 1. Are the petitioners entitled to get an interim injunction on the strength of a prima facie case, balance of convenience and irreparable loss?
 2. Order as to costs?
6. **Point No.1:**

The suit was for declaration of prescriptive easement and injunction. The petitioners case is that plaintiff A Schedule property belongs to them and B Schedule property belongs to the respondent. The petitioners claim that C Schedule pathway, situated in B Schedule property, has been used by them continuously to access the public road from A Schedule property. They allege acquisition of prescriptive easement over the said pathway. It is alleged that the respondents attempted to construct D Schedule structures obstructing the

pathway, thereby denying their right of user. It is argued that the trial court dismissed the suit without properly considering their pleadings and evidence. The petitioners contend that the pathway is the only means of access to the public road, and obstruction would cause irreparable hardship.

7. The first respondent on the other hand has denied existence of any C Schedule pathway and has asserted that plaintiff B Schedule property belongs exclusively to the first respondent, where he resides with his family. He stoutly denied petitioners' claim of prescriptive easement. It is argued that the petitioners could not even mention the date on which the alleged obstruction D schedule toilet construction was made and it shows the mala fides.

8. The existence of plaintiff C Schedule pathway itself is disputed. The petitioners have claimed prescriptive easement, which requires proof of continuous, uninterrupted, and hostile use for the statutory period. The respondent has denied such user and pointed to alternative access. The trial court has already dismissed the suit, and at this stage, this Court is not required to adjudicate conclusively on the rights claimed.

9. The limited question is whether interim protection is warranted to prevent irreparable injury. The trial court has already found that the petitioners could not establish the right of way through respondent's property and that the structures were actually made as an obstruction. The claim of

prescriptive easement is a matter to be adjudicated finally in appeal and cannot be presumed at this interlocutory stage. The Commission Report filed in this appeal also would suggest that an interim order of injunction is not required to preserve the status.

10. In the absence of clear prima facie case, the petition for preservation of status quo cannot be granted as the property is being used by the first respondent and his family and the order would have an adverse effect of infringement on their privacy. The point is found against the petitioners.

11. **Point No.3** : In view of findings on point no.1, the IA is to be dismissed, with costs.

In the result, IA is dismissed, with costs.

Dictated to the Confidential Assistant, typed by her directly to laptop, corrected and pronounced by me in open court on this the 24th day of February, 2026.

Sd/-
LAKSHMY.S,
SUB JUDGE

Appendix : Nil

Id/-
SUB JUDGE