

IN THE COURT OF THE DISTRICT JUDGE, ALAPPUZHA

Present : Sri. K.K.Balakrishnan, District Judge

Tuesday the 21st day of October, 2025/ 29th Ashwinam 1947

I.A. No.1/2021 in AS No. 11/2021

(Filed on 16.02.2021)

Petitioner/: Josekutty, Aged 57 years, S/o Kuttappan, Madayanmali
Appellant Veetil, Muttar Village, Kuttanadu Taluk

By Adv.Satheesh Chandra

Respondents:

1. Satheesh Kumar, Aged 49 years, S/o Sreedharan Achari, Peediyackal Veedu, Muttar Village, Kuttanadu Taluk, Alappuzha District
2. Savithri, Aged 48 years, W/o Satheesh Kumar, Peediyackal Veedu, Muttar Village, Kuttanadu Taluk, Alappuzha District
3. Muttar Grama Panchayath, Muttar Panchayath Office represented by Secretary
4. Karthyayani Amma, W/o Sreedharan Achari, Peediyackal Veedu, Muttar Village, Kuttanadu Taluk, Alappuzha District (Died)
5. Babu, S/o Thankappan, Thaithara Veedu, Mithrakkary Muri, Kuttanadu Taluk, Alappuzha District
6. Sivanandan, S/o Govindan, Nalpathanchil Veedu, Mithrakkary Muri, Kuttanadu Taluk, Alappuzha District

Addl.R7. Sasi, Aged 63 years, S/o Sreedharan Achari, Peediyackal Veedu, Muttar Village, Kuttanadu Taluk, Alappuzha District

Addl.R8. Jagadeesan, Aged 55 years, S/o Sreedharan Achari, Peediyackal Veedu, Muttar Village, Kuttanadu Taluk, Alappuzha District

Addl.R9. Aakunju, Aged 52 years, S/o Sreedharan Achari, Peediyackal Veedu, Muttar Village, Kuttanadu Taluk, Alappuzha District

Addl.R10.Kamala, Aged 65 years, D/o Sreedharan Achari, Peediyackal Veedu, Muttar Village, Kuttanadu Taluk, Alappuzha District

(Addl.R7 to R10 are impleaded as legal heirs of deceased R4 as per the Order dated 14.09.2023. in I.A 2/2022)

R1 & R2 By Adv.S.Sudarsana Kumar

This application is filed under S.5 of Limitation Act to condone the delay of 408 days in preferring the appeal. This petition having been finally heard on 14.10.2025 and the court on 21.10.2025 passed the following:-

ORDER

This application is filed under S.5 of Limitation Act to condone the delay of 408 days in preferring the appeal.

2. Petitioner is the second defendant in OS 540/2010 on the file of Addl. Munsiff's Court, Alappuzha. The suit was filed by R1 and R2 against the petitioner herein and other respondents herein for their relief of permanent prohibitory injunction with respect to the plaint scheduled property. Originally, the suit was filed arraying R3 herein as first defendant and petitioner herein as second defendant. Thereafter, additional D3 to D5 were impleaded before the trial court. The trial court by judgment dated 28.01.2020 decreed the suit with cost. Against the judgment, petitioner herein approached this court by filing appeal. Since, there is delay of 408 days in preferring the appeal, this petition is filed to condone the same. The respondents herein are both plaintiffs, D1 and additional D3 to D5. During the pendency of this petition, additional D3, who is the fourth respondent herein died and her legal heirs are impleaded as additional R7 to R10.

3. Petitioner in his affidavit stated the following facts; The subject matter of the suit is with respect to right of way. He came to know about the judgment of the trial court on 05.02.2021. The reason for delay in informing the disposal of the suit was that his counsel lost phone number of him. He is a heart patient and was bed ridden. Thus, he was unable to contact previous counsel of him. Due to COVID-19 pandemic there was restriction for him to travel. Doctor suggested complete rest. Thereafter, case records were collected from his previous counsel and entrusted the matter to the present

counsel on 05.02.2021. The delay was neither willful nor intentional. So, pleaded for condonation of delay of 408 days in filing the appeal.

4. Even though notice served to all respondents, R1 and R2 (plaintiffs) alone appeared through their counsel, all other respondents remained *ex parte*.

5. The objection filed by R1 and R2 in brief is the following;

The suit was earlier remanded by this court after setting aside previous judgment of the trial court. Thereafter, the property was measured and after recording evidence, suit was decreed in favour of R1 and R2. There is no basis for the allegation that the suit was decreed without considering the objection raised by the appellant with respect to the way in item No:2 of the suit property. The trial court rightly found that there is no public way in item No.2 of the property. This fact is suppressed by the petitioner. It is unbelievable that the petitioner was unaware of the decree of the trial court for 400 days. The reason for delay in filing the appeal stated by the petitioner is unbelievable and false. Petitioner approached Muttar Panchayat and Legal Services Committee of Kuttanad Taluk, with respect to the claim of same way and against the petitions, respondents filed objections, specifically stating about the decree passed by the trial court. So, the petitions were dismissed and after many months of that dismissal, this appeal is filed. The health issues and COVID-19 pandemic and consequential rest suggested by the doctor for the petitioner are false. In between November 2019 and January 2020, there was no restrictions in connection with that pandemic. As the petition is filed without any bonafides, it is only liable to be dismissed.

6. Heard both sides.

7. The point for consideration is that;

Whether the reasons stated by the petitioner for the delay of 408 days in filing the appeal against the judgment and decree of the trial court are sufficient cause under Section 5 of Limitation Act ?

8. **The Point** :- The learned counsel for the petitioner submitted that the two reasons stated in the petition that his previous counsel lost his contact number and health issues of the petitioner are sufficient cause to condone the delay in filing the appeal. The learned counsel pointed out that he is a man of aged 57 years and was suffering from different health issues. In the affidavit, the reasons are clearly stated. One of the points argued by the learned counsel is that no prejudice will be caused to any of the respondents by allowing this petition. The suit is already decreed in favour of the plaintiffs, who are R1 and R2 herein. Therefore, the learned counsel argued for allowing this petition to admit the appeal by this Court.

9. Against the arguments, the learned counsel for the respondents submitted that the suit is filed in the year 2010 and the petitioner dragging the matter on flimsy reasons. No document was submitted by him to substantiate his claim of inability to contact his counsel and to file this appeal. The learned counsel pointed out that from November, 2019 to January, 2020, there was no COVID-19 pandemic lock down or any other restrictions in the State. The suit was decreed on 28.01.2020. So, the learned counsel argued that one of the reasons for the delay in filing the appeal is COVID-19 pandemic restrictions. The reply against the claim of lost contact between the petitioner's counsel and petitioner is that it is unbelievable that no communication can be sent to the petitioner by his counsel. The learned counsel further submitted that the motive of the petitioner is to deny the fruit of the decree to the respondents. So, the learned counsel argued for the dismissal of the petition.

10. The suit was decreed in favour of R1 and R2 (plaintiffs) with costs of the suit. By the decree, permanent prohibitory injunction passed against the petitioner herein and the Muttar Grama Panchayat, who are D1 and D2. Following is the decree passed by the trial court:

“The plaintiffs are granted a permanent prohibitory injunction restraining the defendants 1 and 2 from trespassing into item No.1 property and constructing a panchayat road through item No.1 property excluding the portion marked as ‘A-A1-A17-A’ in Ext.C1 (b) plan and from increasing the width of item No.2 pathway.”

It is true that in the year 2020, COVID-19 pandemic affected all over the State and restrictions were imposed including lock down. This petition is filed on 12.02.2021. At the time of filing of this petition, COVID pandemic lock down was existing. Petitioner is aged 57 years as per the petition. One of the reasons for delay in filing the appeal is that he was a heart patient and the doctor suggested bed rest. Therefore, there is merit in the contention of the petitioner that he was unable to engage a counsel to file this appeal within time.

11. As the decree was passed by the trial court in favour of R1 and R2, prohibiting the petitioner and R3 herein from trespassing into item No.1 property, no prejudice will be caused to R1 and R2 by condoning the delay in filing the appeal. Considering all the facts and circumstances, especially the facts stated in the affidavit of the petitioner, I am of the view that the reasons stated by the petitioner are sufficient cause to condone the delay in filing the appeal. For the difficulties and inconvenience caused to R1 and R2 by the delay in filing the appeal can be addressed by imposing reasonable cost to

them. So, for the interest of justice, I am of the view that delay is to be condoned, but with condition to pay cost of ₹2,500/- each to R1 and R2 by the petitioner.

In the result, the petition is allowed. Delay in filing the appeal is condoned with a condition to pay ₹2,500/- each to R1 and R2 by the petitioner on or before 31.10.2025. If the condition is not complied, this petition shall be treated as dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her, revised and corrected by me and pronounced on this the 21st day of October, 2025.

Sd/-
K.K.BALAKRISHNAN
DISTRICT JUDGE

APPENDIX: Nil

Id/-
DISTRICT JUDGE